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# BRIDGING THE GAP: STRATEGIES FOR FOSTERING INCLUSION AND RESILIENCE AMONG STATELESS AND REFUGEE COMMUNITIES IN MALAYSIA

Edited by  
Teo Lee Ken & Hirzawati Atikah Mohd Tahir



**Bridging the Gap: Strategies for  
Fostering Inclusion and Resilience  
among Stateless and Refugee  
Communities in Malaysia**

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**MySDG Academy**

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Classes on Microsoft Office and Safe Internet usage for young Rohingya refugee girls in Selayang.

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# Contents

Foreword	<i>Denison Jayasooria &amp; Zoel Ng</i>	1
Introduction	<i>Hirzawati Atikah Mohd Tahir</i>	5
Contributors		12

## **Part I: Understanding Barriers, Formulating Better Strategies: The Legal and Economic Dimensions**

1	Unpromising Future for Refugees and Stateless in Ampang <i>Nurul Syaza binti Mazelan</i>	18
2	Addressing Statelessness Among Sabah's Indigenous Communities <i>Mary Anne K. Baltazar &amp; Aime Marisa Chong</i>	35
3	SDG Non-Compliance and Refugee Rights (The Case of Late Rafi Ullah in Malaysia) <i>Agha Abdul Sattar</i>	55
4	Legal Empowerment Approaches of the Stateless Community through Paralegals, Strategic Litigation & Policy Reforms <i>Sia Chin Chin</i>	69
5	Exploring the Dynamics of Public Debt and Economic Growth in Malaysia: The Impact of Economic Statelessness <i>Khairunisah Kamsin, James Alin, Mori Kogid, Norzaini Saup, Amy Faizah Nain, Hazlina Baba, Rohana Arpa, Akmal Nashren Abd Malik, Siti Rahma Malusirang, &amp; Delores Pammie Joeh</i>	84
6	Towards Decent Work for All: Evaluating ESG-Related Policy and Regulatory Measures for Potential Application to Refugees' Right to Formal Employment in Malaysia <i>Sarah Adibah Hamzah &amp; Rodziana Mohamed Razali</i>	96

## **Part II: Fostering Holistic Well-being: Reproductive and Health Care as Human Rights**

- |    |   |     |
|----|---|-----|
| 7  | Invisible Lives, Visible Needs: Organ Donation and Stateless Populations<br><i>Faerozh Madli, Stephen Laison Sondoh, Yuzainy Janin, Dean Nelson Mojolou, Ag Kaifah Riyard Kiflee, Ng Yen Phin &amp; Wong Sing Yun</i>   | 146 |
| 8  | Lost Identity and Statelessness: The Consequences of Unregulated Third-Party Involvement of Assisted Reproductive Technology in Malaysia<br><i>Nurhafizah Sahidan, Josephine Tang, Suryani Mohamed Suhane, Ching Hui Chi, Wan Firdaus Wan Ahmad &amp; Sia Chin Chin</i> | 161 |
| 9  | Contraceptive Implant Failure in a Refugee Teenage Mother: A Case Study<br><i>Za'aimah binti Zainon</i>   | 180 |
| 10 | Utilisation of Community-Based Maternal Health Clinic for Refugees<br><i>Zuraidah Che' Man, Za'aimah Zainon, Mohd Fairuz Ali &amp; Shahrizal Azwan Samsudin</i>   | 194 |

## **Part III: Moving Forward by Enhancing Community-led Initiatives: Case Studies and Best Practices**

- |    |   |     |
|----|---|-----|
| 11 | Building Resilience: Strengthening Partnerships for Rohingya Refugees in Malaysia under SDG 17<br><i>Aizat Khairi, Mohd Ramlan Mohd Arshad &amp; Andika Ab. Wahab</i> | 220 |
| 12 | Systemically Addressing the Issue of Refugee New Arrivals in Malaysia<br><i>Douglas Teoh, Ronald Premus and Patrick Yaw Htoi</i>                                      | 237 |

