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## Contested Statelessness in Sabah, Malaysia: Irregularity and the Politics of Recognition

Catherine Allerton

Department of Anthropology, London School of Economics and Political Science, London, United Kingdom

### ABSTRACT

UNHCR's current #IBelong campaign presents stateless people as uniquely excluded, emphasizing the need for legal solutions to their situation. Such approaches to statelessness sidestep both the complexities of lived experience and the wider politics of state recognition. In response, this article utilizes ethnographic data from Sabah, Malaysia, and theorizations of the gray areas between citizenship and statelessness to argue for the fundamental connection between statelessness and irregularity. Such a connection is central to understanding both the everyday lives of potentially stateless people and Sabah's public discourse on statelessness as a mirage obscuring the problems of "illegals" and "street children."

### KEYWORDS

Sabah; Malaysia;  
statelessness; irregularity;  
recognition; children; UNHCR

In 2014, statelessness was firmly re-installed on the international human rights agenda with the introduction of UNHCR's #IBelong campaign. This campaign, launched 60 years after the 1954 UN General Assembly adopted the Convention Relating to the Status of Stateless Persons, plans to draw attention to statelessness in order to eradicate the problem within 10 years (UNHCR, 2014a). UNHCR's campaign webpages state that in most cases people's statelessness could be resolved "through minor changes in existing laws,"<sup>1</sup> and its Global Action Plan emphasizes practical measures that states can take to reduce the numbers of stateless people. Such measures include birth registration and the reform of nationality laws, in particular, so that otherwise stateless children can acquire the nationality of the state in which they were born.

In Malaysia, it would seem that no such legal reform is needed. Although the country subscribes to a *jus sanguinis* principle of citizenship (Razali et al., 2015, p. 20), there are clear legal provisions to protect the status of otherwise stateless children. The federal constitution allows for a child born in Malaysia, who is

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**CONTACT** Catherine Allerton  [c.l.allerton@lse.ac.uk](mailto:c.l.allerton@lse.ac.uk)  Department of Anthropology, London School of Economics and Political Science, Houghton Street, London WC2A 2AE, United Kingdom.

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“not born as citizen of another country,” and who cannot acquire citizenship of another country by registration within one year of birth, to become a citizen of Malaysia by operation of law (UNHCR, 2013, p. 2). However, in reality, Malaysian citizenship has *never* been granted to a child on such terms (Razali, 2014). For example, in a 2015 case, a Malaysian father’s application for citizenship for his 5-year-old son was rejected. Since the parents were not married at the time of the boy’s birth, the judge stated that the boy should follow his birth mother’s nationality. The fact that the boy’s mother was a Thai national, who disappeared when he was 6 months old and has never been tracked down, was deemed irrelevant. The judge ruled that the boy (who had lived all his life in Malaysia) *could* apply for Thai citizenship and was therefore *not* a stateless child (Ho Kit Yen, 2015).

This and other similar cases highlight how, in Malaysia, statelessness as an issue is *always* embroiled in wider moral and political arguments, whether these concern mixed relationships, the status of children born out of wedlock, or (as we shall see) the question of “illegals.” Thus, even though laws exist to apparently prevent child statelessness, in practice, the path toward Malaysian citizenship for potentially stateless children is unlikely to be straightforward. Whilst approaches such as the #IBelong campaign that emphasize practical, technical measures to reduce statelessness are important, they will be ineffective in a country such as Malaysia if not backed up by political will. This is because, as I shall argue, statelessness is fundamentally an issue of (social, moral, and political) recognition and is not simply a question of the lack of citizenship (cf. Somers, 2008). An essential part of the analysis of contexts of and remedies for statelessness must therefore be an exploration of the moral and political claims surrounding the issue.

This article focuses on statelessness as an ambiguous and contested issue in the East Malaysian state of Sabah. This is a state in the north of the island of Borneo with very high numbers of migrant workers, where thousands of people, particularly children, have been described as being at risk of statelessness (Tenaganita, 2006). The article draws on fieldwork with the children of migrants and refugees in Sabah’s capital, Kota Kinabalu, and uses a two-pronged analysis to explore the politics of recognition in the state. Firstly, the article focuses on the lived experiences of refugee and migrant families, drawing out the fundamental vulnerability of irregularity in this context, and suggesting that the tenor of contemporary anti-statelessness campaigns does not reflect the problems and priorities of such families. Secondly, the article analyzes certain political debates and media discourses on stateless people in Sabah, exploring two factors that work *against* recognition: the presentation of statelessness as a nonissue and the assumption that stateless children are “street children.” Thus, the article shows how even acknowledging the existence of statelessness in Sabah is highly contentious, reflecting not only the political context, but also problems with the analytical category of “stateless persons.”

