

Joint Submission to the Committee on the Rights of the Child

100th Pre-Sessional Working Group

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Malaysia

Advocates for Non-discrimination and Access to Knowledge (ANAK)
Association of Family Support & Welfare Selangor & KL (Family Frontiers),
Borneo Komrad, Iskul Sama diLaut Omadal (Iskul),
Buku Jalanan Chow Kit, Yayasan Chow Kit,
Development of Human Resources for Rural Areas (DHRRA)
Elom Initiatives (Elom), Nationality for All (NFA),
Global Campaign for Equal Nationality Rights (GCENR), Equality Now,
Child Identity Protection (CHIP),
Institute on Statelessness and Inclusion (ISI).

15 November 2024



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Introduction

1. Advocates for Non-discrimination and Access to Knowledge (ANAK),¹ Association of Family Support & Welfare Selangor & KL (Family Frontiers),² Borneo Komrad,³ Iskul Sama diLaut Omdal (Iskul),⁴ Buku Jalanan Chow Kit,⁵ Yayasan Chow Kit,⁶ Development of Human Resources for Rural Areas (DHRRRA) Malaysia,⁷ Elom Initiatives (Elom),⁸ Nationality for All (NFA),⁹ Global Campaign for Equal Nationality Rights (GCENR),¹⁰ Equality Now,¹¹ Child Identity Protection (CHIP)¹² and the Institute on Statelessness and Inclusion (ISI)¹³ make this joint submission regarding Malaysia's compliance with every child's right to acquire a nationality under Article 7 of the Convention on the Rights of the Child (hereafter the CRC) and preserve their nationality under Article 8 of the CRC. This submission also draws on the Guiding Principles of the CRC, in particular, every child's freedom from discrimination (Article 2) and the best interests of the child (Article 3).
2. This thematic submission is based on the co-submitting organisations' expertise and considerable efforts to address the issues of childhood statelessness and realise every child's right to acquire a nationality in Malaysia. This submission focuses on:
 - I. Procedural and implementation challenges with regard to the child's right to a nationality in Malaysia;
 - II. Issues affecting certain categories of stateless children in the acquisition of Malaysian nationality;
 - III. Latest developments on provisions on childhood statelessness and discriminatory nationality laws; and
 - IV. Consequences of childhood statelessness and discriminatory nationality laws in Malaysia.

¹ For more info, please see: <https://anaksabah.org/>.

² For more info, please see: <https://familyfrontiers.org/>.

³ For more info, please see: <https://www.borneokomrad.net/>.

⁴ For more info, please see: <https://iskul.my/>.

⁵ For more info, please see: <https://bukujalananchowkit.wixsite.com/website/home>.

⁶ For more info, please see: <https://yck.org.my/>.

⁷ For more info, please see: <https://dhrramalaysia.org.my/>.

⁸ For more info, please see: <https://www.facebook.com/elominitiatives>.

⁹ For more info, please see: <https://nationalityforall.org/>.

¹⁰ For more info, please see: <https://www.equalnationalityrights.org/>.

¹¹ For more info, please see: <https://equalitynow.org/>.

¹² For more info, please see: <https://www.child-identity.org/>.

¹³ For more info, please see: <https://www.institutesi.org/>.

3. Annex I to this submission contains previous recommendations to Malaysia on the child's right to a nationality, for ease of reference of the Committee. Annex II and III contain testimonies shared by children and their families affected by childhood statelessness.

Malaysia's international obligations

4. Malaysia is a party to only three of the core human rights instruments: the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD). Many of Malaysia's obligations as enshrined in the CRC, CEDAW and CRPD are provided for by existing domestic legislation. However, these are usually not applied in practice.
5. 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.
6. The human rights instruments to which Malaysia has acceded – CRC, CEDAW and CRPD – provide for the right to a nationality. 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).¹⁴
 - 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 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 Universal Periodic Review (UPR) in 2024, Malaysia only noted recommendations to remove the above mentioned reservations to CEDAW.¹⁵

¹⁴ Federal Constitution of Malaysia, 31 August, 1957, available at <http://www.refworld.org/docid/3ae6b5e40.html>.

¹⁵ Human Rights Council, 'Report of the Working Group of the Universal Periodic Review: Malaysia', A/HRC/56/11, 14 March 2024.

7. 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”.¹⁶ 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.¹⁷
8. 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.
9. The combined effect of Malaysia’s lack of implementation of its domestic legislation that incorporates its international obligations, reservations to CRC, CEDAW and CRPD, and the lack of accession to other relevant human rights instruments is of great concern in the context of the denial of children’s equal right to nationality and resultant childhood statelessness in Malaysia.

Snapshot of childhood statelessness in Malaysia

1. There is overwhelming proof that statelessness, in particular childhood statelessness, is widespread in Malaysia. However, the Malaysian Government does not officially recognize its existence. As reflected in the Malaysian Home Ministry’s statement: “*there is no group classified as stateless in Malaysia, as individuals without valid travel documents are not permitted entry into the country.*”¹⁸ This viewpoint disregards the wider, internationally accepted definitions of statelessness, which include children of who may be born stateless without necessarily leaving a country due to gaps in nationality laws, those unable to obtain nationality despite their legal status, and those rendered stateless due to the lack of enforcement of protections against statelessness as outlined in the Federal Constitution. By adhering to this restrictive definition, the Government effectively diminishes the visibility of stateless individuals and children in Malaysia, and fails to recognize their rights as outlined under international human rights law. As such, the Ministry acknowledged that the National Registration Department (NRD) does not record individuals without citizenship and lacks information regarding the total number of stateless children. This absence of data hinders the development of effective policies and safeguards for vulnerable populations, leaving them at greater risk.
2. Malaysia has the third largest reported stateless population in Southeast Asia, reporting 115,169 stateless persons to UNHCR in 2022.¹⁹ 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.’²⁰ 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 Malaysians while the

¹⁶ 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.”

¹⁷ 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.

¹⁸ Ida Lim, ‘Why Malaysia has zero data on stateless persons: Decoding the official view through Parliament’s lens’, July 2023, Malay Mail, available at: <https://www.malaymail.com/news/malaysia/2023/07/11/why-malaysia-has-zero-data-on-stateless-persons-decoding-the-official-view-through-parliaments-lens/78931>.

¹⁹ UNHCR, ‘Global Trends 2021’ (June 2022) Annex, Table 5.

²⁰ Ibid.

remaining 9,392 remain stateless.²¹ 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.

3. 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.²² This figure is almost double the UNHCR 2019 estimate of 450,000 stateless persons in Sabah.²³ Most of this population has lived in Sabah for multiple generations yet lack documentary proof of their connection to their country of domicile or origin. While this population is stateless as a result of the denial of their right to nationality, they do not appear to have any pathway to citizenship of either Malaysia, the Philippines or Indonesia.²⁴ According to the 2024 estimation by the Department of Statistics Malaysia, over 27% of Sabah's population of 3.742 million consists of non-citizens, totalling approximately 1,043,400 individuals. Among them, around 371,100 are children ranging from 0 to 19 years old. The Malaysian Government estimated them to be at 28,000 in July 2024.²⁵
4. In Malaysia, statelessness among children is widespread across various vulnerable groups, all of whom are impacted by factors beyond their control, including:
 - I. Abandoned and foundling children
 - II. Adopted children;
 - III. Children born out of wedlock to Malaysian men;
 - IV. Children born overseas to Malaysian mothers; and
 - V. Indigenous communities, such as mobile maritime populations and Orang Asli/Asal;

Additionally, refugees, irregular migrants, and their children, including a notable population in Sabah (East Malaysia), remain at high risk of statelessness due to lack of citizenship pathways.

ISSUE I. Procedural and implementation challenges with regard to the child's right to a nationality in Malaysia

Lack of birth registration

5. In Malaysia, children are not treated as full rights holders²⁶ and their best interest is not taken into primary consideration as required by Article 3 of the CRC. The current practices subordinate their rights to those of their parents and in particular, to the legal marital status of their parents,

²¹ Ida Lim, 'Counting Malaysia's 'invisible' people: How many born here cannot be citizens despite their local roots', July 2023, Malay Mail, available at: <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>.

