



HUMAN RIGHTS AND STATELESSNESS

IN PENINSULAR MALAYSIA

Human Rights Commission of Malaysia
2023





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Executive Summary

Statelessness is a global human rights problem that affects millions of people. The absence of a nationality makes it difficult for stateless persons to access education, healthcare, employment, and social security benefits. In Malaysia, there is an alarming number of stateless persons despite attempts to reduce statelessness through litigation and advocacy efforts. Since 2015, the Human Rights Commission of Malaysia (SUHAKAM) has received 1,291 complaints related to statelessness. There have been significant efforts to understand statelessness from a legal perspective and broader, macro policies. However, less attention has been paid to understand the micro, intersectional lived experiences of stateless persons. This research consists of a rigorous desk review based on the existing body of legal and social science knowledge relevant to statelessness in Peninsular Malaysia, as well as in-depth empirical fieldwork done through interviews with multiple stakeholders surrounding statelessness, including stateless people themselves.

Section 1 presents an introduction to the study and the methodology employed in data collection. It includes the definition of ‘statelessness’ operationalised by the study, the research background, research questions, objectives, and variables of interest in the study, research duration, overall methodology for data collection, sampling framework, literature review, and the background of researchers.

Section 2 delves into the different stateless populations in Peninsular Malaysia in detail and takes a look at the causation of their statelessness, as well as the documented scale of the issue.

Section 3 presents a legal analysis on statelessness in Peninsular Malaysia. It starts out with definitions of statelessness and proceeds to explore Malaysia’s international and regional obligations on statelessness, the historical context surrounding Malaysian nationality laws, nationality provisions in national legislation and jurisprudence, and an analysis of strategic litigation on statelessness.

Section 4 provides an overview of registration processes and identification documents available in Peninsular Malaysia, which includes birth

registration, marriage registration, death registration, a summary of all government-issued identity cards, procedures for obtaining passports, and other forms of documentation utilised by stateless individuals.

Section 5 explores circumstances leading to statelessness. It first presents an overview, and then goes through eight stateless groups of interest (namely persons with long-standing residence since pre-independence and their descendants, abandoned children born in Malaysia, adopted children, cases where children were born out of wedlock or before a marriage was registered, children born outside of Malaysia to Malaysian mothers and non-Malaysian fathers, indigenous persons, stateless refugees, and any other undocumented persons who do not fit any of the previous categories) by way of exploring causations of statelessness specific to the group, as well as the scale of the issue.

Section 6 explores the process of acquiring citizenship in Malaysia. It runs through the citizenship application process through Jabatan Pendaftaran Negara (JPN – the National Registration Department), issues surrounding the process of obtaining citizenship, and a discussion on the denial of human rights and the inability to access services while waiting for citizenship applications to be processed.

Section 7 presents the effects of statelessness on members of the community. Section 7 gives an analysis on human rights and statelessness. It looks at various intersections of statelessness with human rights violations, such as statelessness as it intersects with the rights to food, housing, family life, and duty to the community; statelessness as it intersects with the rights to social security, life, physical and mental health, education, non-discrimination, fair trial, and liberty; and statelessness as it intersects with the rights of women against violence, freedom of expression, assembly, and to not be subjected to torture or degrading treatment.

Section 8 looks at the country's attempts to reduce and prevent statelessness. It presents government perceptions towards statelessness, data and statistics of stateless persons in Peninsular Malaysia, and developments in resolving statelessness.



Section 9 presents best practices by other countries to reduce and prevent statelessness. This includes statelessness determination procedures and facilitated naturalisation; law reforms to resolve existing major *in situ* stateless populations; law reforms to reduce and prevent childhood statelessness; ensuring birth registration for all children to prevent statelessness; preventing denial, loss, or deprivation of nationality on discriminatory grounds; removing gender discrimination in nationality laws; implementation of Sustainable Development Goals to address statelessness; international and regional instruments; and improving quantitative and qualitative data on stateless populations.

Section 10 presents detailed recommendations for policy changes based on the data obtained in this study. It presents solutions and recommendations from the findings, a strategy and plan of action, and limitations of the study.

Finally, Section 11 presents the references.

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Content Warning

This report utilises transcripts and excerpts from real interviews in its analysis. These excerpts may depict instances of violence, child marriage, rape, and sensitive situations that may be triggering to certain readers.

List of Abbreviations

1951 Convention	Convention Relating to the Status of Refugees
1954 Convention	Convention Relating to the Status of Stateless Persons
1961 Convention	Convention on the Reduction of Statelessness
ACHPR	The African Charter on Human and Peoples' Rights
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ADUN	Ahli Dewan Undangan Negeri/ State Legislative Assembly Member
AGC	Attorney-General's Chambers/ Jabatan Peguam Negara
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of South East Asian Nations
BDRA	Births and Deaths Registration Act 1957
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
DHRRA	Development of Human Resources for Rural Areas
DOSM	Department of Statistics Malaysia/ Jabatan Perangkaan Malaysia
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
EPF	Employees Provident Fund
EU	The European Union



HRC	Human Rights Council
IC	Identity Card
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISI	Institute on Statelessness and Inclusion
JAKOA	Jabatan Kemajuan Orang Asli/ Department of Orang Asli Development
JIM	Jabatan Imigresen Malaysia/ Department of Immigration
JKM	Jabatan Kebajikan Masyarakat/ Department of Social Welfare
JPN	Jabatan Pendaftaran Negara/ National Registration Department
KDN	Kementerian Dalam Negeri/ Ministry of Home Affairs
KPWKM	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat/ Ministry of Women, Family and Community Development
LAS	League of Arab States
MCO or PKP	Movement Control Order/ Perintah Kawalan Pergerakan
MDS	Multidimensional Scaling
MENA	Middle East and North African
MP	Member of Parliament
MOE	Ministry of Education/ Kementerian Pendidikan
MOFA	Ministry of Foreign Affairs/ Kementerian Luar Negeri
MOH	Ministry of Health/ Kementerian Kesihatan
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
PATI	Pendatang Asing Tanpa Izin/ Illegal Immigrants

PH	Pakatan Harapan
PR	Permanent Resident
SDG	Sustainable Development Goals
SDP	Statelessness Determination Procedure
SNAP	The Statelessness Network Asia Pacific
SOP	Standard Operating Procedure
SOCISO/ PERKESO	Social Security Organisation/ Pertubuhan Keselamatan Sosial
SUHAKAM	The Human Rights Commission of Malaysia
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
VOC	Voice of the Children

SECTION 1:

INTRODUCTION



1.1 Research background

Statelessness is a global human rights problem that affects millions of people today. The very existence of statelessness is said to be a reflection of failure by the State to fulfil the basic right to a nationality which is protected by Article 15 of the Universal Declaration of Human Rights (UDHR). Article 15 of the UDHR provides that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”. The 2014 Handbook on Protection of Stateless Persons by the United Nations High Commissioner for Refugees (UNHCR) further establishes the definition of stateless people as “individuals who are not considered citizens or nationals under the operation of the laws of any country”. Stateless people face difficulties or find it impossible to access education, healthcare, employment, social security benefits, property rights, civil registration (births, deaths, marriages), identity cards, travel documents, and more. Furthermore, statelessness often results in marginalisation, discrimination, insecurity, and an overall sense of hopelessness, negatively impacting peoples’ lives. COVID-19 has further exacerbated issues faced by stateless people, as the relationship between citizenship and the physical location of the person became more salient. In a report published in June 2021 by the Institute of Statelessness and Inclusion (ISI) on the impact of COVID-19 on stateless people, it was revealed that for Malaysia:

The lack of access to documentation and inability to acquire Malaysian legal identity has heightened the precarity of stateless persons and non-citizens during the pandemic. Non-citizen spouses and children continue to face barriers to entering Malaysia due to border closures and travel restrictions. Families with special circumstances have also not been allowed into the country, including families who lack financial resources, and those with family members with physical and mental disabilities. It is anticipated that there will be an increase in the number of children of Malaysian women without access to citizenship because of the inability of their mothers to return to Malaysia to give birth. Along with medical facilities being less accessible, civil registration offices have either closed or restricted services, making it much harder to register births.

(ISI, 2021)



In Malaysia, nationality is a highly sensitive matter as it is regarded as a manifestation of the country's sovereignty and identity. As with a number of other countries, citizenship has also been used as a political tool in the creation of "who belongs" and "the other" (Wingfield, 2003; Mannarini and Salvatore, 2020). Despite attempts to reduce incidences of statelessness through the application of national laws, there have been disturbing numbers of stateless persons. During the 2013 to 2018 period, Jabatan Pendaftaran Negara (the National Registration Department, hereafter referred to as JPN) reportedly recorded 111,142 citizenship applications, with 26,222 of them being rejected and another 54,222 being processed. Roslina Che Soh@Yusoff et. al. (2019) also listed down several factors leading to the creation of stateless children in Malaysia – failure of marriage registration by parents, adopted or abandoned children, children of refugees, undocumented migrants, and unregistered births. Since 2015, SUHAKAM has received 1,291 complaints related to statelessness (SUHAKAM, 2021). During an online dialogue on "Human Rights and Statelessness in Malaysia", organised by SUHAKAM on 11 June 2020, various issues were raised. The dialogue concluded that there exist gaps in nationality laws and guardianship, a lack of transparency and inconsistency of procedures, complexities of statelessness in Sabah, and other issues.

There have been significant efforts to understand statelessness from a legal perspective – specifically focusing on the laws that govern citizenship and legal cases within the judicial system that fight for individual rights and claims to citizenship – and broader, macro policies surrounding statelessness. However, less attention has been paid to understanding the micro, intersectional lived experiences of stateless persons, as seen in Figure 1 below. Thus, this report uses rigorous social science methods to understand and bring to light the various aspects of life for stateless persons that have been underexplored, specifically related to the social, political, legal, and economic aspects of their lives, and how all of these dimensions are informed or are affected by statelessness.

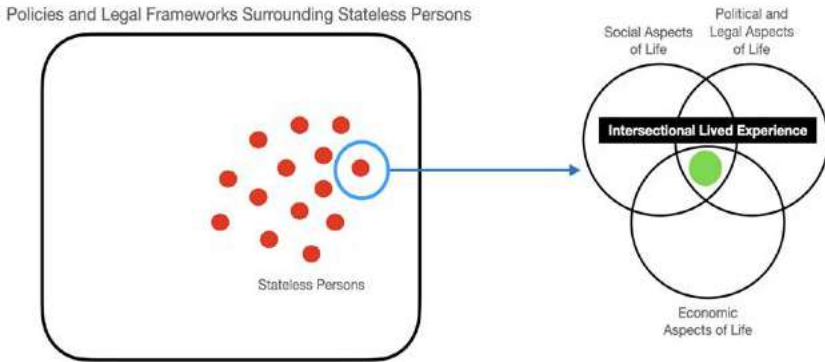


Figure 1: Much attention has been paid to understanding broad, macro policies and legal frameworks surrounding stateless persons. Less attention has been paid to understanding the intersectional lived experiences of stateless persons, which involves understanding their relationship to society, policies, the legal system, and economic life

Specifically, this report summarises a nine-month research study focusing on two aspects: 1) rigorous desk review based on the existing body of legal and social science knowledge relevant to statelessness in Peninsular Malaysia, and 2) in-depth interviews and data collection with relevant stakeholders surrounding statelessness in the (physical) field. It is important to stress that this report focuses only on statelessness in Peninsular Malaysia, as statelessness is a diverse issue (Burki, 2021) that affects various populations across the country differently. For example, conditions that cause statelessness and the lived experiences of stateless people are very different in Sabah, given its history and proximity to the Philippines and Indonesia, compared to the plight of stateless indigenous people in Perak, Peninsular Malaysia. For concreteness, the study follows the process flow of statelessness in Figure 2, which takes a close look at circumstances leading to statelessness, the effects of statelessness, and the process of acquiring citizenship. It uses existing legal frameworks and case law to review the progress made so far regarding statelessness in the legal sphere and finally, concludes with solutions and recommendations based on findings from the entire process.

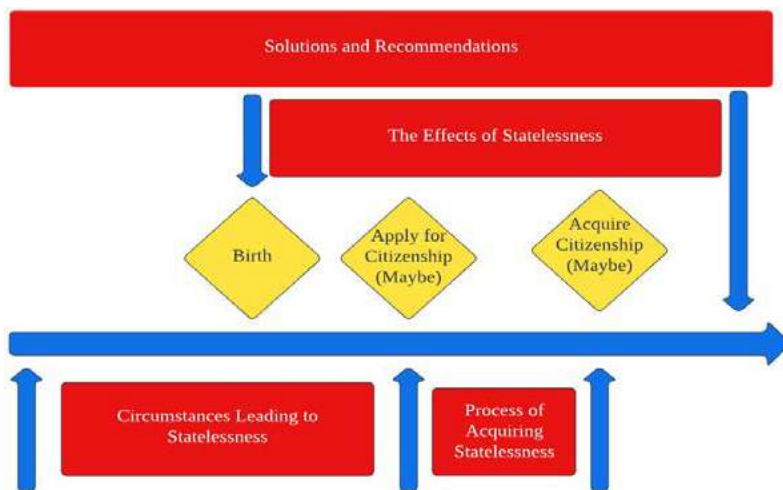


Figure 2: The process flow of statelessness

This report is divided into eleven sections. The first section introduces the scope of the underlying project and the methodology. Section 2 delves into the different stateless populations in Peninsular Malaysia in detail and takes a look at the causation of their statelessness, as well as the documented scale of the issue. Section 3 explores the domestic and international legal frameworks surrounding statelessness as relevant to Peninsular Malaysia. Section 4 discusses civil registrations and vital statistics in Peninsular Malaysia, such as processes for birth, marriage, and death registrations. Section 5 explores findings related to circumstances leading to statelessness, broken down by category of statelessness (i.e. 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 other undocumented persons who do not fit any of the previous categories). Section 6 presents findings related to the process of acquiring citizenship. Section 7 presents the effects of statelessness, Section 8 looks at the country's attempts to reduce and prevent statelessness. Section 9 presents best practices by other countries to reduce and prevent statelessness. Section 10 presents detailed recommendations for policy changes based on the data obtained in this study. Section 11 presents references.

1.2 Definition of statelessness and categories of interest

In this study, we refer to stateless populations in Peninsular Malaysia in two contexts, *in situ* statelessness in a non-migratory context, and stateless persons with a migratory context. *In situ* statelessness involves stateless people in a non-migratory context who find themselves stateless in their own country of birth. A working definition for *in situ* statelessness is stateless persons “who are in their ‘own country’, meaning a country with which they have significant and stable ties through birth, long term residence etc.” (Gyulai, 2012). These are persons who were born and have lived their entire lives in the country but are unable to acquire nationality because they may lack the necessary documentation. Statelessness *in situ* is often the result of the framing and implementation of nationality laws (UNHCR, 2014). We refer to seven of the stateless populations as statelessness *in situ*: persons with long-standing residence since pre-independence and their descendants, abandoned children born in Malaysia, adopted children in Malaysia, children of ‘mixed’ marriages or cases where children were born out of wedlock, children born outside of Malaysia to Malaysian mothers and non-Malaysian fathers, indigenous persons, and undocumented persons. These *in situ* stateless persons can be considered as ‘administratively’ stateless persons as they are entitled to legal recognition in the country but are unable to access citizenship due to administrative, financial, legal, or discriminatory barriers. A person who qualifies for citizenship but has not acquired citizenship is considered as stateless regardless of their past or future claims and qualifications to citizenship.

On the other hand, stateless persons in a migratory context are persons who have a migratory background, such as refugees or migrants who have no genuine and effective links with the country they live in, and so do not automatically qualify for Malaysian citizenship. Some stateless refugees who have lived in Malaysia for a long period of time may qualify for citizenship but they can only apply for citizenship by naturalisation or registration, and must meet the requirements to establish their genuine and effective link to Malaysia (Liew, 2019).



It is important to distinguish between these two contexts, as the distinction suggests the possible remedies and rights that the different groups are entitled to under international law. Under international law, there are two types of statelessness – *de jure* statelessness and *de facto* statelessness. A person is considered *de jure* stateless if they meet the universal definition provided under the 1945 Convention Relating to the Status of Stateless Persons, which is “a person not considered as a national by any State under the operation of its law”. On the other hand, a person is considered *de facto* stateless if they have a nationality and are outside the territory of their country of nationality but are unable to seek the protection of that country. Stateless refugees are therefore *de facto* stateless (Peter McMullin Centre on Statelessness, 2020).

Only *de jure* stateless persons qualify for the protections under the Statelessness Conventions (1954 Convention and 1961 Convention) whereas *de facto* stateless persons fall outside the protection under these Conventions. Therefore, it is important for States to identify who is stateless through a statelessness determination procedure (SDP) so that stateless persons can access the rights and protection afforded to them under the 1954 Convention. Having SDPs helps states identify stateless persons to ensure they can access the rights they are entitled to until they acquire a nationality. Stateless persons in a migratory context are suitable for identification through SDPs. However, the UNHCR Handbook on the Protection of Stateless Persons (UNHCR, 2014) recommends that SDPs are not appropriate for *in situ* stateless persons because of their long-established ties to their countries, either through long-term habitual residence or as a residence at the time of state succession. For *in situ* stateless persons, it is recommended for States to undertake targeted nationality campaigns or nationality verification efforts to grant these *in situ* persons nationality, instead of using SDPs.

This report takes the stance that the term ‘stateless’ will encompass all populations that are operationally stateless, i.e. the core of the issue is the relationship of said population with the government in their country of residence. This is crucial as day-to-day life and lived experiences depend on this relationship.

1.3 Research questions

In this research, we are interested in the following questions:

1. What are the existing legal, policy, administrative, and institutional frameworks surrounding access to nationality in Peninsular Malaysia?
2. What are the processes and practices surrounding citizenship and access to citizenship in Peninsular Malaysia?
3. What are the core issues and gaps in accessing citizenship in Peninsular Malaysia? Specifically, what are the causes, barriers, risk factors, and consequences of statelessness? How do these issues intersect with human rights?
4. What are some recommendations on measures or actions needed to prevent or alleviate the issue of statelessness in Peninsular Malaysia?

1.4 Objectives and variables of interest for this research study

Acknowledging that statelessness is a broad, all-consuming topic, the study focuses on the following objectives and variables of interest. The first and main objective is to understand, using the lived experiences of stateless individuals, the circumstances leading to and risk factors surrounding statelessness, the process of acquiring citizenship, and the effects of statelessness on individuals – i.e. mapping out the entire ‘journey’ of statelessness by focusing on the foundational issues related to each circumstance. Under this objective, we do the following:

- Identify various causes and circumstances that contribute and give rise to statelessness in Malaysia;
- Define the different categories of proof of citizenship/ residency and the determination procedure in Malaysia by
 - exploring challenges and difficulties faced in obtaining citizenship in Malaysia;
 - providing legal definitions of terms used to describe, differentiate and explain any relationships of undocumented persons/ stateless persons/ refugees/ migrants/ asylum seekers;



- analysing and identifying the pattern of court cases related to obtaining citizenship in Malaysia;
- analysing the geographical locations of stateless populations, including demographic composition;
- understanding the interrelation between these issues and human rights violations in this country as determined by international law.
- Define the scale of the issue by
 - estimating the size (in terms of numbers) of various categories of stateless people living in Malaysia, such as by age group and geographical spread;
 - understanding the effects of statelessness and scale of the issues;
 - assessing the economic risks and social costs of inaction;
 - assessing the readiness of the government in dealing with and tracking down cases in light of the COVID-19 pandemic amongst stateless people.

Based on the findings from the first objective, the second objective then is to provide solutions and recommendations in order to make progress on the issue of statelessness in Peninsular Malaysia. Specifically, we do the following:

- Comprehensively review laws (civil and syariah laws) that are inadequate and/ or not in line with human rights principles as well as those favouring (and/ or in line with human rights principles); e.g. the recognition of adopted children under Section 1(a) of the Second Schedule of the Federal Constitution, the recognition of citizenship of children who are born in Malaysia that did not obtain foreign citizenship within one year under Section 1(e), the wide discretion of the government to register a person under the age of 21 as a citizen under special circumstances in article 15A, and also the Legitimacy Act 1961;
 - a. conduct a comparison study to identify best practices from other countries (single and dual/ multiple citizenship) in addressing statelessness issues;
 - b. based on the facts and findings of this research, develop recommendations to the federal and state governments relating, but not limited to:

- i. the review of citizenship laws and other related laws and policies, with a view to incorporating a human rights focus, addressing in particular the problems faced by the stateless people regarding their right to nationality;
- ii. the formulation of strategies and plans of action with the aim of protecting and promoting stateless people's right to nationality as an integral part of the protection and promotion of their other human rights, particularly their economic, social and cultural rights; and
- iii. the direct and indirect implications (with an intent focus on the benefits) of acceding to relevant international human rights instruments including but not limited to the Convention Relating to the Status of Stateless Persons, Convention on the Reduction of Statelessness and Convention Relating to the Status of Refugees, as well as the ICCPR, ICERD and ICESCR.

1.5 Research duration

This research project was conducted within a period of under nine months, partitioned into three phases to ensure an exhaustive process of data collection, research, and analysis. It was conducted through three different modes – remotely (primarily for desk review), online, and in-person. The breakdown for how the period of research was spent can be found in Table 1. Based on guidelines provided from the Malaysian Ministry of Health¹, COVID-19 protocols were put into place for the physical data collection, which included routine testing for all research team members who were meeting participants, provision of free testing kits to members of the research team as well as participants, strict masking, vaccinations, ensuring good ventilation during data collection through a preference for outdoor venues, and adherence to physical distancing and capacity-capping measures when indoors.

1 To view the comprehensive list of these protocols, please visit the Ministry of Health website here: <https://covid-19.moh.gov.my/garis-panduan/garis-panduan-kkm>



Table 1: Breakdown of research activities according to month

Phase	Activity	Month
1	Local ethics approval	1
	Desk review	1
2	Interviews	2-5
	Transcription of interviews	5-7
3	Data analysis	7-8
	Final report preparation	8-9

1.6 Overall methodology for data collection

This research is based on both primary and secondary sources of data and is split into two methods:

1. A **desk review** of media publications, government data and responses, academic journals, international NGO reports, as well as other relevant documents on international human rights and legal provisions.
2. **In-depth, semi-structured interviews** that involved 89 members of eight stateless populations (defined below), civil society organisation (CSO) workers, and representatives of relevant government agencies.

In consultation with SUHAKAM, we identified eight categories of stateless populations as the target participants. The categories are as follows:

1. Persons with long-standing residence since pre-independence and their descendants
2. Abandoned children born in Malaysia
3. Adopted children in Malaysia
4. Children born out of wedlock or before a marriage was registered
5. Children born outside of Malaysia to a Malaysian mother and a non-Malaysian father
6. Indigenous persons
7. Stateless refugees
8. Undocumented persons who do not fit any of the previous categories

It is important to note that personal and citizenship identity is multifaceted, and that individuals may fall under multiple categories. For example, a child born in Bangladesh to a Malaysian mother and Bangladeshi father out of wedlock could be analysed under categories 4, 5, and 6 for the purposes of this study – but an interview with them or their guardian would ‘count’ as a single addition to the number of participants involved in the study.

Desk review

The desk review was conducted over a diverse range of knowledge, including government data, academic journals, think tank and policy reports, media articles, social media, and other relevant national and foreign materials/ research on statelessness in Malaysia. It was conducted in both English and Bahasa Malaysia. We found a total of 220 source materials on statelessness, with the breakdown listed in Table 2.

Table 2: Breakdown of desk review according to source type

Source type	Number
Media articles	74
Government responses	70
Academic articles (journals, books)	33
NGO reports	10
Legal provisions	33
Total	220

In-depth interviews

We conducted 89 interviews over four months, between September 2021 and December 2021. Interviews were conducted by authors M.N., N.F., and S.T. The target number was 80 interviews: 60 stateless individuals, 15 CSO members, and five government agency representatives. We ended up exceeding our interview target by 11.25%. Interviews were done with participants from all across Peninsular Malaysia – with the modes of interview being Zoom or phone (most common) and in-person. The map displaying the geographical spread of participants can be found in Figure 3. Table 3 summarises the number of interviews conducted for each of the categories and subcategories of participants.

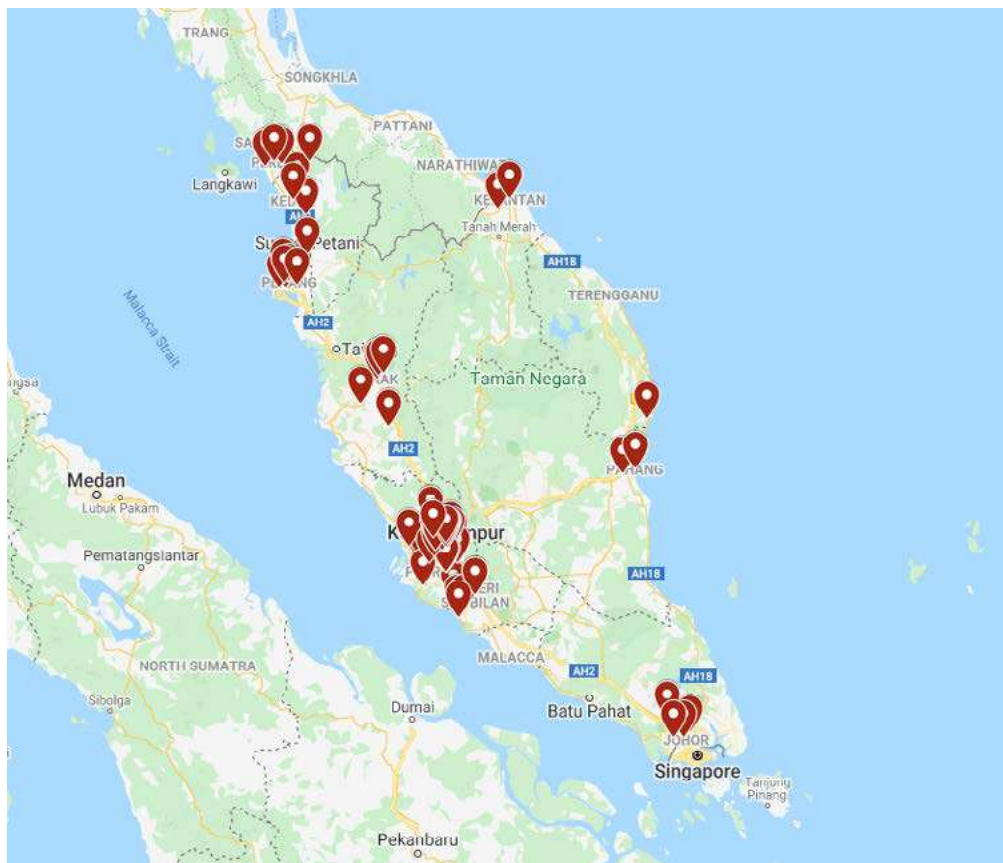


Figure 3: Geographical spread of participants in this study

SUHAKAM had intervened to help us contact all relevant governmental ministries and agencies. However, the authors would like to make a note that we were not able to speak to the following government agencies:

- JPN (National Registration Department) – three emails went unanswered.
- KDN (Ministry of Home Affairs) – three emails went unanswered.
- JKM (Department of Social Welfare) - we were able to correspond through email but our last correspondence on 24 November 2021 to set a date and time for a meeting went unanswered.
- KPWK (Ministry of Women, Family, and Community Development) - a date and time for a meeting was set but the ministry requested to reschedule. Email dated 30 November 2021 to reschedule went unanswered.

- JPN specifically did not respond to queries for an interview in an official capacity, but we were able to interview one (anonymous) JPN officer at one of their offices.

Table 3: Number of interviews conducted

Category	Sub-category	Number
Stateless persons	Persons with long-standing residence since pre-independence and descendants	4
	Abandoned children born in Malaysia	2
	Adopted children in Malaysia	12
	Children born out of wedlock or before a marriage was registered	11
	Children born outside of Malaysia to a Malaysian mother and a non-Malaysian father	5
	Indigenous persons	3
	Stateless refugees	9
	Undocumented persons who do not fit any of these categories	6
	<i>Total number of individuals</i>	52
Civil society organisation members	Elected representatives (e.g. MP, ADUN, Senator)	8
	NGOs	19
	Others (e.g. lawyers, academics)	5
	<i>Total number of CSO members</i>	32
Representatives of government agencies (JPN, Jabatan Kemajuan Orang Asli, Attorney General's Chambers, Ministry of Foreign Affairs, Department of Statistics Malaysia)		
TOTAL		89



1.7 Sampling framework

Study populations

As elaborated in Section 1.5, eight groups of stateless persons were identified to be prioritised for in-depth interviews as a main goal of this study was to understand the lived experiences of stateless people. However, other relevant stakeholders were also interviewed, as described below. The questions utilised in all of the interviews can be found at <https://osf.io/kvf5s/>.

1. Individuals from the eight stateless populations:

The first category comprises individuals from the eight stateless populations. The interviews focused on their lived experiences as stateless persons in order to understand the issues they face in the denial of their right to nationality and its impact on other human rights, particularly economic, social, and cultural rights, as well as the impact of the COVID-19 pandemic on stateless individuals.

2. Civil society organisation workers working with one of the eight stateless populations:

Semi-structured interviews were also conducted with humanitarian agencies and civil society organisations (CSOs) that work with one of the eight stateless populations. These interviews focused on the advocacy work and experiences of the CSOs or humanitarian agencies in assisting and working with stateless populations with regard to their right to nationality, as well as any challenges in assisting stateless individuals during the Covid-19 pandemic. In some cases, they may function as proxies for certain stateless populations through case management data.

3. Representatives from government agencies or stakeholders working with one of the eight stateless populations:

Semi-structured interviews were also conducted with relevant government agencies or stakeholders that work on matters that affect any of the eight stateless populations. These interviews focused on the roles of relevant government agencies and stakeholders in facilitating the acquisition of citizenship for stateless populations and how existing government policies align with laws on citizenship, adoption, immigration, and equality.

As part of an ethical research practice, we assured the participants that every effort would be made to preserve their anonymity and confidentiality and no data provided could be traced back to them. We also ensured that the participants fully understood the purpose of the research and their rights as participants. In cases where representatives of government agencies were interviewed, although the name of the agency or ministry would be revealed in this report, specific individuals would not be identified in any manner.

Participant recruitment

Participants were recruited through:

1. CSOs and related networks
2. Researcher networks – the team has extensive professional networks including members of vulnerable populations and civil society organisations

Information about the study and a call for volunteer participants (in the form of WhatsApp messages, email, Twitter, Instagram, Facebook) was disseminated through these networks. These networks then circulated the message or emails to the relevant contacts. The voluntariness of participation was emphasised in the message or email and they were reminded that participation was not mandatory. The text also stated that refusal to participate or a decision to withdraw will not result in any penalties or loss of benefits to which the participant was otherwise entitled. When a participant volunteered, their contact information was shared with the research team. The research team then contacted the volunteer participants through text message, email, or phone call, and they were taken through the relevant information before proceeding to informed consent.

A 'first interviewee' from each of the eight stateless populations was identified through our existing contacts with organisations that interface with individuals from these categories. From them, sampling was done by snowballing, a recruitment technique where participants are asked to assist researchers in identifying other potential participants from the targeted stateless populations.



Inclusion and exclusion criteria

The following were the criteria that we used for inclusion and exclusion of study participants:

- Above the age of 18, with the capacity to provide voluntary, informed consent.
- Fits with one of the categories below:
 - Member of one of the eight stateless populations, and/ or
 - Civil society organisation (CSO) worker working with one of the eight stateless populations, and/ or
 - Representative from a government agency working with one of the eight stateless populations.
- Not a member of the eight stateless populations but speaking as a proxy on behalf of one of the categories. For example, a parent/ guardian/ CSO worker speaking on behalf of persons below 18 years old from any of the eight categories of stateless populations.

Ethics protocol

Local ethics approval

Ethics approval was obtained from the local Ethics Consultative Service for Marginalised Populations, housed under the Research Integrity Unit at the University of Malaya on 1 September 2021, prior to when the interviews began. Information on this service can be found at: <https://medicine.um.edu.my/news/ethics-consultative-services-for-marginalised-population-ecs-mp>

Ensuring the autonomy and agency of participants through informed consent

There were two separate informed consent forms – one for interviews, and one specifically to obtain consent from participants to agree to share their personal documents related to their circumstances of statelessness. This specific consent form was for participants whom we did not interview directly but whose consent we wished to obtain for their documents to be shared through a third party (CSO or government stakeholder). Participants who were to be interviewed only needed to sign the one interview consent form, as it includes a section on sharing of documentation.

The process of gaining informed consent for the interviews and documents for all participants included an explication of the nature of the study – the explanation was provided in a language of the participant's choice, with an interpreter if required. All of the consent forms used in this study can be found at <https://osf.io/kvf5s/>.

With regard to the interviews specifically, this consent process was audio-recorded. For certain groups of participants, the research team acknowledged possible power asymmetries which we tried to compensate for through a repeated emphasis on the voluntariness of participation in this research project. They were also informed of their right to decline the interview invitation without any consequences. Participants who had agreed to participate was informed of their right to refuse to answer any questions or to stop the interview at any time. To ensure understanding, participants were asked to repeat what the study is for and what is expected from the participants (time, information) to the interviewer. Particularly due to the sensitive nature and the vulnerability of the populations, we informed all participants of our data storing and management to ensure that they will have anonymity and confidentiality. Consent was also taken for the act of audio-recording the interviews. If the participant declined to be recorded, they could still participate in the study and notes were taken by the interviewer.

As for the documents, participants were asked to share any relevant documentation related to the circumstances of their statelessness. If they agreed, they sent the documents over to us via email, text messaging app, or by post. We reimbursed any costs of sending the documentation over (e.g. postage, photocopying costs). The information from the documents is confidential, and no one else except the research team were to have access to the documents. Once we received the documents, we removed any identifiable information on it. The documents were kept in a cloud storage space that was password protected and only accessible to the research team. The information recorded is confidential, and no one else except the research team were to have access to the documents.

Other considerations:

- For illiterate participants, we read the informed consent document out to the participant alongside an impartial witness, selected by the participant, to observe the consent process. Both the participant



and the impartial witness signed the consent form. If the person was unable to sign, a signature by mark 'X' was sufficient.

- Informed consent forms that had been approved by the UM Ethics Review Committee were translated into multiple languages. If required, we utilised interpreters in the interview after checking with the participant which language they were most comfortable with.
- For persons with intellectual or mental disabilities, we ensured arrangements to accommodate them such as providing sign language interpreters or engaging their care providers to support them in attending the interview.

Voluntariness of participation in this study

Participants were reminded before consent was signed, and at the beginning of the interview, that they were not obliged to participate, and that they could stop the interview at any point. We reminded participants that they did not have to share any documents if they were too personal or if it made them uncomfortable, and that they did not have to give us any reason for refusing to share documents related to the circumstances of their statelessness.

Reflection on the benefits of the study for its participants

There was no direct benefit to the participants of the study, aside from helping progress policy-making surrounding statelessness in Peninsular Malaysia. We did inform participants that this final developed report, if fully utilised, would aid policymakers in addressing problems of statelessness, which in turn would benefit all the participants in the future. Participants were offered RM20 as compensation for their time and were reimbursed for documentation expenses (e.g. postage, photocopying costs), travel expenses, phone top-up, Covid-19 self-test kits, masks, and sanitisers.

Ensuring confidentiality of sensitive information related to participants

The anonymity and confidentiality of the participants were strictly protected – all participants would not be identified by name, nor would there be any identifying information that could potentially reveal the participants' true identities to external parties in any publication. The participants' identities

would be concealed by changing the names, locations, and parties that may be mentioned during the interview. For Zoom interviews, the video function would not be utilised by the participants and the interview would only be recorded aurally. All recordings of the interviews would be kept in password protected folders on the researchers' computers and destroyed 14 days after the interview is transcribed.

Protections surrounding mental health and physical distress

In the event that certain questions were distressing for the participants, all interviewers were given basic psychological first aid training to pick up signs of distress and to respond appropriately, either through active listening and practices surrounding empathy, or through a referral list of experts and professionals who could help aid the participants. Participants who were deemed to need it were offered information on avenues to attend counselling with mental health practitioners or social workers.

1.8 Literature review

In reviewing the literature on statelessness in Malaysia, we found that there were more studies that focus on statelessness in Peninsular Malaysia, compared to studies on statelessness in East Malaysia. We found 20 studies that focus on statelessness in Peninsular Malaysia, as compared to 13 studies on statelessness in East Malaysia, particularly amongst the Bajau Laut community and Filipino stateless refugee community in East Malaysia. We used the following phrases "stateless Malaysia", "statelessness Malaysia", "right to citizenship Malaysia", "isu kewarganegaraan Malaysia", and "orang tanpa kewarganegaraan Malaysia" to search for these studies in English and Bahasa Malaysia across Google Scholar, Research Gate, Research Rabbit, and other web search engines on scholarly literature.

Table 4 illustrates the breakdown of the academic articles found, which include a mix of peer-reviewed articles published in international journals and non-peer-reviewed publications such as Malaysian university journal articles, working papers, and students' dissertations. For articles on Peninsular Malaysia, 50% of the articles in English are published in peer-reviewed international journals whereas 100% of the articles in



Bahasa Malaysia are published in non-peer-reviewed sources. 89% of articles on statelessness in both Peninsular Malaysia and East Malaysia are written in English. This shows the clear lack of academic research available on statelessness by peer-reviewed sources² in both English and Bahasa Malaysia, highlighting the need to grow this body of research for policymakers and civil society members.

Table 4: Breakdown of academic articles according to language, source type, and region

Language	English		Bahasa Malaysia		Total
	Peer-reviewed	Non-peer-reviewed	Peer-reviewed	Non-peer-reviewed	
Peninsular Malaysia	8	10	0	2	20
East Malaysia	6	5	0	2	13
Total	14	15	0	4	33

Table 5: Breakdown of academic articles based on categories of statelessness in Peninsular Malaysia

Categories of stateless populations	Number of studies
(1) Persons with long-standing residence since pre-independence and their descendants	4
(2) Abandoned children born in Malaysia	4
(3) Adopted children in Malaysia	3
(4) Children of 'mixed' marriages or alternative families; cases where children were born out of wedlock or before a marriage was registered	2
(5) Children born outside of Malaysia to Malaysian mothers and non-Malaysian fathers	0

² Peer-reviewed research is written by experts and is reviewed by several other experts in the field before the article is published in the journal in order to ensure the article's quality. Therefore, the article is more likely to be scientifically valid and reach reasonable conclusions, as compared to research published in non-peer-reviewed sources.

Categories of stateless populations	Number of studies
(6) Indigenous peoples	4
(7) Refugees	4
(8) Undocumented persons who do not fall into the other categories	5

Statelessness in Peninsular Malaysia

Statelessness in Peninsular Malaysia is largely conceptualised through a policy or legal lens, and is usually presented through qualitative case studies of the different stateless populations in Peninsular Malaysia. Most rely on secondary data while only one study collected primary data, indicating a lack of primary data, which includes lived experiences of stateless persons.

The most comprehensive qualitative study to date (Liew, 2019) explains the various definitions of statelessness under international laws and situates Malaysia within the context of international human rights conventions. It identifies the causes and consequences of statelessness for six stateless populations through collecting primary data via interviews: persons with long-standing residence since pre-independence and their descendants; people who lack documentation, abandoned children or foundlings and adopted children; children of mixed marriages or alternative families and cases where children were born out of wedlock; indigenous persons; refugees and children of migrant workers. They also offer solutions and pathways to citizenship for these stateless populations who do have 'genuine and effective links' to Malaysia. This is the only study thus far that collects its own primary data and that focuses on all eight stateless populations that we are studying.

Tamara J. Duraisingam (2016) takes a similar approach but uses secondary data to analyse four stateless populations in Malaysia – the Orang Asli, the Indian community, Rohingya refugees living in Peninsular Malaysia, and the street children in Sabah. Another study by the same author (2016a) analyses the causes and consequences of statelessness for the same four populations, detailing the factors that lead to the cause of their *de facto* statelessness along with the grave consequences of their statelessness.



On the other hand, other studies adopt a conceptual approach towards statelessness, most commonly via a legal approach, relying on secondary data. Tamara J. Duraisingam and Harmahinder Singh Iqbal Singh (2020) analyse the position of stateless persons using international law and domestic law via the Federal Constitution by theorising the possible inclusion of the right to livelihood for stateless persons through a liberal interpretation of the right to life under Article 5 of the Constitution. Low (2017) provides a historical background on the development of citizenship law in Malaysia and Singapore, drawing heavily on how each country's citizenship regime is influenced by its former colonial citizenship systems. It then details the current citizenship regime in the respective countries, highlighting major trends on citizenship amendments post-independence.

Firstly, there are conceptual legal studies focusing on the stateless Indian community in Peninsular Malaysia, which is one of the most researched stateless groups. The purely theoretical study conducted by Tamara J. Duraisingam et. al. (2020a) focuses on whether the Rule of Law helps mitigate the issues faced by stateless Malaysian Indians, primarily their right to employment. In another study, Tamara J. Duraisingam et. al. (2020b), also focusing on stateless Indians, use a doctrinal approach to outline the historical factors that led to their statelessness, definitions of a stateless Indian, and how they can be provided a right to citizenship through an analysis of citizenship law and statelessness.

Secondly, there are studies that focus on the nexus between statelessness and migration (e.g. refugees, irregular labour migrants, asylum seekers, victims of human trafficking) via a legal framework. Rodziana Mohamed Razali et. al. (2015) adopt an international law framework to explore the interconnections between migration and statelessness, particularly how modern patterns of migration expose several groups of vulnerable persons with a migratory background to the risk of statelessness in Malaysia. Zulfaqar Mamat and Rodziana Mohamed Razali (2020) find that the unrecognised legal status of Rohingya refugees complicates the registration of their marriages in Malaysia and argue that more streamlined, detailed guidelines on marriages amongst Muslim refugees should be developed so that their marriages can be better regulated, as a means to preserve their rights according to Islamic law. Another doctrinal

research (Debrita Yanieta Santoso, 2022) adopts a rights-based approach to explore the legal consequences of the State's responsibility to confer Indonesian citizenship for children of undocumented Indonesian migrant workers in Malaysia.

Thirdly, while the previous studies examine both adult and child stateless populations, the following studies focus specifically on childhood statelessness, also using theoretical, legal frameworks and secondary data. Rodziana Mohamed Razali (2017) provides a holistic overview of the recent jurisprudential developments on childhood statelessness, along with possible solutions to address childhood statelessness, primarily for foundlings (children born to unknown parents), children separated from parents with no proof of parentage, and children born outside of wedlock. They suggest that more engagement with legislators and judges to expose them to the human side of statelessness should be pursued, along with a consistent push to reform citizenship provisions that contain discriminatory elements. This is to develop jurisprudential patterns in court that can act as safeguards against childhood statelessness. Likewise, Roslina Che Soh@Yusoff et. al. (2019) evaluate the extent of rights of stateless children to acquire citizenship in cases involving unregistered births, children born out of wedlock, foundlings, and children with parents of uncertain immigration status. They address crucial gaps and provide recommendations on the current legislation relating to the protection of these groups of children.

Fourthly, Azizah Mohd (2011) focuses on foundlings, analysing the laws related to the protection of the abandoned child's right to identity, especially to name, registration of birth, and citizenship under both civil and Islamic law in Malaysia. It is found that the Federal Constitution and Islamic law both provide a good legal framework for abandoned children to acquire citizenship, but issues arise in the implementation of certain laws by relevant government bodies (e.g. JPN, KDN). Chen (2003) similarly examines foundlings under the Federal Constitution and international human rights provisions.

Lastly, Nur Athirah Syuhada Hasni and Nurshahirah Azman (2020) use a qualitative approach to situate the statelessness of adopted children and ways to confer citizenship under the Malaysian legal provisions, and then



analyse selected cases of citizenship applications by adopted children to the Court or JPN. Azizah Mohd (2012) examines whether the existing legal provisions via the Adoption Act 1952 and the Islamic family law on adoption in Malaysia are adequate to accommodate both Muslims and non-Muslims.

While most of the literature focuses on different groups of stateless children, Tharani Loganathan et. al. (2022) examine the intersection of undocumented and non-citizen children in Malaysia and their vulnerabilities in education access. Using a desk review and in-depth interviews, they find that most of them rely on informal education provided by alternative learning centres that typically lack standardised curricula and resources. They also find that stateless Rohingya refugees in Peninsular Malaysia and the Bajau Laut children in Sabah are the most marginalised, having the poorest educational opportunities. Furthermore, Mazura Md Saman and Nor Hafizah Mohd Badrol Affandi (2018) look more into the Malaysian law regarding access to education to explain stateless children's high barriers to entry into public schools. Menz (2016) is the only study that explores the intersection between statelessness and the risk of child marriage for girls in Malaysia. The risk of child marriage is especially high for the stateless Rohingya refugees as well as underaged trafficked Rohingya girls.

Statelessness in East Malaysia

In comparison, the literature on statelessness in East Malaysia mostly focuses on two groups of stateless populations in Sabah, namely the Bajau Laut community or the children of migrants and refugees. Seven out of the thirteen studies found focus on the Bajau Laut community while the remaining six focus on the children of migrants and refugees in Sabah.

The stateless Bajau Laut are often framed as national security concerns. Using the Bajau Laut in Sabah as a case study, Marshall et. al. (2019) discuss their case study by looking at the history of illegal immigration in Sabah and the ongoing conflict between the Malaysian government and armed vigilantes. Ramli Dollah et. al. (2016) present the stateless Bajau Laut in Sabah as one of the major constraints in addressing cross-border crime in Sabah, and position them as a threat towards Sabah's security.

However, the rest of the literature on Bajau Laut tends to rely on ethnographic fieldwork to explain the lived experiences and complex political formation of identities of the stateless Bajau Laut communities. Chuah (2016) uses fieldwork to examine the reasons why statelessness persists amongst the sea nomad and semi-nomad Bajau Laut communities in Semporna, Sabah. Badariah Saibeh (2018) uses fieldwork to explore the relationship between citizenship status and access to education amongst undocumented persons with unclear citizenship status in Semporna, Sabah, and how access to education can play a role in social inclusion. The remaining studies use secondary data to explain the historical policies and background leading to the statelessness of the Bajau Laut, such as Ismail Ali and Mohammad Raduan Mohd Ariff (2011) and Brunt (2015) who also provides recommendations.

Similar to the literature on Bajau Laut, most research on children of migrants and refugees in Sabah rely on ethnographic fieldwork. Allerton's studies are the only peer-reviewed studies that look at statelessness from an ethnographic approach, as compared to the majority of studies that analyse statelessness in Peninsular Malaysia via a legal framework. Allerton (2014) uses ethnographic fieldwork with stateless children of migrants and refugees in Sabah to argue that many of these children with familial origins from Indonesia or the Philippines, lack an "effective nationality". In a later study, Allerton (2017) argues that UNHCR's current #IBelong campaign presents stateless persons as uniquely excluded and heavily emphasises the need for legal solutions. She uses ethnographic data on stateless migrant children in Sabah to highlight how this campaign disregards the complexities of the lived experiences and wider politics of State recognition. Later still, Allerton (2018) again takes an anthropological approach towards explaining the circumstances behind the childhood statelessness of migrant children in Sabah. She outlines the lived realities of the illegality and exclusion these children experience from getting documents "raided" and from their inability to access schools. Azizah Kassim (2009) also uses fieldwork to explain how the state administration and societal stereotypes contribute to the ambiguous legal status of stateless Filipino refugees in Sabah.

Mohd Nur Hidayat Hasbollah Hajimin and Ibnor Azli Ibrahim (2017) take a different approach and analyse the rights and protections of Muslim



Filipino refugees in Sabah through Malaysian civil law and Islamic law. They argue that the existing protections and rights did not meet the standard of international legal Islamic philosophy and that more can be done within Islamic law to provide these international Muslim refugees more protection. The only paper that takes a human rights approach is by Fahisham Taib (2012) who uses both stateless groups of children as a case study to explain the reasons they exist and the vulnerabilities they are exposed to when excluded from their basic rights. Olson (2007) describes recommendations for governments and UN agencies to resolve the large numbers of undocumented migrant children from the Philippines and Indonesia who, because of their statelessness, are targeted for arrest and deportation.

1.9 Background of researchers

The main research team for this consultation project consisted of Dr. Melati Nungsari and Nicole Fong. Dr. Melati is an Assistant Professor of Economics at Asia School of Business in Kuala Lumpur, Malaysia and a Research Affiliate at MIT Sloan School of Management in Cambridge, Massachusetts, USA. She is an applied economist who works closely on issues surrounding labour market informality and social integration amongst vulnerable groups in Malaysia. Nicole is a Research Associate at Asia School of Business and a human rights defender. She is a social science researcher working on issues around human rights and public health amongst marginalised populations through an intersectional and feminist lens. The research team has a vast amount of experience interfacing with and collecting data in the field for research studies with marginalised populations. The team took two courses on statelessness – the Institute of Statelessness and Inclusion’s Advanced Course on Childhood Statelessness and the University of Melbourne’s Statelessness Intensive Course – in order to better understand these issues from an international law perspective, and have consulted with a legal scholar on matters relating to local laws and the Federal Constitution.

SECTION 2:

STATELESS POPULATIONS IN PENINSULAR MALAYSIA



In this section, we will review the categories of stateless populations in this study to analyse the causation of their statelessness as well as the scale of the issue.

2.1 Persons with long-standing residence since pre-independence and their descendants

2.1.1 Causation of statelessness

Persons who have been living in Peninsular Malaysia prior to independence (before 31 August 1957) become 'administratively' stateless because they did not register or apply for the appropriate documentation after Merdeka Day or Malaysia Day. Although statelessness in this group is most commonly attributed to Indian persons of Tamil descent living in rural plantations, it also includes other migrant populations such as persons of Chinese descent and persons of Siamese descent.

Indian Tamils who used to live in rural plantations make up a large part of this stateless population because they lived remotely in self-contained communities where there was no need for formal documentation (Liew, 2019). Many did not register their children's birth or their marriages as they were unaware of its importance. Once the plantations were closed and they moved to urban areas, they started facing difficulties obtaining access to public services despite having lived here for generations and having strong, effective links to Malaysia (DHRRA, 2017). Therefore, lack of formal documentation such as birth certificates, passports, identification cards, and entry permits, as well as lack of access to registration services to qualify for citizenship are the main barriers for this group to obtain citizenship despite their legal entitlement to the same.

Many stateless permanent resident card holders die before they are able to obtain their citizenship, as in the case of Jaya Letchumi, who died in 2021 while waiting for a decision on her citizenship application that she started working on in 2018. Jaya Letchumi's mother had also passed away as a permanent resident, highlighting the intergenerational aspect of this form of statelessness (Cikgu Rukku, 2021). D. Kamaladevi, whose family lived in the estates, has not been able to obtain citizenship for the past 45 years because her mother's documents could not be located as they claimed it had been surrendered to JPN ("After 45 Years", 2018). Another



instance of loss of documents is 77-year-old S. Thangam who lost both her parents and her birth certificate, whose citizenship application was rejected with no reasons given (Malaysia Nanban, 2017, March 7). In the case of Aliammah, who was born in a rubber estate hospital during the communist insurgency in Malaya, she was unable to register her birth as her home was set on fire. She is unable to find witnesses to attest to her birth to support her citizenship as the midwife cannot be located. (Predeep Nambiar, 2021, December 13). Another example of how a person can become stateless is when they were born at home and did not obtain birth registration documents, as in the case of Lakshmi who is a stateless red IC holder who has lived in Perak her entire life (UNHCR Malaysia, 2018).

Many senior citizens from the Siamese communities in Kelantan, Kedah, Perlis, and Perak who were born before independence and hold permanent resident cards are still unable to access Malaysian citizenship. Senator Aknan Ehtook explains that the issue remains invisible as the welfare and communal issues of the Siamese community in Malaysia are not getting enough attention from the government (Rohana, 2019).

Another stateless case is of a person of Chinese descent, 57-year-old Chen Shunhao, who was born in Johor and holds a red IC or permanent resident status, and has been waiting for his Malaysian citizenship for 45 years. With only primary education up until Standard Four, he failed his Bahasa Malaysia test three times, which is an obligatory requirement of his citizenship application (New, 2017).

2.1.2 Scale of issue

There has been no official data released by the government on the number of stateless persons with long-standing residence since pre-independence. We can only estimate the number of this population based on NGO-collected data on stateless persons and figures based on the number of permanent resident status holders.

A mapping and registration campaign by DHRRA (Development of Human Resources for Rural Areas), an NGO working on eradicating statelessness amongst Malaysian Indians, identified at least 12,392 stateless Indians in Selangor, Negeri Sembilan, Perak, and Kedah, between 2014 and 2017.

Out of this sample, only 2,225 had acquired citizenship. Statelessness is inherited and intergenerational for Malaysian Indians as 36% of the sample were children, 26% were adults, and 37% were senior citizens (Uqbah Soperi, 2017).

The Home Minister revealed that 52,397 people who were permanent residents (MyPR holders) have no information about their country of origin, in a parliamentary reply to Sivarasa Rasiah (Subang) on 10 November 2010 (Parlimen Malaysia, 2010). The Home Minister stated that JPN recorded 227,430 MyPR holders as of 30 November 2016, in a parliamentary reply to Tan Kok Wai (Cheras) on 15 November 2016 (Parlimen Malaysia, 2016). Most recently, the Home Minister revealed that JPN records from 2010 until 30 June 2017 shows that 17,155 citizenship applications have been received from individuals of Indian descent, in a parliamentary reply to Charles Anthony Santiago (Klang) in 2017 (Parlimen Malaysia, 2017a).

2.2 Abandoned children born in Malaysia

2.2.1 *Causation of statelessness*

An abandoned child or foundling is defined as a child who is in need of care and protection after being abandoned by his parent or guardian, and that after reasonable enquiries the parent or guardian cannot be found, and no other suitable person is willing and able to care for the child (Child Act, 2001).

Statelessness persists amongst abandoned children born in Malaysia because they cannot obtain citizenship mainly due the inability to prove their link to their Malaysian birth parents. The citizenship application process requires abandoned children to trace their birth parents' identities in order to show their link and claim towards Malaysian citizenship through either parents' nationality status. However, abandoned children who lived in government shelter homes or were dropped off at baby hatches are unable to locate their birth parents and thus remain stateless into adulthood (Ho Kit Yen, 2018). One such person is "Edward", who was abandoned as a baby, and who then faces issues into adulthood, such as the inability to open a bank account and register his own business due to a lack of Malaysian citizenship (Nurul Azwa Aris, 2018). Abandoned



children who live in government shelter homes under the care of JKM do not receive assistance from the department to obtain citizenship, so remain without citizenship upon leaving the homes.