13	A Case Study on Climate Action Education Program for Enhancing Food Security Among Refugees <i>Noorul Huda Abu Bakar &amp; Norani Abu Bakar</i>	261
14	A Case Study of The Impact of Vocational Education for Refugee and Irregular Migrant Youth in ElShaddai Centre <i>Ng Oi Leng</i>	281
15	Empowering Refugee Integration: A Case Study on PSPK's Community-Centric Approach in Selayang, Gombak <i>Keerthana Rajaderan and Hemaapadmaashini P</i>	292

## Introduction

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### **Hirzawati Atikah Mohd Tahir**

*MySDG Academy Officer and  
Conference Coordinator for MySDG Conference 2024*

In recent years, the plight of stateless and refugee communities has emerged as one of the urgent humanitarian challenges in the modern world. Malaysia is not an exception. The influx of refugees entering through the border with Thailand, and the rights of individuals being denied citizenship in their own country thus becoming stateless, leaves Malaysia in a precarious position. The complexity of existing laws that barely addresses the loopholes of managing these communities makes these them vulnerable.

MySDG Academy hosted the MySDG Conference 2024 on Stateless and Refugee Communities in Penang on 14 and 15 September 2024. Arising out of the papers presented are two publications. The first is *Unheard Voices: The Lived Experiences of Stateless Persons and Refugees in Malaysia* where we highlighted how stories and on the ground narratives as lived experiences are central resources in informing our understanding of the plight and needs of stateless and refugee communities.

For this second book entitled, *Bridging the Gap: Strategies for Fostering Inclusion and Resilience among Stateless and Refugee Communities in Malaysia*, we continue where Book I ended, by illustrating how these experiences can be used then to formulate better strategies, and the domains in which these multifaceted focuses are needed. There are three parts as we go through each by understanding the legal and economic barriers that these communities are facing; fostering holistic well-being through reproductive and health care; and finally

moving forward through the initiatives that organisations or local communities have done to address stateless and refugee communities to obtain what they deserve as a human being. From these three parts, there are 15 chapters in total.

In the first part of the book, *Understanding Barriers, Formulating Better Strategies: The Legal and Economic Dimensions* exposes the legal and economic barriers confronted by these communities. We also identify the best strategies for legal protection and economic empowerment to ensure these communities are able to adapt in the local communities and to be able to support themselves.

Chapter 1 *Unpromising Future for Refugees and Stateless in Ampang* begins with Nurul Syaza Mazelan exploring the issues faced by the stateless and refugee communities in Ampang via APPGM-SDG's grounded research process method, which is the issue mapping field research. Ampang is divided into two parts, one is governed by Wilayah Persekutuan Kuala Lumpur and the other under Hulu Langat district and these two localities have different social backgrounds. Nurul Syaza conducted grounded research at the latter where both communities face different contexts but similar challenges especially when it comes to access to healthcare, education and job employment. Despite being an urban area, Ampang also has stateless individuals due to various reasons. Late in registering child birth, foster care and abandoned child to mixed marriages between citizens and non-citizens further exacerbate the issue of Statelessness in the area.

Chapter 2 *Addressing Statelessness Among Sabah's Indigenous Communities* by Mary Anne K. Balthazar and Aime Marisa Chong discusses the issue of statelessness among indigenous communities in Sabah and the progress that the federal government, state



government and NGOs have done so far in addressing the issues and challenges faced by these communities. Chapter 3 *SDG Non-Compliance and Refugee Rights (The Case of Late Rafi Ullah in Malaysia)* by Agha Abdul Sattar highlights the challenges and recommendations for stateless and refugee communities from a SDGs' perspective focusing on the case study of a refugee namely Rafi Ullah.

In Chapter 4 *Legal Empowerment Approaches of the Stateless Community through Paralegals, Strategic Litigation & Policy Reforms*, Sia Chin Chin studies the legal empowerment approach taken by a civil society organisation, Development of Human Resources for Rural Areas Malaysia (DHRRA) in empowering and addressing the challenges of stateless individuals in Malaysia. DHRRA implemented three legal empowerment approaches for stateless individuals in Malaysia and these approaches include paralegal development, legal reform initiatives and strategic litigation. Strategic litigation is seen as an important pillar for DHRRA as it illustrates successful stories of obtaining judicial justice from two appeal court cases.

