

Prepared by



on behalf of

Birth Registration – Briefing Paper for UPR - Malaysia

Children from the indigenous and minority, refugee and asylum seeking, irregular migrant, and the rural and urban poor communities still have difficulties in obtaining birth certificates.

Access to education, healthcare and other basic social services is impeded for children without birth certificates. For Malaysian children, a lack of a birth certificate can also be a barrier to obtaining national identification cards (MyKad) when they reach 12 years of age. In addition to barriers of cost, families have reported difficulties in navigating bureaucratic and overly-rigid requirements for registration.

Generally **knowledge of the importance of birth registration is weak** amongst the marginalized communities. Where the importance of this document is recognized, cost, access to the registration offices, rigid requirement of documents like parents' birth/marriage certificates are conditions either difficult or impossible for the refugee, migrant, indigenous, rural and urban poor communities to meet. Without a birth certificate children are unable to access services like education and healthcare. A 2009 study by the Malaysian Ministry of Education showed that **44,000 undocumented children were not enrolled in schools**. Actual figures will most likely be higher. Children who somehow manage to attend primary school are unable to continue once they are 12 because they cannot be issued the National Identification Card (MyKad). Without MyKad they are unable to sit for the crucial national examination and are forced to drop out of school. Lack of attention to this matter has led to a generational problem (in some instances three generations) of lack of documentation, continuing the cycle of poverty and no access to education and healthcare and other services which are the inherent right of a child.

What is unconscionable is that children who end up in the government homes and whose identity is not verifiable are **issued a “bukan warganegara” (non-citizen) birth certificate**. These children could be those born out of wedlock, of mixed parentage or abandoned. With this “Non-citizen” birth certificate once they leave the home at the age of 18, they are unable to get formal employment, driving licenses, marriage certificates, bank accounts or birth certificates for their children. The issuance of birth certificates (if at all) with a “Non-citizen” stamp is most acute amongst the Indonesian and Filipino migrants in Sabah.

In general Malaysian laws are progressive. Article 14(1)(b) Part II (1)(e) of the Malaysian Constitution is quoted in international circles as an exemplary model to follow to address statelessness. It clearly states that any child born in Malaysia is a Malaysian citizen if at the time of the birth the child “is not a citizen of any country”. **In practice reality differs rather sharply**. Not only the above article of the constitution is overlooked, Malaysia's reservation on Article 7 of the CRC continues to be a barrier to advocate for birth certificates.

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Strengthening and reforming the law is a positive step forward, but **weaknesses in implementation** are the major drawback in granting birth certificates. Lack of standardized procedures leads officers to operate differently from one National Registration Department (NRD) Office to another. Thus, while one birth certificate is issued with a given set of documentation in one NRD Office, the exact same set of documentation presented in another Office results in denial of the issuance of the certificate. Another cause for declining birth certificates is completing the long and complex application forms which is a difficult feat to accomplish for marginalized communities who have very little or no education. No alternatives are in place if proof of parentage or birth is impossible through the standard requirements, which is mostly the case with marginalized groups or children caught in the generational cycle of lack of documentation.

QUESTIONS

- What measures are being undertaken to ensure that all babies are registered immediately after birth regardless of parents' legal status and/or origin?
- What measures are being undertaken to prevent children from becoming stateless?

RECOMMENDATIONS

- Implement a simple free-at-all-stages, non-discriminatory birth registration system that covers all territories in Malaysia, including through the use of mobile birth registration centres.
- Fully implement Article 14(1)(b) Part II(1)(e) Second Schedule of the Federal Constitution to prevent children from becoming stateless. Remove onerous administrative and legal requirements that can result in statelessness.
- Withdraw reservations to Article 7 of the UNCRC and amend the law to make it compulsory for the biological father's name to be entered in the birth certificate.
- Withdraw reservation to Article 2 of the UNCRC to make the birth registration process far more transparent without any form of discrimination
- Develop a strategic plan to address the question of birth registration and statelessness amongst children in a holistic manner involving all stakeholders, i.e., Ministers, International Agencies like UNICEF and UNHCR, NGOs, Governments of Indonesia and The Philippines and Community Leaders.
- Standardize and simplify the birth registration procedures as well as reduce documentation required and where unavailable provide alternatives.