

Received: December 2023 Accepted: January 2024

DOI: <https://doi.org/10.58262/ks.v12i2.047>

The State of Being Stateless in Malaysia, Thailand and Australia

Hayati Yusof^{1*}, Ong Hock Siong², Yee Chew Fong³, Mohamad Fared Mohamad Makmor⁴, Lee Weng Onn⁵

Abstract

Statelessness is becoming an issue that requires immediate attention at the individual, community and state levels. In Malaysia, a few categories of statelessness affect children's access to education, the overall well-being of communities and healthcare developments, the rise of mental health issues, decline in the literacy rate of a nation and impact its economic developments. It also results into the recurring cycle of exclusion, reflects the professionalism of departmental staff in handling statelessness as well as the political directions of countries. This study looks at the challenges faced by the stateless groups in the context of Malaysia, Thailand and Australia. Past studies have been gathered based on literature search. Missing birth documentation can lead to citizenship ambiguities while unstable, incongruent policies reflect policymakers' direction on refugee management. A few effective strategies have been observed that might be worth exploring among future scholars and practitioners.

Keywords: *Stateless, Refugees, Asylum Seekers, Human Rights, Citizenship.*

Introduction and Problem Statement

Being stateless in Malaysia is like being invisible in a country where the authority did not even collect data on such a person. Being stateless here means someone is not a citizen of any country in the world. How do people especially children end up being stateless in Malaysia? For example, parents may lack the awareness on the importance of registering a child's birth resulting into children growing up without birth certificates or identity documents (Lim, 2023). In the case of the stateless in Sabah, Malaysia, the complexity of dealing with departments and documentations may have deprived children who were born on Malaysian soil from getting recognition which leads to an intergenerational cycle of exclusion (Cheong & Baltazar, 2021).

Even with identity documents such as birth certificates, the National Registration Department may still label children as non-Malaysians. These referred to children who fall into several categories such as foundlings or abandoned children with no information about their parents, children born overseas and out of wedlock to a Malaysian father and a non-citizen mother, children born overseas to Malaysian mothers, children born to stateless parents, children who were born to non-citizen mothers and unknown fathers but were subsequently adopted or raised by Malaysian citizens and the nomadic *Bajau Laut*, the sea gypsies off the coast of Semporna, Sabah (Lim, 2023; New, 2018).

There is a need to educate the public on the difference between a stateless person, an undocumented person, a migrant and a refugee. Refugees refer to those who fled their country of origin due to conflicts,

¹Department of Entrepreneurship and Supply Chain Management, Faculty of Business and Finance, University Tunku Abdul Rahman, Malaysia

²Department of Banking and Risk Management, Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Malaysia

³Department of Entrepreneurship and Supply Chain Management, Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Malaysia

⁴Department of Entrepreneurship and Supply Chain Management, Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Malaysia

⁵Department of Marketing, Faculty of Business and Finance, Universiti Tunku Abdul Rahman, Malaysia

war or persecution. Conversely, migrants are citizens of other countries who moved to Malaysia to live and/or work. Undocumented persons are not necessarily referring to migrants who may lack identity documents, it can also include children who are born in Malaysia to Malaysian parents. For example, in the case of the indigenous people (*orang asli*) who failed to report their children's births may end up being excluded (undocumented) as the children grow up with no birth certificates. Resolving the stateless issues may ask for ASEAN or international efforts such as in refugee cases while resolving the other "low-hanging fruit" cases may require minor or some regulatory efforts by awarding these groups their citizenship statuses (Lim, 2023).

The government's plan to amend the citizenship rules in the Federal Constitution may have some adverse effects to the stateless groups. The removal of certain sections in the Federal Constitution might remove a protection that safeguard the stateless groups since the formation of Malaya. Non-governmental organization (NGO) representatives and legal experts ("Pakar Perlembagaan beri amaran", 2023) were of the opinion that this amendment would be "most cruel, ill-advised and counter-productive" if realized (Lim, 2023; Tee, 2023). It is also an infringement to the United Nations convention of the rights of the child ("Stateless Children, 2023). In general, the stateless people are denied access to education, healthcare and employment opportunities in Malaysia ("Ending Statelessness in Malaysia", 2024). The current law only allows citizen children to attend public schools. The non-citizen children either attend alternative schools or face the burden of expensive private education fees, are denied free medical care, easily exploited, abused and often discriminated ("Stateless Children", 2023). In addition, the stateless people neither can open bank accounts nor obtain driving licence, they cannot fly on aeroplanes ("No IC at 21", 2023) or own houses and do business, register for a mobile line (Coddington, 2020) and legally marry (Tee, 2023).