²² Durie Rainer Fong, 'Almost a quarter of Sabah residents are non-citizens, assembly told', March 2022, FTM, available at: <https://www.freemalaysiatoday.com/category/nation/2022/03/24/almost-a-quarter-of-sabah-residents-are-non-citizens-assembly-told/>.

²³ US Department of State, 'Malaysia 2021: Human Rights Report', April 2022.

²⁴ DHRR Malaysia, 'Report: Statelessness in Malaysia', April 2022, available at: https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022_compressed.pdf.

²⁵ Current Population Estimates by age and ethnic group, Sabah [Internet]. 2021 [cited 2021 Sep 15], available at: <http://pqi.stats.gov.my/searchBI.php?tahun=2021&kodData=2&kodJadual=1&kodCiri=5&kodNegeri=12>.

²⁶ SUHAKAM, 'Press statement No. 22-2023_Elimination of discrimination and barriers against children toward citizenship', June 2023, available at: <https://suhakam.org.my/2023/06/press-statement-no-22-elimination-of-discrimination-and-barriers-against-children-toward-citizenship-kenyataan-media-no-22-hapuskan-diskriminasi-dan-kekangan-terhadap-kanak-kanak-untuk-menjadi/>.

excluding children and limiting their access to citizenship and other fundamental rights on this basis, contrary to Articles 2, 3 and 7 of the CRC.

6. Obtaining a birth certificate is a crucial prerequisite for acquiring other identity documents and citizenship in Malaysia.²⁷ Registration is not automatically granted at the time of birth. Instead, individuals are required to actively register their births with the NRD of the Malaysian Government to obtain a birth certificate.²⁸ Without proper birth registration and the accompanying birth certificate, it can be challenging for children to establish their own identity and acquire a nationality, a great concern in relation to Articles 7 and 8 of the CRC.
7. 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.²⁹ The inconsistent application of standard operating procedures (SOPs) and the insufficient timeframes for birth registration contribute to statelessness in Sabah and Sarawak. In these regions, the deadline for delayed birth registration is set at 42 days, compared to 60 days in Peninsular Malaysia.³⁰ For rural communities facing geographical challenges - such as long distances and high transportation costs to the nearest towns - meeting this shorter deadline presents significant difficulties, further exacerbating the risk of statelessness.

Procedural inconsistencies

8. Over the years, the NRD has applied procedures inconsistently in addressing statelessness, often neglecting the constitutional safeguards outlined in the Federal Constitution.
9. Some stateless individuals, including adopted children, have been issued Permanent Residence (PR) cards despite being born in Malaysia and having no ties to any other country. Recently, the Government has confirmed the existence of two categories of PR holders: foreign nationals and those of Malaysian origin,³¹ with the latter group totalling around 40,000 people.³²

“Ravindran holds a red IC with permanent resident status after he was adopted from an orphanage. With it, he managed to complete the Sijil Pelajaran Malaysia (SPM) examinations. He is now attempting to apply for citizenship through naturalisation via Article 19(1) of the Constitution, after failing once when trying via Article 15A. He had applied back in 2012 and his application was rejected in 2013. However, Ravindran only knew that his application was rejected this year — a whopping 12 years after.”³³

28-year-old Ravindran Veerasingam adopted by Malaysian parents

²⁷ 'MyKad Application For 12-Year-Old Children' (Portal JPN - Permohonan MyKad Bagi Kanak-Kanak 12 Tahun), available at: <https://www.ipn.gov.my/my/perkhidmatan/kad-pengenalan/mykad-12>.

²⁸ Institute of Statelessness and Inclusion, 'Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia', November 2018, available at: https://files.institutesi.org/UPR31_Malaysia.pdf.

²⁹ 'Late Registration of Birth' (Mygov - the government of Malaysia's Official Portal), available at: <https://www.malaysia.gov.my/portal/content/30258>.

³⁰ Available at: <https://www.ipn.gov.my/en/core-business/birth/sabah/pendaftaran-kelahiran-lewat-sb-eng>.

³¹ Martin Carvalho and others, 'Local-born PR holders' rights not affected by citizenship amendments, says Saifuddin', October 2024, available at: <https://www.thestar.com.my/news/nation/2024/10/16/local-born-pr-holders039-rights-not-affected-by-citizenship-amendments-says-saifuddin>.

³² Lower House of Parliament, available at: <https://www.parlimen.gov.my/files/hindex/pdf/DR-17102024.pdf> (p.97).

³³ Dhesegaan Bala Krishnan, 'From missing exams to rejected from civil service: Why Malaysia-born stateless persons fear citizenship laws change will forever trap them in limbo', September 2024, Malay Mail, available at: <https://www.malaymail.com/news/malaysia/2024/09/07/from-missing-exams-to-rejected-from-civil-service-why-malaysia-born-stateless-persons-fear-citizenship-law-change-will-forever-trap-them-in-limbo/149241>.

10. Some stateless individuals, including abandoned children and foundlings, have been issued Temporary Residence Cards (MyKas), which are renewable every five years. However, some affected individuals have been denied renewal of this document and Malaysian citizenship due to procedural inconsistencies.

“Gopal currently only holds a green-coloured temporary resident identity card (MyKAS) that has to be renewed every five years, but had for years asked the Malaysian government to recognise him as a Malaysian citizen (who are given blue-coloured identity cards or MyKad). Gopal has sent letters to the government (as far back as the Najib administration) but the National Registration Department (NRD) had indicated that there are no available procedures for MyKAS holders like him to be a Malaysian citizen. The tenure of four home ministers had ended prior to his failed court bid this year, and his plight remains unresolved.”³⁴

50-year-old Gopal Muniandy Born in a plantation in Sungai Petani, Kedah and abandoned by his biological parents since young

11. Meanwhile, many other stateless children, despite having strong ties to a Malaysian parent - whether biological or adoptive - are left with only a birth certificate indicating their citizenship status as "Non-Citizen" (Bukan Warganegara) or "Yet to be Determined" (Belum Ditentukan).

Kamaladevi's daughter T's birth at Hospital Teluk Intan was registered late and she was given a birth certificate in May 2009, which stated her citizenship status to be “belum ditentukan” (yet to be determined).³⁵

Lack of practical implementation of the law

12. The Malaysian Federal Constitution contains robust safeguards against statelessness. However, they are not implemented and the best interests of the child are not taken into consideration as required under Article 3 of the CRC.
13. 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”³⁶* 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.
14. 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.
15. 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”³⁷* is a citizen by operation of law.

³⁴ Ida Lim, 'Abandoned by parents, 50-year-old Kedah man born in estate in court bid to be Malaysian citizen', December 2023, Malay Mail, available at: <https://www.malaymail.com/news/malaysia/2023/12/12/abandoned-by-parents-50-year-old-kedah-man-born-in-estate-in-court-bid-to-be-malaysian-citizen/106914>.

³⁵ Borneo Post online, 'A Perak family's suffering: Three generations, all stateless, go to court to be Malaysians', June 2023, available at: <https://www.theborneopost.com/2023/06/17/a-perak-family-suffering-three-generations-all-stateless-go-to-court-to-be-malaysians/>.

³⁶ Federal Constitution of Malaysia, 31 August, 1957, Section 1(e) of Part II of the Second Schedule, available at <http://www.refworld.org/docid/3ae6b5e40.html>.