2.2.2 Scale of issue

The number of stateless abandoned children or foundlings in Malaysia is difficult to estimate. The only government figure on this is from the Welfare Department, which recorded 1,933 stateless children under the age of 18 in homes nationwide, comprising 1,098 boys and 835 girls in 2019 (“Inconsistency in Granting Citizenship”, 2020). Previously, JKM revealed in 2017 that there were 246 children registered with them. However, JKM has been criticised for not assisting children under their care to obtain citizenship by an NGO that claimed to receive as many 1,758 stateless children in their welfare homes (Zulaikha Zulkifli, 2012).

2.3 Adopted children in Malaysia

2.3.1 Causation of statelessness

Adoption is a practice used to protect children in need of care and protection as stipulated under the Child Act 2001. Children in need of care and protection, as defined by the Child Act 2001, include abused children, neglected children, abandoned children, children who are in danger, children found begging, and children involved in illegal hawking or activities detrimental to their health and welfare.

Stateless children who are adopted by Malaysian parents do not always obtain citizenship automatically. Similar to abandoned children, adopted children are rendered stateless due to the inability to prove their link to their Malaysian birth parents. Some abandoned children are adopted by Malaysian parents. Rohana Abdullah, who was abandoned by her Indonesian biological mother and raised by a Chinese kindergarten teacher who became her adoptive mother, has been denied citizenship since 2016 (“A ‘touched’ Hamzah to look into”, 2022). Tan Soo Yin’s lawsuit seeking citizenship was rejected by High Court judge Mariana Yahya on the grounds that she had failed to prove that her biological parents were Malaysians, as required under Section 1(e) in the Second Schedule of the

Federal Constitution (Ainaa Aiman and Larissa Lumandan, 2020). As for Than Siew Beng's adopted son, Alexander Than Keng Mun, the court found that it was not possible to determine the teenager's lineage as there was no information in the birth certificate regarding his biological parents and he had not proven he was not a citizen of any other country (Lim, 2017).

Another cause of statelessness amongst adopted children is adopted parents not going through the formal adoption procedure due to the lack of awareness and access to information towards formal adoption processes. Student Wong Yoong Jau, an adopted child, whose adopted parents mistakenly registered her as their biological child, has been waiting for her citizenship application to be reviewed since 2015 (Wani Muthiah, 2021). There is also the case of Monteiro, whose citizenship application was rejected due to a lack of documentation on her adoption as her parents did not go through the 'proper' adoption procedure (Nur Khairah Alegria Suner, 2017). A Malaysian couple from Penang, who also mistakenly registered their adopted child as their own, had to surrender their child's initial birth certificate. After obtaining an adoption order, their child subsequently became stateless (Lim, 2021, November 19).

2.3.2 Scale of issue

Stateless adopted children are discriminated against due to their non-citizen status when it comes to accessing and remaining in public schools. E. T., a stateless child adopted by Malaysian parents whose citizenship application was still under review, was asked by the Johor Education Department to show his student pass and passport in order to continue schooling ("Some stateless children", 2021). The Penang state government identified nineteen stateless children unable to go to school because their adopted families could not produce their passports as they had no contact with the children's birth mothers ("Some stateless children", 2021). Darshana's parents, who adopted her, said that when they went to the nearby school they were told both by the school and immigration authorities that due to her status as a non-citizen she must have a passport before she could be accepted (Sarban Singh, 2018). Wong, who scored well in the STPM exams, is worried that she would not be able to pursue tertiary studies because of her unresolved citizenship status which is still under review (Wani Muthiah, 2021).



There are few cases of adopted children which were resolved after a long, difficult process in court. However, this legal remedy is not accessible to everyone due to the high financial cost and low success rate. In one case, a Selangor-born teenage boy, born to unknown biological parents, fought for citizenship for almost seven years before winning it on 12 February 2020 (Lim, 2020, February 12). In another case, a baby born to unknown biological parents in Kuala Lumpur was adopted by a Penang couple who are still fighting for their child's citizenship in court for almost three years (Lim, 2020, November 25). Another case, Yu, born to a Malaysian father and Indonesian mother in Penang and who was subsequently adopted, spent more than a decade being shunted between the courts and various government offices and finally obtained Malaysian citizenship at 11 years old (Radzi Razak, 2019). Muhammad Aiman Hafizi Ahmad, a Malaysian e-sports player, born to an Indonesian mother and an unknown father, was adopted by a Malaysian couple who managed to obtain citizenship for him after eight years through various efforts to apply for citizenship by registration and through a judicial review (Lim, 2020, September 2).

2.4 Cases where children were born out of wedlock or before a marriage was registered

2.4.1 *Causation of statelessness*

The first group are children of mixed racial or religious marriages or born to alternative family arrangements such as single parents, foster parents, adoptive parents, and LGBTQ+ parents. The second group are children born to parents who were not married at the time of their birth, especially to a non-Malaysian mother and a Malaysian father.

Statelessness amongst this group of children is caused by gender discriminatory provisions under Section 17, Part III, Second Schedule of the Federal Constitution that provides preferential treatment to married couples to confer citizenship to their children. In cases of children born to unmarried parents, especially to a non-Malaysian mother and a Malaysian father, children are not able to acquire citizenship from the Malaysian father. The Minister of Home Affairs also affirms that citizenship must be conditional on a registered marriage to prevent children from being categorised as “conceived out of wedlock or without status” (Bernama, 2022, January 22).

The lack of marital status of parents before the child is born is the main cause for children born out of wedlock to become stateless. There are many reasons for parents not registering their marriage, including: issues with divorce from a previous marriage not being finalised, parents being unaware of the importance of marriage registration for citizenship conferment, or a situation where only a customary marriage or marriage outside of Malaysia took place (Liew, 2019). In the case of Venkateswaran's three children, born out of a registered marriage to a Malaysian father and Indonesian mother, the three were denied citizenship because their mother was not present during the registration of the children (Malaysia Nanban, 2017, April 27).

The most recent court case was an appeal for Malaysian citizenship by CTEB, a 10-year-old who was born in the Philippines to unmarried parents (a Malaysian father and a Filipino mother), which was dismissed by the Federal Court (*CTEB & Anor. v Ketua Pengarah Pendaftaran Negara Malaysia & Ors.*, 2021). This is because the parents married after the child was born which excluded him from being a citizen by operation of law under Article 14 of the Federal Constitution (Bernama, 2021). Nalvin Dhillon, whose mother is Filipino and father is Malaysian, was ineligible for Malaysian citizenship because his parents' marriage was not registered and his mother was not a Malaysian (Imran Ariff, 2021). A teenage girl born in Perak to a Malaysian father and a Filipino mother was denied citizenship because the parents registered their marriage two years after she was born (Lim, 2021). Andy's appeal for Malaysian citizenship for his son was dismissed by the Shah Alam High Court because he was not married to his Indonesian wife at the time of his son's birth (Thomas, 2021).

However, there also seem to be favourable decisions for children born out of wedlock in other courts. LFK's child who was born out of wedlock appealed at the High Court to conduct a DNA test to prove LFK's paternity, and subsequently applied the court order demanding the NRD to correct the record of the child's birth certificate. The judge ruled in favour of LFK's child by citing Section 28 of the Births and Deaths Registration Act 1957 which requires the NRD to obtain the most accurate information by all means (Anbalagan, 2021). In another case, the High Court declared OXT to be the legitimate child of her parents in September 2019 because Malaysian laws allow non-Muslim couples to legitimise their children by



registering their marriage later (Bunyan, 2021). These cases highlight the inconsistencies of civil and Islamic laws for Malaysian Muslim and non-Muslim couples on the requirement of marital status for citizenship conferment for their children.

There have been reported cases of statelessness for children born in mixed marriages. A Siamese teenager born to a Malaysian father and a Thai mother remains stateless, even though her siblings have citizenship. Her citizenship application was rejected despite previously owning a birth certificate and a Malaysian passport ("Remaja keturunan Siam", 2010).

2.4.2 Scale of issue

The Home Minister revealed that, based on JPN's records as of 25 February 2018, 12,667 children with a Malaysian father and a non-Malaysian mother were denied citizenship on grounds that their parents' marriage was not registered ("MP shocked", 2018).

2.5 Children born outside of Malaysia to a Malaysian mother and a non-Malaysian father

2.5.1 Causation of statelessness

Gender discriminatory provisions in citizenship laws is the major cause for children born outside of Malaysia to Malaysian mothers and non-Malaysian fathers to become stateless. This is because Malaysian mothers married to non-Malaysian fathers cannot confer their Malaysian citizenship to their children. Malaysia is one of 25 countries that do not give mothers and fathers equal rights to pass their nationality to their children (Reuters 2021). Two constitutional provisions, Section 1(b) and Section 1(c) of the Second Schedule's Part II, are discriminatory to Malaysian women as these provisions only expressly allow Malaysian fathers to pass on citizenship to their children born abroad (Lim, 2021, December 22).

2.5.2 Scale of issue

The Home Minister revealed that only 21 out of 2,352 citizenship applications made by Malaysian mothers for their children between

2018 and 2021 were approved, and only 31 were rejected, leaving 2,300 applications under review (Lim, 2021, October 26). This discriminatory citizenship policy limits Malaysian women's agency and choices as they may remain stuck in marriages because they cannot confer citizenship to their children ("Solve discrimination against children", 2020). Some women end up trapped in abusive marriages for fear they will lose custody of their children if the marriage breaks down (Batha, 2021).

2.6 Indigenous persons

2.6.1 *Causation of statelessness*

The Orang Asli are the indigenous minority persons living in Peninsular Malaysia. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi, and Aboriginal-Malay groups account for 0.7% of the population of Peninsular Malaysia (International Work Group for Indigenous Affairs, 2021).

Statelessness amongst Orang Asli communities persists because they lack formal documentation such as birth certificates, marriage certificates, and identification cards. This lack of documentation can be largely attributed to poverty because the financial barriers involved (such as travel expenses and producing necessary documentation) make it very difficult to access registration or citizenship processes outside their villages (Nicholas, 2010). Another reason Orang Asli may lack documentation and become stateless is the lack of a proactive stance on the part of JAKOA in ensuring that Orang Asli have access to birth registration. (Yahya Awang, 2010). Another reason is the lack of accessibility to the JPN offices – it is currently not easy for Orang Asli to visit JPN in order to register births and apply for identification cards. It is also difficult to trace the date or place of birth for Orang Asli born in villages because identifying midwives is also another challenge ("80 Orang Asli in Rompin", 2010).

2.6.2 *Scale of issue*

It was reported in 2010 that up to 80 Orang Asli living in the district of Rompin were stateless because they were born without birth certificates ("80 Orang Asli in Rompin", 2010).



2.7 Stateless refugees

2.7.1 Causation of statelessness

Not all refugees are stateless and not all stateless persons are refugees. This is because statelessness and forced migration are interlinked where statelessness can lead to forced displacement but forced displacement can also lead to statelessness. Being stateless and a refugee can make people more vulnerable to harm as compared to a non-stateless refugee (Institute on Statelessness and Inclusion and the Norwegian Refugee Council, 2016).

Refugees can be stateless in two contexts. Firstly, a refugee who held a nationality prior to displacement may lose their identity documents and be unable to prove their link with their home country. Over time, intergenerational statelessness occurs because their children born outside their home country become stateless due to a conflict of nationality laws. Second, a person can be discriminated against and arbitrarily deprived of their nationality by their own government. In this case, stateless refugees may not be able to return to their country of origin because they are not nationals and do not have the right to enter and remain in their country of origin or any other country. Being a refugee and stateless makes people more vulnerable to harm and violence, as compared to non-stateless refugees, because they are at higher risk of detention or expulsion due to a lack of identity documents.

2.7.2 Scale of issue

The largest population of stateless refugees in Peninsular Malaysia are the Rohingya refugees who make up 103,560 out of the 181,510 refugees and asylum seekers registered with UNHCR Malaysia in 2022 (UNHCR, 2022). The Rohingya are subject to inconsistent government statements and policies. The government announced in 2004 that they would regularise the stay of the Rohingya in Malaysia to allow them to work without fear of arrest. There was also an attempt in 2006 to grant IMM-13³ documents to the Rohingya but it failed to go through (Tamara

3 IMM-13 documents are issued to Filipino refugees and migrants to reside and work in Malaysia.

J. Duraisingam, 2016a). Other groups of stateless refugees in Malaysia include Palestinian and Syrian persons. Refugees in Malaysia live in extremely vulnerable situations with no access to employment, education, and healthcare. Obtaining refugee status and access to basic services in Malaysia is difficult as Malaysia is not a party to the 1951 Refugee Convention (Liew, 2019).

Children born to stateless refugees in Malaysia are at an increased risk of statelessness because Malaysian citizenship is tied to their parents' nationality. Therefore, if their parents are non-citizens, they will also be automatically classified as non-citizens (Rodziana Mohamed Razali et. al., 2015). A child's right to a nationality is not guaranteed in Malaysia because a child's citizenship is subject to their parents' nationality, immigration status, and marriage status. Children born to refugees have limited access to birth registration because of the high hospital fees that refugees have to pay and refugee mothers' fear of being detained upon giving birth (Mayberry, 2014). Children of stateless refugees are also denied access to formal education and depend on alternative learning centres run by NGOs and UNHCR (Rodziana Mohamed Razali et. al., 2015).

Some stateless refugees may qualify for Malaysian citizenship due to having lived in Malaysia for a long time but it is not automatic and they must apply for citizenship by registration or naturalisation. However, due to the strict requirements of the naturalisation process, it is very difficult for refugees to access Malaysian citizenship through this pathway, leaving very limited options to qualify for and obtain Malaysian citizenship (Liew, 2019). Azimah, born to refugee Cambodian Muslim parents in Malaysia, failed to acquire citizenship by operation of law, despite her parents and siblings successfully obtaining citizenship through naturalisation ("In Court, Woman Born to Muslim Refugee Parents", 2021).



2.8 Undocumented persons who do not fit any of the previous categories

2.8.1 Causation of statelessness

Undocumented persons who come from extreme poverty do not have the awareness to register for birth certificates and obtain formal documentation. This is exacerbated by a lack of knowledge on the importance of registering children, which creates challenges in the process of obtaining citizenship. This is evident in the case of Malaysian citizens Nagalingam Ramasamy, 56, and Chellamma Papaiya, 56, whose five children were not able to obtain Malaysian citizenship (Malaysia Nanban, 2017, June 29). In the case of Thenmozhi Ramakrishnan, she did not register the birth certificates of her two children within the stipulated time period set by JPN, and thus rendered them stateless (Malaysia Nanban, 2017, April 27).

2.8.2 Scale of issue

The scale of the issue from this category is unknown because the Malaysian government does not collect disaggregated data on non-citizens. They maintain the binary of citizen and non-citizen as a citizenship status so have no breakdown on the number of refugees, migrants, stateless persons or undocumented persons (Parlimen Malaysia, 2019b).

SECTION 3:

NATIONALITY LAWS AND STATELESSNESS IN PENINSULAR MALAYSIA



3.1 Malaysia's international and regional obligations on statelessness

Malaysia has not acceded to the two key international treaties on statelessness, the Convention Relating to the Status of Stateless Persons 1954 (1954 Convention) and the Convention on the Reduction of Statelessness 1961 (1961 Convention). Malaysia has also not acceded to the Convention Relating to the Status of Refugees (1951 Convention) and its protocol despite hosting 179,779 refugees and asylum seekers and 111,298 stateless persons registered with the United Nations High Commissioner for Refugees (UNHCR, 2020). The right to nationality is also articulated in other international human rights conventions such as the ICCPR, CRC, CEDAW, ICERD and CRPD, as shown in Table 6, demonstrating how stateless persons are still entitled to general human rights protections across these human rights treaties.

However, most articles related to the right to nationality among the treaties Malaysia has acceded to have been reserved: Article 7 of the CRC; Article 9 of the CEDAW; and Article 18 of the CRPD. The reservation to these articles means Malaysia is not legally bound to abide by these provisions on the right to nationality. Therefore, the use of international law is very limited on issues on statelessness and is limited to domestic law (Tamara J. Duraisingam & Harmahinder Singh Iqbal Singh, 2020).

Malaysia must accede to the following treaties – the 1954 Convention, 1961 Convention, 1951 Convention, ICCPR, and ICERD, as well as remove the reservations on the articles related to the right to nationality in the CRC, CEDAW, and CRPD, in order to provide a foundation for Malaysia to start fulfilling its obligations towards the prevention and reduction of statelessness. The accession to these treaties upholds Malaysia's obligations to protect and fulfil the human rights of all stateless persons in Malaysia, as enshrined in the fundamental liberties guaranteed in Articles 5 to 13 under Part II of the Federal Constitution. Beyond domestic legislation, Malaysia adopted the ASEAN Human Rights Declaration, a regional human rights declaration which has a provision on the right to nationality under Article 18, which states that "Every person has the right to a nationality as prescribed by law." Malaysia has also broadly accepted the provisions in the Universal Declaration of Human Rights as customary



international law, which also has provisions on the right to nationality under Article 15(1) which states that “Everyone has the right to a nationality.” These treaties should ensure that the Malaysian legislation on nationality complies with the treaties’ provisions, as well as act as an accountability mechanism to ensure Malaysia’s obligations are fulfilled through regular reporting and scrutiny by UN human rights bodies.

Accession to the 1954 Convention ensures that all stateless persons in Malaysia are entitled to a set of civil, economic, social, and cultural rights that they may not otherwise qualify for within the domestic legislation, procedures, and policies. Malaysia would be obligated under international law to guarantee all stateless persons in Malaysia the rights listed in the 1954 Convention, such as access to employment, education, housing, social security, identity papers, travel documents, and facilitated naturalisation. There is also an implied obligation that States must identify stateless persons in order to guarantee them rights, so Malaysia would have to establish a statelessness determination procedure (SDP) to identify stateless persons. The Convention does not force Malaysia to grant citizenship to all stateless persons but they are required to prioritise and assist with the naturalisation of stateless persons by reducing the costs of the naturalisation process. In summary, this Convention would help stateless persons gain access to employment, housing, education, and social security, which they are currently denied access to, as well as encourage Malaysia to establish its SDP.

The 1961 Convention outlines specific, legally binding measures for States to implement to prevent and reduce statelessness, as compared to the 1954 Convention which aims to protect the rights of stateless persons. Under the 1961 Convention, Malaysia would have to fulfil the following obligations: first, positive obligations to grant nationality at birth in several circumstances; second, obligations relating to loss, deprivation or renunciation of nationality; and lastly, safeguarding against statelessness in cases of the creation of a new state or transfer of territory. Article 9 provides that nationality shall not be deprived on grounds of race, ethnicity, religion, or political reasons. The Convention would require Malaysia to grant nationality to a person born on its territory who would otherwise be stateless, meaning a child born in Malaysia is entitled to Malaysian citizenship if they have no other nationality or are not able to acquire any

other nationality. In summary, the Convention would provide robust legal provisions for Malaysia to implement and apply to prevent statelessness at birth.

Accession to the 1951 Convention provides protection for stateless persons with a migratory background (i.e. stateless refugees), and in practice is the only pathway to protection for this group of stateless persons in Malaysia. Most of the rights granted to stateless persons under the 1954 Convention are the same as those granted to refugees under the 1951 Convention due to its shared drafting history. The 1951 Convention would provide a refugee determination procedure and specific provisions (that is not available in the 1954 Convention) such as non-penalisation for unlawful entry or presence and non-refoulement that forbids a country from returning a refugee or asylum seeker to a country where they will be subject to persecution. These two principles would provide protections for stateless refugees in Malaysia who have historically been detained upon entry or deported back to their home countries. The 1951 Convention is far more established with 148 parties compared to the 1954 Convention with 95 parties, and it gives greater sets of rights at the national level. In summary, the 1951 Convention would provide much needed protections of rights for stateless refugees from arrest, abuse, and deportation by the Malaysian authorities.

Neither the 1954 Convention nor the 1951 Convention provides for an international body which monitors compliance and would enforce Malaysia's obligations towards ensuring the rights of stateless persons. Therefore, the accountability mechanisms offered by these treaties are rather limited. However, the UNHCR has supervisory responsibilities, and disputes between contracting states regarding how to apply the Convention can be brought before the International Court of Justice.

Malaysia must remove the reservations on the Articles related to the right to nationality in the CRC, CEDAW, and CRPD, and ratify the ICCPR and ICERD because these core international human rights treaties have provisions on the right to nationality (as outlined in Table 6) that will supplement the provisions in the 1961 Convention, 1954 Convention and 1951 Convention. In contrast to the 1951 and 1954 Conventions, these other treaties all have monitoring bodies consisting of human rights experts whose role



is to monitor the implementation of the respective Conventions. These include the Committee on the Rights of the Child, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of Persons with Disabilities, United Nations Human Rights Committee, and Committee on the Elimination of Racial Discrimination. As a party to these treaties, Malaysia would be required to submit regular reports to the respective Committees outlining the legislative, judicial, policy, and other measures they have taken to give effect to the Conventions. Therefore, these monitoring bodies under the CRC, CEDAW, CRPD, ICCPR, and ICERD create stronger compliance mechanisms to ensure that States adhere to their obligations to uphold the right to nationality and prevent and reduce statelessness.

Malaysia must withdraw its reservation on the right to nationality under Article 7 of the CRC because a child's right to nationality is seen as an 'enabler' right, a key to unlocking other fundamental children's rights under the CRC (Institute on Statelessness and Inclusion, 2016) In other words, Malaysia must prioritise the protection of children's right to a nationality in order to meet its full obligations under the CRC. Malaysia should use the General Principles of the CRC to inform its implementation of all rights in the Convention which are relevant to the problem of childhood statelessness. These rights include the rights to life, non-discrimination, survival, and development, as well as the principles of the best interests of the child, and respect for the views of the child. Besides issuing recommendations to all State Parties, the CRC Committee is able to consider individual complaints on any alleged violations of the Convention. The three themes the Committee has adopted the most recommendations on are also linked to the right to nationality: to end gender discrimination in nationality law, to grant nationality to stateless children born in the territory, and to register all births to prevent statelessness (Institute on Statelessness and Inclusion, 2018c).

Malaysia must withdraw its reservation under Article 9 of CEDAW because Article 9 is "central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights," as recommended by the CEDAW Committee. Besides that, nationality laws that are discriminatory on the basis of gender are in conflict with the general obligations of non-discrimination under Article 2.

The CEDAW Committee further asserts that, “nationality is critical to full participation in society”, under General Recommendation No. 21: Equality in marriage and family relations (Global Campaign for Equal Nationality Rights, 2022).

Malaysia must withdraw its reservation under Article 18 of the CRPD because these reservations mean the CRPD is not fully implemented, with the implication that Malaysia is unable to fulfil its obligations to protect the rights of persons with disabilities (Ikmal Hisham Md Tah and Khairil Azmin Mokhtar, 2016). A SUHAKAM Roundtable Discussion has also recommended the withdrawal of this reservation on Article 18 because this article provides for the freedom of movement guaranteed under Article 9 of the Federal Constitution (Bahagian Hal Ehwal Undang-undang Jabatan Perdana Menteri, 2015).

Table 6: Provisions on the right to nationality across all the relevant international treaties besides the 1954 Convention and 1961 Convention

Treaty	Article
ICCPR	Article 24 (3) Every child has the right to acquire a nationality.
ICERD	Article 5 States Parties undertake to prohibit and to eliminate racial discrimination in all its forms... notably in the enjoyment of the following rights ... (iii) The right to nationality...
	Article 1 (3) Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.



CRC	Article 7 (1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. (2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
	Article 8 (1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.
	Article 9: States parties shall grant women equal rights with men to acquire, change or retain their nationality.
CEDAW	Article 18: States Parties shall recognize the rights of persons with disabilities... including by ensuring that persons with disabilities... (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on a basis of disability...
CRPD	

At the regional level, the Association of South East Nations (ASEAN) adopted its own non-binding Human Rights Declaration (AHRD) in 2012 where Article 18 provides that “Every person has the right to a nationality as prescribed by the law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.” The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) are two commissions that have mandates in the region focusing on the promotion and protection of human rights of stateless

persons. Other regional developments include SUHAKAM renewing its memorandum of understanding (MoU) in March 2022 with the National Commission on Human Rights of Indonesia and the Commission on Human Rights of the Philippines to address the issue of statelessness in Sabah (Qistina Nadia Dzulqarnain, 2022).

3.2 Historical background of Malaysia's nationality law

Malaysia adopts both a *jus soli* principle of citizenship (by birth right) and *jus sanguinis* (by nationality of parents). To understand Malaysia's citizenship developments, we will examine how the Malaysian citizenship history of multilevel citizenship and *jus soli* citizenship was shaped by British colonialism, federalism, and the politics of communalism (Low, 2017).

Multilevel citizenship

Prior to 1946 in pre-war Malaya, there was no concept of 'Malayan citizenship' at the Federal level. Instead, there was multilevel citizenship that depended on the legal entity and who governed the states or colonies in Malaya (Low, 2017). State citizenship existed in the nine Malay states whereas British nationality existed in the two British colonies of Penang and Malacca (Carnell, 1952). During this time, the status of immigrant Chinese born in Malaya was undetermined due to the lack of citizenship legislation in the Malay states, as compared to the immigrant Indians who were considered British subjects (Lau, 1989). The British assisted the Malay States to provide a naturalisation pathway and a British passport for foreigners living in Malay States so that they could enjoy the rights and privileges of a natural-born subject within the Malay States (Low, 2013).

Post-1946, the British then merged the Federated Malay States, the Unfederated Malay States, together with Penang and Malacca to form the Malayan Union. This union was the first attempt of territorial unification and the creation of a national citizenship at the Federal level to unite the different administration units and the immigrant communities. However, it was replaced by the formation of the Federation of Malaya whereby it still continued with multilevel nationality laws with state-level nationality



and national-level nationality until the Federation achieved independence on Merdeka Day (Low, 2017).

Jus soli citizenship

The current nationality laws were shaped by the politics of communalism between the Malays and non-Malay (Chinese and Indian) migrant labourers. We will examine the three key developments of how the controversial *jus soli* principle of citizenship was implemented and how it was finally adopted into the Federation Constitution post-Independence in 1957 (Low, 2017).

First, during the Malayan Union in 1946, the British introduced *jus soli* for all local-born children of immigrants, which threatened the concept of citizenship under the Malay states (Cheah, 2002). This meant that the local-born immigrant children would automatically qualify for citizenship without needing to declare allegiance to the Malay rulers (Cheah, 1978). However, this liberal form of citizenship was not passed because of the strong opposition from the Malay community amidst growing Malay ethnonationalism during this period.

Second, during the formation of the Federation of Malaya in 1948, the concept of double *jus soli* was introduced whereby second-generation migrants obtained federal citizenship automatically if both of their parents were born and resided in the Federation for a continuous period of at least 15 years (Article 124 (1)(e), Federation of Malaya Agreement). This form of *jus soli* citizenship was too restrictive as less than one-third of local-born Chinese and Indians became Malaysian citizens by operation of law (K. J. Ratnam, 1965). In contrast, it benefited Malays, indigenous persons, and British subjects who were able to acquire Malaysian citizenship by virtue of being born in the Malay states or British colonies.

Lastly, the constitutional amendment in 1952 saw the double *jus soli* principle being replaced with the delayed *jus soli* principle where local-born children became subjects of a Malay ruler if one of their parents were born in the Federation of Malaya. This amendment resulted in a total of 1,157,000 Chinese, 220,000 Indians, and 2,727,000 Malays automatically becoming Federal citizens (Low, 2017). This restricted form of *jus soli*

was a compromise to include non-Malays as citizens instead of providing unconditional *jus soli* which was still highly controversial amidst the rising Malay ethnonationalism (K. J. Ratnam, 1965). Delayed *jus soli* meant that the level of assimilation became the criterion (instead of birth right) for non-Malays to acquire Malaysian citizenship (Low, 2016), which meant only second generation of non-Malays were eligible for citizenship by operation by law as they would have assimilated.

Unconditional *jus soli* was finally adopted post-Independence in 1957 so that non-Malays, born within the Federation on or after Merdeka Day, were able to acquire Malaysian citizenship by registration under Article 16 of the Constitution, as shown in Figure 4. This was contingent on two factors: first, independence from the British, which was conditional on inter-ethnic cooperation in working towards nation building, and second, the inclusion of special affirmative citizenship rights for the Bumiputera (i.e. Malays and indigenous persons) to ensure a balanced socio-economic redistribution between the Bumiputera and non-Bumiputera (Low, 2017). Therefore, even though all persons were finally entitled to citizenship by birth right, the presence of affirmative citizenship rights for the Bumiputera creates an unequal starting point on citizenship rights (Verma, 2002).



Figure 4: Sample Certificate of Registration to register citizens of the Federation of Malaya under Article 16 of the Constitution of the Federation of Malaya



3.3 Nationality provisions in the Federal Constitution and other relevant laws

This section examines the pathways of acquisition of nationality (operation of law, registration, naturalisation) and ways a person can lose their nationality (renunciation, loss, deprivation).

3.3.1 Acquisition of nationality by operation of law

The first pathway to citizenship by operation of law is stipulated in Article 14(1) of the Federal Constitution, which provides that persons born before and after Malaysia Day are eligible for Malaysian citizenship at birth through operation of law. For those born in or outside the Federation before Merdeka Day, Article 14(1)(a) should be read with the provisions in Section 1, Part I of the Second Schedule as outlined in Table 7. While for those born in or outside the Federation after Merdeka Day, Article 14(1)(b) should be read with the provisions in Section 1, Part II of the Second Schedule as outlined in Table 8. These provisions on who is entitled to citizenship by operation of law can also be interpreted as the definition of Malaysia's original body of nationals.

14. (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:

- a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part I of the Second Schedule*
- b) every person born on or after Malaysia Day and having any of the qualifications specified in Part II of the Second Schedule*

Citizenship by operation of law, before Malaysia Day, is subject to whether they were citizens of the Federation of Malaya prior to Merdeka Day or were born in the Federation before Malaysia Day. This is a clear application of the *jus soli* principle as nationality is acquired on the basis of place of birth. As for those born outside the Federation before Malaysia Day, they are subject to gender discriminatory provisions as they are only entitled to Malaysian citizenship if the father was a citizen at the time of birth and is required to register the birth within one year at a consulate. Malaysian mothers are unable to confer their citizenship to children born outside the Federation before Malaysia Day.

Citizenship by operation of law, post Malaysia Day, is subject to the status of their birth parents which is a clear application of the *jus sanguinis* principle. This means that for those born within the Federation post Malaysia Day, one of the parents is required to be a citizen or a permanent resident of Malaysia at the time of their birth, in order to qualify for citizenship by operation of law. Similarly to Article 14(1)(a), those born after Malaysia Day outside the Federation are also subject to gender discriminatory provisions that only allow for the father to confer citizenship.

Table 7: Citizenship by operation of law provisions in the Federal Constitution based on whether one was born before or after Malaysia Day as well as within or outside the Federation

Articles on citizenship by operation of law	Provisions for those born WITHIN the Federation	Provisions for those born OUTSIDE the Federation
Those born BEFORE Malaysia Day, based on Section 1, Part I of the Second Schedule, subject to provisions of Part III of the Constitution	1. (a) Every person who immediately before Merdeka Day, was a citizen of the Federation by virtue of any of the provisions of the Federation of Malaya Agreement 1948, whether by operation of law or otherwise. 1. (b) Every person born within the Federation on or after Merdeka Day and before October 1962.	1. (d) Every person born outside the Federation on or after Merdeka Day whose father was a citizen at the time of his birth and either was born in the Federation or was at the time of the birth in service under the Government of the Federation or of a State.



Articles on citizenship by operation of law	Provisions for those born WITHIN the Federation	Provisions for those born OUTSIDE the Federation
	1. (c) Every person born within the Federation after September 1962, of whose parents one at least was at the time of the birth either a citizen or permanently resident in the Federation, or who was not born a citizen of any other country.	1. (e) Every person born outside the Federation on or after Merdeka Day whose father was a citizen at the time of the birth if the birth was, or is, within one year of its occurrence or within such longer period as in any particular case was or is allowed by the Federal Government, registered at a consulate of the Federation or, if it occurred in Singapore, Sarawak, Brunei or North Borneo, registered with the Federal Government.
Those born AFTER Malaysia Day, based on Section 1, Part II of the Second Schedule, subject to provisions of Part III of the Constitution	1. (a) Every person born within the Federation of whose parents one at least one is at the time of birth either a citizen or permanently resident in the Federation.	1. (b) Every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State.

Articles on citizenship by operation of law	Provisions for those born WITHIN the Federation	Provisions for those born OUTSIDE the Federation
	1. (e) Every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph. 2. (3) For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provision corresponding to paragraph (c) of that section or otherwise.	1. (c) Every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government. 1. (d) Every person born in Singapore of whose parents one at least is at the time of the birth a citizen and who is not born a citizen otherwise than by virtue of this paragraph.



3.3.2 Acquisition of nationality by registration

The second pathway is citizenship by registration whereby persons can put in an application for citizenship to the government, under these four Articles in the Federal Constitution which are outlined in Table 8. Citizenship by registration is non-automatic and discretionary, as an applicant may not automatically qualify for citizenship.

Under Article 15, a non-Malaysian wife of a Malaysian citizen can apply for citizenship provided these requirements are met: she has resided in the Federation for two years, she intends to reside permanently in Malaysia, she is of good character, she renounces any foreign nationality, and the marriage is still in force. These stricter requirements were newly introduced by the Constitution (Amendment) Act 1962, which meant that applicants needed to prove a genuine attachment to the country in order to qualify for citizenship (Low, 2017). There are currently no provisions for a non-Malaysian husband of a Malaysian citizen to apply for citizenship by registration, so naturalisation is the only pathway available for non-Malaysian husbands to acquire Malaysian citizenship.

Article 15A can be seen as a safeguard mechanism for children who don't qualify for citizenship by operation of law (i.e. foundlings, adopted children, children born out of wedlock, children born abroad to a Malaysian mother), as it is open to children and persons below the age of 21 (Liew, 2019). However, in reality, very few applications via this pathway have been successful due to the arbitrary and uncertain nature of the process. Compared to the other provisions on citizenship by registration, Article 15A is the only provision that does not specify the requirements to qualify for citizenship. The phrase "special circumstances" is not legally or procedurally defined and there is no reference made to the parents' nationality status and the legal status of their marriage. In addition to this uncertainty on the requirements, this remedy gives the Home Minister wide discretionary powers to approve or reject citizenship applications without any reason given to the applicant. This arbitrary process results in long timeframes for applications to be processed and is a barrier towards stateless applicants acquiring citizenship (Rodziana Mohamed Razali, 2017) – this is further discussed in Section 5.3.

Table 8: Citizenship by registration provisions under Articles 15, 15A, 16, 16A

Article	Provisions
15. Citizenship by registration (wives and children of citizens)	(1) Subject to Article 18, any married woman whose husband is a citizen is entitled, upon making application to the Federal Government, to be registered as a citizen if the marriage was subsisting and the husband a citizen at the beginning of October 1962, or if she satisfies the Federal Government— (a) that she has resided in the Federation throughout the two years preceding the date of the application and intends to do so permanently; and (b) that she is of good character. (2) Subject to Article 18, the Federal Government may cause any person under the age of twenty-one years of whose parents one at least is (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by his parent or guardian. (3) Subject to Article 18, a person under the age of twenty-one years who was born before the beginning of October 1962, and whose father is (or was at his death) a citizen and was also a citizen at the beginning of that month (if then alive), is entitled upon application made to the Federal Government by his parent or guardian, to be registered as a citizen if the Federal Government is satisfied that he is ordinarily resident in the Federation and is of good character.



Article	Provisions
15A. Special power to register children	15A. Subject to Article 18, the Federal Government may, in such special circumstances as it thinks fit, cause any person under the age of twenty-one years to be registered as a citizen.
16. Citizenship by registration (persons born in the Federation before Merdeka Day)	16. Subject to Article 18, any person of or over the age of eighteen years who was born in the Federation before Merdeka Day is entitled, upon making application to the Federal Government, to be registered as a citizen if he satisfies the Federal Government— (a) that he has resided in the Federation during the seven years immediately preceding the date of the application, for periods amounting in the aggregate to not less than five years; (b) that he intends to do so permanently; (c) that he is of good character; and (d) that he has an elementary knowledge of the Malay language.
16A. Citizenship by registration (persons resident in States of Sabah and Sarawak on Malaysia Day)	16A. Subject to Article 18, any person of or over the age of eighteen years who is on Malaysia Day ordinarily resident in the State of Sabah or Sarawak is entitled, upon making application to the Federal Government before September 1971, to be registered as a citizen if he satisfies the Federal Government— (a) that he has resided before Malaysia Day in the territories comprised in those States and after Malaysia Day in the Federation for periods which amount in the aggregate to not less than seven years in the ten years

Article	Provisions
	immediately preceding the date of the application, and which include the twelve months immediately preceding that date;
(b)	that he intends to reside permanently in the Federation;
(c)	that he is of good character; and
(d)	except where the application is made before September 1965, and the applicant has attained the age of forty-five years at the date of the application, that he has a sufficient knowledge of the Malay language or the English language or, in the case of an applicant ordinarily resident in Sarawak, the Malay language, the English language or any native language in current use in Sarawak.

3.3.3 Acquisition of nationality by naturalisation

The third pathway is citizenship by naturalisation whereby persons over the age of 21 can put in an application for citizenship under Article 19(1), provided they meet the requirements of residing in Malaysia for a specific length of time, having the intention to reside in Malaysia permanently, having good character, and having adequate knowledge of the Malay language. Additionally, the Government may also grant citizenship by naturalisation in “special circumstances as it thinks fit” under Article 19(2). Similarly to citizenship by registration, this is also a non-automatic and discretionary method towards acquiring a nationality.

19.(1) Subject to Clause (9), the Federal Government may, upon application made by any person of or over the age of twenty-one years who is not a citizen, grant a certificate of naturalisation to that person if satisfied—

- (a) that he has resided in the Federation for the required periods and intends, if the certificate is granted, to do so permanently;*
- (b) that he is of good character; and*
- (c) that he has an adequate knowledge of the Malay language.*



19. (2) *Subject to Clause (9), the Federal Government may, in such special circumstances as it thinks fit, upon application made by any person of or over the age of twenty-one years who is not a citizen, grant a certificate of naturalisation to that person if satisfied—*

- (a) *that he has resided in the Federation for the required periods and intends, if the certificate is granted, to do so permanently;*
- (b) *that he is of good character; and*
- (c) *that he has an adequate knowledge of the Malay language.*

This method of citizenship acquisition may be the only available remedy for certain stateless populations, primarily stateless individuals above the age of 21 (i.e. abandoned children, stateless children, children born out of wedlock, children born abroad to Malaysian mothers) or non-Malaysian husbands married to Malaysian citizens, because they exceed the age limit to qualify for citizenship by registration under 15A. However, similarly with applications filed under Article 15A, there are issues such as a lack of clear guidelines, a lack of transparency, no requirement to give reasons for rejection, no time limits set on the processing of applications, and no procedural rules for appeals (Low, 2017). For example, to fulfil the condition of proving residence in the country for the required period, the applicant must submit their passport along with the entry permit. This would be impossible for many *in situ* stateless populations who were born and have since resided in Malaysia to fulfil, as their statelessness prohibits them from qualifying for a passport. Instead, this method has been used to fast-track and grant citizenship to footballers of foreign nationality or mixed parentage with Malaysian ancestry as part of an initiative between Football Association of Malaysia (FAM) and JPN, to improve Malaysian football performance (“FAM suspend naturalisation project”, 2021). The strict documentation requirements and arbitrary process makes citizenship by naturalisation highly inaccessible for many of the stateless populations in this research.

3.3.4 Renunciation and deprivation of nationality

This section discusses how a citizen can lose their Malaysian nationality either by renouncing it or being deprived of it by the Federal Government.

There is a high intolerance towards dual citizenship in Malaysia. JPN announced in 2017 that dual citizenship holders must either “renounce or risk revocation” of their citizenship because “Malaysia does not recognise dual citizenship under Article 24(1)” (Sira Habibu, 2017). Malaysian citizens can voluntarily renounce their citizenship in order to register as a citizen of a foreign country under Article 23 of the Federal Constitution. JPN reported that there are 5,000 citizens who renounce their citizenship annually (Habibu, 2019). They need to submit Application Form K to JPN, along with supporting documents such as passport, birth certificate, foreign citizenship certificate, or a copy of confirmation that the applicant will become a citizen of a foreign country.

23. (1) Any citizen of or over the age of twenty-one years and of sound mind who is also or is about to become a citizen of another country may renounce his citizenship of the Federation by declaration registered by the Federal Government, and shall thereupon cease to be a citizen.

As for revocation of citizenship, any citizen (regardless of citizenship by operation of law, registration, naturalisation) who has acquired citizenship of another country may be deprived of Malaysian citizenship under Article 24. Acquiring and exercising the right to a foreign citizenship is defined as voting in political elections or applying for a foreign passport under Article 24 (3A).

24. (1) If the Federal Government is satisfied that any citizen has acquired by registration, naturalization or other voluntary and formal act (other than marriage) the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship.

(2) If the Federal Government is satisfied that any citizen has voluntarily claimed and exercised in any country outside the Federation any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Federal Government may by order deprive that person of his citizenship.



(3A) Without prejudice to the generality of Clause (2), the exercise of a vote in any political election in a place outside the Federation shall be deemed to be the voluntary claim and exercise of a right available under the law of that place; and for the purposes of Clause (2), a person who, after such date as the Yang di-Pertuan Agong may by order appoint for the purposes of this Clause—

- (a) applies to the authorities of a place outside the Federation for the issue or renewal of a passport;*
- (b) uses a passport issued by such authorities as a travel document, shall be deemed voluntarily to claim and exercise a right available under the law of that place, being a right accorded exclusively to the citizens of that place.*

Citizens by registration and naturalisation are generally at higher risk of deprivation of nationality as they are subject to more grounds for deprivation of citizenship, which citizens by operation of law are not subject to. The grounds for deprivation of citizenship that had been acquired by registration or naturalisation are outlined in Table 9. Children and wives are at risk of statelessness as they may be deprived of their citizenship because their citizenship is conditional on their parents' citizenship status (Article 26A) and the status of their marriage (Article 26 (2)). Other groups at risk of statelessness are activists or human rights defenders, who are citizens by registration or naturalisation, who can be deprived of citizenship by conducting an act or speech of disloyalty (Article 25 (1)). These deprivation of nationality provisions should be amended to include safeguards against statelessness to allow children and wives to retain their citizenship status in the event that their parent or spouse loses their citizenship.

Only the federal government has the power to deprive a person of their citizenship under Article 24 if it is satisfied that the person has voluntarily acquired and exercised their right to a citizenship of a foreign country. As stated by Wong (2020), this was affirmed by the Court of Appeal in *The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors.* (2018):

As mentioned by the learned judge, while Malaysia does not recognise dual citizenship, any deprivation of citizenship may only be validly undertaken by the Federal Government pursuant to Articles 24 and 27 of the Federal Constitution, or if it was voluntarily renounced by the plaintiff himself under Article 23 of the Federal Constitution. Until to date, there is no evidence or indication to this effect...

Deprivation of citizenship is not automatic upon acquiring citizenship of another country. There is a procedure under Article 27 that the federal government must follow prior to depriving a person of their citizenship. The government must issue a written notice informing the person of the grounds on which the deprivation is being made, and their right to have the case referred to a committee of inquiry to review and appeal the deprivation.

Table 9: Grounds for deprivation of citizenship for citizens by registration or naturalisation under Articles 24, 25, and 26

Grounds	Article
1. Serving in office, post, or employment by a foreign government, which require an oath of allegiance	25. (1A) The Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 16A or 17 or a citizen by naturalization if satisfied that without the Federal Government’s approval, he has accepted, served in, or performed the duties of any office, post or employment under the Government of any country outside the Federation or any political subdivision thereof, or under any agency of such a Government, in any case where an oath, affirmation or declaration of allegiance is required in respect of the office, post or employment:



Grounds	Article
	Provided that a person shall not be deprived of citizenship under this Clause by reason of anything done before the beginning of October 1962, in relation to a foreign country, and before the beginning of January 1977, in relation to a Commonwealth country, notwithstanding that he was at the time a citizen.
2. A five-year continuous residence in countries outside the Federation, unless in service of the Federation or registered annually at a Consulate to retain their Malaysian citizenship	25. (2) The Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 16A or 17 or a citizen by naturalization if satisfied that he has been ordinarily resident in countries outside the Federation for a continuous period of five years and during that period has neither— (a) been at any time in the service of the Federation or of an international organization of which the Federal Government was a member; nor (b) registered annually at a consulate of the Federation his intention to retain his citizenship: Provided that this Clause shall not apply to any period of residence in any Commonwealth country before the beginning of January 1977.
3. Parental renunciation or deprivation of citizenship (for children who obtained citizenship by registration)	26A. Where a person has renounced his citizenship or been deprived thereof under Clause (1) of Article 24 or paragraph (a) of Clause (1) of Article 26, the Federal Government may by order deprive of his citizenship any child of that person under the age of twenty-one who has been

Grounds	Article
	registered as a citizen pursuant to this Constitution and was so registered as being the child of that person or of that person's wife or husband.
4. Conducting an act or speech of disloyalty towards the Federation, assisting an enemy country during a war in which the Federation was involved, imprisonment in any country for 12 months, or a fine of RM5,000 during the first five years of residence	25. (1) The Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 16A or 17 or a citizen by naturalization if satisfied— (a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation; (b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or (c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand ringgit or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.



Grounds	Article
5. Dissolution of marriage to her Malaysian husband or acquirement, by marriage, of a foreign citizenship (for women who obtained citizenship by registration)	26. (2) The Federal Government may by order deprive of her citizenship any woman who is a citizen by registration under Clause (1) of Article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage. 24. (4) If the Federal Government is satisfied that any woman who is a citizen by registration under Clause (1) of Article 15 has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.
6. Fraud, false representation, concealment of information, or mistake	26. (1) The Federal Government may by order deprive of his citizenship any citizen by registration or by naturalization if satisfied that the registration or certificate of naturalization— (a) was obtained by means of fraud, false representation or the concealment of any material fact; or (b) was effected or granted by mistake.

3.3.5 Procedural questions

The government does provide legal definitions of and provisions pertaining to Malaysian citizenship in Article 14(1) along with the provisions in Part I and Part II of the Second Schedule. However, there are no legal definitions of or provisions on statelessness in Malaysia's nationality laws.

Section 6 of Part III of the Second Schedule empowers the Minister of Home Affairs as the assigned competent authoritative body on all citizenship matters, to “make rules and prescribe forms for the purpose of the exercise of his functions”, allowing wide room for discretion.

All decisions made by the government on citizenship acquisition (operation of law, registration, naturalisation) are not open to appeal or review by applicants. A person is not “entitled to appeal or review any decisions in any court” on all citizenship matters decided by the Minister on behalf of the federal government, as outlined in Section 2 of Part III of the Second Schedule.

3.4 Analysis of Malaysia’s nationality laws and their implementation in practice

3.4.1 Statelessness safeguards within Malaysia’s nationality laws

First, the Federal Constitution provides safeguards for all stateless persons born in Malaysia, specifically in Article 14(1)(b), read with Section 1(e) and Section 2(3) under Part II of the Second Schedule. A child born in Malaysia who has not acquired a nationality from any other State within one year of their birth is considered a Malaysian citizen. Section 1(e) provides that “every person born within the Federation who is not born a citizen of any country is a citizen of the Federation by operation of law,” while Section 2(3) stipulates the time period, “having at birth any citizenship which he acquires within one year afterwards.” This means that regardless of their parents’ citizenship, all stateless persons born in Malaysia, who have yet to acquire any citizenship within one year, are citizens by operation of law (Rodziana Mohamed Razali, 2017; Liew, 2019).

1. (e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

Second, there is a safeguard for abandoned children’s or foundlings’ right to a nationality. Section 19(B) of Part III of the Second Schedule read with Article 14(1)(b) stipulates that “any new born child found exposed in any place shall be presumed, until the contrary is shown, to have been born there of a mother permanently resident there.” These provisions recognise foundlings or abandoned children as nationals of Malaysia.



19B. For the purposes of Part I and II of this Schedule any new born child found exposed in any place shall be presumed, until the contrary is shown, to have been born there of a mother permanently resident there; and if he is treated by virtue of this Section as so born, the date of the finding shall be taken to be the date of the birth.

Third, there is a safeguard for adopted children's right to a nationality. Section 9(1) of the 1952 Adoption Act provides that an adopted child's legal position is the same as the position of a biological child. Adopted children born in the country are subject to the provisions of acquiring citizenship by operation of law that biological children are subject to, as long as their adoptive parents are either a citizen or permanent resident.

9. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent, guardian 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:

Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters provided in this subsection and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively to a lawful father and mother, respectively.

However, in practice, these provisions and safeguards fail to prevent or reduce cases of statelessness because there are no administrative guidelines or procedures regarding the implementation of these constitutional safeguards to prevent statelessness. This leaves stateless persons with limited viable remedies to acquire a nationality.

3.4.2 How the framing and implementation of citizenship laws cause *in situ* statelessness

Although Malaysia subscribes to a combination of both *jus soli* and *jus sanguinis* principles of citizenship, the *jus sanguinis* principle seems to play a more prominent role for citizenship determination (Rodziana Mohamed Razali et. al., 2015). This was observed based on the administrative rules on citizenship set out by the Ministry of Home Affairs and the stricter qualifications introduced via the Constitutional (Amendment) Act 1962 to prove a genuine and effective link to a country (as discussed in Section 3.4 on nationality provisions).

The application of the *jus sanguinis* principle in citizenship procedures and rules by the Ministry of Home Affairs and JPN imposes strict requirements for persons born in Malaysia. Figure 5 shows how JPN has created new sets of citizenship determination rules that are solely conditional on the parents' nationality status (citizen, permanent resident, non-citizen) and the status of the marriage at the time of birth. This infographic has been criticised by civil society as being unconstitutional and giving 'false narratives' on citizenship entitlement ("Latheefa Criticises Home Ministry", 2021). This imposition of parents' statuses of nationality and marriage violates Article 14(1)(e) under Part II of the Second Schedule which stipulates any person born in Malaysia who is not a citizen of any country is considered a Malaysian citizen by operation of law. The citizenship determination rules outlined by JPN disproportionately favours exclusion criteria instead of inclusion criteria for citizenship qualification, resulting in a high number of *in situ* stateless persons who are unable to prove their links due to administrative, discriminatory, financial or legal barriers and very few successful cases of *in situ* stateless persons acquiring citizenship through the existing legal provisions and administrative processes.

As established in Section 1.8, five out of the eight *in situ* stateless populations born in Malaysia – persons with longstanding residence since pre-independence, indigenous persons, undocumented persons, adopted children, and abandoned children – are rendered 'administratively' stateless because they lack the formal documentation needed for citizenship application processes and are subject to arbitrary citizenship determination by JPN. Despite their genuine and long-standing links to



Malaysia, the lack of documentation, compounded with their inability to trace information on their parents’ statuses of nationality and marriage in order to prove their links to Malaysia, leaves them stateless with very few options for recourse.



Figure 5: Citizenship determination infographic from the Ministry of Home Affairs’ Twitter account (KDN, 2021)

3.4.3 Nationality laws and implementation in practice for persons with long-standing residence since pre-independence and their descendants

Persons with long-standing residence since pre-independence and their descendants, primarily the migrant populations born in Malaysia before Malaysia Day (e.g. Indian persons of Tamil descent, Chinese persons, and persons of Siamese descent) qualify for citizenship by operation of law under Article 14(1). Any person born in the Federation between Merdeka Day, which was 31 August 1957, until Malaysia Day, which was 16 September 1963, automatically qualifies for Malaysian citizenship by operation of law under Article 14(1)(a). This provision is conditional on the

person owning a birth certificate, as the Births and Deaths Registration Act 1957 requires the birth to be registered before citizenship by operation of law can take effect (Tamara J. Duraisingam et. al., 2020).

In the case of *Kalwant Kaur a/p Rattan Singh v Kementerian Dalam Negeri Malaysia & Anor* (1993), the Johor Bahru High Court held that Kalwant met the requirements of citizenship by operation of law under Article 14(1)(a) of the Federal Constitution, read with Article 124(1)(c)(ii) of the Federation of Malaya Agreement. This is because the High Court recognised that Kalwant's father qualified as a British subject at the time of her birth and later became a permanent resident in Perak and that she was born in Perak, one of the territories of the Federation.

However, for those born after Malaysia Day (post 16 September 1963), they can only qualify for citizenship by operation of law under Article 14(1)(b) of the Federal Constitution, read together with the provisions of Sections 1(a) to (e) Part II of the Second Schedule, which relies on the *jus sanguinis* rule of citizenship. To qualify for Malaysian citizenship by operation of law for those born after Malaysia Day, a person must prove their linkage via their parents' nationality and marriage status. It becomes more challenging for Indian children to acquire Malaysian citizenship under these provisions because of the prevalence of customary (unregistered) marriages within their respective communities.

In the case of *Nalan a/l Kunji Kanan & Anor. v Secretary General of Ministry of Home Affairs, Malaysia & Ors.* (2017), the High Court held that Nalan did not meet the qualifications under Article 14(1)(b) and Section 1(a), Part II of the Second Schedule of the Federal Constitution, since Nalan is considered "illegitimate" at the time of birth because of his parents' unregistered marriage. The High Court relied on decisions that qualified the word "parent" in Article 14 as referring to a lawful parent, as in the cases of *Pendaftar Besar Kelahiran Dan Kematian Malaysia v Pang Wee See & Anor.* (2017) and *Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, child) v Ketua Pendaftar Kelahiran Dan Kematian, Malaysia* (2012).

Statelessness is typically intergenerational and inherited amongst persons with long-standing residence since pre-independence and their



descendants, as in the case of Letchumy Suppiah and her two daughters (Pathma Subramaniam, 2013). Letchumy was born in 1943 in Selangor and only received permanent resident (PR) status when she filed for citizenship in 2008. Letchumy's two daughters were rendered stateless because of their mother's statelessness and the fact that they only had their birth certificates. The two daughters passed on their statelessness to their children because their respective marriages were unregistered. In 2013, the Kuala Lumpur High Court granted citizenship to all three stateless Indian women. Many persons who are in similar circumstances to Letchumy are not able to access legal representation to take their citizenship bid to court, and remain stateless.

3.4.4 Nationality laws and implementation in practice for abandoned children

Section 171(ii) of the Child Act 2001 defines an abandoned child as a child under the age of eighteen years who is in need of care and protection after being abandoned by his parent or guardian, and that after reasonable enquiries the parent or guardian cannot be found, and no other suitable person is willing and able to care for the child.