Chapter 5 *Exploring the Dynamics of Public Debt and Economic Growth in Malaysia: The Impact of Economic Statelessness* by Khairunisah Kamsin et. al. explores the dynamic of public debt and economic growth in Malaysia through the concept of economic statelessness, a novel and useful concept in our contexts. Chapter 6 *Towards Decent Work for All: Evaluating ESG-Related Policy and Regulatory Measures for Potential Application to Refugees' Right to Formal Employment in Malaysia* by Sarah Adibah Hamzah and Rodziana Mohamed Razali examines the refugees' right to access formal employment in Malaysia in terms of policy and regulations from an ESG's framework.

In Part Two, *Fostering Holistic Well-being: Reproductive and Health Care as Human Rights* argues how well-being should be understood as social

and holistic well-being, and this includes the provision of services to healthcare and reproductive care. Safety and access to good health and reproductive rights are also part of well-being and the upholding of human rights. Stateless and refugee communities face barriers in accessing healthcare in Malaysia. This includes lack of awareness over available healthcare services and fears over their undocumented status and financial capability.

Chapter 7 *Invisible Lives, Visible Needs: Organ Donation and Stateless Populations* by Faerozh Madli et. al. studies the relationship between organ donation and Statelessness through two approaches via a systemic review of different methods. Chapter 8 *Lost Identity and Statelessness: The Consequences of Unregulated Third-Party Involvement of Assisted Reproductive Technology in Malaysia* by Nurhafizah Sahidan et. al. explores the consequences of unregulated third-party involvement in Assisted Reproductive Technologies (ART) that has led to an increase of stateless children due to prohibited commercial surrogacy. ART involves the in-vitro manipulation use of donated eggs, sperm, or embryos to help individuals or couples struggling with infertility to conceive a child. It emphasises the tension between Malaysian social norms, legal parentage, and the potential confusion over parental rights when third parties, such as donors or surrogates, are involved in ART. Key issues discussed include the potential for multiple individuals to claim parenthood, which may lead to parental confusion and legal disputes. The welfare, intimacy, and citizenship rights of children born through ART are particularly problematic, as these concepts are intertwined and crucial to the child's rights, including health, education, and inheritance.

Chapter 9 *Contraceptive Implant Failure in a Refugee Teenage Mother: A Case Study* by Za'aimah Zainon highlights the importance of accurate information and understanding of contraceptive methods among

refugee teenage mothers. It does so through the study of a case of contraceptive implant failure.

In Chapter 10 *Utilisation of Community Based Maternal Health Clinic for Refugees*, Zuraidah Che Man et. al. identifies the characteristics and the utilisation of the sexual reproductive health (SRH) services among the refugee communities. Their location of focus takes place in the northern region of Malaysia and is presented from a humanitarian organisation's perspective, Malaysian Relief Agency (MRA). MRA has a community-based SRH clinic in Sg. Petani, Kedah which can accommodate 40 to 60 patients per day. The top three SRH services that have been utilised by the refugees and asylum seekers communities are maternal and child health services (mostly antenatal services), followed by family planning and sexually transmitted infection (STI) clinics.

There should be no difference in treatment when it comes to healthcare whether they are stateless or refugees. They should be able to access the healthcare services they need to avoid future health risks especially by the vulnerable communities. To have good health is now a privilege for us, but for stateless and refugee communities, being able to get treatment is considered a privilege.

In the last part of the book, *Moving Forward by Enhancing Community-led Initiatives: Case Studies and Best Practices* seeks to affirm the need for bottom up and community led approaches in empowering stateless and refugee communities in Malaysia. We illustrate how, through case studies, there are best practices that can be identified and generalised to formulate effective models and strategies to address the needs of those communities.

