

Joint Submission
to the Human Rights Council
at the 45th Session
of the Universal Periodic Review.

Malaysia

Introduction

1. Advocates for Non-discrimination and Access to Knowledge (ANAK), Association of Family Support & Welfare Selangor & KL (Family Frontiers), Borneo Komrad, Buku Jalanan Chow Kit, Yayasan Chow Kit, Development of Human Resources for Rural Areas (DHRRA) Malaysia, Elom Initiatives (Elom), Global Campaign for Equal Nationality Rights, Institute on Statelessness and Inclusion (ISI), Lawyers for Liberty and Nationality for All (NFA) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Malaysia.
2. This submission focuses on:
 - I. The Child's Right to Nationality and Childhood Statelessness
 - II. The Bajau Laut in Sabah, East Malaysia
 - III. Gender Discrimination in Malaysia's Citizenship Law
 - IV. People of Indian Origin
 - V. Refugees and Irregular Migrants (and their Descendants)
 - VI. Consequences of Statelessness in Malaysia

Malaysia's Universal Periodic Review Under the Third Cycle

3. Despite the prevalence of statelessness, gender discriminatory nationality laws and related human rights challenges in the country, Malaysia did not raise any nationality or statelessness issues in its State Report before its previous UPR in 2018.¹
4. During the 2018 UPR, Malaysia received three recommendations on ensuring gender equality in national legislation and policies in respect of the conferral of nationality to children and/or spouses (Belgium, Haiti, Iceland), three recommendations on withdrawing

¹ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/31/MYS/1, 23 August 2018, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/256/22/PDF/G1825622.pdf?OpenElement>.

reservations, inter alia, to article 9 CEDAW (Turkey, Sweden, Norway) and one recommendation on protecting the right to nationality and preventing statelessness of children born to Malaysian citizens (Kenya).² All these recommendations were noted by Malaysia.³

Malaysia's International Obligations

5. Malaysia is a party to only three of the core human rights instruments: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). Many of Malaysia's obligations as enshrined in the CEDAW, CRC and CRPD are provided for by existing domestic legislation. However, these are usually not applied in practice.
6. Malaysia has not yet acceded to other important international human rights instruments. For example, Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), the 1951 Convention relating to the Status of Refugees (Refugee Convention), the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the ILO Convention No. 169 on Indigenous and Tribal Peoples, among others.
7. The human rights instruments to which Malaysia has acceded – CEDAW, CRC and CRPD – provide for the right to a nationality and equal nationality rights between women and men. However, the State has placed reservations on relevant provisions of these instruments as follows:
 - a. CRC: Article 2 (non-discrimination); Article 7 (name and nationality); Article 14 (freedom of thought, conscience and religion); Article 28(1)(a) (free and compulsory education at the primary level); and Article 37 (freedom from torture or other cruel, inhuman or degrading treatment or punishment and arbitrary detention). With respect to Article 28 paragraph 1 (a) of the Convention, the Government of Malaysia has declared that primary education in Malaysia is made compulsory. Malaysia has also stated that the application of the CRC at a national level is subject to its compatibility with the Federal Constitution of Malaysia (Federal Constitution).⁴
 - b. CEDAW: Article 9(2) (nationality of children); Article 16(1)(a) (right to enter into marriage); Article 16(1)(c) (rights during marriage and dissolution); Article 16(1)(f) (guardianship); Article 16(1)(g) (same personal rights between spouses); and Article 16(1)(h) (same property rights for spouses). Malaysia has also stated that the

² Report of the Working Group on the Universal Periodic Review, A/HRC/40/11, 7 January 2019, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/001/96/PDF/G1900196.pdf?OpenElement>

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum, UN Doc. A/HRC/40/11/Add.1, para. 7-8.

⁴ Federal Constitution of Malaysia, 31 August, 1957, available at <http://www.refworld.org/docid/3ae6b5e40.html>.

application of CEDAW in Malaysia is subject to compatibility with the Federal Constitution and Syariah (Islamic) law.

- c. CRPD: Article 15 (freedom from torture, or cruel, inhuman or degrading treatment or punishment) and Article 18 (freedom of movement and nationality).

At its previous UPR in 2018, Malaysia rejected recommendations to remove the abovementioned reservations to CEDAW.⁵

- 8. However, it must be noted that in addition to treaty obligations, as a member State of the United Nations, Malaysia is obligated by the UN Charter to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁶ These human rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (UDHR), many of which are also recognised as principles of customary international law.⁷
- 9. Furthermore, as a member State of the Association of Southeast Asian Nations (ASEAN), Malaysia is a signatory to the 2012 ASEAN Human Rights Declaration. Although this declaration is a non-binding document, it nonetheless reflects consensus as to the importance of human rights in the region.
- 10. The combined effect of Malaysia’s lack of implementation of its domestic legislation that incorporates its international obligations, reservations to CEDAW, CRC and CRPD, and the lack of accession to other relevant human rights instruments is of great concern in the context of gender discriminatory nationality laws and statelessness in Malaysia, as it implies that the State does not view the right to a nationality of paramount importance.

