

Children's right to identity in Malaysia

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1 Creation of identity

Birth registration:

- The National Registration Department (*Jabatan Pendaftaran Negara* or JPN) – under the Ministry of Home Affairs (MOHA) – is the **principal authority for civil registration** in Malaysia¹ and works in collaboration with the Ministry of Health (*Kementerian Kesihatan Malaysia* or KKM) for birth registration, by sharing data and insights.²
- Although there are no direct **fees** for registering a birth in a timely manner in Malaysia, families often incur substantial indirect costs. These expenses – mainly related to travel to JPN offices – pose a significant barrier, particularly for those in remote areas or facing financial hardship.³ Such costs have been a critical factor for non-registration of births for over a decade.⁴
- In addition, **late registration** increases administrative burdens due to additional verification processes, heightens the risk of errors and causes delays in accessing vital services, such as healthcare. This stringent time frame and the consequent complications may highlight a less effective approach to birth registration.⁵ For example, in Sabah, birth registration must be completed within 42 days; failing to meet this deadline categorises the registration as 'late', which entails a fee and therefore a challenge to universal birth registration.⁶
- The country set two ambitious **goals for birth registration by 2024**. Firstly, it has aimed to register at least 98% of births, with an estimated 99.5% of children under five expected to have their births documented. Secondly, it intended to ensure that 100% of registered births receive complete and official birth certificates, containing vital information like the individual's name, sex, date and place of birth, and parents' names when known. This has represented a dual focus on both the quantity and quality of birth registration for establishing legal identities and enabling access to other rights.⁷
- Furthermore, to respond to the challenges faced by isolated communities, the Malaysian government has rolled out **various initiatives**.⁸ Amongst these, a promising practice observed in Peninsular Malaysia has been the **extension of the period for timely registration to 60 days**, a move aimed at enhancing the completeness of civil registration.⁹ Furthermore, an **Outreach Programme** was launched in 2015 aimed at populations in remote or rural areas. Its objectives include raising awareness among these communities and facilitating various processes that might otherwise be inaccessible to them.¹⁰ In addition, **Mobile Community Transformation Centres (CTC)** cater specifically to people in remote and rural locations. They comprise mobile buses that are equipped with necessary tools and staff to assist in registration processes, thereby bringing essential services directly to these communities.¹¹ Finally, a **One-Stop Center**, designed to streamline administrative processes, provides improved and extended services. It offers a range of services in a single location, simplifying access to various governmental services and reducing the complexity and time involved in administrative tasks for remote communities.¹²

Particular circumstances potentially excluding children from birth registration:

- **Migration:** A recent UNICEF report, which focused essentially on Peninsular Malaysia,¹³ revealed that a major bottleneck for the registration of births of migrant populations are the procedures and obstacles that migrants and refugees face to register births. These communities – while generally aware of birth registration – often lack detailed knowledge about the process – whose criteria seem to vary from one office to another – and its critical importance, an issue compounded by their unique socio-cultural settings and geographical isolation.¹⁴ A significant impediment to addressing these disparities is the absence of systematic data on birth registration within migrant and refugee communities, which hinders a full understanding and resolution of non-registration issues.¹⁵
- **Refugees and stateless persons, particularly undocumented individuals,** often express confusion regarding the birth registration process and its differentiation from UNHCR registration. Confusion stems primarily from different JPN offices applying different criteria, an issue which requires policy and process reforms. In addition, their access to accurate information is hampered by reliance on informal networks, leading to varied experiences and misinformation. The role of community representatives is pivotal, but their advice can be anecdotal and sometimes inaccurate due to the same inconsistencies in the process, as well as a lack of proper training and information.¹⁶
- Access to birth registration may also be hindered due to an **irregular or undocumented status** (70% of foreigners in Sabah, for example, are irregular immigrants) **or/and unregistered marriages of parents**,¹⁷ which should not be obstacles to birth registration in themselves, but often act as a deterring factor. Indeed, these populations face a fear of arrest and women often suffer from stigma and a lack of awareness about their ability to register births independently.¹⁸ Finally, children born to couples of mixed nationalities sometimes are not registered, due to concerns about the deportation of the non-citizen parent.¹⁹ This may also be linked to the policy that those entering Malaysia as migrant workers – in most categories – are not allowed to have children while on an employment visa.²⁰
- **Indigenous children** also face registration challenges due to remote living conditions where the JPN offices/services are not present or rarely reach these locations, and parents' lack of documentation, such as marriage certificates (resulting in the father's name not being automatically included on the birth records). Cultural norms, limited awareness and bureaucratic hurdles complicate the registration process.²¹ The above-mentioned UNICEF report²² mentions the lower levels of birth registration in Sabah and Sarawak, which have important numbers of indigenous populations and suffer from geographical isolation. Thus, in these remote areas of Malaysia, the JPN and KKM may work together on outreach programmes to ensure that births in rural and indigenous communities are registered (*see above*).²³