Chapter 11 *Building Resilience: Strengthening Partnerships for Rohingya Refugees in Malaysia under SDG 17* by Aizat Khairi et. al. examines the importance of partnership in the process of empowering and building the resilience of the Rohingya community in Malaysia including the involvement of Rohingya community organisations. Chapter 12 *Systemically Addressing the Issue of Refugee New Arrivals in Malaysia* by Douglas Teoh Shang En shares initiatives taken by Young Lives through collaborative partnership to create the Crossroad Program for refugees who are new arrivals'. It calls for a more comprehensive and collaborative approach to refugee assistance in Malaysia. Chapter 13 *A Case Study on Climate Action Education Program for Enhancing Food Security Among Refugees* by Noorul Huda Abu Bakar and Norani Abu Bakar highlights the Blue Ribbon Global's initiative of an education programme called Education for Climate Action Program (E4CAP) in empowering youth refugees to address food security issues in Malaysia.

Chapter 14 *A Case Study of The Impact of Vocational Education for Refugee and Irregular Migrant Youth in ElShaddai Centre* by Ng Oi Leng illustrates the efforts taken by a CSO, ElShaddai Centre and its partners in developing the ElShaddai Advance Vocational Education (EAVE) Program since 2021. This initiative was a response to refugees who lost their jobs during COVID-19 and had difficulties to make ends meet. Therefore, the initiative was developed to equip refugee youths with the practical skills for education and employment.

Last but not least, Chapter 15 *Empowering Refugee Integration: A Case Study on PSPK's Community-Centric Approach in Selayang, Gombak* by Keerthana Rajaderan shares the initiatives taken by the Association of Social Services and Community Development of Gombak District, Selangor (PSPK) in empowering the refugees in Selayang through

education, vocational training, cultural integration, and community support.

This book serves as a call to action for policymakers, practitioners, and researchers to work together in bridging the gap among stateless and refugee communities with local communities. The authors have brought together critical insights, recommendations, and practical solutions that pave the way for a more inclusive and resilient future for Malaysia's stateless and refugee communities. The journey towards equality and justice is arduous, but through legal reforms, community empowerment, and the prioritisation of human rights, we can move closer to a Malaysia where everyone—regardless of status—has the opportunity to live with dignity and act for a better world.

## Chapter 4

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### **Legal Empowerment Approaches of the Stateless Community through Paralegals, Strategic Litigation & Policy Reforms**

*Sia Chin Chin*

#### **ABSTRACT**

In the past three decades Malaysia has been witnessing a growing number of the stateless population over the years. A significant number of individuals here have been rendered stateless despite never crossing international border, and thousands more who are at risk of statelessness despite being born in the country that has witnessed the birth of their parent, and in some cases, even the birth of their grandparents. To build resilience and empower individuals and communities to overcome the challenges of stateless communities, this action research critically studies the effectiveness of three approaches taken by civil societies in Malaysia by using paralegals, strategic litigations and policy reforms to enable communities to become active champions in achieving SDG goals in SDG 4 (Quality Education), SDG 8 (Decent Work and Economic Growth), SDG10 (Reduce Inequalities), SDG 16 (Peace, Justice and Strong Institutions and SDG 17 (Partnership for the Goals).

The civil society Development of Human Resources for Rural Areas Malaysia (DHRRA) has supported and assisted thousands of individuals to free themselves from the cycle of statelessness entrapping them and their families. Due to DHRRA's continuous advocacy efforts on the issue, statelessness is no longer a concealed issue in Malaysia. It has gained attention of various stakeholders, especially the Malaysian Government, which prompted them to take the necessary actions to tackle the issue. The Government increased

access to public education for stateless and undocumented children as part of the Education Ministry's "Zero Reject Policy", to ensure that all children in the country, including stateless and undocumented children, have access to education subject to certain conditions. Further recommendations are also drawn from valuable insights shared by the study participants actively engaged in DHRRA's legal empowerment approaches, which constitutes a critical component of the research.

### **BACKGROUND OF CASE STUDY**

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

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

development, legal reform initiatives and strategic litigation in achieving this.