In Islamic family law, an abandoned child is described as a foundling (*laqit*) and is defined as a child who is lost or left abandoned from fear of responsibility (deemed burdensome), or to escape from suspicious accusation of adultery, or for any other reason, and where his parents are not known (Azizah Mohd, 2011).

An abandoned child's right to identity and name are protected in the provision for the mandatory registration of a child upon his birth under the Births and Deaths Registration Act 1957 (BDRA). Section 7 of the BDRA requires that every child born (including abandoned children) in Malaysia has to be registered, regardless of the child's status or background. The registration of birth of an abandoned child applies to both Muslim and non-Muslim abandoned children. It is the responsibility of the Registrar General to provide and maintain the number of registers in the prescribed form for the recording of a child. The Registrar will register the birth of a child for the registration area in which the child was born, regardless of whether the child is born alive or dead (Azizah Mohd, 2011).

As for birth registrations of an abandoned child, registration of the child's place of birth will be based on the area where the child is found, as provided for in Section 15. The person who finds the abandoned child will be in charge of the child under Section 10. This is typically done by a Protector from JKM who is responsible for securing the birth certificate of the child. Abandoned children who are found are exempt from the late birth registration fees under Section 11(1) and (2). There is no time limit for birth registration of a child because birth registrations are a prerequisite for a person's identity, and failure to do so may deprive them from accessing other rights and basic services which require proof of identity (Azizah Mohd, 2011).

In practice, birth registrations for an abandoned child are missing a lot of important information such as their surname, place of birth, and details of their parents, as shown in Figure 6. Without this information, the abandoned child would be unable to prove their genuine link to the country in order to qualify for Malaysian citizenship by operation of law. The Registrar will typically register the child's citizenship status as "to be determined". This practice is one of the biggest causes of childhood statelessness amongst abandoned children who are born in and have been living in Malaysia but the circumstances of their birth make them unable to prove their genuine and effective link to Malaysian citizenship. Nevertheless, it is important for abandoned children to obtain birth certificates because it is their only proof of identification and manifestation of their right to an identity, so they can use it to apply for citizenship or for adoption applications.

As for the practice of birth registration in Islamic law, the practice falls under the concept of protecting the public interest (*al-masalih al mursalah*) (Azizah Mohd, 2011).

An abandoned child's name can be changed or added in cases where they were previously registered without a name within 12 months of the finding of the child under Section 15 of the BDRA (Azizah Mohd, 2011). This is important because evidence can be produced to the Registrar General to declare a child to be legitimate under Section 5 of the Legitimacy Act 1961. This is only applicable to the non-Muslim children as the Legitimacy Act 1961 does not apply to Muslims under Section 3 of the Legitimacy Act. As for Muslim children's right to identity, Islamic law protects the right of

Islamic law. Another way a child can be adopted is under the Registration of Adoptions Act 1952. Adoption under this Act does not change the status of the adopted child but only shows proof that an adoption has taken place. This Act is applicable to both Muslims and non-Muslims as it does not contravene Islamic law.

Many Muslim countries recognize and confer citizenship status to an abandoned child born in their jurisdiction. Countries such as Iraq, United Arab Emirates, and Sudan recognise and confer citizenship to abandoned children born in their territory under Islamic law. There are provisions allowing such a child to be claimed; i.e. a declaration or acknowledgement (*al-iqrar*) that a child of unknown identity is a child of somebody. This acknowledgement is subject to conditions a person must fulfil which includes declaring they are of unknown status, their parentage is not yet established by another person, they have not been claimed as illegitimate, and they have attained the age of seven years (*mumayyiz*). For example, Section 114 of the Islamic Family Law (Federal Territories) Act 1984 recognises the acknowledgement of paternity (but not maternity) of an abandoned child after the above conditions are fulfilled. Islamic law also recognises adoption or foster care only under the Registration of Adoptions Act 1952, based on the principle of enjoining good deeds (*al-'amr bi al ma'ruf*) (Azizah Mohd, 2011).

Section 19B of Part III of the Second Schedule provides that “any new born child found exposed in any place shall be presumed, until the contrary is shown, to have been born there of a mother permanently resident there.” This provision, when read together with Section 1(e) of Part II of the Second Schedule, recognises that children born in Malaysia, regardless of their status (legitimate or illegitimate, abandoned or otherwise), qualify for Malaysian citizenship by operation of law. However, this only applies if the child is born in Malaysia and if the child is a new born child. If the abandoned child is a grown child or born outside of Malaysia, the child is rendered stateless due to the unknown parentage of the child (Azizah Mohd, 2011). Furthermore, “new born child” is not clearly defined and as discussed in Section 3.5.1, there are no existing administrative guidelines or procedures by the relevant government agencies (KDN, JPN, Registrar-General of Births and Deaths) to implement this safeguard.



In terms of case law, the landmark case of *CCH & Anor. v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* (2021) set the precedent that an abandoned child is entitled to citizenship by operation of law by virtue of Article 14(1)(b) and Section 1(a) of Part II read with Section 19B of Part III of the Second Schedule. First, the court concluded that Section 19B must be interpreted in the broadest possible sense to encompass the plight of abandoned new born children in order to meet the original intention of the provision to prevent statelessness. This means the Court should give the widest possible meaning to words in the provision to guarantee a fundamental right to life and personal liberty contained in Article 5(1). Therefore, a wider interpretation of “any new born child found exposed in any place” must include “new born children who are left and discovered in a place without any trace of their biological parents.” They further define places of abandonment as “dumpsites, baby hatches, public or school toilets, places of worship, and so on”. Secondly, to address the *jus sanguinis* concept within Section 19B (“until the contrary is shown, to have been born there of a mother permanently resident there”), the Court concluded that if an abandoned child fulfils the *jus soli* requirements of Section 1(a) of Part II which requires the child born within the Federation to be born of at least either one parent who is a citizen or resident in the Federation, it automatically satisfies the *jus sanguinis* aspect of Section 1(a) and Section 19B, unless anyone claiming to the contrary can prove otherwise. In this case, the abandoned child was born in a hospital in Malaysia with proof of the Adoption Order and birth certificate. Thirdly, the case sets precedent for how the KDN, JPN, and Registrar-General of Births and Deaths should deal with future cases of abandoned new born children. It explicitly states that the “burden is on the respondent (The Government) to undertake proper investigations to determine the status of such child’s biological parents or mother” and that if the abandonment is true, the Government “is obligated by the highest law of the land in Section 19B of Part III to recognise that new born child’s citizenship by operation of law, unless where there is evidence to the contrary” on the child’s parentage.

The latest decision in the Court of Appeal in March 2022 that granted Malaysian citizenship to an abandoned child follows the decision in *CCH & Anor. v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia*, which was heard at the Federal Court in November 2021 (Lim, 2022). At the Court of

Appeal, the woman, G, who was abandoned at birth in a hospital in Kuala Lumpur, was granted citizenship by operation of law by virtue of her birth in Malaysia having fulfilled the conditions for citizenship under Article 14(1)(b), Section 1(a), Part II, read together with Section 19B, Part III of the Second Schedule.

This overrules previous decisions that were not in favour of using Section 19B to confer citizenship by operation of law for abandoned children, such as in the case of *Samuel Duraisingh & Anor. v Pendaftar Besar Kelahiran dan Kematian, Malaysia & Anor.* (2019). In that case, the Kuala Lumpur High Court ruled that Section 19B (“any new born child found exposed in any place shall be presumed, until the contrary is shown, to have been born there of a mother permanently resident there”) is to be read with Section 19C. This meant that in order for the abandoned child to acquire citizenship by operation of law through Section 19B, the child must prove the mother is a Malaysian resident. However, it would seem that this ruling no longer holds, following the latest developments in case law.

3.4.5 Nationality laws and implementation in practice for adopted children

The Child Act 2001 does not include provisions or policies on adoption or the citizenship of adopted children but positions adoption as a form of child protection instead (Azizah Mohd, 2012). Child protection in Malaysia is governed by the Child Act 2001 and outlines the categories of children protected under the Act. It defines children in need of care and protection as abused children, neglected children, abandoned children, children who are in danger, children who are found begging, and children involved in illegal hawking or activities which are detrimental to their health and welfare. Section 30(4) of the Child Act 2001 provides the power of the Court for Children to place a child in need of care and protection (in particular, a child who has no parent or guardian or has been abandoned) into adoption.

30. (4) If during the period mentioned in paragraph (1)(c) the parent or guardian of the child concerned has not claimed the child or made any appearance, the Court For Children may:



- (a) at the expiry of that period; and*
- (b) if the Court is satisfied that reasonable steps have been taken by the Protector to trace the parent or guardian of the child, make an order placing the child for adoption by the foster parent or any person who wishes to adopt the child and in any such case:*
 - (a) the parent's or guardian's consent for the adoption of the child shall be dispensed with; and*
 - (b) the Adoption Act 1952 [Act 257] (in the case of a child not professing the religion of Islam), the Registration of Adoptions Act 1952 [Act 253], Sabah Adoption Ordinance 1960 and Sarawak Adoption Ordinance [Cap 91] shall be construed accordingly.*

As previously mentioned, there are two Acts governing adoption – the Adoption Act 1952 (for non-Muslims only) and the Registration of Adoption Act 1952 (for Muslims and non-Muslims), neither of which has any provisions on the citizenship of adopted children (Roslina Che Soh@Yusoff et. al., 2019). Both these Acts are applicable only in Peninsular Malaysia while Sabah and Sarawak are governed by the Sabah Adoption Ordinance 1960 and the Sarawak Adoption Ordinance Cap. 91.

Section 9 of the Adoption Act 1952 provides that “all rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the applicants (i.e. adopting parents) as though the child was a child born to them in lawful wedlock.” This means that adoption under this Act grants a special status to the adopted child so that the child is treated the same as biological children of the adoptive parents. The Adoption Act provides legal adoption through a court order where the court will have the power to make adoption orders upon the application being made (Nur Athirah Syuhada Hasni and Nurshahirah Azman (2020)). The effect of adoption under this Act was clearly expressed in the case of *Re TSY (an infant)* (1988). It was explained there that the adoption order “destroys the legal bond between the infant and the natural parents and puts him in precisely the same position as natural child of his adopted parents. The making of an adoption order may, therefore, be rightly described as the using of statutory guillotine”. The rights, duties, obligations, and liabilities of the adoptive parents are further strengthened by the provisions entitling adopted children to inherit the property of the adoptive parents under

the Distribution Act 1958, Probate and Administration Act 1959, and the Inheritance Act 1971. Section 25A(1)(b) of the Adoption Act stipulates that the word adopted, adopter, adoptive or any other word that carries the same effect shall not appear in the birth certificate of the adopted child. This was further reiterated in the case of *Chin Kooi Nah (suing by herself and as next of kin to Chin Jia Nee, an infant) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* (2016), which explained that the intent behind the provision is to protect the child from having an adverse psychological effect upon finding out the fact of their adoption.

The Registration of Adoption Act provides for the registration of a *de facto* adoption, which is an informal adoption done personally or through JKM before registration (Azizah Mohd, 2012). Section 6 describes a *de facto* adoption as a situation where a child is in the custody of a person and is being brought up, maintained, and educated by him as his own child for a period of not less than two years continuously. Adoption under this Act is a legal registration to prove that an adoption has taken place, and indirectly gives the right of custody to the adoptive parents over the adopted child. However, adoption under this Act does not grant the adopted child the same status and rights one gets under the Adoption Act, primarily the ability to inherit the property of the adoptive parents.

Both the Adoption Act and Registration of Adoption Act do not address the conferral of nationality of adopted children. Adopted children whose biological parents are not traceable or unknown will face difficulties in acquiring Malaysian citizenship, leaving them at high risk of statelessness. The existing provisions in these Acts are insufficient and do not provide a way for adoptive parents to confer their Malaysian citizenship to their adopted children (Roslina Che Soh@Yusoff et. al., 2019). In practice, citizenship for adopted children is determined arbitrarily by JPN in the exercise of its administrative function of registering orders granted by the Malaysian courts (Mah and Lim, 2013). Parents of adopted children are forced to apply for citizenship by registration for their adopted children under Article 15A, which is non-automatic, at the discretion of the Home Minister, and cannot be appealed in court.



In the case of *Lee Chin Pon & Anor. v Registrar-General of Births and Deaths, Malaysia* (2010, unreported) the High Court decided that adopted children born in Malaysia to unknown biological parents should automatically qualify for Malaysian citizenship by operation of law, under Article 14(1)(b) and Section 1(a), Part II of the Second Schedule of the Federal Constitution, as well as Section 9(1) and Section 25A of the Adoption Act 1952. This landmark decision is one of the few cases that is in line with the adopted child's best interest, compared to other court decisions on the citizenship of adopted children (Mah and Lim, 2013). This case developed the principle that a lawfully adopted child born in Malaysia on or after Malaysia Day has the right to be recognised as a Malaysian citizen, provided either that the adoptive parent is a citizen, or a permanent resident of Malaysia. There are also other unreported cases that follow this precedent of granting Malaysian citizenship to children born in Malaysia whose biological parents could not be traced under Article 14(1)(b) and Section 1(e), Part II of the Second Schedule, for example in the case of *Leong Peng Kheong & Anor. v Registrar-General of Births and Deaths, Malaysia* (2014, unreported).

However, in 2017, the Court of Appeal set aside the High Court's decision in the case of *Pendaftar Besar Kelahiran Dan Kematian Malaysia v Pang Wee See & Anor.* (2017), in which they unanimously concluded that first, the Adoption Order issued under the Adoption Act 1952 does not confer Malaysian citizenship to an adopted child even if one of the adoptive parents is a Malaysian citizen or permanent resident in Malaysia. Second, to acquire citizenship by operation of law under Article 14(1)(b) and Section 1(a), Part II of the Second Schedule, a person must be born in Malaysia and one of their biological parents is at the time of their birth either a Malaysian citizen or permanent resident in Malaysia. Third, that the identity and whereabouts of the biological parents of the adopted child must be taken into consideration to meet the conditions needed to acquire citizenship by operation of law.

[39] Put simply, the Adoption Act 1952 is not competent as a legal instrument to confer citizenship status to an adopted child under art 14(1)(b) read with s 1(a) Part II, Second Schedule of Federal Constitution. The fact that it is silent on that subject

must be telling. Indeed, it would be futile to insert such a provision in the Adoption Act 1952. If it was the intention of the Federal Constitution to include an adoptive parent as a biological parent (parent whose at least one is at the time of the birth) for the purpose of art 14(1)(b) read with s 1(a) Part II, Second Schedule of Federal Constitution such intention would have found clear expression in the Federal Constitution itself, because to interpret an adoptive parent in the definition of a biological parent would have huge implications. To reiterate, we could not find such express stipulation in the Federal Constitution and neither could learned SFC nor Mr Raymond Mah, to that effect. In the circumstances, it would indeed be wrong for us to read into the Federal Constitution something which is conspicuously not there. We are therefore in agreement with the learned SFC on this score.⁴

This decision is in line with the previous case of *Chin Kooi Nah (suing by herself and as next of kin to Chin Jia Nee, an infant) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* (2016) where both the Court of Appeal and the High Court concluded that if the identity of a child's biological parents is unknown, the child will not qualify for Malaysian citizenship by operation of law, and that the adoption order issued under the Adoption Act does not automatically confer citizenship. Similarly, in the cases of *Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, child) v Ketua Pendaftar Kelahiran Dan Kematian, Malaysia* (2012); *Than Siew Beng & Anor. v Ketua Pengarah Jabatan Pendaftaran Negara & Ors.* (2017); and *Lim Jen Hsian & Anor. v Ketua Pengarah Jabatan Pendaftaran Negara & Ors.* (2016), the respective judgments affirm the need for the adopted child to obtain the identity and location of the biological parents and that the Adoption Act 1952 is not a competent legal instrument to use for an adopted child to qualify for citizenship (Rodziana Mohamed Razali, 2017). The most recent case on the citizenship of adopted stateless children happened in April 2022 where the High Court rejected a citizenship appeal by a stateless man born in Kuala Lumpur and adopted by a Malaysian couple (Loheswar, 2022).

4 *Pendaftar Besar Kelahiran Dan Kematian Malaysia v Pang Wee See & Anor.* (2017)



There is a growing number of decisions of late granting citizenship to adopted stateless children under Article 15A of the Federal Constitution. In the case of *Yu Sheng Meng (suing through next of kin, Yu Meng Queng) v Ketua Pengarah Pendaftaran Negara & Ors.* (2016), the adopted child was finally granted Malaysian citizenship under Article 15A in September 2019 after 11 years of seeking citizenship (Radzi Razak, 2019). In 2019, in three different cases, stateless boys born in Malaysia were granted citizenship by registration under special circumstances under Article 15A by the Home Ministry before the applicants' cases were scheduled to be heard at the Federal Court. Lawyers representing the stateless applicants consider this a missed opportunity for the government to create a "binding precedent that would entitle other adopted children in the same situation to citizenship by operation of law."

There is an ongoing case of an adopted stateless teenager, C, who was born in Malaysia to unknown parents and adopted by a Malaysian couple, which was heard at the Federal Court in September 2021. The teen is asking to be recognised as a citizen by operation of law under Article 14(1)(b), Sections 1(e) and 2(3) of Part II of the Second Schedule of the Federal Constitution as these provisions do not require proof of identity of the biological parents to qualify for Malaysian citizenship. Depending on the Federal Court decision, this case could set precedent for other stateless children to acquire their right to nationality under the provisions of Article 14(1)(b) of the Federal Constitution, read with Section 1(e) and Section 2(3), Part II of the Second Schedule.

The emerging pattern in case law regarding citizenship for adopted stateless children is that the courts typically focus on a narrow and technical analysis of nationality provisions that do not favour or protect adopted children against statelessness. The continued insistence by JPN and KDN for adopted stateless children to provide documentation or information about their biological parents, which are impossible to find, leaves the children with little option in acquiring citizenship (Lim, 2019). The court decisions that leave stateless children without citizenship are not informed by human rights principles or the principle of 'the best interests of the child.' (Rodziana Mohamed Razali, 2017)

3.4.6 Nationality laws and implementation in practice for children born out of wedlock to a Malaysian father and a non-Malaysian mother

Section 17, Part III of the Second Schedule of the Federal Constitution is used by JPN and KDN to assert that the legitimacy of the child at the time of birth must be fulfilled to meet the requirements under Section 1(a), Part II of the Second Schedule. In cases of children whose unmarried parents comprise a non-Malaysian mother and a Malaysian father, the Malaysian father is not able to confer citizenship upon the child, leaving the child at high risk of statelessness. Section 17 states:

17. For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly Section 19 of this Schedule shall not apply to such a person.

More relevant provisions on the legitimation of a child are found in Sections 3, 4, and 5 of the Legitimacy Act 1961. Section 3 states the ordinances that recognise the formal registration of a marriage to allow for the legitimation of a child:

3. Nothing in this Act shall operate to legitimate a person unless the marriage leading to the legitimation was solemnized and registered in accordance with:

- (a) the Civil Marriage Ordinance 1952 [Ord. No. 44 of 1952], or the Christian Marriage Ordinance 1956 [Ord. No. 33 of 1956];*
- (b) the Christian Marriage Ordinance [Cap. 24] or the Marriage Ordinance 1959 [Ord. No. 14 of 1959]* of Sabah; or*
- (c) the Church and Civil Marriage Ordinance [Cap. 92] of Sarawak, or any Enactment or Ordinance repealed by any of the said Ordinances.*

In the landmark case of *CTEB & Anor. v Ketua Pengarah Pendaftaran Negara Malaysia & Ors.*, the Federal Court held in May 2021 by a majority of 4 to 3 that an illegitimate child born outside Malaysia to a Malaysian biological father and a non-Malaysian mother is not entitled to become a Malaysian citizen by operation of law under Article 14 of the Federal Constitution.



In that case, the child was born on 27 October 2010 in the Philippines to a Malaysian father and a mother who is a citizen of the Philippines. The parents subsequently registered their marriage in Malaysia on 22 February 2011, approximately four months after the birth of the child. JPN registered the child as a non-citizen on the birth certificate because the child was born out of wedlock. In 2011, the child applied for citizenship by registration under Article 15A but was rejected without any reasons given. In 2016, the child filed a suit to the High Court to obtain a declaration of citizenship by operation of law pursuant to Article 14(1)(b) read with Section 1(b), Part II of the Second Schedule of the Federal Constitution. In 2017, the High Court dismissed the suit on the ground that the child was illegitimate at the time of his birth and his citizenship would follow the citizenship of his mother. In 2019, the Court of Appeal dismissed the child's appeal under Article 24 of the Federal Constitution by depriving the child of Malaysian citizenship due to the child holding a Filipino passport.

The majority decision of the Federal Court held that a child's citizenship status follows that of the mother, as opposed to the father, when the child is born out of wedlock, under Section 17, Part III of the Second Schedule, which defines the word "father" as referring to "mother" in the case of an illegitimate child. The majority finds that Section 17 is clear in its meaning and interpretation:

*There is nothing ambiguous about Section 17 to permit other rules of interpretation. From the express distinction for parents or father of an illegitimate child in Section 17, it is obvious that the word "parents" in the context of Part III of the FC must be construed to refer to lawful parents in a recognised marriage in the Federation. This country never legally recognised unwedded parents. I say so because proper distinctions have always been made in our legislation in order to differentiate between the status of "parents" in a recognised marriage or otherwise. Even under Section 13 of the Births and Deaths Registration Act 1957, the legislation makes a clear distinction between a father or mother of an illegitimate child. This connotes that "parents" refers always to legally wedded parents, not biological father and mother.*⁵

⁵ Majority judgment of the court, *CTEB & Anor v Ketua Pengarah Pendaftaran Negara Malaysia & Ors*. https://www.elaw.my/JE/01/JE_2021_27.html

The Federal Court by majority further held that qualification of citizenship by operation of law must be met “at the time of birth” and must be “conferred as a matter of birth right”. The majority cited other High Court decisions that follow this approach, *Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, child) v Ketua Pendaftar Kelahiran Dan Kematian, Malaysia* (2012); *Chin Kooi Nah (suing by herself and as next of kin to Chin Jia Nee, an infant) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* (2016); *Yu Sheng Meng (suing through next of kin, Yu Meng Queng) v Ketua Pengarah Pendaftaran Negara & Ors.* (2016); *Nalan a/l Kunji Kanan & Anor. v Secretary General of Ministry of Home Affairs, Malaysia & Ors.* (2017); and *Samuel Duraisingh & Anor. v Pendaftar Besar Kelahiran dan Kematian, Malaysia and Anor.* (2019). The majority also cited similar approaches held by the Court of Appeal in the case of *Pendaftar Besar Kelahiran Dan Kematian Malaysia v Pang Wee See & Anor.* (2017), *Lim Jen Hsian & Anor. v Ketua Pengarah Jabatan Pendaftaran Negara & Ors.* (2016) and *Chan Tai Ern Bermillo & Anor v Ketua Pengarah Pendaftaran Negara Malaysia & Ors.* (2020).

The majority agreed with the Court of Appeal’s decision that “the subsequent marriage of the parents does not change the birth status of the child as an illegitimate child.” The majority finds that “there is no mention made for the rights of citizenship in the Legitimacy Act and no corresponding provision in the FC that deems legitimisation confers the right to citizenship.”

The majority also overturns the distinct decisions made in the Court of Appeal case of *Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors.* (2018), which granted citizenship by operation of law to an illegitimate child under Article 14(1)(b) read together with Section (a) and/or (e) of Part II of the Second Schedule of the Federal Constitution. The Court stands that the legitimacy of a child must be considered at the time of the application and the interpretation of the word “parents” in Section 1(a), Part II of the Second Schedule to be defined as “the lawful father or mother of a person”.

The majority further agreed that gender-biased nationality laws should be abolished and that the Federal Constitution discriminates between a legitimate and an illegitimate child, but maintains that the judiciary is not



“constitutionally empowered to ignore or neglect the clear dictates of the Federal Constitution and overcome that authorised gender bias in the name of progressive construction of the Federal Constitution”.

The dissenting judges held that Section 17, Part III of the Second Schedule was meant to serve as an aid to assist in the interpretation of Parts I and II and not to impose further conditions into Section 1(b), Part II of the Second Schedule. Section 17 is intended to prevent statelessness in a situation where the child’s father is unknown and not to deprive a Malaysian father from conferring citizenship to their child without a legally recognised marriage. On the discriminatory provisions in the Federal Constitution, the dissenting judges held that Article 8 does not allow discrimination on the conferment of citizenship and that a child’s right to life and liberty in Article 5 of the Constitution must include the right to nationality. Similarly to case law on the citizenship of adopted children, there is a pattern of decisions on the citizenship of children born out of wedlock made based on a literal and narrow interpretation of the provisions in the Federal Court.

As for children born in Malaysia out of wedlock to one Malaysian parent and a non-Malaysian parent, case law from the lower courts indicate more liberal interpretations of nationality provisions that recognise a stateless child’s right to a nationality. The High Court most recently granted citizenship by operation of law in the case of *Nalvin Dhillon* in April 2022 (Tee, 2022). *Nalvin*, who was born in Malaysia in an unregistered marriage to a Malaysian father and a Filipino mother, was recognised as a Malaysian citizen under Article 14(1)(b) read together with Section 1(e), Part II of the Second Schedule of the Federal Constitution. Similarly, the “Perak-born stateless girl”, who was born in Malaysia in an unregistered marriage to a Malaysian father and Filipino mother, was granted citizenship by operation of law under Article 14(1)(b), read with Section 1(e), Part II of the Second Schedule of the Federal Constitution by both the Court of Appeal in February 2022 and the High Court in May 2019 (Lim, 2022, February 15). Contrary to the majority decision in *CTEB*, the High Court found that Section 3 of the Legitimacy Act can be used to render the child as legitimate and therefore meet the conditions under Article 14(1)(b). In October 2021, child *OXT*, who was born in Malaysia out of wedlock to a Malaysian father and Chinese mother, was granted citizenship by operation of law under Article 14(1)(b), read with Sections 1(a) and 1(e) of Part II of the Second

Schedule of the Federal Constitution (Bunyan, 2021). On the other hand, in the case of child L, who was born out of wedlock to a Malaysian father and Thai mother, the child was granted citizenship under Article 15A by the Home Ministry before their case was heard at the Federal Court, following the trend of stateless children acquiring citizenship under the discretion of the Home Ministry in 2019 (Lim, 2019b, February 14). These cases set the precedent for future cases of stateless children of mixed parentage (citizen and non-citizen) born in Malaysia out of wedlock because there is now a line of decisions interpreting Article 14(1)(b) of the Federal Constitution, read with Sections 1(a) and 1(e) of Part II of the Second Schedule of the Federal Constitution as a provision for anyone born in Malaysia but who is not born a citizen of any other country to be considered a Malaysian citizen by operation of law.

3.4.7 Nationality laws and implementation in practice for children born outside of Malaysia to a Malaysian mother and a non-Malaysian father in lawful wedlock

There are gender discriminatory provisions in citizenship laws that cause children born abroad to a Malaysian mother and a non-Malaysian father to become stateless. Malaysia is one of only three countries that deny men equal rights in conferring nationality on their children who are born out of wedlock; and one of only 25 countries that deny women the right to confer nationality on their children on an equal basis with men (Mah and Wong, 2021).

As for children born abroad to a Malaysian mother and a non-Malaysian father, Section 1(b) and Section 1(c) of Part II of the Second Schedule of the Federal Constitution are discriminatory to Malaysian women, as these provisions only expressly allow Malaysian fathers to pass on citizenship to their children born abroad, therefore discriminating against mothers to pass on their citizenship.

1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:



- (b) *every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of I Federation or of a State*
- (c) *every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government.*

In the case of *Suriani Kempe & Ors. v Kerajaan Malaysia & Ors.* (2021), the High Court ruled in favour of six Malaysian mothers to pass their citizenship rights to their children born abroad on an equal basis to Malaysian fathers in September 2021. This landmark decision means that KDN must issue citizenship documents to the children of the plaintiffs and all other children born abroad to Malaysian mothers. The High Court found that the provisions in the Federal Constitution are discriminatory and that the Government failed to justify the discrimination in Sections 1(b) and 1(c). The High Court further recognised that the right to citizenship is a fundamental liberty under Article 5 of the Federal Constitution and thus the provisions in the Federal Constitution must be interpreted harmoniously and purposively to prevent them from being rendered as ineffective. Sections 1(b) and 1(c) must be interpreted to reflect equality before the law as provided for in Article 8 of the Federal Constitution. Therefore, the High Court declared that the word “father” in those provisions must be interpreted harmoniously to include “mother”. (Mah and Wong, 2021).

The Court of Appeal later unanimously rejected the Malaysian government’s bid to delay issuing citizenship documents to the affected mothers in December 2021 (Lim, 2021, December 22). In February 2022, three mothers who were plaintiffs of the lawsuit successfully obtained citizenship for their children following the High Court ruling, while many other affected mothers are unable to confer citizenship to their children

(Bedi, 2022). In March 2022, the Home Ministry announced it would continue its appeal against the High Court decision and wait for the Court of Appeal decision to be announced on 22 June 2022, leaving the affected mothers in limbo (Bedi, 2022). In June 2022, the Court of Appeal decided to defer its verdict to August 2022 to allow for more arguments to be heard from both sides, after the government raised additional points during the hearing on 22 June 2022 (Tan, 2022). In August 2022, the Court of Appeal overturned the earlier High Court decision on 9 September 2021 that allowed women to confer citizenship on their overseas-born children. The six mothers announced they would be appealing the decision to the Federal Court (Lim, 2022, August 5).

This case also affects other ongoing cases with similar circumstances, as in the case of Mahisha Sulaiha, a woman born in India to a Malaysian mother (Lim, 2021, November 2). The High Court decided in May 2020 that the ruling was in favour of the government and her appeal, scheduled to be heard at the Court of Appeal in November 2021, was postponed.

3.4.8 Nationality laws and implementation in practice for indigenous persons

The Orang Asli are mentioned four times in the Federal Constitution. The Orang Asli are referred to as “aborigine” in Article 160(2) of the Federal Constitution and 9th Schedule, List 1 that appoints the Federal Government as the legislative authority for the “welfare of the aborigines.” Article 45(2) provides for the appointment of Senators “capable of representing the interest of the aborigines.” Article 8(5)(c) legitimises positive discriminatory provisions in favour of the Orang Asli in terms of their protection, well-being, advancement, land reserves, or appointments in public service (Malaysian Bar, 2007).

8. (5)(c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service.

Besides the Constitution, the Aboriginal Peoples Act 1954 (revised in 1974), grants authority to the Jabatan Kemajuan Orang Asli (JAKOA)



to govern and protect the welfare of the Orang Asli under Act 134. The Act determines who is considered Orang Asli under Section 3(1), as outlined below. The Orang Asli do not have proper land ownership and live on designated land reserves for Orang Asli so they are effectively “tenants-at-will” and subject to the eviction or relocation of the land by state authorities. Because of the powers granted to JAKOA under the Aboriginal Peoples Act 1954, JAKOA is designated the responsibility for the well-being and advancement of the Orang Asli. Therefore, it is JAKOA’s responsibility to ensure all Orang Asli acquire Malaysian citizenship and have access to birth registration and identity cards. JAKOA has the duty of facilitating all birth registration and citizenship processes by working with JPN and KDN.

3. (1) In this Act an aborigine is– (a) any person whose male parent is or was, a member of an aboriginal ethnic group, who speaks an aboriginal language and habitually follows an aboriginal way of life and aboriginal customs and beliefs, and includes a descendant through males of such persons;

(b) any person of any race adopted when an infant by aborigines who has been brought up as an aborigine, habitually speaks an aboriginal language, habitually follows an aboriginal way of life and aboriginal customs and beliefs and is a member of an aboriginal community; or

(c) the child of any union between an aboriginal female and a male of another race, provided that the child habitually speaks an aboriginal language, habitually follows an aboriginal way of life and aboriginal customs and beliefs and remains a member of an aboriginal community.

The Orang Asli use their right to nationality as Malaysian citizens to exercise their rights. There is a growing interest in litigation as a strategy for Orang Asli to claim their rights that they are entitled to as citizens (Rusaslina Idrus, 2010). There have been a number of good precedents set in court on Orang Asli rights to their land and resources. In 1991, the Ipoh High Court ruled that Orang Asli had the right to the forest produce in Orang Asli reserves and that the state government of Perak had

breached the Aboriginal Peoples Act, in the case of *Koperasi Kijang Mas Bhd. & 3 Ors. v Kerajaan Negeri Perak & 2 Ors.* In 1997, the Johor High Court awarded compensation to 52 Jakuns for the loss of their ancestral lands, concluding that the Jakuns have proprietary rights over their lands, so they have the right to use it for subsistence and other needs, as in the case of *Adong bin Kuwau v Government of Johor* (1997). In 2005, the Court of Appeal threw out the appeal by the Selangor state government, Malaysian Highway Authority and the federal government and upheld the High Court ruling that the Temuans did have native title under common law over their lands and were to be compensated, in the case of *Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors* (Nicholas, 2010). In 2012, the High Court ruled in favour of 52 Jakuns who sought to obtain compensation from the Johor state government for their native customary land that had been acquired to build a dam, in the case of *Saling bin Lau Bee Chiang & Ors. v Kanawagi a/l Seperumaniam & Ors.* (2010).

However, as a result of the marginalisation and discrimination they face as a minority group, many eligible Orang Asli are undocumented and do not have identity cards because of poverty, high costs of accessing civil registry offices, and complicated civil registration processes (Nicholas, 2010). They may also lack identity cards and other documentation because of the growing state-sponsored Islamisation of the Orang Asli community (“Jakoa to examine claims”, 2019). Some of our participants reported discriminatory practices by JPN officers forcing Orang Asli to convert to Islam in exchange for identity cards. Without identity cards or documentation, Orang Asli are unable to use legal means to claim their rights and access other rights to basic services such as healthcare, education, and social security.

3.4.9 Nationality laws and implementation in practice for refugees

Stateless refugees in Malaysia are guaranteed protections on the international level. The 2010 Prato Conclusions underlines that a stateless person who is also a refugee according to the definition under the 1954 Convention should receive the higher standard of protection, which in most cases will be the international law on refugees (1951 Convention) rather than the international law on statelessness (1954 Convention and 1961 Convention) (Rodziana Mohamed Razali et. al., 2015). However,



because Malaysia is not a party to the 1951 Refugee Convention, there is no legal or administrative framework or formal mechanism in place for the protection of stateless persons or refugees, and so refugees depend on UNHCR for protection (Rodziana Mohamed Razali et. al., 2015). Refugees in Peninsular Malaysia who qualify for refugee protection can register with the UNHCR to obtain a UNHCR identification card that provides them a form of identification and discounted rates to access public healthcare. The government does not differentiate between refugees, stateless persons, and undocumented migrants so they are all treated as non-citizens (Rodziana Mohamed Razali et. al., 2015). Refugees in Malaysia live in chronic poverty with limited access to work, healthcare, or education.

Their uncertain legal status and lack of protection puts them at high risk of arrest, detention, deportation, and exploitation. Refugees and stateless persons are frequently subject to arrest and detention under Section 6(1)(c) of the Immigration Act 1959/1963, that charges anyone who illegally enters the country with a RM10,000 fine, jail up to five years, and six strokes of a cane. In 2019, a stateless minor was arrested by the Immigration Department for not having documentation and subsequently charged under Section 6(1)(c) of the Immigration Act with a detention and deportation order (Hazwan Hariz, 2020). In 2020, the Alor Setar High Court ruled in favour of dropping the whipping sentences meted out to 27 Rohingya, who had been charged for illegal entry under the Immigration Act, on the basis of their status as refugees (Hadi Azmi, 2020). In the case of *Tun Naing Oo v Public Prosecutor* in 2009, the Shah Alam High Court exempted a Chin refugee from two strokes of whipping on humanitarian grounds, but he was still imprisoned for 100 days. Despite these positive rulings, many Rohingya refugees are still detained in crowded and unsanitary immigrant detention centres across Malaysia, with as many as 624 refugees in one detention centre ("Six killed", 2022).

(1) *No person other than a citizen shall enter Malaysia unless—*

- (a) *he is in possession of a valid Entry Permit lawfully issued to him under Section 10;*
- (b) *his name is endorsed upon a valid Entry Permit in accordance with Section 12, and he is in the company of the holder of the Permit;*

(c) *he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or*

(d) *he is exempted from this Section by an order made under Section 55.⁶*

Refugees who have lived in Malaysia for a long period may be able to qualify for Malaysian citizenship through naturalisation (provided they can prove that they meet the conditions of having resided in Malaysia for a period of time, be of good character, and speak Bahasa Malaysia) or by registration (if they marry a Malaysian citizen, be of good character, speaks Bahasa Malaysia). Both these citizenship application processes are not automatic and are discretionary. In the case of a 35-year-old stateless woman born in a refugee camp in Pahang to Muslim refugee parents from Cambodia in 2022, both the Court of Appeal and the High Court concluded that the applicant was not eligible for Malaysian citizenship under Article 14(1)(b) and Section 1(e), Part II of the Second Schedule. The Court suggested that the applicant apply for Malaysian citizenship by naturalisation under Article 19. This case shows that refugees who meet the requirements are able to access citizenship by way of permanent residence and, subsequently, by naturalisation as shown by how the applicant's parents obtained their Malaysian citizenship and were then able to pass on their citizenship to their children (Khmer Times, 2021; Bernama, 2022). However, because of the uncertain legal status and lack of protection refugees face, in reality it is very difficult for refugees to meet the citizenship requirements for these processes, which are ultimately not viable, accessible solutions for stateless refugees in Malaysia to acquire a nationality.

6 Section 6(1) of the Immigration Act 1959.

SECTION 4:

CIVIL REGISTRATION AND VITAL STATISTICS IN PENINSULAR MALAYSIA



Understanding statelessness requires understanding how individuals obtain documentation for a variety of life events. Lack of these documents or lateness in obtaining them can cause a cascade of events that eventually lead to statelessness. In this section, we review documents needed for birth, marriage, and death.

4.1 Birth registration

In Peninsular Malaysia, for domestic births, there are broadly two categories of birth registration. The first being 'normal registration of birth', which occurs within 60 days of the child being born. The second is 'late registration of birth', which occurs past the 60 days. All information for this section was taken from the JPN website.⁷ It is important to note that birth certificates, which are a result of birth registrations, do not confer automatic citizenship. The status of individuals who have birth certificates will be prominently displayed on the document and that is what matters in terms of access to citizenship and citizenship documents.

4.1.1 Normal registration of domestic birth

This type of registration may be submitted to any JPN office by the following persons:

1. Parent
2. Legal guardian
3. Person having knowledge of the birth
4. The mother and father of the child (for 'illegitimate' children – i.e. children born out of wedlock)

⁷ The JPN website may be found here:

<https://www.jpn.gov.my/en/core-business/birth/peninsular/pen-kelahiran-bia-sa-sm-eng>



The list of documents required for normal birth registrations can be found in Table 10, which also presents the list of documents required for late birth registrations at hospitals/ clinics, as well as home births. As is apparent, the normal registration of domestic births is by far the simplest procedure to register births, and is free. It also applies to most births that are ‘traditional’ – i.e. births to living Malaysian parents who have documents. It is also important to note that a birth certificate may be issued to non-citizens as well as citizens – i.e. it does not confer citizenship, but can be used to apply for citizenship documents such as an identification card (IC).

Table 10: Required documents for normal and late domestic birth registrations in Peninsular Malaysia

	Normal Birth Registrations	Late Birth Registrations (Hospitals and Clinics)	Late Birth Registrations (Home Births)
Documents from Child	• Birth registration form JPN.LM01 • Confirmation of birth form from the hospital or certification of home birth from a midwife or doctor (for home births) - original • Prenatal card (maternity examination book) - original and copies	• Birth registration search form JPN.LM12 (for births from 2002 onwards) • Birth registration form JPN.LM01 • Confirmation of birth form • Prenatal card or maternity examination book, child's health and immunisation card, certification of home birth by midwife/doctor (originals and copies) • Recent full-length 4R photograph (one (1)) • Recent passport-sized photograph (one (1)) • Recent passport-sized photograph (one (1)) • Recent passport-sized photograph (one (1)) • Extract of school register or school certificate with endorsement from the head teacher or school principal if the child is schooling and aged seven (7) and above, or alternatively,	• Birth registration search form JPN.LM12 (for births from 2002 onwards); • Birth registration form JPN.LM01 • Prenatal card or maternity examination book, child's health and immunisation card, certification of home birth by midwife/doctor (originals and copies); • Recent full-length 4R photograph (one (1)); • Recent passport-sized photograph (one (1)); • Certification of birth from a headman or village chief or Member of Parliament or member of a State Legislative Assembly for the constituency where the child was born;

Normal Birth Registrations		Late Birth Registrations (Hospitals and Clinics)	Late Birth Registrations (Home Births)
Documents from Parents	Identity cards or entry permits or passports of the parents and the person reporting the birth - original and copies	certification from a headman or village chief or Member of Parliament or member of a State Legislative Assembly for the constituency where the child resides, that the child has never been schooled and is aged seven (7) and above.	- Extract of school register or school certificate with endorsement from the head teacher or school principal if the child is schooling and aged seven (7) and above, or alternatively, certification from a headman or village chief or Member of Parliament or member of a State Legislative Assembly for the constituency where the child resides, that the child has never been schooled and is aged seven (7) and above. - Statutory declarations of two (2) witnesses with knowledge of the birth
		Identity cards or entry permits or passports or death certificates (originals and copies);	Identity cards or entry permits or passports or death certificates (originals and copies);

Normal Birth Registrations		Late Birth Registrations (Hospitals and Clinics)	Late Birth Registrations (Home Births)
	• Death—certificate of mother and father of the child - original and copies • Marriage or divorce certificates - original and copies	• Marriage certificate or divorce certificates (originals and copies); • Recent passport-sized photograph of each parent (one (1))	• Marriage certificates or divorce certificate (originals and copies); • Recent passport-sized photograph of each parent (one (1))
Documents from Informant	• Identity card or entry permit or passport - original and copies	–	–
Documents from Siblings		• Birth certificate or identity card, if any (original and copy); • Recent passport-sized photograph of the sibling from the same parents (one (1)); • Family information forms BMK81 and BMK81A	• Birth certificate or identity card, if any (original and copy); • Recent passport-sized photograph of the sibling from the same parents (one (1)); • Family information forms BMK81 and BMK81A
Documents from Sponsor		• Statutory declaration JPN. LM27 for two (2) sponsors with knowledge of the birth; • Identity card or entry permit or passport or death certificate of the informant, witness or sponsor (original and copy)	• Statutory declaration JPN.LM27 for two (2) sponsors with knowledge of the birth; • Identity card or entry permit or passport or death certificate of the informant, witness or sponsor (original and copy)

4.1.2 Late registration of domestic birth

Late registrations of domestic births become significantly more arduous in terms of documentation requirements, as can be seen through Table 6. This type of birth registration can still be done at the nearest JPN office to the applicant, but costs a monetary amount of RM 50 (versus free). The number of applicants also double, as applicants must consist of two persons, namely:

1. Parents
2. Mother or father and a sponsor with knowledge of the birth who is 15 years older than the child (if one of the parents cannot be found/ is deceased)
3. Two (2) sponsors acquainted with the child, who are both aged 21 and above and are at least 15 years older than the child (if both parents cannot be found/ are deceased)
4. Two (2) sponsors who are social welfare officers or two (2) persons who have been given custody of the child in accordance with the Child Protection Act 1991 (if the child is found stranded)

JPN also distinguishes between home births and births at a medical facility, where late registrations for home births involve significantly more required evidence, including sworn affidavits from individuals present at the birth of the child.

4.1.3 Registration of birth abroad

Malaysians who give birth abroad can also apply for a birth registration, which, unlike domestic birth registration, stands as proof of citizenship. This being said, there is a difference between the rights of Malaysian mothers and Malaysian fathers in the conferring of citizenship – as of time of writing, Malaysian mothers who give birth abroad to children of foreign fathers are not able to pass their citizenship on to their children (i.e. are not allowed to proceed with birth registration abroad), unlike Malaysian men in the same situation with a foreign spouse and a child born abroad. The documents and criteria required for registrations of birth abroad for Malaysian fathers are as follows:

- Application form - Borang D
- Both parents and the child must be present during registration
- Child's birth certificate (issued by country of birth) - original and copy
- Parents' Malaysian marriage certificate - original and copy
- Parents' Malaysian IC - original and copy
- Parents' passports
- Parents' birth certificates
- Parents' current valid visa or permanent resident card from the country of residence
- Two passport-sized photos
- Processing fees - which vary according to country

Typical documentation hurdles for Malaysian fathers trying to undergo this birth registration process include the fact that a large number of married couples residing abroad also were married abroad, and many had not formally registered their marriages in Malaysia – hence, they do not possess Malaysian marriage certificates and may face difficulties trying to register the birth of their child born abroad.

4.2 Marriage registration

Marriage registration in Malaysia depends on whether or not the couple is Muslim or non-Muslim. Muslim couples must register with the Islamic religious authorities in their state, and non-Muslims register with JPN. Below, we outline the procedures for both types of marriages.

4.2.1 Muslim marriages

A Muslim couple's marriage registration in Malaysia results in a 'sijil nikah'. Marriages performed domestically must follow these steps in order to obtain this certificate:

1. The couple must complete the Islamic pre-marriage course (i.e. 'kursus kahwin')
2. The couple must undergo HIV tests at a government healthcare facility



3. The couple must register their intent to get married with the government portal here: <https://www.sppim.gov.my/sppim/home>
4. The couple must figure out which district of residence each of them belong to, in order to ascertain which religious office to approach for the eventual physical 'sijil nikah'
5. The groom must fill in and sign their marriage registration form. The documents that are needed for this step include the following:
 - a. Copy of ICs/ passports
 - b. Copy of ICs/ passports of 2 witnesses
 - c. Copy of pre-marriage course certificate
 - d. HIV test results
 - e. Letter stating place of residence for the couple
 - f. Death certificate from previous spouses (if applicable)
 - g. Conversion certificate if individuals recently embraced Islam
 - h. Approval letter for marriage if a member of the police or military forces
 - i. Approval letter for marriage from embassy or consulate if bride/ groom is foreign
6. The bride must fill in and sign their marriage registration form and attach the same documents required in Step 5, with the addition of 'wali' documents as well as a 'surat wakalah' (letter from 'wali' confirming that they are not able to attend and to pass on this responsibility to the next person in line, as per Islamic law). The bride must also ensure that there is a 'wali' in place for the date of the wedding.
7. The permission to marry is released by the religious office to the couple, together with a form to be brought to the wedding and signed by the relevant individuals in the next step.
8. The wedding happens, officiated by a 'kadi', and witnessed by the individuals previously mentioned. The 'kadi' is owed a 'kadar upah' – a small fee – for performing his services. This fee varies from state to state. The temporary marriage certificate is then issued.
9. The couple brings the temporary marriage certificate back to the religious office, who then issues the permanent marriage certificate, i.e. 'sijil nikah'. They can then apply for a marriage card, which is a transportable version of the marriage certificate.

It is relevant to note that the process for Muslim marriages is fairly complex and requires multiple administrative steps. Should any step be left out, it will result in the 'sijil nikah' not being issued. It also requires the involvement of other family members, due to the 'wali' requirement, which means that individuals with estranged or no living family members tend to face difficulties in obtaining the 'sijil nikah'.

4.2.2 Non-Muslim marriages

Non-Muslims have a choice of where to register their marriages, according to the couple's citizenship status⁸. Couples have the following options for places of solemnisation and marriage registrations:

- For Malaysian citizens
 - JPN offices
 - Malaysian representative office abroad
 - Church, temple, place of worship, or association approved by the Assistant Registrar of Marriages
- For MyPR holders or MyKAS holders marrying Malaysians or non-citizens
 - JPN offices
- Malaysian marrying a non-citizen
 - JPN offices
 - Malaysian representative office abroad
- Non-citizens marrying each other
 - JPN offices

The required documents for this type of marriage registration are as follows: Form jPN.KC02, one passport-sized photo, copies of ICs for citizens, permanent residents, and MyKAS holders, approval letter for marriage issued by the head of department for police/ army personnel (if applicable), and passports for foreigners. Though the core list of documents is relatively short and simple, the application must also be

⁸ This information was obtained from JPN here:

<https://www.jpn.gov.my/en/core-business/marriage/kahwin-daftar-eng>



supported by a list of documents, which may be queried by the authorities. This includes, for example, birth certificates, verification letters from respective governments that the applicant is not Muslim, original letter verifying the marital status of a non-citizen applicant, etc.

4.3 Death registration

Death registrations in Peninsular Malaysia are divided into “normal registrations” (i.e. registrations made before the seventh day of death) and “late registrations” (i.e. registrations made after the seven days). There are two methods for normal registrations of death, as outlined below.⁹

The first method of registration for normal deaths includes registration through agencies that certify death, i.e. hospitals, the Malaysian armed forces, or city councils such as Dewan Bandaraya Kuala Lumpur. The second method of registration is through the family members or a ‘death notifier’. Both methods require no charges, but a significant amount of paperwork is needed to fulfil the requirements, which may be found at this website: <https://www.jpn.gov.my/my/perkhidmatan/kematian/semenanjung/kematian-daftar-biasa-sm>. There is significantly more paperwork for the second method of registration.

Late death registrations are those made after seven days of death, and require a penalty fee of RM 50. It can be done at any JPN office in Peninsular Malaysia and must be applied for by two sponsors who are ‘waris’ (heirs) to the deceased or people who know of the death. If there is no ‘waris’, the sponsors must be the police officers who are investigating the deaths. The forms needed for this type of registration are:

- Borang Daftar Kematian JPN.LM02
- Borang Akuan Sumpah JPN.LM28
- Identification documents of the deceased

⁹ The information in this section was obtained from:
<https://www.jpn.gov.my/en/core-business/death/peninsular/kematian-daftar-biasa-sm-eng>

- Identification documents of the sponsors
- Dokumen Perakuan Kematian JPN.LM09 or JPN.LM10 (if death occurred at the hospital)
- Daftar Kematian or Permit Kubur JPN.LM02 (Pin.1/11)

4.4 Identity cards (MyKad, MyKAS, MyPR, MyKid, MyTentera)

This section provides an overview of the types of identity cards in Malaysia issued by JPN. There are 5 main types of identity cards issued to individuals in Malaysia – MyKad, MyKAS, MyPR, MyTentera, and MyKid. These can be seen in Figure 7.



Figure 7: Types of identity cards in Malaysia



Most of these identity cards (IC) do not confer citizenship – only a blue IC is accepted as proof of citizenship. Description for each of these cards are as follows:

- **MyKid** - MyKid is an IC granted to Malaysian citizen children who are below the age of 12.¹⁰ It is granted by JPN and can be obtained by bringing the child's birth certificate which shows proof of citizenship, together with identification documents of applicants (i.e. parents or guardians) to a nearby JPN office.
- **MyKad or blue IC** - Granted to Malaysian citizens at the age of 12.¹¹ It does not have an expiry date and lasts for the entire lifespan of an individual. According to Peraturan-Peraturan Pendaftaran Negara 1990, all children who have reached the age of 12 years and hold Malaysian citizenship must mandatorily register for a blue IC. To obtain this card, children and their guardian must go to the nearest JPN office with the original and copies of the child's birth certificate showing proof of citizenship (or passport if living abroad and applying at a consular/ embassy), parent or guardian's blue IC (guardians who do not have biological relations must show an official letter from JKM) or passport, and official supporting letters if the current address of the child does not match that of the parent/ guardian, which can include residential utility bills or support letters from Members of Parliament or ADUN. It is important to note that children who are late to register for blue ICs may still do so, but must face late fees and significantly more paperwork for registration, which includes the following:
 - Borang Permohonan JPN.K-01
 - Surat Akuan (Borang JPN DL-1)
 - Borang Keterangan Pendaftaran Lewat Kad Pengenalan oleh Ibu atau Bapa atau Penjaga (Borang JPN DL-2)
 - Cabutan Daftar Sekolah (Borang JPN DL-3)
 - Surat Akuan Bagi Kanak-Kanak Yang Tidak Pernah Bersekolah (Borang JPN DL-4)
 - Borang Maklumat Keluarga (BMK.81 dan BMK.81A)
 - Borang RK–JPN-KP-PU-06-04 (if necessary)

¹⁰ The information in this section was obtained from: <https://www.jpn.gov.my/my/mykid>

¹¹ The information in this section was obtained from:

<https://www.jpn.gov.my/my/perkhidmatan/kad-pengenalan/mykad-12>

- **MyPR or red IC** - This is granted to Malaysian Permanent Residents who possess 'Permit Masuk' documents. It does not have an expiry date but has the country of citizenship of the holder clearly displayed on it.¹² Hence, MyPR is not a proof of Malaysian citizenship. The first application for this card can only be done at the JPN headquarters in Putrajaya or state-level headquarters, but replacements can be made at any JPN office. To receive a red IC, applicants must bring their original 'Permit Masuk' document and copies, original passport and copies, original birth certificate and copies for those born in Malaysia, copies of adoption certificates if relevant, and any other relevant documents. A fee of RM 40 must be paid for this card and there is a waiting period for processing.
- **MyKAS or green IC** - This IC is granted to individuals who reside in Malaysia but have indeterminate citizenship status.¹³ It is green in colour and most importantly, only lasts for five years and must be renewed for it to continue to be valid. It is granted to individuals who are born in Malaysia, do not have citizenship from other countries, and do not have the legal right to citizenship from other countries.¹⁴ It is issued under Regulation 5(3) of the National Registration Regulations of 1990.
- **MyTentera** - this form of identification is given to individuals who are members of the Malaysian Armed Forces. In 2010, about 100,000 soldiers across the country switched out their 'BAT C 10' military identification cards (which were introduced in the 1960s) to MyTentera. It is a silver-coloured card that displays the armed forces logo on the card, and contains a 12-digit military service identification number similar to a MyKad.¹⁵

Each of these ICs confers different rights to the holder – some of which are ambiguous and may be up to interpretation. These rights are elaborated in Table 11.

12 Please see: <https://www.jpn.gov.my/my/mypr>

13 <https://www.jpn.gov.my/my/mykas>

14 <https://m.facebook.com/DHRRR/posts/4061853117205912>

15 <https://web.archive.org/web/20100904221411/http://www.nst.com.my/nst/articles/20lead/Article/>



Table 11: Display of rights for each type of identity card

	MyKad	MyPR	MyKAS	MyTentera
The right to vote	Yes	No	No	Same as MyKad
The right to confer nationality to children	Yes to all situations with married parents, except for women who gave birth abroad with foreign spouses and Malaysian fathers with non-Malaysian spouses who gave birth before a marriage was registered	Yes to all situations with married parents with child born within Malaysia	No	Same as MyKad
Ability to access subsidised public healthcare ¹⁶	Yes	Yes	No	Same as MyKad
Ability to enrol children in public schools	Yes	Yes/ Ambiguous	No	Same as MyKad
Ability to open a bank account	Yes	Yes	No	Same as MyKad
Ability to own property in Malaysia	Yes	Yes	No	Same as MyKad

16 Please refer to Peraturan-Peraturan Pendaftaran Negara 1990 (P.U.(A) 472/1990) and Ministry of Health Malaysia's Circular Letter from the Ketua Setiausaha Bil. 2/2019 (Rujukan: KKM.400-8/1/89 Jld 9, Tarikh: 8 April 2019) titled "Garis Panduan Pelaksanaan Perintah Fi (Perubatan) (Kos Perkhidmatan) 2014".