³⁷ Ibid, Section 1(a) of Part II of the Second Schedule

16. 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.”*³⁸
17. 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 [...]”*³⁹
18. However, these safeguards have proven to be ineffective, due to the absence of administrative guidelines for implementation.⁴⁰
19. These practices fall short of Malaysia’s international commitments as it denies children their right to a nationality (Article 7 CRC). These limiting conditions do not take into consideration the best interests of the child (Article 3 CRC), given that the child’s nationality, social identity and legal status remains insecure for an extended period of time after birth. Stateless children are still excluded from accessing Malaysian nationality based on the actions of their parents, guardians or lack of family ties, violating Article 2 CRC. Furthermore, not granting Malaysian nationality also interferes with the right of children’s identity and sense of belonging outlined in Article 8 CRC. Finally, as childhood represents a limited amount of time in people’s lives, this does not allow them to fully enjoy their right to a nationality as well as other children’s rights before reaching adulthood.

In light of the above information, the Committee is requested to ask Malaysia, during its review, to respond to the following questions:

- **What measures is Malaysia taking to start collecting and publishing data on childhood statelessness? Is there a particular authority responsible for collecting such information?**
- **What steps are being taken to address statelessness among children caused by late birth registration, identification card registration and parents’ marriage registration?**
- **How will the Government ensure that the SOPs are made widely accessible to the public, especially regarding birth and citizenship registration for stateless children?**
- **What efforts are being made to implement the already existing constitutional safeguards outlined in Malaysia’s Federal Constitution to protect foundling children and stateless people from statelessness?**

³⁸ Ibid, Section 1(b) of Part III of the Second Schedule.

³⁹ Section 9(1) of the 1952 Adoption Act

⁴⁰ Rodziana M Razali, ‘Addressing Statelessness in Malaysia: New Hope and Remaining Challenges’, 2017, Statelessness Working Paper Series No. 2017/9, 5 available at: https://files.institutesi.org/WP2017_09.pdf.

ISSUE II. Issues affecting certain categories of stateless children in the acquisition of Malaysian nationality

20. There are different categories of stateless children who cannot access Malaysian nationality due to discrimination, lack of implementation of Malaysian law and procedural inconsistencies. By failing to provide citizenship rights to children (Articles 7 and 8 CRC), freedom from discrimination (Article 2 CRC) and prioritise the best interests of the child (Article 3), Malaysia fails to safeguard children's welfare and denies them opportunities all of which are fundamental for their development and well-being.

Abandoned children and foundlings

21. 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.⁴¹
22. 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.⁴² Following this case, the 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 though simplified procedures, legal representation and with not exorbitant legal fees.

Adopted children

23. 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.
24. 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 Muslim⁴³ and non-Muslim⁴⁴ parents, with the former subject to more restrictive rules, such as the adopted child being unable to inherit the adoptive parent's name.

⁴¹ Mohd A, 'Abandoned Child's Right to Identity Protection in Malaysia', 2011, US-China Law Review 389, available at: <http://irep.iium.edu.my/6684/>.

⁴² Tan K, 'Case Commentary: CCH and Anor V Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia' [2021] SSRN Electronic Journal.

⁴³ Governed by the De Facto Adoption Act 253.

⁴⁴ Governed by the Court Adoption Act 257.

25. Case law has shown that the courts often employ a narrow and technical approach to citizenship cases involving adopted stateless children, which does not prioritise their protection.⁴⁵

Children born out of wedlock to Malaysian fathers

26. Children born outside a legally recognised marriage to Malaysian fathers and non-Malaysian mothers do not have the right to inherit Malaysian citizenship.⁴⁶ This can create statelessness where children cannot acquire nationality from their mothers, for example, if:

- I. Mother is stateless;
- II. Mother's identity is unknown or cannot be traced; and
- III. Laws of the mother's country do not permit her to confer nationality in certain circumstances.

27. According to the interpretation of Section 17 of Part III of the Second Schedule of the Federal Constitution, an illegitimate child must assume the citizenship of the natural mother.

*"If the mother is Malaysian, the child will also be a Malaysian citizen. However, if the mother is a stateless person or a foreign national, the child's citizenship status will be recorded as 'bukan warganegara' or 'non-citizen' on the birth certificate, rendering the child effectively stateless if mother is unable to pass on citizenship to the child."*⁴⁷

28. In June 2024, the Ministry of Home Affairs confirmed that the majority of citizenship applications submitted under Article 15A of the Federal Constitution are from children born out of wedlock to Malaysian men.⁴⁸ This discretionary provision allows stateless children with strong ties to Malaysia to apply for citizenship. According to statistics released in June 2023 from a mapping exercise conducted by the Development of Human Resources for Rural Areas (DHRRRA) in West Malaysia, the largest categories of childhood statelessness include children born before their parents' marriage and adopted children. Of the over 16,392 stateless individuals registered with DHRRRA between 2016 and June 2023, approximately 7,000 have been granted Malaysian citizenship, while 9,392 remain stateless. Among these, 8,223 are stateless children, including those born out of wedlock in Malaysia and children adopted by Malaysian citizens.⁴⁹

29. Without reforming discriminatory laws, stateless children of Malaysian origin remain subject to the discretionary powers of Article 15A, perpetuating discrimination and lack of legal recognition. This process denies these children automatic citizenship, underscoring the need for systemic change to address statelessness effectively. Notably, Malaysia, along with Barbados,⁵⁰ is one of only two countries where men face discrimination in passing citizenship to children born out of wedlock.

⁴⁵ Nungsari M and Fong N (SUHAKAM - The Human Rights Commission of Malaysia 2023), available at: https://suhakam.org.my/wp-content/uploads/2023/03/SUHAKAM_Statelessness.pdf.

⁴⁶ 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.

⁴⁷ Federal Constitution of Malaysia, 31 August, 1957, Section 17 of Part III of the Second Schedule, available at <http://www.refworld.org/docid/3ae6b5e40.html>.

⁴⁸ Malay Mail, 'Home minister says citizenship applications for illegitimate and adopted children priority as cases top 15,000', June 2024, available at: <https://www.malaymail.com/news/malaysia/2024/06/16/home-minister-says-citizenship-applications-for-illegitimate-and-adopted-children-priority-as-cases-top-15000/140010>.

⁴⁹ Ida Lim, 'Counting Malaysia's invisible' people: How many born here cannot be citizens despite their local roots', July 2023, Malay Mail, available at: <https://www.malaymail.com/news/malaysia/2023/07/10/counting-malysias-invisible-people-how-many-born-here-cannot-be-citizens-despite-their-local-roots/78296>.

⁵⁰ Available at: <https://www.equalnationalityrights.org/the-problem/>.

30. Relying on discretionary provisions like Article 15A is constitutionally problematic, as such decisions by the Federal Government are excluded from court scrutiny, creating a gap in accountability and legal oversight. A registration-based or discretionary approach weakens stateless individuals' right to challenge decisions, compromising their right to citizenship under a transparent, equitable process.

Children of Malaysian mothers who have been abandoned

31. Cases of children born out of wedlock have significantly increased in Malaysia over the years, with “illegitimate” births rising from 70,430 between 1999 and 2003 to over 257,000 by July 2008 - an average of about 2,500 births per month.⁵¹
32. The legal classification of “illegitimate” places sole responsibility on the biological mother, leaving children vulnerable when the registration of birth and citizenship registration solely depend on the biological mother. Under Section 13 of the Births and Deaths Registration Act 1957, a mother cannot name the father of an “illegitimate child” when registering the birth unless the father acknowledges his paternity. In case the father is willing to voluntarily step forward, both parents must submit a joint request for the father's information to be included, and the registration must be signed by both the mother and the father.⁵²
33. Children born out of wedlock face severe repercussions from systemic stigmatisation rooted in Eastern values and the Islamic emphasis on marriage, unfairly punishing them for circumstances beyond their control on their right to father's name and citizenship. Even DNA tests to establish paternity, for fathers willing to step forward, are often disregarded due to these same cultural and religious biases.⁵³ As a result of this stigma, many parents resort to putting these children up for adoption, abandonment or, tragically, to baby dumping. From 2018 to 2021, Malaysia recorded 443 cases of baby dumping, with only 149 infants found alive while 294 died.⁵⁴
34. Children who are abandoned, whether left with babysitters or eventually placed for adoption, face significant barriers to obtaining Malaysian citizenship. Despite having valid proof of birth from a hospital and evidence that their biological mother is Malaysian, these children are denied citizenship due to systemic requirements. The current system mandates that biological parents must be voluntarily present to complete the necessary birth registration for citizenship access. This policy places the entire burden on vulnerable children, who are not responsible for their circumstances, further marginalising them and denying them the rights and protections they deserve.