According to UNHCR (2024), there are at least 10,000 people in Peninsular Malaysia who are denied citizenship while the number of people who may be affected by statelessness outside Peninsular Malaysia (including East Malaysia) is unknown and is more difficult to establish since they involved a complex issue related to the mixed migratory context in Sabah ("Ending Statelessness in Malaysia, 2024). In the context of Rohingya refugees, Malaysia has allowed about 200,000 refugees into the country on humanitarian principles even though it is not a signatory to the 1951 refugee convention or its 1967 protocol relating to the status of refugees ("Ucapan YAB Perdana Menteri Malaysia", 2022 & 2023). The Malaysian governments have always urged the signatory countries to the refugee convention and its protocol to fulfil their responsibilities in providing protection to refugees regardless of origin, ethnicity and religions. For Malaysia to better manage refugee issues on its own, an efficient management and enforcement mechanism is needed locally ("Malaysia urges 1951 Refugee Convention", 2023) in which it is lacking in terms of guidance and consistency (Rahmatullah et al., 2022).

In this study, the researchers are determined to investigate the state and conditions of being stateless in Malaysia and two of its neighbouring countries – Thailand and Australia in order to understand the challenges faced by these groups. Hence, it gives rise to the following research objectives:

- 1) To identify the challenges faced by the stateless in Malaysia, Thailand and Australia through literature search (RO1)
- 2) To identify the effective strategies to overcome or counter these challenges (RO2)

And, To the Following Research Questions

- 1) What are the challenges faced by the stateless in Malaysia, Thailand and Australia?
- 2) What needs to be done to overcome or counter these challenges effectively?

The findings helped to create an awareness and educate the public on the issue. This added to the scarce literature

on studies involving stateless, humanitarian migrants, refugees or asylum seekers, the role of host/transit or resettlement countries, the state of mental health of the stateless using specific interventions or measures, impacts of social support to their physical and mental well-being, etc. The effective strategies (coping mechanism) implemented somewhere can be further studied for implementation or modification to suit another country requirements. The next sections cover the research methodology, categories or types of statelessness, introduction to the 1951 Refugee Convention, discussion on challenges of being stateless and coping strategies in Malaysia, Thailand and Australia and end with the conclusion and future direction.

Research Methodology

This study adopted an exploratory approach by deploying the online literature search to gain some insights into the stateless groups in three countries namely Malaysia, Thailand and Australia. The findings are summarized in table forms in order to clearly view some significant issues, similarities and differences, challenges and obstacles, including the tools and effective strategies (comparison and analysis) deployed by any of the country mentioned.

Refugees, Internally Displaced People, Stateless and Asylum Seekers

Malaysia is a transit country for refugees before they are sent to a third country for resettlement. Refugees are protected under the international law. “A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are the leading causes of refugees fleeing their countries” (USA for UNHCR The UN Refugee Agency, 2024; Rahmatullah et al., 2022). At present, Malaysia did not give recognition to any refugee group and they are considered illegal immigrants (*Pendatang Asing Tanpa Izin*, PATT) even though they carry the UNHCR cards (Rahmatullah et al., 2022).

“An internally displaced person (IDP) is someone who has been forced to flee their home but never cross an international border. These individuals seek safety anywhere they can find it such as in nearby towns, schools, settlements, internal camps, even forests and fields. This group includes people displaced by internal strife and natural disasters, are the largest group that UNHCR assists. The IDPs are not protected by international law or eligible to receive many types of aid because they are legally under the protection of their own government” (USA for UNHCR The UN Refugee Agency, 2024).