## Statelessness, citizenship, and recognition

One explicit focus of current UNHCR campaigns is to have more states become parties to the 1954 and the 1961 Conventions on Statelessness (UNHCR, 2014a, pp. 23–24). These conventions were a response to the stateless refugees of mid-20th century Europe, whose condition illuminated how “natural rights” counted for little in the absence of citizenship. It was Hannah Arendt, in *The Origins of Totalitarianism*, who first theorized the problem of statelessness in relation to these refugees. Arendt argued that statelessness entailed three losses: the loss of a home, the loss of government protection, and the loss of the “mutual recognition necessary for a political life” (Gibney, 2011, p. 50), what Arendt famously called the “right to have rights” (1968, p. 296). Arendt saw that the precondition for exercising human rights was the prior right of inclusion; this is what made the refugees’ loss of “mutual recognition”—in Somers’s terms their “ontological dehumanization” (2008, p. 16)—so devastating.

However, although Arendt’s move to put the noncitizen at the center of political thought remains powerful, more recent work on statelessness and citizenship questions the picture of pure exclusion that she presents and that seems so influential in current UNHCR campaigns. For example, in her subtle analysis of the situation of “Urdu-speakers” living in camp and noncamp situations in Bangladesh, Redclift questions the utility of abstract oppositions of “statelessness” and “citizenship.” Statelessness, Redclift argues, cannot be reduced to “a singular, or discrete, legal or social form” and does *not* tell a story “solely of exclusion” (2013a, p. 6; cf. Sigona, 2016). Focusing on Urdu-speakers’ lived experience (rather than abstract theorizations) reveals that “stateless people” can access rights, just as “citizens” can at times be denied rights. Redclift also argues that the influence of Agamben’s (2005) language of “exception,” which surrounds many contemporary analyses of refugees and displacement, “suppresses a political reading of the camp” (Redclift, 2013b, p. 309) and presents a “rather flattened” understanding of “stateless” and migrant populations (Redclift, 2013b, p. 312).

In arguing that “citizenship is about more than citizenship law” (2013a, p. 112), Redclift draws on the growing sociology of citizenship and, in particular, Isin and Nielsen’s argument that a proper understanding of citizenship requires a focus on those “acts” in which “subjects constitute themselves as citizens” (2008, p. 2). Recent work within this field has explored the implications of migrant and noncitizen “acts of citizenship,” including antideportation campaigns (Nyers, 2003), migrant counterconducts in the United States (Inda, 2011), and migrant activism at the Calais camp in France (Rygiel, 2011). Significantly, for the concerns of this article, Redclift argues for the need to bring the study of statelessness and “irregularity” *together*. Both statelessness and irregularity, she argues, are often presented as “a social or legal status that an individual holds,” whereas in reality both are better considered as unstable, ambivalent conditions that individuals can move “in and out of,” and may contest (Redclift, 2013a, p. 7; cf. Squire, 2011). Crucially,

Redclift notes that for both irregular migrants and “stateless” people, what is most important is not necessarily formal status but, rather, “rights, mobility and belonging” (Redclift, 2013a, p. 113). Although international campaigns tend to focus on the *de jure* stateless, their practical situation shares much in common with *de facto* stateless irregular migrants, who exist as “precarious residents” in the state where they make their lives (Gibney, 2011, p. 52).

By blurring the boundaries of citizenship and statelessness, the sociology of citizenship demonstrates how noncitizens can make claims to belonging through varied “acts of citizenship.” By contrast, the work of Somers (2008) shows how people with *de jure* citizenship can, through social exclusion, lose “meaningful membership” of their state. By exploring the contemporary “contractualization” of citizenship, Somers has argued that people “with nothing to offer”—most notoriously, the poor U.S. victims of Hurricane Katrina—can be “denied moral recognition” and rights “because they have no worth” (2008, p. 89). Such people effectively end up as “stateless citizens” in their own country. Somers’s work reinvigorates Arendt’s conception of citizenship as the right to have rights with a more political understanding of the moral and social recognition that rights claims involve (Redclift, 2013a, p. 170). This emphasis on (lack of) recognition and the moral responsibilities of states is also seen in Gibney’s (2014) theorization of the stateless as “unrecognized members” of the state in which they reside. In a powerful argument that, I shall show, has clear relevance to the Sabah case, Gibney argues that the injustice experienced by most stateless people is not some *general* lack of citizenship, but the fact that the *specific* state with which they have “deep connections” does not recognize their “moral claim to membership” (2014, p. 58).

If statelessness is, fundamentally, a question of states’ lack of moral recognition of all their members, then “solving” statelessness is clearly a deeply political task, that must in part involve honesty about the political *uses* of statelessness *by* states (Gibney, 2014, pp. 53–57). Yet, in the current UNHCR campaign, the main “solutions” put forward for statelessness emphasize “identification” procedures and reform to nationality laws (Fiddian-Qasmiyeh, 2016, p. 302). Such “solutions” draw on the rhetoric of what Reddy (2015) calls “legal triumphalism,” according to which law is an autonomous sphere with almost magical force, giving it the ability to transcend considerations of power, prejudice, and inequality. Within the terms of such legal triumphalism, argues Reddy, identification is reduced to documentation; that is, documents are given the power to “prove” identity. However, as this article explores, in many contexts, statelessness is not just an issue of *legal* identification but is embroiled in contentious politics of national and regional belonging.