Children of Malaysian mothers born overseas

1. Malaysia's citizenship laws do not yet grant women equal rights as men to confer automatic citizenship on their children born outside the country, though efforts are currently underway to amend this discriminatory provision.

⁵¹ Awani, “Pre-marital” children in Malaysia - addressing the issue, January 2023, available at:

<https://international.astroawani.com/malaysia-news/columnist-pre-marital-children-malaysia---addressing-issue-402341>.

⁵² Ibid.

⁵³ Predeep Nambiar, ‘DNA testing would undermine marriage institution, says Saifuddin’, October 2024, FTM, available at:

<https://www.freemalaysiatoday.com/category/nation/2024/10/17/dna-testing-would-undermine-marriage-institution-says-saifuddin/>.

⁵⁴ Sinar Daily, ‘Baby dumping still rampant’, February 2022, available at: <https://www.sinardaily.my/article/171553/focus/national/baby-dumping-still-rampant>.

2. Malaysian men 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.⁵⁵ 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.⁵⁶
3. The landmark Kuala Lumpur High Court decision in *Suriani Kempe & Ors v Government of Malaysia & Ors* in September 2021, 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.⁵⁷
4. The Constitution (Amendment) Bill 2024 (see below on the regressive amendments on childhood statelessness presented in the Bill) that was debated and passed unanimously on 17 October Lower House of Parliament in March 2024, recognised Malaysian women's equal right to confer citizenship on children born abroad, addressing gender discrimination. The Bill is expected to proceed to the Upper House in December.⁵⁸
5. However, the amendment to the gender-discriminatory provision which replaces "*whose father*" with "*of whose parents one at least*", **will not have a retroactive effect**, excluding women and their children born abroad before the law's enactment and perpetrating this discriminatory effect. They will have to continue to rely on Article 15(2), with no guaranteed outcome of citizenship and no reasons given for rejections.
6. It was disclosed in a parliamentary written reply on 29 October 2024 that in determining outcomes of citizenship applications for overseas-born children of Malaysian mothers, the mother's Permanent Residence (PR) status in a foreign country must be carefully assessed.⁵⁹ The Home Ministry asserted that the mother's loyalty to the country is a crucial factor. Any considerations in matters of a child's nationality must prioritise the welfare and best interest of the child above all else. Furthermore, PR provides the Malaysian mother with security and stability in a foreign country, which directly supports the well-being of her children.
7. In March, the Home Minister announced that 80% of 3,903 applications under Article 15(2) have been approved. While this is notable, it still leaves a substantial number of children whose citizenship applications have been rejected, are pending, or have not yet been submitted due to various circumstances that hinder access to the application process —subjecting them to continued precarity and uncertainty. This includes children born stateless as a result of this provision and are still without any citizenship. (See Annex for lived experiences of children who will not be covered by this law reform).

⁵⁵ Federal Constitution of Malaysia, 31 August, 1957, Sections 1(b) and 1(c) of Part II of the Second Schedule, available at <http://www.refworld.org/docid/3ae6b5e40.html>.

⁵⁶ Ibid, Article 15(2).

⁵⁷ Ida Lim, 'Explainer: How the High Court decided Malaysian mothers' overseas-born children can be citizens too', Malaymail, 20 October 2021, available at: <https://www.malaymail.com/news/malaysia/2021/10/20/explainer-how-the-high-court-decided-malaysian-mothers-overseas-born-childr/2014564>.

⁵⁸ Malay Mail, 'All you need to know about: The constitutional amendment to Malaysia's citizenship laws', October 2024, available at: <https://www.malaymail.com/news/malaysia/2024/10/17/all-you-need-to-know-about-the-constitutional-amendment-to-malaysias-citizenship-laws/153975>.

⁵⁹ The Star, 'Mums' PR status abroad a factor in deciding on children's citizenship, Dewan Rakyat told', October 2024, available at: <https://www.thestar.com.my/news/nation/2024/10/29/mums039-pr-status-abroad-a-factor-in-deciding-on-children039s-citizenship-dewan-rakyat-told>.

Non-citizen spouses' inability and difficulty in obtaining citizenship

8. Malaysian women are also denied the right to confer citizenship on a non-citizen spouse, a right that is enshrined in law for Malaysian men. Women's unequal ability to confer citizenship on a spouse can impact a child's right to be cared for by a foreign father, due to increased barriers to residency and employment which may pose challenges to the father's ability to reside with his family. In cases of divorce, non-citizen fathers, despite having shared custody, are not granted visas to parent and care for their Malaysian children.
9. While non-citizen wives of Malaysian men can by law obtain citizenship by registration, the process is marred by the prerequisite of attaining PR, a protracted and burdensome process which can take up to 12-15 years or more with no guaranteed approvals. Without PR, the pathway to citizenship and improved employment opportunities is closed off, leaving them with no stable and guaranteed long-term legal status in the country.
10. This uncertainty is not in the best interest of the children, who grow up in a state of vulnerability and face significant risks, particularly if the non-citizen parent encounters abuse, separation, divorce, or the death of the Malaysian spouse. In such cases, the non-citizen spouse has severely limited rights to remain in the country and is typically only granted short-term visas without the right to work, which can lead to forced family separation.

Stateless children of the Bajau Laut community

11. The Bajau Laut is a large community in Sabah that make their livelihood through marine-based income sources. They lead a semi-nomadic, indigenous lifestyle in boats or stilt houses without identity documentation and are denied the right to citizenship.⁶⁰ Despite being born in Malaysia before independence and holding the right to citizenship, they have not been granted Malaysian citizenship and face intergenerational statelessness.⁶¹
12. The Bajau Laut community's non-recognition by the Malaysian State, connected to lack of access to documentation such as birth registration, lack of access to basic services, rural isolation, systemic discrimination and marginalisation of the population, along with other administrative barriers has led to conditions of intergenerational statelessness today.⁶² 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.⁶³
13. 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.⁶⁴ The community lacks exposure to modern medication to understand the importance of childbirth at a hospital. Language barriers and discrimination also discourage them from seeking medical help. Furthermore, they do not have the financial ability to go for prenatal checkups and labour in the government hospital. As a result, Bajau Laut women give birth at home without the chance of registering their babies for birth certificates.

⁶⁰ Institute of Statelessness and Inclusion, 'Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia', November 2018, available at: https://files.institutesi.org/UPR31_Malaysia.pdf.

⁶¹ Bathmaloshanee M, Maalini Ramalo and Savarana M Sinpan, 'Report Statelessness in Malaysia', April 2022, available at: https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022_compressed.pdf.

⁶² Wan Shawaluddin Was Hassan and Diana Peters, 'The Vulnerability of Bajau Laut as Stateless People in Sabah', 2020, 26(2), Jurnal Kinbalu Bil 184.

⁶³ Ibid.

⁶⁴ Institute of Statelessness and Inclusion, 'Joint Submission to the Human Rights Council at the 31st Session of the Universal Periodic Review, Malaysia', November 2018, available at: https://files.institutesi.org/UPR31_Malaysia.pdf.

Stateless children of refugees and irregular migrants

14. 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.⁶⁵ Despite not being a signatory to the 1951 Refugee Convention or its 1967 Protocol, Malaysia has allowed refugees to reside temporarily.
15. Prolonged detention, often in overcrowded and unsanitary conditions, poses serious health and human rights concerns, particularly for children. In 2022, 150 foreigners died in detention, including 7 children and 25 women.⁶⁶
16. 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,⁶⁷ in particular Rohingya refugees and Syrian Refugees.⁶⁸ The absence of birth certificates can limit children's opportunities such as from enrolling in schools, participating in formal education programmes, and accessing essential healthcare services. This situation further exacerbates their vulnerability and restricts their ability to lead a normal life.