This case study is derived from action research titled 'Stories from the field: Overcoming access to justice barriers through grassroots communities' participation and collective action', which is comprised of 3 Action Research with each focusing on one of the 3 key legal empowerment approaches of DHRRA. By examining these approaches, the research aims to shed light on the experiences and outcomes of legal empowerment approaches implemented by DHRRA and contribute to the understanding of how these strategies can increase access to justice for stateless persons in Malaysia.

### **KEY LEGAL EMPOWERMENT APPROACHES**

The three key legal empowerment approaches employed by DHRRA in achieving the shared goal of promoting access to justice for stateless people in Malaysia, is described as follows:

#### ***Intersection of paralegal services and policy reform***

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

#### ***Intersection of paralegal services and strategic litigation***

When attempts to obtain citizenship through the submission of applications fail, DHRRA turns to strategic litigation as a final recourse.



Paralegals play a multifaceted role in this approach, identifying cases with the potential to set legal precedents and guiding the community through the litigation process. They work in collaboration with pro-bono lawyers, particularly in cases that cannot be resolved at the National Registration Department level and cases involving the legal adoption of stateless children.

### ***Intersection of strategic litigation and policy reform***

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

### **DHRRA'S COMMUNITY-BASED PARALEGAL APPROACH**

A review of DHRRA's legal empowerment work shows that the community-based paralegal engagement by the organization can be categorised into 4 major clusters of activities as follows:

- 1) Mapping & Registration Project
- 2) Direct Services through Case Management
- 3) Addressing Statelessness caused by Gender Inequality Practices
- 4) Crisis Response

### ***Mapping & Registration Project***

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

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

### ***Direct Service through Case Management***

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

### ***Addressing statelessness caused by gender inequality***

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

government's implementation of these policies, and provide evidence-based recommendations to address gender inequality in access to nationality. Through the project, 120 community members were identified and trained as paralegals. Their roles encompass gathering ground-level data, monitoring administrative policies and engaging with government agencies. Community-based paralegals also play a critical role in supporting individuals facing challenges to due gender inequality in nationality law and practices, and assisting to monitor the process and progress of their applications.

### ***Crisis Response***

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

### **STRATEGIC LITIGATION**

Strategic litigation is an important pillar of DHARRA's initiative. Litigation presents a dual opportunity to draw awareness to statelessness and to build jurisprudence on statelessness referencing to the existing provisions in the Federal Constitution. There are a number of provisions within the Malaysian Federal Constitution that if implemented fully and consistently, could result in the resolution of many cases of statelessness in West Malaysia. Litigation is considered

strategic because DHRRA identifies, selects and brings to court specific cases targeting states or public officials for violations of the rights to citizenship. Its aims could include one or more of the following:

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

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

DHRRA's pro bono lawyers provide much needed legal support for stateless applicants who require remedy at the court in order to acquire or confirm nationality. These are cases that cannot be resolved at the NRD level by community-based paralegals and are taken to court by pro-bono lawyers. The cases handled by the pro bono lawyers mainly fall under the following four categories:

- 1) Adoption – In cases concerning adopted children who are not able to inherit citizenship from their Malaysian parents who adopt them either formally or informally, DHRRA's pro bono lawyers will provide the necessary legal support to formalise the adoption process, and argue in favour of the right of the

adopted child to inherit the citizenship of their adoptive parents (The Malay Mail, 2022).

- 2) Children born out of wedlock – According to Malaysian nationality law, children who are born in Malaysian territory but out of wedlock inherit citizenship from their mother only. DHRRA has encountered many situations in which a child is born to a Malaysian man and non- Malaysian woman who can no longer be located (due to, for example, having returned to their country of origin) rendering the child with undetermined nationality. DHRRA's position is that in these circumstances, it is in the best interest of the child to inherit Malaysian citizenship through his/her father (CLI Bulletin, 2018).
- 3) Safeguard against statelessness – The Constitution states that a child born in Malaysia who is not the citizen of another country and who cannot register to acquire citizenship of another country within 12 months is a Malaysian citizen. However, while this provision theoretically provides a powerful safeguard against statelessness, it has not been implemented in practice by the Malaysian government. Cases filed on behalf of foundling children aim to test this provision.
- 4) MyPR/MyKas Holders – Article 14 of the Federal Constitution states that every person born on or before Malaysia Day (Independence Day) is a citizen by operation of law. People who meet these qualifications, but who are unable to produce the documentary evidence to prove their presence in the Federation prior to 1957, are often given temporary or permanent residence status. Due to their inability to satisfy the administrative requirements set out by the NRD, they face rejection despite the fact that most have lived out their entire