A Snapshot of Challenges Relating to The Right To Citizenship And Statelessness In Malaysia

- 11. Malaysia has the third largest reported stateless population in Southeast Asia, reporting 115,169 stateless persons to UNHCR in 2022.⁸ The UNHCR outlines that this figure comprises 103,380 stateless Rohingya in Malaysia along with 9,040 non-displaced stateless persons in West Malaysia ‘who may be entitled to Malaysian nationality under the law.’⁹ According to the latest statistics from a mapping exercise done by the Development of Human Resources for Rural Areas (DHRRA) Malaysia, over 16,392 stateless persons in West Malaysia were registered with them from 2016 to June 2023; an estimated 7,000 have been recognised as

⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum, UN Doc. A/HRC/40/11/Add.1, para. 7-8.

⁶ Article 55(c) of the Charter of the United Nations. According to Article 56 of the Charter, it is the obligation of all member states of the UN to take “joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.

⁷ International Law Commission, “Draft Articles on Diplomatic Protection with Commentaries”, 58th session, Yearbook of the International Law Commission, Vol. II, Part Two, 2006, p. 49.

⁸ UNHCR, ‘Global Trends 2021’ (June 2022) Annex, Table 5.

⁹ UNHCR, ‘Global Trends 2021’ (June 2022) Annex, Table 5 fn 24.

Malaysians while the remaining 9392 remain stateless.¹⁰ These statistics only represent the pre-independent context and childhood statelessness cases (such as foundlings/ abandoned children, stateless children adopted by Malaysians and children born out of wedlock to Malaysian fathers) and do not include the numbers of stateless persons in Sabah and Sarawak (East Malaysia) or the West Malaysian states of Kelantan and Terengganu.

12. Several groups at risk of or affected by statelessness have been identified in Malaysia including; persons who have resided in Malaysia since pre-independence as well as their descendants (including individuals of Tamil ethnicity), children of mixed-nationality marriages (through the impact of gender discriminatory nationality laws), indigenous persons (including mobile maritime populations and Orang Asli communities), refugees and irregular migrants (and their children) in Sabah East Malaysia, as well as persons lacking documentation and foundlings.¹¹
13. In March 2022, the Chief Minister of Sabah announced that 810,443 residents of Sabah are non-citizens which mostly comprise the Bajau Laut community.¹² This figure is almost double the UNHCR 2019 estimate of 450,000 stateless persons in Sabah.¹³ Most of this population has lived in Sabah for multiple generations yet lacks any documentary proof of their connection to their country of domicile or origin. It is unclear whether this population is stateless in its entirety or entitled to citizenship of either Malaysia, the Philippines or Indonesia.¹⁴
14. In 2021, of the 115,169 reported stateless persons, 103,380 were stateless Rohingya refugees in Malaysia.¹⁵ While previously welcomed and supported by Malaysia, the Rohingya population has never gained full protection due to Malaysia not being party to the Refugee Convention and its Protocol and in recent years is facing discrimination, arrest, detention and boat pushbacks.¹⁶

ISSUE I. The Child's Right to Citizenship and Childhood Statelessness

15. The Malaysian Federal Constitution contains robust safeguards against statelessness.

¹⁰Lim I, 'Counting Malaysia's "Invisible" People: How Many Born Here Cannot Be Citizens despite Their Local Roots' *MalayMail* (10 July 2023) & <https://www.malaymail.com/news/malaysia/2023/07/10/counting-malaysias-invisible-people-how-many-born-here-cannot-be-citizens-despite-their-local-roots/78296>> accessed 12 July 2023.

¹¹ See Jamie Chai Yun Liew, 'Homegrown Statelessness in Malaysia and the Promise of the Principle of Genuine and Affective Links' (2019) 1(1) *Statelessness & Citizenship Review* 95; Bathmaloshanee M, Maalini Ramalo and Savarana M Sinpan, 'Report Statelessness in Malaysia' (DHRRA, April 2022) <https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022_compressed.pdf>.

¹² Durie Rainer Fong, 'Almost a Quarter of Sabah Residents are Non-Citizens, Assembly Told', *Free Malaysia Today* (24 March 2022)<<https://www.freemalaysiatoday.com/category/nation/2022/03/24/almost-a-quarter-of-sabah-residents-are-non-citizens-assembly-told/>>.

¹³ US Department of State, 'Malaysia 2021: Human Rights Report' (April 2022) 25.

¹⁴ Bathmaloshanee M, Maalini Ramalo and Savarana M Sinpan, 'Report Statelessness in Malaysia' (DHRRA, April 2022) 15 <https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022_compressed.pdf>.

¹⁵ UNHCR, 'Global Trends 2021' (June 2022) Annex, Table 5 fn 24.