## Research context and methods

### *Migration and irregularity in Sabah*

Sabah, once part of the Sultanate of Sulu, has long been a place of mixtures and migrations (see Figure 1). However, such flows have increased markedly since the



**Figure 1.** Map of Sabah island in Southeast Asia, with inserts showing sending locations of (A) Filipino and (B) Indonesian migrants.

1970s and 1980s. Firstly, between 1972 and 1977, a separatist war in the southern Philippines forced about 100,000 people to flee to Sabah (Kassim, 2009, p. 58). These Muslim Filipinos were recognized as refugees by UNHCR, given basic housing in resettlement villages, and initially received special permission to stay and

work from Sabah's chief minister (Kassim, 2009, pp. 57–58). Secondly, several of Sabah's key industries and services, including rural oil palm plantations, have been dependent on migrant labor (mostly Filipino and Indonesian) for decades. Sabah has the highest population growth rate and the highest proportion of "foreign" workers of any Malaysian state. Official population statistics put Sabah's 2015 population at just over 3.5 million, of whom 870,400 were "non-citizens."<sup>2</sup> However, such official statistics do not include Sabah's high numbers of undocumented workers or their dependents.

Foreign workers are often "demonized" in Sabah (Majid Cooke & Mulia, 2012, p. 152) and are subject to an increasingly restrictive set of immigration regulations. Migrant workers are meant to be temporary, are expected to move into or out of the country as required and are "in no way meant to integrate into Malaysian society" (Gurowitz, 2000, p. 867). There is no provision for permanent employment, and the permit system presupposes short-term contracts that "chain" workers to a particular employer (Pye, Daud, Harmono, & Tatat, 2012, p. 331). Unskilled and semiskilled workers are not allowed to bring their families with them to Malaysia and female domestic workers found to be pregnant are subject to rapid deportation (Chin, 1997, p. 371). Male workers may not marry local women, and children of migrants (who should not be in Malaysia) are unable to access health care or attend government schools (Pye et al., 2012, p. 332).

One inevitable consequence of such immigration policies and procedures is that many migrants and their children choose, are born into, fall into or are forced into (through the actions of their employers) irregularity. Many undocumented workers in Sabah are protected by what Idrus (2008, p. 156) describes as a system of "mutual illegal collaboration" between agents, police, and employers. However, during the regular public "crackdowns" in the state, such collaborative protection fails and workers and their families are detained and often subsequently deported (Nah, 2007, p. 45). Even former refugees, who were issued with a temporary pass known as IMM13 and are now categorized by UNHCR as "people of concern," may find their families slipping into irregularity (Kassim, 2009, p. 69).

## **Methods**

This article draws on qualitative data collected during a year of fieldwork research in Kota Kinabalu (KK) from August 2012 to August 2013. Research focused on the children of Filipino and Indonesian refugees and migrants, exploring issues of identity, illegality, belonging, potential statelessness, education, and work. Access to such children was initially secured through teachers and other adults working at or living close to informal learning centers in the city. In all, I paid 182 visits to such centers: 101 visits to four mostly "Indonesian" centers and 81 visits to five mostly "Filipino" centers. My role at these centers varied, depending on the center setup, and the needs of the volunteer teachers. At three centers, one of which was Indonesian (40 visits) and two of which were Filipino (25 and 35 visits,



respectively), I worked as a volunteer English teacher. At three centers that I visited less frequently (5, 7, and 9 visits each) and at KK's only official Indonesian school (33 visits), I mostly observed lessons and chatted with students during their break, whilst at one understaffed Indonesian center (23 visits), I was encouraged to utilize some sheltered outdoor space to involve children in different research exercises. For comparative purposes, I also visited two learning centers outside of the city: one on an offshore island with a large squatter settlement and one in an interior town with high number of immigrants working in the timber trade.

Through these visits, I collected information on 338 children in KK, aged 8 to 18 years, 191 of whom had at least one parent of Indonesian origin and 147 of whom had at least one parent or grandparent of Filipino origin. Fieldwork was conducted in the local language, Malay, as an individual researcher and, in addition to participant observation, drew on a variety of mixed methods. Questionnaires were used to collect information on all children's backgrounds and family setup, with children conveying information verbally or in their own writing. At the centers I visited most frequently, I also utilized several methods that have been proven to be particularly "child-friendly" (Punch, 2002). These included drawing, spider diagrams, mapmaking, group discussions, and open-ended worksheets encouraging children to reflect on, for example, differences between life in Indonesia versus life in Sabah. One hundred fifty-six children participated in four or more (in 54 cases, 10 or more) of these different activities, and 46 children wrote "holiday diaries." In the later stages of the fieldwork, 70 children were lent cameras and encouraged to take pictures of places, people and things that were important to them, later describing the images for me. I also conducted 29 semistructured "life history" interviews with those teenagers I knew best, either individually or in pairs, depending on their preference.