Abandonment:

- When the child's birth is registered, the JPN can still label them as non-Malaysian, which often happens in the case of **abandoned children** with no information about their parents.²⁴ This labeling not only denies them a Malaysian identity, but it may also violate their basic right to identity, nationality and family relations. Indeed, 'abandoned children, also known as foundlings, may be at risk of statelessness due to being unable to prove connection to Malaysian parents. The Welfare Department recorded 1,933 stateless children in welfare homes in 2019'.²⁵
- The **continued operation of baby hatches** indicates a reliance on them in a context of limited support services to parents and ongoing stigma in relation to children born out of wedlock. In Peninsular Malaysia, Orphan Care manages seven baby hatches, with 97 babies placed since 2008. When children are left in baby hatches, their birth registration process is often more complex due to a lack of required information, which in addition deprives them of crucial information about their biological parents and family history, impacting their understanding of their own identity.²⁶

Resort to assisted reproductive technologies:

- Modern medical assisted reproductive technologies (ARTs) are available in Malaysia and the cost of these treatments is low compared to neighboring countries, which explains the 'medical tourism boom' that has been observed.²⁷ The significant lack of proper legislation – explained by the complex duality of laws in Malaysia – entails that no legislation is in place, but the Standards for Assisted Reproductive Technology provide some guidance for the ART facilities operating in Malaysia.²⁸
- The resort to ART by unmarried couples is a prohibited practice in the country, according to guidelines from the Malaysian Medical Council, nor are same-sex marriages recognised in Malaysia.²⁹ Despite these prohibitions, media channels report that this practice occurs.³⁰ Thus, the implications of the resort to ARTs are particularly complex due to the coexistence of secular and Islamic laws. Islamic beliefs often view third-party reproductive involvement as impermissible, which raises legal and social challenges for children born from anonymous donations. These children might face difficulties in terms of legal recognition, especially concerning inheritance rights and parentage under Islamic law. Additionally, they could confront social stigma and religious challenges within conservative communities. Identity issues are also a significant concern for these children, particularly if their biological origins are unknown.³¹

Surrogacy:

- In Malaysia, no specific law governs surrogacy. The Ministry of Health and the Malaysian Council published two guiding documents respectively in 2002 and 2006,³² and the Malaysian Medical Council has noted that surrogacy conflicts with the beliefs of major religions in the country, potentially complicating legal matters for involved parties.³³ However, the practice seems to occur.
- Malaysian law does not explicitly recognise surrogacy agreements, this could lead to legal complications for intending parents. Generally, to be recognised as the legal parents of the child, they would likely need to go through a legal adoption process. However, this process can be

influenced by various factors, such as adoption laws, the marital status of the intending parents and their relationship with the surrogate mother.³⁴ Indeed, the surrogate mother, who is married, is considered to be the legal mother of the child. The child born to an unmarried Malaysian surrogate mother is considered illegitimate, but she holds guardianship and custodial rights on the child and the child's citizenship follows her.³⁵ In addition, a child born in Malaysia to a surrogate who is stateless would inherit her statelessness.³⁶

Potential considerations:

- **What measures are being taken to ensure that all children, without discrimination of any kind, are registered and have access to registration services irrespective of their place of residence?**
- **What is being undertaken to prevent anonymous abandonment and to preserve relinquished children's identities? Is a ban on baby boxes being considered?**
- **Despite a cultural and legal reluctance to the resort to ART and surrogacy, these practices are common. What measures are being taken to ensure that children born through such methods have their full genetic, gestational and biological identities recorded?**

2 Modification of identity

Alternative care, kafalah and adoption:

