



# **Children At-Risk of Statelessness and their Constraints to Citizenship**

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## **Abstract**

Malaysia ratified the Convention on the Rights of the Child (CRC) in 1995 but has put in a number of conditions or ‘reservations’. Some of those reservations were lifted throughout the years, however the reservation on Article 7 on the right to identity still remains. Today, children at-risk of statelessness face a myriad of challenges in accessing basic rights in Malaysia, including lacking legal identity documents. This poses a huge impact on the child’s access to fundamental rights, including education and healthcare. A human rights based approach was employed for this research, and focuses on children of Filipino descent found in various Alternative Learning Centres (ALCs), or informal schools located in three geographical locations in Sabah, Malaysia. This paper will discuss the causes, constraints and mitigating factors that children at-risk of statelessness are confront with on a daily basis. We argue that the right to identity is a prerequisite to achieving other basic rights of children, and thus should be addressed as a first step in mitigating the issue of children at-risk of statelessness in Sabah.

**Keywords:** Statelessness, citizenship, Sabah, children, right to identity

## **Introduction**

Malaysia shows no significant visible effort in reducing or ending statelessness of children despite the fact that stateless children of Sabah are not unknown to the eyes of the world. There have been countless articles, media reporting, and studies produced about these children. Without citizenship, these children have very limited access to healthcare and education (Adnan, 2012), which are two crucial factors in the development of a child. Hence, this lack deprives them of their very basic rights as children and leaves them vulnerable to many risks including poverty, trafficking (Asia Pacific Mission for Migrants, TENAGANITA and Migrants International, 2009) and abuse. Therefore, the lack of citizenship must become a priority in addressing the infringement of the rights of stateless children.

Statelessness exists around the world and is equally prevalent in Southeast Asia. According to UNHCR, Myanmar is listed as having the highest number of stateless persons at 938,000 in 2015, while Malaysia had 11,869 persons under UNHCR’s statelessness mandate. UNHCR Malaysia said that this number does not include the number of stateless persons in Sabah, which could significantly raise this number. Children of Filipino descent, in practice, are considered at-risk of

statelessness due to the fact that most of their family lineages can be traced back to the Philippines. This, in theory, renders them as not being stateless. In Sabah, those who are labeled stateless mostly live in the Sama Dilaut community (Brunt, 2013) - also known as the Bajau Laut, since the inhabitants are historically nomadic seafarers, making it difficult to determine their ethnic background. However, both stateless children and children at-risk of statelessness are equally vulnerable as neither category is able to access basic rights and protection in Malaysia. This also includes the issue revolving around the lack of identity. Thus, this issue should be taken more seriously. In this paper, the right to identity will be discussed according to the Convention on the Rights of the Child (CRC), the 1954 Convention relating to the Status of Stateless Persons and the Malaysian laws, namely the Child Act 2001 and the Federal Constitution of Malaysia.

There are many situations causing statelessness. In the case of the children in Sabah, this includes political restructuring and changes in laws triggered by state secession, unresolved descendants issues of Filipino refugees since the 70s, and citizenship challenges for economic migrant coupled with costly immigration processes and no clear path to Malaysian citizenship (Blitz & Lynch, 2011; Rachagan & Dorall, 1981; Kassim, 2009; Asia Pacific Mission for Migrants, TENAGANITA & Migrants International, 2009).

There is not much research on statelessness (Blitz & Lynch, 2011; Redclift, 2013) and even fewer on the situation of statelessness in Sabah. Previous significant studies usually discussed the everyday human experience of statelessness in Sabah (Allerton, 2014, 2017a, 2017b) but there has not been much research on the issues of the right to identity and citizenship issues among children at-risk of statelessness. This research focuses on children of Filipino descent at-risk to statelessness, in which we argue that their right to identity or citizenship is a prerequisite to accessing other basic rights for children especially to healthcare and education.

To better understand the status of citizenship of children, studies on statelessness, migration and citizenship - especially those focusing on Sabah - were reviewed. This was followed by interviews with children at-risk of statelessness and their parents; NGOs; key individuals; and governments in order to find out the reasons for and causes of statelessness and the risks being faced by children at-risk of statelessness. This helped to gather ideas for meaningful prevention, mitigation, and resolving of statelessness issues among these children. The survey was conducted with children and their parents in Alternative Learning Centres (ALCs), which many children at-

risk of statelessness attend. Since the matter is still actively ongoing in the country, current situations, cases and news were also incorporated in this study.