4.5 Passports

Passports are defined as “an official document issued by a government, certifying the holder’s identity and citizenship and entitling them to travel under its protection to and from foreign countries and recognised as a travel document by the Government of Malaysia.”¹⁷ Thus, it serves two functions – it is both proof of citizenship as well as a document that allows for international mobility.

Once an individual possesses a MyKad in Malaysia – and it is important to note that only MyKad holders can be issued with a Malaysian passport – the application process for a passport is fairly simple. A hurdle in accessing a passport may, however, be the fees charged for the document, which is (as of now) RM 200.¹⁸

4.6 Other forms of documentation

In our study, we had also encountered a few other official documents granted by the Malaysian government that were used, at various points, by stateless individuals as proof of documentation. For example, stateless individuals who are applying for MyKAS are issued with ‘Resit Pengenalan Sementara’ while waiting for their applications to be approved. This document states that their citizenship status as ‘taraf belum ditentukan’ (i.e. citizenship status yet to be determined/ indeterminate). It is unlikely that this document would hold up as formal identification as it is a mainly ‘transitory’ document - a mere receipt.

While citizen birth certificates issued by JPN are green in colour, such as depicted in Figure 8, stateless people have been granted non-citizen birth certificates, which are pink/ red in colour. These birth certificates have their citizenship status as being ‘bukan warganegara’ or in some cases, ‘belum ditentukan’ (i.e. citizenship not yet determined).

17 Please see: <https://www.imi.gov.my/index.php/en/main-services/passport/>

18 Please visit this link for more information on the application process: <https://www.imi.gov.my/index.php/en/main-services/passport/malaysian-international-passport/>



Sijil Kelahiran Malaysia



Semenanjung

Sarawak

Sabah

**Sijil Kelahiran
Warganegara**

**Cabutan Dari Daftar Kelahiran
Warganegara**

**Cabutan Yang Diperakui - Sijil Kelahiran
Warganegara**

**Sijil Kelahiran
Bukan Warganegara**

**Cabutan Dari Daftar Kelahiran
Bukan Warganegara**

**Cabutan Yang Diperakui - Rekod Kelahiran
Bukan Warganegara**

Figure 8: Types of birth certificates in Malaysia

Finally, adopted stateless children also sometimes use the JKM-JPN *de facto* adoption certificate as a form of identification. In this certificate, their citizenship status is also either stated as 'bukan warganegara' or 'belum ditentukan'.

Figure 9: Sample of adoption certificate as a form of identification

SECTION 5:

CIRCUMSTANCES LEADING TO STATELESSNESS



In Sections 5, 6, and 7, we present the empirical findings from this study. Before moving on, we would like to first elaborate on the methodology used to analyse the dataset which then birthed the results presented here. As elaborated on in previous sections, we had interviewed 89 participants for this study - 21 interviews were done in Bahasa Malaysia (BM), 18 interviews were done in Tamil, and 50 were done in Malaysian English - a mix of both BM and English. All interviews were transcribed verbatim in their original languages and then translated to English. The entire analysis was conducted by the research team in English.

The unit of analysis for this study was at the question-and-answer pair level. This meant that all transcripts were dissected into “pieces” according to these pairs. To see what this means in practice, consider the following “short” interview, where “IV” denotes interviewer and “IE” denotes interviewee. In the following interview, the participant is a leader of an NGO that works on assisting stateless Malay youth in obtaining their citizenship:

- IV:** *Just now you mentioned that you work closely with JKM and also other NGOs... do you work with other government agencies? For example, the NRD, Jabatan Pendaftaran Negara or the Home Ministry. Do they help with the registration process?*
- IE:** *Actually, JPN, NRD are very helpful. It's just that the investigation of it normally includes a lot of JKM work. So basically, I don't have any problem with NRD but I know JKM always tries their best. When it comes to foundling babies and babies [who] are put into JKM homes, they even push it [the issue] harder, you can actually see that. But in the end, it all depends on JPN.*
- IV:** *OK. Now, we'll move to the second part of the interview. We want to understand the nature of statelessness and the effect of statelessness. So based on the experience in your advocacy journey, in the cases that you have assisted, can you describe some of the cases in terms of their demography [like] where they were born, what kind of work that they do, and what kind of races are mostly involved with these cases? What caused them to become stateless?*
- IE:** *My kind of work... because my advocacy rights are mostly in Malay, so basically most of the [people I work with] are Malay. The two main questions that I like to ask is their level of education, mostly the level*



of education is below 17, meaning that they probably don't take SPM, most of them. That is in general and if they don't register their marriage and they find it hard to come back. So basically, blessings from parents are normally zero. They don't get blessings from their parents, and the other one is either the girl or their boyfriend are involved in some social ills, such as drug or gambling problems. Mostly are Malay Muslims.

In this interview, the IV asked two questions, which were each followed by an answer. Hence, there would be 2 units of analysis here, corresponding to the following highlighted blue and red texts:

IV: *Just now you mentioned that you work closely with JKM and also other NGOs... do you work with other government agencies? For example, the NRD, Jabatan Pendaftaran Negara or the Home Ministry. Do they help with the registration process?*

IE: *Actually, JPN, NRD are very helpful. It's just that the investigation of it normally includes a lot of JKM work. So basically, I don't have any problem with NRD but I know JKM always tries their best. When it comes to foundling babies and babies [who] are put into JKM homes, they even push it [the issue] harder, you can actually see that. But in the end, it all depends on JPN.*

IV: *OK. Now, we'll move to the second part of the interview. We want to understand the nature of statelessness and the effect of statelessness. So based on the experience in your advocacy journey, in the cases that you have assisted, can you describe some of the cases in terms of their demography [like] where they were born, what kind of work that they do, and what kind of races are mostly involved with these cases? What caused them to become stateless?*

IE: *My kind of work... because my advocacy rights are mostly in Malay, so basically most of the [people I work with] are Malay. The two main questions that I like to ask is their level of education, mostly the level of education is below 17, meaning that they probably don't take SPM, most of them. That is in general and if they don't register their marriage and they find it hard to come back. So basically, blessings from parents are normally zero. They don't get blessings from their parents, and the other one is either the girl or their boyfriend are involved in some social ills, such as drug or gambling problems. Mostly are Malay Muslims.*

In total, 1860 units of analysis (from here onwards called ‘excerpts’) were identified and analysed by a team of 3 independent researchers (from here onwards called ‘coders’) who were not involved in the design, execution (i.e. interviews), or planning of the research project¹⁹ in order to minimise the contamination from any biases from the main research team (authors M.N. and N.F.). The coders met eight times between 9 December 2021 and 15 February 2022. The first meeting was an overall briefing on the project and explanations surrounding how the analysis would take place. Then, collaborative team coding on the 1860 excerpts was conducted according to the procedure outlined in MacQueen et. al. (1998). In the second to fifth meetings, the coders were assigned the same ten interviews to code as a sample in order to generate alignment and consensus on the coding process. Each of these discussions took approximately two hours. Then, once consistency was reached, the remaining 86 interviews were distributed across the three coders approximately equally and coders continued coding their assigned transcripts. The sixth to eighth meetings were on progress updates, realignment (if needed) and troubleshooting surrounding newly appeared constructs from the interviews. Each of these meetings took approximately one hour.

The coding framework was as follows: each excerpt was coded to one of the following overall four main themes: circumstances leading to statelessness, process of acquiring citizenship, effects of being stateless, and solutions and recommendations. Subthemes were also identified – for example, an excerpt coded as “circumstances leading to statelessness” could also be identified with a subtheme like “born to parents out of wedlock”. Each excerpt was also identified with at most three human rights themes, following the Office of the United Nations High Commissioner (OHCHR)’s guide to measurement and implementation of human rights indicators²⁰, which is based on the complete list of human rights as outlined in the Universal Declaration of Human Rights (UDHR).²¹ A human

19 These three individuals are C.K.Y., C.S.Y., F.N.B.J. Please refer to the front of this report for the full names listed according to these acronyms.

20 For the full guide, please visit this link: https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf

21 For the full version of UDHR, please visit this link: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>



rights theme was coded either when there was an explicit or implicit mention of it - they were also coded when the excerpt clearly displayed a lack of the human right theme. The OHCHR guide that we utilised lists the most important (and commonly occurring) human rights that have been used throughout the world. This list includes the following rights, though we also allowed space for the coders to add in any additional rights that they felt were pertinent to the excerpt but not listed in the OHCHR list, as shown in Table 12.

Table 12: Human rights themes used in coding and how it corresponds to the UDHR and Federal Constitution

OHCHR	UDHR	Federal Constitution
Right to liberty and security of person	UDHR Article 3	Article 5: Right to life and liberty
Right to adequate food	UDHR Article 25	Article 5: Right to life and liberty
Right to enjoyment of the highest attainable standard of physical and mental health	UDHR Article 25	Article 5: Right to life and liberty
Right to not be subjected to torture or to degrading treatment or punishment	UDHR Article 5	Article 5: Right to life and liberty
Right to participate in public affairs	UDHR Article 21	Article 10: Freedom of speech, assembly, and association
Right to education	UDHR Article 26	Article 8: Equality Article 12: Rights in respect of education
Right to adequate housing	UDHR Article 25	Article 8: Equality Article 13: Rights to property
Right to work	UDHR Article 23	Article 8: Equality Article 5: Right to life and liberty Article 6: No slavery

OHCHR	UDHR	Federal Constitution
Right to social security	UDHR Article 22	Article 8: Equality Article 5: Right to life and liberty
Right to freedom of opinion and expression	UDHR Article 19	Article 10: Freedom of speech, assembly, and association
Right to a fair trial	UDHR Articles 10-11	Article 7: No retrospective criminal laws or increases in punishment and no repetition of criminal trials
Violence against women	UDHR Articles 1-5, 16	Article 8: Equality
Right to non-discrimination and equality	UDHR Articles 1,2,7	Article 8: Equality
Right to life	UDHR Article 3	Article 5: Right to life and liberty
Right to water and sanitation	UDHR Article 25	Article 8: Equality
Right to freedom of peaceful assembly and association	UDHR Article 20	Article 10: Freedom of speech, assembly, and association
Right to family life	UDHR Article 16	Article 8: Equality
Right to duty to your community	UDHR Article 29	Article 5: Right to life and liberty

The method of analysis for Sections 4, 5, 6, and 7 was thematic analysis following Clarke, Braun, and Hayfield (2015). In an inductive thematic analysis, the dataset consisting of all excerpts are analysed and coded for themes and subthemes that emerge from the dataset. It allows for a more exploratory way of understanding the data. In Section 4.4, where the intersections between statelessness and human rights are explored, we utilised a methodology called three-step analysis called Hermeneutic Content Analysis (HCA) following Bergman (2010). The first step of HCA



that we utilised was a deductive thematic analysis based on the human right themes described above. The second step was the visualisation of these themes to understand their relationships to each other through a multidimensional scaling (MDS) graph. The third and final step was the recontextualization of the MDS graph by using the raw qualitative data to find justifications and explanations to the relationships between the themes.

In Sections 5, 6, and 7, we will present an overview of the issue as discussed in the section, followed by a deeper analysis that is specific to a particular stateless group.

5.1 Overview

Our dataset revealed a number of circumstances leading to statelessness, which are depicted in Table 13. Table 13 lists a series of themes - main findings - surrounding the circumstances that lead to statelessness, coupled with corresponding sub themes that elaborate on each of the themes in greater detail. For example, issues surrounding marriages was one of the recurring themes in the dataset, and we identified the subthemes surrounding this being marriages that were not properly registered, marriages conducted overseas, and marriages to foreigners. The themes are not listed in order of importance or frequency.

Table 13: Findings surrounding the circumstances leading to statelessness, broken down into main themes and corresponding (more detailed) subthemes

Circumstances Leading to Statelessness	
Themes	Subthemes
Issues surrounding marriages	Marriages were not properly registered
	Marriages were done overseas
	Marriages to foreigners
Issues surrounding births	Births that were not properly registered
	Birth was abroad
	Child born from rape
	Birth in remote location

<i>Circumstances Leading to Statelessness</i>	
Themes	Subthemes
<i>Issues surrounding births</i>	Child born out of wedlock Home or village births producing insufficient documentation for birth registration
<i>Issues surrounding parents</i>	Estranged or separated parents Abandoned by parents Foreign parent(s) Parents made mistakes during the birth registration Parents not physically present for registration Parents' lack of understanding on processes Migrant parents or ancestors Absent parents of unknown origins and identities
<i>Historical events from pre-independence</i>	Generational statelessness
<i>Issues with JPN</i>	Red ICs given as a stopgap measure Poor quality or incorrect information given to parents and guardians
<i>Issues with the status of the child</i>	Adopted children Baby of unknown origins was bought by parents Child was trafficked
<i>Issues with documentation and paperwork</i>	Documentation or citizenship was revoked
<i>Discrimination by ethnicity or religion</i>	Allegations that certain ethnic or religious groups were prioritized for birth and marriage registration approval
<i>Issues with birth registrations</i>	Parents were illiterate and could not navigate paperwork surrounding birth registrations Parents unable to afford to travel to register the birth of the child Poor quality or incorrect information circulating on how to register Delayed birth registration due to COVID-19



Circumstances Leading to Statelessness

Themes

Subthemes

*Refugee or
asylum-seeker
status*

Certain refugees, such as the Rohingya, are stateless

We now present excerpts to help contextualise and provide support to the causes and circumstances that led to statelessness. It is important to note that these circumstances will vary according to the subpopulation of stateless individuals. For example, stateless indigenous persons and stateless abandoned children may have arrived at their status of statelessness through different circumstances, but the themes illustrate the pattern of circumstances that have caused statelessness, such as difficulties during birth registration.

In the first excerpt, for example, a stateless individual told us about how they were able to acquire a red IC after 15 years of waiting:

It was maybe 20, 30 years ago. Yeah. In fact, it started with my own mother. Yeah. She has a red IC. Until I got older, I started to apply. I still remember when I was Form Three, I think, yeah, until I came to university in KL, when I looked at that. I went to this JPN in PJ at that time to follow up. I wanted to know about the application and whatever document they require. We gave it to them. Yeah, we gave everything to them, but [when it] came to a certain period, they were just quiet. We wanted to know why. And then I went to this JPN at that time in PJ, and then they took it out, they took out all the files with the documents that we submitted... I think the documentation, whatever, was completed, yeah, but we don't understand why that is still pending. For what purpose? We don't understand. And then of course, after that, I went there. After that three months, yeah, three months. My mum got the er those letters, and then subsequently followed up with the process. We got the IC. Yeah. But the process that I mentioned... can you count how many years?

An individual who helps assist stateless individuals to register and apply for citizenship stressed that the lack of a proper marriage registration can often lead to statelessness, which take a significant amount of time to rectify:

So there's actually a man in Malaysia who got married with a woman in Thailand. The issue is that they do not have a proper, registered marriage cert. They did not register, they don't have the marriage cert, and this was actually where the problem started. When they have a child, the child will get a birth cert, but it's not automatically called warganegara [citizen]. It's not citizenship yeah? You look at the the birth cert and it is actually indicated there. So, therefore, they have to go through the application [of citizenship] under Perkara 15A, I think. So, this is actually the process and then they have to do that, then they go to the so-called district JPN to register those to start with. So, to me, I just help them to follow up nothing nothing much nothing else yeah, I just help them to follow up of the application status. So they start with this JPN, they apply they submit the document that is required, and then we know that we understood that the state the state JPN will not process this by their own they will send to Putrajaya. They send to JPN Putrajaya, and then few time that I came to JPN Putrajaya to follow up certain case in the past. They told me exactly the process of documentation. They compile all document requirement, to ensure the document and everything is completed. Yeah. Before they submit to KDN, yeah. Yeah, right. Yeah. Kementerian Dalam Negeri, KDN. So, the final decision is actually at the KDN. Okay. So, this is the process we understand... and the average in the past years for those who already got the ICs, it's actually about seven years on average. I will say this based on my experience, that this is actually quite a long waiting time. So if you ask me this, what is this issue, I think the issue is too long to wait.

In situations where the birth of the child happened in a non-conventional setting, such as at home assisted by family members or midwives, additional challenges can occur with trying to produce documentation for the registration of birth. The following excerpt details some of these



difficulties – particularly surrounding producing a ‘Surat Akuan’ from witnesses at the birth of the child, who was born out of wedlock (another factor that increases the risk of statelessness):

‘Surat Akuan’ means somebody can confirm that ‘I was born in this house’. If born at hospital, no problem. They would say I was born in this house, by my grandmother or by this person who delivered the baby. So, like that kind of thing you need ‘Surat Akuan’ because there is no birth certificate. Normally they must take that and apply for a birth certificate la. But a lot of people don’t do it because sometimes also, the child was born out of wedlock, which means the parents were not married... like young children, young girls get pregnant. So, they don’t do it in the hospital. Later when they come to us we try to document the case. So first we’ll ask them when the baby was born, who was there? They’ll say this person. They say okay M was there so next, we ask M to do an oath. Of course M will be scared la, [and they will ask]: if I help means tomorrow I will go into lockup? Must make M confident first la. Don’t worry, you know you could do or not, [but if you do it], you could do a good service. A lot of them are scared, you know, because without the oath letter, someone must collaborate... [for example], when M took out the baby, I was standing beside her. I was the one helping, I was the one boiling the hot water. So then we give a few documents, which we give to JPN, when we make the application as supporting documents. Because a lot of cases, very pitiful. Because the child doesn’t know who’s the father and mother.

Children often also fall into statelessness when they are abandoned by their parents, who can no longer be traced.

The undocumented persons don’t have anything usually because of their parents’ mistakes. For example, parents left them. A lot of them live in rural areas. Not just Indian people, Malay people also got. There’s one case with four children who were born in the house to a Malay family. They need witnesses if they are going to do home births. They don’t even have a midwife as a witness. And it’s not because they are lazy, it’s because they are embarrassed.

So what happens to the children with no IC? They cannot go to school. And it's hard to make a living without an IC. And the source of this is the government in power who don't voice out about these issues, about people with red ICs or no documentation. Most of the Malay politicians do not ever voice about this citizenship issue in parliament. They really don't care about this.

Parents who are illiterate also face additional hurdles in registering their children. The following is an excerpt from a Tok Batin (village leader) on the issues facing his (indigenous) community:

The registration for birth certs is very difficult, too. For Orang Asli, there are some who are illiterate, who can't read or write. This is another factor that causes this issue. As the Tok Batin, I need to care about these important issues.

Physical hurdles can also be very crucial to a number of parents. The following excerpt details issues surrounding travel, which prevents parents from registering their child at birth. Certain government agencies, as noted below, have taken steps to reduce this cost by going directly into villages and rural areas to help register individuals, though these programmes are reportedly becoming less frequent, perhaps due to the pandemic:

I remember going to a programme, a general awareness through education programme, and at the same time document the Orang Asli. So in one village we went to, they knew there was going to be a documentation process – that means you come in, those who are not registered or not documented, come and get the photos. The JPN will be there. While the normal education awareness talk [is ongoing]. So in that particular program, the JPN people came with all the cameras and all the documentation, the computers and so on. But the JAKOA officers said, no, no, you guys don't need to do it. You guys don't need to do it. Because that's our job. And we will do it. So they all went back and did nothing, nobody was documented. One month later, we went to X, the same programme for documentation and also awareness for education. And this time also, the JPN people were there but the JAKOA officers at X were very cooperative. You know, in that three hours we were



there, they were able to document 80 Orang Asli, and give out about 70 ICs, which was processed earlier. They even asked me to help them do the photography because their batteries died with cameras. So I had to use a camera, my camera and shoot the photos for them. So what I'm trying to say is, you know, it's not a programme, it's not a policy, it's individuals at the local level, little napoleons. They are the ones who are the guys who are very important. So it's not a case of directive or you know, this the policy of the JPN? No, it's these little guys thinking that this is what they do, they can do or should do for the name of the religion, the race.

There are many issues with documentation, non-documentation. This is just one of them. Yeah, this one, of course, is the cost of documentation and poverty involved. So if you're poor, no, and you deliver in the village, far away, you have a certain timeline. I don't know how many days, but you know, within a certain time, you're supposed to register. You know, if you don't register that, then it becomes more difficult. You got to get, you know, all kinds of other documentation. So normally, what happens is, if the person is, you know, already from a poor community, a poor person, living in a forest, or whatever comes out, goes to town to the main town to register, there's so much cost involved, then they go there and they say, oh, sorry, you forgot about this photograph, or this form or whatever. No, go back. Come here again. After all, we just get this just becomes too costly and impractical. That's why I say it's JAKOA or JPN's job to be more proactive, more proactive. You see, like JPJ, the road transport department. Many Orang Asli, they do not have licences, but they got motorbikes. You know, they don't catch the Orang Asli, you know, or ask them to come for tests or whatever, but they have programmes in the village. No, every three months, or they go to different villages. One week, you'll be there and then do all the tests and then issue licences there and then. Why can't JPN do it? JPN was doing it for two years. So that's how you're supposed to do it. There's no proactive efforts taken to document Orang Asli. Then later on, after you know, these people are not documented and they also have their own children, it becomes more difficult to prove that they are indigenous and so on. So, the whole problem becomes a bigger problem.

One former political aide we spoke to also brought up issues where non-Muslims were discriminated against in their quest for citizenship, according to his experience helping his Member of Parliament's constituents. The excerpt also details the politics surrounding citizenship access in this country:

A lot of people came to ask [us] for help, asking for welfare assistance. So we went to JKM. And that's how we learn on the job. There are some good people at JKM, but some of them are not helpful, they just ask us to refer to the internet. So I used to help people with the forms at JKM. There's a lot of forms you need to learn. So that's how I learnt and how I came across birth certificates and ICs. We visited the JPN office in K and the officers there taught me how to fill up the forms and which form to use because I said I'm with an MP. So that's how we learnt.

One day a grandmother came to us for help. She was 65, and had no IC. So how did their children get ICs? So making a living, trying to get healthcare is so hard for them. And she only had a red IC from the government. So for example, those that are born here, for those who are Islam they give them citizenship but for those who are non-Islam, they don't give citizenship. They only give citizenship to Muslims. And in the interior, rural areas there are a lot of people like this.

I met the JPN officer and he said they can't do anything, that they just follow the instructions from higher up. Sometimes I fight until the director comes out to fight me. And they will say they understand but I also cannot do anything. I am just the director of one section, not the higher ups. I also cannot do anything because of my position. I have to follow my employers. So whatever they say I just follow. I went to Port Dickson, Jerantut, Temerloh. And all this on my expenses. So that's how I learn.

There's one time a JPN officer asked to talk to me to understand where you're from to know which channel you came from because they know there are a lot of middlemen out there cheating people out of money. So I've done a lot of IC and birth certificates.



There's one case I did – this 13-year-old, the mother left her, and then the dad left her. They gave the child to some aunty. It took her 13 years old until 20 years old, only to get her IC. I worked with S and LK on this case. She is a very smart kid. A lot of cases like that we helped with. We always ask the government to give out citizenship equally and fairly. If you don't give IC to kids, how else will children learn? The children here are at no fault. Last time in 2010, the Home Minister, he was the best, he gave children citizenship first. Even though they are not at fault. Those who are eligible and born in Malaysia.

Children surrendered as infants at “baby hatches” are also at risk for statelessness as they are considered abandoned and with uncertain parentage. The following excerpt details the experience from an organisation that manages the processes surrounding these infants:

If JKM gets a baby, well, the first thing they need to do is to take [the baby] to the hospital or you know, to check the baby. If the baby's fine, they will get a birth cert. They can apply for this birth cert. Birth cert is given. You can get this. It is a right. Same thing as [our organisation]. All babies that come in our hatch. And that's why we always encourage those mothers or whoever brings the child to our hatch to always say, I'm a Malaysian. Because we vouch for them, that we are a safe haven. We are connected to the police and JKM. No one is going to report them even. Even our hatch has CCTV but it's not positioned such that you will see the face of the person who puts the baby. You can only see their hands putting it there. So very safe. And then we have some forms that say please fill in the form and give us some particulars so that when it comes to adoption, your baby can then be a Malaysian baby. So yeah, sometimes they do leave some notes for us to say, my baby is Malaysian and so, whatever. So we have to take it as that so that means the birth cert will show that. Sometimes they leave even the birth cert, if usually they don't, we just go apply for the baby. It's the same thing as what JKM would do. It's like JKM and us, we are like partners working hand in hand, but we tend to be speedier in terms of our work. Yeah. So that's one initiative we do to try to prevent statelessness, basically ask whoever who

leaves the baby to like, include some personal information so that they can be contacted.

A circumstance that also leads to statelessness included being trafficked or being a foundling – a baby of unknown origins and parentage found by authorities, typically during immigration or police raids. The following excerpt is from an individual who works on advocating for trafficked persons and clearly demonstrates the precarity of legality for trafficked individuals:

Baby selling is not considered trafficking. Baby selling for illegal adoption is a good thing if the child goes to a good home. My first question always is, but baby selling goes to the highest bidder? How do you know it's a good home? Exploitation means the child is coerced, forced, and is not aware of them being exploited. Babies don't get that. So the special protection already kicks in the fact that they have no say, no voice and where they go, and then they are taken away from the parents. That is for me already a violation. And it's commercial. And we don't know where they go. Right. So there is no registration directory of where these children go. We don't know. And how do you say it is for the best interests of the child? So baby selling for me, which is my advocacy platform, is a trafficking offence. It is very much driven by the supply and demand, you have money you can buy, you have no money you can't buy. So how is the best interest of the child? So that's number one. Then of course, the fact that babies who are sold are foundlings, right? Because their documents are thrown or falsified. So when you find them when you do a raid, and you find all these babies, right, it's actually the worst form of exploitation again, for me, because all we've done as a process is identify them as victims, but we don't give them papers. We don't give them lessons. And we definitely don't give them access to any services. So we've victimised the victim, and over again, by identifying them as baby-selling victims. We've identified them as being victims who have been sold, we say we take away your citizenship, and your parents, you go and apply again [for citizenship]. The one who suffers are the kids.



Then we talk about the different categories, whether children traffic, sexual exploitation of children traffic or commercial exploitation, which includes forced labour. So we had a huge case a few months ago, where you had 31 kids rounded out in a raid for forced labour. Kids who had turned 18 were sent to detention centres... they've been there for more than eight months, with no idea when the court cases are. No contact with parents, right, because they're victims of forced labour. But the little ones are eight years old. So with no access to education, with no access to health services, when it comes to their families versus eight months, we don't know where they are.

You know, children trafficked for commercial or sexual exploitation have the same issues. No mental health, extra services, no language, if they're from a different country, what happens to them after they are taken out of the shelters and placed back in the family homes that maybe sold them or exploited them? Or put them in shelters, they should be near their families then they leave at 18 because they all leave at 18 with no services, no protection and very little information of what to do next.

Disturbingly, there were also a significant number of reports surrounding having documentation revoked by the government – and some also reported revocations of blue ICs, i.e., the revocation of citizenship. The following stateless individual explains the situation faced by his mother, whose blue IC was revoked when authorities suspected (but did not give proof) that her original birth documents were fake:

The JPN said my mother's birth place is different and that she was born in India. JPN thought the documents presented by mother were fake. When we reapplied again, there was no reply. We even approached [a political party], they also thought my mother presented fake documents. We are no longer receiving JKM welfare assistance for my mother. In 2019, it was cut off. My mother's birthplace is actually in X [a place in Malaysia]. My mother got married at the age of 21 years old. She had blue IC initially. Then one day without telling us she went with family relatives in Y [to JPN]. There, they said it seems the papers need to

be changed. They accused my mother of giving wrong information and took [her] blue IC and hence they revoked the blue IC.

This issue of being accused of falsifying documents and information at time of birth registration came up repeatedly, as seen through an interview with a CSO working with stateless and migrant communities below:

Most of the applications for citizenship [come] from children who are stateless, adopted by Malaysian parents. And that roughly is about 76% [of the cases we handle]. Of all the cases actually submitted to JKM. So those are most of the cases, I mean, if you solved that alone, it's more than half. So yeah, how many cases have we done in NGO, too many. Definitely, in the hundreds. [The ones who have falsified information] ...oh my God, it's in the thousands. So now when they go up and get their ICs, they're all getting caught. And then what JPN is doing is just revoking citizenship, which they're not supposed to be doing. [Interviewer: Why are they falsifying documents? Is it because they don't know?] Because they bought the babies and falsified the documents, or they said that they were the children were adopted legally, that the information provided on the birth certificates when they were born, has been falsified to say that the parents are biological parents instead of adoptive parents, you know, all that kind of stuff, and then they get caught. [Interviewer: Would you say the root cause of this is because the actual legal adoption process is really difficult?] Honestly. Yeah, that's the standard answer. The adoption process is really difficult, because it's not been easy. But I will tell you, it's not the adoption process that's difficult. It's the waiting and the fact that you have these two conflicting, conflicting adoption laws. So you have the Sharia law, then you have the civil law in terms of adoption, the fact that the adoption laws are different in Sabah, Sarawak, different in Peninsular. That there has been one amendment to all three adoption laws, in the whole time that the adoption laws were introduced, the fact that the adoption law it started, you know, was was was, was done in 1954 or 1957, or whatever it was. So you know, there's so many reasons, it's not relevant, it needs to be amended. And it doesn't have room and doesn't specifically



say that you can automatically get citizenship if you adopt the child legally, you know, there's so many gaps, I think and so much room for interpretation. So there's room for both sides, whether the applicants to apply for citizenship or the government who may not reject or may reject the citizenship, there's room for both interpretations, right. Whereas, you know, there's really little space to be able to address the issue from a child rights perspective, or what's best in the interest of the child. But then you look at the impact on what happens when you don't have citizenship.

There were also a significant number of excerpts that detailed confusion with the processes of how to register a child born to a Malaysian as a citizen. This happened throughout the dataset, but was very common when it came to dealings with JPN or embassies in foreign countries. In the following excerpt, we hear from a Malaysian mother who married in Thailand to a Thai national and gave birth in Thailand. She details the confusion and convoluted processes she had to go through in order to register her child, and finding out, ultimately, that she could not pass on her citizenship to her child, unlike Malaysian fathers with foreign spouses:

It wasn't easy [to register our marriage in Thailand]. Because we needed to get letters directly from JPN and my brother [in Malaysia] had to go to the JPN. And we had to get a notarised letter to give him permission to get a letter to say you're single and you've never been married before and then he had to send them to me. And then we got married first in Thailand. So then the embassy, what they do is they take the primary certificate and recognise that basically. So that was the process. And this was possible because of COVID. If not, you're expected to go back to Malaysia and get married. [Interviewer: And then what about when your child was born in Thailand?] No, they [JPN] don't recognise it. Because she was already born, I already went to the embassy to say I have to deliver my baby in Thailand. And they say that's a very bad idea. Go back to Malaysia. All the ladies working in the embassy told me the same. They said, you cannot, there's no option for you to register. And I said surely there is. No, there's a form for Malaysian fathers. There is nothing for you here. And through the family support group, I asked the mother, have you

applied under 14 (2) in the Federal Constitution application process? And then they said yes, we are in Australia, in Abu Dhabi, and kind of all over the world. They were telling me they even have screenshots of the form of the Borang B. That is the application. So obviously the other borang that the men use that automatically get, it's more of a formality. And then they get their MyKad and their birth cert and everything. Whereas for Malaysian mothers, we fill up this form and then they send it to Putrajaya and then the application process begins, but you get nothing. You didn't even get a proof of your application. So I went back to the embassy so many times saying look there is this form, maybe I can show you a screenshot to my phone, from the Australian embassy and from the Qatar embassy and showing them examples and then he's like, never seen this before. I don't know what to do. I say you've got to help me like try and find out. So unhelpful. So I got really angry because at that time my daughter was four months old. So I went to the embassy from before she was born heavily pregnant, and after she was born I followed up. Previously to follow up, they said ok fine we'll ask JPN, because every time I asked them, they were like, oh, yeah, if I remember your face, okay, let me follow up and so unhelpful.

So one day, I wrote her an email to the same guy in the embassy. I put Hishammuddin, SUHAKAM in CC. I put everybody I can think of like minister and Member of Parliament. And I said I called him out when I sit, I looked at the timeline. And he told me you get back to me, but now my child is four months old and I know there is an application form, I need you to help me. He called me on a Sunday at 10 o'clock at night. Like when he received the email. And he told me oh sorry puan, I already found out I was very busy. And he kept information for me, he said I called JPN and it turns out it's Borang B, but it turns out they have to send it to you. And each borang has a serial number. So you cannot photocopy. It's an official borang, so they will send it from Putrajaya. You fill it up in front of us. Need a thumbprint from your husband from you and your child and then we will send it back. It's a very formal process. And you have to almost swear in front of him that you have no other citizenship and all this kind of thing. Yeah, very long



process, very painful as well. And part of me doesn't blame him, part of me blames him for not being helpful, but part of the blame for this is like 50 to 60 over years of Malaysian independence and the Ministry of Foreign Affairs never gave them guidance on how to accept a registration from a mother. So I asked him don't tell me I'm the first mother you are dealing with? Can you call her back? Can you like how far how long ago? He said dulu ada beberapa. Baru baru COVID ada lagi. And I said can you call her [these other mothers] and tell her there are these forms. And he said sudah sudah, I already called her. They just tell you sorry, there is no no way for you to register. Then a lot of mothers who don't question people will accept this is the reality. So angry and the husband being so angry because this is so unacceptable. It's a very important issue. How can we just tell you like that and then tell you wrong information and let you go through all this hassle? Yeah. So that was the application process. We submitted it. I think you're aware that the success rate is very low, a lot of people get rejected.

Circumstances that give rise to statelessness are very complex, as multiple factors can intersect. For example, a child can be abandoned by parents of unknown identities and origins, and then sold by guardians to a Malaysian couple who wanted to adopt them, and then face issues accessing citizenship due to their complicated history. This excerpt details one situation:

Mostly the [children who end up in JKM homes] are abandoned. They are left with some people whom they trust. And these people, equally ignorant, will take care of the baby whilst looking for a couple to buy the baby. Some people will buy the baby and they don't know it's stateless. But there is a birth cert and today but birth certs are a dime a dozen you can actually see that there is a scheme that is printing out birth certs and whatnot. Even citizenships you know, so it's all about education. There are people who are ignorant who are handling these things. That's the sad part. You know, you get a couple from the lowest strata of society. They don't know their rights. They don't know what to do. So they have a baby and then they have it either outside of a

hospital or and they have all sorts of proposals coming to them. You don't want your child? Okay. You do this, you sign this form and I give you RM 5,000. And they're all happy to do that. So there is a baby available then they are resold for RM 20,000, RM 30,000 depending, you know, so. In fact, I don't even know Dr. Hartini, but she was doing a collaboration with an Australian TV company that highlighted the selling of babies in Malaysia. It is rampant. Maybe lately it has come down a bit, but nevertheless, I think it's happening. I mean even through just casual friends' contacts, they'll say, oh, my friend and she just adopted one couldn't wait to go to orphan care, too long to wait. They just got one from a friend or from friends. That's all they say. And then you don't go and ask them eh is this legal or got birth cert? Then suddenly, years later, you remember I told you about this adoption. Do you know what? They cannot apply for citizenship. Some funny things will come up. And then you wonder what's going on with even the educated people, they're not thinking well, so all this is encouraging all these things to happen more. So yeah, a lot of times it's illegal, no marriage, child from out of wedlock. They will bear this consequence of no citizenship or as I say mostly mostly it's an illegal marriage. For example with Chinese you just do your tea ceremony and you are accepted right. So there's no registration. That is where the problems. Even with a Malaysian man marries a Filipino girl. They have a baby, okay. Then, for some reason, there is a birth cert but they didn't go and apply for citizenship. Because why? Because if they go where they will say this baby is. So that means something is wrong with the marriage lah so because if you a foreigner marry a Malaysian then you need to do all the necessary paperwork and all that right? Probably you marry the man and you renounce your citizenship or you keep your citizenship then you have to decide what to do with your child because the child cannot have dual citizenship in Malaysia.

Children born out of rape to unknown fathers also typically end up stateless due to difficulties getting registered at birth:

Generally I'm able to solve most cases that but there's one spectacular failure I had because it was a Malaysian prostitute



that had this baby. God knows who the father is but she had a pimp who claimed to be the father. He was nice, like a good-natured guy, but a DNA test won't help. But because that woman – number one, because she was drugged out, she couldn't remember the boy's date of birth, so that was the main issue. And then later, she died. Once she died, the link [of the child] to him [the pimp] was severed, and it was a sad case, because I think subsequently the child went into sex work as well.

Issues and disagreements between parents of a child, or domestic violence and abuse, can also cause statelessness; for example, if the parents cannot make it to register their child's birth, or if one of the parents holds the child's citizenship as a 'ransom' in the marriage for leverage in the situation. CSOs who work with these individuals have indicated the following:

Sometimes, when there's a problem between husband and wife, the child's documentation is used like a bargaining chip, you know, at that moment, this child is not my child, you know, I know that you had an affair with a Bangladeshi, obviously. This tends to be 50% of the cases. The other 50% is because we work with family violence and abuse, child abuse, etc. This other 50% – we also work with the main hospital here, with the gynaecology department, because they tend to refer cases of unwed pregnant girls, underage girls, girls who come there, they don't know what to do, and they have no documentation. So they'll call us in, at least try and help them pay some bills. And then along the line, we'll try and sort out the girls' documentation. And then subsequently, the baby's documentation. That will be 50% of the cases, so the cases that come through there are usually from family violence, or crime, statutory rape or something. Yeah.

From the data, it also appeared that red ICs, or permanent residence, often serves as a temporary stopgap measure and specifically, as an alternative to citizenship. Instead of pushing their citizenship process along, obtaining permanent residence seems to be a mechanism to appease many individuals so that they would stop or give up in their pursuit of citizenship.

Hmm. Okay, so my name is V. I'm currently 21 years old, stateless living in Malaysia. I was born and raised in Malaysia, I have never been anywhere else. So I discovered my statelessness when I actually wanted to apply for my IC when I was 12 years old. That's when the moment was... it's a long story, actually, I don't know where to start. Okay, when I was alive, when I was still a kid, when I was still a baby, right, my, my father actually left me, left and left me. So there was only my mother. So my mother is actually undocumented lah, she doesn't have any, you know, like, legit documentation in Malaysia, because it has expired. Her passport has expired, and she didn't know she had to have it extended, which was her negligence. And then, it came to a problem. Now when it comes to a decision of me wanting to make wanting to make my IC, because she's undocumented, and my father, who was PR, permanent resident of Malaysia, he had the red IC. He left me. So obviously we could not depend on him to make my IC, you know, so you don't, from my mother lah. So the problem arises, my mother being undocumented, and all. So she had to depend on other people to help me get IC.

So these people, actually are these people that these people that have helped me has helped me to, you know, with regards to the documentation process, have been taking care of me. She was the babysitter for me when my mother go to work and stuff like that. So they have been taking care of me since I was a baby, up until I was a teenager. So naturally, my mother asked this family, this person who has been taking care of me to help me make my IC. So that's when we so one way to make my IC through this family that has helped me is through adoption process, because obviously, I cannot depend on my mother, because, again, she's undocumented. So my mother actually asked this family to help me get an IC through the adoption process, that was the only way during that time. So when we go through the adoption process, like, it's quite lengthy process, like took about one or two years, and we had to attend interviews, and the officers have to come to our home, sort of like to check up and stuff like that. So it was a lengthy process. And eventually, we did get adoption certificate. But in the adoption certificate, it is stated that I am



not a warganegara. So I am bukan warganegara. So because of that statement in the adoption, so that's when I realised that it was going to be a challenge for me to get an IC. And that's also when I realised that I'm a stateless, I'm a stateless. Sorry, I'm a stateless person living in Malaysia, because of that. So I had to go to make an application for Malaysian citizenship since then until now. So that's how I found out about my statelessness.

I think when I was about 12 to 13 years old, so I made an application when I was 10. I think, then when we want to. Actually be 13 to 14, or sorry, 13 to 14 years old, because I wanted to make an IC when I was 12. Then the JPN told me that I have to go through adoption process, you know, get adoption certificate and stuff like that. So that process took two years. So yeah, I caught it around 14. [Interviewer: Just to check, so your father has permanent residency and your mother is undocumented but the family who adopted you are Malaysian citizens?] They are PRs also, so they have the red ICs. Yeah. My mother, my father is Indonesian and the family who adopted me in years was also Indonesian. They've been living here for 20 to 30 years long... super long. My adopted father is applying for blue IC. But right now, there has not been a lot of responses from the JPN yet.

Having a red IC be a deterrent, in a sense, to citizenship was repeated throughout the dataset:

My name is L and I'm 73 years old. I was born in LK. I'm working as a florist. I was born in 1949. My father entered Islam. My husband also has a red IC. Since the beginning, when I applied for IC, I was given red IC. I have tried applying for a blue IC since 2018 but no answers from them. I provided a 'Surat Akuan' after taking an oath at the Commissioner Office and the death certificate of my husband.

Issues surrounding the possession of red ICs that never converted to blue ICs was also seen in border communities, such as the Siamese community on the Malaysian border with Thailand. We spoke to an individual who is from this community, who told us:

I'm not sure the actual number of stateless people, but I used to request from the JKK or some local leaders to give me their ICs – those who still hold the red IC. I got about a few hundred of them. Okay, but I'm not sure whether it's accurate. I will say that the only way to get the actual numbers is from the Jabatan Pendaftaran. Yes. Because I can't go to everybody, and even some who used to apply for the blue IC, but probably they need to come forward and tell their stories. But some have given up because they've been trying for so many years. They say forget about it. I will die with my red IC, please burn the red IC with me. That's some simple remark that I get.

The ones I encountered, it's all over. It's all over. As long as there's a Siamese community there are the issues. So some in Kelantan, some in Kedah, some in Perlis and even some in a small number in Penang. Those adults are the ones who I mean, they don't have formal documentation during the early stage, because of the accessibility to the departments, services, and sometimes the ignorance of parents at times. And some are illiterate and so on. So some even in a same family, let's say the brothers and sister, some of the elder brothers managed to get their blue IC. But some of the younger ones, that's surprisingly, still holding the red ICs even though from the same family. For the young ones, okay, at the medium level is okay. around my age 50, 60s 40s. Okay, because at that time, I think the system was quite okay. Okay, and the knowledge of the parents is okay, so they managed to get their citizenship, and so on. But later on, when people start to get married to the foreigners, the Siamese near the border, they tend to be attracted to the Thai woman and start to get married their own way, without registering their marriage with the department. So as you know, the child will come up with the status bukan warganegara because the warganegara, it's based on the mother's citizenship? That's the issue. So we have, the chunk of older one and the chunk of the younger ones.

A number of individuals became stateless because they were unable to prove any form of identity due to lost documentation throughout the years. The elderly, due to their age, are particularly at risk in this situation:



We don't know how to help because we are also in a desperate situation. But even my neighbour, there was an aunty with red IC but it got lost since her house was burned. And even if she wants to do a new application, she doesn't have the documents. Now, she can't go anywhere and stays at home only. She's already 80 years old.

The COVID-19 pandemic and its corresponding lockdowns and movement restrictions also affected access to birth registration, as depicted below in the Siamese community at the Malaysian-Thailand border:

For example, during the MCO, we are seeing there must be an increase in some issues about the stateless also. Because in Perlis, especially for those who are planning to get married before March of last year, most probably they are planning to have kids and they are on the way planning to have kids. And suddenly they have their kids. But suddenly with the closure of this MCO we are seeing cases of them not able to do registration, the marriage registration. So eventually the baby came out before they registered. So there are quite a lot of cases like this. So it's an unpredictable case that they cannot travel back to Thailand to do all the documentation and so on. So I believe that this not just happened to the Thai communities, or the Siam community, other communities, this happens to other countries as well, maybe. So this could be something you need to look into.

There also seem to be very strong racial elements when it comes to access to citizenship. The following is an individual who worked with a parliamentarian's office, helping those who need help with citizenship paperwork:

For me, I didn't categorise cases according to race, if we are able to solve it. Like for example, marriage not registered and adoption issues and also the senior citizen issue, I believe we will cover the Indian community issue by luck. Well, because of the Indian community, I think it's similar to Chinese communities. One thing is the senior citizen. Many of the Indian senior citizens are still holding red ICs. So at that point of time we were campaigning if

they stay here for more than 20 years already, let's give them the blue IC. I mean, yes, maybe their bahasa is not fantastic, but they have already been here for more than 20 years already, I mean, let's have some sympathy towards these senior citizens lah. So, this is what I am campaigning, I know certain Indian colleagues, they actually campaign for Indian citizenship issue in the context of Indian community, but having said that, I believe if what proposed by us is being adopted fully by the government, we should be able to solve or cover the problem faced by all races because it's either marriage not registered and therefore children are not Malaysian or adopted but not getting citizenship or senior citizen. I believe by large, it's these three categories. The kid is not getting citizenship, so they also suffer in that sense.

There were also many instances of documented generational statelessness – a situation where multiple generations in the same family were stateless, and inherited statelessness.

When I was small, nine years old my father passed away. I was small at that time. My mother also was unwell she has kidney failure. I was staying in a relative's house with my brother, sister and didn't go to school. We were working just to eat and were struggling. At that time, I didn't have a birth certificate. At that time, I didn't know and didn't think it was a big issue. Then, at the age of getting IC around 17, 18 years old I was still trying to get IC. I asked for help from many people and people with power. I didn't get the right people to help me. I remained this way for quite some time. Then, I fell in love with a guy and went away with him. He's from TG and after falling in love with him, I followed him to TG. After going with him, I didn't have contact with my relatives. My husband is an alcoholic. We were struggling to make ends meet and we were just like that. When I gave birth to my children, I didn't face many issues as I used my husband's IC to go to the clinic. Not much of a big issue at that time. I have four children, two of them died. For my daughter, it's the same, she has a birth certificate on her father's name but it is stated 'Warganegara Belum Ditentukan'. So only if I am able to get citizenship, I can take it for my children. Since I do not have anything, they also



can't get anything. When they were 12 years old, I took along their father and asked JPN that their father is Malaysian and my kids need a birth certificate. They said they cannot because mother most importantly must have documents. If the mother has no documents, they cannot give birth certificates. We will put 'Warganegara Belum Ditentukan'. They asked me to settle mine first and then automatically my children will get mine. So we stayed that way. My daughter loved a guy and got married to him and has two children. Her husband is also Malaysian. But, when giving birth every time at the [government] hospital you need to pay RM 6,000.

They count them as warga asing, foreigners. For their first son, they asked RM 6,000. Then, many people helped a bit and we paid about RM 5,000 and managed to do the operation. For the second child, they asked nearly RM 7,000. They were counting all of them as warga asing. Despite her husband being Malaysian, we didn't get any help or assistance. The reason is because the mother has no citizenship, they said that's why we are counting this way. Like that, there were so many problems. If they got injured, for one stitch they asked RM 100. So, if any of us fall sick we won't go to hospital and we'll just be at home. We will buy medicine from a Chinese shop and will wait to heal. So, it was counted that way, if injured there was a different rate, for a stitch there was a different rate. So many problems, my kids couldn't go to school. They couldn't sit for the examination at Form One. Only if they have IC, they said they will allow them to sit for examination. So, couldn't study. My children have studied until standard six. They lost the opportunity to obtain education. They can't work anywhere. My daughter cannot work anywhere and my son also does the same. So, many problems. I also cannot work anywhere because I also work at people's house, spraying pesticide, working at people's houses, and cleaning houses like that. Then, my husband also passed away. So, this is how my life has been going. I am also trying hard but with so many complexities.

Generational statelessness was also compounded by difficulty navigating the bureaucracy surrounding citizenship:

The other thing [for having documentation] is the requirements. For example, you do require proof of birth. Okay, they require a marriage certificate, they require identity cards of both the father and the mother. So if your father and mother are not documented, how can you the child be documented? So you already put in place, you already have all these restrictions and enough problems to face and because of that they cannot get documented. And now when they have their own children, you know, it's impossible if you follow your rules or the guidelines, especially marriage certificates. Another challenge if you're a woman, and especially if you're divorced, or single parent, almost impossible to get it registered.

This problem of generational statelessness was also found amongst the indigenous community in Peninsular Malaysia due to the way in which indigenous status is passed down in families:

There will be many variations of this [statelessness] for Orang Asli. And for example, if a foreign male marries an Orang Asli woman, the child is not considered Orang Asli. But if an Orang Asli man marries a foreigner, then yes, the child is considered Orang Asli. So these are all practices known by law. Either case, by law, if I'm an Orang Asli couple who adopts a Chinese baby born of Chinese parents, and brings her or him up as an Orang Asli child speaking the language and so on that child is Orang Asli. It's not a blood definition, it's a cultural definition. It's just like Malay, you know, adopt a Chinese baby you know, and, and bring up the baby as a Malay customs language, everything. That child is a Malay even though the parents, blood parents were Chinese. But now all this is being picked individuals are interpreting it differently. The law is one thing, the practice is another thing... in the case that of Orang Asli, the non-documented, their status as undocumented Orang Asli is another very important and direct cause of the marginalization and poverty. That's very clear, in terms of education, aid, and everything else. So it's against the whole objective of the government to bring up everybody or to reduce poverty and all that stuff.



Historical events that date back to pre-independence also have had long-lasting effects on statelessness. Here, we hear from the child of a stateless person with long-standing residence in Malaysia, albeit at the border with Thailand:

I remember, I also asked, I also asked my mother, why did you end up with this red IC? Many people, you know, is kampung people at that point in time. They live there, you know that our community is not a migrant community. I don't know, you know, the history, but we are not migrants. We have been living there since day one, I will say. Before Merdeka. So before that, we did that. And then of course, the history of British colonisation and so on. And then after we got back, we caught the Merdeka. Yeah. Before independence, those people read that. So after independence, after Merdeka, the government went to our place to register. Because it is unclear right, the border, people, either you are Thailand side or you're Malaysia side. So when they go to the border, they start to register. Those with maybe good education or awareness, I will say will go and then register. Normally, when does the government agency go to the register? They will quickly do it. But somehow some will be left behind. Yeah, so that is actually, I think they don't know. They left behind. And then after a certain period, yeah, that sorry, this deadline, maybe then the after the deadline, you are not going to have proper registrations, I think then they normally come up with a red IC. And then that is actually maybe already past the normal grace period process. You get a red IC. You have to go through the proper application. This is what I think happened.

They don't do anything until the deadline. And then they get the red IC. I think that is the case. I also asked why. So [this is] based on my understanding... I did not really check why they end up officially with red IC in the first place. For these people, 'believe they missed a deadline. They missed the boat, let's put it this way.

I don't know [what happens] in Sabah and Sarawak. But in my place, I think there are quite a number of them. I think they apply and then until today, I think some of them they still not getting

the blue IC because they are of course kampung people if they don't follow up, you didn't follow up then they maybe letter sent to them gone missing or whatever, they don't know which document is not completed to submit and then nobody follows up, you see.

Children born out of wedlock had difficulties proving that they had rights to citizenship due to there being no documents certifying the marriage between the parents, and in some cases, no existing ties to Malaysians.

For example, in place X [in Malaysia], I know there's a lot [of stateless people] but they don't tell me the actual numbers. I have an uncle there, so when I go balik kampung to visit him. I hear about these stories. So he will say, that child born out of wedlock in that farm, the mother is married to a Bangladeshi. And that's how it usually is, they are not cared about, and that feeds into other social issues.

SECTION 6:

PROCESS OF ACQUIRING CITIZENSHIP



6.1 Citizenship application remedies through JPN

All stateless persons who qualify for Malaysian citizenship and want to acquire Malaysian citizenship must apply for citizenship through the National Registration Department (JPN), the administrative body which processes applications, and the Ministry of Home Affairs (KDN), which is the decision maker responsible for conferring or withdrawing nationality from individuals. This section discusses the citizenship application processes established by the government that are available for stateless persons as well as alternative mechanisms provided by civil society organisations and lawyers.

The stages of the citizenship application process through JPN are outlined in Figure 10. Information regarding citizenship applications can be found on JPN's website including conditions, procedures, required documents, payment details, a sample of the application form, and a checklist, as outlined in Table 14. A sample of these forms can be found here: <https://osf.io/kvf5s/>. Each citizenship application form has criteria established by JPN that a person has to meet in order to apply for citizenship. To submit the citizenship application, a person is required to go to either the counter of the Citizenship Division of the Putrajaya JPN headquarters or state JPN offices to request for the citizenship forms. Applicants are required to show the required documentation to the JPN officer in order to obtain the application form. Once an application has been submitted, depending on the type of application, an applicant has to attend an interview with a JPN officer to test their Bahasa Malaysia proficiency as part of the application process. The waiting time is long, taking between two to five years for a decision to be made. If their application has been rejected, there is no reason given to applicants from KDN or JPN and there is also no option to appeal the rejection. Unsuccessful applicants must repeat the process and submit their citizenship application form again.

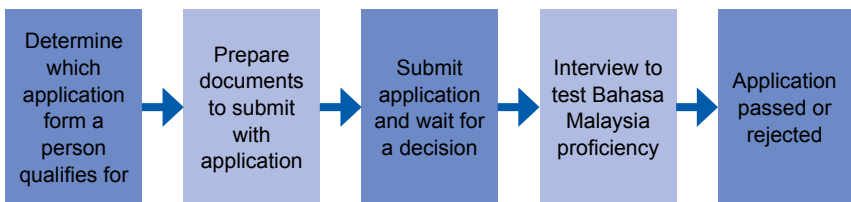


Figure 10: Stages of citizenship application process through JPN



Table 14: The citizenship application forms available on JPN's website along with the application conditions

Citizenship Application Forms	Application Conditions
Operation of law	
Borang D: Application for Citizenship Under Article 14 of the Federal Constitution – Confirmation of Citizenship (Born Outside Malaysia)	This is an application to confirm the status of a person born outside Malaysia on or after Malaysia Day (16 September 1963) based on the status of the father. 1. The applicant and the person to be registered shall appear before the Registrar of Citizenship/ consular officer when submitting the application in accordance with Rule 28 of the Citizenship Rules 1964 (Amendment 1996). 2. The applicant shall be the: • parent; • guardian or next of kin.
Borang E: Application for Citizenship Under Article 14 of the Federal Constitution – Confirmation of Citizenship (Born In Malaysia)	This is an application to confirm the status of a person born in Malaysia on or after Malaysia Day (16 September 1963) based on the status of the mother or the father. 1. The applicant and the person to be registered shall appear before the Registrar of Citizenship/ consular officer when submitting the application in accordance with Rule 28 of the Citizenship Rules 1964 (Amendment 1996). 2. The applicant shall be the: • parent; • guardian or next of kin; • the applicant.