¹⁶ See Christine H Kim, 'Challenges to the Rohingya Population in Malaysia', *Centre for Strategic & International Studies* (10 July 2020) <<https://www.csis.org/blogs/new-perspectives-asia/challenges-rohingya-population-malaysia>>; Sui-Lee Wee, '6 Rohingya Refugees are Killed Fleeing Detention Centre in Malaysia', *The New York Times* (20 April 2022) <<https://www.nytimes.com/2022/04/20/world/asia/rohingya-refugees-malaysia-deaths.html>>.

- a. According to Section 1(e) of Part II of the Second Schedule “Every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph” is a citizen by operation of law. This means that irrespective of the parents’ citizenship, all stateless individuals born in Malaysia, who have not obtained any citizenship within one year, are automatically considered citizens.
- b. Section 19(B) of Part III of the Second Schedule read with Section 1(a) of Part II of the Second Schedule grants automatic citizenship to foundlings and abandoned children.

Section 1(a) of Part II of the Second Schedule reads “every person born within the Federation of whose parents one at least is at time of the birth either a citizen or permanently resident in the Federation” is a citizen by operation of law.

Section 19(B) of Part III of the Second Schedule reads “For the purpose 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.”

- c. Section 9(1) of the 1952 Adoption Act recognises adopted children as having the same legal standing as biological children. It states the following:

“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 best exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock...”

However, these safeguards have proven to be ineffective, due to the absence of administrative guidelines for implementation.¹⁷

16. Abandoned children and foundlings: Section 1(a) of Part II of the Second Schedule and Section 19(B) of Part III of the Second Schedule, when read together, grant abandoned children and foundlings born in Malaysia automatic citizenship. However, the latter is only applicable to a “newborn child”, although the age limit is not clearly defined in the provision.¹⁸

¹⁷ Rodziana M Razali, ‘Addressing Statelessness in Malaysia: New Hope and Remaining Challenges’ (2017) Statelessness Working Paper Series No. 2017/9, 5 <https://files.institutesi.org/WP2017_09.pdf> accessed 27 June 2023.

¹⁸ Mohd A, ‘Abandoned Child’s Right to Identity Protection in Malaysia’ (2011) US-China Law Review 389 <<http://irep.iium.edu.my/6684/>> accessed 2 July 2023

17. The landmark Federal Court case *CCH & Anor v Pendaftar Besar Bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71 established that abandoned children have the right to citizenship by operation of law, setting crucial guidelines for government bodies on handling future cases involving abandoned newborns.¹⁹ Following this case, the National Registration Department (NRD) should be issuing automatic citizenship to foundlings without the need for a court order. Unfortunately, this process remains inaccessible as the NRD refuses to acknowledge the foundlings' circumstances and refuses to register the foundlings as citizens. The NRD's actions have resulted in many foundlings remaining stateless as they are not able to access legal remedies due to unaffordable and exorbitant legal fees.
18. Adopted children: The 1952 Adoption Act does not specifically provide for the transfer of citizenship from adoptive parents to adopted children. Adopted children whose biological parents cannot be traced or are unknown, such as foundlings and abandoned children, face challenges in obtaining Malaysian citizenship, putting them at a high risk of statelessness. NRD and the Home Ministry require adopted stateless children to provide documentation or details about their biological parents, which is unattainable for foundlings and abandoned children.
19. The determination of citizenship for adopted children is often arbitrary and based on the administrative decisions of the NRD. Adoptive parents are required to apply for citizenship through registration via the discretionary Article 15A of the Federal Constitution, which is a non-automatic, lengthy and inconsistent process filled with rejections, available only to those below the age of 21 and cannot be appealed in court. Furthermore, adoption procedures differ for Muslim²⁰ and non-Muslim²¹ parents, with the former subject to more restrictive rules, such as the adopted child being unable to inherit the adoptive parent's name.
20. Case laws have shown that the Courts often employ a narrow and technical approach to citizenship cases involving adopted stateless children, which does not prioritise their protection.²²
21. Birth Registration: Obtaining a birth certificate is a crucial prerequisite for acquiring other identity documents and citizenship in Malaysia.²³ Registration is not automatically granted at the time of birth. Instead, individuals are required to actively register their births with the National Registration Department of the Malaysian Government to obtain a birth certificate.²⁴ Lack of birth registration contributes to the issue of statelessness. Without

¹⁹ Tan K, 'Case Commentary: *CCH and Anor V Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia*' [2021] SSRN Electronic Journal

²⁰ Governed by the De Facto Adoption Act 253

²¹ Governed by the Court Adoption Act 257

²² Nungsari M and Fong N (SUHAKAM - The Human Rights Commission of Malaysia 2023) rep <https://suhakam.org.my/wp-content/uploads/2023/03/SUHAKAM_Statelessness.pdf> accessed 29 June 2023