In contrast, “a stateless person is someone who is not a citizen of any country. Citizenship is the legal bond between a government and an individual, and allows for certain political, economic, social and other rights of the individual, as well as the responsibilities of both government and citizen. A person can become stateless due to a variety of reasons, including sovereign, legal, technical or administrative decisions or oversights. In general, everyone has the right to a nationality as underlined by the universal declaration of human rights. Quite a number of stateless cases in Malaysia were the results of technical or administrative oversights (careless and poor awareness, complexity, high opportunity cost) involving parents (such as late marriage registration) and/or the related agencies or departments’ professionalism and political directions (New, 2018; “No IC at 21”, 2023; Cheong & Baltazar, 2021).

Furthermore, “when people flee their own country and seek sanctuary in another country, they can apply for asylum that is the right to be recognized as a refugee and receive legal protection and material assistance. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded” (USA for UNHCR The UN Refugee Agency, 2024). In this writing, the term stateless, refugees, asylum seekers and migrants will be used to discuss relevant issues found from literature.

The 1951 Refugee Convention

“The 1951 Geneva Convention is the main international instrument of refugee law. The convention clearly spells out who a refugee is and the kind of legal protection, other assistance and social rights he or she should receive from the countries who have signed the document. The convention also defines a refugee’s obligations to host governments and certain categories or people, such as war criminals, who do not qualify for refugee status. The convention is limited in terms of protecting the European refugees in the aftermath of the World War II, hence the 1967 Protocol expanded the scope of the convention to include further issues of worldwide displacement of people” (USA for UNHCR The UN Refugee Agency, 2024).

Stateless in Malaysia, Thailand and Australia: Challenges and Coping Strategies

One of the major causes of statelessness in Malaysia is the lack of identity documentations such as the birth certificates. Stateless is a homegrown issue in Malaysia, it did not only involve the refugees and the migrants but it also affected several other categories of people who are born and raised in Malaysia. Without the birth certificates, many stateless people have been denied from the entitlement to citizen benefits such as the government-subsidized healthcare (Cheong & Baltazar, 2021; Kunapalan et al., 2020). Additionally, anti-immigration sentiment is high in Sabah, Malaysia despite its economic dependent on migrant workforce (Cheong & Baltzar, 2021). Similarly, the same issue (racial or demographic identity) is used by the Thais to label the refugees as a security threat (Coddington, 2020). As a result, the stateless faced difficulties in obtaining vital documents that can lead to legal identity and citizenship in Malaysia while in Thailand, the refugees are denied access to work, proper housing and are constantly being raided (Cheong & Baltazar, 2021; Coddington, 2020). Please refer to Table 1 for the list of issues involving the stateless groups.

Coddington (2020) explained that Thailand, apart from receiving nearly four million migrant workers, is also home to more than half a million stateless groups including refugees and asylum seekers. They are located in temporary shelters along the Thai-Myanmar border as well as the urban groups who lived in Bangkok and Chiang Mai. Similar to Malaysia, Thailand is neither a signatory to the 1951 convention and 1967 protocol relating to the status of refugees nor the 1954 or the 1961 statelessness convention. As a transit country, Thailand explained and justified its action to use time and space directly against migrants to limit protection for refugees and asylum seekers in the long-term (Coddington, 2020). Malaysia is also an ideal transit or host country (Rahmatullah et al., 2022), it has involved with many group resettlements to Australia in the past, not to mention the Bosnian (1994) and the Vietnamese refugee (1970-1980) involvements. However, refugees in Malaysia still faced the risk of being arrested, security extortion, detention in immigration centres and racial and political mistreatment (Cheong & Baltazar, 2021; Suzarika et al., 2020; Kunapalan et al., 2020; Rahmatullah et al., 2020; Melati et al., 2020), familiar to the conditions in Thailand (Coddington, 2020).