Citizenship Application Forms	Application Conditions
Registration	
Borang A: Application for Status of Citizen Under Article 16 of the Federal Constitution – Persons Born in the Federation Before Independence Day, 31 August 1957	This is an application for registration as a Malaysian citizen by a person aged 18 years and above who was born in the Federation before Independence Day. 1. The applicant shall appear before the Registrar of Citizenship when submitting the application. 2. The applicant must be born in the Federation before Independence Day (not including Sabah and Sarawak). 3. The applicant must be aged 18 years and above on the date of the application. 4. The applicant has resided in the Federation for the past seven years and not less than five years from the date of the application. 5. The applicant intends to reside permanently in the Federation. 6. The applicant is of good character. 7. The applicant has a basic knowledge of the Malay language.
Borang B: Application for Citizenship Under Article 15A of the Federal Constitution – Citizenship Registration Under Special Circumstances	Application to register as a Malaysian citizen by persons below age 21 under special circumstances. 1. The applicant and the person to be registered shall appear before the Registrar of Citizenship when submitting the application. 2. The person to be registered must be below age 21 on the date of application. 3. State reason for applying for citizenship under special circumstances in Section F and paragraph A of the application form. Include an attachment if the space provided is insufficient. 4. Form B must be completed and submitted together with copies of the necessary documents. 5. The application must be submitted by a parent or a guardian who is a relative.



Citizenship Application Forms	Application Conditions
Borang B: Application for Citizenship Under Article 15 (1) of the Federal Constitution – Wife of a Citizen	This is an application by a married woman whose husband is a citizen. 1. The marriage is still in effect. 2. She has resided in the Federation throughout the two years preceding the date of application and intends to do so permanently. 3. She is of good character. 4. The marriage was registered under written laws in force in the federation.
Borang B: Application for Citizenship Under Article 15(2) of the Federal Constitution – Child Under the Age of 21 Whose Parent is a Citizen	This is an application for Malaysian citizenship by a person under the age of 21 whose parent or parents are (or were at the time of death) citizens. 1. The applicant and the person to be registered shall appear before the Registrar of Citizenship when submitting the application. 2. The person to be registered shall be below age 21 on the day of application. 3. One of the parents is a Malaysian citizen. 4. Application must be submitted by the parent or guardian. 5. Form B must be completed and submitted together with copies of the necessary documents. 6. Appendix A 15(2), which is a dual-purpose form for declaration of acceptance of and application for citizenship under Article 15(2) of the Federal Constitution, must be completed and submitted to a consulate abroad within one (1) year of the date of birth.

Citizenship Application Forms	Application Conditions
Naturalisation	
Borang C: Application for Citizenship Under Article 19 of the Federal Constitution – Aged 21 Years and Older	This is an application for Malaysian citizenship by naturalisation. 1. The applicant shall appear before the Registrar of Citizenship when submitting the application. 2. The applicant must be aged 21 years and above on the date of the application. 3. The applicant has resided in the Federation for a period of not less than 10 years in a period of 12 years, including the 12 months immediately preceding the date of application. 4. The applicant intends to reside permanently in the federation. 5. The applicant is of good character. 6. The applicant has adequate knowledge of the Malay language. 7. The applicant must be sponsored by two referees who are citizens aged 21 years and above and who are not relatives, not hired persons, and not advocates or solicitors to the applicant.

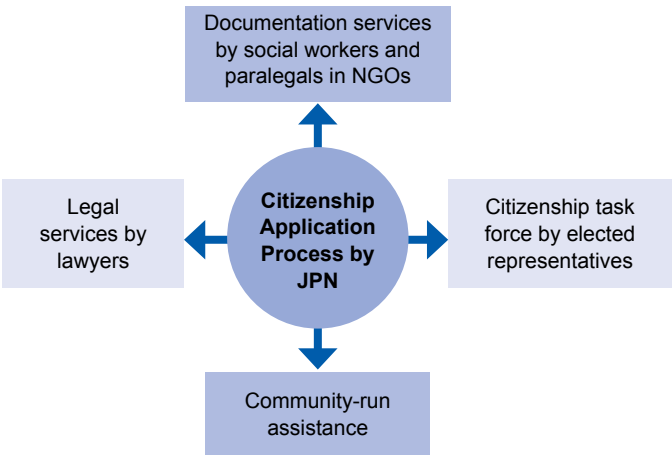


Figure 11: Citizenship application ecosystem



There are many barriers towards accessing the citizenship application process by JPN which disadvantages certain stateless populations. Based on our interviews, we found that the gap in stateless persons accessing citizenship application processes led to the growth of civil society organisations and individuals who provide documentation and citizenship application services, as outlined in Figure 11. These initiatives are typically self-funded and run independently of JPN, but some have direct working relationships with JPN to improve their citizenship registration initiatives.

NGOs such as Development of Human Resources for Rural Areas (DHRRA) run targeted registration and paralegal aid services in Peninsular Malaysia for stateless Malaysian Indians of Tamil descent living in remote areas in palm oil plantations. Yayasan Chow Kit (YCK) provides social workers to assist stateless or undocumented children and teenagers in Chow Kit, Kuala Lumpur with birth certificate applications, identification card applications, adoption, and citizenship applications. The Johor Women's League (JEWEL) assists stateless or undocumented girls and women facing gender-based violence with birth registration applications or school enrolment in Johor. Family Frontiers provides citizenship, documentation, and immigration support via a support group for Malaysian women who cannot pass on their citizenship to children born outside Malaysia. Orphan Care runs a baby hatch service for abandoned stateless children and receives stateless children from JKM welfare homes, and advises parents adopting stateless babies or children on documentation and citizenship applications.

Elected representatives such as MPs, ADUNs, Senators, or political party members also provide their own citizenship registration services similar to NGOs to assist people with their citizenship application submission or to check on the status of the citizenship application. Many elected representatives such as EXCO members, MPs, ADUNs, and non-elected political party members provide documentation services for undocumented stateless persons who have red ICs or lack identification cards or birth certificates in the estates, plantations, and urban poor Orang Asli areas. The Penang state government set up a Citizenship Bureau to assist stateless persons with their citizenship applications by acting as a coordinator between federal agencies and state agencies such as JPN, KDN, JIM, and Pejabat Pendidikan Daerah (PPD).

Community members from affected stateless populations also set up their own initiatives. One of our interviewees, EC, assists other stateless persons with red ICs from his hometown with their citizenship applications in his own time because he has more knowledge and access to resources from assisting his own family members' citizenship applications. Another interviewee, KCK, set up a support group for families with adopted stateless children to support each other in their children's citizenship applications. S, another community member, works with NGOs and lawyers working on statelessness, to support stateless persons holding red ICs with their documentation and citizenship applications.

One other option to acquire citizenship by operation of law is by filing a civil suit in court for a declaration of citizenship. An applicant can engage lawyers to file a civil suit in court to ask the court to give recognition to the applicant's right to citizenship while their citizenship application through JPN is ongoing or once they have exhausted all the available remedies through JPN. In cases where an applicant has exhausted all remedies through JPN, a judicial review would be filed to review and challenge KDN's rejection of the citizenship application. In cases where an applicant has filed a suit in court and there is still a decision pending from KDN on their citizenship application, the court process helps expedite the existing application process with JPN. However, this option is financially inaccessible for many stateless persons unless law firms offer *pro bono* services.

6.2 Issues surrounding the process of obtaining citizenship

In this section, we present the findings related to the process of applying for citizenship in Table 15 and expand on a number of the findings using excerpts from the interviews. There is significant ambiguity and lack of transparency surrounding the process of applying for citizenship, from the arbitrary application conditions set by JPN to the inaccessibility of the entire process for stateless persons. The unequal and inaccessible citizenship application and birth registration processes which render certain populations stateless is further compounded by the discrimination and exclusion they face in accessing basic services. This makes it very difficult for stateless persons to access citizenship application processes or documentation. They are stuck in a vicious cycle that is difficult to break



because the inequities, discrimination, and exclusion they face from being denied citizenship make it even harder to acquire documentation and a nationality.

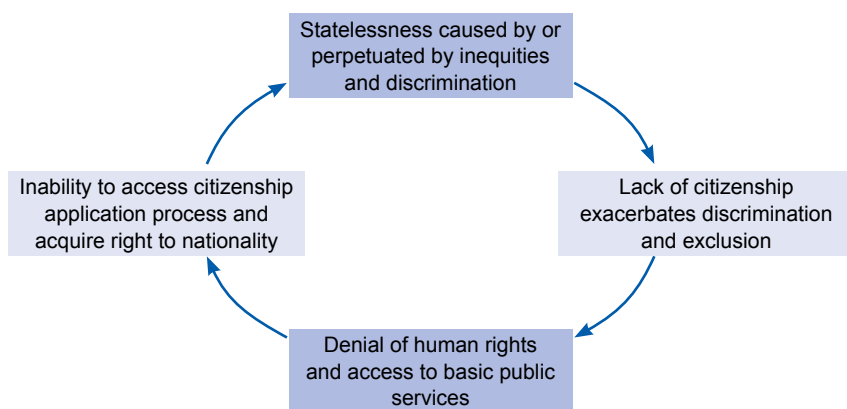


Figure 12: Vicious cycle of statelessness and inability to break it

Table 15: Findings surrounding issues specific to the process of obtaining citizenship (in no particular order)

Long waiting times and delays for approval	Discriminatory application process
Tedious processes	Mental health toll on applicants and families
Lack of transparency surrounding the process	Change in policies, governments, and politicians making the process harder to navigate
Complicated, confusing, and unclear instructions on what to do	Rejections are common and no reasons are given
Discrimination and poor treatment at JPN offices	Internet access needed for web searches and research on procedures
Enquiries on process and application status not entertained	Subsequent applications after first rejection need to start from square one and data does not carry over

Corruption while interfacing with law enforcement	Physical groundwork by the authorities as a facilitator in obtaining citizenship
Problems obtaining 'good character' reports	Being told that permanent residence is a solution to statelessness
Difficulties communicating with JPN and accessing information due to language barriers	Certification needed from multiple parties in order to get documents approved
The unreasonably heavy burden of producing documentation	Detention due to being stateless being an impediment in the process of applying for citizenship
High cost of legal aid to guide the process	Being forced to repeatedly renew visas and legal status while waiting for citizenship application decision
Difficulties navigating the bureaucracy and paperwork	Political connections or interventions enabling quicker decisions
The high costs of repeated visits to various authorities	Failed citizenship test
Lost crucial documents	The existence of middlemen in the process
High monetary costs of going through the process	Loss of money due to scams
Citizenship interviews have inconsistent standards and requirements	Difficulty tracing relevant individuals and family members
Literacy needed to navigate the process	Deaths in the family complicate matters
Fear of dealing with government officers	Many applicants need help to navigate the process
Stress and anxiety during interview process	Due to lack of trust, applicants sometimes hide pertinent information



6.2.1 Inaccessible application process that systematically disadvantages stateless populations

Although the citizenship application information is on the JPN website, it is difficult to figure out which application form a person qualifies for without the assistance of a JPN officer, paralegal, social worker, community leader, or an elected representative. This is because the definitions, systems, and processes for citizenship applications can be very technical and inaccessible to certain stateless populations who come from lower socioeconomic backgrounds.

An officer from the Penang state government's Citizenship Bureau shared that the stateless clients they work with come from lower income and lower education backgrounds:

80% of my cases come from B40. The average income is lower than RM1000. Maybe because of their low education level, they don't understand how our citizenship law works. They can't even, some of them can't afford education through a private institution. So, most of them, they can't even go to the secondary school without any help from other local YBs. So if you based on average income, they come from B40. And if you look at the education level, most of them come from very low educational education level family.

There is no option to complete the application form online or remotely because hard copies of the forms can only be obtained by requesting them in-person at JPN offices. This method of in-person citizenship applications systemically disadvantages certain stateless populations as they face multiple barriers accessing citizenship application forms. Indigenous persons are unable to afford the cost of accessing these offices because of poverty, and/ or they live in remote, rural areas. There are also stateless persons living in poverty with low literacy, language barriers, or low education levels. An NGO worker working closely with Orang Asli with documentation issues described how difficult it is for Orang Asli to access documentation processes:

One of the issues with documentation is the cost of documentation and poverty involved. So if you're poor and you deliver a baby in

the village, far away, you got a certain timeline. I don't know how many days, but you know, within a certain time, you're supposed to register the birth. You know, if you don't register that, then it becomes more difficult. You got to get, you know, all kinds of other documentation. So normally, what happens is, if it's a if the person is, you know, already a poor community, a poor person, living in a forest, comes out, goes to main town to register, there's so much cost involved, then they go there and the officer says, oh, sorry, you forgot about this photograph, or this form or whatever. So that they have to go back and forth to the office. After all, it becomes too costly and impractical. Then later on, after they remain undocumented and they also have their own children, they become more difficult to prove that they are OA and so on. So the whole problem becomes a bigger problem.

Each citizenship application form has criteria established by JPN that a person has to meet in order to apply for citizenship. However, these conditions depend on the circumstances of their statelessness and their access to their birth registration record and documentation. Stateless persons who lack birth registration records or documentation about their parents' citizenship or marriage status are systematically disadvantaged because a minimum level of documentation is required to qualify for the application form to even be given by the JPN officer, and to submit the application form. A political party working with stateless Indians of Tamil descent who lived in the plantations, explains how difficult it is to trace documentation necessary for the citizenship application:

It is very hard to trace a person's family history and their documentation. A lot of people get stuck because they got no documentation and it is very hard to trace documentation.

A social worker from an NGO working with stateless children explained how certain families end up with no documentation:

One reason they don't register is because they lost the record, from moving places or they become homeless. So everything is not in their hands anymore. So that's why they don't know how to get back their documents and they leave the situation as it is.



Another reason why the client cannot get birth cert is late birth registration. Before 14 days, you can register the birth and then very fast you can get, on the one day you can get the birth cert. But sometimes they postpone it and then it's past the 14 days now. After the 14 days when they go they need to fill up a document and they need to find a witness, they need to have this and that and then after that, yeah, it becomes a problem. It becomes so much thing to do and they end up leaving it be and ignore getting the child documentation.

6.2.2 Lack of information on language proficiency requirements and determination process in citizenship application process

Consider an individual applying for citizenship under Article 15A of the Federal Constitution. As detailed by JPN on their website²², the applicant is required to fill in Borang B and is expected to file the form in person at the Citizenship Division of the Putrajaya JPN headquarters. However, there are no details regarding any interviews or Bahasa Malaysia proficiency tests on the website, despite the fact that many of the participants of our study noted that these were, indeed, requirements along the process. Applicants were also asked to sing *Negaraku*, the national anthem, and recite the *Rukun Negara*, which was not communicated to them beforehand. This lack of information is a huge problem for applicants, particularly elderly applicants and those who struggle to speak and understand Bahasa Malaysia. Due to the fact that this problem appears more in non-Malay stateless communities than it does with Malay communities, enforcing strict standards for language comprehension and speaking ability discriminates against non-Malay applicants. To see this, consider the following individual who regularly assists Indian applicants from estates and plantations detailing their experience bringing JPN officers to the community to help individuals get registered:

We invite them (JPN) to the temple and one of the reasons given to me is that the problem with the old people is they can't really

22 Please refer to this link: <https://www.jpn.gov.my/en/core-business/citizenship/warga-15a-khas-eng>

command the BM. I told this, I said, you can't really blame these people because they stay in kampung right? They're likely just doing pertanian, they tap rubber every day, and if they say they communicate with the Malays, the most is to buy fish, and also buy sayur, or whatever so their vocab is limited. If let's say you asked them to sing Negaraku or recite the Rukun Negara, you won't be able to get as you wish. But if, let's say, they have a syllabus, your syllabus, for those people who want to apply for citizenship, that has 'these are the things you need to learn' ... whatever it is, let them learn by heart, right? And then at the same time, they know what they're supposed to know about Malaysia. And we also can test them. If they fail, they can't blame anybody else because they only have themselves to be to be blamed. So it's a win win situation. Now without any syllabus and suddenly you ask that old folk at the age of 70 to recite Rukun Negara, he won't be able to get it right. Even we sometimes can't really remember everything and they [the applicants] don't need the Rukun Negara to survive. If you ask them, how do you speak Malay when you buy ikan kembong or whatever, probably they can answer it.

As pointed out by the excerpt, citizenship applicants are not given any syllabi or prior information on what to expect during the proficiency test, and sometimes, as indicated below by a CSO member who assists communities with applications, actually fail and have their applications rejected.

So we've manually assisted quite a few of them to apply for citizenship. And we did then thousands of them because it wasn't complicated at first, it was quite straightforward. But then we came across a pool of people, no matter if they applied, they wouldn't get approval, or when they would go for citizenship tests and everything, they would actually fail.

Applicants also are required to obtain 'good character' report from local law enforcement, which takes a significant amount of time and seems to be based on subjective criteria:



I remember they say the good character report has to be prepared by the police at least, the bigger issue was that it takes a long time. It takes more than a year, it takes a long time. People wait inordinately long periods. We said, why don't you just simplify the SOP? And just say, look up in the police computer if the computer is there. You know, there's a database of people arrested or charged and all that. And if the guy hasn't been arrested for anything in the last ten years, take it as good character lah, simple. There's nothing more you need to ask. So that's what we proposed. They refused to agree to that meeting. They said, we want to think about it. And finally, they never came back with a positive answer. While for us, it was a reasonable solution to solving the good character requirement of somebody who's already 70 years old and 80 years old, and just wanting to become a Malaysian citizen.

6.2.3 High and hidden costs throughout citizenship application process

The process of applying is expensive in a variety of ways. The first obvious way is that it costs a significant amount of money to apply. First of all, the application itself costs money:

They [the applicants] can't afford the costs and fines that come with these applications. Last time it used to cost RM5, now it costs RM 50. So this has all increased.

Then, after the documents have been prepared, if the applicant needs legal aid in the process, lawyers' fees can also be high, particularly since statelessness intersects with poverty and economic hardship very significantly. If the applicant is lucky, or if their case is deemed unusual or is being used as a landmark case to build up legal precedence, some lawyers may take on their case for free (*pro bono*). However, this usually is not the case, and a significant number of individuals have trouble accessing legal help during the application process.

[The legal fees] cost RM 2,300 per person. It's quite expensive because the lawyers, they had to go to Putrajaya, KL and to court. Of course, there'll be some expenses which they would incur.

Due to the lack of information and transparency in the process, there was a significant number of scammers reported in the dataset – i.e. individuals who would cheat applicants out of large sums of money by promising a smoother process and faster results. This was described to us by a stateless individual describing what their father went through in applying for citizenship:

I think there's one time my father was actually cheated. Like, there's this 'agent' who asked for, like, I think, around 20K saying that, he can help by, by getting the right form. And then he will try to expedite things, but nothing came out of it. And my father actually paid the 20K... especially because if you are in a position of being stateless, then most probably your family would have faced the same problem somehow or other. So there's always this fear of going to government office, you know. And it didn't help that some people actually make money out of this. They would wait outside the NRD trying to help you and people are gullible enough, I guess, because you don't know things. You want to apply, but you don't know the right procedures, where, [what] to do, so if people volunteer to help and then ask you later for money you would just have to give them money.

6.2.4 Long waiting times resulting in uncertainty, anxiety, and desperation

There is a significant amount of anguish and desperation in the dataset on the fact that this process takes incredibly long. The waiting time to hear back about the application status is typically spent in fear and with high anxiety. The following was told to us by a Malaysian man who had adopted two stateless children:

We both [husband and wife] are Malaysians and their [adopted stateless children] status has changed and now they have become our children. We have completed all the documents, but



why [does it] take two years? You can clear it within six months. It's all for the sake of their future. That's all I'm asking. We are asking the things that you want us to do. We are doing this legally, even though you said just now it will take 2 years, 3 years or even maximum 10 years but what will happen to their future? You see, my daughter, after she turns 18 years old, she needs to go to university. Can I tell this to her university? Can I say at her college that she's not a Malaysian, we have applied for citizenship but after ten years only we can get. Can I keep on saying this at every place I go? Why not expedite the process? We did it legally and became their parents legally.

Aside from mental health burdens as being a high cost to pay to undergo this process, time spent was also a significant cost, as described by the following young, stateless applicant (who was also a student):

Um, I mean, I live in KL. So going to Putrajaya wasn't that much of a big deal. Like there was no parking cost or anything like that over there was just mileage. So cost wise, I don't think it was more significant than RM 250, thereabouts, you know, you can maybe round it up to RM 300 in total. But I think the significant thing is the time. You know, when you come back for a short break, you want to spend as much time with family and really maximise that time that you can get family and stuff and so having to spend it [doing this]... it's not just the two days you go to Putrajaya, you actually have the running around to the mahkamah, that's another day and doing this, it's another day. So it's like, if I have like three weeks here, you know, five days is just gone. A whole week is actually just gone during this kind of crappy stuff. That's also a continuous complaint.

6.2.5 Inability to track status of application and no reason given for rejected applications

It is also incredibly difficult to enquire on the status of your application, as many participants had brought up. There are no digital ways to track how the application is moving through the system, and all documentation and receipts are handled manually. The following was a typical example of how enquiries were generally managed:

I only managed to call and nobody answered, so I sent out emails. They just sent a reply that said "this is a very long process". I've written to them about three or four emails.

Rejections are also fairly common and applicants sometimes have to repeatedly apply, starting from scratch with each application, even though most of the details in the application are the same. Applicants typically have to demonstrate an otherworldly level of persistence, far beyond the burden that any human being should bear when interfacing with bureaucracy for such important matters, as displayed in the excerpt below:

[I started applying for citizenship] from the time I was 21, 22 years old. At that time I realised this [lack of citizenship] is a problem, big problem... I'm 56 years old now. 56 years old already and I've been trying since 1988 and it's so difficult for me. Before this, people exploited my money saying that they will help me to solve this issue like RM 600 but they didn't actually help me.

The most infuriating part of the process for applicants and caregivers is perhaps the fact that after incredibly long waits, rejections (which are often) come without any new information about what went wrong with the application and what needs to be given in order for the application to be approved. This gives applicants a sense of despair and is cruel as it forces them to repeatedly do the same things and hope for different results:

We applied two times already before this. And it's in the system... of course, it was rejected but no reasons were given. When we asked them why we were rejected, they'll say it's okay, apply again. This is the reason why sometimes people for ten years also not getting citizenship. What kind of system is this?

6.2.6 Difficulty tracing down documents or people as part of the application process

Aside from these issues, a huge part of the process of applying for citizenship boils down to tracing down documents or tracing down people. Many applicants are forced to trace documentation surrounding events that may have happened decades ago, and may include



individuals who they either no longer want to speak to or have died. This is particularly difficult for stateless abandoned children who may have to face a highly traumatic past in order to fulfil the standards set by JPN for what constitutes acceptable evidence. DNA tests can also be very expensive and act as another deterrent to the process:

So we asked them, the birth certificate stated that my dad is Malaysian... and it stated that my dad is on my birth certificate. So we asked them, why do you need a DNA test? So they say DNA test, it's just to tell you, maybe to reconfirm, that he's your dad. So basically then we asked them back whether if we do this DNA test, is it for free? She said no. They said you need to pay for it so it's not cheap enough to do a DNA test. And [we need to do it] for both parties, you know, for my dad and me, so we asked them again, is it 100% confirmed that if we do a DNA test... I mean, it's my dad, will I get the IC? And they say that one, not sure yet. So basically, we are gonna have to waste a few thousand just to do one documentation, which is with no 100% guarantee that I will get the IC.

Mandatory physical presence of individuals becomes an issue for the process as relevant important people to a particular citizenship application may be in jail or detention, or simply impossible to track down. Finally, aside from the issues of tracking down individuals and documents, documents can also be lost - either throughout time, or due to unfortunate incidents in life, such as flooding or fires. Important individuals such as members of parliament, ADUN, or other politicians, were noted to be able to 'push the application through faster', though, of course, many applicants struggled with getting this level of access to these individuals, unless they had pre-existing relationships with them.

6.3 Denial of human rights and inability to access services while waiting for citizenship application to be processed

Table 16 shows the issues stateless persons face in having their human rights denied, something that may arise in the very long time that stateless individuals wait for the citizenship application to be processed, and expand on a number of the findings using excerpts from the interviews.

Table 16: Findings surrounding issues that arise during the waiting time in the process of obtaining citizenship

Fear of media coverage while waiting
Exploitation in the labour market
Constant fear and anxiety
Delays in schooling
Poor access to affordable healthcare services
Harassment by law enforcement
Participation in the informal economy
Being ineligible for government assistance during pandemic
Limited mobility due to lack of legal status
Underutilised, undeveloped talent
Unaddressed issues for the disabled
Difficulties accessing aid and help
Strain on adoptive parents and caregivers of stateless children
Vulnerable women have no grievance channels
Inability to open a bank account
Forced conversion of religion in order to access resources
Intergenerational statelessness as time progresses and marriages and births happen in stateless families
Increased risk of being trafficked and smuggled
Discrimination and bullying at school
Maternal health issues
Issues getting work
Increased vulnerability to social problems, crime, and gangs
Disengaging from life due to stress
Risk of getting deported while at school
Lack of autonomy in planning for future
Possibility of family separation across countries due to pandemic restrictions
Burden on CSOs being accused of harbouring immigrants
Negative financial impact of having to pay high fees to access services

Stress and anxiety were the most commonly reported issues during this time, aside from various life conditions (such as sick parents) intersecting with and aggravating the experience of going through this process.



The following excerpt was told to us by an individual who was formerly stateless because she was born abroad to a Malaysian mother and a non-Malaysian father, but received her blue IC around the time when she was done with Form Five:

I wanted to have more autonomy over my life [when I was stateless]. But at that time, you just thought... that's how things are done. In hindsight, it does feel a lot. Very shitty, to be honest... it wasn't just the IC that was in the hands of other people, because my mom was a cancer patient. So there were charities helping us out. And it's a very shitty feeling, honestly, to receive charity as well, because I grew up on people giving prohibitions and everything and people sponsoring studies to go to school. It was only once I turned 18, I went to Form Six. And then I went to government uni, which, by the way, I couldn't have done if I didn't have an IC. So that was very important. It's only then I could sort of take charge and say, no, this is what I want to do. This is what I want to study. I remember, I finished Form Five, right? And because everybody had been making decisions for my life. Somebody asked me, what do you want to study? Oh, my God, mom. She asked me... what do you want to study? And I was like, I don't know. I've never thought about what I want to study. Because I've just spent my whole childhood trying to survive till the next day and making sure that there's food on the table, I can just hope that there's food on the table. I get home from school and there were many times that there wasn't food on the table.

Lack of, interrupted, expensive, or low-quality schooling was also a huge issue for many stateless children as public schools typically did not allow them to register to attend, and if they did, the children were often barred from sitting for formal examinations such as SPM and UPSR. The following excerpt describes an individual who was abandoned as a child and later adopted, who found out they were stateless when they were barred from taking PT3:

When I sat for the PT3 examination, I discovered how serious this problem is. When I sat for PT3, they stopped me from taking the examination. When I asked the reason they said I don't have

the documents. So, after that we went and fought for this issue and paid a levy. Only at 15 years old, I realised I'm having this [statelessness] problem.

Even when the children get to access education, however, it was in the form of private schooling and therefore costs a lot of money, or it came with a significant amount of bullying and taunting at school:

Honestly, most of the time, I didn't understand the insults and what was going on. But I remember, it happened enough times for me to start skipping school. So when my mom used to be at work, and I take the bus, I'll go into school, and then I just sort of walk out the main gate, nobody would say anything. And I just walked to the train station, which in hindsight was very dangerous for me to do. I would go to KL Sentral and sit down. But sometimes, I wouldn't even enter class and just go to the library and sit down and read and also help improve my English. So I would do that. I remember this one time, this girl just shouted at me. And I remember the word pekak, which I learned because she shouted at me "Kau pekak ke?" I had to go to the dictionary and look up. What does that mean? And that was all I was doing. But most of the time I didn't understand what they're saying. And I cannot even remember no, you know how your brain shuts down when it's like a traumatic... Yeah, so most of the time, my brain shut down.

Parents of adopted stateless children often expressed worries and frustrations surrounding the fact that their children's talents and abilities were left unnurtured and undeveloped:

Another thing is my daughter was getting involved with school, you know, like drama and competitions. And she was actually very good at it. She has high scores for it. But the one teacher did not allow (her to compete). Oh, you need IC to go for competition. So I had to call them and say look, are you not getting her in because of that? Are you not taking her in because she's not good enough? So, those kind of things la. Small, small things like these but matters you see. So, it sort of limits the child la. Psychologically limits them and I wouldn't say academically, but it does put some barriers.



While they are waiting for their citizenship applications to be approved, stateless individuals cannot access any government aid or welfare. This is particularly damaging for highly vulnerable groups within this already vulnerable group, such as stateless persons with disabilities. Additionally, a significant amount of government aid during the pandemic was given to citizens only, and so stateless individuals could not access this as they did not qualify. A stateless individual explains how they received no aid from the government during the pandemic:

So, we don't really get such bantuan la [from the government] because they need IC. So especially on the E-Belia, you have to put in your IC on the 'Touch and Go' then you have to scan your face. So, some of the help from government actually excluding the stateless community.

Orang Asli without documentation could not access government cash aid during the pandemic as well or needed to go through extra verification procedures to qualify for aid, as explained by a JAKOA officer:

Like BPN, BRIM, must have documents. So for Orang Asli community who lost their documents, we will do verification. Example, JAKOA will ask verification from Tok Batin or JKK and we will give a letter to the involved agency, which says the particular person is the resident of the village. Their IC is lost or like that. But for those who really without documentation, that one need to refer back to JPN again.

Access to affordable healthcare was a recurrent theme. Many stateless individuals, due to their lack of citizenship, were unable to access affordable healthcare. Most of the time, they did not qualify for the local subsidised rates at government hospitals and had to either seek private treatment or forgo treatment. An adopted stateless individual shared that he is willing to pay more at a private clinic because of the fear of being discriminated against at government hospitals without any identity card:

I don't go to government hospitals. I only go to private clinic. But so far throughout my life, I've been blessed enough to not have any serious medical conditions. So it's fine for me to go clinic if

I got fever. Because I don't dare to go to government hospital, obviously, because they will ask for your IC and then if not, then you would have you have to pay like a higher medical fees, right? Yeah. So I don't go in there. But I just go to private clinic. But then that's even more pricey, but at least there they won't question, who you are, of my IC, and who am I?

Sometimes individuals or caregivers were able to access private health insurance – which meant they could access private healthcare, such as the excerpt below from a Malaysian mother who cannot pass her citizenship to her child born abroad – but this was not the norm:

When she [stateless child] was a child, she had an emergency recently, she actually ran into a piece of glass and slashed her forehead open. And I was freaking out and went to the closest paediatric emergency for me and I paid double... everything was double for my daughter. But what was going to be a RM 60 emergency charge was RM 120 for me. So after all that drama of like, getting my daughter seen, the medicine was also more expensive. So everything is doubled, basically, in a public hospital, to bill for our children. So there is a Malaysian child price and foreigner child price. And after all of that, you go to this place, and then you're seeing like, "Oh, bukan warganegara", double the price, sakit hati, man. I can't describe the geram and the frustration that comes from seeing that. But yeah, any public hospital will be double for my child basically.

Lack of access to affordable healthcare is a big issue for stateless children and individuals, as they are not able to get routine check-ups and access vaccinations. Stateless individuals who reported that they managed to get the Covid-19 vaccination were able to access vaccination because they had some form of documentation such as a birth certificate. However, for those without any documentation, it was very difficult to access the Covid-19 vaccinations because they did not have documentation to register on the MySejahtera system for vaccinations. A stateless mother with no documents explains how she was only able to access vaccinations with help from a clinic:



You see, even I get the vaccination from MySejahtera is a big thing. One Chinese doctor helped me, he has a clinic. He's the one who helped me by saying it's okay not to have documents and asked me to come to receive vaccine. Without the vaccine, I wouldn't even have been able to come here by bus. If I went through government, for sure I wouldn't have gotten vaccination. Since I received help from the clinic, I managed to get two doses of vaccine. If not I wouldn't have received vaccine and I wouldn't be here. That is also as a result of not having IC. So, like these there are many problems.

Access to jobs and secure employment is also very shaky for stateless individuals. The following excerpt by a stateless individual born out of a wedlock to a Malaysian father and a non-Malaysian mother, summarises the difficulties and lack of social security for stateless workers in the economy:

My first job, I was working in a Chinese shop when I was working part time at 15 years old. I used to mix with my Chinese friends, then I started to work in a cybercafe. From the cybercafe I used to work carwash. From carwash, I used to work in a Chinese restaurant and I have my friend do business there. I used to work as a specialist in telematch. So, basically from there, I said no this is not working because they couldn't make me permanent due to my not having an IC. They tried their level best to talk to the managers to make me permanent, you know, to get EPF, SOCSO but they couldn't. So they asked me to work as a part time worker. But no point because I don't have insurance. My work is not only about welcoming people, I was in the extreme, like going jungle trekking and stuff, so anything could happen to me. I don't have insurance, the green card which they provide for full time workers. So I said this is not working. I stopped, I continued my studies – diploma – when I was 19. Then I worked in a restaurant and I was the manager there. Then due to the pandemic I went back and when I was studying, I was working at a cybercafe part time. Then when I was studying I got another offer. I used to go to houses you know to do painting because

I got some hand skills so I used to go to my friend's house and paint all. So, they used to give me money. I used to earn that, I never say no to any job. Then, I used to work with my friend's lorry for a while you know, 'cuci jalan' (washing roads). Then, I got an offer in my former restaurant. Again, I tried helping, but couldn't work out. Basically, now I'm working in a kitchen. This is a new F&B where my operation manager last time, he called me in but he left the job now. They made me a manager, they showed me how to become professional, you know how to work and stuff till today. And they give me rights like a normal human, I mean like an employee. You know, bonus and stuff.

While stateless individuals are waiting for their application to be processed without any documentation, they are also more susceptible and vulnerable to discrimination, harassment, violence, and exploitation. A social worker from an NGO running a children's welfare home which takes in stateless refugee children shares their experience on the threat of stateless children being trafficked:

Once, the kids were in a home in KT. But then the smugglers came to the home and threatened to take the children. So, the UN took the children and brought them to our place. So I took them in, about ten of them or something. The smugglers are very good. They even found, they found our home, they came and then I called the UN. I didn't allow the people in, but I called the UN and I said, hey, you better do something about these smugglers, these smugglers are no joke. So they came and they took the children. Then, I don't know where they hid them.

Stateless or undocumented girls and women are more vulnerable to gender-based violence, domestic violence, child abuse, or sexual violence. The lack of documentation and protection increases the risk of girls and women to gender-based violence and sexual violence. A social worker from an NGO working with undocumented girls and women facing domestic violence and sexual violence shares how their statelessness exacerbates their situations:



They may have come from some domestic violence background. So it's a woman who ran away from another state, for instance, from NS to come here to get away from the husband, and the child may not have been documented for many reasons. One is because the family was going through this domestic violence. Sometimes it's also to, when there's a problem between husband and wife, the child's documentation is used like a bargaining chip, you know, at that moment, this child is not my child, you know, I know that you had an affair with a Bangladeshi, obviously. This tends to make up 50% of the cases. The other 50% is because we work with family violence abuse, child abuse, statutory rape etc. We also work with the hospital, with the gynaecology department because they tend to refer cases of unwed pregnant girls' underage girls, girls who come there with no documentation. They don't know what to do so they'll call us in, at least try and help them pay some bills. And then along the line, we'll try and sort out the girls' documentation and then subsequently, the babies' documentation.

Stateless people also have difficulties interfacing with the formal financial system in the country, which includes the simple issue of having their own bank accounts. Multiple participants in the study repeated that not having a bank account was a big issue for them, stating things along the lines of *"I cannot open a bank account because they only accept valid identification papers."*

Finally, the fear of arrest and fear of interacting with law enforcement officers was very strong amongst citizenship applicants, who worried about their safety. During the pandemic, when there was an increased number of immigration and police raids, a number of stateless individuals found themselves in jail:

They [the stateless individuals] were just arrested and most were sorted out. They were arrested because they didn't have any documentation. They were kept in the lockup for eight to ten days.

Stateless individuals and their caregivers also often have to carry around their birth certificates or copies of receipts of their JPN citizenship application forms to show members of law enforcement that they have some sort of status or documentation, as noted below:

But one of our students, she is six years old. That time there was a lockdown but still some people worked at the market, so one of the students got arrested because they went out at night. But they showed their birth certificates even with the bukan warganegara, the police let them go. So I think it is a document that can help people prove their identity.

Repeated negative interactions with law enforcement caused a significant amount of trauma. An adopted stateless individual recounts his dehumanising encounter with police at roadblocks and how he would rather walk a long distance instead of taking the bus to avoid the police:

This one time, after I finished my SPM, I actually worked as a waiter at a shopping mall near my area. And when I wanted to go back home after work. There was a roadblock, because I took a bus to get home. And the police came into the bus and they asked us for, like, our identification and all. And I remember this one specific moment when the police actually asked me about my IC. And I mentioned to them, it's still in process. So I don't have an IC yet. And they were shouting and screaming at me as to why I don't have my IC. And they mentioned to me, I remember the exact word they say, "Kenapa kau tak ada IC lagi? Kau nak tunggu sampai kiamat ke?" And I was like do you have to be rude about it? And people were looking at me. And the policemen were shouting, but I felt very, very, very embarrassed. You know, I never wanted to be in this situation, but it's all from the government side, I don't have power in it. Like, the only thing I can do is push for the application and why are you blaming me that I'm not being productive or whatever lah. About why I am in this situation. It was a bit, yeah, insensitive of them to do that. Because some more, they were screaming. The bus was very crowded at the time. But everyone was looking at me. So I felt very, very, very embarrassed at that time. Yeah, that was one of the encounters



that I had with the police. I did encounter multiple roadblocks as well. But usually before the roadblock, I would stop at a bus station like before the roadblock site. And I would just walk back from there to home because I don't want to be questioned. And I don't think I can handle another embarrassment, because people look at me because I don't have an IC.

Stateless persons are racially profiled by the police at roadblocks so that if they 'look like a foreigner', they typically face more harassment and extortion by the police, as compared to people who can 'pass' as citizens, such as this individual who is stateless because he was born abroad to a Malaysian mother:

Because like I'm Chindian right. And I look quite Malay. So they [police officers at the roadblock] are always surprised. And then I speak to them in Malay, and I sort of get off pretty easy. I so far, I haven't been harassed.

Stateless refugees have become so normalised to police harassment and extortion, as one person describes:

I've gotten stopped a lot of times at the roadblock. Sometimes there are good people [police]. Sometimes they saman us. If I go, if I ride on a motorcycle, sometimes got stopped. I have car also, sometimes they saman me too. Sometimes they ask for bribe. But this is normal. Anywhere la.

SECTION 7:

IMPACTS OF STATELESSNESS



7.1 Overview

We now provide a comprehensive view of the impacts of statelessness on individuals, caregivers, and communities. The summary of the findings for this section, derived from the data, are summarised in Table 17. These issues include, among others, a lack of access to financial services, severe mental health issues, no mobility domestically and internationally, and persistent problems with accessing educational and economic opportunities. It is important to note that different categories of stateless persons may experience different effects from being stateless. For example, individuals who are stateless by Malaysian law – i.e. do not have Malaysian citizenship but have applied for it – but hold passports from other countries may be subjected to repeated visits and payments in order to renew their visas for permission to stay in the country. This happens frequently to children born to a Malaysian mother and foreign father abroad, as we have noted above, and may be a unique effect of statelessness for them. For example, the following is the case of a child born to Malaysian parents in a foreign country out of wedlock, who holds another country's passport but considers Malaysia home:

Coming into Malaysia, I was treated really badly by an immigration officer once - this was because my visa had expired. But then I had an immigration lawyer and agent who told me that, you know, I could come in because he had already applied for certain things. And then my bad luck. I was leaving the country and there was this really scumbag of an officer who told me like, you can't come back because of that. As I know, my lawyer said, I can come back and he said, no. And when I came back, it was the same guy. And he sent me straight to the centre where they send all the undocumented people and I had to sort of wait there for like, four or five hours until they finally realised that you know, my lawyer was right. And I could go through. So, I mean, coming home should not feel like that Yeah. And, of course, I really feel for my sister, you know, I wasn't able to get that support she needed from her family when she was going through a really, really rough time with her health, and her mental health. So I mean, that that's probably like, where we suffer, where we suffered the most. Thankfully, when it came to education, and security, and housing and that



sort of stuff, we've been very okay, compared to other people that you've probably met. But still, this is definitely like, we're very sad that a place we call home, doesn't treat us well. Like, we belong, so that kind of sucks.

In many cases, given the way citizenship is defined, which is highly specific and legalistic and does not take into account family and cultural ties, many stateless individuals find themselves at odds with their personal identities and a deep feeling of not belonging to the country. However, many, if not all, categories of stateless people tend to experience similar effects – for example, the stress, anxiety, and fear of living from day to day is common, and was repeatedly seen throughout the dataset. In this section, we choose a number of effects to highlight by using interview excerpts.

Table 17: Findings surrounding the effects of statelessness (in no particular order)

For stateless schoolchildren, being bullied at school	Inability to board domestic flights
Lack of, difficult, inconsistent, or low-quality schooling	For stateless schoolchildren, being systematically excluded from extracurricular activities at school
Having no access to bank accounts	Inability to get married legally, which sometimes exacerbates multigenerational statelessness
Inability to own property under own name	Inability to own a driver's licence
Mental health issues	Inability to start own business ventures for livelihoods
High costs and difficulties in accessing healthcare	For stateless abandoned children or foundlings, struggling to be adopted due to difficulties obtaining citizenship
Inability to qualify for social security benefits such as EPF, SOCSO, PERKESO, and other retirement benefits	Discrimination and bullying in life
Having no access to formal employment	Vulnerability to harassment by law enforcement and society at large

Being informally and precariously employed	Difficulties with reporting issues surrounding sexual harassment and domestic violence to authorities
Inability to leave the country	Constant stress, fear, and anxiety
Difficulties in long-term planning and being forced to abandon ambitions	Suicidal thoughts
Potential family separation across countries	Lack of economic independence
Being ineligible for government aid and welfare assistance	Vulnerability to abuse by local citizens and service providers
Difficulty accessing higher education	Inability to file a legal suit against other individuals
Inability of youth to progress and attain higher standards of living	Being unable to qualify for scholarships
For stateless persons who are disabled, being ineligible to receive disability support	Shame from societal stigmatisation and cruel treatment by society due to lack of status
Vulnerability to arrest and detention or being smuggled and trafficked	Loss of agency
Burden of having to carry around multiple physical documents to prove legal status	No access to financial services
Psychological trauma	Increased risk of falling very ill or contracting a preventable disease due to lack of preventative care
Falling prey to scams and expensive middlemen services	For stateless children, wasting precious years in their early age development
Higher risk of forced and child marriages	Dissociation from self, struggles with identity, and disillusionment
Higher risk of ending up in sex work	Financial difficulties preventing families from filing citizenship application



Being at risk of deportation	Inconsistent and uncertain salary and pay
Difficulties with international travel due to lack of citizenship	Threats of being evicted from their home
Trauma from dealing with authorities at JPN	Being trapped in toxic marriages
Having to resort to child labour to make ends meet	Becoming financially dependent on others
For stateless women married to Malaysians, being forced to rely on husbands' legal status to live	Inability to sit for formal educational or training certifications
Resorting to drugs and illegal activities as coping mechanisms	For parents, worrying about the government taking away their stateless children
Exploitation in the labour market	Needing to continually apply for visas in order to be allowed to stay in the country

The constant fear and anxiety cannot be underscored – particularly when leaving one's home. Many participants reported that they feared any interactions with law enforcement, with many stating that they constantly have to carry numerous documents with them in order to extricate themselves from situations with the police and/ or other enforcement agents. The following excerpt was from an indigenous person living in Perak:

I mean, usually because those without documents, don't go far away from the village and usually... The thing is, that the reason why there's a heavy cost, and is because the undocumented indigenous people in the area, they can't get jobs outside. You can't apply for all kinds of things. So, what are you talking about? So, this is the whole circle of marginalisation.

Due to the fact that there are no set rules for how law enforcement should react to stateless individuals, the level of vulnerability to law enforcement is really contingent on individual officers on the ground. We also heard from a stateless person who said that they were lucky to have met kind policemen:

I have met a few police before. I was in IHP during Thaipusam. So, we were youngsters, drinking and stuff right? So police came, a bunch of police, that time I think Bukit Aman people came or what I don't know. So, they came, they ask everyone's IC. They counted IC and said "Hey, satu orang tak da IC." I said "Saya, Tuan." So, he said "Kenapa tak da IC, you Bangla ka?" I said "Tak da, saya punya mak bapa." So, there's a senior officer, he did not say anything, he was just standing there, he was just looking. So basically, the guy said like that la, I said "No, Tuan," this one, this one. He said, "You tahu ke saya siapa? Saya polis tau, jangan main-main." Something like that. He said "You baik-baik bagi I." I said, "Encik, saya tak ada IC, saya mari Encik ikut office." I said office but he said to follow him to station. I said come la because I got nothing to worry what. I did not do any crime and was okay to follow him. He got stunned. Hey, this fella is following me to station? So, he was worried. So, from there the senior officer pulled me aside, the young guy was talking to me, then the senior he talked to me. I showed him my birth certificate and I told him my story. So, he understands, oh, you're in this scenario. So, he's okay, never mind, hope you can deal with this one. So, he just told the young officer, hey, don't disturb him, I know him, leave him alone. Then, the young officer said no IC and the senior officer was like no, you leave him. Senior officer la, he was just looking out these fellas do and I was talking to him, because he knows, maybe he went through all these. These young fellas, where they know about IC all? So from there, they just let me go and they told me to take care.

You know there's another time, second time also happened the same thing. Eight o' clock in the morning, police all came and ask for IC. Then, again the same thing happened. So, I said no IC and they said come to station. I said okay no problem and again they got stunned why I agree to come. So, they were like



why this guy agree to follow, does he have contacts or what, so they got worried whether I am a Datuk's son or what. They got scared. Then, an officer pulled me to the side and talked to me. I told them my sad story la. It took thirty minutes to tell my sad story. Wasted my thirty minutes. Talk to them and everything then I went home. They said it's okay, you just write your name, your IC number or whatever number you have or address for the records sake. Night I came back home, the senior officer, like the head la, he called me, he asked me to take out my birth certificate. You believe it or not, this Malay guy, the officer, he went and ask his friends at immigration to help me you know. I and him was standing, people were surrounded what so they think I was a big criminal or what. So everyone was surrounding me and I and the police was showing the documents and they think I'm a criminal. Then, he was showing me the phone. Then, he whispered to me, "Sekarang saya gelak, mesti semua orang akan pergi." Then he just laughed and everyone went off. You know people just want some news, some latest news. This Malay guy was so sweet of him, he came to me, you know he tried to help, he said "Saya sudah tanya kawan, kawan cakap ini macam, susah, saya try help you." Even, I told them that in the morning they tried to help me the same night. It was so sweet of them. So, a lot of people out there who understands, appreciate what is stateless you know. I cannot say 100% people out there all is bad. No such thing. I saw bad people and good people in my life. Yes, I'm 24 but I experienced things faster. I move around faster.

There is a significant amount of trauma and a number of mental health issues that persist over years amongst stateless populations. Many caregivers and parents of stateless children have voiced out that they're under constant pressure and fear for their children. The following is a Malaysian mother who adopted a foundling describing her feelings and worries about her child:

Yeah, I didn't know I didn't know getting a child adopted is going to be so traumatic. And my daughter has been asking why she's not able to get MyKid you know? Whenever we go to visit lawyers

or something, we have to carry her original 'bukan warganegara' birth certificate. So she always asks me why, I have to tell her it was a mistake... I am getting emotional [participant starts to cry].

These children are innocent and then their parents don't want them, and then somebody adopts them, and I think the government should consider giving them citizenship as the adoptive parents are, it's so simple. You know, it doesn't have to hurt another person or the child is what the child is going through now, you know.

Sometimes there are some competitions, only for warganegara. Then my daughter will ask me amma, why cannot, I just say, because you don't have a MyKid. You know maybe once you have it, you can join. It's very, so sad you know. Because she is bukan warganegara that's why she can't participate. She's Standard Four this year, next year going to be Standard Five, and then Standard Six, I hope by then she will get it. I don't know.

A number of participants in the study also expressed that they were depressed, with some being suicidal. The following is a stateless adult who was abandoned at birth in Malaysia:

No, I actually don't know what to do. I even thought about going to Royal Palace and see my Sultan. I want to tell him that his citizens are stateless. This is bringing a lot of depression to me. But, since I'm a Muslim and we believe to God, so whatever happens but it didn't go well I'll just take it positively. I cannot think negatively then I'll ended up committing suicide.

We also interviewed a stateless Malaysian Indian in the waiting room of a JPN office, who told us her heartbreaking tale of trying to gain citizenship for her family members, and the deathly toll that the whole process of statelessness has exerted on her family:

Things in this age now has changed. Without IC, we cannot do anything. You see, even I get the vaccination from MySejahtera is a big thing. One Chinese doctor helped me, he has a clinic. He's



the one who helped me by saying it's okay not to have documents and asked me to come to receive vaccine. Without the vaccine, I wouldn't even have been able to come here by bus. If I went through government, for sure I wouldn't have gotten vaccination. Since I received help from the clinic, I managed to get two doses of vaccine. If not, I wouldn't have received vaccine and I wouldn't be here. That is also as a result of not having IC. So, like these there are many problems. Now there are already laws stressing the importance of IC, so I think without IC you can't do anything. My two children died by hanging themselves. Maybe they faced problems because of this IC issue since they couldn't study, couldn't work anywhere. Maybe they had depression, right?

I'm not saying that is the reason entirely [for their deaths]. But, if they had IC, they could have studied, gone to work at a better place. Might even have gotten a good friend. So without all these, they cannot cope with life. The children who died were two boys, first child and third child.

Access to schooling and higher education was also a huge issue, as described by the following stateless teenager who was able to attend school and sit for public examinations, but faced difficulty accessing college and university programmes:

As I said, it took three months for the application into my primary school and when I was like Standard Two, I was forced by the government to quit the school but the reason I don't know why I a. But after that I applied again and I got into Standard Three but I missed like few months of study in my primary school. When I was in Standard Six, I needed to sit for the UPSR right? I got all As for the UPSR but unfortunately the Jabatan Pendidikan, they had lists for me, like lists of the Sekolah Cemerlang, but I could not enter them. So, I have no chance even I get a full As... I have no chance to get into my dream secondary school. So yeah, secondary school I also facing some problems like I nearly cannot sit for the PT3 and the SPM. So, it's quite stressful. If I cannot sit for SPM, why am I still continuing to study for the secondary school right? Waste of time. But fortunately, I can get in for SPM. A struggle point is

there's not many places who can accept stateless person in a university. I have asked for many universities for around one year but there's no university that will accept. Finally, currently, one university accepted me... I'm in diploma now. [Back when I was in school], I was getting some information from my headmaster at that time. I have asked her why am I getting expelled from the school, but she said, if I'm not going to expel from the school, she will get into the jail. She just told me like that. So maybe the officer forced her to do so.

Stateless individuals' interactions with the labour market can also be highly problematic. There is a high risk of having to work in dangerous jobs and getting exploited due to a lack of legal frameworks surrounding stateless and undocumented persons' right to work:

My wages [when I was working part-time in secondary school]... they were giving me a very low wage, that was RM 4 per hour. That's very low as compared to my friend that works as a waitress that even get a RM 7 per hour, RM 8 per hour but I just got a RM 4 per hour. Luckily, now I have met a very nice person that brought me to work in a manufacturing company to work as a QC inspector and then treated me well too. They give me a like, normal person's wages like that but before that, I have also applied for many, many companies, but they cannot accept me because I have no KWSP and SOCSO, they don't want to bear the consequence, I mean.

In many cases, even if stateless people wanted to, they cannot access formal jobs. For example, if they wanted to open up a food stall by the side of the road, they cannot do so legally because they do not have access to a business and trading licence. Thus, life remains in flux:

Whether I get it or not, at least we can try to get it right. Because if I see for Malaysia then I must sacrifice India and if I see for India then I must sacrifice Malaysia. I'm stuck in between. I have three children. So, I must look after my life. The place that I grow up won't change so I can see India anytime. If let's say I want to set up a food stall, if I have an IC, I can apply for a licence for it.



The pandemic and its corresponding economic downturn have also aggravated employment situations for stateless persons. Below, a CSO worker details a particular case related to lockdowns, aid, and evictions at the beginning of the pandemic:

During MCO, no one ask you to pay rent. No one ask you to pay. Food reach your home. You don't suffer. Just relax at home. After MCO, all begin. Pay the rental or leave. Pay bills or leave. Until now I have one case we have. The owner wants to kick him outside home because he didn't pay for two months, the rental. Pay or leave. And you need to pay after you leave. So, they are suffering. No one working. They cannot find any job.

Until now cannot find job. Before they work in tourism. He is like a tour guide. He make money. But now everything stop. No airport nothing. He suffering. He even stop sending his kids to school. He cannot afford to pay for them. And he send him to sell flower in Bukit Bintang. But no one buy. So it becomes very difficult for him. He have three daughters, 17, 19, 22 and one daughter two years. And one baby boy nine months. Nine months the fees for hospital, RM 4,500. For delivery the baby. Because the lady delivers the baby outside the gate of the hospital. [laughs] Normal delivery for her should be RM 2,500 but because she delivers outside the gate. They charge her for blood test, bla bla bla. Yea. More. In the same day, the [real estate] agent kicked him outside the house. He tells him you don't have contact and you don't pay for me the deposit. Actually, he paid but he don't have any proof. So, they kicked him in the same day. I go pay rent for him the house in the same day and pay RM 3,200 for the house and delivery RM 4,500. It is like RM 9,000 now and after they need diapers, milk. All these for the kids. Since the time, I think February or January this year until now. No working. I speak to the family. Today the last day they need to pay RM 2,650. If they don't pay they need to leave.