Though I tried to ensure that I had the same quality and type of data on Indonesian- and Filipino-origin children, it was otherwise difficult to control the selection of young participants. Given the vulnerability and, to a certain extent, "invisibility" of this population, the main criteria were children's interest in and comfort with talking to me and the relative safety of their learning center as a research setting. As fieldwork progressed and I got to know some individual children and their parents well, child-focused research in learning centers was supplemented with visits to families at their workers' housing or in squatter settlements. Twenty-five parents also completed detailed questionnaires on their own and their children's access to education. Three local research assistants were employed for two months purely to conduct a survey of working youth, who were otherwise difficult for me to access. The survey had 138 respondents, aged 11 to 23 (average age, 16). To give a sense of the exclusion that it revealed: 81% of those surveyed did not have a birth certificate and the *average* length of total education received was just 6 months. One of these research assistants, a young woman of Indonesian origin, also facilitated visits to several factories where children of migrants worked. To protect the identity of my research interlocutors, all names of adults and children are pseudonyms.

## Statelessness and lived experience in Sabah

For the #IBelong campaign, “solving” statelessness must begin with the identification and counting of “stateless people.” Campaign documents attempt to create a universal category of “the stateless” who are, in Gibney’s terms, seen as “victims of “statelessness per se” (2014, p. 57). However, understanding statelessness requires understanding not only, as we have seen, how it is intimately connected to citizenship but also how it is “plural and diverse,” as well as historically specific (Sigona, 2016, p. 265). In Sabah, statelessness is both unstable and highly contested. In a context of long-term cross-border movements and impoverished migrant families, there are no clear populations of “stateless people.” Rather, long-term exclusion and problems in acquiring birth certificates and other documents mean that many children are considered to be “at risk” of statelessness (Allerton, 2014; Razali, Nordin, & Duraisingam, 2015; Tenaganita, 2006). Potential statelessness is thus entangled with wider issues of irregularity and vulnerability. To explore this, I turn to the lived experience of potentially stateless people, a dimension that is, with some key exceptions (Redclift, 2013a, 2013b; Fiddian-Qasmiyeh, 2016), often missing from theorizations of statelessness.

Rozita, a young mother who was born in Sabah, was completely undocumented and despaired of ever having any identity documents. Her Filipino father came to Sabah as a refugee and she knew nothing about the identity of her mother, since her parents split up when Rozita was a baby. Rozita’s father remarried and moved to peninsular Malaysia, and Rozita was informally adopted and raised in a coastal village outside the city by an elderly woman. Rozita told me that she thinks she did once have a birth certificate and a copy of her father’s old passport. However, both documents were lost in a sequence of family moves after an uncle’s death. This kind of story of family dispersal, informal adoption, and the loss of documents was a common one for refugee families. Rozita now finds herself without any documents, with no sense of how she might ever get any, and with four children who all lack birth certificates. Ironically, although not officially recognized as belonging to (or even existing in) Sabah, Rozita works part-time, cooking meals at the government school that her children are unable to attend. Gibney’s approach to the stateless as “unrecognized citizens” seems particularly apt in her case (2014, p. 60).

Although a person without a birth certificate is not necessarily stateless, birth registration is essential to obtaining many other identity documents and is therefore a significant tool in statelessness prevention. Survey and ethnographic data collected for this research revealed that the majority of children of migrants lacked birth certificates. In a minority of cases this may be because parents lack knowledge of the birth registration process, but in most instances it is because they cannot register their children’s birth without a passport or ID card or an official certificate of marriage (Razali et al., 2015, p. 29). Many parents also actively avoid hospital births due to the high costs for foreigners and the fear (for those without valid identity documents) of being reported by hospital staff to the police (Nah, 2007,

p. 42). Divorce, house fires, theft, and scams had also led, in several cases, to a loss of documents. One boy, Jony, told me that his Filipino mother had previously held an IMM13 card, a form of documentation originally given to refugees (and that allows a person to live, travel, and work in Sabah), but had been “scammed” out of it. Although a minority of families of Indonesian or Filipino origin was fully documented and “legal,” the majority was of mixed and shifting legal status. People moved in and out of legality and into potential statelessness from a previous situation of being documented.

Very few children or adults involved in this research had any understanding of the idea of statelessness or saw this as relevant to their situation. Instead, they were concerned with “having a *pas*”: having valid documents, of whatever form. Without a *pas*, children feared being picked up by the police during regular “checking” operations and feared that undocumented family members might be arrested and detained. Without a *pas*, it becomes hard to travel to shops to buy food, to take children to learning centers, or to access health care. For children, irregularity often meant confinement to squatter settlements or workers’ housing. Nasira, an undocumented Suluk teenager, told me that although she wanted to go out beyond her squatter settlement, “If you don’t have a *pas* you are scared of the police and scared of going out.”

Therefore, for most migrant and refugee families, what mattered was not necessarily gaining Malaysian citizenship, but escaping irregularity. In Sabah, the desire to “have a *pas*” leads to documentary pragmatism, a distinctive attitude toward identification documents that is likely to be common in other contexts with long-term refugee and irregular migrant populations (cf. Redclift, 2013b, pp. 313–315). Families attempt to tactically acquire or borrow documents in a variety of different ways, even as these acquisitions and borrowings may have unintended and potentially problematic future consequences. Being documented or undocumented does not have any moral connotations for such families; one may be lucky or unlucky, brave or timid in pursuing “a *pas*.” Similarly, Malaysian citizens may obstruct or help with this pursuit. It is unlikely that any of the families involved in this research would condemn the actions of a clerk who received money in relation to late birth registration applications (*Daily Express*, 2013); rather, the clerk’s actions would probably be seen as moral and useful ones, given the risks, complexities, and politics surrounding birth registration in Sabah.

