

THE COST OF STATELESSNESS

2019

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This policy report was primarily co-written by Wong Chen and Goh Paul Mae (Officer).

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Abbreviations

Deoxyribonucleic acid (DNA) – Hereditary material in humans and almost all other organisms.

Department of Statistics Malaysia (DOSM) – The official source for government data and statistics.

Department of Human Resources for Rural Areas (DHRRA) – A non-profit organization focusing on improving the livelihood of the vulnerable.

National Registration Department (NRD) – Department under the Ministry of Home Affairs responsible for the registration of birth, death, adoption, marriage, and divorce.

Executive Summary

This paper explores some fundamental issues arising out of statelessness among those born in Malaysia and children of Malaysian parents. Furthermore, it provides a good estimate on the cost of statelessness to the economy when rightful citizenship is denied.

The main findings and conclusions are as follows:

- The estimated economic loss from denying citizenship amounts to RM 6 billion per annum; and,
- With the right political will, the matter of 300,000 stateless persons can be resolved without an increase in departmental budget and within two years.

We further suggest solutions to resolve the issue of statelessness by focusing on, but not limited to:

- amending of the Adoption Act 1952; and,
- introducing DNA testing as conclusive evidence.

By conclusively resolving citizenship cases, Malaysia will yield much higher economic, social and health benefits without incurring any additional administrative costs.

1.0. Introduction

- 1.1. Statelessness is an extremely serious problem in Malaysia. It involves a large number of persons and the problem is institutionally protracted.
- 1.2. In measuring the level and types of statelessness, we have a serious data and categorization problem. The term used by the Department of Statistics Malaysia (DOSM) is “non-citizen”, which refers to an individual who is not considered a citizen by the particular state. In Malaysia, non-citizens include stateless persons, permanent residents, foreign spouses, refugees and migrants (both legal and illegal).
- 1.3. According to DOSM, the number of non-citizens living in Malaysia has been on the increase¹. In 2010, 2.3 million non-citizens were recorded; in 2018, the number increased to 3.3 million. This number of non-citizens includes migrants and persons born in Malaysia. Unfortunately, there is insufficient publicly available disaggregated data from DOSM.
- 1.4. This paper focuses on a narrower definition of statelessness; it does not include refugees and illegal migrant workers. It focuses on cases involving Malaysian citizens that have children, spouses and family members who have failed and/or denied citizenship.

¹ Department of Statistics Malaysia. “*Migration survey report, Malaysia, 2015.*” Accessed on 12 February 2019. <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=TkxwQkN1Yzhwbk1JZkVtMmVZZINLUT09>

1.5. This paper is largely inspired by the actual work that our officers and interns deal with in our Pusat Khidmat Rakyat Parlimen Subang. Our office has handled 89 cases of citizenship applications since 2013 and as of 31st January 2019, we have 65 on-going cases. These cases relate to individuals who have actively applied for citizenship but have yet to get citizenship approved.

1.6. The citizenship cases handled by our office can be divided into five sub-groups:

1	Children born out of wedlock <ul style="list-style-type: none"> In the majority of these cases, the mother is usually a foreigner.
2	Legally adopted children, but still with citizenship denied.
3	Children illegally adopted, without proper documentation. <ul style="list-style-type: none"> Most of these cases involve children who were abandoned at birth.
4	Senior citizens who did not receive citizenship after Merdeka.
5	Persons whose parents failed to register their births and/or failed to apply for identification cards.

1.7. To better illustrate the complexity of issues, we will provide a summary of a few real-life cases. As a privacy measure, personal details and names have been altered.

1.8. Being stateless entails being denied access to public healthcare, public education, equal job opportunities, banking and financial facilities, and inability to travel overseas. Essentially, a stateless person is discriminated and denied many basic rights. They have to pay more for services and yet, are unable to live a normal life as most do. This situation then creates mental stress to the stateless person and by extension, negatively impacting their Malaysian family and friends too.

2.0. The Problem of Statelessness

2.1. Here are a few examples of real-life cases handled by our office.

Case #1: Children Born Out of Wedlock

In 2015, Mr Ali came to our office requesting for help regarding his daughters' citizenship cases. Seven years ago, Mr Ali and a Vietnamese citizen conceived two daughters before registering their marriage. Shortly after the registration, the couple went their separate ways, leaving Mr Ali's daughters under his care.