Woman and children, specifically, continue to be highly vulnerable as a result of their statelessness. This is particularly true for female children, who may be vulnerable to additional risks, such as child marriage. The following excerpts talks about the intersections between human trafficking and statelessness:

We do occasionally turn cases away only because it's bordering on human trafficking. You will get lah sometimes because we are close to Singapore. So, [they'll say], "Okay, my twins don't have a birth cert." Okay, [we'll ask them], why didn't you take a birth cert, or actually they were which hospitals the child born in? "Oh, it's in Singapore, children born in Singapore." Then how did you get them across? "I had a dispute with my wife and I smuggled the children away in a basket in the car. Nobody saw it." Then we will say, we need to have your documentation from the Singapore hospital, etc. So some of these cases when they're a bit wild, we just tell them no lah, because it's illegal. We're not going to help you commit a crime.

You see, because if you have a child locally, the citizenship follows the mother, in particularly if it's not a registered union, the citizenship follows the mother. So, if it's a Malaysian woman, unmarried Malaysian women, the child gets a mother's citizenship, but it is an undocumented woman giving birth to a child, the child ends up stateless but many cases, the mother is stateless as a result of her own family's problematic history. So, her own father and mother did not have a proper union. In many cases, with a little bit of sleuth work or some digging up, we actually can find out that this person was born in some towns somewhere and how to trace the relatives, we can figure it out. And in some cases, we have worked with the police. Because the girl comes she remembers some vague story, you know. I heard I was born in Masai. Sometimes we're able to actually verify it and with enough information and some police work you know, we actually able to track down. In one case we managed to tracked down the mother, the mother was an errant kind of woman like she was not quite right... we had spent about RM 5,000 on that is because MCO we had to drive the mother up and down. Eventually she tried to extort us for some money, you know, but we didn't. But because the DNA test came through, the girl got a blue IC out of it. And then subsequently she got married, we made sure she was legally married and all that so. And that girl initially had been made pregnant, through rape because she was an undocumented girl and she was working in the warung, etc.



As some old man helped himself exerted control over her and got her pregnant and when she was pregnant and the community was sizing up these people, the old man tried to smuggle her back to Indonesia on an illegal boat. On an illegal boat because that was seen as the solution because what to do, she and he was going to take her back to Lombok, I think and it is just her sheer luck that when the illegal jetty somewhere near Kota Tinggi, that particular day the boat was full, and they didn't have a place for her. Otherwise she would have been smuggled across then. Then subsequently, when she delivered the baby, she asked for help. And then the doctors called us in. And then she just said, "No, I can't cope with this baby. I don't want this baby." And this what happened is what happened. But, you know, strangely, whatever little bits of information she had turned out to be true. So, we use the police, we tracked her mother down. And then we got in the end we got a blue IC because that baby properly legally adopted out to a relative of the girl, somewhere within the family as well.

It's very sad to be left stateless, because it was through no action or inaction on your part. It's a state you know. So sometimes something has to be done. You cannot leave a person in society like undigested stone in the belly of our society, you know, people have a place in our society. So, to leave them hanging, and then to say, Oh, too bad. No, you're and you can't, you can't. You can't live your full potential because of some paperwork. It's incredibly sad. And then women and girls are left particularly vulnerable, particularly vulnerable, because there'll be someone out to take advantage of you, you know.

A number of stateless women are also at risk of, or are trapped in, toxic marriages – many find themselves victims of abuse and domestic violence:

Because a lot of these stateless families, they are in trouble, a lot. Normally, when we help the stateless people, they are also trapped in not very ideal marriages. And if they worry for their children, you know, that if one of the parts of reluctance for them to go to the authorities to seek help is, what if I get separated from my

children? And if I get separated from my children, I don't think my other half capable to look after my children in my absence. Yeah, so that is the biggest worry that they have, you know, that if they escalate it, or if we escalate it for them? You know, their first worry is no, no, please don't do that. Because I might get separated from my very young kids. You know, and I have no one, no support network, nothing to look after the kids. So, we can't guarantee that also right. That's why we try not to get involved in that and we always pass them to welfare.

There was also a strong sense of despair amongst the stateless participants in the study, with many experiencing hostility from Malaysian citizens and yearning to disassociate from their troubling predicament:

They [society] see me as trash. Because many will only tend to use us [stateless people] as a platform. Some people will make fun of us. Some won't even respect us at all. That's the world. They will only look at you if you can be of use to them. Otherwise, nobody will respect you. This life is a very difficult one.

As pointed out in previous sections, statelessness can also be an inherited condition, which can cause multigenerational families with no access to citizenship. The following is a stateless individual who was born out of wedlock in Malaysia, who is now a grandfather himself – with multiple generations in his family still stateless, due to his own stateless status. It is heartbreaking to realise the magnitude of hardship that stateless people go through in order to fit into society, despite the fact that in their heart of hearts, they are Malaysian citizens and have known no other home:

I've seen blue IC holders sometimes they will just simply leave it anywhere. I've seen it so many times. They will leave their purse, bank card, IC just like that. I will think to myself, they don't know the importance of it? Only those who are without it, knows the pain and struggle of not having a blue IC. I've also found many and given it to the owner. We know the pain despite born as a Malaysian, we don't have IC and the struggle to get that is a lot. What I think is that now I have grandchildren, the elder one is seven years old and he's nearing the time to go to school and since



he does not have birth certificate will be problematic for him also. What I think is that, for them the future is long and I'm doing my level best to make sure they don't have to suffer. Even if I have to struggle, need to ask for loan from somebody in order to get IC, I will do it. I am doing all the efforts to get one. But, even if one day if I'm not here, I want my children to get somehow. That's my only hope. If anything happens to me, at least my children have to get. You see after I fought for this a lot and still didn't get, tell me what I'm supposed to do.

Many people have helped me after getting to know that I don't have IC. For my children also, they helped me. They'll help as much as they can. Because they know the problem that I'm facing. They have helped me a lot and they didn't discriminate me just because I didn't have IC. The neighbours are like relatives to me. They have helped me as much as they could.

[There is no harm to me], because we don't have to be afraid of anything. We are still Malaysian. We don't have to be afraid. It's only that, due to our situation, the mistakes that our parents did we are unable to get citizenship. Apart from that, we didn't run from anywhere and didn't do anything. It's not necessary for us to be afraid. True or not? If the police came and ask me about my situation, I will say it's my situation. My father died, I'm a Malaysian, it's just that my parents didn't take citizenship for me that's why I'm struggling. But, it's not that I also don't want to take, but I'm trying. But, I am not getting it. What can I do?

7.2 Human rights and statelessness

The analysis done in this section follows Bergman (2010) and is a three-step process: the dataset was first coded for the existence of human rights themes, the data was then visualised using a multidimensional scaling (MDS) graph, and finally, the graph was recontextualised using qualitative data. The MDS graph was generated based on 1,100 excerpts using 17 human rights themes. The frequency table for these themes – namely, how many times these themes appeared in the dataset – can be found in Table 18.

Table 18: Frequency table depicting the full list of human rights themes and the frequency at which they appeared in the dataset (n=1100). The right to participate in public affairs (UDHR Article 21) was removed from the analysis as it only occurred once

Human Rights Theme	Frequency (n = 1100)	Percentage
Right to non-discrimination and equality (UDHR Articles 1, 2, 7)	665	60.45%
Right to freedom of opinion and expression (UDHR Article 19)	256	23.27%
Right to education (UDHR Article 26)	211	19.18%
Right to enjoyment of the highest attainable standard of physical and mental health (UDHR Article 25)	169	15.36%
Right to work (UDHR Article 23)	128	11.64%
Right to duty to your community (UDHR Article 29)	68	6.18%
Right to liberty and security of person (UDHR Article 3)	49	4.45%
Right to social security (UDHR Article 22)	42	3.82%
Right to family life (UDHR Article 16)	38	3.45%
Right to a fair trial (UDHR Articles 10-11)	29	2.64%
Right to adequate food (UDHR Article 25)	19	1.73%
Violence against women (UDHR Articles 1-5, 16)	19	1.73%
Right to life (UDHR Article 3)	15	1.36%
Right to not be subjected to torture or to degrading treatment or punishment (UDHR Article 5)	15	1.36%
Right to adequate housing (UDHR Article 25)	13	1.18%
Right to freedom of peaceful assembly and association (UDHR Article 20)	5	0.45%
Right to participate in public affairs (UDHR Article 21)	1	0.09%



The frequency count for the themes indicates how many times they were mentioned in the dataset – most of the time, these occurrences happened because there was a direct violation of the right. For example, the right to non-discrimination and equality was the most frequently mentioned in the dataset, as can be seen through the following excerpt by a CSO leader working with stateless groups, which explains issues faced by parents who were trying to register their child for a birth certificate:

There may have been changes by now, but at that point in time... the NRD or JPN would request that the father of the child must be present, so that the father's name can be put in the birth cert. So if the father was in prison, if the father was overseas on work, and he couldn't come back... we had proposed that you know, look, there's a marriage certificate, the father's name is there, you know, and a photostat document should be sufficient, without the father's physical presence, and for the father's name to be put in the birth certificate. But they say no, I want the father to stand here in front of me. So this is an example of an SOP but the SOP is unreasonable. There's another example I have here that the NRD does not allow the father's information to be included in the birth certificate without the father being present. In these cases, the father's details only will be included as an informant of the birth. Not that he's the father of the child. And despite providing DNA tests and SDs, the NRD will not include the father's details in the birth certificate, and the child will be classified as illegitimate. These kinds of things like, you know, where I mean you have a DNA result, which is in front of you. Why can't you accept that and just put the father's name on the birth certificate? So the child has his father's name on it. And so when, for example, if the mother is stateless, a foreigner, or people who have gone missing, then there's a problem for the child. So I think you've got examples of those kinds of procedures that are onerous, unfair, unreasonable, which could be simplified, but making sure that the basic provisions of the law are followed. When we read Article 14 [of the Federal Constitution], it is the most important provision... that if either one parent is Malaysian citizen or Malaysian PR, the child is Malaysian. And that's it.

You know, that's all it takes. But because of the complication in the Second Schedule, I think, where they bring this concept of legal marriage, that's where things get complicated... the one that talks about the child born out of wedlock... so if that Section is removed, we can solve thousands of cases overnight immediately.

The following excerpt details issues surrounding the right to non-discrimination as it pertains to Malaysian women who do not have the same ability to pass citizenship to their children as Malaysian men, spoken by a CSO who is working on citizenship rights for Malaysian mothers:

On the issue of Malaysian women, and having given birth overseas... the reason they want Malaysian citizenship is primarily because their marriages have failed and they're coming back. A lot of them – not all – but a lot of them whose marriages have failed need that citizenship for their children, so that both of them share the same legal identity in the country. It [also] becomes difficult to access other citizenship, to get passports renewed if the father is estranged, right? He's definitely not going to want to renew the documents. So that's one of the things we are fighting for on citizenship and there are some children who have been stateless. So for a few we were able to get citizenship.

Issues surrounding the right to education were also fairly common in the dataset, appearing in almost 20% of the excerpts that were coded. For example, the following two excerpts detail issues surrounding children having to abandon or postpone schooling due to their stateless status, spoken by adoptive parents of foundlings:

My son is eight years old... he is not able to go to school from the beginning because he doesn't have any documents. Because he only has the cert from the hospital and the pink colour book.

My child has no schooling at all... until 14 years old he didn't go to school at all.



The right to freedom of opinion and expression was also expressed as a concern in the dataset, with almost a quarter of excerpts demonstrating issues with it. For example, the following individual working with a CSO expressed (unaddressed) opinions surrounding the level of literacy needed to access one of the basic points of the registration process – filling in forms:

I'm only concerned about those who do not know how to fill in the forms. Sometimes the language used in the forms... it's quite high level. Sometimes people don't understand and they fill in the information wrongly. For Malays, I think there is no issue for them. For Indians and Chinese, I'm sorry to say this, sometimes some of them do not have a strong command of the Malay language. I've helped to fill in the forms of applicants. I've seen the forms and level of language in the forms is quite high. From the aspect of bureaucracy, I'm not sure... but to follow up with the cases, for example, after they apply... they will give a receipt and phone number to follow up, but for me is there any other way to follow up because the number will be called by Malaysians from all over the country? If the application fails, just straight away tell them it's failed. People question the reply from KDN because they only say "GAGAL" instead of the reasons. So, why aren't they telling the reasons? People ask me why it failed but how can I say I don't know, right? What I will normally say is I will ask them to apply again. If you fail, please inform me of the reasons why the application has failed. But they are not saying the reasons and only telling "GAGAL". It's not bureaucracy because once you submit your application, you will get your receipt but to follow up with the cases you must have a new alternative. Or we can key in the receipt number and so that we can know the stages of our application. It's like how we buy things online, for example, we can track... like the application has been sent to JPN... next, application has been sent to KDN, it's being reviewed. If we do it this way, I think people won't be upset. It'll become efficient. If through a phone call, not sure whether we will get the answer that we want. I'd say it's not only the bureaucracy that is the problem at JPN, also in terms of filling the forms and the feedback [after applying]. Those are the things that need to be changed.

One in ten of the excerpts also demonstrated issues surrounding the right to work. As seen in the following excerpt, the issue of statelessness is often multidimensional and affects multiple issues in one's life, including the right to work and access to livelihoods. This was spoken by a stateless individual:

I was raised by my grandmother since I was a two-months-old baby. She's my father's mother. My parents didn't come since they gave me to my grandmother. I don't know who they are and their details. I've only seen my father once and I haven't seen my mother at all. The only mistake they made was they gave me a Malay name. My mother is a Malay hence they named me that. But, after that I grew up in a Tamil family with Tamil culture. In case my mother had taken me, I would have grown with my mother's side and would've been a Muslim. Since my grandmother raised me since I was small, now I'm 43 years old, I've been following Tamil tradition and culture.

After that, I got married and my husband is an Indian. I have eight children. Four girls and four boys. Out of them only two of them have IC. Only two girls have IC. For other children, they refuse to give IC. When asked for a reason, they said there's been a mistake in the computer system. My first child was born to my first husband. Second child born to their [pointing to the children] father. He has seven children in total. The first child's father is my uncle. He married someone else and the child also got married to someone else, the husband passed away and has two children. For them, they have complete documents. Second child is my daughter and she also has a birth cert and IC, 21 years old. In her IC, she's named at K A/P M. In her IC and birth cert, the information is all accurate. So if she has her information accurately, why the other siblings cannot get? This is my question.

When I went and asked, they said there's an error in the computer system. How can the computer system go wrong if we have the death certificate, birth certificate? They were talking among themselves rather than giving an answer. They keep on saying computer system errors but the death cert and birth cert which have been issued cannot be wrong. Because my daughter she's 21



years old and she has all the documents, why are they not giving it to other children? When I asked they said my name is Malay but my name is in Malay but I don't have "binti" behind, only A/P. They said they can give birth cert based on their mother's name. Okay, I accept it. But, today I'm alive but who knows tomorrow I might not be alive. If I'm dead, later there'll be problems. They'll ask my children to convert to Islam by saying that I'm a Malay. For me my descent is listed as Malay but my religion is Hindu. There'll be problems later because after 12 years old the father's name must be behind. I don't care about whether they label me as Malay or Indian. But, my children's lives have been destroyed. My children has no education. All studied until Standard Three and Standard Four, all are staying at home due to birth cert issues.

Not one or two people, many people came to our house and said that they will help but they didn't in the end. I've spent so much money also. We used to have the documents, documents such as the forms to apply for IC and birth cert but my husband is irresponsible. In the beginning, we used to have no house. Even this house that we are staying, there is no water and electricity. Living here has been a struggle. For me, my kids are of big help. Since my kids are helping me, after the end of this year we are planning to move out because they are saving some money. Due to my husband's irresponsibility, we'll just sleep at places like the garden, bus stop and we struggled a lot in life. Nobody helped us. I also have no siblings since I'm the only child. I have an uncle and aunty but I came out of the house at the age of 16 years old. So, I don't have their contact but I have a relative sister's contact.

Then, after I came here after marrying my husband, we had no house, life was full of struggle and we used to live in gardens while having kids for two to three days. Then, after another baby was born, we stayed in a hotel. At one point, we cannot pay the hotel rental fees because my husband is a road construction worker only, so he cannot pay. They asked us to leave the hotel and we came out of the hotel. Since we didn't pay, the hotel management refused to give us our documents. After two years, lots of struggle and without a house, the eldest child managed to find this house. Since we are

here and refusing to leave the house, they cut electricity and water supply. My children have no IC, how can they go outside and work, right? They had no right job, they used to work at scrap metal shops. Based on the daily wage from there, we support ourselves for our daily meal. When we asked for the documents, they said they had thrown it. We cannot do anything.

Two of my kids worked in a shop and they got caught by the police many times but we managed to take them out. Due to IC issues, they lost their jobs as well. At the shop, the pay was good so after the end of the year they were planning to look for a new house. But, the jobs are all gone since they got caught. All because of IC, if they have IC, they can get a better job and since they don't have one they have to suffer wherever they go. Even if the children fall sick, we only treat them at home by buying medicine from the pharmacy and we can't bring them to hospital. Even if I bring them, I'll register them under my name. All the documents are gone now but we have made a report at the police station. I haven't received my [COVID-19] vaccination either since my husband didn't bring me... nobody has received their vaccines until now. Because they don't have a birth cert or IC. I also cannot because my husband is not taking these matters seriously. Yesterday, I scolded him over the phone and then only he agreed to bring me. Even the police know that we haven't been vaccinated.

My goal is since we have made a report at the police station and they know that we don't have documents, I want to take the proof of birth from the hospital where they were born and figure out whether it's possible to register them. Why are they not allowing the father's name behind? Since the two children have it, why can't the other children get it too? If we ask for an explanation, they are talking among themselves but not giving us an answer. When I asked my husband he said we were all born in Malaysia. Some foreigners coming to Malaysia can get IC, why despite being born in Malaysia we are being told to get out of the country and be treated as foreigners? He's insisting that his name should be put behind his children's name on the IC. If two children have it, why not the others?



In the following section, we proceed to the second step of the HCA, which is to visualise all of the human rights themes in relation to each other by utilising a MDS graph. The MDS depicting the relationships between the various human rights themes is given in Figure 13. The number of clusters is $k=3$ and the stress value for the graph is 0.129, which indicates a “fair” fit, according to Kruskal (1964). The MDS graph is interpreted visually according to distance – that is, themes that are closer together on the graph co-occurred more often in the dataset than those that are far apart. For example, the right to food often co-occurred with the right to housing in the dataset (they are close together on the graph), whereas the right to food did not often appear in excerpts together with the right to a fair trial (they are far apart on the graph). We will take a cluster-based interpretation, which means that we will interpret the MDS graph by focusing on the three clusters that are apparent from the visualisation – grey, blue, and yellow – and later, in the third step of the MDS, explore why these themes were clustered and co-occurred so often together.

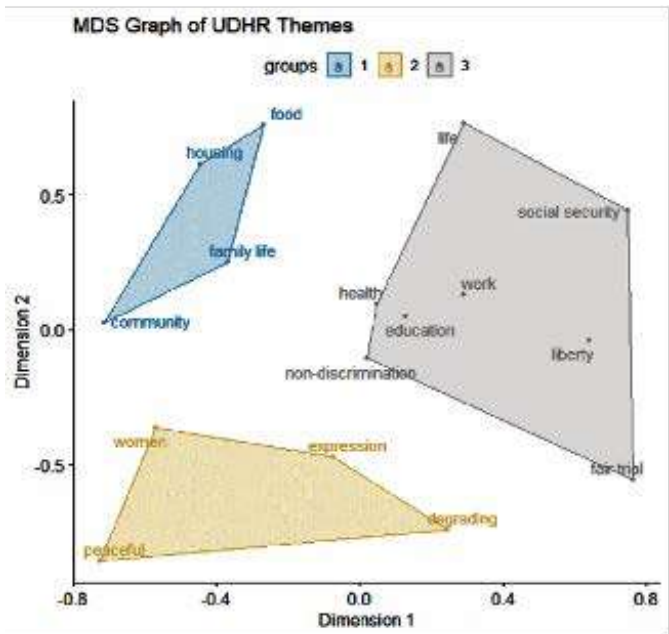


Figure 13: The MDS graph that depicts the relationships of all of the human rights themes relative to each other in the dataset. Clustering is at $k=3$ with stress=0.129

7.2.1 Statelessness as it intersects with the rights to food, housing, family life, and duty to community

The blue cluster in the MDS depicts that the following four human rights themes co-occur frequently: the right to adequate food, the right to adequate housing, the right to family life, and the right to duty to your community. The rights to adequate food and housing typically co-occur as they form the basis of day-to-day life for stateless individuals, as seen below. These rights also interface with one's relationship to their community as ordinary civil society members – for example, in situations where individuals or organisations step in to try and help alleviate a stateless person's inability to access human rights such as housing. The following is an excerpt from an interview with a stateless person who obtains support for human rights through their employer and colleagues:

Now, I'm living in a hostel. I am paying rent for my room at a hostel. My housemates are working with me together... so, we are actually staying at our President's condo. President is staying upstairs and we are staying downstairs. So, he'll take care of us every time. So, even if we are going out we'll tell Sir. The place is secure and the people who are with me are very lovely and they will take care of me if anything happens. Here I managed to find myself a brother. To be honest, even my own blood brother won't bother to ask you whether you have eaten or not but this brother I found will ask me whether I have eaten or not, will cook for me. They are very loving and helpful people. I'm very lucky to have them.

In exercising their own capacity to help, organisations that help stateless individuals are also important in maintaining the right of duty to the community. As we saw in the dataset, a large number of these organisations often go above and beyond to help facilitate issues with the stateless community. For example, the following excerpt details the experience of a social worker from an organisation which helps register stateless Orang Kurang Upaya (OKU) individuals:

I identify the issue first, so that when I go to the JPN office, I can figure out whether it's a birth registration or citizenship issue, and can figure out who is eligible for what. In ten years, I have helped



apply for over 200+ OKU cards. Apply for the OKU card first then ask for the OKU allowance. If they don't work, more allowance. So they look at the family's income first.

Organisations and individuals who help stateless persons often bear the unfair burden of having to explain and guide individuals in their journey of being stateless, which oftentimes involves very detailed procedures and manoeuvring around a giant bureaucratic mess – instead of referring them to government-linked individuals or resources, CSOs often have to take it upon themselves to be the first line of contact for stateless individuals or parents who have adopted stateless individuals and are trying to obtain documents for their children. The following excerpt is from a social worker who works with an organisation that helps stateless and undocumented minors, and shows the lengths to which civil society has gone in the process of aiding members of their own communities:

We are helping children regardless of their status, regardless their religion, background, and then we will accept them when they come and register with us. So first, when they come to register, when they hear about us or others, or friends or you know, maybe they see Facebook, they come, we meet them, sit with them, we have the registration form. So the social worker will sit with the parents or guardian and then fill out the registration form. We have a few pages, we ask about the biodata of the children, their parents, or guardian and then biodata of education and then also a little bit about. So the parents will sign in the back of the form. We must have consent at the beginning. So we try to take all the safety measures for the children when they come to our place and maybe they get into an accident, children playing, maybe get injured or whatever. And then we also have the background of the health of the children. So maybe they can put down if they have anything just like vaccination complete or not. So something like that.

So from there, we see what the issue is and we are asking them questions. We see the reason they come to our place, and then yeah, from that we know for example, if they come to our place let's say seven years old, don't go to school, what is the reason?

So from that, we try to investigate further, then we have the information? Or what is the issue that we can help with? And then they will share with us: oh, maybe the child is born at home, something like that. Or born in the hospital but the records are now missing. Maybe they moved from place to place and it went missing. So we gather information, it is very important. Because from that we know how to help clients. So we have all the information, for example, just like where the child was born, if born and who's the witness when, when that happened. And then what immunisations for the baby, if you go to any clinic after delivery, maybe you will go to seek advice from the clinic or something like that. So we try to get as much information as we can get from them.

Then after that, we sit with the when we have the forms, inside actually is inside the registration form. So, we try to see how we can help the children so we know the issue, okay, don't go to school, because there is no documentation or no birth certificate, or something like that. And then after that, we try to see what we can do, maybe brainstorming, you know, with the other social workers to see how we can help the children. So maybe we can see the previous case that we helped with previously. See what we can do to help the show. So of course, it's not similar but maybe certain of that, yeah, can apply to this new case from the previous case.

So what next, we start the communications, first, we can communicate with the respective agencies. For example, if the child is born in HKL for example, we try to compete with a unique record called to collect, we told them this information, this identity, the mum, the date of birth, and then we try to see if they can find the record. Okay, you need to do like this, for example, you bring the police report, bring the JPN letter from, you know. Yeah, we bring all the things they need and they will find the record for us. I think it's because we are closest to HKL. So for those who were born in HKL, and if the mum is very cooperative, and then we can do the police report, she can go with us. So it can settle very fast to get the report, the proof that this child born in HKL, from the



report, we use that to, you know, to the next stage, you go to that stage, go to JPN, we take the form for the late registration, from that we have the few things we have to fill up, like pictures, we have to put information of the family, we have to put the if we need to do the oath part of the witness, or if don't have much document or if the mum doesn't have the Red Book, you know, the pregnancy book. So, we need to do an affidavit again, go to the Commissioner of Oath, and then get them to get the commission chop, and then get the two witnesses and then bring the child and the mother and then the witness to the nearest JPN. So that what we do that one is straightforward. So the parents are cooperative, they want to cooperate with us. They get the cooperation. Yeah, usually get settled that maybe is depends on the documentation. Sometimes it's three, sometimes maybe longer.

So for us because we accept all children, we receive a lot of cases that you mentioned before. The mum left or maybe they work here and, then they go back to their own country. And then they left the children with you know, Malaysian citizens, and then they didn't do the adoption, the proper document documentation. So the children is here without the document, we do have that one. So, sometimes we receive a call and say oh my maid already go back to their own country. She left me with a child. So what next, what can I do? So usually we address them okay, what do you have when the child was born? So, what papers do you have, anything when the mum left or you signed anything? So at least something to show? Yeah. Yeah, the mum passed the child to you.

And then after that, we follow up we work together we you know, first thing we have to do is we advise, do a police report. So inside the police report you mentioning where you take the child from where you from when from from who you received it and then when this happened, and then where is the location and then why you want to report. Okay, let's say you want to report or to do the birth certificate for the children you want to adopt the children. So you mentioned the words there and then for reference who, welfare department and our registration department. Usually it's like that.

So that one after the report, we go to welfare department nearest I mean the location you have to see the location where you stay. So bring the police report, anything you have about the child, and then go to the welfare department. And then they have an officer who will interview we will collect the information? And then after that, yeah, we go to the next step. That one is the court order. The JKM, the welfare department will bring the case to the court and then yeah, present the case and tell the magistrate okay, this is the situation what happened and then the mum already disappeared no longer in touch. Probably go back to Indonesia or something like that or the country of origin. So the court order will say whether the magistrate will give the court order so this person can take care of the children and then with this can do birth cert. But let's say if they don't have the report of the birth. So it's difficult. So there's complicated ones.

I think it's hard to create awareness... that is more important. If you want to take care of the child good, very good. But you have to do in proper way. So very important. Sometime they just take care, take care, and then only when seven years old then only figure out. You know why? Because they want to do birth certificate. They want to go to school. That's why that time is very crucial. Only now want to sort out the birth cert issue. In between that they don't rush they don't take the action. So then it's very difficult. This thing is simple and can happen very fast but actually is not. It takes some time to do this kind of thing. So a lot of procedures and then a lot of agencies we have to work with, yeah. That usually happens to the children born to maids etc. A lot of issues are so I think related with the category of stateless.

So yeah, this issues is still happening until now. So we have to create the awareness for those who want to adopt children, so they have to prepare themselves it's not easy. Sometimes they ask why I have to go here and do this and there. The expectation is very "Oh, I can sort this out very quickly" etc. But it's not it's not like that. Yeah. If you have money and can hire a lawyer maybe faster. But in the normal way, you have to follow the procedure. What document you need. So after that only can get



and then interview so on. So it takes time. I always say this thing cannot, I will tell them, this one is not a one day thing. You have to be prepared. You have to be patient. Plus, nowadays it's PKP, and COVID. So the things may be longer, I have to make them understand that. Because sometimes they want to rush, they want to finish things very quickly, so they get angry. Yeah, I try to make sure I don't promise anything to them. And then we just brief them on whatever needs to be done and have to follow and then the decision is not up to us. Yeah, we just try to accommodate them and try to help them to go through the application. But they have to understand the result is not up to us.

Finally, it's important to note that children and minors tend to be the ones who are most deprived of the right to a family life, as statelessness often comes with deprivation and with a significant amount of physical and mental trauma. In the following excerpt, a Malaysian parent who has adopted a stateless child details their experience protecting their child from being taken by the local welfare department:

They came from the Welfare Department after somebody gave them information. Don't know who gave it. They said if kids were taken by the Welfare Department we cannot take them back. Many asked me to be cautious. The Welfare Department staff looked at this [my] house and started to intimidate me, but I said I will move out from this house soon and I had to lie to them. Because they kept pressuring me. I was afraid that they would take my kids away from me. I talked to them and sent them away. But, nobody is actually helping.

We also spoke to a number of individuals who had worked with stateless indigenous persons in Peninsular Malaysia with long-standing residence. The following excerpt details the experience of a stateless child, told from the standpoint of their teacher, who managed to help them in their process of overcoming statelessness:

So R works with a community in Pahang too. And she told me she met an Orang Asli child who doesn't have documentation. He is eight years old and cannot go to school because he has no birth

certificate or documentation. Back then, their village was very much in the interiors and the roads leading out weren't good. So they hoped that JAKOA officers would sort out the registration documents but I'm not sure also, the officer was moved or something, so needing to follow up on the case took months. So when the officer was moved to another location, when they asked another officer, they said we don't know where your stuff was passed to. So it was left hanging. So the child grew up without a birth cert or MyKid, and they couldn't go to school.

So they asked me to help by talking to JAKOA in Pahang. I asked Encik J on how to overcome this kind of issue. He told me that before you bring them, you need to know their input. He said a lot of Orang Asli marry with foreigners so we cannot simply approve any applications. These Orang Asli who marry here and there, especially with foreigners, Bangladeshi, Nepali. So that's one of the causes of the issues, which JAKOA says they cannot help with much. To sort this out, you need the verification from the Tok Batin, so there's a lot of bureaucracy and processes involved. But actually, both parents are Orang Asli and they are really Orang Asli, so the child is an Orang Asli. The issue is the document that was surrendered to JAKOA was lost. So he said okay, I will send my officer in to sort this out. So with the verification of JAKOA officer and the Tok Batin, they managed to write a letter to bring to JPN. So in a few weeks, it was all sorted, they got a letter saying their documentation for the child was being processed. And the child can register and go to school now.

Finally, stateless children also experience a significant degree of trauma due to their lack of legal status, and ambiguity surrounding their parentage and standing relative to other siblings from the same parents, who may have citizenship. The following is an excerpt from a representative of an organisation that works to help stateless individuals navigate through the legal system:

So for example, if a client comes to say, you know, like, "Well, my wife and I were not married, but she got pregnant, but eventually we got married, but we cannot register the child under my name,"



for example... because then JPN will have a certain calculation of number of days that the parents were married, right. So, you know, the idea is to provide that evidence, you know, that a child should be reasonably named. But the process is such that you probably either have to negotiate or go back and forth with the Sharia court and JPN to convince them of the timeframe that he or she can take on the father's name.

So you've gone through all that process, but then JPN still insists that no, the father's name cannot be given to the child. Then the family has an option to take it to court... there's all that stigma, you know, especially if there is another younger sibling, right? I mean, if you are an only child, then maybe, you know, there can still be some hidden element, but if you actually have another sibling, a younger sibling, then you know, the stigma is there. And I know our society is not very sensitive to it. And so, you know, that can be indirectly calling out or asking, you know, the child a question publicly, you know, like, why is your father's name? Your sister's name [is different], it is this, yeah? It may also create questions within the child as to, you know, their sense of who they are and their belonging...

We do counsel children, even though we have been dealing with more of the parents. And I think it's not something that people are open and willing to talk about, because as a child, it is [hard] to be able to gauge the understanding. I mean, you know, the, they will get a sense of stigma, but they will not be able to verbalise what they go through, unless, you know, there is a specific children's group that deals with children who are born out of wedlock, and just, you know, cares for them, and so on and so forth... it would also be worthwhile to check out with orphanages as well, you know. Because, only the children will be able to tell what is the impact on them at all? Or if you want to, then you seek out people who have gone through that experience, and they talk about it from their perspective as adults. Because and this has to be something that is also because, actually in other communities, I don't know what the stigma is, and whether, you know, the stigma is the same, you know, for children who are born in Muslim families and children were born in other faiths.

7.2.2 Statelessness as it intersects with the rights to social security, life, physical and mental health, education, non-discrimination, fair trial, and liberty

The grey cluster in the MDS indicates that the following rights typically co-occur: the right to social security, the right to life, the right to enjoyment of the highest attainable standard of physical and mental health, the right to education, the right to non-discrimination and equality, and the right to liberty and security of person. At a glance, it appears that some of these rights are intuitively grouped – for example, the right to physical and mental health intersects with the right to liberty and security of person when it comes to stateless individuals accessing healthcare, as described by the parent of a young, adopted stateless child:

Currently... the other day when she was one year plus right, so, when she get really ill, so I could not send her to the government hospital. So, she needs to be admitted into private which cost a bomb la. Then [there is] this one thing that I personally have issues with. My next concern is that okay, when she goes out, I'm just holding a birth cert going around – I am concerned also regarding the police checking and everything. This is my current worry la. My future worry is that I have issues getting insurance for her, so I have to run around many insurance companies until one manages to give the insurance for her. So, this is the current [worries] that I have but in the future – schooling, identification, participation in things, even the normal things like buying books and bank accounts. Those are my future issues, but now she's only two plus la.

The following is an excerpt describing the mental health toll on stateless children who are often left in precarious, uncertain situation, described by a member of a CSO:

I think that emotionally, when the child's growing up, they will face a lot of emotional impacts yeah... I can share one case with you. The father had already passed away, the mother went back to Thailand, so she lived with a grandmother. Okay, and then she started to grow up and she listened to her friends, 'normal children' who get IC so she came back to her grandma [and said],



"I may need to leave Malaysia because I don't have an IC." So this is very sad to hear. Emotionally, I think this impacts them a lot. Not only during the child's studies, I think they also are less focused in terms of studying because they feel unclear and [not] secure... when they grow up, what will happen to them? But I think this is not their fault, I also discussed with YB... that this is actually very unfortunate for the child. Because I cannot imagine... if I bring my child to the JPN, I just wait only one or two hours to get the IC – it is very, very fast and very easy. But for those who got to wait six, seven years... very painful.

The right to a fair trial and the right to liberty and security also intersects with the stateless experience of facing law enforcement personnel and operations in their day-to-day life. The following long excerpt details the experience of a stateless man who previously held Indian citizenship through the eyes of his spouse. The man was a drug addict and was captured during a raid by the police. He had been living in Malaysia his entire life and no longer had any ties, including citizenship, to India, and was at risk of losing his only legal status in the country – his permanent residence, as documented by a red IC. Because of this, he was also placed in immigration detention, pending deportation back to India. The excerpt details her experience seeking help from "A.L.", a CSO leader in the country.

My husband has this problem of taking drugs. So, because of that he got captured. Normally, he'll get captured but he'll go to jail and then will be released. Only this time, since my first daughter hit puberty, I can't go here and there. So, they arrested him for three months and produced him in the Court. We didn't go to the Court for the hearing. Normally, we'll go but this time we didn't. They said RM 3,000 fine and three months jail. So, we thought it's only three months so better that he's inside jail rather than roaming outside. We thought this would be a lesson to him but they kept him in jail for three months, I think it's for two months then they handed him over to immigration.

He was arrested at police station then they said since the date of his release nearing, they promised to release him on December 17th. My mother-in-law went to see him two times but I couldn't

go because of work. On the day he was supposed to be released, he wasn't released and my mother-in-law was waiting for him there with my kids. So, after long hours of waiting after 1 pm, she asked the people there and they said he's already been released and he went out. My mother-in-law said that she was sitting there all that while and didn't see my husband go out. When asked how he went out they said he was transported in a lorry. So, my mother-in-law thought even if he went out, somehow he'll return home. But then at the same time she was suspicious because normally my husband would call her if he's released from jail. Then, after returning home she asked me whether my husband had called me or not and I said no. She asked me why he hasn't returned yet. I said it's impossible for him to meet his friends also because he would call to inform his whereabouts. The next day my mother-in-law went there again to inquire about the release of my husband; when, where and how he was released since he hasn't returned home yet. Then, there was a Malay officer there who insisted that my husband was released. There was an Indian police officer who was stationed there who told the truth to my mother-in-law – that her son was handed over to immigration department and asked her to keep it secret since leaking the information could put him into trouble. Then, my mother-in-law asked a few places, called the immigration department and found out my husband is detained by immigration. Then, she came to my workplace to bring me along to Putrajaya to meet the people who detained him.

They said he cannot be released because my husband is a red IC holder and got captured so many times already. I said yes, it's true that he got arrested but he already received punishment for the crimes that he has committed. It's just that every time he meets his friends he keeps going back to the same old habit. Then, they still said they cannot and asked me why my husband is doing all those activities despite being a red IC holder. I pleaded with them to help me by releasing my husband. So, they asked me to write a letter of appeal. When I prepared a letter of appeal, they manipulated the letter since I am illiterate and I signed without reading. They made me sign an empty paper, I think it was about



three papers because my mother-in-law was beside me also at that time. They said that I can sign the letters confidently and they didn't have time to read out what's in the letters to me. They also said that I also have transportation issues since I have to take a bus and come to this place and it will be difficult for me if I don't sign. So, they asked me to sign and after preparing the letter they promised to tell me what's written in the letter. Since both my mother-in-law and I are illiterate, we signed without reading and till the very end they didn't tell us what's written in the latter. It turned out that in the appeal letter, they manipulated what we requested for his belongings and sent it to the higher officers. We received a reply saying that we cannot claim his belongings. They said to me, see you already did an appeal but they sent a rejection letter to you. It was a Malay lady at Putrajaya who gave me the letter of rejection.

We tried so many things but couldn't find a way. I admitted that he's a red IC holder and what he did was wrong because everybody's doing it and there is no exception for him. I also said he already received the punishments for what he has done and the only bad habit that he has is consuming drugs. They kept saying cannot and said my husband is a red IC holder and how can he be involved in such things and it's difficult to release him. This is what the Malay lady at the office told me. Her name RSLN. After she finished talking, she asked us to go meet some people here and there. Then, we wrote a letter to KDN and it took some time for us to receive a reply from KDN due to the Covid situation. When we got a reply eventually, they said that his 'Permit Masuk' [permanent residence] has been revoked and they said my husband is now considered as 'empty' here and need to send him back to India. Then, my mother-in-law and I went to JPN, especially the department which handles the entry pass. There, they said it's not revoked yet but his documents belong to the government and they can't disclose any further information. The staff at the IC department said revealing further information can cause them trouble. But, since their intention to help us, the only information that they told us is that my husband's entry pass has not been revoked yet.

Then, we went to the immigration department and we received a letter from KDN which stated that his citizenship is about to be revoked and then they said it could be evidence and they can help based on it. When we asked the higher officer, she asked us back how we can receive the particular letter and I shouldn't have received the letter. I said that I only received from KDN and only met her since we received the letter. Then, she was a bit hesitant to assist us and said it's not under her department and tried to make us go here and there. Then, at another department, we managed to convince the officer to help us to get some documents and when he was about to do that suddenly a person who was sent by the higher officer we met earlier came down and immediately there was a behaviour change in the officer who wanted to help us at first. They had a small meeting within themselves for five to ten minutes and in the end they said they cannot hand over the letter to me and they will send it to whichever place that it needs to be sent directly. After that, we couldn't do anything. Due to the lockdown, we can't do much. We even went to the Indian Embassy.

At the Indian Embassy, they personally requested to send him to India and the Indian Embassy questioned my husband on his background and he said he came to Malaysia within the first three months after he was born. His life stages such as schooling, marriage and everything else here in Malaysia. After my mother-in-law and my husband told the Indian Embassy everything, they said my husband cannot be sent back to India since he had no ties back to India and he has resided in Malaysia for 46 years. So, they said my husband is considered Malaysian and won't be accepted in India. Then, we went again to the Indian Embassy with all his files. They said that my husband cannot be sent back to India and cannot do anything and all his ties are in Malaysia and he has no ties in India. They even said they didn't understand why they [immigration] are doing this and told us that they are doing it out of hate towards my husband. They told us to make other efforts since they cannot send him back to India because he has no ties there.



Then only I heard that, A.L. is helping people with issues like this so that's why we reached out to A.L. Yesterday, the police allowed my husband to make a phone call to home but I couldn't talk since I was at work. He talked to my mother-in-law and said that they asked her to meet them with all the available documents. So, yesterday my mother-in-law went to meet him. There, they said rules and regulations have changed and asked us to try back at the Indian Embassy. But, my mother-in-law said that she's too old to go here and there and has transportation issues as well. She told them she went to many places including Putrajaya and asked for their help and requested them to release my husband. They said they have talked to the higher officer but don't know what can be done.

After one year plus yesterday only they allowed me to visit my husband. He's been there for two years... we didn't ask for help from anywhere else because we are afraid that our photos and family members might get viraled. Whatever mistakes my husband has made, shouldn't affect others. That's why I chose to fight my own way without going to others. First, we went to KDN and after that, met A.L. because there's a person who told us that A.L. has been helping a lot of people especially the underprivileged. We don't know where to go next because we are not well-to-do family also so I saw A.L. as my God and decided to seek his help.

The right to education also intersects heavily with the right to mental and physical health – specifically regarding difficulties in accessing education and healthcare. The following is an excerpt describing these issues in detail, from the point of view of a government official:

They [the stateless people] can go anywhere within the country because they are permanent residents but they cannot apply for a passport, because they are not citizens. So all of the benefits that are given to citizens, like 'bantuan COVID' and whatever, they can't get because they are not citizens. And then if they go to hospital, their fees will be different. I saw one case, a kid without

citizenship, went to the hospital and the charges were RM 260 per night. So it's different, they cannot get the RM 1 service. Other than that, they can live as usual, but anything that has been given to citizens, they can't get it. Luckily, if they're old enough, there is not much of this requirement, right. But let's say the young ones... the ones not only at school level, but also university level, they are facing some problems, because it's not new, because those who are married to foreigners, maybe 20 years back, with kids who are about 20 years old, they have problems getting into universities and colleges and so on. So they can only go up to Form Five, Form Six. I don't know... they probably can't get a job. I don't know whether the private sector can accept it if they're not citizens.

Orphaned stateless children also face these difficulties a lot due to the fact that their access to rights is tied to whether or not they get adopted as well as by whom, which comes with a significant number of problems for potential adoptive parents. In the following excerpt, we hear about some of these difficulties from a CSO member who works closely with placing orphaned or abandoned children with families:

When they come to adopt, if the child that they want to adopt is stateless, and they agree to adopt, we will explain to them... that education is not going to be free. You need some money to put your child in a local private school which you have to research about it. So that is education, the second one, health... which they will need to pay for and usually, as long as we can do so, we will always screen parents [to make sure] they are financially stable. People sometimes say, how come we do things like that? You mean to say if I'm poor, I can't adopt? No, it's not as simple as that. You will also want to adopt if you're poor. Why are you going to adopt? I mean, you know, you need to fend for yourself first. You can't afford to live, you want to add another life to your difficult life? Okay, if you talk about a family who's like earning RM 5,000, both husband and wife? And then there's another one whose total income is RM 15k to RM 20k a month. All right. So when you think you will choose, of course, we will choose the second one...



That's why some of our SOPs, now, we are intending to be more and more transparent. When we interview parents who want to adopt, we have to ensure that, you know, we explain to them why we need to care and support them. You're going to be going up and down Putrajaya like crazy. You need to have a car. You need to maybe take time off. So these are the things and if we find that there's anything we can do to help we will help even sometimes we provide provisions to single mothers who need it but want to keep the child. I mean, you know, regardless of statelessness or not, and mind you if a mother has a stateless child, then you know, what do you think we will advise her to do to keep the child although our work is not to separate mothers in childbirth. But if her situation is very fragile in the sense that if the child stays with you, there's no way the child can get citizenship, what are you both going to do? Are you going to be able to survive? Are you a rich foreigner who's living here? We need to knock some sense into these people before we advise. We take that a lot into consideration to advise people correctly, even single moms or parents. So, at the end of the day, you know, even if we are basically undermining our own efforts, I think it is important because at the end of the day, the child's life has to map out positively, you know, we will help wherever we can.

Finally, the right to non-discrimination intersects heavily with all other rights, due to the fact that discrimination against stateless people is multifaceted, but it intersects the heaviest with the right to mental and physical health, as seen in the following excerpts. The first excerpt below details how discrimination against Malaysian mothers, which can cause statelessness, interfaces with mental health:

I just want to name the privilege [my daughter] has and the privilege my husband has because they are white, and in the sense that they are not dark-skinned. I grew up with a lot of people calling me names and all of that stuff in a small town. So I've grown up to that. But so far, my child has been sheltered from that. I still get the brunt of it, though. People say you're lucky, [she is] not as dark as you. But so far, she's been kind of not exposed to that yet. Um, the otherness, yes, I don't feel quite settled here. Because I know

my daughter is not going to be able to fully enjoy and fully be here in the same way. I feel like I'm depriving her of something.

And so again, coming down to a choice of should I keep her close to my family, or should I be thinking about her education and health care and all barriers she's gonna face from that, because education is my biggest worry... I don't want her to go to Sekolah Kebangsaan. Vaccinations and all of that is going to cost a lot. And then miss school because she's not a local. Going to public school as a foreign student, I've heard too many horror stories about how they are really outed in public schools, I don't want her to experience that. And so when I don't know if I can afford private school it's just too expensive.

So it's just that feeling of not belonging, already, starting at this point already kind of in that. And then when she has lots of cousins, my brother and my other cousins, like, she's got lots of cousins, and they're all Malaysian and she's the only odd one out and I have a complex about that already. And I'm very defensive, and very defensive. If someone says something I'm very, like, I immediately like to try to shield her and protect her from anything. And so like, that's not going to be healthy for her growing up having a super defensive and super like, like, tingly, someone who's hyper sensitive to all of this [type of] mum. And so I'm trying to be aware of it and work on that, but it's really hard. So I went amongst my family already feeling like she's someone that I need to shelter and protect. But at the same time, how do I do that? Not impacting her in a way that is going to give her a complex. I don't know. It's really hard. Not without citizenship, and I feel like sometimes, like it's been an education process, like a lot of folks don't really fully get what it means. They're like, oh, but dual citizenship. I'm like, no, it's not about dual citizenship. It's about gender discrimination. It's if a dad can have a mum should have.

So it's been a process of educating my entire family, a lot of my friends, I get lots of questions, especially now with the court case being out there like lots and lots of questions coming my way, explaining that. So in a way, it's raising awareness, but at



the same time I find that you know, it's such, some people don't see a problem with that even amongst my family, like the uncles and folks that don't see a problem. But yeah, always follow father one. It's always father one. Why, why [does the] mother need too much like blah, blah, blah. The patriarchy is so deep-seated, so entrenched that the tentacles are so everywhere. This is just one thing that they, you know, don't even see it as a problem.

Another excerpt detailed discrimination at JPN while applying for documentation and how it traumatised them for future encounters:

Actually the JPN staff or everyone inside this JPN... [they] usually have this receptionist right, they should know about things, especially this stateless thing. Every time I go there and say I would like to see this, they will tell me, "You are 'anak haram'", "You are PATI", "You are not eligible because of this and that". The discrimination is kinda bad. You know it makes me feel like... I didn't come here for you to mock me. I came here because I need help. Instead of getting help, we get mocked. So, I think they need to keep open minded a bit, get knowledge about statelessness, about refugees. It's JPN, you are working inside, you should know things.

Discrimination at the front-facing end of JPN seemed fairly common, appearing in our dataset multiple times. The following excerpt is from an individual distinct from the previous individual:

I've been to a lot of JPN. I've been to the UTC, I've been but lots of them are not very nice la. Very discriminative. The discrimination is like, one of the staff said, oh, my status is actually 'anak haram'. She said that to me and I was like what? I know my dad is married. She says sorry to offend you but you are actually 'anak haram'. Lots of them say that it does hurt my feelings every time I go. It's not like I'm proud to become stateless. Okay, there's a lot of difficulties actually being stateless. You know, one time I wanted to go to the cinema and it was rated for 18 plus. I bought a ticket already and when I tried to get inside, they asked for my IC. I said I don't have an IC so I just went home. I couldn't work at lots of places without an IC. I can't get a job, it's very hard to get a job.

And then I can't apply for a licence, basically I live in fear la. I am afraid to go here, to go there. I've got no IC, what if I get caught by the police, who's gonna help me as well.

So, we say it is not fun but people think it's fun, they mock: "Oh, you tak de IC ke, you pendatang la, you PATI la". I feel like what? I have lived in Malaysia for my whole life since I was a kid. I was born in a local hospital, my dad is Malaysian. People, even a few friends who know me, say "Eh, you tak de IC ke" and only when they start to like treating me like she's PATI, she's Indon la. So, it happens like that... even my dad's relatives, the sisters, the families, when I go to their places with my dad before, "Oh, you anak Indon itu, right? You tak sekolah kan? Kesiannya, mesti you tak reti baca." So, I get a lot of negative comments about me because my mom is Indonesian. "Oh, you anak Indon ah? You are BB." I got a lot of it. So if you ask me being stateless is it fun? Actually it's not fun at all la. And some people still mistakenly think that refugees and stateless people are the same. Actually, I said no, it's not the same, I told them that. So, that's about it la. Lately I'm trying to get a new job also. But, I had to get a new job especially nowadays. But, since I got my birth certificate, I can register MySejahtera and I'm also fully vaccinated. So, I'm quite well la.

The final excerpt surrounding the right to non-discrimination and equality and the right to physical and mental health shows the multigenerational impact of statelessness, as a stateless adopted child of a Malaysian describes her mother's trials in trying to obtain citizenship for her:

I mean, she's worried, she's worried because she's a bit dramatic. She's only 61? [She says] when I die, I don't know what's going to happen to the property, will I be able to hand it off to you and your sister? She's worried about whether we'll be able to continue staying on in Malaysia, that sort of thing. So like, that's, we're definitely worried about those things, but, you know, bless her, she's trying really hard to find a way to get [us] citizenship. So she got me an immigration lawyer that I spoke to the other day. We're also talking to this Datuk that says he can get [us] citizenship.



So, yeah, we're, I mean, we're exploring our options, but we're not super hopeful. And we do wish that there was just a clear, legitimate route that we could follow through which we could pursue our citizenship. Yeah, so it's, it's very stressful in that way.

7.2.3 Statelessness as it intersects with the rights of women against violence, freedom of expression, assembly, and to not be subjected to torture or degrading treatment

The final cluster is the yellow cluster, which depicts the following four rights highly co-occurring in the dataset: the rights of women against violence, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, and the right to not be subjected to torture or to degrading treatment or punishment.

First of all, violations against the rights of women to be safe from violence were featured significantly in the dataset. The following excerpt depicted the experiences of a stateless refugee in Malaysia surrounding domestic violence and how it's typically resolved:

Here in Terengganu, we [husband and wife] fight also not until we go to the police station. We call Mufti. We on our own... we settle it, won't go to the police station. We don't reach to an extent where we go and report to the police station. [Sometimes] the police station also calls us, call me, Encik H, you see, your people you can settle, settle la. Don't come to the police station.

The following excerpt details an NGO worker's experience working with Malaysians who are at risk of statelessness - and how a variety of social issues can be exacerbated due to lack of legal status, including violence and child marriages, and how these issues also relate to being treated in a degrading manner:

When the girl gets pregnant, including our last case, the relatives of the boy try to talk about marriage as a solution. And they talk about it [in a] very stupid [manner], of course, this girl is less educated, the girl's mother is less educated. So they do not have the skills to talk back. But the boy was a Malaysian boy. So the

parents of that boy said, because she was underaged, he was arrested for statutory rape. So the boy's parents said, "No, if my son sangkut kesalahan, he will have 18 years of jail, but you only have to put up with nine months of pregnancy. So it's not a big deal for you to tarik balik that case." And they're saying it because they know that girl is undocumented. And then the other thing they said was, why didn't they just get married? Because tak pe lah it's better to be a janda than to be an unmarried mother, you know? So, yeah, it was one of those spectacular cases of where child marriage is promoted as a solution. And the other case was, of course, the case of the girl who was asked to get on the boat, that 60-year-old guy had to marry that 20-year-old girl, you know, as a solution. But generally, this is offered as a solution to get out of the crime of rape.

I've got a lot of desperate cases because the lockdown meant so many men have lost their jobs. So on top of being abusive, and then not being great providers, now they were locked in the house with the person who was frustrated and not a provider at all. So there were a lot of [domestic violence] cases. And it was quite severe. It was very desperate, very difficult to evacuate the woman from the tough situation. Yeah, shelters were not able to take in new people because of the COVID fears. And, and then if the person is undocumented, even when everything is expensive, some NGOs don't want to take you in. Because if they take you in and you fall sick, they end up having to pay big money to clinics and all this kind of thing.

The right to freedom of opinion and expression was very common in the dataset due to the fact that stateless individuals typically do not have an outlet to communicate their fears and issues in their life. They do not fall under any government agency, nor the United Nations Refugee Agency (UNHCR), and hence, are not able to voice what they feel towards mistreatment in any systematic manner. To see this, note that stateless persons such as in the following excerpt do not have a method to express their opinions about roadblocks in their process of overcoming statelessness:



Yes, they were JPN officers who wanted to help but then they said need to trace back my history back when I was a baby and need to find back my files based on the welfare home that I stayed throughout my lifetime, get letters from the welfare homes that I stayed, and a copy of my birth certificate and send them to JPN. Then, JPN said within two weeks they will call. They didn't call after two weeks. We are the ones that have to call them. No replies... but some I did receive replies. They sent a letter asking for the same details that I have already provided them before and it's still the same.

People from organisations that work with helping stateless individuals also sometimes face difficulties in expressing their opinions to stakeholders and in getting help from the authorities in bigger issues that intersect with their work – for example, the following individual detailed a couple that they had helped who were not aware of the stateless consequences for their child when they had bought a baby:

A lot of times, you know, it's the parents who do things wrongly... they can adopt a child and they don't understand... when they are refused citizenship from the JPN, they will get upset. Then when you dig, it comes up that they bought the baby. They buy the baby without knowing and understanding it. They easily assume that if you are born here, they are Malaysian. They always think that.