- **Jabatan Kebajikan Masyarakat (JKM)** is the Department of Social Welfare and its primary role is to **provide social welfare services for children who are abused, neglected or abandoned. It provides fostering and adoption services.**³⁷ The structure of family support services is multifaceted, focusing on both financial and psychosocial assistance to families in need, particularly to prevent child abandonment and family separation.
- **Community-based preventive services** are targeted at children at risk and their families. They are delivered through child activity centres supervised by child protection teams. These centres are part of a nationwide initiative mandated under the *Child Act 2001*, which calls for the establishment of local teams to coordinate services for families and children in need of protection.³⁸
- Indeed, the *Child Act 2001* (Act 611) provides a comprehensive legal framework for the care and rehabilitation of children. It includes a **greater emphasis on family reunification**, ensuring that the legislation supports the principle of keeping children with their families whenever possible and appropriate.³⁹ Several non-governmental organisations in Malaysia collaborate with JKM to support family reunification, e.g. SUKA Society (or Persatuan Kebajikan Suara Kanak-Kanak Malaysia) focuses on the rights and welfare of children, especially those who are marginalised.⁴⁰
- **Kinship care** is the most common form of family-based care in Malaysia. There are stigmas associated with fostering and adoption and most families prioritise kinship arrangements, allowing the child to remain within their cultural and family environment.⁴¹
- The total number of children in **institutional care** in Malaysia is unknown. According to available estimates 64,000 children live in institutions. However, the basis of these estimates requires further verification. According to a local contact, only 7,997 children live in Residential Care Centres



(RCCs) that are registered. If the existing estimates are accurate, this leaves up to 56,000 children placed in institutions that are unregistered, meaning that both the institutions and staff are unregulated and unmonitored.⁴² In addition, it appears that 87% of them still have at least one living parent and 35% still have both parents alive.⁴³ Some NGOs, such as the Orphan Care Foundation have been promoting the shift from institutional care to family-based care.⁴⁴

- The Islamic family law in Malaysia encourages Muslims to care for children without families through **kafalah**. Kafalah is deemed more respectful of a child's rights to maintain family relations, as it preserves the biological parentage of the child, allowing them to retain their original family ties.⁴⁵

- It is also worth mentioning the operation of faith-based care services, like Tahfiz schools⁴⁶ and Islamic schools, which may entail that children are placed – primarily for their education – in these educational centres, but with an impact on their family relations and thereby on their identities.⁴⁷

- Malaysia does not formally engage in intercountry **adoption** and is not a signatory to the 1993 Hague Adoption Convention.⁴⁸

Potential considerations:

- *What is being undertaken to further prevent family separation?*
- *What efforts are made to ensure that children separated from their families may maintain contact with them, including when placed in religious schools?*
- *What measures are being foreseen to ensure that any modification to children's family relations are based on the child's best interests and are duly recorded and preserved?*

3

Falsification of identity

Adoption:

- Since 2012, the Malaysian Child Rights Coalition has raised the issue of illegal adoptions. For example, there is a notable absence of data on illegal and informal adoptions, which have been thought to surpass legal adoptions in number.⁴⁹ Low awareness of proper procedures and perception of slowness lead to informal adoptions.⁵⁰

- A recent case reflects this situation: in 2021, the JPN of Malaysia uncovered a significant incident involving falsified birth documents. A doctor and an agent from a maternity clinic in Petaling Jaya were found to have provided false birth certificates. These documents incorrectly identified a couple as the biological parents of an adopted child. This fraudulent action led to a serious misrepresentation of the child's true parentage. Following this discovery, the JPN initiated a thorough review and flagged approximately 200 birth records due to inconsistencies and irregularities. Many of the cases involved children who were between the ages of 12 and 16 when these discrepancies came to light.⁵¹

Surrogacy:

- There have been cases of parents, who enter into an agreement with a surrogate, sometimes providing false information on the baby's birth records and putting their own names as the baby's parents instead of the surrogate mother's name. In Malaysia, it is a criminal offence that carries a maximum seven-year prison sentence.⁵² These practices contribute to the falsification of the child's identity.

Child marriage:

- In Malaysia, annually, at least 1,500 children, as of 2018, were married. Under civil law, the minimum age for marriage is set at 18, while Sharia law permits girls to marry at 16 or at an even younger age under 'certain circumstances' with the religious court's approval.⁵³ Beyond the risks that child marriage may entail for the child's education, health, development and other rights, it may also alter a child's identity, as these children enter into new family relations, often distancing them from their families of origin, from an early age. In addition, false identity documents may be used to prove identity and age.