About less than one percent of refugees settled in countries such as Australia. In Australia, its humanitarian settlement scheme offers newly arrived refugees with services such as accessing local services, free English language classes, temporary housing and finding employment (Ziersch et al., 2023). Moreover, Kunapalan et al. (2020) stressed on the need for the refugees to learn local language (Palik, 2020; Ziersch et al., 2023) and culture in order to help them adapt and blend-in locally (indirectly curbing mental health issues). This can be done via knowledge sharing classes and community-based institutions (Palik, 2020). However, Doma et al. (2022) demonstrated the challenges as more barriers were faced by women migrants as compared to men in accessing support services and gained employments such as taking care of children (Ziersch et al., 2023) in Australia. It also exposed more women to suffer from mental health issues as compared to men.

Table 1: Findings from Literature on Stateless in the Context of Malaysia, Thailand and Australia.

Author/ Issues	Subject and Country	Permissio n to Work	Access to Educati on	Access to Healthca re	Local Languag e Proficien cy	Understa nd local culture	Look like Illegal immigra nt	Physic al Abuse	Men tal Healt h Issue s	Tempora ry Work Permit
Suzarika et al. (2020)	Refugees (Malaysia)	No	No	No	No	-	Yes	-	Yes	-
Kunapala n et al. (2020)	Refugees (Malaysia)	No	No	No	Yes (needed)	Yes (needed)	Yes	Yes	Yes	Yes
Melati et al. (2020)	Refugees (Malaysia)	No	No	No	Yes	-	-	Yes	-	-
		Note: No freedom to move around.								
		-	-	Yes	No	-	-	Yes	Yes	-
Kaur et al., (2020)	Refugees (Malaysia)	Note: Access to healthcare for further mental treatment with the help of UNHCR; food insecurity among the refugees (food accessibility); the importance of social support such as families and friends to curb mental health disorder. Females and those suffered from physical trauma are more prone to mental health issues.								
	Stateless;	-	-	Yes	-	-	Yes	-	-	-
Cheong & Baltazar (2021)	undocumented, asylum seekers (Malaysia)	Note: Three delays framework for maternal healthcare and birth registration which pointed out the complex administrative efforts (political and legal factors) which could have produced intergenerational cycle of exclusion from civil registration and healthcare systems.								
		-	Yes	-	-	-	-	-	Yes	-
Palik (2020)	Child refugees (Malaysia)	Note: Access to alternative schools run by community-based organizations; studied the local language, teachers faced students with behavioural challenges stemmed from post-traumatic stress disorder (PTSD).								
		Yes (Farm)	-	-	-	-	-	-	-	-
Pechdin & Ahmad (2023)	Refugees (Thailand)	Note: Farmers are more willing to hire refugees as temporary assistants; higher income earners are reluctant to the idea of similar job opportunities given to refugees as it added more competition; Older people (age) are more cautious about refugees than younger people for safety reason; the longer the locals know the refugees, the more reluctant they are for similar treatment as they may have experienced disputes involving refugees.								
		-	-	-	Yes	-	-	-	-	-
Coddington (2020)	Refugees (Thailand)	Note: As a transit country, refugees are seen as security threats; refugees are hypervisible, subject to racial concern, legal practices towards refugees and asylum seekers are constantly shifting; migrant destitution as a result of work prohibition, heavy penalty on employers who hired undocumented workers, poor accommodation, frequent ad hoc raids and arrests and limited communications. Refugee children who speak fluent Thai helped to release his entire family on bail.								
Liddell et al.	Refugees	-	-	-	-	-	-	-	Yes	-

al. (2022)	(Australia)	Note: Insecurity or ongoing uncertainty due to missing or separated family members; it can alter refugee's capacity to socially function (cannot work, study or focus); person-centred approach may work with refugees dealing with missing or separated family members.	Yes	Yes	Yes	Yes	-	-	-	-	-
Doma et al. (2022)	Refugees (Australia)	Note: Looking into the effects of emotional, instrumental and informational supports on mental health conditions of refugees and asylum seekers during short, medium and long-term durations; older humanitarian migrants received less social supports as they found it more difficult to understand how the Australian systems work especially those with less English proficiency; some migrants received financial benefits from Australian governments.	Yes	-	Yes	Yes	Yes (needed)	-	-	Yes	-
Ziersch et al. (2023)	Refugees (Australia)	Note: How positive and negative employment experience affects mental and physical health among women refugees; numerous employment barriers such as lack qualification, low English proficiency, discrimination, lack of referees, limited social network and no local work experience; the importance of worker rights education.									

