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Statelessness and the Lives of the Children of Migrants in Sabah, East Malaysia

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Abstract

This article explores issues involved with researching statelessness ‘on the ground’ during ethnographic fieldwork in Malaysia with the children of migrants and refugees. It argues that many of these children, whose parents or grandparents originate from Indonesia or the Philippines, lack an ‘effective nationality’. However, rather than statelessness or illegality per se, what dominates these children’s lives is their perpetual ‘foreignness’. Even when children might be able to have their citizenship recognised by a parental country of origin, families often prefer to remain undocumented, and to wait (perhaps indefinitely) for the Malaysian citizenship they perceive as rightfully theirs.

Keywords

statelessness – migration – citizenship – children – Malaysia – Sabah

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The primary injustice the stateless experience (...) is not that they cannot find a state to grant them citizenship but that the state which should grant them citizenship will, for various reasons, not do so.¹

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1 Matthew J Gibney, ‘Statelessness and the Right to Citizenship’ (2009) 32 *Forced Migration Review* 50, 50.



1 Introduction

In printed and web-based material, stateless children are commonly symbolised by the image of a young, wide-eyed child, looking forlornly into the distance. Such images are often, though not always, accompanied by text suggesting that stateless children are 'lost,' 'lacking an identity' or 'a place in the world'. An example of this kind of approach would be many of the photographs of Greg Constantine, a photojournalist who has done much to highlight the issue of statelessness in Asia. Constantine's photographs of 'The Lost Children of Sabah' – one of several cases in his 'Nowhere People' project – focus predominantly on children working in a fish market and usually portray an image of forlorn hopelessness.²

Such images are in strong contrast to my own experiences acquired through researching the lives of children at risk of statelessness in Sabah, East Malaysia. These are moving images of children performing choreographed dances to music emerging from mobile phones, or jumping high over elastic in the yard of a learning centre. From August 2012 to August 2013, I carried out ethnographic fieldwork in the city of Kota Kinabalu with the children of Indonesian and Filipino migrants. Ethnography, the primary methodological tool of anthropologists, aims at uncovering, through the sharing of daily experiences, people's taken-for-granted and everyday understandings. Thus, in addition to researching the conditions in which these children lived, and the problems that they faced, I wanted to uncover children's own perspectives on their past, present and future. Though I knew children who lived in difficult circumstances, who had faced past adversity or a highly uncertain future, it would be hard to describe any of these children as 'lost' or as 'nowhere people'. Indeed, one of my strongest memories from fieldwork is of an eleven year-old boy who, in response to my question about his ethnic origins, looked fiercely at me and exclaimed, 'I am a person from here!'

This paper, written just a few weeks after ending fieldwork and leaving Malaysia, represents an early reflection on some of the issues encountered in researching statelessness 'on the ground'. It aims not only to explore the difference between 'legal' and 'effective' statelessness, but also to highlight people's

2 See Greg Constantine, 'Nowhere people project.' <<http://www.nowherepeople.org/index.php?s=0&mi=2&pt=1&pi=10000&p=4&a=0&at=0>> accessed 20 October 2013.

desires for the nationality of their choice. Statelessness, as an international issue of concern, tends to be approached primarily in terms of law and policy. As such, it might be assumed that the primary obstacle the stateless wish to overcome (in whatever way possible) *is* their statelessness. However, in order to write an ethnographic account of statelessness, we need to consider the ways in which, in real people's lives, 'statelessness' might merge with wider issues of (il)legality and belonging. Moreover, as I shall argue, we need to take seriously people's sense of exclusion from the nationality to which they feel they belong.

2 Children of Migrants in Sabah

In Malaysia, there are four main groups of people who are described as either stateless or at risk of statelessness: Rohingya refugees from Burma, Malaysians of Indian descent, members of the traditionally nomadic, boat-dwelling Bajau Laut/ Sama Dilaut community, and the children of refugees and migrants in Sabah, north Borneo. A glance at many advocacy publications on statelessness shows that children of migrants in Sabah are frequently mentioned as an example of a stateless population.³ However, determining the precise legal status of many of these children is in fact extremely complicated, as I myself am only just beginning to discover.

The state known today as Sabah has long been connected to the wider Southeast Asian and South China Sea region through trade and migration routes.⁴ However, the migrations that are most relevant to the legal status of the children I know began in the early 1970s and continued through the 1980s, when Muslim refugees from the civil war in the Southern Philippines arrived in Sabah.⁵ At the same time, the numbers of Indonesian workers moving to Sabah to work in the timber industry and on oil palm plantations began to steadily increase. Since then, as Sabah's economy has become increasingly reliant on migrant labour, and as family members have come to the state to join earlier migrants, the numbers of 'foreigners' in the state have rapidly grown. In the last census (2010), non-Malaysian citizens accounted for 27.81% of

3 Plan and UNHCR, *Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights* (2012) 10.

4 See Bilson Kuras, 'Migrant Labor: The Sabah Experience' (1998) 7 *Asian and Pacific Migration* 200, 281-295; Koji Miyazaki (ed), *Making of multi-cultural Sabah* (Tokyo, Research Institute for Languages and Cultures of Asia and Africa 2002).