lives in Malaysia. DHRRA advocates for a reform of NRD's administrative procedures in the interest of establishing a more flexible approach to applying the nationality law. Another common scenario that falls under this category concerns foundling who are raised in welfare homes. Because their parents cannot be located, they are given temporary residence status (MyKas), renewable every five years

There is clear indication among participants that strategic litigation has made a significant impact to improve access to justice on women and gender justice issues for stateless people in Malaysia. This could be illustrated by two appeal cases in which litigants were successful in obtaining justice via strategic litigation through strategic litigation decided by Malaysian Court of Appeal in the *case of Madhuvita Janjara Augustin*<sup>1</sup> and *case of G*<sup>2</sup> .

## **RECOMMENDATION FOR ENHANCING ACCESS TO JUSTICE FOR STATELESS PEOPLE IN MALAYSIA**

### ***Provide Temporary ID for Stateless People***

One participant profoundly expressed, "I don't see any logic and fairness to the stateless person for not getting ID because the refugees are having their ID under UNHCR. But these persons who are born and bred their entire lives in Malaysia, they are not getting any ID".

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<sup>1</sup>CLJ Bulletin (2018) 10 May MADHUVITA JANJARA AUGUSTIN (SUING THROUGH NEXT FRIEND, MARGARET LOUISA TAN) v. AUGUSTIN LOURDSAMY & ORS [2018] 4 CLJ 758. Available at: <https://bulletin.cljprime.com/?CLJBulletin;2018;19;b;#COTW211> [Accessed 23 August 2023]

<sup>2</sup> The Malay Mail (2022) 15 March Court declares woman abandoned at birth in KL to be a Malaysian citizen, orders new birth certificate. Available at: <https://www.malaymail.com/news/malaysia/2022/03/15/court-declares-woman-abandoned-at-birth-in-kl-to-be-a-malaysian-citizen-ord/2047548> [Accessed 15 Aug 2023]

This sentiment highlights the glaring disparity faced by stateless persons who are born and lived their entire lives in Malaysia without legal identification. Issuance of temporary ID would enable these individuals to access essential rights and services such as KWSP and SOCSO, which could secure them their livelihood. As another participant emphasised, “It doesn't matter if they're going to be citizen or not, but you must give somebody identification if they are born in Malaysia because they need identification to study, to go for training, and when to go for work”

However, as pointed out by several participants during the validation discussion, it is important to note that this recommendation is not necessarily tied to citizenship but rather to access the basic rights to live a dignified life.

#### ***Policy Reform from the Perspective of the Community***

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

#### ***Create a Safe Environment for Stateless People to Speak Up***

Stateless individuals often fear speaking out due to concerns about repercussions or jeopardising their applications. To encourage them to share their experiences and needs, it is imperatives to create a safe

environment for them. As one participant emphasised, assurance is key. They must be assured that speaking out will not negatively impact their legal status or applications. Building trust in the process is vital to empower stateless individuals to voice their concerns. Promoting self-advocacy by encouraging stateless individuals to use their own voices is essential.

### ***Promote Collective Action***

Collective action is a powerful tool in advocating for the rights of stateless individuals. Collaborative efforts create a louder and more impactful message, increasing the likelihood of being heard by both the public and the authorities.

### ***Better Enforcement***

Effective enforcement of policies and regulations is essential in addressing and overcoming issues related to statelessness. Problems stemming from inadequate enforcement, such as misuse of power and communication breakdowns can lead to errors and injustices.

### ***Political Will***

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

## **ACKNOWLEDGEMENT**

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