²³ 'MyKad Application For 12-Year-Old Children' (*Portal JPN - Permohonan MyKad Bagi Kanak-Kanak 12 Tahun*) <<https://www.jpn.gov.my/my/perkhidmatan/kad-pengenalan/mykad-12>> accessed 28 June 2023

²⁴ Institute of Statelessness and Inclusion (ISI). "Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia, Third Cycle, Nov 2018." 29 Mar. 2018. https://files.institutesi.org/UPR31_Malaysia.pdf.

proper birth registration and the accompanying birth certificate, it can be challenging for children to establish their own identity and prove their parentage. Unfortunately, many parents are not sufficiently aware of the importance of obtaining a birth certificate, with some registering their children's births only when they reach school-going age. Late registrations are significantly more arduous as they require a long list of documentation requirements.²⁵

22. Latest Developments: As part of recent developments concerning childhood statelessness, the Malaysian Government announced its intention to remove Section 1(e) of Part II of the Second Schedule as part of a list of citizenship amendments scheduled to be tabled in October 2023.²⁶ If this provision is removed, it will further deprive stateless children of their pathway to citizenship and fundamental liberties and rights, potentially leading to an increase in statelessness in Malaysia. Similarly, Section 19(B) is set to be amended, replacing the existing provision of automatic citizenship for foundlings with a discretionary application process that places the burden of proving statelessness on the child.²⁷
23. In June 2023, two committees were established to study the proposed amendments mentioned above.²⁸ However, concerns have been raised regarding the lack of transparency and inclusive consultation with stakeholders on the proposed amendments. Following media attention on this, several civil society organisations (CSOs) were invited to a consultation where the proposed amendments were revealed. However, the draft amendment itself remains undisclosed to the general public and CSOs.
24. In the meantime, the Ministry of Home Affairs has announced efforts to prioritise the processing of applications for Malaysian citizenship of adopted children and those born before independence. The Ministry aims to approve at least 10,000 applications in 2023 and has implemented a shorter processing period to expedite the application.²⁹

ISSUE II. The Bajau Laut in Sabah, East Malaysia

25. The Bajau Laut is a large community in Sabah that make their livelihood through marine-based income sources. They lead a semi-nomadic lifestyle in boats or stilt houses without identity documentation and are denied the right to citizenship.³⁰ Despite being born in Malaysia before independence and holding the right to citizenship, they have not been

²⁵ 'Late Registration of Birth' (*Mygov - the government of Malaysia's Official Portal*) <<https://www.malaysia.gov.my/portal/content/30258>> accessed 28 June 2023

²⁶ Malay Mail, 'Proposed Constitutional Amendments Will Worsen Childhood Statelessness in Malaysia - Civil Society Organisations' *Malay Mail* (24 June 2023) <<https://www.malaymail.com/news/what-you-think/2023/06/24/proposed-constitutional-amendments-will-worsen-childhood-statelessness-in-malaysia-civil-society-organisations/76124>> accessed 27 June 2023

²⁷ 'Govt's Proposal on Citizenship Laws Worst since Merdeka, Says LFL' *Free Malaysia Today* (24 June 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/06/24/govts-proposal-on-citizenship-laws-worst-since-merdeka-says-lfl/>> accessed 27 June 2023

²⁸ 'Home Ministry Identifies Eight Suggestions for Constitutional Amendments Related to Nationality' *New Straits Times* (10 June 2023) <<https://www.nst.com.my/news/nation/2023/06/918726/home-ministry-identifies-eight-suggestions-constitutional-amendments>> accessed 27 June 2023

²⁹ Singh S, 'Priority for Adopted Kids, Pre-Merdeka Birth Dates in Citizenship Application Process' *The Star* (13 April 2023) <<https://www.thestar.com.my/news/nation/2023/04/13/priority-for-adopted-kids-those-born-before-independence-when-processing-citizenship-applications>> accessed 27 June 2023

³⁰ UPR Malaysia, ISI <https://files.institutesi.org/UPR31_Malaysia.pdf>

granted Malaysian citizenship and face intergenerational statelessness.³¹

26. The Bajau Laut community's non-recognition by the Malaysian state, connected to lack of access to documentation such as birth certification, lack of access to basic services, rural isolation, discrimination and marginalisation of the population, along with other administrative barriers has led to conditions of intergenerational statelessness today.³² The insufficiency of these institutional mechanisms coupled with the irregular migrant flows also prevents estimating the number of stateless people from the Bajau Laut community that Sabah hosts.³³ According to the 2021 estimation by the Department of Statistics Malaysia, over 25% of Sabah's population consists of non-citizens, totalling approximately 995,400 individuals. Among them, around 250,000 are children ranging from 0 to 19 years old.³⁴
27. The absence of birth registration poses a greater obstacle for parents, particularly in the Bajau Laut community, who face challenges due to high birth rates and rural isolation, in bestowing citizenship upon their children.³⁵

