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# BRIEFING NOTE: REALISING THE RIGHT TO EDUCATION FOR REFUGEE & STATELESS CHILDREN IN MALAYSIA



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## INTRODUCTION:

Malaysia, despite not being a state party to the 1951 Refugee Convention, its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness, has a history of providing asylum. The absence of a legal framework distinguishing refugees/asylum-seekers, stateless persons, and undocumented migrants creates unpredictability for these groups. Without formal legal status, they face barriers to fundamental rights, including education.

## HISTORICAL CONTEXT:

In 1975, the United Nations High Commissioner for Refugees (UNHCR) began operations in Malaysia following the arrival of Vietnamese boat refugees. Since then, Malaysia, with UNHCR's assistance, has provided temporary and ad hoc asylum to those fleeing persecution. As of June 2023, Malaysia hosted 181,560 registered refugees and asylum-seekers, including 49,220 children.

## LEGAL LANDSCAPE:

The Immigration Act 1959/63 does not legally differentiate between refugees, asylum-seekers, stateless individuals, and undocumented migrants. This lack of distinction results in no protective framework for these groups. In the context of education, Malaysia's commitment to safeguarding children's rights is evident through the Malaysian Education Act 1996 and Child Act 2001. The ratification of the United Nations Convention on the Rights of the Child in 1995 further reinforced this pledge. However, asylum-seeking, refugee, stateless, and migrant worker children are currently limited to non-formal education via alternative learning centers (ALCs), community learning centres (CLCs) and private institutions. The national school admission guidelines are unparallel with the spirit of inclusivity enshrined in the Federal Constitution's Articles 12(1) and 8, which emphasises equal treatment.

# ROUNDTABLE DISCUSSION:

On 10 May 2023, the Human Rights Commission of Malaysia (SUHAKAM), in partnership with UNHCR Malaysia, the International Rescue Committee (IRC), and the Asia Displacement Solutions Platform (ADSP), and with the support of the European Civil Protection and Humanitarian Aid Operations (ECHO), convened a roundtable titled “Realising the Right to Education for Refugee and Stateless Children.” The discussion was exclusively aimed at members of various civil service ministries, with practitioners from relevant national and international organisations sharing experiences from the ground and regional countries to foster the conversation.

The roundtable highlighted seven critical challenges faced by refugee and stateless children in accessing formal education in Malaysia namely, (a) language barriers, (b) financial constraints, (c) limited funding, (d) lack of documentation, (e) insufficient infrastructure, (f) legal barriers, and (g) insufficient parental involvement.



## a) LANGUAGE BARRIERS

Significant challenge for refugee children worldwide is the language barrier they frequently encounter in accessing formal education. Often coming from diverse linguistic backgrounds, they end up in host countries where the official language differs from their native tongue. This linguistic gap creates hurdles for their education and integration into national school systems. Additionally, it is common for refugee and stateless children to lack strong language skills, which can hinder their integration and educational progress. While in situ stateless children, who have spent years in Malaysia, might not face the same language challenges, accurate data is needed to gauge the extent of the issue. The language barrier affects their communication, comprehension, and literacy skills development.



## b) FINANCIAL BARRIERS

Refugee and stateless children often struggle to find the resources and money for essential expenditures associated with education, either by indirect or direct schooling costs. Even though the Malaysian government allows undocumented children with one Malaysian parent to access education, they must nevertheless pay RM 120 (USD 26.25) for primary school and RM 240 (USD 52.50) for secondary school each year to attend. In addition to compulsory tuition fees, these children struggle with other educational expenses like uniforms, textbooks, stationery, and transportation, even in informal settings such as alternative learning centres. Education opportunities in -remote areas are limited and out of reach, making them unattainable for undocumented children. Thus, financial constraints often force refugee families to prioritise their children's labour for household income over education. This is especially notable in Malaysia, where formal secondary or tertiary education is restricted for refugee children.



## c) LIMITED FUNDING

The provision of education for refugee and stateless children faces challenges due to both financial constraints and underfunding, resulting in limited access to quality education and resources. It is crucial to allocate adequate funding to address this issue, supporting marginalised children in rebuilding their lives and contributing to their host and home countries if and when they are able to return. Inadequate funding also contributes to a shortage of teachers due to insufficient wages. Historically, refugee education funding has been short-term and fragmented, often separate from national systems. Therefore, to integrate refugee children into national education, a shift is needed towards sustained, long-term financing benefiting both refugees and host nations, in addition to potentially increasing the chances of getting accepted to third-country resettlement initiatives. Collaboration between the Malaysian government and the international community can be vital in increasing education budgets and integrating stateless and refugee children. Intergovernmental agreements, similar to Malaysia's 2006 agreement with Indonesia, have shown success in expanding access to education for undocumented children, suggesting a potential solution for improving learning centres<sup>1</sup>.



## d) LACK OF DOCUMENTATION

The absence of official documents like birth certificates or identification documents impedes refugee and stateless children from enrolling in formal education, compounded by complex identification processes that marginalise and hinder integration. Allowing refugees in public schools doesn't deplete local resources; it can enhance them, as evidenced by Pakistan's compassionate approach granting Afghan refugees access to schools has improved social cohesion between refugees and their host communities<sup>2</sup>. In Sabah, the stateless population is growing, requiring a comprehensive approach to address the education barrier. Raising awareness among Malaysians about the significance of documentation for basic rights is vital. Sarawak demonstrates effective collaboration among state government ministries to aid stateless children's school registration. Similar cooperation could facilitate documentation for refugee children, utilising UNHCR registration. A holistic strategy involving all stakeholders is essential to tackle the documentation issue, alongside establishing legal pathways for individuals to acquire identification documents, thereby enabling education access.



