Sometimes at the nexus where migration and separated children occurs, statelessness is also known to be present. This is particularly true in the case of Malaysia – the situation I was asked to speak about today. I’ll start with a brief description of the larger problem of statelessness around the globe and then discuss the situation of separated and stateless children in Sabah, Malaysia.

Who is a stateless person?

The UN Convention relating to the Status of Stateless Persons - a stateless person is anyone who is not considered a national by any State under the operation of its law.

What does it mean to be stateless?

Having no legal protection. No right to participate in political process. Poor employment prospects and poverty. Little opportunity to own property. Travel restrictions. Social exclusion and harassment. No healthcare and education.

Where are stateless people?

No region is untouched. Refugees International believes the low end estimate to be over 11 million. They are found among individuals from the former Soviet bloc, some of Thailand’s ethnic groups, the Bhutanese in Nepal, Muslim minorities in Burma and Sri Lanka, some Palestinians, Europe’s Roma, the Bidoon in Kuwait, Bahrain, Saudi Arabia, and United Arab Emirates, children in the Dominican Republic and Malaysia, individuals in Cote d’Ivoire, specific cases in the Horn of Africa, ethnic minorities such as the Batwa ‘Pygmy’ and Banyarwanda of the Great Lakes Region of Africa, Bihari and Rohingya in Bangladesh, Kurdish populations, some Meskhetian Turks, and Zimbabweans of Indian descent or with links to Malawi and Mozambique.

What are the paths to childhood statelessness?

The main paths to citizenship: by blood, by birth, and by naturalization. Through citizenship by blood (jus sanguinis) a newborn child can obtain nationality through one or both parents.

This means one can obtain a parent’s nationality regardless of one’s country of birth.

Alternatively, a newborn child obtains nationality from the country of birth regardless of parental citizenship through citizenship by birthplace (jus soli).

One can also obtain citizenship through naturalization, a process by which a state regulates how a person can change from one nationality to another.

But there are sometimes malfunctions!
Children can become stateless when a state collapses or when newly formed nations may write laws excluding minorities or ethnic groups from citizenship. (ESTONIA)

Families who leave homes and possessions during political crises expecting to return may flee their country without identification or lose proof of citizenship and find themselves stranded. (BANGLADESH)

Nationality of a child born to parents from different countries is a particular concern when laws treat men and women differently. (SYRIA)

In the case of migrants, children with parents that come from a country that recognizes *jus sanguinis* will have the right to citizenship from their parents’ country of origin even when the family migrates. However, in practice children cannot always access this form and may instead become *de facto* stateless in a country where they have grown up. It has been suggested that the arrival of a whole generation of stateless children may result from the vulnerability of irregular migrants’ children to lack of birth registration.

We see evidence of this in Cote d’Ivoire, Dominican Republic, and Malaysia. (IMAGES)

(Map) 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 at risk of statelessness.

The existence of undocumented children in Sabah who may be vulnerable to statelessness is a complex, politicized issue. Undocumented migrants in Malaysia are targets for arrest and deportation. 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. In some cases this has left children alone on the street.

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. 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.

A little more than a year ago one of my colleagues at Refugees International traveled to Sabah and interviewed migrants of Filipino and Indonesian descent. (image)

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 non-governmental organization has worked to educate almost 5,000 undocumented children in eastern Sabah, with the support of local authorities.

The exact number of street children in Sabah is unknown, but they are estimated to be in the
There are 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. 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.

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].” (MALAYSIAN BOY PICTURE)

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 reported that he sleeps on the street near the fish market. He does not go to school. He has no identity documents.

Local sources 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.

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.

Response

Recognizing the problematic situation, Malaysian NGOs and the Malaysian Human Rights Commission (SUHAKAM) have conducted fact-finding missions to Sabah.

UNHCR and UNICEF report that their offices are monitoring this issue.

Head of stateless unit visited Malaysia – confirmed that there is a common mis-perception there that a person without documents is necessarily stateless and that this often leads to people being considered stateless when they are not. In fact, many of the people referred to (e.g. in Sabah) do possess links with a State and would be able to exercise nationality if a flexible approach is adopted to ascertaining their identity. Generally our approach in such situations is to work with authorities to document the links between such people and the State (birth, descent, residence), a key means of preventing statelessness. There is a growing civil society movement towards addressing the problems with the birth registration / documentation procedures.
UNICEF’s efforts include technical consultations with governmental entities responsible for legal and policy provisions, but also in making international best practices available to the Government of Malaysia.

**Current Situation:** In recent months it has been reported that the Government of Malaysia has been cracking down on irregular migrants. In June it was announced the Federal Government would “flush out the illegal immigrants from Sabah and deport them to their home country”.

In August NGOs issues a joint statement of concern that the mass crackdown will likely result in the wrongful arrest, detention, deportation and other human rights abuses as they are bound to occur when harsh actions are taken on a mass scale and without examining the individual circumstances of the irregular migrants and stateless people.

**Among other things, asked: (SLIDE)**

That the Government halts the planned crackdown and to immediately set up a Royal Commission to study the various issues and concerns in Sabah and to specify actions that are in compliance with international human rights and humanitarian standards;

that the Government prepares proper short, medium and long term management plans for foreign immigrant labour including the setting up of efficient and ethical channels through which repatriated immigrants can return to Sabah to work;

**Summary….. and What can be done? (LAST SLIDE)**

**The Government of Malaysia:**

1. Ensure that all births in Malaysia are registered.
2. Convene discussions on the issue of children vulnerable to statelessness in Sabah to develop a strategic plan.
3. Uphold its commitments under the Convention on the Rights of the Child and allow free primary education to undocumented children.
4. Cease the arrest and detention of undocumented children in Sabah.

**The Government of the Philippines:**

5. 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:**

6. 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.
7. UNICEF increase advocacy efforts on the protection of undocumented children in Sabah and support local community education programs.