ISSUE III. Gender Discrimination in Malaysia's Citizenship Law

28. Despite the prohibition of discrimination based on gender being a fundamental principle enshrined in the Malaysian Federal Constitution, Malaysia's citizenship laws contain several gender-discriminatory provisions. Malaysia received and took note of six recommendations on gender-equal nationality rights during its third Universal Periodic Review.³⁶
29. Currently, Malaysian women do not have equal rights as men to confer automatic citizenship on their children born outside the country. Malaysian men can rely on Sections 1(b) and 1(c) of Part II of the Second Schedule of the Federal Constitution which state that a person born outside of Malaysia is a citizen by 'operation of law' if the father is a citizen. Malaysian women have to rely on Article 15(2) where citizenship is upon application, an arbitrary and inconsistent process filled with delays and a slim chance of approval.
30. The landmark Kuala Lumpur High Court decision in *Suriani Kempe & Ors v Government of Malaysia & Ors*, which initially granted Malaysian women equal citizenship rights, was later overturned in a 2-1 decision following the Government's appeal. The case is currently pending at the Federal Court. In the meantime, the Malaysian Government has committed to table an amendment to the Federal Constitution in October 2023 to grant equal

³¹ See Bathmaloshanee M, Maalini Ramalo and Savarana M Sinpan, 'Report Statelessness in Malaysia' (DHRRA, April 2022) 10-11<https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022_compressed.pdf>

³² See Wan Shawaluddin Was Hassan and Diana Peters, 'The Vulnerability of Bajau Laut as Stateless People in Sabah' (2020) 26(2) *Jurnal Kinbalu Bil* 184

³³ See Wan Shawaluddin Was Hassan and Diana Peters, 'The Vulnerability of Bajau Laut as Stateless People in Sabah' (2020) 26(2) *Jurnal Kinbalu Bil* 184,

³⁴ Current Population Estimates by age and ethnic group, Sabah [Internet]. 2021 [cited 2021 Sep 15]. Available from: <http://pqi.stats.gov.my/searchBI.php?tahun=2021&kodData=2&kodJadual=1&kodCiri=5&kodNegeri=12>

³⁵ Institute of Statelessness and Inclusion (ISI). "Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia, Third Cycle, Nov 2018." 29 Mar. 2018. https://files.institutesi.org/UPR31_Malaysia.pdf.

³⁶ Recommendations 151.150 by Belgium; 151.151 by Haiti; 151.152 by Kenya; 151.208 by Iceland; 151.219 by Sweden.

citizenship rights to children born overseas to Malaysian women.³⁷

31. Children born outside a legally recognised marriage to Malaysian fathers and non-Malaysian mothers do not have the right to inherit Malaysian citizenship.³⁸ This contributes to statelessness, particularly when the children cannot acquire the mother's citizenship due to various reasons, such as the mother being stateless, their country of origin not allowing them to confer citizenship in certain circumstances or their identity is unknown or cannot be traced.
32. In the landmark case of *CTEB & Anor. v Ketua Pengarah Pendaftaran Negara Malaysia & Ors.*, the Federal Court ruled in May 2021 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.
33. Additionally, Malaysian women do not have the equal right as men to confer citizenship on their foreign spouses.³⁹ While Malaysian men can confer citizenship on their spouses after two years of residency in the country, spouses of Malaysian women can only rely on citizenship by naturalisation, which is available to any non-Malaysian and requires twelve years of residency. As part of the scheduled amendments in October 2023, the Government intends to amend this provision to tighten the existing law, while retaining the gender-discriminatory element. This would include a provision to revoke the citizenship of the foreign spouse of a Malaysian man if the marriage dissolves within two years of acquiring citizenship, with proficiency in the Malay language as an additional requirement.⁴⁰

ISSUE IV. People of Indian Origin

34. People of Indian origin in Malaysia were one of the largest stateless communities in the country located primarily in West Malaysia. They are Indian persons of Tamil descent who were brought into the country in the British colonial period, during the 19th and early 20th centuries.⁴¹ They were brought to work as labourers in rubber plantations and public services and the community has since resided predominantly around rubber estates.⁴²

³⁷ Dzulkifly D, 'Govt to Table Amendment to Citizenship Act in Sept: Saifuddin' *The Vibes* (23 March 2023) <<https://www.thevibes.com/articles/news/88636/govt-to-table-amendment-to-citizenship-act-in-sept-saifuddin>> accessed 26 June 2023

³⁸ Section 17 of Part III of the Second Schedule of the Federal Constitution states that the term "parent" in the case of children born out of wedlock is to be interpreted as the mother.

³⁹ Article 15(1) of the Federal Constitution provides Malaysian men with the right to confer their citizenship by 'registration' to their foreign spouses provided they have resided in Malaysia for two years prior to the application. Spouses of Malaysian women can only rely on Article 19 – Citizenship by Naturalisation available to any non-citizen for which they must demonstrate residency of ten out of twelve years.