5 Azizah Kassim, 'Filipino Refugees in Sabah: State Responses, Public Stereotypes and the Dilemma over their Future' (2009) 47 *Southeast Asian Studies* 58.

Sabah's total population of 3.2 million people.⁶ However, the actual number of 'foreigners' is likely to be even higher, since the census figures do not include undocumented migrants.⁷

Today, foreign workers continue to be found in timber mills and on plantations, as well as in construction, agriculture, transport and service industries, including informal domestic service. Yet, despite this economic reliance on migrants, there is considerable public and political opposition to their presence, and the authorities have initiated various 'crackdowns', rounding up and deporting thousands of undocumented workers. Malaysian immigration policy treats migrant labour as 'fluid' and unattached. Unskilled and semi-skilled workers (with the exception of domestic workers) are only allowed to stay in Malaysia for five years, after which they should return home and stay for six months before re-entering Malaysia.⁸ Such workers are not allowed to bring their families with them to Malaysia, or to marry or have children whilst in Malaysia.⁹ Indeed, there is a very real sense in which the children of migrants are considered 'illegal' simply because of being born to foreign workers. This may be one reason why their exclusion from government schools – noted as a serious problem by the UN Special Rapporteur on the right to education – does not attract much local opposition.¹⁰

In reality, and despite such immigration policies, migrant workers have multiple ties and attachments to Sabah, and as people have married and had children, the legal status of their families has become very complicated. Families face problems in applying for and renewing documents, and have their desire for legality exploited by unscrupulous agents, police and others. For a variety of reasons, many of the children of migrants do not have their births registered. These reasons range from lack of knowledge about the registration process, avoidance of hospital birth due to the high cost for foreigners, the irregular migration status of parents (and concomitant fear of being reported to immigration), and parents lack of a marriage certificate.¹¹

6 Department of Statistics Malaysia, 'Population Statistics Malaysia' (2010). <http://www.statistics.gov.my/portal/download_Population/files/population/05Jadual_Mukim_negeri/Mukim_Sabah.pdf> accessed 18 October 2013.

7 Azizah Kassim, 'Cross-Border Movement of Foreign Workers in Malaysia: A Comparative Analysis' (2005) 3 *Master Builders Journal* 78, 82.

8 *Ibid* 79.

9 Amnesty International, *Trapped: The Exploitation of Migrant Workers in Malaysia* (2010, ASA 28/02/2010) 15.

10 UNHRC, *Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum: mission to Malaysia* (20 March 2009) UN Doc. A/HRC/11/8/Add.2, 14.

11 Tenaganita, *Acting Today for Tomorrow's Generation: Regional Conference on Stateless/Undocumented Children in Sabah* (16-18 November 2005, Kota Kinabalu, Malaysia) 31-43.

The families that I know in Sabah span the full range of possibilities of documentation: from families where parents and children are all fully documented and 'legal' to those where no family members have any valid legal documents. However, the majority are somewhere between these two extremes, including many families where members have wildly varying legal statuses. For example, one family consisted of: a father who possessed a 'Permanent Resident' identity card, a mother with an expired IMM13 (a document, renewed annually, allowing refugees and their families the right to remain in Malaysia), a grandmother with no documents, an older sister with full Malaysian citizenship thanks to her (paid) 'adoption', a brother with an IMM13, and three younger siblings with no documents. But do difficulties in accessing and renewing documents, when combined with the length of time that parents and grandparents have been absent from their home countries, mean that these children are either legally or effectively stateless?

3 'Statelessness' on the Ground in Sabah

According to the currently accepted definition of the United Nations High Commissioner for Refugees (UNHCR), outlined in the 'Prato Conclusions', an individual is considered legally stateless if all states to which he or she has a 'relevant' or 'factual' link fail to consider the person as a national.¹² In Sabah, children thought to be at risk of statelessness have factual links with Malaysia (as their country of residence and - in the vast majority of cases - of birth) and with at least one other country (usually Indonesia or the Philippines, from where their parents or grandparents originated). Therefore, in the case of children born in Sabah but considered 'foreign' by the Malaysian authorities, the key question is whether or not they would be considered nationals by Indonesia or the Philippines. In the case of children of Indonesian parents, this issue is fairly straightforward. Although many children of Indonesian migrants born in Sabah lack documents, there is an Indonesian consulate in Kota Kinabalu which regularly issues birth certificates and passports for the children of its nationals. For children of Indonesians living in the interior of Sabah, the expense of travelling to the city may prohibit the acquisition of such documents, making recognition of Indonesian citizenship theoretically possible,