The access to citizenship varies between children of Bajau Laut, Indonesian, or Filipino descent, as majority of those who are stateless or at-risk of statelessness in Sabah, subject to various factors including social and political aspects. For example, some nationalities were granted different documents than others. Also, marital status and the place of birth of the child played a major role. In a 2017 report, a conservative estimate by the Federal Task Force in Sabah and Labuan provided a record of 30,000 children born by undocumented parents (Daily Express, 2017). However, it is generally known that the number could be at least twice as much, based on observations. Therefore, the status of these children who are stateless (or at-risk of statelessness) has become a critical humanitarian issue, especially as there appears to be no resolution to this problem until present. Since Malaysia is a signatory to the Convention on the Rights of the Child (CRC), which enshrines the right to name and nationality in Article 7, Malaysia has the duty to shed a light on these ‘invisible children’ so that they can legally exist as a person and be accounted for, in line with UNHCR’s goal to end statelessness by 2024. The question of access should also look into the accessibility of those applying for legal documents, including issues such as distance, cost, complexity of the process, taking into account those who are below the poverty line and illiterate. There is also a different process for children who are considered ‘illegitimate’, for example those who were born to an unmarried couple.

In this study, those considered as being of Filipino descent are persons who have at least one parent whose ethnicity originates from the Philippines. The terms ‘nationality’ and ‘citizenship’ will be used interchangeably in this paper but will refer to the same thing. Lastly, the term ‘undocumented’ is used for those who have no legal identification documents.

### **Dynamics of statelessness**

The 1954 Convention relating to the Status of Stateless persons defines a stateless person as “*a person who is not considered as a national by any state under the operation of its law.*”

UNHCR states that there are at least 10 million people who are stateless around the world. Most of the causes of statelessness are discrimination against a particular ethnic or religious group, or on the basis of gender; the emergence of new states and transfers of territory between existing

States; and gaps in nationality laws (UNHCR, n.d.). More than 75% of stateless persons in the world are from minority groups, including the descendants of migrants, nomadic populations who have links to two or more countries, and people who have lived in a place for many generations but are discriminated against continuously (UNHCR, 2017). Statelessness exists in eight out of the ten ASEAN countries, which include Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Myanmar had the highest number of stateless persons (938,000) in 2015, while Malaysia has 11,869 persons under UNHCR's statelessness mandate and another 80,000 'of concern' to UNHCR under the category of Filipino Muslims (UNHCR, 2015). However, even with the significant numbers of stateless persons, the issue of statelessness has been a minor interest within UNHCR (Redclift, 2013, p.3).

Malaysia did not ratify any of the conventions on statelessness which includes the 1954 UN Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The country hence does not recognize stateless persons and consequently does not offer any forms of protection for stateless persons. This corresponds with Blitz and Lynch (2011) who stated that: "Although international law records that all children have a right to nationality, a nationality is the prerogative of the state, and hence the nationality of the child is determined according to the laws of the states involved" (Blitz & Lynch, 2011, p.9).

One reasons for children of Filipino descent in Sabah becoming at-risk of statelessness is related to the migration of Filipinos to Sabah, particularly since the 70s. Geographically, the Philippines share a border to Sabah. Together with the long history of economic trade between the two countries as well as the arrival of Muslim refugees from the civil war in Southern Philippines in the 70s (Wan Shawaluddin & Ramli, 2013) and the increasing need for low-cost migrant workers in Malaysia's timber industries and oil palm plantation encouraged heavy migration of Filipinos to Sabah. Filipino migrant workers mostly dominated the construction sectors and informal services (Wan Shawaluddin & Ramli, 2008). Today, the government of the Philippines estimates that there are 800,000 Filipinos in Sabah. NGOs estimate this number to be around 1.4 million (Navallo, 2013). Strict nationality laws in Malaysia have become a barrier for these Filipinos to be naturalized, even if their families have been in the country for generations. In its nationality laws, Malaysia is leaning towards the practice of *jus sanguinis* (Sadiq, 2009) where a child's nationality is according to their parents' nationality irrespective of their place or birth. In contrast, *jus soli* determines a nationality by the country of birth irrespective of the nationality of the parents.

Thus, in Malaysia, the “legal means to gaining citizenship is either too complicated or expensive” (Sadiq, 2009, p.15). This renders many children of migrants or refugees vulnerable. According to Allerton (2014), for children of Indonesians, the process seems to be “fairly straightforward” (Allerton, 2014, p.30) with the presence of the Indonesian consulate in Kota Kinabalu and in Tawau. However, the experience is very different for children of Filipinos where there is no presence of the Philippine government due to political sensitivities to the claim on Sabah (ibid) as part of the former ‘Sultanate of Sulu’ which has become a barrier for children of Filipino descent to obtain legal documents. Hence, many of the descendants of Filipino refugees and migrants born and raised in Sabah lack legal proof of identity. While the lack of birth registration does not equate to statelessness (Blitz & Lynch, 2011), children who do not have birth registration or legal documentation that proves their citizenship become at-risk of statelessness.

When discussing the rights of a child, the CRC outlines the international standards in the protection and development of a child. There are four core principles of the CRC, which are non-discrimination or universality; the best interests of the child; the right to life, survival and development; and respect for the views of the child. Article 7 of the CRC on Name and Nationality states that

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

It needs to be noted that the right to name and nationality is the 7<sup>th</sup> article out of the 54 articles in the CRC, which reflects the importance of the article.