⁴⁰ Lim I, 'New Citizenship Rules Could Leave Foreigners Wed to Malaysian Men Stateless or Stuck in Abusive Marriages, Group Cautions' *MalayMail* (4 July 2023) <<https://www.malaymail.com/news/malaysia/2023/07/04/new-citizenship-rules-could-leave-foreigners-wed-to-malaysian-men-stateless-or-stuck-in-abusive-marriages-group-cautions/77817>> accessed 10 July 2023

⁴¹ Institute of Statelessness and Inclusion (ISI). "Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia, Third Cycle, Nov 2018." 29 Mar. 2018. https://files.institutesi.org/UPR31_Malaysia.pdf, p.6.

⁴² United Nations High Commissioner for Refugees (UNHCR). "Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness." Refworld, Aug. 2022, www.refworld.org/docid/54e75a244.html, p.35

Essentially, these communities were self-contained, with few incentives for them to leave the plantations and explore beyond their boundaries.⁴³

35. Malaysia gained its independence in 1957, which entitled the communities to Malaysian citizenship. However, due to the remote location of the plantations, low literacy rates, and limited awareness about the significance of obtaining proper documentation, a considerable number of individuals of Indian-Tamil descent did not register for citizenship.⁴⁴ Due to their self-isolation, the community also did not register the births of their children, leaving them with little to no proof to prove their intergenerational link to Malaysian citizenship. It was only upon the closure of these plantations that this community was forced to move to urban areas, where they faced several barriers in accessing basic amenities due to the lack of documentation.⁴⁵

36. There are several ways through which citizenship can be acquired in Malaysia— through birth, registration, and naturalisation. The Constitution, through Article 14 (1) asserts that every individual born before 16 September 1963 to be eligible for Malaysian citizenship.⁴⁶ While the legal framework to reduce statelessness among people of Indian origin exists, there are administrative and procedural hurdles to acquiring citizenship.⁴⁷ Furthermore, the exorbitant expenses to acquire supporting documentation and late fee charges for delay in birth registration, and DNA tests required by the National Registration Department, a department under the Ministry of Home Affairs, exacerbates the difficulty of this process.⁴⁸

ISSUE V. Refugees and Irregular Migrants (and their Descendants)

37. Malaysia hosts a significant number of refugees and irregular migrants, including children, who face numerous challenges. As of the end of September 2022, a total of 183,430 refugees and asylum seekers were registered with UNHCR. The vast majority (86%) are from Myanmar consisting of Rohingya, Chin and other ethnic groups. The Rohingya group makes up 58% or 105,870 of the total refugee population in Malaysia.⁴⁹ Despite not being a signatory to the 1951 Refugee Convention or its 1967 Protocol, Malaysia has allowed refugees to reside temporarily.

38. Prolonged detention, often in overcrowded and unsanitary conditions, poses serious health and human rights concerns. In 2022, 150 foreigners died in detention including 7 children

⁴³ UNHCR. "Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness." Refworld, Aug. 2022, <https://www.refworld.org/pdfid/54e75a244.pdf>, p. 36

⁴⁴ Ibid. p. 35.

⁴⁵ See Jamie Chai Yun Liew, 'Homegrown Statelessness in Malaysia and the Promise of the Principle of Genuine and Affective Links' (2019) 1(1) *Statelessness & Citizenship Review* 108.

⁴⁶ Section 14 (1) Federal Constitution (Malaysia)

⁴⁷ UNHCR. "Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness." Refworld, Aug. 2022, <https://www.refworld.org/pdfid/54e75a244.pdf>, p.37

⁴⁸ Ibid.

⁴⁹ UNHCR (2023) *Malaysia*, UNHCR US. Available at: <https://www.unhcr.org/us/countries/malaysia#:~:text=Malaysia%20hosts%20some%20181%2C000%20refugees,%2C%20while%2033%25%20are%20women.> (Accessed: 03 July 2023).

and 25 women.⁵⁰

39. Access to basic services, including healthcare and education, remains limited for refugees and irregular migrants.⁵¹ Many are unable to afford medical treatment or enrol their children in schools.
40. Children of refugees and irregular migrants face unique challenges. Their uncertain legal status often prevents them from obtaining birth certificates, which hinders their access to education and healthcare.⁵² Refugees such as Rohingya refugees, and Syrian Refugees often struggle to obtain birth registration for their children.⁵³ The absence of birth certificates can limit these refugee children's opportunities for education and healthcare. It can prevent them from enrolling in schools, participating in formal education programs, and accessing essential healthcare services. This situation further exacerbates their vulnerability and restricts their ability to lead a normal life.