Those from organisations that work with stateless populations often also themselves face issues in expressing their opinions as those opinions could potentially be degrading to the stateless population they are working with, as evidenced below:

Majority of the people we help, I will still say it is parents who didn't register their marriage in Malaysia. For those born abroad and then try to get Malaysian citizenship, we get this type sometimes, but not very regularly. Majority is still parents who failed to register their marriage and therefore kids are not being considered as Malaysian.

Some say they don't know. I think they don't understand the consequences. And I think yes, the majority of them are actually I will say, a low income group or middle to low income groups. I don't think they understood the issue before they got married. And of course, perhaps some, I usually don't ask them in very, very details because some perhaps got their problem with a family issue as well. It's like an illegal second wife also possible or some foreign wife who has run away and then therefore, before they registered the marriage, etc. So there are various types of issues. But I don't usually go into that much detail because I think I want to focus on helping the children. I don't want to make any moral judgments there. So usually, even though sometimes I feel very angry, like why do you want to be a parent when you're so irresponsible. But I will say in the majority of cases, the father failed to register the marriage. And some mothers may have already run away. Could not locate them anymore. But why didn't they register the marriage in the first place? I think yeah, yeah, it's a long story, which I don't usually ask too much about. Yeah.

Finally, in the last two excerpts, we see that violence often interfaces with the right to not be subjected to torture or degrading treatment through the deprivation of stateless people:

We [the CSO] don't need to give legal services because we would just guide them how to reach out to JPN. And if there was no proof of their documentation in JPN, then, while the person is in detention, we would get their family members to come to JPN and do the basic requirements so that the person is out of detention. And a lot of the officers that we know who are based in the detention centres do personally text us saying that we're not sure but it seems like this person is stateless, because all their family members are Malaysian. This does happen to the younger generation today, where they could be around your age, but they run away from their home and never get their documents sorted. They could have joined gangsterism or they probably are working by themselves. So when these people are caught, we try to bring their family and then we go to JPN and do the first basic necessity things and then get him out. And then process his application for



citizenship and you won't be left in a detention centre. But if you do not have family members, getting the proof is difficult. Yes, you have to be in the detention centre until your case is sorted.

These two rights also typically co-occur in the data surrounding the interactions between stateless people and law enforcement, as seen in the following excerpt from a stateless individual:

Well, [during the pandemic] I still can get to work because of the good people, they have accepted me into the industry. But I'm quite depressed when I pass the block. I have an experience when I like going back from work, and I was blocked by the police. They asked to see my, like, IC. And I have no IC to show them, right. So I have to show them the letters from the KDN. And they just took the letter and they were like, what is this? They asked me but they kept asking me, where is your IC? And I will keep asking, keep answering them like I have no IC, that [letter] proves my identity. And they still do not understand that.

SECTION 8:

ATTEMPTS AT RESOLVING STATELESSNESS IN PENINSULAR MALAYSIA



This section discusses current and past policymakers' attempts towards resolving statelessness in Peninsular Malaysia. It looks at four areas: government perceptions towards stateless persons, data and statistics of stateless persons, developments in resolving statelessness, and best practices by other countries on resolving statelessness. We use excerpts from the interviews with the ten elected representatives (e.g. MPs, ADUNs, Senator) and five government representatives from JPN, JAKOA, MOFA, DOSM, and AGC. We also use data, statistics, and information from news articles, NGO reports, parliamentary replies, and country level reporting to international treaties.

8.1 Government perceptions towards statelessness

Malaysia does not have specific legislation on, or definition of, a stateless person. The Malaysian government has repeatedly refused to recognise the existence of stateless persons, demonstrating its intolerant and uninformed attitude towards stateless persons.

The past and current Home Ministers' stance is that stateless persons do not exist in Malaysia because they are not allowed to enter this country without legal documents or that they do not qualify for Malaysian citizenship due to their parents' citizenship and/ or marital status. The Home Ministry's consistent conflation of stateless persons with illegal immigrants (PATI) or children born to non-Malaysian parents shows a lack of understanding towards the lived experiences of stateless persons and the realities of how persons born in Malaysia can become stateless.

Stateless persons refer to persons who do not have a citizenship or are not recognised as a citizen by any country in the world. Based on the definition of statelessness, there are not supposed to be any stateless persons in Malaysia. This is because they are not allowed to enter the country due to a lack of valid documentation. In reality, this group of people has entered Malaysia with valid documentation or are illegal immigrants (PATI)



*and then purposely hidden these documents with an ill intent of obtaining Malaysian citizenship.*²³

The Home Ministry maintains that citizenship in Malaysia is determined by their parents' citizenship and marital status and therefore, they can only be classified as citizen, non-citizen, and undetermined ("No stateless people", 2015). The Home Minister also maintains that "the conferment of Malaysian citizenship is the highest award and the exclusive right of the Federal government which is not offered and given arbitrarily", (Suraya Roslan, 2021). They also maintain that the non-citizen category in children's birth certificates does not refer to stateless children and instead is an indicator to the information of the parents' citizenship status or the inability to prove they qualify for Malaysian citizenship.²⁴

*The Home Ministry would like to state that it is not appropriate for a person to claim himself as stateless. This is because the determination of a person's citizenship among others is based on the status of the nationality of his mother or father. In this case, any birth which occurs in Malaysia which has been registered as non-citizen is not a reference to stateless persons because there is information at the time of the birth showing the mother or father are foreigners. In addition, for children of foreigners born in this country, it is the responsibility of their parents to refer to their respective countries of origin to obtain travel documents and their identification documents.*²⁵

23 Same statement made by the Home Minister's parliamentary reply to Gobind Singh Deo (Puchong) on 23 March 2016, who was asking how many stateless children there are in Malaysia and what are the steps being taken to tackle the issue of childhood statelessness and to Julian Tan Jok Ping (Stampin) on 19 October 2016, who was asking what steps the government was taking in resolving the issue of stateless children in Sarawak.

24 Home Minister's parliamentary reply to Julian Tan Jok Ping (Stampin) on 19 October 2016, who was asking what steps the government was taking in resolving the issue of stateless children in Sarawak.

25 Home Minister's parliamentary reply to Ramkarpal Singh (Bukit Gelugor) on 19 May 2016, who was asking whether the government was planning on amending the laws to allow stateless children to be automatically registered as Malaysian citizens.

The non-recognition of stateless persons by KDN, the designated authoritative body governing matters on citizenship and civil registration, has two effects. First, it results in an overall low understanding and awareness of statelessness by other government agencies. Our interview with a representative from the Ministry of Foreign Affairs (MOFA) found that they rarely interact or come across the issue of statelessness because the issue is under the purview of KDN.

Second, we found that these intolerant and uninformed attitudes through policy statements from KDN translates into the way JPN operates as well. Our interview with a JPN officer revealed that they held similar views on citizenship and statelessness to statements released by the Home Minister. According to the officer, the two causes of statelessness are “... *due to incomplete documents by their parents... so they can’t prove anything to obtain citizenship*”, or “*abandoned children who couldn’t prove that their parents who abandoned them are Malaysians*”. Statelessness is thus seen as an issue that arises because of parents’ nationality status. The officer also reiterated the same stance as the Home Minister of citizenship being a privilege and not a right, “*it is not necessary or a must to give someone Malaysian citizenship because Malaysian citizenship is actually like an award... that a person must be eligible and qualify for*”.

8.2 Data and statistics of stateless persons in Peninsular Malaysia

Without a legal or working definition on statelessness, there is no official government data released on any of the stateless populations in Peninsular Malaysia. This makes it difficult to measure or quantify statelessness in Peninsular Malaysia. Even though JPN collects some relevant data such as birth registration and number of successful citizenship applications, it is not publicly available or easily accessible. The Home Minister previously maintained that JPN is not required to keep records of stateless people under the National Registration Act 1959 (Parlimen Malaysia, 2010). Our interview with representatives from DOSM found that census exercises do not collect disaggregated data on stateless persons because refugees, migrants, undocumented persons, and stateless persons are grouped together into an ‘others’ category for all non-citizens. JPN and the DOSM does not have a statelessness determination procedure, nor



has it adopted a legal or working definition of statelessness to collect comprehensive data to determine the prevalence of statelessness in Peninsular Malaysia²⁶. Therefore, statelessness in Peninsular Malaysia remains unmapped and incredibly underreported.

For data collection on stateless individuals, especially for the stateless we don't have a specific category for stateless. We insert them in the category of "Lain-Lain" [meaning] others... We will ask for identification documents, like IC, passport or other available identification documents. If they don't have also, we will still count them in the census. It's just that for us to categorise them as stateless or 'other categories' depends on the acknowledgement from the respondent itself. If they inform us that they don't have documents and citizenship status from any countries, maybe we will place them under the category of "Lain-Lain" because we don't have a specific category for stateless persons.²⁷

Another problem is that existing datasets that could be used to measure the prevalence of statelessness, such as the number of identity card applications according to the type of identity cards or number of persons registered in mobile registration programmes, are collected using different methodologies and measures and kept within KDN. Through our interviews with government agencies such as JAKOA, MOFA, and DOSM, we found they typically do not have access to any relevant data on stateless persons and it is kept exclusively within KDN. Only DOSM reported that they get non-citizen related datasets from KDN on non-citizens once a year for a technical working committee. Thus, a recommendation from our interview with DOSM is to form a special committee with all relevant agencies who collect data on stateless persons to encourage inter-agency collaboration to make sense of their existing datasets to understand the prevalence of statelessness in Peninsular Malaysia.

The Covid-19 Immunisation Task Force reported that up to 1.1 million stateless individuals, or 'non-Malaysians without proper documentation'

26 Excerpt from our interview with representatives from DOSM.

27 Excerpt from our interview with representatives from DOSM.

completed their Covid-19 vaccination up until 31 August 2021. KDN's recommendation to them was to record data on non-citizens based on the following categories: illegal immigrants (PATI), refugees registered with the United Nations High Commissioner for Refugees (UNHCR) and stateless persons (The Malaysian Reserve, 2021). However, it is unclear what definition of 'statelessness' government agencies are using to determine whether a person is stateless and what process was used to determine a person's statelessness. Under the MySejahtera mobile application, there is no option to self-report your nationality status as the only information collected are: full name, IC or passport no, country of origin, and date of birth. Thus, this figure of 1.1 million individuals is unclear, as the measures the Ministry of Health used to determine whether a person is stateless have yet to be disclosed.

The data from Malaysia's Periodic Report to the Committee on the Rights of the Child 2008-2018 can be used to highlight the incidence of childhood statelessness, as shown in Table 19. There is an alarming gap between the number of births registered and the total number of children in Malaysia. Out of the 2,595,300 children in 2018, only 513,586 births were registered, indicating that there are as many as 2,081,714 children without their births being registered. Children without birth registration are at risk of being stateless. Another alarming trend from this report is the large increase in the number of non-citizen children from 58,900 to 138,300 over a period of ten years. This growing number of stateless children, refugee children, and migrant children are more vulnerable with no access to basic services such as education, healthcare, and welfare (UN Treaty Body Database, 2021).

NGO reports such as DHRRA and UNHCR collect data on stateless persons. However, this is limited to the number of stateless persons they can reach or access in a given time period, which also depends on the scale of their registration and mapping efforts. DHRRA identified at least 12,392 stateless Indians in Selangor, Negeri Sembilan, Perak and Kedah between 2014 and 2017 (Uqbah Soperi, 2017). UNHCR identified 111,298 persons under UNHCR's statelessness mandate in 2020. They also identified that the largest group of stateless refugees in Malaysia are the Rohingya from Myanmar who make up around 103,380 out of the stateless refugee population (UNHCR, 2021).



Table 19: Data from DOSM and JPN, taken from Malaysia's Periodic Report to the Committee on the Rights of the Child 2008-2018 (UN Treaty Body Database, 2021)

Year	Total number of births registered	Total number of children	Total number of non-citizen children
2008	502401	25125000	58900
2009	519924	2515000	57000
2010	512579	2508600	54100
2011	530130	2505600	71400
2012	547987	2524700	88300
2013	529401	2559300	111600
2014	540415	2571200	130300
2015	534464	2601600	147000
2016	525054	2630400	149500
2017	522487	2613700	145600
2018	513586	2595300	138300

Data from government agencies revealed in parliamentary replies or reported in press statements are the only available proxy measures to estimate a stateless population. However, they are not the most accurate and reliable because the data shared is typically for a given time period with unclear and unstandardised measures, making it impossible to track the size of stateless populations over time. The data is not accessible as it can only be requested during parliamentary sittings at the discretion of the relevant ministers. The most common type of data shared by KDN are the number of citizenship applications and the type of citizenship applications along with the success rate.

The following information can be used to estimate the number of stateless children in Malaysia. Based on JPN's records, out of the 33,094 applications for Malaysian citizenship under Article 15A between 2015 and 2021, only 4,534 have been awarded citizenship while 2,396 applications were rejected, while the status of the remaining 26,164 applications is still unknown (Parlimen Malaysia, 2021). There were 9,372 citizenship applications under Article 15(2) for children with one Malaysian parent and one non-Malaysian parent between 2008 and 30 April 2014 (Parlimen Malaysia, 2014). JPN's records show that as of 25 February 2018, 12,667 children with a Malaysian father and non-Malaysian mother were denied citizenship on grounds that their parents' marriage was not registered ("MP shocked", 2018). The Home Minister revealed that only 22 out of 2,532 citizenship applications made by Malaysian mothers for their children between 2018 and 2021 were approved, and only 31 were rejected, leaving 2,300 applications under review (Lim, 2021, October 26). As previously stated, in 2019 JKM recorded 1,933 stateless children under the age of 18 in homes nationwide, comprising 1,098 boys and 835 girls in 2019 ("Inconsistency in granting citizenship", 2020).

As for the estimated number of persons with long-standing residence since pre-independence, the Home Minister stated that JPN recorded 227,430 Permanent Resident Card holders as of 30 November 2016 (Parlimen Malaysia, 2016). JPN recorded 17,155 citizenship applications that have been received from individuals of Indian descent from 2010 until 30 June 2017 (Parlimen Malaysia, 2017a).

As for the estimated number of stateless indigenous persons, JAKOA estimates that no more than 10% of the Orang Asli population are undocumented. Based on JAKOA's census data on Orang Asli in 2020, there are around 20,000 Orang Asli without any documentation. The most affected areas in Peninsular Malaysia with Orang Asli without documentation are Pahang, Kelantan, and Perak because many of their villages are in rural areas.²⁸ A news report in 2010 found up to 80 Orang Asli from the Rompin district in Pahang are stateless because they were born without birth certificates ("80 Orang Asli in Rompin", 2010).

²⁸ Excerpt from our interview with JAKOA.



8.3 Developments in addressing statelessness in Peninsular Malaysia

8.3.1 *State's recognition and commitment to preventing and reducing statelessness at the international level*

The Malaysian government acknowledged the problem of statelessness and pledged to work with UNHCR to resolve statelessness for the first time at an international level during UNHCR's High-Level Segment on Statelessness in 2019 (Malay Mail, 2019; UNHCR Malaysia, 2019). The then Home Minister Muhyiddin Yassin recognised the level of discrimination, stigmatisation, and precarious environment that makes stateless persons more susceptible to human trafficking and extremism. The Home Minister shared the following measures Malaysia has taken to reduce and prevent statelessness. However, there have been no updates on the government's developments on resolving statelessness since then, and subsequently the change in government occurred:

- (1) *Malaysia is adopting more transparent procedures to facilitate applications of citizenship and to prevent Malaysian children from becoming stateless. Our revised policies will facilitate the adoption process and help to curb baby-selling and smuggling. We are also taking measures to achieve universal birth registration by simplifying procedures and improving access to the process.*
- (2) *In fulfilling Malaysia's obligation under the Convention on the Rights of the Child (CRC), Malaysia had enacted the Child Act 2001. Subsequent amendments to the Child Act in 2016, provide protection and family-based care for every child, regardless of status and citizenship. Every child is entitled to protection and assistance in all circumstances without discrimination.*
- (3) *Malaysia is also committed to address situations faced by undocumented persons. A task force has been established to look into existing barriers. As a result, 1,641 citizenship applications have been approved recently. This task force will continue its work in the foreseeable future and hopefully we will be able to reduce the number of stateless people further.*

- (4) *Malaysia acknowledges that some sections of the population are at particular risk of statelessness. This may be because their living conditions make it difficult for them to register births or obtain related documents. They include nomadic and border populations. In line with the spirit of Sustainable Development Goals (SDGs) of leaving no one behind, particularly those who are in vulnerable situations, the Government of Malaysia has sanctioned outreach programmes to encourage civil registration especially in rural and remote areas with the aim to facilitate access to social services. The implementation of the MyDaftar programme by the National Registration Department (NRD) has immensely helped those who have been living without documents. A total of 227,481 applications in 8,412 separate outreach programmes were facilitated by the Registration Department from 2012 to 2017. In the first eight months of 2019, 1,066 outreach programmes have been conducted.*
- (5) *Malaysia underlines that the effective utilisation of ICT can contribute to States' efforts in addressing statelessness. The Government of Malaysia has embarked on serious efforts towards digitalisation of civil registration including birth registrations.²⁹*

8.3.2 Targeted registration initiatives for stateless Indians and Orang Asli with no documentation

The Government acknowledged the existence of the stateless Indians of Tamil descent population by launching the Malaysian Indian Blueprint in 2017, where it pledged to resolve statelessness and documentation issues for the affected Indians of Tamil descent within five years (Rodziana Mohamed Razali, 2017). It organised a major registration campaign known as MyDaftar which reportedly resulted in 2,500 citizenship applications submitted by persons of Indian descent who were born before independence and lack documentation (Malaysiakini, 2017). The Home Minister revealed that out of the 2,400 persons who attended the MyDaftar campaign in June 2017, 701 applications were

29 Country Statement by Muhyiddin bin Haji Mohd Yassin, Minister of Home Affairs of Malaysia at the UNHCR High-Level Event on Statelessness, 70th Session of the Executive Committee of the High Commissioner's Programme.



incomplete while 1,338 persons needed citizenship guidance. The Home Minister also revealed that they received 17,155 citizenship applications from individuals of Indian descent between 2010 and 30 June 2017 (Parlimen Malaysia, 2017a). In addition, the Pakatan Harapan government pledged in 2018 that all stateless Indians aged 60 and above, including the 3,407 persons identified by Pakatan Harapan MPs, would be immediately granted citizenship. Another mapping and registration campaign by Development of Human Resources for Rural Areas Malaysia, an NGO working on eradicating statelessness amongst Malaysian Indians, identified at least 12,392 stateless Indians in Selangor, Negeri Sembilan, Perak, and Kedah, between 2014 and 2017. Out of this sample, only 2,500 had acquired citizenship (Uqbah Soperi, 2017). Despite these registration campaigns by government agencies and NGOs and pledges to resolve statelessness amongst this population, it is still unclear how many stateless Indians of Tamil descent managed to obtain citizenship through these efforts due to a lack of transparent and regular updates by the government on this matter.

As for Orang Asli with no documentation, JPN and JAKOA have organised Unit Mobile JPN, mobile registration programmes that go on the ground to Orang Asli villages to register births and identification documents, as well as to replace lost identification documents or register late births (Suraya Roslan, 2018; Erzufariza Zulkifly, 2019). These mobile registration units are targeted at people who are unable to access NRD offices because they live in remote, rural areas. However, it is unclear how frequently this programme runs as it appears to have only been run between 2018 and 2019 based on news reports (Suraya Roslan, 2018; Erzufariza Zulkifly, 2019). The JAKOA officers we interviewed estimated that the Unit Mobile ran around three to four times per year across different villages before the pandemic and that it has not been running since the MCO began in 2020. It is difficult to determine the effectiveness of the Unit Mobile initiative based on the infrequent schedule and the impact of the pandemic, and whether this has exacerbated the issue of Orang Asli with no documentation.

8.3.3 Changes made to procedures to facilitate applications of citizenship by government agencies

The Home Ministry announced changes made to improve the procedures for citizenship application affecting stateless populations. In 2019, the Home Ministry amended the SOPs to shorten the processing times from three years to one for citizenship by registration applications under Article 15A for applications received from 2020 onwards (Malaysiakini, 2019; Parlimen Malaysia, 2020a). In 2016, the Home Ministry announced the removal of the requirement of sitting for a written test for Bahasa Malaysia proficiency for those aged 50 years and above (Parlimen Malaysia, 2016). In 2011, the Ministry of Home Affairs announced that the status of the Thai community in Malaysia on their MyKad would be changed from “Thai Descent” to “Bumiputera Siam” to allow them to access public universities and own property. He also announced that those above 60 years old applying for citizenship would be excluded from the Bahasa Malaysia written test and only need to sit for the Bahasa Malaysia oral test (Malaysiakini, 2011).

JKM announced in 2017 that they would issue a special identity card for all abandoned stateless children under the care of its welfare homes. This ‘special ID card’ would complement the official letters issued by JKM for children who turn 18 and have to leave the welfare homes. Besides this special card, a special cabinet paper on the betterment of stateless children’s welfare was also submitted (Noorsila Abd. Majid, 2017). It is unclear how many abandoned stateless children managed to obtain citizenship or access public services with this ‘special ID card’ and how it differs from a MyKid or MyKas card.

8.3.4 Citizenship policy reforms by elected representatives

Peaceful protests were held at JPN offices in Ipoh, Penang, Klang, and Putrajaya by stateless individuals with red ICs along with assembly persons from Parti Keadilan Rakyat (PKR) between 2012 and 2013 (“Perak red IC holders”, 2012; Loone, 2013; “60 stateless Indians”, 2013). The protests were to pressure the federal government to resolve statelessness amongst stateless Indians and to raise public awareness about the prevalence of statelessness and the lack of remedies available for stateless persons.



When the Pakatan Harapan coalition was in government, there were several policy and advocacy engagements to resolve statelessness made by elected representatives and civil society. Sivarasa Rasiah, the former Deputy Minister of Rural Development, along with other Indian MPs and ADUNs explained in our interview that they attempted to initiate internal discussions with the Home Minister and other high ranking KDN civil servants to resolve the issue of stateless Malaysian Indians in 2018. They successfully campaigned for the then Prime Minister to make a statement that all stateless Indians aged 60 years and above are to be granted citizenship immediately. However, they were not able to translate this policy statement into a change in SOPs in JPN to simplify the documentation and application process for the targeted group. He reported that KDN refused to change their SOPs for persons who have been residing in Malaysia since pre-independence. This pushback by the civil service demonstrated “the ideological resistance” in KDN, possibly because the issue was “too Indian, too many Indians trying to get citizenship”. Another initiative led by Waytha Moorthy Ponnusamy, the former Minister in the Prime Minister Office, was to set up a Cabinet committee and draft a Cabinet paper with solutions to formally address and resolve the issue of statelessness amongst Indians in 2019. However, these efforts did not come to light after the Pakatan Harapan government lost power in 2020. Charles Santiago, the Klang MP, initiated a closed-door dialogue in Putrajaya between a group of stateless children and Malaysian parents from the Stateless Children Family Support Group (SCFSG) with the former Home Minister Muhyiddin Yassin in 2019 (Zikri Kamarulzaman, 2019). Rasiah reflected that they “should have maybe taken it as a more multiracial issue” instead of focusing strictly on statelessness amongst Malaysian Indians.

Also in our interviews, Teo Nie Ching, Kulai MP and former Deputy Minister of Education shared about her and other MPs’ efforts to resolve statelessness during her service in the Pakatan Harapan administration. As part of the PH reform agenda on citizenship, they initiated internal discussions with the Home Minister and top civil servants from JPN and JIM to campaign for change in SOPs to resolve statelessness amongst children born out of wedlock, adopted children and senior citizens with red ICs for all persons regardless of race. The meetings appeared to be “fruitful” because the former Home Minister,

Muhyiddin Yassin was supportive of the proposed SOPs to make citizenship application procedures easier for stateless persons, and for KDN to review and simplify these SOPs. However, these proposed changes to the SOP were never approved and implemented after the change of Home Minister at the fall of the PH government. Teo theorised that the civil servants made use of this change of Minister to “cancel or block the decision or plans” made by the previous Home Minister to get the outcome they want.

In terms of efforts to campaign for stateless children to access public education, the Ministry of Education under the PH administration released a circular on 15 January 2018 announcing that all stateless and undocumented children can enrol in schools from 2019 onwards (Nor Affizar Ibrahim, 2018). This applied to children adopted by Malaysian parents, children born to parents who did not register their marriage legally, and undocumented children with one Malaysian parent. However, they needed to submit the relevant documentation in order to enrol in schools, such as adoption papers from JPN, court order from JKM, and a letter from an MP, state assembly person, district officer, village head, or the identity card of the Malaysian parent. An additional condition after enrolment was that parents or family members were given two years to apply for documentation and citizenship with JPN, or the child might not be able to continue public schooling. Besides the submission of documentation, stateless or undocumented children were required to pay fees between RM 120 and RM 240 to enrol. These children were also not eligible to receive aid such as given under the Textbook Loan Scheme, Supplementary Food Programme, and other special assistance measures. However, the MOE made a huge U-turn on this stance in November 2020, using the Education Regulations 1998 and Education Act 1996 to justify its non-permittance of stateless children to enrol in government schools, and offered alternative education centres or private schools as an alternative for stateless children (Parlimen Malaysia, 2020). Because of the MOE’s inconsistent policy, stateless children continue to be denied enrolment in public schools as reported by former deputy education minister Teo Nie Ching for Johor in December 2020 and Penang in February 2021 (“Some stateless children”, 2021).



8.3.5 *Parliamentary advocacy, strategic litigation, and provision of basic services by civil society organisations*

The number of CSOs working on statelessness issues in Peninsular Malaysia grew significantly between 2010 and 2022 but a majority of the CSOs are relatively new as they were established in the last five to seven years.

NGOs working on advocacy on statelessness in Peninsular Malaysia are Family Frontiers, Voice of the Children (VOC), Lawyers for Liberty, and DHRRA. Family Frontiers has been more active during the pandemic from 2020 onwards, creating guidebooks for citizenship applications for Malaysian mothers under Article 14 as well as conducting surveys to document lived experiences by Malaysian mothers applying for citizenship for their children. VOC collects data and documentation from the cases of childhood statelessness they handle to create evidence-based research and policy papers to present to the government. DHRRA works with government agencies to create cabinet papers with recommendations to resolve statelessness amongst the Malaysian Indian community and publishes community-based handbooks on understanding and resolving statelessness. Most of VOC and DHRRA's policy papers and handbooks were published between 2017 and 2019.

Besides advocacy, there is also a network of NGOs working to enable stateless persons to access basic services. Orphan Care and other formal and informal children's homes across Malaysia assist JKM to house stateless children in their shelters. Orphan Care opened a baby hatch in 2010 to support young women dealing with unplanned pregnancies. NGOs or community organisations such as IDEAS Academy (set up in 2014), Buku Jalanan Chow Kit (set up in 2015), Yayasan Chow Kit (set up in 2011), and Dignity for Children Foundation (set up in 1998) run alternative learning centres for stateless children, mostly for primary level and very few for secondary level education.

NGOs also work with legal firms on strategic public interest litigation on the rights of stateless persons to acquire a nationality, primarily Lawyers for Liberty; Azri, Lee Swee Seng and Co; and Mah Weng Kwai and Associates, as well as many other lawyers from other firms. For

example, Family Frontiers and six Malaysian women filed a constitutional challenge with the Kuala Lumpur High Court in December 2020 to declare that Malaysian women married to foreign spouses can automatically confer citizenship on their children who are born overseas. The High Court ruled in their favour on 9 September 2021 and declared that Malaysian mothers who married foreigners should be able to automatically pass on their Malaysian citizenship to their children born overseas instead of having to go through a citizenship application process. The Malaysian government had applied to suspend the High Court's landmark decision to issue citizenship documents, pending their appeal on the judgment. However, the Court of Appeal dismissed the Malaysian government's bid to suspend the issuing of citizenship documents on 22 December 2021 (Lim, 2021, December 22). Three of the plaintiff Malaysian mothers were finally issued citizenship certificates for their children on 21 February 2022. Following this landmark decision, the Ministry of Home Affairs announced that the proposal to amend the constitution on citizenship laws to allow Malaysian women to pass on citizenship to children born abroad is pending approval from the Conference of Rulers before it can be tabled at Parliament. ("Govt reiterates intention", 2021). However, in March 2022, the Home Ministry announced it would continue its appeal against the High Court decision and wait for the Court of Appeal decision that will only be announced on 22 June 2022, leaving the affected mothers in limbo (Bedi, 2022; Lim, 2021, December 22). In June 2022, the Court of Appeal decided to defer its verdict to August 2022 to allow for more arguments to be heard from both sides, after the government raised additional points during the hearing on 22 June 2022 (Tan, 2022). In August 2022, the Court of Appeal overturned the High Court decision on 9 September 2021 that allowed women to confer citizenship on their overseas-born children. The case is still ongoing as the six mothers announced they would appealing the decision to the Federal Court (Lim, 2022, Aug 5).

SECTION 9:

BEST PRACTICES BY OTHER COUNTRIES ON REDUCING AND PREVENTING STATELESSNESS



9.1 Statelessness determination procedures and facilitated naturalisation

Many States party to the 1954 Convention have established statelessness determination procedures (SDPs) to identify stateless individuals in a migratory context and ensure they enjoy the rights and protections entitled to them under the Convention until they acquire a nationality (UNHCR, 2018). States party to the 1954 Convention are obligated to identify stateless persons within their jurisdiction so they can extend the rights and protections they are entitled to. However, the Convention has no guidelines on how States are to determine whether an individual is stateless. Therefore, SDPs are the most efficient way for States to identify stateless persons and fulfil its obligations under the Convention.

Globally, out of the 94 States party to the 1954 Convention, only 23 States have introduced SDPs (Rouweler, 2020) while 37 States made pledges in 2019 to implement SDPs (UNHCR, 2020, July 20). There is a recent positive development of countries starting to accede to the 1954 Convention and establish an SDP at the same time, such as **Georgia, Moldova, Spain, and Turkey** – as compared to countries who have been parties to the Convention for years without establishing any SDP. The following are good practices in establishing fair and effective statelessness determination procedures that protect stateless persons, as outlined by UNHCR (2020, July 20):

- a) Increase in research and guidelines on statelessness and SDPs. The UNHCR published a Handbook on Protection of Stateless Persons (“UNHCR Handbook”) in 2014 which provides detailed guidance for governments, policy makers, the judiciary, NGOs, legal practitioners, and others on how to develop SDPs to recognise and grant protection status to stateless persons (UNHCR, 2014). In Europe, research into the scope of statelessness at a national level has increased the awareness of the issue and the importance of SDPs, and led to the adoption or improvement of SDPs. For example, the **United Kingdom** established its SDP in 2013 after research on statelessness and advocacy efforts by civil society (UNHCR and Asylum Aid, 2011). Another example is **Belgium**, which published a mapping study on statelessness in 2012 highlighting the gaps in the existing SDP, which led to the government taking steps to



improve the procedure (UNHCR, 2012). Research and advocacy by UNHCR and other NGOs in **Italy** have increased awareness on statelessness among the Roma population and gaps in their existing SDPs. This led to the initiation of a draft law proposal to reform and improve the SDPs in Italy in 2015. Another example is **ENS' Statelessness Index**, an online comparison tool assessing European countries' law, policy, and practice on the protection of stateless people, which highlights gaps in countries that have yet to implement SDPs, or how existing SDPs can be improved according to international norms and good practice. Meanwhile in the Americas, the **Brazil Declaration and Plan of Action** established in 2014 called for the establishment of SDPs and facilitated naturalisation, and the **Organisation of American States** adopted a series of resolutions encouraging States to introduce SDPs. These regional efforts led to seven countries in the region establishing their own SDPs (Rouweler, 2020). In Asia, the **Philippines** was the first country in Asia to establish an SDP in 2012 following the country's ratification of the 1954 Convention in 2011.

- b) SDPs need to be accessible to stateless populations. This requires a balance between the centralisation of expertise on how to conduct SDPs by a specialised administrative or judicial unit of government and decentralising the process to allow individuals to access these SDPs in government offices throughout the country. For example, **Spain** allows applications to be lodged through governmental bodies throughout the country, but the examination and analysis of the applications is done within a centralised body. In **Italy**, where SDPs can take place both through an administrative and a judicial procedure, the judicial procedure was decentralised in 2017 to enhance the specialisation of judges hearing such matters. **Hungary** trains government officials who are in contact with stateless persons on how to identify potential stateless persons and refer them to the SDP. Similarly in **Spain**, those who qualify to claim they are stateless are identified in the asylum procedure and informed they can initiate the SDP.
- c) SDPs should incorporate fundamental due process guarantees such as access to an interview; interpretation assistance; legal aid; safeguards for protections for women, children, and people with disabilities; a right to a timely decision along with a decision in writing with an explanation; and a right to repeal applications

without threat of expulsion. **Moldova** and **Hungary** allow applicants to submit both written and oral applications for SDPs. In **Latvia**, applicants receive assistance from the designated government agencies to fill out the application form. Strict application deadlines and legal status requirements should also be avoided to minimise any practical and legal barriers to the procedure. **France** and **Mexico** have established SDPs that do not impose these conditions on applicants.

- d) The burden of proving a lack of nationality should not be placed entirely on the applicant but shared between the State and the applicant. States should adopt a collaborative, non-adversarial approach in investigating a person's citizenship. SDPs should take into consideration the difficulties in proving statelessness given the nature of statelessness where applicants will not be able to provide documentation. The burden of proof is shared in countries such as **France, Hungary, Moldova, the Philippines, and Spain**, so that both applicant and the case worker make efforts to establish the applicant's lack of nationality. This can involve contacting foreign authorities to request specific information about an individual's case or guidance on that country's nationality laws, such as in the case of **Kosovo** and **Moldova**.
- e) States with SDPs should allow stateless persons to enjoy the rights and protections under the 1954 Convention such as the right to work and the right to reside without fear of expulsion. For example, **Moldova's** law grants applicants a right to stay during the SDP process. In **France**, stateless persons who have been recognised by the procedure receive a renewable residence permit for one year while in **Turkey**, they receive a renewable Stateless Person Identification Card that allows lawful residence for two years. **Spain's** law allows those recognised as stateless the right to work.

Once an SDP has been established, one of the State's obligations is to facilitate the naturalisation of stateless persons in a migratory context (e.g. migrants, refugees) by lowering the legal, financial, and practical barriers to accessing citizenship. In Malaysia, citizenship by naturalisation is inaccessible to stateless persons as it requires applicants to have lived in Malaysia for a certain period of time, show proof of entry through a



valid travel document, and show a good proficiency of Bahasa Malaysia, as discussed in Sections 3 and 6.

The following are good practices outlined by UNHCR on citizenship laws to allow stateless persons to access citizenship by naturalisation (UNHCR, 2018):

- a) Laws that reduce residency requirements for stateless persons: **Greece** reduced the period of residency required for stateless persons to be eligible for naturalisation from seven to three years. **Brazil** similarly halved the residency requirement from four to two years for stateless persons.
- b) Laws that waive proof of language mastery and livelihood: **Bosnia and Herzegovina** waived the requirement of language proficiency and proof of livelihood for stateless persons to qualify for citizenship by naturalisation.
- c) Laws that lower other documentation requirements for stateless persons: **Bosnia and Herzegovina** adjusted their documentation requirements by exempting stateless persons from needing to prove a lack of criminal history. **Greece** exempts stateless persons from needing to present a birth certificate and allows them to submit other alternative documentation.
- d) Laws that waive or reduce application fees for stateless persons. States should eliminate or reduce fees and other administrative costs on application fees. **Greece** reduced fees for recognised stateless persons from 700 euros to 100 euros.
- e) Facilitated naturalisation of children and other kin of stateless persons. In **Kosovo**, the law allows that family members of stateless persons are entitled to acquire citizenship. In **Bosnia and Herzegovina**, minor children of stateless persons with temporary residence are not only entitled to nationality but are granted even more favourable exemptions for naturalisation.
- f) Non-discretionary approach as a best practice to facilitate naturalisation: UNHCR recommends a non-discretionary approach instead of a discretionary approach, as in the case of **Malaysia** where decisions for citizenship by naturalisation applications are at the discretion of the Minister of Home Affairs to grant or deny without any option to repeal.

9.2 Law reforms to resolve existing major *in situ* stateless populations

In countries with existing large-scale statelessness, the cause of their statelessness is typically traced to the State's formation when certain groups were excluded or subsequently deprived of nationality for discriminatory reasons. This applies to many *in situ* stateless populations in a non-migratory context who were born in and lived their entire lives in the country but are unable to acquire nationality due to administrative, financial, legal, or discriminatory barriers. Statelessness *in situ* is often the result of the framing and implementation of nationality laws, as discussed in Section 3. Therefore, the solution to resolve *in situ* statelessness is for changes to be made to legislation and policies on citizenship.

The most effective way to resolve large-scale *in situ* statelessness is to amend the rules for acquisition of nationality to automatically give stateless persons a nationality if they fulfil criteria to demonstrate their genuine and effective links to the country. Criteria such as stateless persons born in the country or resident before a specific date or descended from persons who fulfil these criteria is most commonly used. Other non-automatic nationality acquisition procedures are citizenship by registration or naturalisation (as discussed in the previous subsection on facilitated naturalisation) – both are non-automatic and discretionary in Malaysia. Non-automatic and discretionary procedures are less effective ways to resolve statelessness because it requires individuals to apply for nationality who may face difficulties accessing the information and the procedure due to poverty or physical access.

Based on UNHCR's Good Practice Paper on Action 1: Resolving Existing Major Situations of Statelessness (UNHCR, 2015, February 23), these are the four common themes in successful responses in addressing major statelessness. First, States identified and acknowledged the existence of large-scale situations of statelessness in their country. Second, UNHCR and other civil society actors provided technical advice and ran targeted advocacy to States. Third, States demonstrated the political will to resolve statelessness. Lastly, the collaboration among a broad range of stakeholders ensured governments mobilised government agencies to reform the law and policies.



The following are the key elements UNHCR identified in successful resolutions of large-scale cases of statelessness based on other countries' good practices (UNHCR, 2015, February 23):

- a) Law or policy reform enabling automatic acquisition of nationality. In **Sri Lanka**, the stateless Hill Tamils, which had become stateless following migration and State succession, acquired nationality through law reform to automatically grant nationality, facilitated by a targeted nationality campaign to do community outreach. This helped almost 200,000 members of the population to acquire nationality. In **Bangladesh**, statelessness among the Urdu-speaking 'Bihari' community, which had become stateless following migration and State succession, was resolved after sustained community-based advocacy, a successful litigation strategy, and lobbying for the implementation of a High Court ruling to recognise this group as nationals. In **Kyrgyzstan**, stateless Soviet citizens who had become stateless following State succession acquired citizenship because of the implementation of a new citizenship law that simplified the naturalisation procedure and recognised this group as nationals with proof of residence in the last five years.
- b) Law reform enabling acquisition of nationality by registration. In **Brazil**, children became stateless when born abroad to Brazilian parents because of a legal barrier denying citizenship to children born in these circumstances. A civil-society-led advocacy campaign resulted in constitutional reforms to allow these children to acquire Brazilian nationality upon registration at a Brazilian consulate.
- c) Law or administrative reform enabling acquisition of nationality through naturalisation. The **Russian Federation** implemented legal and administrative reforms to facilitate the naturalisation of more than 650,000 stateless former Soviet citizens who had become stateless following State succession. Similarly, the **Turkmenistan** government collaborated with UNHCR to conduct a registration campaign to identify and register undocumented former Soviet citizens (who became stateless following State succession) for naturalisation or residence status. In **Vietnam**, to address statelessness among former Cambodian refugees and Vietnamese women married to foreigners, the government reformed the nationality law to allow for naturalisation of the refugees and to

safeguard against statelessness for Vietnamese women. UNHCR was highly involved in raising awareness of the issue through high-level outreach, providing technical and operational advice to the government, and conducting a comprehensive assessment of gaps in the nationality laws.

9.3 Law reforms to reduce and prevent childhood statelessness

The goal of Action 2 of UNHCR's Global Action Plan to End Statelessness by 2024 is to ensure States have provisions in law to grant nationality to (i) children born in their territory who do not acquire another nationality at birth, (ii) children of unknown origin found on their territory, and (iii) children born to their nationals abroad who do not obtain another nationality at birth (UNHCR, 2017). Obligations to prevent and reduce statelessness among children are found in the CRC and ICCPR, which recognise the right of every child to acquire a nationality. The 1961 Convention requires States to prevent statelessness among children born in their territory by automatically granting nationality to children at or very soon after birth. Regional human rights systems such as the American Convention on Human Rights and the African Charter on the Rights and Welfare of the Child also place an obligation on States to grant nationality to children who do not acquire another nationality at birth.

The following are good practices on law reforms to reduce and prevent childhood statelessness as identified by UNHCR (2017, March 20):

- a) Laws ensuring nationality for children born in the country who would otherwise be stateless and for children of unknown parents: Children who would otherwise be stateless should automatically be granted nationality at birth through a non-discretionary procedure that is not subject to conditions such as language proficiency, legal residence, or 'good conduct'. In **Finland**, even though they follow *jus sanguinis* rules, they allow children born in Finland who would otherwise be stateless to acquire Finnish nationality automatically. **Latvia** and **Estonia** have adopted law and procedural reforms that allow children of former Soviet citizens with undetermined nationality to obtain nationality more easily based on being born



in their territory. In the **United Kingdom**, there are provisions under their nationality laws for children with unclear nationality or weak links to other States to acquire British citizenship but in practice it is exercised less frequently. In **Senegal**, the law provides that if someone has been a habitual residence in the country and has always been treated as a national, then it shall be presumed they are a national. In **France**, they mix both *jus soli* and *jus sanguinis* principles so that there are provisions to prevent statelessness for children born to parents who are unable to confer nationality or are unknown. The French courts play an important role in establishing the nationality of stateless children.

- b) Laws ensuring nationality for children of unknown parents: A common safeguard to prevent childhood statelessness is to have a process for children of unknown parents to be granted nationality based on evidence supplied by the police, hospital, social worker, or children's home caring for the child. This safeguard would apply to abandoned children but also in cases of adopted children who cannot trace their parents' location or identity. In **Kenya**, after many years of campaigning, a 2010 constitutional reform recognised the right to nationality for children of unknown parents and established a procedure to determine the nationality of an abandoned child.
- c) Laws ensuring nationality for children of nationals born abroad: Some countries do not allow the transmission of nationality for children born abroad to parents who have been residing outside the country for an extended period, which may cause childhood statelessness in cases where they cannot acquire the nationality of the country of their birth. **Chile** and **Brazil** amended their nationality laws which typically follow a *jus soli* approach to provide easier access for children born abroad to acquire nationality. In the **United Kingdom**, conferment of citizenship for children born abroad by descent is restricted to only one generation, but this restriction does not apply if the child does not acquire any other nationality at birth. Therefore, stateless children born outside the country are entitled to registration as a citizen.
- d) Laws ensuring nationality for children born under international adoption: In some countries, adopted children are not protected from statelessness such as **Malaysia** where adopted children cannot acquire their adoptive parents' nationality. In cases of

international adoptions, there can be problems if the nationality of the adopted child does not follow the nationality of the adopted parents. If the country of the child's original nationality has automatic loss of nationality in international adoptions but the country of the nationality of the adoptive parents does not automatically allow for the adopted child to acquire the adoptive parents' nationality, the child is rendered stateless. In **Romania**, a child can lose their nationality if their adoption is cancelled or reversed. The Committee on the Rights of the Child (CRC Committee) has made explicit recommendations for States to introduce safeguards to prevent childhood statelessness in the context of international adoption (Institute on Statelessness and Inclusion, 2016). For example, the Committee has recommended **Switzerland** to "accelerate the assessment period" for adopted children in international surrogacy arrangements to "ensure the child is not stateless or discriminated against" during the assessment period.

- e) Laws ensuring nationality for children born under international surrogacy arrangements: Some countries may lack laws to protect children against statelessness in the context of international surrogacy arrangements because of a conflict in the surrogacy regime and the nationality laws of the surrogate mother's country of nationality and the commissioning parents. Statelessness can be induced in countries where commercial surrogacy is illegal, highly regulated, or actively discouraged by the law such as in the case of Switzerland which prohibits surrogate motherhood and surrogacy arrangements made abroad. In this circumstance, the nationality of the commissioning parents or the surrogate mother may not be legally recognised and children born in these arrangements may not be able to acquire a nationality. In countries such as **France, Italy, Germany, China, Japan, Switzerland, Greece, Spain, and Norway**, surrogacy is entirely prohibited and they refuse to grant nationality to surrogate-born children. In countries such as **Canada, UK, Australia, New Zealand, and the Netherlands**, commercial surrogacy is restricted but altruistic surrogacy is allowed. In countries such as **India, Ukraine, Russia, Panama, Thailand** and **some states in the United States**, commercial surrogacy is legally permitted so surrogate-born children can acquire citizenship from the commissioning parents, but there



are still some documented cases of statelessness induced by international surrogacy arrangements. International law provisions have been insufficient in preventing statelessness among children born out of international surrogacy arrangements (Sanoj Rajan, 2017, January). Therefore, one solution is that international surrogacy arrangements need to be regulated under international law which requires commitment and the political will from States. A second solution is for States to regulate international surrogacy arrangements at a national level through legal and policy reforms to prevent statelessness for surrogate-born children. In **India**, international commercial surrogacy was abolished completely to avoid complications of statelessness through the introduction of the Surrogacy (Regulation) Bill 2016 (Sanoj Rajan, 2017, April 21).

- f) Adoption of *jus soli* approach to protect against statelessness: In the Americas, States adopt the *jus soli* approach so that children born in the territory are able to acquire nationality solely by virtue of birth in the territory and not by the parents' nationality. The **United States** adopts this approach so that any child born there is an American citizen regardless of their parents' nationality. However, a *jus soli* approach by itself does not always guarantee stateless children will be safeguarded and granted citizenship. An additional provision is needed to explicitly grant nationality to stateless children because some countries with a *jus soli* approach exclude stateless children born to parents of 'transient' status. In **Chile**, a 2014 law reform removed the provisions that excluded children whose parents are of 'transient' status.

9.4 Ensuring birth registration for all children to prevent statelessness

The goal of Action 7 of UNHCR's Global Action Plan to End Statelessness by 2024 is that no cases of statelessness occur due to lack of birth registration. Birth registration only permanently records a child's existence and does not confer nationality whereas nationality is acquired through the operation of a State's nationality laws. Though they are two distinct processes, birth registration helps prevent statelessness as it establishes a legal record of the child's birth and information about their parents' nationality, which can assist them in qualifying them for a

nationality. Children with no birth registrations are more vulnerable and at higher risk to discrimination, abuse, marginalisation, child marriage, child labour, trafficking, and forced child labour.

Therefore, the achievement of universal and accessible birth registration depends on the civil registration laws and regulations in place and the quality of civil registration systems. UNHCR assists governments to develop birth registration systems that meet international standards and good practices to prevent and reduce statelessness.

Based on UNHCR's Good Practice Paper on Action 7: Ensuring Birth Registration for the Prevention of Statelessness (UNHCR, 2017, November), these interventions focus on:

- a) Reforming civil registration laws and practices: States should align their civil registration laws and regulations with international standards as a first step to make birth registration universally accessible. **Thailand** reformed their Civil Registration Act in 2008 to allow all children born in the territory to be registered regardless of their parents' nationality and legal status. **Bangladesh** extended their Births and Deaths Registration Act in 2016 to allow 18,564 children of registered refugees born in the territory to be registered in their digitised civil registry, as well as allow for children born to registered refugees to be directly registered into their registry.
- b) Improving civil registration systems: States should strengthen their existing civil registration systems to ensure universal accessible birth registration. **Jordan** has integrated birth registration for refugee children into their maternal health services. UNHCR and its partners' advocacy efforts have resulted in refugee women being able to access maternal healthcare so they can deliver their children safely and register the child's birth. In environments where civil registration services are inaccessible due to poverty, low levels of literacy, or high transportation costs, States should bring these services to the affected populations. In **Kenya**, mobile birth registration services are conducted in areas where stateless communities live. **Jordan** has established mobile registration services in the country's refugee camps to increase accessibility to the refugee population. States can also transition from paper-based to digital civil registration systems to overcome geographic



and administrative obstacles to registration. **Burkina Faso** introduced a mobile registration system, *iCivil*, that allows children to be registered remotely on a mobile application so children living far from a civil registry office can access it.

- c) Raising awareness through information campaigns and community-based outreach programmes: These campaigns are to address the low levels of awareness in affected communities that face barriers accessing birth registration. UNHCR and its partner NGOs typically assist governments to conduct mass awareness campaigns on national television and radio, leaflet distribution, and direct engagement with communities through community and religious leaders. In **Lebanon**, UNHCR offers counselling to Syrian refugee families who ask about birth registration and are referred to UNHCR's legal partners who assist them with birth registration at hospitals or civil registry offices.
- d) Working through partnerships to achieve registration of vulnerable individuals and groups. The partnerships between UNHCR with the private sector, development actors, think tanks, and faith-based institutions at the national, regional, and global level have been a key element in increasing access to birth registration. At the national level, the **Serbian** government signed an MoU in 2012 to prevent statelessness by strengthening engagement and cooperation between UNHCR, government agencies, and civil society organisations. This led to amendments in residency regulations and a new judicial procedure for late birth registrations so that stateless Roma communities could obtain birth documentation. The number of Roma persons at risk of statelessness dropped from 30,000 in 2005 to approximately 2,400 in 2017. To address the lack of birth registration among the indigenous Ngöbe and Buglé people in **Costa Rica**, UNHCR and the Costa Rican Supreme Electoral Tribunal signed an MoU to assist this population with birth registration and confirmation of nationality procedures. At the regional level, the **Economic Community of West African States (ECOWAS)** in Africa features birth registration as a key practice to prevent statelessness³⁰. The adoption of the **Zagreb**

30 See Objective 5.1 of the Banjul Plan of Action of the 2017 – 2024, at: <http://www.unhcr.org/591c38347>

Declaration in 2011, signed by **Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia, and the former Yugoslav Republic of Macedonia**, recommends legislation to facilitate birth and late registration procedures³¹. The **Brazil Plan of Action**, which has a programme to end statelessness in the Americas by 2024, has States working toward nationality confirmation through facilitating access to late birth registration. In the Middle East and North Africa and Asia-Pacific region, UNHCR has conducted high level meetings with governments, civil society, and UN agencies on the goal of universal birth registration and the role it plays in preventing statelessness. At the global level, UNHCR and UNICEF launched a joint **Coalition to Ensure Every Child's Right to a Nationality** in 2016, to improve birth registration and eliminate laws and practices that deny children nationality. As part of the **World Bank's Identification for Development (ID4D) initiative**, they support 49 countries by providing technical advice and knowledge on how digital civil registration advice can help development, and is financing the implementation of digital civil registration systems in 35 countries³².

9.5 Preventing denial, loss, or deprivation of nationality on discriminatory grounds

The majority of stateless populations globally belong to ethnic, religious, or other minority groups. There is an inextricable link between inequality, discrimination, and statelessness where inequality and discrimination both cause and impact statelessness. It is important to understand how discrimination on the basis of ethnicity, race, religion, language, gender, social origin, and disability are used against different groups to fuel inequality and discrimination and cause statelessness. Stateless populations are more vulnerable to discrimination, harassment, violence, and exploitation because of their denial to fundamental rights and exclusion

31 Zagreb Declaration on the Provision of Civil Documentation and Registration in South Eastern Europe, Zagreb, 26-27 October 2011, at: <http://goo.gl/R6yhsG>

32 Identification Principles for Sustainable Development: Toward the Digital Age, at: <http://documents1.worldbank.org/curated/en/213581486378184357/pdf/Principles-on-Identification-for-Sustainable-Development-Toward-the-Digital-Age.pdf>



from society. Understanding the role that inequality and discrimination play in causing and exacerbating statelessness is key so we can address the root causes of statelessness and not just the symptoms of statelessness (Institute on Statelessness and Inclusion, 2018).

The goal of Action 4 of UNHCR's Global Action Plan to End Statelessness by 2024 is that no States have nationality laws which permit denial, loss, or deprivation of nationality on discriminatory grounds. The following are good practices identified by UNHCR of how this can be implemented (UNHCR, 2018):

- a) Removal of discrimination provisions in nationality laws: States must uphold the principle of non-discrimination by introducing non-discriminatory provisions in their Constitution and nationality laws as well as remove all discriminatory provisions on the basis of gender, ethnicity, race, religion, language, social origin, or disability in their nationality laws. There also needs to be monitoring of compliance of these provisions through complaints or repeal mechanisms and judicial reviews. In Ukraine, children's nationality may be renounced by the State as a result of the deprivation or loss of their parents' nationality in these circumstances: "(a) if the child, and at least one parent, leave for permanent residence abroad and at least one parent gives up Ukrainian citizenship; and (b) when a child has acquired Ukrainian citizenship at birth and, at the time of birth, at least one of his or her parents was a foreigner or stateless person, such citizenship may be renounced at the request of either parent, regardless of the child's place of residence." The CRC Committee has recommended Ukraine to amend its law to ensure children are not deprived of nationality on any ground, and regardless of their parents' nationality status (Institute on Statelessness and Inclusion, 2016)
- b) Prohibitions and safeguards against arbitrary deprivation of nationality: The 1961 Convention states that States shall not deprive a person of a nationality if such deprivation would render them statelessness. International instruments such as the CRC and UDHR explicitly prohibit the arbitrary deprivation of nationality. A deprivation of nationality is considered not arbitrary if it (1) serves a legitimate purpose; (2) is the least intrusive instrument to achieve

the desired result; and (3) is proportional to the interest to be protected. A non-arbitrary deprivation also complies with minimum due process standards and procedural safeguards such as decisions issued in writing and an opportunity to review decisions. Many States which introduced deprivation of nationality provisions to respond to terrorism concerns have established safeguards against statelessness. **Canada** previously had introduced a provision to revoke citizenship on grounds of a conviction of terrorism in 2014 but in 2017, they amended legislation to repeal this provision and reverted to legislation to only allow deprivation of nationality in instances of misrepresentation, fraud, or concealment of material facts in relation to the acquisition of nationality. **Ukraine** amended their citizenship law in 2016 to set out principles to prevent statelessness and to ensure that grounds for loss of nationality would not be permitted if it results in statelessness. **Madagascar** reformed their citizenship laws on loss of nationality to ensure that it does not affect children and spouses of the individual whose nationality is deprived. In some countries, deprivation of nationality on grounds of terrorism are only applicable for dual nationals. In 2016, France opposed proposed amendments to extend deprivation of citizenship to dual nationals. Naturalised citizens are also more vulnerable to deprivation of nationality as the deprivation of nationality provisions only apply to naturalised citizens. **Australia** introduced new grounds in their 2015 amendment so that grounds of deprivation based on terrorism-related offences would apply to both natural-born and naturalised citizens.