When Malaysia ratified the CRC in 1995, the country made some reservations which included Article 2 on non-discrimination, Article 7 on name and nationality and Article 28(1)(a) on free and compulsory education at primary level. While the country has lifted some reservations throughout the years, reservations on Articles 2, 7, and 28(1)(a) remain. Articles 2 and 7 are however contrary to the legal safeguard against statelessness in the Malaysian Constitution in the Second Schedule, Part II, Section 1(e) (to be read with Article 14(b) of the Federal Constitution)

which stipulates that “every person born within the Federation who is not a citizen of any other country is a citizen of Malaysia by operation of law” (Malaysian Constitution, 1957).

Malaysia has crafted the Child Act of 2001 with an amendment in 2016 to fulfill its obligations under the CRC. While provisions to the legal protection of children - especially those experiencing violence and abuse - have improved throughout the years, there seems to be no provision on name and nationality. The absence of these provisions affects the right to life, survival and development of a child, where children with no citizenship have very limited access to education thus limiting their development and quality of life. The absence of a proper legal status for many children of Filipino descent has left them with no access to formal, government-run education, and government-subsidized healthcare. This has left them stuck in an infinite cycle of poverty. As stated by Kamal Sadiq (2009) in his book *Paper Citizens*: “Since rights come from the individual’s legal relationship with the state, a loss of that relationship means non-recognition of an individual’s existence and, therefore, a loss of his/her rights. One has to exist, legally, to have rights. Hence, citizenship status brings with it both citizenship and human rights” (Sadiq, 2009, p.16).

In Blitz and Lynch (2011), “child advocates claim that birth registration provides the first legal recognition of the child” (Blitz & Lynch, 2011, p.9). They added that birth registration is central to the campaign to reduce statelessness and inequality, thus strengthening the argument that the right to name and nationality or citizenship is a prerequisite to gaining access to other rights. Laura Van Waas (2007) also stated that “In order to prevent statelessness, birth registration is paramount importance that every child is registered at birth and a birth certificate issued (Van Waas, 2007, p.2). While Malaysia is offering birth certificates to all children regardless of citizenship, the current format effective July 1, 2011 differentiates the children on the status of citizenship according to the categories of “warganegara” (citizen), “bukanwarganegara” (non-citizen), or “belumditentukan” (yet to be determined), which is stated on the birth certificate. Therefore, in Malaysia, having a birth certificate does not equate to having a citizenship. In preventing statelessness, a pathway to citizenship must come hand-in-hand with the registration of birth of a child.

### **Children at-risk of statelessness in Sabah**

Children in Sabah become at-risk of statelessness when they do not have citizenship. Birth registration is allowed for all children in Malaysia regardless of citizenship status, but it neither guarantees citizenship nor a pathway to citizenship. Children who are eligible for citizenship at birth are those whose parents are citizens or permanent residents at the time of birth of the child, and must be able to fulfill the requirements by the National Registration Department. Children who are not eligible and those who are not able to fulfill the requirements could fall at-risk of statelessness and would therefore need to apply for the long and complicated procedure of applying for a citizenship. Children who are not eligible for citizenship would include children of migrants, refugees, undocumented persons, temporary residents and Sama Dilaut. For non-citizen children, ALCs or CLCs have been set up throughout Sabah by NGOs, faith-based groups, individuals and communities to provide education for these children. These learning centres mostly focuses on basic education such as the 3Ms (*membaca* - reading; *menulis* - writing; *mengira* - counting) as well as simplified Malaysian, Indonesian or Filipino education syllabus.

While most of those teaching in ALCs are untrained teachers, the centres have been providing their own training and formed loose coalitions to collectively train their teachers. A mapping of the ALCs and CLCs conducted by UNICEF (2015) listed 372 ALCs and CLCs. However, there was no listing of faith-based ALCs. The total estimate of the number of children in ALCs and CLCs in Sabah according to the mapping was 29,465. Including those children in Etania Schools, Stairway to Hope and Madrasah al-Hikmah increased the total number 31,114. This number only reflects learning centres in the mapping. There are many other ALCs and CLCs which have not been mapped and included in this list.