In light of the above information, the Committee is requested to ask Malaysia, during its review, to respond to the following questions:

- **What steps will the Government take to ensure that the landmark Federal Court ruling in the case of *CCH & Anor v Pendaftar Besar* is consistently and effectively implemented across all cases of abandoned children and foundlings?**
- **What steps will the Government take to confer citizenship on children born out of wedlock to Malaysian fathers and adopted children, particularly those whose biological parents are unknown or stateless?**
- **What is the rationale for the current legal framework that places the burden of citizenship on the mother in cases of children born out of wedlock, and how will this be addressed to prevent statelessness?**
- **What plans does the Government have to make these changes retroactive to include children born before the law's enactment, thereby addressing the existing gap in citizenship rights for children of Malaysian mothers?**
- **What specific measures is the Malaysian Government taking to ensure the protection of stateless children of refugees and irregular migrants?**

⁶⁵ UNHCR, 'Malaysia', 2023, UNHCR US, available at:

<https://www.unhcr.org/us/countries/malaysia#:~:text=Malaysia%20hosts%20some%20181%2C000%20refugees,%2C%20while%2033%25%20are%20women.>

⁶⁶ Teng LH, 'Malaysia Pressed to Probe Deaths of 150 Foreigners in Detention', February 2023, Al Jazeera,

<https://www.aljazeera.com/news/2023/2/23/malaysia-pressed-to-probe-deaths-of-150-foreigners-indetention>.

⁶⁷ Ibid.

⁶⁸ Ibid.

- What steps will the Government take to ensure the child's right to a nationality to children of the Bajau Laut community?

ISSUE III. Latest developments on provisions on childhood statelessness and discriminatory nationality laws

17. In June 2023, the Government put forward several changes to the citizenship provisions of the Federal Constitution, focusing exclusively on the progressive amendments concerning mothers of children born overseas, hereafter referred to as the mother's amendment. The sole progressive provision aimed to grant equal rights to children born overseas to Malaysian mothers. Previously, a child born abroad could only automatically acquire citizenship if the father was a Malaysian citizen.⁶⁹
18. Following calls for transparency regarding these amendments, the Government conducted briefings for several civil society organisations (CSOs) to outline the extent of the proposed changes. Among the bundled amendments, five regressive amendments were identified apart from the progressive amendment for mothers. The regressive amendments seek to change provisions from "*citizenship by operation of law*" to "*citizenship by registration*" for foundlings, children of permanent residents, and stateless individuals, including those of Bumiputra and indigenous origin in Malaysia.⁷⁰
19. The Government cited security concerns as a rationale for tightening these laws. However, these claims were not supported by data.⁷¹
20. In March 2024, the public outcry against the regressive amendments, particularly regarding foundlings and stateless children, ultimately led the Government to withdraw two constitutional safeguards intended to protect these vulnerable groups but three regressive amendments remained.⁷²
21. Despite concerns raised by the Human Rights Commission of Malaysia (SUHAKAM) in the statement issued two days before the Bill was debated, which stated: "*Our stance remains firm regarding the substantive issues and potential impacts of the Bill. While several areas of consensus have been achieved, SUHAKAM continues to oppose the proposed removal of automatic citizenship for children of permanent residents. Additionally, SUHAKAM strongly advocates for applying retrospective rights to children born overseas to Malaysian mothers and non-Malaysian fathers after September 2001, as outlined in our prior statement.*"⁷³
22. On 17 October 2024, the Malaysian Lower House of Parliament unanimously passed this controversial bill to amend citizenship laws. The Bill is expected to move to the Upper House in

⁶⁹ Rahimy Rahim and others, 'Constitutional amendments on citizenship to be presented to Rulers on July 12, says Home Minister', June 2023, the Star available at: <https://www.thestar.com.my/news/nation/2023/06/14/constitutional-amendments-on-citizenship-to-be-presented-to-rulers-on-july-12-says-home-minister>.

⁷⁰ Malay Mail, 'Proposed constitutional amendments will worsen childhood statelessness in Malaysia', June 2023, available at: <https://www.malaymail.com/news/what-you-think/2023/06/24/proposed-constitutional-amendments-will-worsen-childhood-statelessness-in-malaysia-civil-society-organisations/76124/>.

⁷¹ Nina Muslim, 'Provide data, proof to justify citizenship amendments – activists', March 2024, FOKUS, available at: <https://www.bernama.com/en/bfokus/news.php?current&id=2276841>.

⁷² Iyilia Marsya Iskandar, 'Govt drops proposed amendments to citizenship law for foundlings', March 2024, New Straits Times, available at: <https://www.nst.com.my/news/nation/2024/03/1029103/govt-drops-proposed-amendments-citizenship-law-foundlings>.

⁷³ SUHAKAM, 'Press statement on Constitutional (amendment) Bill 2024 – 2.0', October 2024, available at: https://suhakam.org.my/wp-content/uploads/2024/10/Press-Statement-No.-25-2024_Press-Statement-on-Constitutional-Amendment-Bill-2024-2.0.pdf.

December 2024. It includes several significant amendments, marking a milestone for gender equality by granting Malaysian women the same right as men to confer automatic citizenship to children born overseas (Section 1(b) and (c) of the Second Schedule, Part II of the Federal Constitution). However, the amendment does not apply retroactively, thus excluding Malaysian women with children born abroad before the law's enactment.⁷⁴

23. Regrettably, the Bill was also passed with several regressive provisions that undermine nationality rights and risk perpetuating statelessness among vulnerable groups of children:

- I. Children born to Malaysian Permanent Residents (PR) no longer receive automatic citizenship, affecting thousands in vulnerable groups, including indigenous communities and those with PR status from before Malaysian independence;
- II. The age limit for applying for citizenship is reduced from 21 to 18, shortening the window for stateless children to apply and access to citizenship, exacerbating delays due to bureaucratic hurdles; and
- III. Foreign wives of Malaysian men risk losing citizenship if the marriage ends within two years, potentially trapping women in abusive marriages due to Malaysia's ban on dual citizenship and with a risk for children to not acquire Malaysian nationality and live in a safe environment.

24. As of 1 October 2024, the Ministry of Home Affairs has processed 17,452 citizenship applications, stating that it has surpassed the 17,000 target set for the year. However, Home Minister Datuk Seri Saifuddin Nasution Ismail did not disclose details regarding the outcomes. A new Standard Operating Procedure (SOP) has been implemented, establishing a one-year processing time for applications.⁷⁵

In light of the above information, the Committee is requested to ask Malaysia, during its review, to respond to the following questions:

- **How does the Government plan to address the three discriminatory and regressive amendments in order to protect every child's right to a nationality?**
- **What steps will the Government take to address the impact of the newly passed Citizenship Bill in the Lower House, which includes regressive amendments that could increase childhood statelessness - especially for children born to stateless permanent residents - and an age reduction provision that restricts opportunities for stateless children with strong connections to Malaysia to apply for citizenship?**
- **How does Malaysia plan to align its children's citizenship laws with international human rights standards, including the Convention on the Rights of the Child (CRC)?**

⁷⁴ Malay Mail, 'All you need to know about: The constitutional amendment to Malaysia's citizenship laws', October 2024, available at: <https://www.malaymail.com/news/malaysia/2024/10/17/all-you-need-to-know-about-the-constitutional-amendment-to-malaysias-citizenship-laws/153975>.

⁷⁵ Qistina Sallehuddin, 'Over 17,000 citizenship applications approved as of October', October 2024, New Straits Times, available at: <https://www.nst.com.my/news/nation/2024/10/1124026/over-17000-citizenship-applications-approved-october>.

