

TERMS OF REFERENCE

RESEARCH ON HUMAN RIGHTS AND STATELESSNESS IN PENINSULAR MALAYSIA

Project: Advancing the Economic, Social and Cultural Rights of Vulnerable Groups in Malaysia

Research Title: Study on Human Rights and Statelessness in Peninsular Malaysia

Post Title: Research Consultant

Project Duration: Tentatively 9 months from date on letter of appointment

Expected Starting Date: As soon as possible

1. BACKGROUND

Statelessness is a global human rights problem that affects millions of people today. The very existence of statelessness is said to be a reflection of failure by the State to fulfil the basic rights to a nationality which is protected by Article 15 of the Universal Declaration of Human Rights (UDHR). Article 15 of the UDHR provides that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” The 2014 Handbook on Protection of Stateless Persons by the UNHCR further establishes the definition of stateless people as “individuals who are not considered citizens or nationals under the operation of the laws of any country”.

Stateless people face difficulties or find it impossible to access education, healthcare employment, social security benefits, property rights, civil registration (births, deaths, marriages), identity and travel documents and more. Furthermore, statelessness often results in marginalization, discrimination, insecurity and an overall sense of hopelessness, negatively impacting peoples’ lives.

In Malaysia, nationality is a highly sensitive matter as it is regarded as a manifestation of the country’s sovereignty and identity. Despite attempts to reduce incidences of statelessness through the application of national laws, there is a disturbing number of stateless persons. During the 2013 to 2018 period, the National Registration Department (NRD) reportedly recorded 111,142 citizenship applications with 26,222 of them rejected, while 54,222 were being processed.¹ A research article published by the Human Resource Management Academic

¹ <https://malaysia.news.yahoo.com/putrajaya-discrimination-citizenship-laws-causing->

Research Society (HRMARS) has also listed down several factors leading to the creation of stateless children in Malaysia – failure of marriage registration by parents, adopted or abandoned children, children of refugees, undocumented migrants, and unregistered birth.

Since 2015, the Human Rights Commission of Malaysia (the Commission) has received 1,291 complaints related to statelessness. During an online dialogue on “Human Rights and Statelessness in Malaysia”, organised by the Commission on 11 June 2020, various issues were raised. The dialogue concluded that there exist gaps in nationality laws, guardianship, lack of transparency and inconsistency of the procedures, complexities of stateless in Sabah and others.

In view of deep and lifelong negative impacts upon anyone being stateless and in the interest of accumulating evidence-based data to support advocacy efforts, the Commission wishes to conduct an in-depth research on statelessness with a view to examine the issues and concerns faced by stateless people in this country. The Commission is particularly concerned with regards to their right to nationality and its impacts on human rights, particularly on economic, social and cultural rights.

2. OVERALL OBJECTIVE

The overall purpose of the study on statelessness is to conduct a comprehensive assessment of the legal, policy, administrative and institutional frameworks as well as the processes/practices impacting on access to nationality in Malaysia. The ultimate aim is to identify the gaps: causes, the limitations/barriers, risk factors, consequences of statelessness and infringement of human rights. To recommend also measures or actions necessary to prevent statelessness in Malaysia.

3. EXPECTED OUTPUTS AND DELIVERABLES:

Specifically, the Researcher is expected to produce the following in English:

- **A survey for the identification; and focus group discussion with various population groups**
- **A final report which will include the following:**
 - i. Critical review of previous research on Statelessness in Malaysia;
 - ii. A human rights analysis – to analyse key provisions in international human rights documents relating to statelessness;
 - iii. A legal analysis of the legal, policy and administrative and institutional frameworks (in

particular citizenship, immigration, adoption, equality and other relevant laws) as well as practices impacting on access to nationality and statelessness with a view to identifying gaps: causes and risk factors in Malaysia;

- iv. An analysis of the consequences of statelessness in Malaysia with regards to economic, social and cultural rights, namely employment, education, healthcare as well as voting rights, access to justice, freedom of movement, property, and ownership.
- v. An analysis of the situation and identification of groups that may be stateless, or at risk of statelessness. The analysis of these affected population groups includes their geographical location, including demographic composition;
- vi. Recommendations to Government/relevant stakeholders on the following:
 - a) Prioritized list of recommendations with specific reference / considerations to relevant laws such as the laws on citizenship, adoption, immigration, equality, etc.
 - b) Accession to relevant international human rights instruments such as Convention Relating to the Status of Stateless Persons, Convention on the Reduction of Statelessness and Convention Relating to the Status of Refugees, as well as the ICCPR, ICERD and ICESCR in addressing the long-standing statelessness situation in this country.
 - c) Withdrawal of reservations to relevant articles of CEDAW, CRC and CRPD.
 - d) Roles of relevant government agencies/stakeholders in facilitating the acquisition of citizenship for stateless/undocumented people, and how international standards can be put into practice to improve national standards.
 - e) The cost and risks of inaction.