Table 1 Number of children in ALCs or CLCs

<b>Number of Children in ALCs or CLCs</b>	
<b>ALC/CLC</b>	<b>Number of Children</b>
National Security Council	3,427
Humana Child Aid Society Sabah	13,101
Indonesian Government-Run CLCs	11,000
Pusat Kebajikan Pendidikan Kanak-Kanak Miskin (PKPKM)	1,937
Etania Schools	702
Stairway to Hope	510

Madrasah Al-Hikmah	437
<b>Total Number of Children</b>	<b>31,114</b>

For Indonesians in Sabah, an Indonesian school or *Sekolah Indonesia Kota Kinabalu* (SIKK) and several satellite schools were set up by the Indonesian government, providing more formal education and a secondary level for Indonesian children. The set-up of these educational institutions were the result of the Annual Consultations meeting in 2006 between then-Indonesian President Soesilo Bambang Yudhoyono and then-Prime Minister of Malaysia Abdullah Ahmad Badawi. Undocumented Indonesian children who enrolled into SIKK are given assistance to apply for Indonesian birth certificates. However, interviews showed that ALCs or CLCs that are not for Indonesians but, for instance, for children of Filipino or Sama Dilaut descent, there are more challenges compared to the Indonesian-based ALCs. One ALC shared that there are centres being closed down, which was also documented by Brunt (2013:36).<sup>1</sup> Some also received summons by the Malaysian Ministry of Education (MOE) for not complying with the MOE's standards, such as not having qualified teachers or teaching according to the Malaysian syllabus. This is a challenge for the ALCs who are struggling with sustainability of finance to run the centres. Most ALCs depend on monthly fees and donations, and it is very common that children are not able to pay regularly.

However, outside the ALCs and CLCs, there seems to be not much effort in assisting children to address other issues around statelessness or undocumented. However, learning centres are committed to providing further assistance such as working with the Ministry of Health for child vaccinations, or assistance in applying for legal identification documents. Application for birth registration was also included during one of the teacher trainings for the ALCs. While some teachers believe that the children deserve Malaysian citizenship even if both parents are not Malaysian citizens, others seem to have come to terms with the fact that the Malaysian law does not allow this. However, since providing education itself involves significant effort and inhibits

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<sup>1</sup> Brunt (2013) in her thesis brought to attention a situation where the Semporna District Office instructed for an ALC for the Sama Dilaut children to be closed down as part of the office's plan to relocate the community from the islands which produced significant revenue through seaweed farming and tourism. The Sama Dilaut community was seen as an inconvenience which is ironic to the annual Regatta Lepa-Lepa, a state-level festival celebrated in Sabah and organised by the District Office themselves, which is a festival to celebrate the 'unique lifestyle of the Bajau Laut ethnic community, the major dwellers in Semporna'.

many complications, there is only a handful of learning centres which are assisting in the application for legal identification documentation. This leaves many children without any proper legal documentation and at-risk of statelessness or non-documentation.

## **Research methodology**

The research made use of a mixed methods approach with a survey questionnaire mainly used to provide quantitative findings from the population of Filipino-descent children enrolled in Alternative Learning Centres. The fieldwork survey was conducted in 2017 and 2018 in three locations in Sabah, i.e. Kota Kinabalu, Keningau and Sandakan. These locations were chosen because of the high population of Filipinos in the selected districts. During the survey, the children were interviewed in the presence of their teachers and parents. The total sample size of children was 125 with 63 parents who were all selected randomly. Six ALCs were covered in this work: Stairway to Hope and Madrasah al-Hikmah located in Kota Kinabalu; Francis Xavier Church and Stairway to Hope Keningau and Learning Enrichment Centre in Keningau; and Stairway to Success and a smaller school house operated by an individual in Sandakan. Among these children, some belonged to parents of mixed origins, e.g. one parent was Filipino while the other parent was Indonesian. In terms of age, the study selected children who were 8 years old and above. None of the children had proper legal documentation and therefore could not attend government-run schools that mainly prioritized children who are citizens.<sup>2</sup>

In terms of qualitative methods, interviews were also conducted with government officials from the Philippine Embassy in Kuala Lumpur and from Sabah State agencies to investigate policies and practices that encourage or hinder children's access to citizenship. A Focus Group Discussion in Keningau and Sandakan with teachers from the ALCs also helped inform and

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<sup>2</sup> Laura Van Waas (2011) in her study of statelessness in Southeast Asian countries has stated that the Ministry of Education (MOE) in Malaysia has renewed its pledge to offer education to all children in Malaysia regardless of their status. However, in an interview with a school headmistress, government schools only allow for non-citizen children whose parents both have proper legal documents, in the case of non-citizens, valid passports. However, the school added that those whose parents do not have valid passports, will usually enrol under guardians who are citizens. In terms of the procedures of enrolling into government schools, a "pink form" or "boring pink" needs to be filled-in and in principle, schools are supposed to accept the students when assigned by the Ministry of Education. However, according to the headmistress, in practice, not all head of schools will accept for fear of encouraging more non-citizen children into their schools. The school that was interviewed in 2018 was one of the schools under the ATHAM (Amalan Terbaik Hak Asasi Manusia) program which was initiated by SUHAKAM (Suruhanjaya Hak Asasi Manusia) and is one of only a handful of those who will accept non-citizen children into their school. This school has about 80 plus non-citizen students.

clarify the issues surrounding the status of these children and their families. Also, secondary source data was obtained from books, journals, news, articles and internet search.