- c) Avoiding the establishment or application of grounds for loss of nationality in nationality laws: Loss of nationality can result from a person's active renunciation (of their nationality) or from the automatic operation of law. A good practice is to not provide any loss of nationality provisions to minimise the risk of statelessness or to provide full safeguards against statelessness for loss of nationality provisions. For example, in **Finland**, dual nationals can lose their nationality at age 22 if they lack a sufficient connection with the country. They provide safeguards against loss of nationality by



requiring persons to “give notice in writing” to a Finnish diplomatic mission or consulate or registry office to retain a sufficient connection³³. The Finnish law also requires that the renunciation of nationality does not result in statelessness by requiring them to produce proof of acquisition of another nationality. Section 35 of Finland’s Nationality Act (359/2003) provides that, “If the applicant is not yet a citizen of a foreign State when the decision is made on the application, he or she may be released from Finnish citizenship only by a decision whose entry into force requires that the applicant produces a report on the acquisition of citizenship of a foreign State within the time limit.” **Turkmenistan** has clear and consistent provisions for the avoidance of statelessness as the prevention and reduction of statelessness is clearly stated as one of the basic principles of Turkmenistan citizenship in Article 5 of its 2013 Law of Citizenship. For example, they provide independence citizenship rights for spouses and children regardless of changes to marital status. They also do not permit renunciation of Turkmen citizenship in the event that a person becomes stateless. Article 16 provides that “application from a citizen of Turkmenistan for the renunciation of Turkmen citizenship shall not be processed if he or she... becomes thereby stateless”. They also provide clear and explicit special safeguards for children against statelessness. Article 19(2) provides that “If one of the parents of Turkmenistan acquires Turkmen citizenship and the other parent continues to be stateless, the child shall become a citizen of Turkmenistan regardless of the place of his or her residence.”

9.6 Removing gender discrimination in nationality laws

The goal of Action 3 of UNHCR’s Global Action Plan to End Statelessness by 2024 calls on States to remove gender discrimination from nationality laws to prevent statelessness (UNHCR, 2015, March 6). UNHCR’s survey on nationality laws found that 25 countries do not provide equal rights to men and women on conferring their nationality to children (UNHCR, 2020, July 14). These findings are outlined in Table 20.

33 Finland’s Nationality Act (359/2003). <https://www.refworld.org/docid/3ae6b51614.html>

Statelessness can also arise when children cannot acquire nationality from their fathers. This happens when the father is stateless or the law prohibits fathers to confer nationality on their children in circumstances where the father is not married to the mother at the time of birth, or where there is incomplete documentation because of death, separation, or abandonment of a father.

Table 20: Overview of countries that do not grant mothers equal rights as fathers to confer their nationality on their children

Categories of countries that limit the ability of women to confer nationality on their children	Countries
Countries which do not allow mothers to confer their nationality on their children with no or very limited exceptions	Brunei Darussalam, Eswatini, Kuwait, Lebanon, Somalia, Qatar
Countries which allow women to confer nationality in some circumstances	The Bahamas, Bahrain, Barbados, Burundi, Iran, Iraq, Jordan, Kiribati, Liberia, Libya, Malaysia, Nepal, Oman, Saudi Arabia, Sudan, Syria, Togo, United Arab Emirates
Countries which limit the conferral of nationality by women but additional guarantees ensure that statelessness will rarely arise	Mauritania

Generally, nationality laws that reflect the international norm of non-discrimination and ensure gender equality share the following features:

1. Their provisions apply equally to women and men without discrimination of any kind; they allow women to transfer their nationality to their spouses, for instance, on an equal basis to men.
2. They allow each spouse to choose whether any change in personal status impacts his or her nationality, as opposed to automatic loss of nationality as a result of a change in marital status, for instance.



3. They make any loss of nationality resulting from changes in personal status conditional upon possession or acquisition of another nationality.
4. They establish naturalisation requirements that are equally accessible to women and men.

The following examples showcase good practices, identified by UNHCR, of other countries addressing gender discrimination in their nationality laws (UNHCR, 2015, March 6; UNHCR, 2020, July 14):

- a) Law reforms to remove discriminatory elements of nationality laws:
There is a growing number of countries that reform their nationality laws to extend the right to women to confer nationality on their children. This includes **Sri Lanka** (2003), **Egypt** (2004), **Algeria** (2005), **Indonesia** (2006), **Morocco** (2007), **Bangladesh** (2009), **Kenya** (2010), **Tunisia** (2010), **Yemen** (2010), **Monaco** (2005, 2011), **Senegal** (2013), **Suriname** (2014), **Madagascar** (2017), and **Sierra Leone** (2006, 2017). For example, **Kenya** reformed their constitution in 2010 with a simple legislation by extending the right for Kenyan mothers to confer nationality on their children born abroad on an equal basis. **Algerian** women's rights organisations engaged with the CEDAW Committee, which made recommendations to the authorities on the implementation of gender-equality reforms on nationality laws and used these recommendations to pressure the government to amend its nationality laws. As a result of this advocacy, the Algerian government introduced a bill in 2005 to grant women nationality rights on an equal basis to men by granting Algerian nationality to all children born in or out of Algeria to an Algerian mother or father. Like Algeria, **Morocco** reformed their nationality law as a result of government engagement with the CEDAW Committee and a comprehensive advocacy strategy by Moroccan women's groups. The Moroccan government amended their nationality laws in 2007 to grant Moroccan women the same rights enjoyed by men to confer nationality on their children and lifted its reservation to CEDAW Article 9(2) in 2018. **Senegal** amended their citizenship law in 2013 to eliminate gender discriminatory provisions, as well as distinctions between children born in or out of wedlock with regard to their right to nationality. This was not only

the result of political will and commitment to women's equality by the Senegalese government but also the efforts of women's groups' advocacy and mobilisation of Senegalese women in the diaspora who campaigned for the government to reform their nationality laws.

- b) International and regional instruments promoting gender equality in nationality laws: Both the CRC under Article 2(1) and Article 7(1) and CEDAW's Article 2 and Article 9(2) have provisions to uphold the right of citizens to pass their nationality to their children regardless of the parent's gender. At the regional level, commitments made in these regional instruments have also helped to promote change.
- i) February 2015 – under the **Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness**, and subsequently pursuant to the legally binding **Banjul Plan of Action** adopted in May 2017, ECOWAS Member States committed to ensuring that women and men have equal rights to confer nationality on their children.
 - ii) October 2017 – **Member States of the International Conference of the Great Lakes Region** signed the **Declaration on the Eradication of Statelessness** and an accompanying Plan of Action which commits those States to ensuring that women and men have equal rights to acquire, change, and retain their nationality, and to confer their nationality on their children and spouses.
 - iii) December 2018 – Member States of the Economic and Monetary Community of Central Africa, endorsed the **N'Djamena Initiative on the Eradication of Statelessness in Central Africa**, under which they also committed to ensuring equal nationality rights for women and men to acquire, change, retain, and transmit their nationality.
 - iv) February 2018 – the League of Arab States (LAS) adopted the **Arab Declaration on Belonging and Legal Identity**, which calls for gender equal nationality legislation in all LAS Member States.
 - v) October 2019 – The African Union Commission committed to submit a draft of the **Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa**, which enshrines equal nationality rights for women and men to acquire, change, or retain their nationality and the nationality of their children.



9.7 International and regional standards and instruments

This section examines the legal frameworks, mechanisms, and instruments at the global and regional levels that can be used to address statelessness and the right to a nationality, as highlighted in Table 21 and Table 22.

Table 21: International standards and instruments to address statelessness

International standards	Conventions	Articles
Recognition of the right to acquire a nationality, and safeguards against statelessness	Convention on the Reduction of Statelessness	1
	Convention on the Rights of the Child	2, 3, 7, 8
	International Covenant on Civil and Political Rights	24.3
Prohibition of discrimination in nationality laws	Convention on the Elimination of All Forms of Discrimination Against Women	9
	International Convention on the Elimination of All Forms of Racial Discrimination	5.d.iii
	Convention on the Rights of Persons with Disabilities	18.2
Protection of the right to nationality and the rights of stateless migrants	Convention Relating to the Status of Stateless Persons	All
	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	29
	Global Compact for Safe, Orderly and Regular Migration*	n/a
	Global Compact on Refugees*	n/a

*Note: *These instruments are legally non-binding as compared to the other legally binding instruments.*

UN Statelessness Conventions

The goal of UNHCR's Action 9 of its Global Action Plan to End Statelessness by 2024 is for States to accede to the two UN Statelessness Conventions, the 1954 Convention and the 1961 Convention, aimed to protect stateless persons and to prevent and reduce statelessness respectively (UNHCR, 2015, April 28).

The 1954 Convention sets out the definition of a stateless person and prescribes the minimum standards and rights of stateless persons, while the 1961 Convention outlines specific, legally binding measures for States to implement to prevent and reduce statelessness. The number of States party to these Conventions is still relatively low, with the 1954 Convention only having 95 parties³⁴ and the 1961 Convention having 78 parties³⁵.

Increasing the number of States that accede to these Conventions will bolster the effort to end statelessness worldwide because it will encourage States to be and hold them accountable for addressing statelessness, for example by reforming nationality laws, improving data on stateless populations, and creating statelessness determination procedures. Encouraging States to accede to these Conventions can also result in increased awareness and capacity building at the national level of politicians, government officials, and civil society groups.

UNHCR can assist States interested in acceding to these Conventions by providing sensitisation training in addressing statelessness to government officials, studying the compatibility of nationality laws and jurisprudence with the Conventions, organising high-level roundtable discussions, translating and launching handbooks about the statelessness Conventions to parliamentarians, engaging directly with government agencies responsible for treaty approval, and providing technical advice to States to translate the treaty obligations into legislation and policies.

34 See here for complete list of parties: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en

35 See here for complete list of parties: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=en



The following are the good practices by other countries that have worked towards accession to the Statelessness Conventions:

- a) The Philippines ratification of the 1954 Convention and accession to the 1961 Convention: The **Philippines** ratified the 1954 Convention in 2011 as a result of UNHCR and civil society's efforts to raise awareness on statelessness and the importance of ratifying the Convention. UNHCR and the Department of Justice Refugee Processing Unit included statelessness issue as one of the core themes that needed to be addressed in the Philippines' protection and legal framework. The government and UNHCR conducted high-level interagency roundtable discussions on statelessness to analyse the compatibility of the UN Statelessness Conventions with Philippine nationality laws. UNHCR continues to assist the government to implement the 1954 Convention through the adoption of an SDP, the issuance of a Procedural Standards Manual, as well as conducting surveys to identify stateless populations. The Philippines acceded to the 1961 Convention in 2022, demonstrating the country's strong commitment towards eradicating statelessness and fulfilling the right of all individuals to a nationality and legal identity (UNHCR Malaysia, 2022). The Philippines remains the first and only country in South East Asia to have adopted the 1954 Convention and 1961 Convention. This sets a good precedent for the region to encourage other States to follow suit.
- b) Croatia's accession to the 1961 Statelessness Convention: **Croatia** acceded to the 1961 Convention in 2011. UNHCR developed a dual-track strategy in 2008 campaigning for Croatia to accede to the 1961 Convention whilst providing technical support to implement initiatives to prevent and reduce statelessness amongst the stateless Roma communities. The Croatian version of UNHCR's Nationality and Statelessness: A Handbook for Parliamentarians was launched in 2009 and UNHCR Brochures on the Statelessness Conventions were developed in Croatian in 2011. Free mobile legal clinics were set up to help Roma individuals obtain birth certificates and other civil registration documentation to acquire nationality. After its accession to the Convention, Croatia hosted a regional conference on the Provision of Civil Documentation and Registration in South-Eastern Europe which resulted in a

joint declaration calling for improvements in the provision of civil documentation to Roma communities.

- c) Accession to UN statelessness Conventions in West Africa: **Nigeria** and **Benin** acceded to both Statelessness Conventions in 2011 and **Burkina Faso** acceded to the 1954 Statelessness Convention in 2012. In 2013, **Côte d'Ivoire** acceded to both Statelessness Conventions. In 2014, **Gambia** acceded to both Conventions, **Guinea** acceded to the 1961 Convention, and **Niger** to the 1954 Convention. This success in this region was the result of sustained advocacy in 2011 by UNHCR's Regional Representation for West Africa (RRWA) and follow-up activities at the national level. The RRWA followed up on high-level letters to all governments in the region, encouraging them to accede to one or both of the Statelessness Conventions. The RRWA provided the governments in the region technical advice and a training session on how to tackle statelessness. The RRWA encouraged the UNHCR country offices to follow up with their respective governments as part of its outreach. The RRWA organised the first regional seminar on statelessness in 2011 to raise awareness and brought together government representatives, civil society, and UNHCR country offices.

Other UN and human rights treaty body standards

The Universal Periodic Review (UPR), CRC, CEDAW, CRPD, ICCPR, ICERD, Global Compact on Refugees, and the Global Compact on Safe, Orderly and Regular Migration all have provisions on the right to nationality (as outlined in Table 22) that supplement the provisions in the 1961 Convention, 1954 Convention and 1951 Convention. In contrast to the Refugee and Statelessness Conventions, these other treaties all have monitoring bodies consisting of human rights experts whose role is to monitor the implementation of the respective Conventions (UNICEF and the Institute on Statelessness and Inclusion, 2020). These include the Committee on the Rights of the Child, CEDAW Committee, Committee on the Rights of Persons with Disabilities, United Nations Human Rights Committee, and Committee on the Elimination of Racial Discrimination. As a party to these treaties, States are required to submit regular reports to the respective Committees outlining the legislative, judicial, policy, and other measures they have taken to give effect to the Convention.



Therefore, these monitoring bodies under the CRC, CEDAW, CRPD, ICCPR, and ICERD create stronger compliance mechanisms for States to adhere to their obligations to uphold the right to nationality and prevent and reduce statelessness.

The **UPR** is a mechanism of the Human Rights Council (HRC) to assess States on their promotion, protection, and fulfilment of human rights obligations under international human rights treaties. Over the course of two UPR Cycles, statelessness is increasingly being raised within the UPR, with over 773 recommendations on prevention of statelessness and realising the right to a nationality being issued. 162 countries have received at least one recommendation relevant to nationality and statelessness. 75% of these UPR recommendations address the root causes of statelessness such as: discriminatory law on the grounds of gender, race, ethnicity, religion, or disability; lack of universal, accessible birth registration; and lack of safeguards to prevent childhood statelessness (Institute on Statelessness and Inclusion, 2014).

The **CRC** is the most widely ratified international human rights treaty with 196 States Parties. It addresses statelessness through its provisions on non-discrimination (Article 2), the right of every child to acquire a nationality and to be registered at birth (Article 7), and the right of every child to preserve his or her identity (Article 8). The CRC Committee has made 139 recommendations on children's right to acquire a nationality between 1993 and mid-2018 and 240 recommendations on measures of implementation for States to take to improve the protection of children's right to acquire a nationality. The three themes the CRC Committee has adopted the most recommendations on are as follows. First, to end gender discrimination in nationality law. The Committee urged **Iran** to review its provisions of the Act on Determination of Nationality of Children Born into Marriages of Iranian Women with Men of Foreign Nationality, and to amend the Civil Code to ensure children who are born to Iranian mothers and children born out of wedlock are entitled to citizenship on an equal basis as Iranian fathers. Second, ensuring access to nationality to stateless children born in the territory. The Committee urged **Thailand** to review and enact legislation to ensure all children at risk of statelessness, especially children of indigenous and minority groups, children of migrant workers, and refugees and asylum seekers are provided access to Thai

nationality. Lastly, ensuring universal birth registration to help protect the right to nationality. The Committee recommended **Indonesia** to ensure all children born in Indonesia are registered and issued birth certificates regardless of their nationality, religion, and status at birth, and that it was free and accessible to do so under all circumstances. The Committee has also made recommendations on children's right to nationality for foundlings, children born abroad, adoption, and deprivation and loss of nationality. However more attention should be paid to international surrogacy arrangements, children born in prisons or detention, and discrimination on the basis of disability in acquiring a nationality. Other examples of good practices addressing childhood statelessness and CRC are discussed in Section 9.3 on childhood statelessness and 9.4 on universal birth registration.

CEDAW addresses women's nationality rights and individuals affected by gender discriminatory nationality laws through its provisions on non-discrimination (Article 2) and equal nationality rights between men and women (Article 9). The CEDAW Committee has consistently recommended that States Parties amend provisions in nationality laws that discriminate on the basis of gender. The Committee has issued General Comments on the core obligations of States Parties to fully implement Article 2 (No. 28), equality in marriage and family relations and right to a nationality (No. 21), gender-related dimensions of refugee status, asylum, and statelessness of women (No. 32), and stateless women in conflict prevention, conflict and post-conflict situations (No. 30). Other examples of good practices addressing statelessness induced by gender discriminatory laws and CEDAW are discussed in Section 9.6 on gender discrimination in nationality laws.

The **ICCPR** addresses statelessness through provisions on non-discrimination (Article 2), equality between men and women (Articles 3 and 23), and the right of every child to acquire a nationality (Article 24). The Human Rights Committee has issued General Comments on the protection of the family, right to marriage, and equality of spouses with respect to acquisition or loss of nationality (No. 28); ensuring that every child has a nationality upon birth and removing discrimination against children born out of wedlock or stateless parents (No. 17); how the rights in this Covenant apply to everyone regardless of nationality or



statelessness (No. 15 and No. 31); the right of stateless persons to enjoy liberty and security (No. 35); how stateless persons must be included in the right to freedom of movement (No. 27); the right to equality before courts, tribunals, and to a fair trial regardless of nationality or statelessness (No. 32); and how stateless minorities must receive protection and rights (No. 23).

The **ICERD** addresses statelessness through provisions prohibiting “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” (Article 1). The ICERD Committee has issued General Recommendations and used its Concluding Observations to urge States party to the ICERD to also accede to the 1954 Convention and 1961 Convention. The Committee drafted recommendations urging States to take measures to avoid discrimination against stateless Roma communities (No. 27); to ensure non-citizens are not discriminated against in respect of access to citizenship and naturalisation (No. 30); to avoid deprivation of citizenship on the basis of race or descent against people of African descent (No. 34); and to prevent racial discrimination in the administration and functioning of the criminal justice system (No. 31).

Article 18 of the **CRPD** requires States to ensure persons with disabilities “have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability.” The CRPD highlights some countries’ discriminatory provisions in naturalisation laws that exclude persons with disabilities, particularly people with psychosocial or intellectual disabilities. The CRPD Committee has made General Comments on the right of children with disabilities to birth registration, as well as recommendations on the right of children with disabilities to a nationality. The Committee urged **Mexico** to ensure that all children with disabilities are immediately registered at birth and are provided with an identity document.³⁶ The Committee urged **Paraguay** to set up a programme on the civil registration of children with disabilities at birth, on an equal footing with other children, and to decentralise

36 See here for CRPD’s Implementation of the Convention on the Rights of Persons with Disabilities for Mexico in 2013: <https://www.refworld.org/publisher/CRPD,MEX-52aede294,0.html>

registry procedures and ensure that they can be carried out simply, quickly, and free of charge. A joint submission between Statelessness Network Asia Pacific and the Institute on Statelessness and Inclusion to the CRPD Committee on **Myanmar** in 2019 highlighted how persons with disabilities living in remote, rural areas often face barriers in travelling to civil registry offices, due to poor public transportation and poverty, and that some persons with disabilities were not allowed to register for national identity cards, and so are not recognized as citizens (Statelessness Network Asia Pacific and Institute on Statelessness and Inclusion, 2019).

The two main international standards on migrants and refugees in addressing statelessness are the Global Compact for Safe, Orderly, and Regular Migration and the Global Compact for Refugees; both are legally non-binding. The **Global Compact on Refugees** emphasises the registration and documentation of refugees as well as recognises that statelessness may be both a cause and consequence of refugee populations. This Compact recommends States to develop national plans to end statelessness in line with international standards and accede to the UN Statelessness Conventions. On the other hand, Objective 4 of the **Global Compact for Safe, Orderly, and Regular Migration** aims to “fulfil the rights of all individuals to a legal identity by providing all our nationals with proof of nationality.” Civil society has criticised this Compact as a missed opportunity for its failure to address statelessness and for generally adding very little to state obligations towards migrants under the body of international human rights law.

Regional standards

This section looks at regional standards and jurisprudence on the right to a nationality, especially where standards are more developed in the Americas, Europe, and Africa and less developed in the South East Asia and Arab regions.



Table 22: Regional standards and jurisprudence to address statelessness

Region	Regional Standards and Jurisprudence
Americas	American Convention on Human Rights
	Inter-American Court of Human Rights
Europe	European Convention on Human Rights
	European Convention on Nationality
	The Convention on the Avoidance Of Statelessness in Relation to State Succession
Africa	African Charter on the Rights and Welfare of the Child
	African Charter on Human and Peoples' Rights
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
	Draft Protocol to the African Charter on Human and Peoples' Rights to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa (pending adoption)
Middle East and North Africa	Arab Charter on Human Rights*
	Covenant on the Rights of the Child in Islam*
Asia and the Pacific	ASEAN Human Rights Declaration*

*Note: *These instruments are legally non-binding as compared to the other legally binding instruments.*

In the **Americas**, the two established regional human rights systems are the **Inter-American Commission on Human Rights** and the **Inter-American Court of Human Rights**. Article 20 of the American Convention on Human Rights protects the right to a nationality, combined

with the accompanying case law of the American Court, provides a robust legal framework for the protection of the right to a nationality. A recent report by the Inter-American Commission on Human Rights provides a detailed overview of regional standards for the protection of vulnerable groups including stateless persons in the Americas. Many of the UPR recommendations focus on accession to the Statelessness Conventions. The American countries that have not signed or ratified either UN Statelessness Convention are the Bahamas, Cuba, the United States of America, Granada, Guyana, Saint Kitts and Nevis, Saint Lucia, Suriname, and Venezuela. The adoption of SDPs in the Americas is still low, with only Mexico and Costa Rica being the only two countries in the region with SDPs.

In **Europe**, the core regional human rights systems are the **Council of Europe (CoE)** and the **European Convention on Human Rights (ECHR)**. The ECHR provides basic human rights and fundamental freedoms to everyone and offers these protections to stateless persons under the **European Court of Human Rights (ECtHR)**. There have been a number of successful cases where stateless persons have appealed to the Court to address human rights violations. Even though there is no provision in the ECHR on the right to a nationality, the Court has recognised nationality as an element of the social identity of a person, which forms the right to a private life under Article 8 of the ECHR. The CoE has adopted several instruments related to address statelessness, the **European Convention on Nationality** in 1997, the **Convention on the Avoidance of Statelessness in Relation to State Succession** in 2006 and adopted a Resolution on the need to eradicate childhood statelessness in 2016. Besides the CoE, the European Union (EU) has its own human rights document, the **Charter of Fundamental Rights of the European Union**. This Charter does not have provisions on the right to a nationality, but the rights guaranteed under EU citizenship might be a possible avenue for the right to a nationality.

In **Africa**, the **African Charter on the Rights and Welfare of the Child** provides under Article 6(3) that “every child has the right to acquire a nationality”, and Article 6(4) requires States to grant a nationality to an otherwise stateless child born in their territory. The General Comment of the African Committee of the Experts on the Rights and Welfare of the Child, adopted in 2014, recognises the negative impact of statelessness



on a person's realisation of other human rights and the need for a nationality to access these rights. The **African Charter on Human and Peoples' Rights (ACHPR)** does not have a provision on the right to a nationality but the African Commission on Human and Peoples' Rights found that Article 5, which states that "every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status", includes the right to a nationality. There is a new draft protocol on the **African Charter on the Right to Nationality** which explores the right to a nationality and the eradication of statelessness.

In comparison to Africa, the **Asia and the Pacific** region does not have a regional human rights framework, with its own treaty, court, and commission. There are no regional norms of jurisprudence on the rights of all persons including stateless persons. The UN Statelessness conventions have a poor level of ratification in the Asia-Pacific. Only six States (Australia, Fiji, Kiribati, Philippines, South Korea, and Turkmenistan) are party to the 1954 Convention, and five States (Australia, Kiribati, New Zealand, Philippines, and Turkmenistan) are party to the 1961 Convention (Peter McMullin Centre on Statelessness, 2020a). The Philippines is the only country in the region to establish an SDP. At the sub-regional level, the Association of South East Nations (ASEAN) adopted its own non-binding **Human Rights Declaration (AHRD)** in 2012, which largely mirrors the UDHR. Article 18 provides that "Every person has the right to a nationality as prescribed by the law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality." Besides this Declaration, the **ASEAN Intergovernmental Commission on Human Rights (AICHR)** and the **ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)** are two commissions that have mandates focusing on the promotion and protection of human rights. However, the AHRD and the AICHR have been widely criticised by ASEAN civil society and international human rights organisations for its lack of transparency and failure to consult civil society during its drafting process (Amnesty International, 2012; Human Rights Watch, 2012; "UN official welcomes ASEAN commitment", 2012). The Declaration fails to include rights to freedom of association and the right to be free from enforced disappearance and contains provisions under Article 7 and 8 that can be used to undermine human rights.

Therefore, with its small budgets and legally non-binding force, there are significant limitations for the use of this Declaration to protect the rights of stateless persons. Besides ASEAN, the **Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime** is a forum for states and international organisations to address the nexus between irregular migration and the risk of statelessness.

Similarly to the Asia and the Pacific region, the UN Statelessness Conventions also have a poor level of ratification in the **Middle East and North African** (MENA) region. Only four States (Algeria, Libya, Tunisia, Israel) are party to the 1954 Convention, and two States (Libya, Tunisia) are party to the 1961 Convention³⁷. No country in this region has adopted an SDP or any specific protection status for stateless persons. Generally, the rights of stateless persons are rarely protected in this region. There is a weak regional human rights framework in the region. Even though both the **Arab Charter on Human Rights** and the **Convention on the Rights of the Child in Islam** protect the right to nationality, they are not binding frameworks and establish no regional human rights mechanism or court to monitor implementation or receive individual complaints. The UPR regularly issues recommendations to MENA countries, most commonly on the removal of gender discrimination from its nationality laws, discrimination in nationality rights, and access to birth registration.

Implementation of Sustainable Development Goals to address statelessness

In 2015, the UN General Assembly adopted the Sustainable Development Goals (SDGs) that encompass economic growth, social development, and environmental protection. The SDGs can be an important instrument to incentivise States to address statelessness, as its aspiration to “leave no one behind” and “to reach the furthest behind first” must include stateless persons.

37 See here for list of Middle East and North Africa States party to the 1954 Convention and 1961 Convention: <https://reliefweb.int/map/world/middle-east-and-north-africa-states-party-1954-convention-relating-status-stateless>



Many of the SDG targets such as SDG 1 (no poverty), 3 (good health), and 4 (quality education) are related to ensuring access to basic rights and services for stateless persons. The SDGs most relevant to address statelessness are set out in Table 23.

Table 23: The Sustainable Development Goals and Addressing Statelessness, UNHCR's Briefing Note

SDG	SDG Target	Relevance to Statelessness
5: Achieve gender equality and empower all women and girls.	5.1: End all forms of discrimination against all women and girls everywhere.	Addresses issue of gender discrimination in nationality laws, which is a major cause of statelessness globally.
10: Reduce inequality within and among countries.	10.3: Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies, and practices and promoting appropriate legislation, policies, and action in this regard.	Discrimination on the basis of ethnicity, race, religion, gender, or language remains a cause of statelessness.
16: Promote peaceful and sustainable societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions for all.	16.9: By 2030, provide legal identity for all, including birth registration. 16.b: Promote and enforce non-discriminatory laws and policies for sustainable development.	Birth registration helps establish a person's legal identity which has key information on the child's parents and place of birth, which can be used to help establish a genuine link to a country and thus acquire a nationality.

SDG	SDG Target	Relevance to Statelessness
17: Strengthen the means of implementation and revitalise the global partnership for sustainable development.	17.18: By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to significantly increase the availability of high-quality, timely, and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location, and other characteristics relevant in national contexts.	This can be used to improve statistical data on stateless populations where stateless populations are excluded and unaccounted for in national administrative registries, databases, and population censuses.

The SDG Agenda offers opportunities for governments, UNHCR, civil society, and the private sector to collaborate with each other towards the implementation of SDGs. The UNHCR published a guidance note in 2017 on the relevance of SDGs to statelessness and how to advocate the implementation of SDGs to address statelessness (UNHCR, 2017). UNHCR and civil society groups can work with government agencies responsible for the implementation of SDGs to ensure that they include stateless persons in their national development plans. For example, to implement Target 16.9 of a legal identity for all, UNHCR or civil society groups can engage JPN and KDN in Malaysia to improve civil registration and vital statistics by identifying gaps stateless persons face in registering births and acquiring identity documentation.



Besides the SDG monitoring framework, which is voluntary and not standardised, the Universal Periodic Review can be used to monitor the human rights related aspects of the SDGs. For example, CRC Committee recommendations to **Bhutan** in 2017 highlighted target 16.9 on legal identity to urge the State to “ensure children born to either a Bhutanese mother or father, including in cases when the identity of the father cannot be ascertained, are granted Bhutanese citizenship” (Institute on Statelessness and Inclusion, 2018). Another example, in the UPR process between 2014 and 2016, Brunei, Nepal, and Myanmar received the largest number of statelessness related recommendations at the UPR. Recommendations to Nepal and Brunei particularly focussed on gender equality on conferring nationality to their children (Institute on Statelessness and Inclusion, 2017, January). Therefore, civil society and UNHCR should make use of development and human rights monitoring and review processes to advocate for the inclusion of stateless persons in the implementation of SDGs.

9.8 Improving quantitative and qualitative data on stateless populations

Globally, stateless populations are undocumented, not recognised, and uncounted by national registries and population censuses. Out of 142 national population censuses, only 112 included a question on nationality and less than 25% included a pre-coded option for census takers to record responses for those who self-identified as stateless. Without quantitative data and analysis, it is difficult to assess the scale in terms of numbers and location of affected stateless populations and thus, to take action to address statelessness and measure a country’s progress towards responding to statelessness.

The goal of Action 10 of UNHCR’s Global Action Plan to End Statelessness by 2024 is for quantitative data on stateless populations to be publicly available for 150 States and for quantitative analysis on stateless populations to be publicly available for at least 120 States. There have been a number of UNHCR-driven initiatives discussing problems and ways to improve quantitative data such as a 2011 report on measuring stateless populations (UNHCR, 2011) and a 2019 discussion of UNHCR statistical reporting on statelessness (Chen et. al., 2019). There are

currently two parallel efforts to develop better methodologies on measuring stateless populations: an initiative led by the Expert Group on Refugee, Internally Displaced Persons and Statelessness Statistics (EGRIS) of the UN Statistical Commission to develop **International Recommendations on Statelessness Statistics (IROSS)**, and the **Inter-agency Group on Statelessness Estimation (IGSE)** (Strode and Khanna, 2021).

Côte d'Ivoire is the only country in Africa to make a serious effort to develop a methodological approach to capture the population of the stateless or at risk of statelessness. In 2019, the National Institute of Statistics of Cote d'Ivoire with the support of UNHCR conducted a national household survey which found an overall estimate of 1.6 million stateless or at risk, much higher than the figure of 700,000 stateless persons previously reported (Manby, 2022).

SECTION 10:

CONCLUSION AND RECOMMENDATIONS



In this section, we provide an overview of the conclusions and recommendations from this study. These recommendations form part of our findings as they were obtained from the data collected from all of our participants, based on their lived experiences. These findings are explored in Section 10.1. We then take a look at a concrete plan for action for multiple stakeholders surrounding statelessness in Peninsular Malaysia and propose ways forward. Finally, this section and report conclude with exploring the limitations of this study.

10.1 Solutions and recommendations from the findings

The last finding from this report consists of the gathering and systematic thematic analysis of the solutions and recommendations from the participants of the study, which are based on real, lived experiences. The complete list of solutions and recommendations is presented in Table 24.

The first recommendation surrounds educating citizenship applicants on the application process, requirements, and potential setbacks – specifically on the importance of seeking help early in the process, as well as the need to continually and consistently follow up on their applications. Participants made a note that political interventions, such as asking Members of Parliament to make a formal inquiry with the appropriate JPN office, did help.

The second recommendation is on the expansion of CSO capacity on the ground in order to reach and help more stateless individuals. Despite the fact that the government, through JPN, does conduct a number of physical workshops and outreach programs, CSOs and community leaders probably have stronger and longer-existing relationships with the stateless communities that they work with. Hence, providing more training and funding to CSOs to continue this outreach could potentially be an effective avenue at coaxing stateless populations, particularly those who do not trust the government, to apply for and gain their rights to citizenship.

The third recommendation is specific to making improvements to the citizenship application process. This involves shortening the waiting times, providing easy access to check on the status of applications, increasing transparency surrounding the path to citizenship, including detailed timelines for the process, offering applicants who are rejected specific



reasons why so they can amend their future applications appropriately, providing a document checklist and informing applicants on how to get the documents, as well as informing applicants about the Bahasa Malaysia language proficiency test and providing a detailed syllabus on potential questions, increasing the access to and affordability of DNA tests to prove blood relations, lessening the burden of paperwork, circulating better and more precise information surrounding the process, making the enquiry process on application statuses more efficient, loosening the registration and documentation process for indigenous communities and individuals with long-standing residence in Malaysia, making provisions for 'extraordinary circumstances', such as the loss of all documentation in a natural disaster, and abolishing gender discriminatory policies surrounding citizenship.

Table 24: Solutions and recommendations from the dataset

Theme	Subthemes
<i>Educating citizenship applicants on issues with the process</i>	The need to continually follow up on their application The importance of seeking help early in the process
<i>Expanding CSO capacity for fieldwork to reach and help more stateless individuals</i>	
<i>Improving the citizenship application process</i>	Having shorter waiting times Providing the ability to check on application status Increasing transparency surrounding the path to citizenship, including general timelines for the process Offering rejected applicants reasons why so they may amend their future applications appropriately

Theme	Subthemes
	Providing a document checklist and informing applicants how to get the documents, informing applicants about the Bahasa Malaysia language proficiency test and allowing them to prepare ahead with given syllabus Increasing access to and affordability of DNA tests to prove blood relations Lessening the burden of paperwork for the application process Circulating better and more precise information surrounding the path to citizenship Making the enquiry process regarding citizenship applications more efficient Loosening the registration and documentation process for indigenous communities and individuals with long-standing residence in Malaysia Having provisions for 'extraordinary circumstances', such as the loss of all documentation in a natural disaster Abolishing gender discriminatory policies surrounding citizenship
<i>With regard to other relevant stakeholders, the need for more education and awareness-raising</i>	Conducting more programmes to educate the public on the necessity of registering marriages Increasing public awareness about statelessness and differences between 'statelessness' and 'refugee status' Offering additional counselling services at baby hatches to educate mothers on the importance of registering their children so they are not at risk of becoming stateless



Theme	Subthemes
	Framing granting citizenship as a moral imperative to protect vulnerable communities Equipping lawyers and CSOs who work in this space with proper training to understand the details surrounding access to citizenship – including which forms and what documents are needed Leveraging on religious institutions to push for the inclusion of stateless people into society
<i>With regard to politicians, the need to be more responsive and open to discussing statelessness</i>	
<i>Improving the lives of stateless children</i>	Prioritising stateless children in the process of obtaining citizenship Having provisions for stateless children to inherit their adoptive parents' Malaysian citizenship upon completion of paperwork Teaching and educating adoptive parents on specific issues surrounding stateless children, especially why they need to and how to apply for a birth certificate for their stateless child Removing the need for stateless children to trace back their parents who may have abandoned them Setting up a government-funded bureau specifically for dealing with citizenship applications and statelessness Abolishing the policy that stateless children are automatically assigned a religious faith

Theme	Subthemes
	Increasing visits to orphanages to identify stateless children and help them progress through the citizenship application process
	Upholding freedom of religion in the country and abolishing unilateral religious conversion of children
<i>Abolishing the requirement for a legal citizenship status in order to accessing schooling and education</i>	
<i>Increasing the number of physical outreach programmes to help stateless individuals register</i>	
<i>With regard to JPN and civil servants, suggestions for improvements</i>	Employing more diverse front-facing staff at JPN, specifically of Malaysian Indian descent
	Giving sensitivity and bias training to front-facing JPN staff who deal with registrations
	With regard to civil servants at JPN, a call for them to take ownership over stateless cases, exercise compassion, and cease being gatekeepers to citizenship
	Increasing training for all government staff who deal with statelessness cases on protocols, required forms, and documentation
<i>Fast-tracking certain categories of stateless persons for citizenship</i>	Granting citizenship to senior citizens who are undocumented or holding 'temporary' documents such as red ICs



Theme	Subthemes
	Prioritising citizenship for stateless individuals who can prove that they were born in Malaysia
<i>Increasing support for stateless individuals and caregivers</i>	Creating partnerships between KPWK, MOH, and NGOs that work closely with stateless populations to increase mental health support for parents and caregivers of stateless children, as well as for stateless adults, through the provision of more programmes, additional hotline resources, and identification and treatment of mental health issues at public healthcare facilities Providing stateless groups with temporary formal identification so they are able to access services such as public healthcare Allowing citizenship applicants to receive permanent residency (red ICs) while waiting for their citizenship approval Providing temporary legal documents so that stateless persons waiting for their applications to be approved can work Creating internship opportunities for stateless students in the private sector
<i>Improving data on statelessness</i>	Having better collaboration between various government agencies in order to streamline and improve data surrounding statelessness Having better data collection on the ground from CSOs and lawyers to understand how policies affect vulnerable communities

The fourth recommendation is on providing more education and awareness for other relevant stakeholders. Specifically, applicants suggested that more programmes need to exist to educate the public on the necessity of registering marriages; that public awareness on the meaning of statelessness (versus refugee and asylum-seeker statuses) be heightened; that additional counselling services be given at 'baby hatches' in order to educate mothers on the importance of registering their children so that they are not at risk of becoming stateless; that granting citizenship should be framed as a moral imperative to protect vulnerable communities; that lawyers and CSOs who work in the stateless space must be equipped with proper training to understand the details surrounding access to citizenship (including which forms to fill and what documents are needed); and that religious institutions should be leveraged to push for the inclusion of stateless people into society.

The fifth recommendation is for more political and, specifically, politician responsiveness on matters surrounding statelessness in order to push for legal reform through the parliamentary system.

The sixth recommendation is on improvements for the lives of stateless children. Stateless children should be prioritised in the process of obtaining citizenship and inherit their adoptive Malaysian parents' citizenship upon completion of adoption paperwork. Adoptive parents should be taught and educated on specific issues related to stateless children, especially on why they need to apply for citizenship for them. The requirement to trace parents who have abandoned them should be removed for stateless children to receive citizenship. Participants also suggested that the government set up a collaborative agency to deal with citizenship issues for stateless people, and that the policy that stateless children are automatically assigned a religious faith be abolished. Finally, JPN should increase the number of visits they make to orphanages in order to identify stateless children and help them start and progress through the citizenship process. Freedom of religion should be upheld in this country and unilateral religious conversion of a child should be abolished.

The seventh recommendation is that legal status should not be tied to access to schooling and education – specifically, that public schools should not discriminate based on the legal status of children and should register children for schooling without requesting for documentation.



The eighth recommendation is that the number of in-person outreach programmes by the government should be increased in order to reach more stateless individuals.

The ninth recommendation is on suggestions related to JPN and other relevant civil servants. JPN should employ more diverse front-facing staff at their offices, specifically of Malaysian Indian descent, as a large number of stateless cases are from this community. Sensitivity and bias training need to be given to these officers who deal with registration, and civil servants at JPN should strive to take ownership over stateless cases, exercise compassion, and cease being gatekeepers to citizenship. Training should be increased for all government staff who deal with statelessness cases – specifically on protocols, required forms, and documentation.

The tenth recommendation relates to fast-tracking certain categories of statelessness for citizenship – specifically that citizenship be granted automatically to senior citizens who are holding red ICs, upon a short application process, and that citizenship should be prioritised for stateless individuals who can prove that they were born in Malaysia.

The eleventh recommendation is on increasing support for stateless individuals and caregivers. Better mental health support needs to be provided for stateless children and their parents and caregivers, as well as for stateless adults. Stateless groups need to be provided with temporary formal identification so that they are able to access services such as public healthcare and pay the subsidised local rates. Citizenship applicants should automatically receive red ICs (i.e. permanent residency) while waiting for their citizenship approval. If a red IC cannot be issued for whatever reason, temporary legal documents should be given to stateless persons waiting for their applications to be approved, so they can legally work and earn money. Private sector companies should also consider creating internship opportunities for stateless students to gain experience, and consider hiring them after the completion of said internships.

The final recommendation is on the provision and collection of better data surrounding statelessness. Specifically, there should be better collaborations between various government agencies in order to produce a comprehensive dataset surrounding basic variables such as total number of stateless individuals, number of children within government-run shelters

that are stateless, etc. This study found that government agencies still very much work in silos surrounding this issue, which ends up harming the community itself. There also needs to be better data collection and documentation from on-the-ground happenings and consultations by CSOs and lawyers – this is so that every stakeholder in this huge, complex issue of statelessness can understand how policies affect this highly vulnerable community.

10.2 Strategy and plan of action

Based on the data-derived recommendations from Section 10.1, we now present the strategy list – partitioned by stakeholder – and a plan of action to address the problems outlined in this study. The following list is based on our data collection and may not be entirely exhaustive, but forms a good base on what needs to happen next. It is important to note that since the issue of statelessness is multifaceted, solutions to solve it must require a truly collaborative effort. We have decided not to classify issues by which one should be tackled first, as all of these plans need to be executed in parallel in order for any progress to be made. For each stakeholder, a reference to the appropriate sections in the report that correspond to their specific plan is also noted.

Kementerian Dalam Negeri (Sections 3, 5, 6, 7, 8, and 9)

1. Make pledges to commit to ending childhood statelessness by 2024 under the UNHCR #IBelong Campaign.
2. Allow UNHCR access to refugees in detention to verify refugee, asylum, and stateless statuses.
3. Regularise the intervals for data surrounding statelessness to be released to all stakeholders so that parties can take action. Such data includes the number of stateless individuals in detention, the number of citizenship applications currently under review, and the average wait time for citizenship applicants.
4. Issue temporary legal documents to stateless individuals waiting on citizenship applications. Such documents must state that they are undergoing the process and waiting for the results.
5. Automatically recognise all babies or children of unknown status – including abandoned children and baby hatch children – as citizens.



6. On 3 December 2020, Deputy Home Minister Ismail Mohamed Said told the Dewan Rakyat that granting/ denying citizenship to children born abroad to Malaysian mothers is “a matter of national security and sovereignty that we must ensure.”³⁸ The Ministry must explain to the public and relevant stakeholders what this means in practice, and why it is used as a reason to not grant citizenship to children/ applicants.
7. Utilise UNHCR as a source of technical advice and expertise on matters related to statelessness.
8. Ensure that work is collaborative and in partnership with other government agencies. There is a need for leadership that is compassionate, that understands and centres human rights, and that is willing to listen to stateless populations about their concerns and issues.

Kementerian Luar Negeri (Sections 3 and 8)

1. Ratify the 1951 Convention, 1954 Convention and 1961 Convention.
2. Remove reservations related to right to nationality in CRC, CEDAW, and CRPD.
3. Ratify the ICERD and ICCPR.

Jabatan Pendaftaran Negara (Sections 2, 3, 4, 5, 6, 7, 8, 9)

1. Ensure that all applicants for citizenship understand the process by devoting time to educating applicants on what needs to be done, and on specific forms and documents that need to be produced.
2. Ensure that applicants can easily check for status of application both by phone as well as digitally (email or website).
3. Ensure all front-facing staff who deal with applicants understand which forms to be used in applications.
4. Provide sensitivity and bias training for front-facing staff who deal with applicants.

38 Please refer to this news coverage: <https://www.malaysiakini.com/news/553595>

5. Hire a more diverse group of officers to deal with citizenship issues as statelessness intersects with race and ethnicity very heavily – if this is not possible, cooperate with NGOs/ CSOs like DHRRA in order to provide a smoother experience for applicants.
6. Related to Point 5, JPN also needs to review the racial quota system for civil servants and update it to reflect the diverse needs of the citizens and residents it serves.
7. Visit more orphanages, and routinely, to determine the extent of statelessness among children in Malaysia.
8. Conduct and fund more in-person, physical visits to remote areas in order to help register stateless individuals – this includes mobile registration vans that go into rural areas to help communities there register births and get their ICs. The categories of stateless persons who would be involved here would be indigenous populations and persons with long standing residence (red IC holders or undocumented) who have yet to apply for citizenship.
9. Implement a targeted outreach and registration campaign with less stringent documentation requirements to grant nationality to vulnerable *in situ* stateless populations. For example, visit all orphanages and shelter homes to reach abandoned children, visit rural, remote areas to reach persons with long standing residence, etc.
10. Implement refugee and stateless determination procedures for stateless persons with a migratory background.

UNHCR (Sections 5 and 8)

1. Implement better monitoring and training for teachers at community-based schools for stateless refugees to ensure a higher level of educational quality.
2. Improve relations with KDN in order to better execute responsibilities to refugees and stateless persons.
3. The Malaysian office needs to expand its ability to deal with and train external parties on matters related to statelessness. For example, UNHCR needs to train more KDN officials on how to respond to stateless cases.



Jabatan Kebajikan Masyarakat (Sections 4 and 7)

1. Ensure stateless children under JKM homes and shelters have birth registration documents and citizenship.
2. Assist stateless children under JKM homes and shelters with citizenship applications.
3. Provide training for all child protection officers to use rights-based and child-centred approaches on matters related to childhood statelessness by partnering with Yayasan Chow Kit and UNICEF.

Law Enforcement - Immigration and Police (Sections 5, 6, and 7)

1. Partner with NGOs and organisations that work on the ground, such as DHRRA, Yayasan Chow Kit, UNHCR, and UNICEF, for sensitivity and bias training for officers who work in communities.
2. Provide the number of stateless adults and children in detention centres, trafficked homes, and schools for young offenders.
3. Release stateless individuals from detention upon confirmation of stateless status.
4. Respect the principle of non-refoulement (non-deportation) and non-penalisation of refugees.
5. Exclude stateless persons from being arrested or charged under Section 6(1)(c) of the Immigration Act for not having a valid entry permit.

Jabatan Perangkaan (Section 4)

1. Work together with UNHCR to incorporate other non-citizen categories such as stateless, refugee, and asylum-seeker into the national census.

Kementerian Pembangunan Wanita, Keluarga, dan Masyarakat (Sections 5 and 7)

1. Partner with NGOs and organisations that work on the ground, such as DHRRA, Yayasan Chow Kit, UNHCR, and UNICEF, to train child protection officers to use rights-based and child-centred approaches on matters related to childhood statelessness, and on

the importance of documentation of parents and parents' marriage for future citizenship applications.

Suruhanjaya Hak Asasi Manusia Malaysia (Sections 5, 6 and 7)

1. Ensure complaint mechanisms are more accessible for stateless persons throughout Peninsular Malaysia.
2. Run more briefing and training sessions for NGOs and CSOs on how they can use the SUHAKAM complaint mechanism to bring cases to attention for investigation.

Jabatan Kemajuan Orang Asli (Sections 5, 6, 7, and 8)

1. Assist JPN in increasing the number of in-person registration events to help register stateless populations.
2. Identify the exact number of stateless indigenous persons within the country and make this number public.

Cabinet (Sections 3, 4, 5, 7, 8, and 9)

1. Form a committee comprising all the relevant government agencies and use the findings here to create an action plan for all government agencies to implement.
2. Monitor compliance to this action plan and provide reports to the public.

Media (Section 8)

1. Help to create positive narratives surrounding Malaysian statelessness by featuring empowering lived experiences and voices of stateless individuals and their caretakers.

UNICEF (Sections 5, 6, and 7)

1. Monitor KPWK's obligations on childhood statelessness in the UNICEF Country Action Plan as part of the SDGs (16.9).
2. Sponsor and run trainings for external parties such as JPN and Kementerian Kesihatan towards a rights-based civic registration process.



Jabatan Peguam Negara (Sections 3 and 8)

1. Partner with UNHCR and the KDN to review the gaps in nationality laws within the Federal Constitution and relevant Acts (Birth and Registration Act, Legitimacy Act, Adoption Act, Registration of Adoption Act), and implement legal reforms to amend nationality laws to prevent and reduce all forms of statelessness.

Bar Council and Malaysian Syariah Lawyers' Association (Sections 3, 6, and 7)

1. Bar Council needs to provide training sessions and programmes for all lawyers on issues on statelessness and available remedies.
2. Both organisations need to work with stateless NGOs to ensure clients who need legal access have it.
3. Both organisations need to provide affordable *pro bono* options for stateless persons to access legal options.

Kementerian Pendidikan (Section 7)

1. Allow stateless Malaysian children to attend school as well as sit for formal public school examinations such as SPM.
2. Reinstate the 'zero-reject policy' for stateless and undocumented children enrolment into public schooling that was started by former education minister Mazlee Malik in the Pakatan Harapan Government and ensure that briefings are conducted at the district and school levels in order to educate school principals and staff that they cannot reject children from accessing education due to citizenship status.
3. Further expand the 'zero-reject policy' to remove fee and documentation requirements for students.
4. Incorporate the history of and issues surrounding statelessness into the formal curriculum as well as creating co-curricular activities focused on volunteering with organisations that work on statelessness issues.

Kementerian Kesihatan (Section 7)

1. Provide the same access to subsidised healthcare to stateless Malaysians as citizens.
2. Partner with the International Committee of the Red Cross (ICRC) and Medecin Sans Frontieres (MSF) to provide sensitivity training for all healthcare workers on stateless persons.
3. Establish partnerships between KPWK, Kementerian Kesihatan, and NGOs that work closely with stateless populations such as Yayasan Chow Kit and MSF to increase mental health support for parents and caregivers of stateless children, as well as for stateless adults, through the provision of more programmes, additional hotline resources, and identification and treatment of mental health issues at public healthcare facilities.
4. Ensure all children have access to birth registration documents.

MPs/ ADUNs/ Community leaders (Sections 5, 6, and 7)

1. Partner with relevant CSOs, NGOs, and organisations that work on stateless issues such as Yayasan Chow Kit, UNICEF, UNHCR, law firms that handle stateless cases, and Lawyers for Liberty, so as to receive training for all elected representatives on stateless persons and the importance of birth registration and marriage registration.
2. Provide remedies or solutions to spot stateless persons in your constituencies/ areas, especially children, and to ensure access to schooling.

Civil Society Organisations (Sections 7 and 8)

1. Create a coalition or network of all NGOs/CSOs working on statelessness in Malaysia to make advocacy more uniformed and streamlined.
2. Engage with UNHCR and UNICEF to provide more training programmes and technical advice for all CSOs on matters related to statelessness.
3. Work with lawyers to ensure clients have access to legal remedies.
4. Work with JKM and KPWK to ensure stateless children are protected.



5. Share stories of lived experiences of stateless persons through social media.
6. Include, train, and empower stateless individuals themselves to share their lived experiences in advocacy.
7. Commit to ethical, rights-based approaches when working with stateless populations.
8. Provide remedies or solutions to spot stateless persons in your areas, especially children, and to push for access to schooling or healthcare.

Public (Sections 5 and 6)

1. Understand documentation requirements for births of children and marriages in order to prevent childhood statelessness. For example, mothers who give up children at baby hatches or government-run children's homes should provide documentation about their nationalities and that of the father of the children.

10.3 Limitations of this study

1. **Key relevant government agencies on statelessness did not respond to our requests for an interview**

As highlighted in Section 1.6, we were not able to speak to the following government ministries and agencies: the National Registration Department (JPN), Ministry of Home Affairs (KDN) (together with the Department of Immigration (JIM) and Majlis Keselamatan Negara (MKN)), Department of Social Welfare (JKM), and Ministry of Women, Family and Community Development (KPWKM). We managed to interview the Department of Orang Asli Development (JAKOA) and Department of Statistics (DOSM), interviewed employees anonymously from JPN and Ministry of Foreign Affairs (MOFA), and received a written response from the Attorney General's Chambers (AGC).

Therefore, we did not have direct input from a number of key government agencies on the research questions on statelessness. We used secondary data published publicly via media articles

or parliamentary responses, as well as verbatim descriptions of participants' experiences with them from interviews from CSO members, elected representatives, and stateless individuals, as a proxy in lieu of the missing input from these agencies.

2. **COVID-19 lockdown measures made vulnerable communities inaccessible and harder to reach**

Throughout half of our data collection period for interviews between September 2021 and December 2021, COVID-19 related travel restrictions were in place, preventing us from conducting in-person, on-the-ground interviews with harder-to-reach vulnerable communities, such as those living in estates, rural, or interior areas.

Therefore, we conducted a majority of our interviews virtually over video or phone calls across September 2021 and October 2021. We managed to exhaust our source of participants who were able to engage via video and phone calls, but we acknowledge that this virtual, online method excludes many participants from our target communities who do not have access to devices and a stable internet connection.

We started conducting on-the-ground, in-person interviews in November once travel restrictions were lifted to reach these vulnerable communities. These field interviews focused specifically on the categories of stateless individuals who are difficult to reach virtually, namely: persons with long-standing residence, holders of red ICs living in the estates and/ or rural areas; abandoned children who may be living in harsh conditions (e.g. makeshift houses) or living in registered or unregistered orphanages; indigenous persons whose villages were closed off as part of public health measures; and undocumented persons.

3. **Participants who live in extremely vulnerable situations may require third party intervention and/ or support**

Based on the experiences of the vulnerable participants we encounter, the circumstances that led to their statelessness and



the way their statelessness impedes their access to basic needs, such as housing, employment, healthcare, education, and safety, place them in extremely vulnerable positions leaving them open to exploitation, discrimination, and abuse.

Some require urgent medical or social interventions, and we were limited by our capacity as we are not an NGO, so we were only able to refer participants to the relevant social services or CSO worker. A number of these stateless individuals are in extremely distressing situations with limited to no social or community support at all, which require systemic changes that are way beyond our control. Where possible, we have intervened and assisted in cases where we found stateless individuals who were unvaccinated and unable to navigate or access the Covid vaccination system because of the discrimination they faced as stateless individuals. In cases where we can easily connect them with an NGO or individual who assists stateless persons, whether it be for citizenship application and/ or access to basic services, we will connect them to ensure they get as much help as they can with our limited capacity as researchers.

Another issue we encountered was that some stateless individuals we met on the ground did not want to participate in the study as they did not feel safe and secure in sharing their stories because of past experiences with political parties that interviewed and then exploited them. For example, individuals from political parties would interview them with promises to help but subsequently shared their stories online without their consent and provided no help in the end.

SECTION 11:

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