ISSUE VI. Consequences of Statelessness in Malaysia

41. Statelessness and gender-discriminatory nationality laws have far-reaching and deeply detrimental consequences. Stateless and non-citizen children - with either parent Malaysian, such as children born overseas to Malaysian women - face challenges enrolling into the national school system, despite the establishment of the Zero Reject Policy in 2018. This policy still requires one parent to be a Malaysian citizen with an identification card, which excludes stateless children without a citizen parent or whose parents lack documentation.⁵⁴ Those eligible are still faced with bureaucratic challenges including having to complete an arduous and lengthy enrolment registration process or being forced to join months after the start of the school year. In addition, these children are also excluded from essential services and resources available for children who are Malaysian citizens such as textbook loan schemes and dental checkups in school.⁵⁵ Stateless persons also face difficulties in accessing tertiary education as not many universities accept to enrol them.⁵⁶ Recently, the Education Minister announced that the Government is in the process of amending the legislation to enable children without documentation to study at public schools.⁵⁷

⁵⁰ Teng LH, 'Malaysia Pressed to Probe Deaths of 150 Foreigners in Detention' (Refugees News | Al Jazeera, 23 February 2023) <<https://www.aljazeera.com/news/2023/2/23/malaysia-pressed-to-probe-deaths-of-150-foreigners-in-detention>> accessed 27 June 2023

⁵¹ Loganathan, T. *et al.* (2019) *Breaking down the barriers: Understanding migrant workers' access to healthcare in Malaysia*, PLOS ONE. Available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0218669#sec006> (Accessed: 03 July 2023).

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Rostam NH and others, 'A Legal Analysis of Stateless Children and Their Rights to Education in Malaysia: A Comparative Study with Thailand' (2022) 11 International Journal of Academic Research in Progressive Education and Development

⁵⁵ Lim I, 'Let Foreign-Born Kids of Malaysian Mums into Schools Pending Citizenship Reforms, Putrajaya Told' *MalayMail* (15 March 2023) <<https://www.malaymail.com/news/malaysia/2023/03/15/let-foreign-born-kids-of-malaysian-mums-into-schools-pending-citizenship-reforms-putrajaya-told/59499>> accessed 10 July 2023

⁵⁶ Ibid.

⁵⁷ Yusof TA and others, 'Govt to Amend Act to Allow Undocumented Kids Attend Public Schools, Says Fadhlina' *The Star* (14 June 2023) <<https://www.thestar.com.my/news/nation/2023/06/14/govt-to-amend-act-to-allow-undocumented-kids-attend-public-schools-says-fadhlina#:~:text=Fadhlina%20said%20the%20amendment%20would,schools%20funded%20by%20the%20government>> accessed 10 July 2023

42. Stateless children and non-citizen children with a Malaysian parent can access public health care but do not qualify for subsidised rates that are available to citizens. For instance, admission deposits for “foreigners” range from RM500 to RM1200 depending on the category of illness.⁵⁸ This is also the case with basic immunisation; it is estimated that parents will have to pay a total of RM 1,000 in vaccinations alone for their children—each vaccine costing RM40—following the schedule set by the Ministry of Health for vaccinations.⁵⁹
43. Stateless persons face difficulties in accessing formal employment leading to many resorting to working in the informal sector or dangerous jobs with a high risk of getting exploited; they also cannot legally set up a business as they cannot be granted a business and trading licence. Stateless persons are not entitled to the mandatory employers’ contribution towards social security benefits such as the Employee Provident Fund (EPF) and Social Security Organisation (SOCSO). This exacerbated the economic marginalisation faced by this vulnerable community during the COVID-19 pandemic when stateless persons were also faced with evictions and were not entitled to Government aid.⁶⁰ Government aids usually require applicants to produce their identification card which excludes stateless or undocumented persons and non-citizen children of a Malaysian parent from accessing such aid. The Bajau Laut community, in particular, consists of daily wage labourers who are excluded from formal sources of employment.⁶¹
44. Stateless persons are also unable to access basic services such as opening bank accounts, owning a driver’s licence or accessing telecommunication services, making it difficult for them to participate fully in society. Without access to legal documentation, stateless persons, especially the Bajau Laut community, also face a lack of access to fundamental services such as clean water, electricity, healthcare and education.
45. Women and children are disproportionately impacted with female children being vulnerable to risks such as child marriage and human trafficking. Stateless women and women who have unequal citizenship rights are also at risk of being trapped in toxic marriages.
46. The uncertain legal status of non-citizen children of a Malaysian parent or stateless persons places them at high risk of arrest, detention and exploitation. Refugees and stateless persons are frequently subject to arrest and detention under Section 6(1)(c) of the Immigration Act 1959/1963, which charges anyone who illegally enters the country with an RM10,000 fine, jail up to five years and six strokes of a cane. Stateless refugees are particularly vulnerable to police harassment and extortion.

⁵⁸ Zainuddin A, ‘Amar: Drop High Health Care Fees For Marginalised Children’ CodeBlue (21 February 2022) <<https://codeblue.galencentre.org/2022/02/21/amar-drop-high-health-care-fees-for-marginalised-children/>> accessed 10 July 2023

⁵⁹ There are a total of twenty-five vaccines required from birth to the age of 15. Ministry of Health Malaysia. “Vaccination for Children in Malaysia.” Ministry of Health. Website. <<http://hsi.moh.gov.my/2019/04/17/vaccination-for-children-in-malaysia-2/>>

⁶⁰ Ibid.