The data collected from the survey was processed using Statistical Package for Social Science (SPSS), focusing on the answers from close-ended questions and variables such as general demographics, ethnicity and identification documents for both children and their parents. The open-ended answers were analyzed using the Content Analysis Method and were coded and grouped together according to themes. Recurring words were then counted and analyzed according to their frequency.

## **Research Findings**

The focus of this study was placed on children. Coming from three different locations in Sabah, they shared the same backgrounds: they were all children of Filipino descent growing up in Sabah. The child respondents were 68 girls and 57 boys within the age of 8 to 17. The age range was selected according to the CRC, where children are those below the age of 18 years. In terms of religion, the children we interviewed were 64.8% Muslim and 34.4% Christian. The majority of the children (85.6%) were born in Sabah; others were born in the Philippines, Sarawak or Labuan. The ethnicity of the children was 30.4% Suluk (or Tausug<sup>3</sup>), followed by 29.6% Bisaya, 16.8% Bajau, 5.6% Tagalog, 3.2% Cagayan, 2.4% Ilonggo, 1.6% Maranao and Palawan, and the rest unknown. Looking at their types of identification documents, there were 5 different categories, with most of the children having birth certificates (51.2%), no documents (22.4%), passports (6.4%), MyPR (3.2%), IMM13 and MyKas (2.4%), MyKad and MyKid (1.6%), JKM (0.8%) and others unknown.

For the adult respondents who were the parents of those in this study, most interviewees were women (58) as compared to 5 men. The age of respondents was between 22 to 54 years. Most of the respondents were born in the Philippines (50.7%), followed by those born in Sabah (36.2%), in Indonesia (1.4%) and others unknown. The ethnicity of the adult respondents was 33.3%

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<sup>3</sup> The Suluk people (orang Suluk) and Tau Sug are the same people, because Tau means 'orang' or 'people' and Sug means 'arus' or 'sea currents', a construction from the word 'Suluk', from the old word 'Sulug' to mean 'sea currents.' Tau Sug is used when Suluk people themselves speak their own language. In the Philippines, Tau Sug is being used to identify the Suluk people. In Malaysia, Tau Sug is identified as Orang Suluk and is listed as one of the 27 native groups in Sabah under the Native Ordinance 1952 (Ajak& Dino, 2018).

Suluk (or Tausug), 18.8% Bisaya and Bajau, 7.2% Illongo, 5.8% Tagalog, 2.9% Cagayan, and 1.4% each Maranao, Zamboangueno and Toraj. Some ethnicities were unknown. There were 8 identification document categories of the adult respondents: passport holders (30.4%), MyKas (15.9%), IMM13 (10.1%), no documents (8.7%), MyKad (7.2%), MyPR (5.8%), birth certificate holders (4.3%), and JKM document (2.9%).

Table 2 Demographics of Respondents

<b>Demographics of Respondents</b>		
	<b>Children</b>	<b>Parents</b>
<b>Total no. of Respondents</b>	125	63
<b>Gender</b>	68 girls & 57 boys	58 women & 5 men
<b>Age</b>	8-17 years old	22 - 54 years old
<b>Religion</b>	Muslim - 64.8% Christians – 34.4% Unknown – 0.8%	Muslim – 60.9% Christians – 27.5% Unknown – 11.6%
<b>Place of Birth</b>	Sabah – 85.6% Philippines – 10.4% Others – 1.6% Unknown - 2.4%	Philippines – 50.7% Sabah – 36.2% Others –1.4% Unknown –11.5%
<b>Ethnicity</b>	Suluk (or Tausug) - 30.4% Bisaya - 29.6% Bajau - 16.8% Tagalog - 5.6% Cagayan - 3.2% Ilonggo - 2.4% Maranao - 1.6% Palawan - 1.6% Unknown –8.8%	Suluk (or Tausug) - 33.3% Bisaya - 18.8% Bajau - 18.8% Illongo - 7.2% Tagalog - 5.8% Cagayan - 2.9% Maranao - 1.4% Zamboangueno - 1.4% Toraja - 1.4% Unknown –8.7%
<b>Identification Documents</b>	Birth Certificate - 51.2% No Documents - 22.4% Passport - 6.4%	Passport holders - 30.4% MyKas - 15.9% IMM13 - 10.1%

	MyPR - 3.2%	No Documents - 8.7%
	IMM13 - 2.4%	MyKad - 7.2%
	MyKas - 2.4%	MyPR - 5.8%
	MyKad- 1.6%	Birth Certificate - 4.3%
	MyKid - 1.6%	JKM - 2.9%
	JKM - 0.8%	Unknown – 14.5%
	Unknown –8%	

Initially, selected child respondents were between the ages of 12 to 17. However, due to the low number of older children in ALCs, a few younger children were involved in the interviews. There were some limitations in interviewing children, as some of them were not aware of their current situation. For example, one child respondent aged 12 said that he possessed a MyKad. However, when asked why he was not enrolled in a government school, he answered that he did not know. Interviews with the parents revealed that all the respondents thought that having documents is important. Most of the parents in this study (55%) were first generation of migrants in Sabah, while 39% of the parents stated that they were second generation. Only 5% of the parents were from the third generation. A total of 55% of the parents were aware of the process of acquiring proper documents while 36.2% lacked this knowledge. Parents shared the following as challenges in acquiring proper documents: 29 parents stated that the cost is their biggest challenge, while others stated that not having complete documents and a complicated application process were most challenging.