This documentary pragmatism does not necessarily link identity to documents, contrasting with the “legal triumphalism” that credits documents with the power to “prove” identity (Reddy, 2015, p. 4). To migrant families in Sabah, papers, cards, permits, and passes are all things that can be acquired, lost, or stolen: they do not necessarily reveal anything about a person’s subjective identity or the places to which they feel they belong. In one Bugis (Indonesian) family, the son, having previously been undocumented until he was 16, now had an Indonesian passport. By contrast, his older sister was now a Malaysian citizen, after becoming the adopted child of a distant, citizen relative. The mixed citizenship of these siblings was not

seen as a problem for their identity, but as a pragmatic response to an opportunity that had arisen at a particular point in time. However, it is also the case that, in their desire to work and survive in the city, families are at risk of exploitation from various actors. Employers who pay regular bribes to prevent immigration raids on their factories or workshops can use this protection as a way to keep workers docile and to benefit from the unpaid labor of grateful family members. Several of my child and adult research participants told me that police officers regularly collected 50 Ringgit payments from undocumented people, allowing them to escape arrest during checking operations. Unscrupulous visa or passport agents also exploit people's desires to have a *pas*, encouraging people to make complicated and expensive applications for documents but leaving them with nothing.

The lived experience of potential statelessness in this context can only be properly understood by considering it alongside irregularity. Take, for example, holders of IMM13 cards. As described earlier, these were given to Filipino refugees and could once (though no longer) be acquired by their descendants. The cards confer a status that is legal but temporary and that is lost if the pass is stolen or not renewed annually. The children of IMM13 cardholders are also not allowed to attend Malaysian schools. Such documents place people, including second or third generation refugee descendants who have never visited the Philippines, in a legal limbo of ongoing noncitizenship. Nevertheless, many people prefer to remain in such a potentially stateless limbo, renewing their cards each year, rather than pursuing the Filipino citizenship to which they might be entitled. During a document-processing visit to a Filipino learning center in Kota Kinabalu by the Philippines National Statistics Office, one Suluk girl told me that her family (IMM13 cardholders with distant connections to the Philippines) would *definitely not* be applying for Filipino passports (Allerton, 2014, pp. 31–32). Not only would such passports have required them to have work permits (whereas IMM13 cards simply require renewal) and would therefore put them at risk of irregularity, passports would also mark them as “Filipino” rather than as unrecognized Suluk Sabahans. For this family, what matters is not escaping statelessness (through acquiring the most easily available citizenship) but retaining documents that recognize some kind of (temporary, liminal) connection to Sabah, in the hope of holding out for the permanent residency cards they feel they deserve.

The complex story that emerges from migrants in KK is that being at risk of statelessness is not always the difference that *makes a difference* in people's lives. Despite UNHCR's assertion that stateless people “face greater everyday pressures than other groups” (UNHCR, 2014b, p. 14), in Sabah it is those in general whose status is “irregular” who are the most vulnerable. During this research, it was impossible to clearly distinguish “stateless children” from the wider category of “undocumented children,” since the daily experiences of such children are very similar (Allerton, 2014, p. 32). Both potentially stateless and currently undocumented children are denied access to education and health care, both fear their own or their family members' arrest in “checking” raids, and both face an

uncertain future in Sabah of perpetual “foreignness” and low-paid, unskilled work. Just as the dichotomy of the “deserving” forced migrant versus the “undeserving” economic migrant fails to capture the complex realities of many migrations, so too does any juxtaposition of the “most pressurized” legally stateless versus “irregular” migrants and their children.

### **Public discourse and (non)recognition of statelessness**

Having described some aspects of the entangled experiences of potential statelessness and irregularity in KK, this article now moves to explore the *politics* of statelessness in Sabah by examining certain public discourses in the state. As Majid Cooke and Mulia note in their analysis of newspaper coverage of the “moral panic” surrounding migration in Sabah, migrants are seen as “opportunists” and “cheats” and are usefully demonized by economic and political elites (2012, p. 141). When it comes to the potential statelessness of migrants and their descendants, two discourses are prominent: firstly, a refusal to see statelessness as a Malaysian problem and, secondly, the assertion that stateless children are “street children.” Such discourses lie at the heart of Sabah’s denial of “moral recognition” (Somers, 2008, p. 89) to its potentially stateless residents and workers.