Stateless, undocumented and refugee children:

- As highlighted by the former Special Rapporteur on the sale and sexual exploitation of children in 2018, the prevalence of stateless, undocumented children and refugees in Malaysia has been a significant concern. In addition, children born to irregular and migrant workers in Malaysia, lacking proper identity documents, are denied access to public education, affordable healthcare, and other welfare services. To address this issue, the Special Rapporteur recommended making birth registration free and accessible for all children born in Malaysia, without any discrimination,⁵⁴ as this vulnerability leaves them at high risk of having no identity or their identities falsified, and of becoming victims of trafficking, sexual exploitation, forced labor and even forced begging.⁵⁵

- It is worth mentioning that developments are happening, with amendments to the federal Constitution, which could potentially result in statelessness (particularly cases of statelessness amongst children and intergenerational statelessness) increasing. Indeed, the proposed amendments seek to remove safeguards for children born on the territory, who would otherwise be stateless, or for foundlings. The exception to these concerns is the proposed amendment, which seeks to grant Malaysian women equal rights as Malaysian men to confer nationality to their children born overseas.⁵⁶

Potential considerations:

- *What actions are being undertaken to prevent illegal adoptions?*
- *What has been the outcome of the review of birth records with identified inconsistencies and irregularities?*
- *What has been undertaken to prevent the falsification of birth records in cases of surrogacy and to respond to these?*
- *How does the country intend to continue safeguarding the situation of potentially stateless children and prevent such situations?*

4

Preservation of identity and access to origins

Preservation of birth records:

- The Department of Statistics Malaysia (DOSM) compiles birth-related data from the records shared by the JPN offices and the Ministry of Health. Indeed, the main source of vital statistics data is from the JPN and State Religious Department. DOSM is responsible for processing and compiling the statistics and indicators of vital statistics. DOSM has compiled births and deaths statistics since 1963 for Peninsular Malaysia and 1966 for Sabah and Sarawak. DOSM has received data on birth, death, marriage and divorce online on a monthly basis since February 2016.⁵⁷



- The National Archives of Malaysia (ANM) is mandated to preserve public records, such as birth records. While the day-to-day registration and issuance of birth certificates are managed by the JPN, older records might be transferred to the ANM for long-term preservation.⁵⁸

Access to origins in adoption:

- The primary legislation governing adoption is the *Adoption Act 1952* (Act 257), which is applicable solely to Peninsular Malaysia and non-Muslim children.⁵⁹ While the best interests of the child are emphasised in the legislation, the *Adoption Act* does not explicitly address the right of an adopted child to access their birth records or the identities of their biological parents. In practice, adoptive parents receive an adoption order and a new birth certificate for the child, which replaces the original birth certificate. The new birth certificate does not mention the adoption making it indistinguishable from a birth certificate of a biological child.⁶⁰

Potential considerations:

- How is access to personal information and birth records ensured?
- What support is available to adoptees, who wish to have access to information about their origins?

5

Restoration of identity

Statelessness:

- During the 2013 to 2018 period, the JPN⁶¹ reportedly recorded 111,142 citizenship applications, with 26,222 of them being rejected and another 54,222 being processed. Despite efforts to address this situation (*see below*), challenges remain in Malaysia concerning the official acknowledgment of stateless individuals.⁶²
- In April 2017, the Malaysian government introduced the Malaysian Blueprint, recognising statelessness among the Indian community in West Malaysia, in order to address statelessness and documentation challenges for this group within five years.⁶³ Following the Blueprint, the Mega MyDaftar campaign in June 2017 saw over 2,000 persons of Indian descent apply to clarify their citizenship status.⁶⁴
- Statelessness in Malaysia also continues to affect children born to unknown parents, children separated from parents with no proof of parentage and children born out of wedlock (*see above*).⁶⁵
- On 21 May 2024, a Perak family won a landmark court ruling granting them Malaysian citizenship after years of statelessness. The High Court declared Kamaladevi Kanniappan, her two children, and three grandchildren as Malaysians, allowing them to register marriages and access fundamental rights. Despite facing challenges due to their lack of documentation, the court recognized their lineage and upheld their right to citizenship. The ruling emphasized citizenship as a fundamental right, following established Federal Court decisions.⁶⁶
- By ensuring that children are no longer stateless, their right to identity may be restored as their right to a nationality is complied with.

Potential consideration:

- Efforts made by the Malaysian government to prevent statelessness are welcome; what additional initiatives and measures are foreseen to ensure that children's identities, including their right to a nationality, are fully safeguarded, including in currently debated legal reforms?

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