One respondent shared that he would be required to travel to and from the Philippines to Sabah to work on his documents. The travel would cost his family a lot of money, since he is the only breadwinner in his family of five. Most parents of the children in the ALCs are doing menial jobs. With no presence of the Philippines Embassy in Sabah, limited consular missions of service (120 - 150 people a day) offered to an estimated 800,000 to 1.3 million Filipinos in Sabah shows further challenges in acquiring proper documents and support.

When discussing the challenges of living in Sabah, most parents (40%) stated that having no proper documents was the biggest challenge, followed by fear of being caught by authorities.

One woman shared her experience of a police officer asking for RM500 and threatening to put her into a police lock-up if she did not pay. Many respondents shared their experience with and knowledge of authorities asking for money. Another respondent shared that at the end of the month, the authorities would ask for hundreds of ringgits, but in the middle of the month, the authorities would also accept less than RM100.

When parents were asked about their choice of citizenship for their children, the majority (75%) stated they would prefer Malaysian citizenship, 8% preferred Philippine or Indonesian citizenship, and 5% said that any citizenship would be acceptable as long as they were not detained by the authorities. Some of the reasons included that their children were born in Malaysia so that their children would be able to go to school or work in Malaysia. While most parents tried many ways to document their children, some gave up when the process became too complicated and costly, for example in cases where parents lacked any proof of linkages to the Philippines, or important documents were destroyed in a fire or flood. A mother in Sandakan shared her experience of applying for the Report of Birth (ROB) of her child through the Philippine Embassy. She first paid RM120 for the ROB but when she went to collect the ROB, she was told to pay an additional RM240 for the three affidavits that needed to be produced. Not having the money at hand, she abandoned the effort to acquire the ROB.

A total of 97.6% of the children agreed that it is important to have documents, with most of them stating that it is needed to avoid arrest. Other reasons for the importance of having proper documents included work, school and safety. At such a young age, only 10.4% of the children stated that they know how to apply for documents, with most of them relying on their parents to sort out the documents for them. Children were also asked if they knew the meaning of citizenship, and what citizenship they identified with. 56.8% stated that they knew the meaning of citizenship. A 14-year old boy from Kota Kinabalu shared: “A citizen is who is not being caught by the police.” A 13-year old from the same city who aspired to become a dentist one day said: “I was born in my own country, but I do not know my citizenship.” The children were also asked about aspects of safety, i.e. whether they felt safe going out, or when there is a presence of the police or immigration officer. More than 60% stated that they did not feel safe, with reasons being fear of being arrested, and not having documents.

“I am big now. I can be arrested.” 12-year old boy, Keningau.

Most children shared that once they reached the age of 12, a child in Malaysia is eligible for a National Registration Identity Card (NRIC) or “IC”. However, without proper legal identification documents, children above twelve years old and adults are usually harassed for money by authorities or risk of being detained and deported. Those who are under twelve years old are usually ignored by the police and immigration. However, a 15-year old boy shared: “If I have a school ID and school uniform, I will not be asked.” Having a school ID or school uniforms seems to be protection for children from arrests. Most learning centres, such as Stairway to Hope, Madrasah al-Hikmah, and Stairway to Success issue student IDs for their students.

45.6% of the children said that family members had been detained by authorities. 31 children stating they had parents or siblings who were arrested and 25 children shared they had grandparents, uncles or aunts, or cousins who were arrested. 1 child - a 17-year old boy - shared that he was arrested by Immigration Officers for 3 days. All arrests were made because of missing documentation. An 11-year old boy in Keningau. stated: “My uncle was arrested because somebody complained. I visited him at the ‘red house’. He was sent to the Philippines and is now back in Kota Kinabalu.”<sup>4</sup>

The majority of children (67.2%) had never visited the Philippines, with most of those who went to the Philippines had only visited once (21 children). 90.4% of the children said that they liked living in Malaysia and stated the reason being friends (43 children), peaceful or safe (15 children), and "I was born or raised here" (13 children). Other reasons included the facilities, the ease of getting jobs, religion, and family.

“If I live in the Philippines, I will be scared in the village because they do not know me.” 12-year old girl, Sandakan.