Upon registering their marriage in 2012, Mr Ali made citizenship applications for both his daughters. Till this day, he has not received any response. This year, Mr Ali's daughters have started primary school. The additional cost of textbooks, non-citizen fees, and medical care have been a burden to the single father. Every two months, Mr Ali visits the National Registration Department (NRD) to inquire on the applications. The same answer remains since 2012, "The application is in process".

- 2.2. The process of obtaining citizenship begins with an application to the National Registration Department (NRD). Adoption papers, marriage certificate, and other relevant documents must be produced during this stage. Thereafter, officers in the NRD will examine and scrutinise the application. There is no stated time frame for the approval or rejection process. Based on our experience in handling such cases, the waiting duration for problematic citizenship application ranges from 5 to 17 years. If an application is rejected, the applicant must wait another 2 years before refilling.
- 2.3. Under Section 17 (Part III) of the Second Schedule of the Federal Constitution 1957, Malaysian citizenship judgements apply the concepts of jus soli and jus sanguinis. Jus

solus refers to the right of anyone born in the state to have citizenship, while jus sanguinis is the principle of nationality law by which citizenship is determined by one or both parents who are citizens of the state. In Malaysia, the only parent identified under the principle of jus sanguinis is the mother. Thus, in most cases where mothers have foreign citizenships, the children's citizenship follows suit.

Case #2: Legally Adopted Children

At birth, Siti was abandoned by her biological mother. Her foster parents took pity on her and legally adopted her at the age of five. Her case has been in the NRD system for the last 17 years, where she was rejected three times in total. She was not given any detailed reasons for rejection.

Siti is now a 22-year-old woman struggling to make a living. Thankfully, her family was able to support her high school education. Despite this, being stateless entails the inability to open a bank account. Siti has difficulty explaining her stateless situation to prospective employers.

- 2.4. The Malaysian Adoption Act 1952 does not cover the issue of citizenship for adopted children². Despite having two Malaysian foster parents, an adopted child's nationality still has to be processed by the NRD. According to Dr Hartini Zainudin, a child rights activist and co-founder of Yayasan Chow Kit, discretionary decisions by the NRD are beyond judicial review³. Taking a citizenship case to court is an option, but this is not

² Malaysian Adoption Act 1952. "Adoption Act 1952". Accessed on 12 February 2019. <http://orphancare.org.my/wp-content/uploads/2017/02/Adoption-Act-Malaysia-1952-1.pdf>

³ Elena Koshy. "Championing Malaysia's lost children." Accessed on 12 February 2019.

<https://www.nst.com.my/lifestyle/sunday-vibes/2018/07/386005/championing-malaysias-lost-children>

feasible for the lower income group. Legal fees for a judicial review application would cost approximately RM 60,000 and upwards, a large sum for most households.

- 2.5. A constant issue that arises in the cases concerning adopted children is the lack of information regarding the identity and citizenship of the biological parents. This causes reluctance in registering legally adopted children.

Case #3: Children Illegally Adopted without Proper Documentation

Two decades ago, Mr Chan was contacted by a young couple hoping to sell their newborn baby to him. He and his wife had trouble conceiving, and out of desperation, he agreed to purchase the baby. Initially, Mr Chan was able to register the child, Ling Ling, as his own and the child received a blue identification card at the age of 12.

Last year, Ling Ling's blue identification card was revoked when the NRD started an investigation into her biological background. According to NRD, Ling Ling's appearance and skin tone sparked this investigation. Mr Chan admitted to the illegal adoption and Ling Ling has been advised to apply for a permanent resident status. Since she is above the age of 18, she can no longer qualify for de facto adoption.

- 2.6. De facto adoption refers to a child being “raised, supported, and educated by any person or husband and wife as their child”⁴. Registration for de facto adoption may be made under the following conditions⁵:

- 2.6.1. The child is below the age of 18 and not married;
- 2.6.2. The child is in the custody of the applicant; and,

⁴ The Malaysian Bar. “Adoption.” Accessed on 12 February 2019. http://www.malaysianbar.org.my/adoption_.html

⁵ National Registration Department. “Adoption”. Accessed on 12 February 2019.