¹² UNHCR, 'Expert Meeting: The Concept of Statelessness under International Law, Summary Conclusions'. (2010, Prato, Italy). See also Open Society Justice Initiative, '*De Jure* Statelessness in the Real World: Applying the Prato Summary Conclusions' (*Open Society Institute* 2011) 4.

but practically difficult to achieve. Nevertheless, children of Indonesians are fairly unlikely to fall into the category of *de jure* stateless children.

The situation for the children and grandchildren of Filipino nationals is much more complex. The Philippines does not have a consulate in Sabah (on the island of Borneo) but in Kuala Lumpur (in peninsular Malaysia). This is largely because of ongoing political sensitivities surrounding the Philippines' historical claim to Sabah as a former part of the 'Sultanate of Sulu'.¹³ This 'claim' is hotly disputed by 'native' Sabahans, and its political fallout contributes to anti-Filipino sentiment in the state.¹⁴ Moreover, it is practically difficult for Filipinos in Sabah to obtain documents, given both the expense of travelling, and the fact that holders of IMM13 'refugee' cards are unable to leave Sabah. The majority of those who might use the services of mobile registration units (which occasionally visit Sabah) do not know of their existence. Thus, whilst the government of the Philippines is known to be 'generous' in granting citizenship to even the undocumented children or grandchildren of refugees and migrants who claim it, *in practice* most are unable to make such a claim. Though the extent to which this renders the descendants of Filipinos vulnerable to statelessness may be debatable, such people clearly lack what has been termed an 'effective nationality'.¹⁵

During my fieldwork with children and their families over the past year, my attention has also been drawn to the emotional realities that complicate discussions of citizenship or belonging on the ground. Take 10 year-old Aisyah, a Suluk girl holding an IMM13 card, whose grandparents came to Sabah as refugees in the 1970s. Once, during a discussion with her class about the differences between Sabah and the Philippines, Aisyah told me: 'I don't know anything about the Philippines'. She has no family that she knows of left there, has never been there, and explicitly refuses to discuss it as a place with which she should have any connection. As holders of IMM13 cards, Aisyah and her parents are

13 On the Sultanate of Sulu see James F. Warren, *The Sulu Zone, 1768-1898: The Dynamics of External Trade, Slavery and Ethnicity in the Transformation of a Southeast Asian Maritime State* (Singapore University Press, 1981).

14 In 2013, such sentiments were enflamed when an armed group, claiming to represent the modern-day Sultan of Sulu, entered Sabah from the Philippines. The 'Lahad Datu stand-off' ended in violence and has led to the creation of a special security zone in eastern Sabah. See Associated Press, 'Malaysia launches air strikes against squatter sultan's Filipino army' *The Guardian* (Kuala Lumpur, 5 March 2013) <<http://www.theguardian.com/world/2013/mar/05/malaysia-bombs-borneo-expel-sultan>> accessed 21 October 2013.

15 Brad Blitz, 'Advocacy Campaigns and Policy Development' (2009) 32 *Forced Migration Review* 25, 25-26.

'legal', in the sense of being allowed to remain in Sabah. However, they still lack a nationality. Whether or not the government of the Philippines would recognise them as citizens, and notwithstanding the inability of Aisyah and her brothers to attend Malaysian government school, the important point in their case is that they do not want to be Filipino citizens, since they feel they belong in Malaysia. Thus, when the Filipino learning centre, where Aisyah studied, organised document-processing by the Philippines National Statistics Office, neither Aisyah nor her brothers were interested in applying for such documents. This implies that for some people, the impulse to escape statelessness is by no means as strong as the impulse to 'hold out' for a particular, preferred nationality that might be gained in the future.

Studying statelessness on the ground in Sabah is complicated, not only by such cases of long-term residence by people lacking either an effective nationality, or by their possible preference for temporary stateless over Filipino nationality, in order that they might eventually gain the Malaysian nationality they feel they deserve. It is also complicated by the reality that many refugees from the Philippines originally came to Sabah to escape fighting, in which they were as likely to have been killed by their national army as by Muslim separatists. It is ironic that many Suluk people, who express ambivalence towards what they see as the 'colonial' Philippines state in Muslim-majority areas of that country, are simply treated as 'Filipinos' by Malaysians in Sabah. Some of the children of such 'Filipinos' had heard stories of violence and warfare from their parents and grandparents, and repeated to me the opinion that, whatever difficulties were experienced in Malaysia, it was at least safer than the place from which their family originated. Recent reports of fighting in and around Zamboanga city, in the south of the island of Mindanao,¹⁶ illustrate the reality of such safety concerns for those who lack desire to 'return' to the Philippines. Moreover, ongoing violence in the southern Philippines, from which many people continue to flee, complicates any easy separation of earlier 'refugees' from contemporary 'economic migrants'.