ISSUE IV. Consequences of childhood statelessness and discriminatory nationality laws in Malaysia

25. Statelessness and discriminatory nationality laws have far-reaching and deeply detrimental consequences. Stateless children and non-citizen children 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.⁷⁶ 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.⁷⁷ Stateless teenagers also face difficulties in accessing tertiary education as not many universities accept to enrol them.⁷⁸ 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.⁷⁹
26. Stateless and non-citizen children with a Malaysian parent can access public healthcare 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.⁸⁰ 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.⁸¹
27. Stateless parents or guardians 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 and without being able to protect their children; they also cannot legally set up a business as they cannot be granted a business and trading licence. Stateless people 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 people were also faced with evictions and were not entitled to Government aid.⁸² Government aids usually require applicants to produce their identification card which excludes stateless or undocumented individuals from accessing such aid. The Bajau Laut community, in particular, consists of daily wage labourers who are excluded from formal sources of employment.⁸³
28. Stateless parents or guardians are also unable to access basic services such as opening bank accounts, owning a driver’s licence or accessing telecommunication services, making it difficult

⁷⁶ 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.

⁷⁷ Lim I, ‘Let Foreign-Born Kids of Malaysian Mums into Schools Pending Citizenship Reforms, Putrajaya Told’, March 2023, Malay Mail, available at: <https://www.malaymail.com/news/malaysia/2023/03/15/let-foreign-born-kids-of-malaysian-mums-into-schools-pending-citizenship-reforms-putrajaya-told/59499>.

⁷⁸ Ibid.

⁷⁹ Yusof TA and others, ‘Govt to amend act to allow undocumented kids attend public schools, says Fadhlina’, June 2023, The Star, available at: <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>.

⁸⁰ Zainuddin, ‘Amar: Drop High Health Care Fees For Marginalised Children’, February 2022, CodeBlue, available at: <https://codeblue.galencentre.org/2022/02/amar-drop-high-health-care-fees-for-marginalised-children/>.

⁸¹ 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.’

⁸² Ibid.

⁸³ Loganathan, Tharani and others, ‘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.

for them to participate fully in society. Without access to legal documentation, stateless parents or guardians and children, especially the Bajau Laut community, also face a lack of access to other fundamental services such as clean water and electricity.

29. Many Bajau Laut children are seen loitering in the streets of Semporna, Sabah, begging for money and food from people, especially tourists. Many of them, from as young as 5 years old have also taken the habit of glue-sniffing. The effect of glue-sniffing helps them forget their hunger and gives them a sense of escapism from their harsh realities. Many of these children are timid, feel inferior and lack self-esteem. A result of systemic and cultural discrimination, especially of their different way of life, in particular the basic hygiene.
30. Without access to adequate healthcare, Bajau Laut women face significant health risks. Miscarriages, dangerous childbirths, and neonatal deaths are common occurrences. Additionally, the lack of family planning knowledge often leads to frequent pregnancies and childbirth, further straining the health and well-being of both mothers and children. Child marriage is also prevalent, exacerbating these issues.
31. 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.
32. The uncertain legal status of stateless children of a Malaysian parent or stateless people places them at high risk of arrest, detention and exploitation. Refugees and stateless people 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, putting also their stateless children in vulnerable situation and with a risk of family separation.
33. Reports also show that stateless people 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.⁸⁴

“Kamaladevi’s two elder sons R and E died by suicide, which the family believes had been contributed to by the devastating consequences and burden of being stateless — including being denied education opportunities and equal job opportunities, and the hardship and difficulties from their lack of citizenship. “Tragically, the weight of the hardship became unbearable for two of my sons,” Kamaladevi had told the court, while Vathumalai and Kamaladevi’s youngest son M assert that the weight or burden of statelessness had become unbearable for R and E.”⁸⁵

45-year- old Kamaladevi Kanniappan of Malaysian of Indian origin and third-generation born in Malaysia, remains stateless, along with all her children and grandchildren.

34. Such challenges that significantly impact their lives and violate their fundamental rights under the CRC. Being denied citizenship and legal identity, these children often struggle to access basic services and protections such as their right to education (Article 28 CRC) and healthcare (Article 24 CRC). They are often denied a stable and safe life (Article 19 CRC), as they may face exploitation, neglect, or even violence in uncertain living conditions. Their right to be heard

⁸⁴ Ibid.

⁸⁵ Ida Lim, A Perak family’s suffering: Three generations, all stateless, go to court to be Malaysians’, June 2023, Malay Mail, available at: <https://www.malaymail.com/news/malaysia/2023/06/17/a-perak-family-suffering-three-generations-all-stateless-go-to-court-to-be-malaysians/73464>.

(Article 12 CRC) is also at risk, as they may be marginalised and excluded from decision-making processes that affect their lives, further silencing their voices in critical matters. In terms of mental health (Articles 24 and 39 CRC), stateless children are particularly vulnerable to psychological distress, and experience trauma, fear of detention, or living in a state of legal limbo. Finally, their right to liberty (Article 37 CRC) is also violated, as many stateless children are at risk of detention or arbitrary arrest. Without a nationality, these children may be detained in immigration or detention centers, often under harsh conditions, and without the opportunity for a fair legal process or access to justice (Article 37 c). Together, these challenges not only violate the basic human rights of stateless children but also hinder their ability to thrive, grow, and fully participate in society not only during their childhood but also when they reach adulthood.

35. Furthermore, Malaysia's gender-discriminatory nationality law is based on stereotypes, such as the idea that citizenship "naturally" derives from the father except in special circumstances. Gender discrimination in Malaysia's nationality laws undermines women's status as equal citizens and equality within the family, with detrimental impact on girls and boys who are harmed by the persistence of state-sanctioned gender stereotypes.

5. In light of the above information, the Committee is requested to ask Malaysia, during its review, to respond to the following questions:

- **What are the efforts made to guarantee the enjoyment of basic rights including rights to development to stateless children, given the challenges just outlined when someone does not have Malaysian nationality?**
- **How does the Government plan to mitigate the psychosocial impact of childhood statelessness on affected children?**

Recommendations

36. In addition to the questions listed above, and in light of the information, evidence and analysis presented to the Committee in this joint submission, we urge the Committee to make the following recommendations to Malaysia, during its review:
 - I. Ensure that the equal right to nationality of all children is respected and fulfilled, including those who are stateless or at risk of statelessness, such as children born out of wedlock to Malaysian fathers, children born overseas to Malaysian mothers, abandoned, foundlings and adopted children, are granted Malaysian citizenship without any discrimination or further delay.
 - II. Identify and acknowledge Malaysian-descendant children rendered stateless by gaps in Malaysia's nationality law, and establish clear standard operating procedures (SOPs) to prioritise their access to citizenship, in accordance with their right to a nationality.

- III. Enhance administrative processes to facilitate the acquisition or verification of children's citizenship and reduce the high application costs for claims to citizenship, to ensure that every child's equal nationality rights are fulfilled.
- IV. In light of the non-retroactive nature of the mother's amendment, expedite citizenship applications of overseas-born children under Article 15(2), ensuring decisions are issued within a year, with reasons given in writing for rejections, and due process for review and appeal of such decisions in place.
- V. Uphold and implement the equal right of Malaysian citizens, women and men, to confer nationality on a non-citizen spouse to facilitate children's right to know and be cared for by their parent.
- VI. Resolve the status of stateless individuals holding permanent residency in Malaysia who lack citizenship from any country and ensure that those who were denied their right to nationality while children and are now over 18 years of age, have access to facilitated and expedited naturalisation procedures, to ensure their speedy access to nationality.
- VII. Remove any administrative barriers in acquiring birth registration and implement automatic birth registration and the provision of birth certificates to all children throughout Malaysia, including for children born to refugees and irregular migrants and the Bajau Laut community.
- VIII. Recognise the Bajau Laut as Indigenous Communities and ensure that all Bajau Laut children's right to Malaysian nationality is secured.
- IX. Ensure the equal right to education and healthcare of stateless children and non-citizen children of Malaysians, including by facilitating their access the national school system and subsidised public healthcare on an equal basis as Malaysian children, without any discriminatory barriers.
- X. Ensure that no children of refugees, asylum seekers or stateless people and their families are subject to arbitrary immigration detention in Malaysia and develop and implement alternatives to detention, such as community-based programmes, that prioritise the best interests of the child and respect their rights to liberty and family unity.
- XI. Conduct awareness campaigns targeting healthcare providers, civil registration authorities, and community leaders to ensure understanding of the importance of birth registration for all children and of their obligations to ensure every child's right to a nationality is protected.
- XII. Strengthen and publish the collection of qualitative and quantitative data on childhood statelessness in Malaysia.
- XIII. Withdraw all reservations to the CRC, CEDAW and CRPD, particularly concerning the child's equal right to a nationality, and accede to all relevant human rights, refugee and statelessness instruments.