- **Deliverables: 5 reports**

- i. 1 inception report
- ii. 1 interim report
- iii. 2 draft final reports
- iv. Final report

4. SCOPE OF WORK

4.1 The research shall encompass statelessness issues in Peninsular Malaysia, and shall focus on stateless people, including but not limited to:

- Persons with long-standing residence since pre-independence and their descendants;
- Abandoned children born in Malaysia (also known as foundlings);
- Adopted children;
- Children of 'mixed' marriages (religious / racial) or alternative families (non-traditional families such as single parents, foster parents, adoptive parents, etc.); and cases where children are born out of wedlock or before a marriage was registered;

- Children born outside Malaysia (Malaysian mother and non-Malaysian father, Malaysian father and non-Malaysian mother);
- Indigenous peoples;
- Refugees;
- People who lack documentation, and any other classes than referred above.

4.2 The research will be framed around, inter alia, the following overarching questions:

- What is the current state of knowledge in the field of statelessness?
- What is the definition of stateless people in this country? How are stateless people in Malaysia portrayed by the state, NGOs and other stakeholders?
- What are the existing legal and policy frameworks (civil and syariah laws) on stateless people in this country? Where are the gaps or shortcomings in the existing legal and policy frameworks? Are the applications of these legislations in cases fair and justified?
- What are the key problems stateless people face regarding access to their basic rights?
- What roles do relevant authorities play on issues regarding stateless people?
- What limitations or difficulties do relevant authorities face in handling issues regarding stateless peoples? How can these be addressed (taking into account overlapping jurisdiction responsibilities)?
- Any other related issues not stated above.

4.3 The scope of work undertaken must also include research regarding:

- The readiness of the Government in dealing and tracking down cases in light of the recent COVID-19 pandemic amongst stateless people.
- Direct and indirect implications with an intent focus on the benefits of acceding to relevant international human rights instruments including but not limited to Convention Relating to the Status of Stateless Persons, Convention on the Reduction of Statelessness and Convention Relating to the Status of Refugees, as well as the ICCPR, ICERD and ICESCR.

5. DUTIES AND RESPONSIBILITIES

5.1 The research would be conducted based on the following Terms of Reference (TOR):

Causation of Statelessness

- To identify various causes and circumstances that contribute to, and gives rise to statelessness in Malaysia;
- Define the different categories of proof of citizenship / residency and the determination procedure in Malaysia;

- iii. To explore challenges and difficulties faced in obtaining citizenship in Malaysia;
- iv. Provide legal definition of terms used to describe, differentiate and explain any relationship of undocumented / stateless persons / refugee/ migrant / asylum seekers, etc;
- v. To analyze and identify the pattern of court cases relating to obtaining citizenship in Malaysia;
- vi. To analyze their geographical location, including demographic composition.

Scale of issue

- i. To estimate the size (number) and category of stateless people living in Malaysia, such as the majority age group and also geographical coverage;
- ii. To understand the effects of statelessness and scale of the issues;
- iii. To assess the risks of economic and social cost of inaction.

Solutions & Recommendations

- i. To comprehensively review laws (civil and syariah laws) that are inadequate and/or not in-line with human rights principles) as well as those favoring (and/or in-line with human rights principles); e.g. the recognition of adopted children under Section 1(a) of the Second Schedule of the Federal Constitution, the recognition of citizenship of children who are born in Malaysia that do not obtain foreign citizenship within 1 year under Section 1(e), the wide discretion of the government to register a person under the age of 21 as a citizen under special circumstances in article 15A, and also the Legitimacy Act 1961;
- ii. To conduct comparison study and to identify best practices from the other countries (single and dual/multiple citizenship) in addressing statelessness issues;
- iii. Based on the facts and findings of this research, to develop recommendations to the federal and state Governments relating, but not limited to:
 - a. The review of citizenship laws and other related laws and policies, with a view to incorporating a human rights focus, addressing in particular the problems faced by the stateless people regarding their right to nationality;
 - b. The formulation of strategies and plan of action with the aim of protecting and promoting stateless people's right to nationality as an integral part of the protection and promotion of their other human rights, particularly their economic, social and cultural rights.

5.2 Researchers are also expected to:

- i. Prepare a suitable workplan and methodology for the project, detailing the scope of study, the roles and responsibilities of the team, the deliverables and timeline for the project.
- ii. Conduct evidence-based, law and policy oriented, and publication-quality research in any documents relevant to this assignment, as well as legal precedents of both

national and international law on nationality and citizenship, and benchmark with relevant policies, standards and best practices of other countries.