⁶¹ Loganathan, Tharani et al. “Undocumented: An examination of legal identity and education provision for children in Malaysia.” *PloS one* vol. 17,2 e0263404. 2 Feb. 2022, doi:10.1371/journal.pone.0263404

47. Reports also show that stateless persons are at high risk of experiencing trauma and mental health issues. Parents and caregivers live in constant fear for their stateless children while stateless persons themselves are at high risk of depression, with some being suicidal.⁶²

Recommendations

- I. Re-evaluate and scrutinise the implications of the proposed amendments to Malaysian citizenship provisions that are scheduled to be tabled in October 2023, especially:
 - a. Removal of Section 1(e) of Part II of the Second Schedule a constitutional safeguard against statelessness and the amendment to Section 19(B) of Part III of the Second Schedule, the right of citizenship by operation of law for abandoned children and foundlings, ensuring it adequately addresses concerns related to childhood statelessness.
 - b. Proposed changes to Article 15(1) of the Federal Constitution on the citizenship of foreign spouses of Malaysian men.
- II. Ensure that all children, including those who are stateless or at risk of statelessness, such as foundlings and adopted children, are granted citizenship without any form of discrimination, following Malaysia's constitutional provisions to prevent statelessness.
 - a. Guarantee the full implementation of existing protections outlined in the Federal Constitution to ensure that every child born in Malaysia, regardless of their parents' gender, ethnicity, documentation, or immigration status, is granted Malaysian nationality, particularly if they would otherwise be stateless.
 - b. NRD must issue administrative guidelines and procedures to implement Section 19(B) of Part II of the Second Schedule that recognises newborn foundlings as citizens of Malaysia.
- III. Reform Malaysia's gender-discriminatory citizenship laws and policies to ensure access to automatic citizenship to children born to either parent Malaysian, irrespective of the gender of the Malaysian parent, marital status of the parents and the place of birth of the child. Specifically:
 - a. Amend Sections 1(b) and 1(c) of Part II of the Second Schedule of the Federal Constitution to ensure Malaysian women have equal rights as Malaysian men to confer automatic citizenship on their children born outside the country.
 - b. Reform the law with regards Section 17 of Part III of the Second Schedule of the Federal Constitution to grant children born outside of a legally recognised marriage the right to inherit the Malaysian father's citizenship.
- IV. Amend Article 15(1) to ensure Malaysian women have equal rights as Malaysian men to confer citizenship on their foreign spouses.
- V. Address the rising situation of statelessness in Malaysia through a 'Statelessness Determination Procedure' to identify and prioritise access to citizenship among vulnerable stateless adults and children.

⁶² Ibid.

- VI. Remove administrative barriers in acquiring birth registration and implement automatic birth registration throughout Malaysia, including for children born to refugees and irregular migrants, ensuring they can obtain birth certificates and legal documentation recognising it as a crucial mechanism for safeguarding the right to a nationality and preventing statelessness.
 - a. Conduct awareness campaigns targeting healthcare providers, civil registration authorities, and community leaders to emphasise the importance of birth registration for all children, regardless of their legal status.
- VII. Enhance administrative processes to facilitate the acquisition or verification of citizenship.
 - a. Reduce the high application costs for claims to citizenship.
- VIII. Resolve the status of individuals who hold permanent residency in Malaysia but lack Malaysian citizenship or citizenship from any other country.⁶³
- IX. Allow stateless children and non-citizen children of Malaysians to access the national school system and subsidised public healthcare on an equal basis as Malaysian children, without any discriminatory barriers.
 - a. Promote the well-being and integration of refugees and irregular migrants through the development of comprehensive social services such as psychosocial support, vocational training and livelihood programs, in collaboration with relevant stakeholders.
- X. Ratify the 1951 Refugee Convention and develop a domestic legal framework to ensure the rights and protection of refugees.
 - a. Ensure that no refugees, asylum seekers or stateless persons are subject to arbitrary immigration detention in Malaysia and develop and implement alternatives to detention, such as community-based programs, that prioritise the best interests of the child and respect their rights to liberty and family unity.
 - b. Enhance the legal framework to ensure access to justice and adequate legal representation for the stateless refugee population.
- XI. Address the discriminatory attitudes of the nationals towards the Bajau Laut community and create national policies that focus on inclusivity.
- XII. Withdraw all reservations to the CRC, CEDAW and CRPD, particularly concerning the right to a nationality, and accede to all relevant human rights, refugee and statelessness instruments.

⁶³ Institute of Statelessness and Inclusion (ISI). "Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia, Third Cycle, Nov 2018." 29 Mar. 2018. https://files.institutesi.org/UPR31_Malaysia.pdf, p.6.