The NGOs both in Malaysia and Thailand faced difficulties in their involvements with the refugees. In Malaysia, the challenge is in the lack of legislative and administrative provisions to help the refugees and asylum seekers legally (Kunapalan et al., 2020; Rahmatullah et al., 2022) while in Thailand, NGOs faced the constantly changing legal practices towards these groups thus, turning to the local grapevines as a more effective source of information and action (Coddington, 2020). Rahmatullah et al. (2020) suggested that a solid framework on policy governing refugee issues may sound feasible as they noticed inconsistencies with the treatment of refugees in the past. This is also supported by Ziersch et al. (2023).

From employment perspective, Ziersch et al. (2023) found that employment helped women refugees to gain a sense of identity or purpose in Australia. This positive impact helped women to start a new life away from war, conflicts and persecution. However, similar to Liddell et al. (2022), those who are unemployed (seeking employment) with family obligations such as supporting families in home country or need to send money to their families experienced some levels of stress and mental illnesses. This pressure is similar between men and women. Women in particular also suffered from exploitation and discrimination for doing precarious employment (Ziersch et al., 2022).

Conclusion and Future Direction

Assisting the fellow human beings to safeguard their fundamental human rights (providing protection) is a religious duty that one should not ignore. It is not just doing a humanitarian favour towards others, it is an act encouraged by religion – an act of obedience towards the Creator (Rahmatullah et al., 2022). The authors are of the opinion that nations like Malaysia should be able to follow the Australian footsteps of sharing resources with the stateless people, that by doing so will not deprive the citizens of their citizenship rights or left them with less material abundance. This study pointed out the complexity of getting birth certificates by the stateless groups and the long-term outcomes of being excluded from the systems, the need for an effective mechanism involving stateless or refugees (policy and practices) based on past experience, the involvements as well as the challenges faced by NGOs to bail out refugees and how the role of employment helped women to gain self-worth or personal achievements in their lives. Due to manual constraints, this study can only report limited evidence from Thailand and Australia. Lastly, a solid framework on refugee management policy is welcomed for further study and debate.