- iii. The Researcher is expected to conduct primary research. This may include, but not limited to, conducting surveys or questionnaires, and interviews and/or hosting consultations with relevant stakeholders or experts on the subject matter.
- iv. Conduct secondary research; this should include but not limited to literature review on the subject, government data, journals, reports, including other relevant national and foreign materials/research as well as other relevant international instruments.
- v. Undertakes to obtain all necessary consents and/or approval from third parties applicable to the carrying out of this assignment and the Researcher shall indemnify the Commission against all liabilities, claims of loss and damage of whatsoever nature incurred / suffered by or against the Commission as a result of lack of consent and / or approval.
- vi. Undertakes not to infringe any intellectual property rights and all other rights that may be relevant in the conduct of research and its report. The Researcher is responsible for obtaining all necessary consents, license and / or approvals from third parties in relation to intellectual property rights. The Researcher shall indemnify the Commission against all liability and claims of loss and damage of whatsoever nature incurred / suffered by or against the Commission as a result of any breach of intellectual property rights or by such lack of consent and / or approval.

5.3 Conduct the research and complete the inception, interim, draft and final paper/report in accordance with the agreed timeframe:

Deliverable	Timeframe (from commencement date) E.g. Commencement Date: 1 st May
Research Period	7 months E.g. 1 st May – 30 th November
Submission of inception report and workplan	20 days E.g. 20 th May
Submission of interim Report	4th Month E.g. 31 st August
Submission of 1 st draft of final report	6th Month E.g. 31 st October
Submission of 2 nd draft of final report and Presentation of the research findings	8th Month E.g. 31 st December 2021
Submission of final report and research paper (soft copy & hard copy)	9th Month E.g. 31 st January 2022

- ii. The period given to the Researcher(s) to complete this study is for seven (7) months. An interim report shall be submitted four (4) months after the research commenced. Total research duration until submission of final report will be nine (9) months. Application to extend time is subject to the discretion of the Research Committee and must be based on justifiable grounds.
- iii. Time wherever and whenever stipulated herein for the performance of the Researcher's duties is of the essence. The Commission shall not entertain any request for extension of time, unless such extension is needed due unforeseen circumstances to which approval is at the discretion of the Commission or due to the delays caused or contributed to by the Commission. This is a strict requirement, failure of which may result in unilateral termination of the Researcher's appointment.
- iv. The Researcher is obliged to incorporate all comments and feedback provided by the Commission into final submissions following the review period.
- v. The Researcher shall hand over a soft copy of the draft and final submissions to the Commission on the specified date in the table above.

5.4 The copyright of the report shall belong to the Commission exclusively, nevertheless the Commission will acknowledge the Researcher's and Co-researchers' (where applicable) contribution.

5.5 The Researcher shall be directly responsible to the Commission.

5.6 Without limitation the Commission may by notice in writing terminate the appointment of the Researcher if the Researcher is:

- Found to be in breach of any of the terms and conditions of appointment contained in the contract. If the breach is capable of remedy, and is not remedied by the Researcher within fourteen (14) days of receipt by the Researcher of a notice from the Commission specifying the breach and requiring its remedy;
- Incompetent, guilty or gross misconduct and/ serious or persistent negligence in the provision of services hereunder; or
- Fails or refuses after written requirement to provide the services reasonably and properly required hereunder.

6. SCHEDULE OF PAYMENTS

Payment to the researcher(s) shall be made according to the following schedule:

Payment	Percentage (%)
First payment upon contract signing	30%
Second Payment upon delivery of the duly completed interim report and first and second draft of final report to the Commission	30%
Final payment upon final submission of the final report to the Commission without further amendments (soft copy & hard copy)	40%

7. CO-RESEARCHERS AND ASSISTANTS:

- i. Research proposals may be submitted jointly or comprise of several researchers. In such cases, the team must be led by one lead researcher known as Research Supervisor who shall be the point person in which the Commission shall communicate with at all times with regard to all aspects of the research. The Commission shall have no communication with the co-researchers throughout the period of consultancy.
- ii. The Researcher may engage assistants so long as their tasks do not cover core deliverables. The Commission shall have no affiliation in all aspects with the assistant. As such, the Commission shall have no communication with the co-researchers throughout the period of research.
- iii. Sub-contracting the research is impermissible. This is a strict requirement, failure of which may result in unilateral termination of the Researcher's appointment.

8. COMPETENCY, QUALIFICATION AND EXPERIENCE REQUIREMENTS

Legal experts or academics who are interested in the assignment should meet the following requirements:

Skills:

Demonstrated track record in conducting research in the area of human rights, nationality, undocumented and statelessness; conducting legal analysis, producing publication-quality research papers and formulating strategies; good understanding and knowledge of the statelessness concept.

Academic Qualifications and Professional Experience:

- i. PhD / Masters / Post Graduate degree preferred in international law, political sciences, international relations, human rights or other relevant field of study and at least four years of working experience OR equivalent combination of education, training, and experience in statelessness/undocumented/nationality issues.
- ii. For lawyers: Masters / Degree in relevant field of study with at least six years of working experience in statelessness/undocumented/nationality issues.
- iii. Preferably with experience in areas relating to social economic development, relevant to this project.
- iv. Experienced in on-the-ground research.

Language:

Excellent command of English and Bahasa Malaysia in both oral and written communication.