<https://www.jpn.gov.my/en/soalan-lazim/anak-angkat/#1458864851305-15b178cd-1b4f>

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- 2.6.3. The child is maintained and educated by the person for a period of not less than two years before the application.

Case #4: Senior Citizens who did not receive Citizenship after Merdeka

This year, Madam Wong celebrates her 70th birthday. Immediately after Merdeka, her father applied to the NRD, but her application was lost in the system. Today, she is the only member of the family without citizenship.

Since then, she has made multiple applications for citizenship. Without citizenship, Madam Wong is unable access public healthcare. Medical treatments at her old age are costly. Every six months, her children take her to the NRD to inquire on her case.

- 2.7. As stated in the Federal Constitution of Malaysia 1957, a person born before Merdeka Day is entitled to be a citizen by way of registration⁶.
- 2.8. The above cases to illustrate the complexities in citizenship application cases. This problem is often unreported and overlooked by the general public. Stateless persons suffer deep social and economic costs, rendering them into a type of invisible society.

⁶ Common LLI. "Constitution of Malaysia 1957". Accessed on 13 February 2019. <http://www.commonlii.org/my/legis/const/1957/3.html>

3.0. The Cost of Statelessness

- 3.1. We do not have sufficient available data on the performance of the NRD in evaluating citizenship applications. However, one thing is certain, there is a grave economic cost in terms of productivity lost to the country by denying and delaying legitimate citizenship applications.
- 3.2. We venture to make an educated guess of this cost based on available data and our real-life experiences in dealing with citizenship applications.
- 3.3. While we are unable to fully verify the data, it has been reported that an estimate of 300,000 persons born in Malaysia are currently stateless in Malaysia⁷. The Minister of National Unity and Social Wellbeing cautioned that the numbers could, in fact, be higher. Nevertheless, to calculate the estimated economic cost, we will use the figure of 300,000 as the best available data on statelessness.
- 3.4. Based on our office experience and that of Development of Human Resources for Rural Areas (DHRRA) Malaysia, we use a conservative assumption that 80% of all citizenship applications are in fact legitimate and deserving. DHRRA Malaysia is a non-profit organization dealing with citizenship issues since 2006. In the last five years, we have only rejected assistance for 6 out of 89 citizenship application cases; in other words, we provided assistance to 93% of all cases.

⁷ The Star Online. "Waytha: 10 categories of statelessness identified." Accessed on 6 March 2019. <https://www.thestar.com.my/news/nation/2018/08/19/waytha-10-categories-of-statelessness-identified/>

3.5. According to DHRRA, it has looked into 12,400 cases and helped to submit 12,078 applications to NRD, which is a 97% assistance rate⁸. In that context, our assumption of 80% percent is a conservative number.

3.6. The average waiting time for citizenship applications to be processed is estimated at seven years. This assumption is based on the fact that most of the cases handled by our office have been pending for 5 to 15 years. In addition, applicants are usually informed by the NRD to check for updates only after two years from their application date.

3.7. To assess the impact on the economy, we calculate the economic cost of productivity lost for all working age stateless persons who should have otherwise received citizenship. The calculations are as follows:

3.7.1. Assuming that half of the stateless persons are at a working age, then $50\% \times 300,000 \text{ persons} = 150,000 \text{ persons}$.

Number of Stateless Persons	300,000 persons
Percentage of Working Age Persons	50 %
Number of Working Age Stateless Persons	150,000 persons

⁸ The UN Refugee Agency. "Ending statelessness in Malaysia". Accessed on 13 February 2019. <https://www.unhcr.org/ending-statelessness-in-malaysia.html>

3.7.2. According to DOSM, the annual average productivity value as at 2018 is RM 81,039⁹. Based on our knowledge that a stateless person has no access to equal job opportunity; we assume that stateless persons can only achieve half of the annual productivity. This suggests that total annual productivity loss per year is 150,000 persons x Total Annual Productivity (RM 81,039) x 50% = RM 6.078 billion per year.