Annex I – Previous recommendations to Malaysia

1. During the UPR in 2018, 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 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).⁸⁶ All these recommendations were noted by Malaysia.⁸⁷
2. Malaysia was also reviewed in January 2024 during the 4th UPR cycle. Malaysia received eight recommendations on allowing Malaysian women the right to pass on their citizenship to their overseas-born children. Three recommendations were made on removing the reservation to Article 9.2 of CEDAW. Finally, the country also received nine recommendations on addressing statelessness, including childhood statelessness and birth registration.⁸⁸ Only three recommendations were accepted by the Government. The State also added: *“Malaysian law stipulates that all children born in Malaysia, regardless of the nationality or the legal status of their parents, have access to formal registration procedures and birth certificates. Malaysia is proactively providing advisory services and implementing awareness-raising programmes related to national documentation especially in rural areas.”*⁸⁹ However, this does not represent the challenges stateless and non-citizen children face on a daily basis.
3. In 2018, CEDAW recommended Malaysia to *“Amend all provisions of the Federal Constitution that deny women equal rights with respect to the transmission of their nationality to their children and foreign spouses. It also recommends that the State party ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.”*⁹⁰

⁸⁶ 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>.

⁸⁷ 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.

⁸⁸ Human Rights Council, ‘Report of the Working Group of the Universal Periodic Review: Malaysia’, A/HRC/56/11, 14 March 2024.

⁸⁹ Ibid.

⁹⁰ Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the combined third to fifth periodic reports of Malaysia’, CEDAW/C/MYS/CO/3-5, para. 34.

Annex II – Testimonies shared by affected children

1. The story of Mel, Child Born out of Wedlock to Malaysian Father

Mel, born in January, 2002, in Penang, has faced lifelong challenges related to her citizenship. At birth, she was issued a Malaysian citizenship birth certificate. However, her parents separated when she was eight years old, leading to her being sent to live with her father's family as he was not mentally stable enough to care for her.

When Mel turned 12, she was unable to obtain her identification card (MyKad). Although her father is Malaysian and her mother is Indonesian, with their marriage registered in Indonesia, authorities later claimed that her Malaysian citizenship birth certificate had been issued in error. This was attributed to her parents not being legally married in Malaysia at the time of her birth.

Mel excelled academically but was forced to leave school in 2017 as she could not apply for a MyKad due to her unclear citizenship status. Efforts to resolve the issue, including seeking legal assistance and engaging with authorities, proved unsuccessful. She was advised to pursue Indonesian citizenship, but the Indonesian embassy informed her that she had no rights or ties to Indonesia.

In 2024, Mel surrendered her Malaysian citizenship birth certificate and was reissued a non-citizen birth certificate. She is now stateless and hopes that the authorities will take steps to facilitate her access to citizenship. Her case highlights Malaysia's failure to implement constitutional safeguards against childhood statelessness, particularly Section 1(e). The constitution safeguard could address statelessness among children born out of wedlock to Malaysian fathers if implemented.

2. The story of Kavita, Child born out of wedlock to Malaysian father and stateless mother; later adopted by her aunt

Kavita, 29, has been stateless since birth. She was born to a Malaysian father and a stateless mother. Due to her mother's status, her parents were unable to legally register their marriage, which prevented them from securing citizenship for Kavita and her siblings.

Her father tragically took his own life, and her mother left the family soon after. Following these events, she was formally adopted by her aunt. Her aunt submitted citizenship applications on her behalf under the discretionary provision of Article 15A but faced repeated rejections. Once she turned 21, she was no longer eligible to apply for citizenship through this provision.

Lacking a citizenship, Kavita faced significant hardships: she was bullied in school, restricted from participating in school activities, and unable to pursue higher education or secure stable employment. She currently works as an Accounts Clerk with a temporary residence card (MYKAS), which only grants limited rights.

Her lack of citizenship impacts her daily life, preventing her from accessing affordable healthcare, obtaining a driver's licence, or owning a bank account. Efforts to obtain citizenship have been hindered by bureaucratic challenges, including repeated requests for additional documentation and unfulfilled promises of assistance.

Although she has been issued a MYKas (temporary residence card), the government's inconsistent approach to addressing statelessness among children of Malaysian descent has perpetuated intergenerational statelessness. This has profoundly impacted the psychosocial well-being of children who have remained stateless since birth.

Since childhood, Kavita has struggled with feelings of being a burden to her family, even contemplating suicide. She lives with the ongoing fear that any children she might have in the future could inherit her statelessness and face the same hardships. Her greatest hope is to finally gain recognition as a Malaysian citizen and to support others who are in similar circumstances.

3. The story of Mr Nasuha, orphaned at birth

Mr. Nasuha, a 28-year-old born in Kelantan, has been stateless his entire life. Orphaned without the knowledge of his parents, he lives with his sister in Kuala Lumpur. Due to his stateless status, Mr. Nasuha struggles with healthcare access, holding only an expired MyKAS card, a temporary ID for stateless individuals born in Malaysia. Despite applying for a MyKAS renewal eight months ago, he has received no response from the National Registration Department (NRD). The delay prevents him from securing stable employment or accessing medical care for his gastric issues and high blood pressure.

In school, Mr. Nasuha faced discrimination for lacking a blue Malaysian ID, which isolated him and led to issues during exams. Although he hoped to study further, his scholarship was revoked due to his statelessness. With his expired MyKAS, he cannot work full-time, buy a vehicle, or even consider marriage, as his girlfriend's family rejects him because of his status. Police often question him at roadblocks, unaware of what MyKAS represents, subjecting him to public scrutiny.

Mr. Nasuha applied for citizenship under Article 15A of the Federal Constitution and followed up with letters from his village head, but his appeals have been ignored. His dream of visiting Mecca as a Muslim remains unachievable. Despite aspiring to be an architect, he has no means to fulfil this or to support his 21-year-old sister, who also lacks MyKAS despite her strong academic performance.

Mr. Nasuha has considered fleeing due to the hardships but knows nowhere else as home. He pleads with the government to end his suffering and grant him citizenship, hoping for a life free of the daily struggles his statelessness brings.

4. The story of Lai: Adoption, Trauma and the risk of statelessness

Lai was adopted at birth by a Malaysian parent through the welfare department. She had a cordial relationship with her adoptive parents and their biological children, but her parents' unstable relationship led to divorce. Lai's mother remarried and faced domestic abuse, traumatising Lai and her siblings.

Although Lai received a permanent residence card (Red IC) through a Section 15A application, her mother's manipulative behaviour caused Lai to run away.

Now 25, Lai cannot obtain citizenship through her approved 15A application without her adoptive mother's involvement. Furthermore, she faces the risk of passing on statelessness to her future children. The approved amendments to Section 1(a) of the permanent residency provision propose removing the right of children born to permanent residents to acquire citizenship by operation of law. Once enacted, this regressive amendment will perpetuate statelessness among permanent resident card holders and their children, further entrenching the issue.

5. The story of Abram, child of a Malaysian mother but remained stateless as she is not willing to come forward

Abram, born in 2017 to a Malaysian mother and an Indian father, became stateless after his mother abandoned him shortly after birth and refused to acknowledge him as her child. Despite being born in Malaysia with sufficient proof being born to a Malaysian woman, he was unable to obtain Malaysian citizenship. Initially, his father placed Abram with a babysitter (Mrs Nurul) and visited him regularly. However, as Abram's health issues arose, the father also refused to claim the child or provide the necessary documentation. This left Abram without a birth certificate, denying him access to basic rights such as healthcare and education.