According to the policy on employment of foreign workers in Malaysia, foreign workers are not allowed to bring their spouse or members of their family into Malaysia, or get married (Department of Labour, n.d.). This could be one of the reasons why children of migrants are somehow not recognized, or are in an unresolved situation as Allerton (2014) mentioned. An

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<sup>4</sup> *Rumah Merah* is a term used to call the Immigration Detention Centre because of its red buildings. Those who are sent to the detention centre are then deported and will be on the country’s immigration blacklist.

interview with a non-citizen mother who took up the Travel Document issued by the Philippines Embassy during a recent amnesty program in August 2018, shared her problem of not being able to ‘jamin’ or endorse her son in Malaysia, and hence chose to bring up her son in the Philippines instead of Malaysia.

Those with IMM13 status (a document issued to Filipino refugees which needs to be renewed annually at a cost of RM90 per person) can extend the status to their children. However, based on the interviews, this has been postponed after the 2013 Lahad Datu intrusion by an armed group from Southern Philippines (The Star, 2013). Birth certificates in Malaysia are categorized into two green birth certificates for citizens, and red birth certificates for non-citizens or those whose citizenship is not yet determined. Children of non-citizens whose births are registered at the National Registration Department would be able to receive their red birth certificates though there have been some reports of people being turned away by officers.

### **The constraints to citizenship**

There are many different legal identification documents in Sabah recognized by the National Registration Department of Malaysia. As part of the interview, a few identification documents were listed in the questionnaire. Those listed down were passport, IMM13, MyPR, birth certificate, MyKad, and no documents. MyKad is the “compulsory identification documentation for Malaysian citizen aged 12 and above, issued pursuant to Regulation 3 of the National Registration Regulations 1990” (Child Rights Coalition Malaysia, 2012, p. 2). MyPR is an identification document of a permanent resident and is red in color. IMM13 is a special document issued by the Malaysian Immigration Department and was issued to Filipino refugees (Kassim, 2009). The limitation for the birth certificates is that not all birth certificate colors or types were documented. After the interviews, two more documents were identified: MyKas and JKM documents. MyKas is a temporary resident identification card issued under Regulation 5(3) of the National Registration Regulations 1990 which is green in color and must be renewed every 5 years (Child Rights Coalition Malaysia, 2012, p. 2). The *Kad Penempatan* or Settlement Card, also known as JKM (*Jabatan Ketua Menteri* or Chief Minister’s Department) document or *Sijil Burung-Burung* as shown in the image below:

Figure 3. Settlement Cards for Foreigners



Source: National Registration Department, Sabah

Our findings showed that children become at-risk of statelessness in Sabah due to a few causes: cost; incomplete documents; and complicated and long procedures. However, incomplete documents and complicated and long procedures are co-related, and hence will be grouped into one theme. Cost will be an independent theme.

The following will look at the costs, documents and processes of only the registration of birth of a child and application for citizenship: When looking at cost, not only the cost of paying for the documents is relevant, but all costs related, including travel costs. Without the presence of a Philippine Embassy in Sabah, Filipinos who need their documents urgently or those who were not able to access consular services in Sabah need to fly to the Philippine Embassy in Kuala Lumpur. The costs this involves would include air and land travel as well as accommodation. Surprisingly, some documents were expensive. In one case, just the process of applying for a Report of Birth (ROB) and passport for an undocumented or stateless child would have cost approximately RM800. After that, there would also be the costs of maintaining the documents, including paying for a yearly student visa, or spousal visa etc.

Maintaining a passport in Malaysia involves more costs. For a child that was born or raised in Sabah and wishes to stay in the country after acquiring a Philippine passport, the choices include a student visa, or being employed as a domestic or professional worker. According to a recruitment agency, for a domestic worker, one must be above 25 years old and for a professional

worker, one must have a salary of RM5,000 and be taxable to be employed in Sabah. However, if a child has a Malaysian parent, the parent would then be able to sponsor a child under the age of 18.

Looking at the registration of births in Sabah, there is no cost for registration of birth made within 14 days of birth, RM5 for delayed registration of birth (15th to 42<sup>nd</sup> day after the birth of a child), and RM10 for late registration of birth (birth registered 43 days and above after the birth of a child) (National Registration Department, n.d.). Recently through partnerships with NGOs, the Indonesian Consulate has been registering the birth of children of Indonesian descent for free in Sabah. In terms of documents needed for the registration of birth, the application for the ROB seems to be easier if there is some proof that links one parent of the child to the Philippines. If there is no passport, other proof such as school documents, baptismal certificates etc could also be used as. During a recent mission by the Philippine Embassy conducted in Kota Kinabalu in August 2018, a woman only had to fill in a statement to explain her loss (or lack) of documents, and the Travel Document was issued. Birth registration in Malaysia, however, needs complete documents and more proof is needed when it is a late birth registration. The procedure to apply for the ROB seems to be straightforward if there is at least one parent who is a citizen and has proof of citizenship. The Philippine Embassy will then conduct an interview during the application. For Malaysian birth registration, the procedure is quite straightforward if it is a normal birth registration but will become more complicated when it is a late birth registration (registered after 42 days). When there is not enough proof through documentation, a child will then need to apply for citizenship. The application for citizenship is one that takes a long time (2 to 3 years), and it is complicated and difficult to be approved unless all documents are in place. When an application is rejected, the applicant has to re-apply, and the waiting duration will remain the same. Looking at the citizenship cases which have been brought to court in recent years, it is common for applicants to have applied for citizenship three times and still be rejected.