Annual Average Productivity Value	RM 81,039
Percentage of Loss in Productivity due to Unequal Job Opportunity	50 %
Annual Average Productivity Value of a Stateless Person	RM 40,520

Number of Working Age Stateless Persons	150,000 persons
Annual Average Productivity Value of a Stateless Person	RM 40,520
Total Loss in Productivity Value per year	RM 6.078 Billion

3.7.3. If the process takes seven years on average, we would lose RM 6 billion/year x 7 years (waiting time lost for application to be processed) = RM 42 billion. We have not even factored in the potential productivity loss of teenagers who will mature into working age within the said seven years.

3.7.4. Therefore, the above clearly shows tremendous economic benefits can be gained by Malaysia by accelerating the granting of citizenship cases. The next

⁹ Department of Statistics Malaysia (DOSM). "Labour Productivity Fourth Quarter 2017." Accessed on 6 March 2019. https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=438&bul_id=RG5xWFpSK0kxOFA3ZXNNZUJvbW9sZz09&menu_id=Tm8zcnRjdVRNWWIpWjRlbnRlaDk1UT09

question is whether the NRD is able do this administratively without incurring substantial additional costs.

3.8. Presently, more than 3,000 civil servants are employed in by the Ministry of Home Affairs for the purpose of managing citizenship cases in NRD. The table below shows that speeding up citizenship application is achievable, with an average 230 work days a year (holidays and leave computed), officers will have to process about 4 to 5 cases per work day.

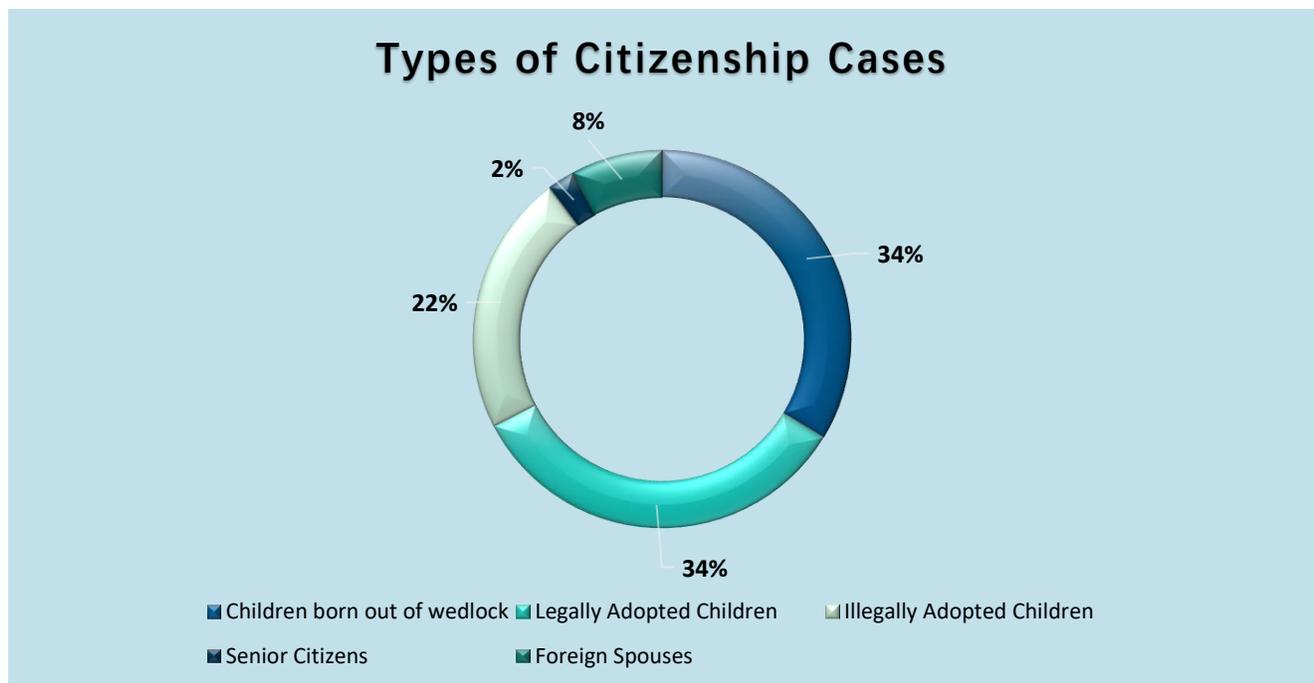
Number of Citizenship Cases	300,000 cases
Number of NRD Officers	3,000 officers
Number of Cases processed per Officer/year	1,000 cases/year
Number of Cases processed per Officer/ work day	4.3 cases/day

4.0. Policy Suggestions

4.1. This paper recommends two other solutions that will tackle some of the scenarios and challenges from the above case studies.