Despite the efforts of caregivers like Mrs. Nurul and her daughter to obtain a birth certificate and citizenship for Abram, the requirement for the mother's presence during the registration process meant they were unable to proceed. Even after contacting the biological mother's family and trying to convince her to come forward, these efforts were in vain, as the mother chose to sever all ties with Abram.

Abram's case highlights how existing legal provisions, though designed to protect children's rights, can inadvertently lead to statelessness when a mother is unwilling to come forward, often due to the stigma associated with having a child out of wedlock. The absence of clear legal mechanisms to address such cases leaves children like Abram vulnerable, growing up without nationality or access to essential services such as healthcare. This underscores the urgent need for legal reforms to ensure that children born in Malaysia are not penalized due to the actions or marital status of their parents. Regardless of complex family dynamics, every child should be guaranteed the protection and rights they deserve.

Annex III – Testimonies shared by children and their families impacted by gender-discriminatory nationality laws

(All names have been changed for privacy)

The story of Carol and Annie

Annie's life has been defined by persistent uncertainty and fear due to her stateless status. Born in Brunei during the COVID-19 pandemic, she was unable to inherit automatic nationality from either parent. Annie's mother, Carol, a Malaysian citizen, was unable to confer automatic citizenship due to gender-discriminatory laws and was unable to return to Malaysia for the birth. Annie's father, a Permanent Resident in Brunei and stateless himself, was also unable to transmit any citizenship to her. Consequently, Annie was forced to inherit her father's stateless status while awaiting the outcome of her Malaysian citizenship application under Article 15(2), a process has been marred by delays.

Each time her family travels to Kuala Lumpur, Carol faces the additional burden of securing a visa for Annie, a process that is exhausting and stressful. The recent non-retroactive Constitution (Amendment) Bill 2024 has intensified her family's anxiety; the law excludes existing cases like Annie's, meaning her application may still face rejection, leaving her status in limbo.

For Annie, each day underscores the impact of statelessness on her sense of security. She cannot truly feel at home in Brunei, and without citizenship, her future remains uncertain. Carol hopes that one day, her persistent efforts will lead to Annie receiving the right to Malaysian citizenship, providing her with a stable and protected future—a fundamental right every child deserves.

The story of Aminah and her children

Three of Aminah's children remain in legal limbo, unable to access the same rights and services available to their Malaysian-born siblings. Born overseas, these three children are not yet recognised as Malaysian citizens. Despite their mother's Malaysian citizenship, these children, born overseas, have yet to be recognised as Malaysian citizens. Their pending citizenship applications leave them without the security and opportunities Malaysian citizenship affords. The youngest child is stateless, a consequence of being born in a controlling, abusive environment in which the father refused to register the child for citizenship as a means of controlling Aminah.

The children's births in Egypt were due to multiple factors: Aminah's first overseas-born child was delivered after she learned too late about airline restrictions on flying during pregnancy. The second child's birth coincided with the COVID-19 pandemic, when closed borders prevented travel. For the third child, Aminah's husband issued a distressing ultimatum, threatening to separate her from her children if she returned to Malaysia to give birth, thus forcing her to stay in Egypt.

Aminah eventually fled and returned to Malaysia for safety, yet her children's hardships continue due to Malaysia's restrictive citizenship laws, which prevent Malaysian mothers from automatically conferring citizenship to their children born abroad.

Healthcare access, a basic right for every child, has become a financial strain. While their Malaysian-born siblings pay only RM5 (approx. USD1) for specialist care, the non-citizen and stateless children face costs as high as RM120 (approx. USD27) per visit. This disparity is acutely felt, as the children

observe their peers receiving healthcare easily while they navigate a system that treats them as outsiders.

As a single mother and sole provider, Aminah faces the daily struggle of financial instability, covering both legal costs to finalise her divorce and essential expenses. Her children need therapy to address their trauma, but the higher fees for non-citizens make this challenging to afford. Currently, only the Malaysian child has access to this vital support. This lack of access to mental healthcare compounds the disparities they endure due to their non-citizen status, depriving them of the care and stability every child deserves.

The story of Maya and Rayyan

Rayyan, a seven-year-old boy born to a Malaysian mother overseas, has experienced significant instability and emotional trauma due to domestic violence against his mother, Maya, and the compounded challenges of his own lack of Malaysian citizenship. Born in Pakistan, Rayyan spent his early years in a home marked by conflict, witnessing episodes of abuse and violence that no child should endure.

After Maya managed to secure their escape and return to Malaysia, Rayyan's life continued to face uncertainty. Despite the Syariah High Court's decision to grant Maya custody, they are still subjected to persistent intimidation and harassment by Rayyan's father.

The prolonged procedural delays in securing Rayyan's Malaysian citizenship have further compounded his sense of instability. Without citizenship, his access to fundamental rights and protections remains in limbo. Additionally, the ongoing fear of potential abduction by his father, who has repeatedly threatened Maya, places immense psychological strain on Rayyan. This persistent threat affects his ability to engage in normal childhood activities, impeding his social development and academic progress.

For Rayyan, gaining Malaysian citizenship is not merely a legal formality; it is essential to securing stability and a sense of belonging. Without it, he remains vulnerable and his future uncertain.

The story of Leila and Anaya

Anaya, a nine-year-old girl, faces ongoing uncertainty and emotional distress due to her precarious legal status. Born in Lebanon, Anaya's birth location resulted from misleading guidance from embassy officials who assured her mother, Leila, that she could secure Malaysian citizenship without difficulty despite being born abroad. Now residing in the UAE, Anaya's stability hinges on her mother's employment-based visa, meaning any disruption to Leila's job threatens their ability to remain in the UAE and leaves Anaya in constant fear of displacement.

This fear is intensified by the persistent conflict between Lebanon and Israel. Their former home in Lebanon was just 30 minutes from the war-torn city of Beirut, an environment unsuitable for any child. For Anaya, obtaining Malaysian citizenship represents her only chance at a stable future alongside her mother.

A recent citizenship approval for her younger brother under Article 15(2) provides some hope, but Anaya's status remains uncertain. With only a Lebanese passport, she is linked to a country beset by

conflict and instability. Gaining Malaysian citizenship would offer Anaya a vital lifeline, granting her the safety, stability, and opportunities that every child needs to thrive.

Story of Moe and her children

For Moe's three children—a 17-year-old boy, a 16-year-old boy, and an 11-year-old girl—the uncertainty surrounding their mother's legal status has resulted in significant instability and disruption. Moe, a Myanmar national married to a Malaysian, has lived in Malaysia for 18 years but continues to struggle for Permanent Residence (PR) status. Without PR, she cannot obtain Malaysian citizenship under Article 15(1) of the Federal Constitution.

This prolonged uncertainty has affected her ability to provide a stable future for her children, especially as her husband's health declines and the family faces financial hardship. Without permanent legal status and access to citizenship, Moe is restricted in her employment options, preventing her from improving her family's economic situation. The lengthy PR process thus acts as a barrier, blocking non-citizen wives like Moe from advancing to citizenship. Currently, she relies on a short-term position at a nursery, offered to her by acquaintances, as many jobs are reserved for Malaysian citizens.

The eldest children, aged 16 and 17, have been particularly impacted. While their mother works tirelessly in a nursery to support the family, the instability of her income and the prolonged legal uncertainty have caused the older children to lose interest in their education. Witnessing their parents' struggle to make ends meet, they have started expressing a desire to work instead of continuing their studies. The financial pressures at home have led them to question the value of education, as they no longer see a clear path toward a brighter future.

For the 11-year-old child, the situation is more subtle but no less damaging. While she still attends school, the emotional strain of living in an unstable environment has begun to take its toll. The family's inability to plan for a secure future continues to weigh heavily on each child, compounding the challenges they face.