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Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness

Decades of irregular migration to Sabah in eastern Malaysia have resulted in large numbers of undocumented children of migrants from the Philippines and Indonesia who are potentially at risk of statelessness. Undocumented migrants in Malaysia are targets for arrest and deportation, which in some cases has left their children alone on the street.

Children of migrants who are born in Malaysia may be undocumented if they do not possess a birth certificate. In addition, if a child's parents have been deported and they have no other family ties in Malaysia, it may be difficult for them to trace their heritage back to their parents' country of origin in order to apply for a passport. If no government recognizes these undocumented children as nationals, then the children are vulnerable to statelessness.

Malaysia is a signatory to the Convention on the Rights of the Child, which states in Article 7 that all children have a right to acquire nationality at birth. However, Malaysia does not grant citizenship by birth, choosing not to adhere to the principle of *jus soli*. Individuals can only apply for citizenship if one parent is a citizen of Malaysia. Foreign parents can register their children for birth certificates, but the certificates are stamped *orang asing* (foreigner), reflecting the fact that the parents are not citizens of Malaysia.

Refugees International recently traveled to Sabah and interviewed migrants of Filipino and Indonesian descent. Children with *orang asing* on their birth certificates, as well as those who do not possess a birth certificate, cannot go to government schools in Sabah. Private school is an option but the cost is prohibitive for most families. There are church and community organizations in Sabah that offer private education at a reduced cost. One such non-governmental organization has worked to educate almost 5,000 undocumented children in eastern Sabah, including those on the oil palm plantations, with the support of local authorities.

The Government of Malaysia has been cracking down on irregular migrants in the country. In Sabah, raids are conducted in housing areas where the migrants live and in markets and public areas where many work. Those arrested are deported back to their country of origin. Many children whose parents have been deported and who do not have any other family or guardian in Sabah end up living and working on the street at a very young age, often in fish markets. A local community worker told RI, "It's those who have nobody who are there [in the fish markets]."

The exact number of street children in Sabah is unknown, but they are estimated to be in the thousands, mostly of Filipino descent. There is strong local resentment of undocumented migrants in Sabah, and the street children are portrayed as a criminal element by authorities and the media. The children working at the fish markets are wary of outsiders and are under constant threat of raids by police. In 2006, the police arrested about 160 street children who were placed in detention. Those with family contacts were eventually released, but there is no information on the whereabouts of the others.

Zugoh, a 12-year-old boy of Filipino descent, works through the night at a fish market in Kota Kinabalu. He pushes a heavy wooden cart hoping that customers will allow him to transport their purchases to their car. Zugoh earns around 1 MYR, or 30 cents per customer. Zugoh does not have a father. He has a mother, but he does not stay with her. Zugoh told RI that he sleeps somewhere on the street near

the fish market. He does not go to school, and he has no identity documents.

Local sources in Sabah told RI that the children living on the street often do not possess identity documents like a birth certificate. There are several reasons for this. In order to obtain a birth certificate in Malaysia, it is necessary to produce a valid passport for each parent and a certificate of marriage, documents which many migrants do not possess. In addition, those who work in rural areas are sometimes not able to travel to the national registration authority to apply for the birth certificate.

Under the UN Convention relating to the Status of Stateless Persons, the term “stateless person” refers to anyone who is not considered a national by any State under the operation of its law. The absence of a birth certificate does not mean that a child is stateless. However, when a child does not have a birth certificate and she has no other way of tracing her family’s country of origin to apply for a passport, then the child may indeed be stateless or at risk of statelessness.

Interviews with migrants suggest that both Indonesia and the Philippines grant citizenship through the nationality of the parents, adhering to the principle of *jus sanguinis*. Currently, individuals of Indonesian and Filipino descent must travel to their country of origin in order to apply for a passport. However, there is an Indonesian consulate in Sabah which could assist those of Indonesian descent with the processing of identity documents. There is no permanent consular presence for the Philippines, however, due to an unresolved dispute between the governments of Malaysia and the Philippines over the ownership of Sabah.

The existence of undocumented children in Sabah who may be vulnerable to statelessness is a complex and politicized issue. Recognizing the problematic situation, Malaysian non-governmental organizations and the Malaysian Human Rights Commission (SUHAKAM) have conducted fact-finding missions to Sabah. Both the Office of the UN High Commissioner for Refugees (UNHCR) and the UN Children’s Fund (UNICEF) report that their offices are monitoring this issue. While steps are being taken to assist undocumented children in Sabah, many are still in need of increased protection and access to their basic rights, including an identity, a nationality, and education.

REFUGEES INTERNATIONAL RECOMMENDS:

The Government of Malaysia

- ❑ Ensure that all births in Malaysia are registered.
- ❑ Convene discussions on the issue of children vulnerable to statelessness in Sabah to develop a strategic plan of assistance involving all concerned parties: the Governments of Indonesia and the Philippines, UNHCR and UNICEF, Ministers of Parliament, Malaysian NGOs and migrant community leaders.
- ❑ Uphold its commitments under the Convention on the Rights of the Child and allow free primary education to undocumented children.
- ❑ Cease the arrest and detention of undocumented children in Sabah.

The Government of the Philippines

- ❑ Ensure that migrants from the Philippines have regular access to representatives of the Philippine Embassy to receive assistance with the processing of identity documents for children of Filipino descent.

UN Agencies

- ❑ UNHCR undertake a survey to identify the numbers of children who are stateless or at risk of statelessness and take concrete steps to prevent and reduce statelessness.
- ❑ UNICEF increase advocacy efforts on the protection of undocumented children in Sabah and support local community education programs that are already in place.
- ❑ In cooperation with the Government of Malaysia, UNICEF facilitate the registration process to ensure that all children are registered at birth.

Camilla Olson assessed the situation for children vulnerable to statelessness in Sabah in April.