### **Political denial of so-called stateless people**

Malaysia’s economic reliance on foreign workers has gone hand-in-hand with opposition to their presence and an obsession with the problem of “illegals.” Under Malaysian law, “only two categories of migrant are recognized—documented, or ‘legal,’ and undocumented, or ‘illegal’” (Hedman, 2008, p. 367). Thus, during Malaysia’s high-profile, public “crackdowns” on “illegals,” refugees lacking a recognized pass, asylum seekers, and stateless people are as likely to find themselves the targets of arrest as undocumented economic migrants (Nah, 2011). Such sharp distinctions between “legal” and “illegal” migrants, in addition to those between “locals” and (locally born, noncitizen) “foreigners” feed a Malaysian political discourse that often refuses to recognize statelessness as a problem.

In 2015, the Malaysian Home Minister Datuk Seri Dr. Ahmad Zahid Hamidi was quoted as remarking that there are in fact “no stateless people” in Malaysia (*Daily Express*, 2015). In response to a question from a senator on the number of stateless children in Sabah and government actions to deal with the issue, Zahid argued that there could not be any stateless people in Malaysia, because no one is allowed to enter the country “without legal travel documents.” Thus, a child of overseas migrant workers must follow the citizenship of his or her parents, since those parents cannot be working in Malaysia without valid documentation from their country of origin. Zahid’s strange logic conforms entirely with official immigration rules, even as it ignores the reliance of several major Malaysian industries on undocumented labor or the statelessness of Malaysians of Indian descent working in peninsular plantations (Paulsen, 2012). For many politicians, then,

statelessness is a kind of “nonproblem” in Malaysia, since it is thought to mask the more *real* problem of “illegal immigrants,” who are the responsibility of *other* states. This political perspective on statelessness is even more complex in Sabah, where suspicions over so-called stateless people are connected with longer-running political grievances concerning federal interference in Sabah’s autonomy (Lim, 2008).

In September 2012, a Royal Commission of Inquiry (RCI) was set up in Sabah to inquire into the presence of immigrants in the state and to explore whether such immigrants had been unlawfully issued with Malaysian citizenship. This Royal Commission had long been demanded by Sabah-based political parties, who hoped to finally clarify the existence of what is known as Project IC. This refers to allegations concerning the unlawful and rapid granting of citizenship (IC, identity card) to Muslim immigrants in previously majority-Christian Sabah as a way to bolster electoral support for the (Malay Muslim-dominated) ruling coalition of UMNO (Sadiq, 2005, p. 116). Project IC has been seen by many indigenous Sabahans as a way for the federal government to alter the demographic make-up of Sabah, where numbers of Muslims have rapidly increased, but the local (Christian) Kadazandusun, Murut, and Chinese population has declined (Sadiq, 2005, p. 108).

This uniquely Sabahan political perspective on irregular migrants as potentially illicit future citizens further clarifies why statelessness might be a nonissue for many people in the state. According to those who consider there to be an *ongoing* Project IC, statelessness is simply the latest ruse through which “illegal immigrants” may try to access Malaysian identity cards. As Somers has noted, “while citizenship is the language of civil society, it is a language built as much ... on exclusion ... as it is on inclusion and solidarity” (2008, p. 69). In Sabah it often seemed as though there was a continual attempt to exclude migrants and their descendants from any more regularized status. During my research, I noticed how often Sabahans referred not to stateless people but to “so-called stateless people.” The implication of the “so-called” prefix seemed to be that people who are described as “stateless” are not *really* stateless and that this issue is a mirage, obscuring other, more important issues; that is, these are “so-called” stateless people because their apparent statelessness is simply a mask, both for illegality and for further demographic and political engineering. Again, we are reminded that legal and technical solutions to statelessness count for nothing without moral and political recognition.

In December 2014, the RCI finally published its long-awaited report. This confirmed the existence of some form of Project IC in Sabah, though failed to blame any particular parties and was therefore immediately criticized as having been watered down for political purposes. Interestingly, the issue of statelessness *does* appear in the report. The eighth and final Term of Reference that the RCI Commissioners were charged to investigate was:

(h) to enquire into the number of immigrants in Sabah who were issued blue identification cards or citizenship by taking into consideration their status as stateless persons. (RCI Commissioners, 2014, p. 7)

In the evidence sections of the report, three (numbered and named) government witnesses who gave evidence to the commissioners *do* briefly mention statelessness (RCI Commissioners, 2014, pp. 63, 76, 124). However, despite these witness statements, in Chapter 3 of the RCI report, Assessment and Findings, term (h) of the terms of reference is no longer listed or commented on. It seems that, even in an apparently independent report, statelessness has disappeared as an issue worthy of comment, reflecting broader political perspectives that it is a straw man, a “non-problem” that does not require recognition.

### ***Stateless children as “street children”***

Significantly, when the RCI report does consider stateless people, it primarily gives space to stateless *children*. Moreover, such children are, quite noticeably, associated with *street children*. Witness 77, Muhd. Azan bin Hussin, who runs the Children Unit of Sabah’s Welfare Services Department, defines a stateless child as “a person who is under 18 years old, does not have any citizenship status and [*sic*] without documents.” His additional comments are entirely concerned with procedures for housing children found “loitering” on the streets, including the eventual detention (and presumably, deportation) of such “noncitizen” children once they reach 19 years of age (RCI Commissioners, 2014, pp. 133–134). Witness 191, Chua Choon Hwa, from the Federal Ministry of Women, Family and Community Development, notes that the ministry defines “street children” as “all children wondering [*sic*] in the streets” (RCI Commissioners, 2014, pp. 139–140). Finally, in the Assessment and Findings section of the report, the RCI commissioners note the significant problem of the “children of illegal immigrants and refugees who do not have access to even basic education and who are seen at times, to be roaming the streets causing public nuisance etc.” (RCI Commissioners, 2014, p. 319).