4.2. Amendment of the Adoption Act 1952 and The Federal Constitution

4.2.1. Of the 89 cases handled by our office, the statistics of citizenship cases are as follows.



4.2.2. From the above pie chart, it is evident that the current Adoption Act 1952 overlooks the citizenship of legally adopted children. In Malaysia, right of citizenship is not practiced despite adoption by two Malaysian parents.

4.2.3. We propose an amendment to the Adoption Act 1952 and the Federal Constitution to grant automatic citizenship to all children adopted by Malaysian parents through legal means.

4.3. Introduction of DNA Testing

- 4.3.1. Deoxyribonucleic Acid (DNA) Testing involves comparing two or more genetic material to identify biological relation. In countries such as Poland and Australia, bloodline acts as a form of evidence for all citizenship applications¹⁰.
- 4.3.2. Under the Polish nationality law, children born with at least one Polish parent are automatically granted citizenship. However, in Malaysia, children born out of wedlock are considered non-citizens if they have a foreign mother. This paper proposes the abolition of a marriage test. A marriage test implies that the validity of marriage for two persons is tested before citizenship is approved for their child.
- 4.3.3. This solution invokes the moral argument of why children should suffer for the indiscretion of their parents. When citizenship is not granted to those of Malaysian descent, the stress of being stateless affects the family as a whole.
- 4.3.4. In Australia, DNA testing is not required by law, but acts as supplementary evidence. Typically, the Department of Immigration and Citizenship encourages the use of DNA testing by providing awareness¹¹. This method is

¹⁰ Black, S. "Five places where your bloodline will get you a second citizenship." Accessed on 13 February 2019.

<https://www.businessinsider.com/five-places-you-could-obtain-citizenship-2012-4/?IR=T>

¹¹ Australian Government Department of Immigration and Citizenship. "Information about DNA testing for visa and citizenship applications". Accessed on 14 February 2019.

commonly used for children without birth certificate; for instance, babies abandoned at birth.

4.3.5. In 2013, three children of a Malaysian citizen were denied citizenship despite a 99.9 per cent accurate DNA test proving blood relation¹². An example of a successful citizenship case involving DNA testing was found on 17 May 2018, when High Court Judge, Rosilah Yop, ruled in favour of the victim in this civil dispute¹³. However, while the judiciary accepts DNA testing as admissible evidence, the NRD does not. This paper proposes the use of DNA testing to speed up the application process under the NRD.

¹² Zainal, F, et.al. *“Kids denied citizenship despite DNA proving Malaysian dad’s paternity.”* Accessed on 13 February 2019. <https://www.thestar.com.my/news/nation/2017/04/28/kids-denied-citizenship-despite-dna-test-proving-dad-is-a-malaysian/>

¹³ Mageswari, M. *“Citizenship: 13-year-old’s DNA test proves her biological father is Malaysian”.* Accessed on 13 February 2019. <https://www.thestar.com.my/news/nation/2013/05/17/citizenship-13year-olds-dna-test-proves-her-biological-father-is-malaysian/>.

5.0. Concluding Statements

- 5.1. To conclude, the economic cost of having stateless individuals far outweighs the cost of approving citizenship applications. This seems to be a matter of the government having a lack of political will to decisively resolve the issues.
- 5.2. In the long run, social problems arising from uneducated and jobless individuals due to their statelessness status, will cause greater socio-economic harm to Malaysia.
- 5.3. The effects of being stateless are most adversely felt by the stateless children themselves. Stateless children are the blameless victims here and the government should take a more caring and inclusive approach to solve their problems.

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