In Malaysia, where there is no proof of legal marriage in the country, a Malaysian father will not be able to pass on citizenship to the child. Article 14 (1)(b) of the Federal Constitution of Malaysia states the following;

14. (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say: (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

However, this article and Part II of the Second Schedule has to be read together with the Interpretation in Part 3 of the Second Schedule which states *interalia* the following;

17. For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly Section 19 of this schedule shall not apply to such a person.

In practice, the above article states a person is a citizen if at the time of birth, at least one of the child's parents is a citizen or a permanent resident in Malaysia. However, if the child is considered 'illegitimate' or born outside of legal marriage in Malaysia, the child shall follow the citizenship of the mother. If the child's parents then legally marry in Malaysia, the child's younger siblings will be citizens, however, this does not apply to the child born before the legal marriage. This has caused many children in Malaysia to be stateless.

### **Citizenship of children under the Jus Sanguinis Principle**

Since the issue of nationality in both countries leans towards the practice of *Jus Sanguinis* principles, the citizenship of a child should be a clear case. However, this is not the reality among these children. Looking at the collected data while also considering statements made in the Malaysian Constitution, 18 out of the 55 parents, or children of 43% of the couples would be eligible for Malaysian citizenship. If the Philippines were to grant citizenship to children of at least one parent with a Philippine citizenship, 27 out of 55 couples, or children of 49% of the parents would be eligible for Philippine citizenship. There is a small number of 5 out of the 55 parents, or children of 9% of the parents, where one parent is a Malaysian citizen and one parent is a Philippine citizen, who would be able to choose Malaysian or Philippine citizenship. However, if the parents were to choose Malaysian citizenship over Philippines citizenship, the balance of 22 out of the 55 parents or children of 52% of the parents would be eligible for Philippines citizenship. Therefore, if both the Malaysian and Philippines government were to grant citizenship according at least one parent is a citizen of their country, a large percentage of 73% of the children would be eligible for citizenship and the percentage of children without citizenship will be lowered to 27%.

### **Conclusion**

As a crucial part to the right to identity, birth registration is one of the ways in preventing statelessness as mentioned by Van Waas (2007). Mechanisms must be put in place to encourage and not hinder birth registrations. The high cost imposed by the Philippine Embassy must be lowered, or as the past Ambassador J. Eduardo Malaya did, conduct birth registration missions and waive the registration fees and any other costs related to the registration of birth. We must note that while statelessness and non-documentation cuts across economic backgrounds, it is more prevalent among those who are below the poverty line in Sabah. Therefore, the costs related to documentation must reflect the situation in Sabah to prevent statelessness and non-documentation.

On the issue of incomplete documents or complicated procedures, the processes should be relaxed for children of Filipino descent born in Sabah to have a pathway to citizenship in Malaysia. From the surveys and interviews, there does not seem to be any functioning processes towards naturalization unless the person is married to a citizen. Clear pathways to citizenship must be in place to prevent statelessness and non-documentation.

When processes take a long time, a child's life is put on hold for the duration of the application without access to affordable education and healthcare, which are two very basic rights of a child. Therefore, the timeframe from the point of application of citizenship to the response from the Ministry of Home Affairs must be within a shorter timeframe for the best interest of the child. The need to produce a marriage certificate for citizenship to be passed on from a father to a child is also unnecessary. The provisions in the Federal Constitution should be amended to allow for a child to be able to receive citizenship as long as it can be proven that he or she is a child of a citizen or a permanent resident. Lastly, a glaring problem that was brought up in the surveys is the abuse of power from some authorities in extorting money and the use of threat.

While the Malaysian government has come up with some mechanisms that could prevent statelessness such as the IMM13 document and birth certificates for non-citizen children, the current practices does not prevent statelessness. The complicated nature of acquiring citizenship or no clear path to citizenship has left many unable to proceed in gaining a citizenship even if they fulfill the requirements in obtaining a Malaysian citizenship. Also, citizenship being subject to ministerial powers heightens the risk of the system being abused by those in power. The way forward to tackle statelessness in the country would be to address the issues brought up in this

study. Malaysia as a signatory to the CRC for the past 23 year should lift all reservations that discriminates against children who are non-citizens. While the Foreign Minister Datuk Saifuddin Abdullah under the new government has pledged to push for the ratification of six more international human rights conventions (The Star, 2018), however, the reservations in the Convention on the Rights of the Child and two other conventions must be seriously looked into first and lifted before ratifying other international human rights conventions in order to truly respect the rights of all persons and to become an inclusive nation.

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