References

- Bernama. (June 20, 2023). "Malaysia urges 1951 Refugee Convention signatories to fulfil responsibilities". Retrieved January 3, 2024 from <https://www.nst.com.my/news/nation/2023/06/922238/malaysia-urges-1951-refugee-convention-signatories-fulfil>
- Cheong, A. R., & Baltazar, M. A. K. (2021). "Too precarious to walk: An integrated "three delays" framework for modeling barriers to maternal health care and birth registration among stateless persons and irregular migrants in Malaysia". *Genus*, 77(1), 1-26.
- Coddington, K. (2020). "Producing Thailand as a transit country: borders, advocacy, and destitution". *Mobilities*, 15(4), 588-603.
- Doma, H., Tran, T., Rioseco, P., & Fisher, J. (2022). "Understanding the relationship between social support and mental health of humanitarian migrants resettled in Australia". *BMC public health*, 22(1), 1739.
- Kaur, K., Sulaiman, A. H., Yoon, C. K., Hashim, A. H., Kaur, M., Hui, K. O., ... & Gill, J. S. (2020). "Elucidating mental health disorders among Rohingya refugees: a Malaysian perspective". *International Journal of Environmental Research and Public Health*, 17(18), 6730.
- Kunapalan, H., Ismail, N. B., & Yatiban, A. B. (2020). "The Roles of Non-Governmental Organisations (NGOs) in Assisting Refugees: From Malaysia Context". *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 5(5), 89-94.
- Liddell, B. J., Batch, N., Hellyer, S., Bulnes-Diez, M., Kamte, A., Klassen, C., ... & Nickerson, A. (2022). "Understanding the effects of being separated from family on refugees in Australia: a qualitative study". *Australian and New Zealand Journal of Public Health*, 46(5), 647-653.
- Lim, I. (June 30, 2023). "Invisible in Malaysia: Why are people born here stateless and will the government's citizenship proposals fix or worsen the problem?". Retrieved January 3, 2024 from <https://www.malaymail.com/news/malaysia/2023/06/30/invisible-in-malaysia-why-are-people-born-here-stateless-and-will-the-govts-citizenship-proposals-fix-or-worsen-the-problem/76895>
- Malay Mail. (September 3, 2023). "No IC at 21: Born in Penang to Malaysian Father, Stateless Woman seeks help from Home Ministry". Retrieved January 3, 2024 from <https://www.malaymail.com/news/malaysia/2023/09/03/no-ic-at-21-born-in-penang-to-malaysian-father-stateless-woman-seeks-help-from-home-ministry/88698>
- MalaysiaNow. (June 27, 2023). "Pakar Perlembagaan beri amaran terhadap pindaan kejam undang-undang kewarganegaraan". Retrieved January 3, 2024 from <https://www.malaysianow.com/my/news/2023/06/27/pakar-perlembagaan-beri-amaran-terhadap-pindaan-kejam-undang-undang-kewarganegaraan>
- Melati, N., Flanders, S., & Chuah, H. Y. (2020). "Poverty and precarious employment: The case of Rohingya refugee construction workers in Peninsular Malaysia". *Humanities and Social Sciences Communications*, 7(1), 1-11.
- New, J.L. (January 14, 2018). "This seven-year-old from Seremban was not allowed to enrol in a government school at first. Why?". Retrieved January 5, 2024 from <https://cilisos.my/this-7-year-old-from-seremban-was-not-allowed-to-enrol-in-a-government-school-at-first-why/>
- Palik, J. (2020). "Education for Rohingya refugee children in Malaysia". *Peace Research Institute Oslo (PRIO) Policy Brief*, 2.
- Pechdin, W., & Ahmad, M. M. (2023). "A Glimpse into the Minds of Thais: Unveiling the Factors Influencing Thai Local Attitudes towards Myanmar Refugees". *Migration Letters*, 20(2), 199-207.
- Rahmatullah, T., Mamat, Z., Ismail, W. A. F. W., & Razali, R. M. (2022). "Refugees in malaysia: issues and importance of a better legal management for refugees". *International Journal of Social Science Research (IJSSR)*.
- SUHAKAM. (2023). "Stateless Children". Retrieved January 3, 2024 from <https://suhakam.org.my/portfolio/stateless-children/>

- Suzarika, S., Rohaida, N. & Ma Kalthum, I. (2020). "The Plight of Refugees in Malaysia: Malaysia as a Transit Country in Protecting Refugees' Rights". *Journal of Nusantara Studies (JONUS)*, 5(1), 378-394.
- Tee, K. (November 8, 2023). "Explainer: A breakdown of the proposed five citizenship law changes deemed regressive". Retrieved January 3, 2024 from <https://www.malaymail.com/news/malaysia/2023/11/08/explainer-a-breakdown-of-the-proposed-five-citizenship-law-changes-deemed-regressive/100811>
- The UN Refugee Agency (UNHCR).(2024). "Ending Statelessness in Malaysia". Retrieved January 3, 2024 from <https://www.unhcr.org/my/ending-statelessness-malaysia>
- United Nation. (September 20-26, 2022). "Malaysia – Prime Minister addresses UN General Debate, 77th Session". Retrieved January 3, 2024 from <https://www.youtube.com/watch?v=aqt7lQ8J6Aw>
- United Nation. (September 22, 2023). "Malaysia - Prime Minister addresses UN General Debate, 78th Session". Retrieved January 3, 2024 from <https://www.youtube.com/watch?v=by6-qZl2K6A>
- USA for UNHCR The UN Refugee Agency. (2024). "What is a refugee". Retrieved January 5, 2024 from <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>
- Ziersch, A., Miller, E., Walsh, M., Due, C., Callaghan, P., Howe, J., & Green, E. (2023). "I really want to work for me to feel good myself : Health impacts of employment experiences for women from refugee backgrounds in Australia". *SSM-Qualitative Research in Health*, 3, 100209.