The association of stateless children with street children is extremely common in a variety of media and other reports on Sabah. Such reports tend to argue that Sabah is dealing with a “generation of stateless children” and faces problems of future “social unrest.” The well-known pictures of the Lost Children of Sabah, part of photographer Greg Constantine’s Nowhere People project documenting stateless people, predominantly focus on boys on the streets and in a market, with one caption noting that “untold numbers of children ... fend for themselves on the streets.”<sup>3</sup> A newspaper article arguing against giving birth certificates to stateless children, quotes the Sabah Progressive Party President as saying that stateless children are “street kids who had been separated from their parents,” whether because they were abandoned or because their parents “have been detained and deported to their countries of origin” (*Rakyat Post*, 2014). A more recent article in the same newspaper on the “ticking time bomb” of stateless street children quoted Sabah

Assemblyman Junz Wong's comments that "the perennial problems of stateless street kids had escalated to a new alarming height of social and security problems" (*Rakyat Post*, 2016).

Ethnographic, sociological, and development-focused research with "street children" has long explored both the difficulties of precisely defining who counts as a street child and the use of "street children" as a "stigmatizing label" that contributes toward negative reaction toward certain urban children (Panter-Brick, 2002, p. 151). Such children are often defined as an antisocial element and a public menace, since they are seen as people "out of place": children outside of the home and therefore outside of the socializing control of adults. Glauser notes that the concern with "street children" often seems to arise "because they disrupt the tranquility, stability and normality of society" (1997, p. 153). However, there is no research in Sabah that justifies the assumption *either* that there are considerable numbers of children living on the streets in the state *or* that the category of "stateless children" can be elided with that of "street children." A local academic study into street children in the state was halted as most of the children thought to be street kids had family and had not, as was assumed, been abandoned (*Borneo Post*, 2013). In 2015, the Sabah Minister for Community Development and Consumer Affairs stated that since 2007 there had been 1,557 street children housed in Kota Kinabalu Protection Homes, of whom 1,541 were subsequently claimed by their parents (*New Straits Times*, 2015). This suggests that very few children are abandoned by their migrant parents or forced to live on the streets and that the association stateless = street ignores the fact that the majority of children at risk of statelessness are living with their families, even if their parents are detained or deported. Kamilah, a 10-year-old girl studying at a church-run learning center visited for this research, had not seen her Indonesian parents for some time, as they were both being held in a detention center. However, like many children of migrants, she had extensive family links in the city and was being looked after by a grandmother and aunt. Similarly, 10-year-old Azmir's father had been deported to the Philippines, but Azmir was cared for by other family members until his father was able to return to Sabah.

Public discourses on stateless children in Sabah associate such young people with the category of "street children" in order to stigmatize them, to mark them as different, as disruptive, as a public menace. This allows such children to be considered a kind of anomaly, outside of the bounds of "normal" family life. Indeed, it even allows stateless children to be located outside of the category of "real" children. If children are stateless because they are on the streets, and if they are on the streets because their "illegal immigrant" parents have been deported or have abandoned them, then the moral responsibility for this problem lies not with Sabah but with these parents and with the countries to which such families "belong." Given the reluctance by politicians and locals to acknowledge statelessness as a genuine problem in Sabah, the ongoing conflation of stateless and street children needs to be considered not as a sociological reality but as a politically-motivated *mis*-recognition.



## Discussion and conclusions

In a discussion of the exclusion of stateless Palestinians from UNHCR's #IBelong campaign, Fiddian-Qasmiyeh quotes the UN High Commissioner for Refugees' comment that the Palestinians' was a "very specific situation" that required a "political solution" (2016, p. 306). Not only does Fiddian-Qasmiyeh critique the language of "exceptionalism" that excluded Palestinians, she also argues that the commissioner's remark "depoliticizes other contexts of statelessness by suggesting that these can readily be addressed through apolitical technical and legal mechanisms" (2016, p. 306). This article has contributed to such critical work on the (often unacknowledged) politics of statelessness by exploring the lack of political will to seriously consider the existence and impact of statelessness in Sabah. As Gibney (2014) makes clear, statelessness cannot only be understood from the perspective of international law but needs to be theorized politically so that we can better understand the reasons why states might keep certain people stateless and might reject their claims to belonging. In Malaysia, statelessness is entangled with public anger about and political discourses on "illegal immigrants." This is why, despite the existence of legal provisions that should, theoretically (and certainly according to the #IBelong campaign), prevent child statelessness, the official recognition of stateless children is highly contested.