On the ground, statelessness as a distinctive issue often disappears from view, since it is almost completely entangled with wider issues of 'illegality'. Even if one were clearly able to separate 'stateless children' from 'undocumented children', their practical experience is in fact very similar. This is why, despite their differing ethnicities and family histories, and despite the different degrees of assistance offered by their apparent 'home' countries, the children of Indonesians and Filipinos actually share many common experiences.

16 BBC, 'Rebels and troops resume fight in southern Philippines' *BBC* (14 September 2013) <<http://www.bbc.co.uk/news/world-asia-24089553>> accessed 14 September 2013.

Children who lack legal documents fear being picked up by the police during one of the regular operations – on buses, in shopping centres or in squatter settlements – aimed at ‘checking’ documents. This is particularly the case for children aged over 12, the age at which young Malaysian citizens are supposed to acquire an identity card. Whatever the complexity of legally establishing an individual as ‘stateless’, in Sabah (as has been argued for other contexts¹⁷) legal statelessness must be analysed alongside the kind of ‘effective statelessness’ created by irregular migration. Indeed, given that holders of IMM13 passes are potentially stateless but nevertheless legally documented, it remains to be explored whether, in this specific context, there might be some advantages to being ‘stateless’ over being ‘undocumented’.

4 Can there be an Ethnography of Statelessness?

The entanglement of statelessness with wider issues of illegality in Sabah makes its ethnographic exploration somewhat tricky. During my fieldwork with the children of migrants, I was able to observe and explore children’s experiences of and perspectives on many issues, including friendship, documents, the police, schooling, work, families and dancing. I observed the limitations that illegality placed on children’s lives, and their occasionally defiant responses. I laughed as children, so different to those conventional images of forlorn statelessness, made constant jokes about ethnicity, about police checkpoints and about corruption. I also saw a frustration amongst some teenagers as they became aware that, in their perpetual status as ‘foreigners’, they are also doomed to do the jobs (cleaning, construction, factory-work) that ‘foreigners’ do. However, ‘statelessness’ as such was not something that I could explore ethnographically, given both the uncertainties surrounding people’s legal status, and young people’s own lack of awareness of this legal concept.

What children and young people are aware of is the power of documents in their lives. They are also profoundly aware of their own lack of power in the face of ever-changing regulations, corruption and, in some rare cases such as a boy whose father sold his birth certificate on the black market, unreliable family protection. When I asked children why they thought children such as themselves – children considered ‘foreign’ and treated as unwanted by the wider society until old enough to take up the kinds of menial labour performed by

17 Jacqueline Bhabha, ‘From Citizen to Migrant: The Scope of Child Statelessness in the Twenty-First Century’ in Jacqueline Bhabha (ed) *Children without a State: A Global Human Rights Challenge* (The MIT Press 2011).

'foreigners' – could not attend government schools, their answers were revealing. The most common answers were 'because foreign children don't have birth certificates' and 'because foreign children don't have proper documents.' For these children, it is their lack of documents that prevents them from receiving Malaysian education. However, the reality is that even children with 'proper' documents are unable to attend government schools if those documents state that they are 'non-citizens'. Unlike other contexts, it is not statelessness or illegality *per se* that prevent children from accessing education (or health care) in Malaysia. Rather, it is their perpetual 'foreignness', their exclusion from Malaysian citizenship.

In this paper I have given a very preliminary account of the difficulties of determining the 'statelessness' of the children of migrants in Sabah, and the entanglement of this issue with other issues on the ground. However, I have also tried to show how, in this context, people do not necessarily desire the nationality that might be most easily available to them. One young woman I knew well had a Filipino father and an Indonesian mother, parents who – like many such couples – had met as migrant labourers in Sabah. She once confessed that she had never tried to gain either Filipino or Indonesian identity documents. Rather, for as long as she is unable to gain a Malaysian identity card, (and whatever her legal position might in fact be) she considers herself to be 'stateless'. She may be very unusual amongst those I knew in explicitly referring to statelessness rather than 'documents', but her sense that her 'rightful' identity is Malaysian, is common. Her and the other children and young people I knew do not consider themselves 'nowhere people'. This is why, in considering statelessness, we must not neglect broader issues of justice and human rights, or the fact that children of migrants may not simply desire 'documents', but recognition of their right to be considered 'people from here'.