## e) INSUFFICIENT INFRASTRUCTURE

Despite the increase in the number of students enrolled in public education institutions in Malaysia, the enrollment rates do not account for refugee and stateless children, as most of these children are not enrolled in schools. Even if refugee children were allowed to enrol in public schools, the availability of seats and the provision of public schools are limited, especially in urban areas where most of them reside. Therefore, despite a high demand for seats in public education institutions, insufficient infrastructure has limited the number of students able to enrol in such institutions, especially in urban settings.



## f) LEGAL BARRIERS

Malaysia's citizenship laws are outlined in several articles of the Federal Constitution, including Articles 14, 15, 15A, 16, and 16A. Citizenship can be acquired through birth or registration if a parent is a citizen or permanent resident. Article 15A gives the government discretion to grant citizenship to those under 21, yet success isn't guaranteed, leading to potential education barriers if applications are denied. The jus sanguinis principle, based on blood ties, underlies Malaysian citizenship laws. This has caused generational statelessness, particularly in Sabah, East Malaysia, limiting children's access to education. The government maintains reservations to certain parts of the Convention on the Rights of the Child, which are Article 2 (right to non-discrimination irrespective of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status), Article 7 (right to name and nationality), and Article 28(1) (a) (right to free and compulsory education at primary level). Moreover, Malaysia's legal framework treats asylum-seekers, stateless individuals, refugees, and undocumented migrants equally, with no recognition of UNHCR cards as valid identification for refugees.



## g) INSUFFICIENT PARENTAL INVOLVEMENT

A common challenge is parental disinterest, affecting children's enrollment in schools. Economic and social hardships can lead families to perceive education as less essential, resulting in low academic expectations. In stateless communities, day-to-day survival takes precedence even if it means engaging in hazardous or low-paying activities. This creates a cycle of poverty and marginalization that deprives children of their right to education and their potential for social and economic development<sup>3</sup>.

1 United Nations Children's Fund Malaysia. (2019). Children Out of School: The Sabah Context. [https://www.unicef.org/malaysia/media/921/file/Out%20of%20School%20children%20%20\(OOSC\)%20Accessible%20version.pdf](https://www.unicef.org/malaysia/media/921/file/Out%20of%20School%20children%20%20(OOSC)%20Accessible%20version.pdf)

2 United Nations High Commissioner for Refugees. (2021). Final Education Factsheet: 10 years of RAHA in Pakistan. <https://www.unhcr.org/pk/wp-content/uploads/sites/103/2021/04/RAHA-Factsheet-Education.pdf>

3 A. Yusof. (2019). Living in a sea of trash: Sabah's stateless children face bleak future. Channel News Asia. <https://www.channelnewsasia.com/news/asia/sabah-stateless-children-sea-gypsies-bajah-laut-11561194>

# RECOMMENDATIONS

## FOR REFUGEES AND STATELESS CHILDREN TO ACCESS FORMAL EDUCATION:

- a. State governments are encouraged to establish a state-level Special Committee on citizenship for stateless children.
- b. The Ministry of Home Affairs or State Government (in the case of Sabah and Sarawak) facilitate the issuance of temporary documentation for stateless children to allow them access to national schools.
- c. Ministry of Education and Ministry of Home Affairs is urged to revisit and amend national legislation that prevents refugee and stateless children from accessing formal education.
- d. Federal government allow public schools and other formal educational institutions to enrol refugee children on the strength of UNHCR identity documents.

## TO FOSTER A MORE INCLUSIVE NATIONAL EDUCATION SYSTEM:

- a. Schools are encouraged to provide early assessment of skills for refugee children to overcome interruptions in learning such as language barriers.
- b. Schools are to conduct introductory classes and transition to mainstream classes for refugee children when enrolled in national schools.
- c. State governments are to provide tailored training for teachers and school leaders to adapt their approaches and cater to the shifting demands resulting from the arrival of refugees and stateless children into national schools.
- d. Schools are to foster stronger bonds with parents of refugee and stateless children in Malaysia.

## TO PROVIDE PROMPT ASSISTANCE TO EXISTING EDUCATION INITIATIVES IN MALAYSIA, THE GOVERNMENT CAN:

- a. Provide material support in the form of books, uniforms and other educational essentials to refugee and stateless children.
- b. Improve the quality of education through a standardised curriculum based on MoE and enhance learning centre's facilities in alternative learning centres and community-based learning centres for stateless children in Malaysia.
- c. Establish sustainable financing for the education of refugee and stateless children through public-private partnerships, including mobilising global funds for education that could support any inclusive measures in government schools.
- d. Allow refugee children to use government school premises outside of regular schooling hours to expand the capacity of existing national schools in Malaysia.

## CONCLUSION

Ensuring access to education for refugee and stateless children in Malaysia is not only a moral imperative but also a strategic investment in the future of Malaysia's prosperity. These vulnerable children face numerous barriers in accessing education, including legal and administrative challenges, and limited financial resources, among others. However, by adopting comprehensive policies and implementing targeted interventions, Malaysia can create an inclusive and enabling environment that allows every child, regardless of their refugee or stateless status, to receive quality education. In doing so, the country will not only uphold the rights of these children but also unlock their potential, contributing to the enhancement of the nation and promoting social cohesion. Through this, refugees and stateless children are equipped to become agents of change, participating in the rebuilding and development of their communities.