In Sabah, in a context of uncertain and shifting legal status, migrant families adopt an attitude of documentary pragmatism, attaching no moral significance to legal identity, but attempting to escape irregularity through tactical acquisitions and borrowings of documents. This attitude involves a preference for any form of Malaysia-based documentation, such as an IMM13 card, even if such a document places a person in legal limbo and in a position of potential statelessness. Following other work on the connection between irregularity and statelessness (Redclift, 2013a, 2013b), it is possible to see these document acquisitions as "acts" of (noncitizen) citizenship (Isin & Nielsen, 2008) that stake a claim to membership. However, despite the necessity of acknowledging that the stateless can act as citizens, and that statelessness is not only about exclusion (Redclift, 2013a, p. 6), it is important not to be too optimistic about peoples' abilities to act and to have a voice in a context of profound vulnerability. If some migrant and refugee families can exercise agency in acquiring documents, others seem to inhabit a position of documentary hopelessness. Consider Rozita, the young, undocumented mother raising her four children in a small wooden house by the sea. One afternoon, after returning from work, Rozita sat with her children at a small outside table, drinking glasses of orange Fanta and looking across the bay to new developments on the other shore. She laughed and said, "I've never been anywhere else in Sabah. Just this place here." Then she added, "I don't know how to get documents for my children. I want to go to Immigration or the Police to ask them, but I am scared."

Working informally at a school and raising her children in the state where she was born, Rozita is clearly an "unrecognized citizen" in Gibney's (2014) terms, a

person who is not simply “excluded” but integrated in various ways into collective life. Emphasizing her *inclusion*, even in the midst of documentary hopelessness, is particularly important in outlining her “deep connections” (Gibney, 2014, p. 58) to Sabah and her moral claims to membership. However, Rozita’s claims to membership are not recognized by the state in which she lives. This is why, despite their practical inclusions, she and her children also lack the right to have most rights: the right to health care, the right to go to school, the right to travel without fear of arrest. Whether or not Rozita and her children are *de jure* stateless (and they certainly seem to be prime candidates), it is not statelessness as such that has led to their ambiguous marginalization but Sabah’s refusal to look past the “irregularity” of their situation.

Contemporary theorizations of citizenship and statelessness have rightly emphasized the “mutual recognition” that is at the heart of social inclusion (Somers, 2008; Redclift, 2013a, 2013b). But what, exactly, does the *failure* of such recognition involve? In her analysis of the victims of Hurricane Katrina, Somers gives one account of such a failure, drawing attention to exclusion as a result of the successful “contractualization” of citizenship in the United States (2008, p. 98). This article, by contrast, has drawn attention to other ways in which mutual recognition fails: the denial of the very existence of “stateless” people, together with the *misrecognition* of “stateless children” as “street children.” However, although, like Katrina’s victims, the potentially stateless residents of Sabah are thought, in local eyes, to have little moral worth, they do, by contrast with those victims, have something “to offer” (Somers, 2008, p. 89). What adults and children have to offer is a constant, docile supply of undocumented labor for Sabah’s factories, shops, car washes, timber yards, farms, and plantations.

This article has described how, in the RCI report on immigrants and unlawful citizenship in Sabah, subdued acknowledgment was given to the long-suspected Project IC, in which Muslim immigrants’ votes were apparently bought with illicitly rapid citizenship. In response to this report, some Sabahan politicians have recently put forward the idea of withdrawing all Malaysian identity cards issued in the state and reissuing Sabah ICs (Carruthers, 2016, pp. 5–6). This Sabah IC would only be available to “genuine Sabahans,” and the process of withdrawing previous cards would presumably root out the “illegals” who have been falsely issued with Malaysian ICs. Such a proposal has significant ethical challenges, since it raises the question of what should be done about the Sabah-born children and grandchildren of those who pragmatically acquired Malaysian citizenship during Project IC (Carruthers, 2016, p. 8). At a time when statelessness is high on the international agenda, Sabahan politicians seem prepared to put further generations at risk of statelessness. But is a child born and raised in Sabah less “genuinely” Sabahan if it is revealed that her grandfather accepted Malaysian citizenship in return for his vote in an election long ago?

The prospect of Sabahan officials recalling all identity cards in order to verify whether the holder is a “genuine” Sabahan illustrates the very real problems

involved for irregular migrants and their families in becoming “visible.” Such problems, however, are underplayed in current campaigns against statelessness. Determining whether a person is a stateless person can never be a simply technical, legal matter. If it were, more people would presumably pursue stateless determination procedures, rather than fearing the consequences of making themselves visible to state officials. As this article has argued, statelessness cannot be approached as a matter only of legal identity but must be understood alongside irregularity and in the context of complex political and moral claims.

## Notes

1. <http://www.unhcr.org/ibelong/what-does-it-mean-to-be-stateless/>.
2. <http://web.archive.org/web/20160212125740> and <http://pmr.penerangan.gov.my/index.php/info-terkini/19463-unjuran-populasi-penduduk-2015.html>.
3. <http://gregconstantine.photoshelter.com/gallery/The-Lost-Children-of-Sabah/G0000R6usl3l9O10/>.

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