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Stateless Children: A Question of Human Rights or Non-Traditional Security Threat?

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Stateless Children: A Question of Human Rights or Non-Traditional Security Threat?

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Introduction

Article 15 (1) of the 1948 Universal Declaration of Human Rights (UDHR) states that ‘everyone has the rights to a nationality’ and Article 7(1) of the 1989 United Nations Convention on the Rights of the Child (CRC) particularly asserts that every child shall have ‘the right to acquire a nationality’. However, the existence of stateless children – sometimes known as undocumented children, invisible children, or hidden children – even in Malaysia, clearly suggests the contrary. In October 2016, a written Parliamentary response stated that there were 290,347 children under the age of 18 who were born in Malaysia but do not possess Malaysian citizenship¹. With the lack of official documentations, the notion of being stateless can have deep-seated physical and psychological implications on children. While Malaysia could technically absolve itself from the legal obligations to provide to stateless persons given that it has yet to ratify both the 1954 and 1961 UN Conventions on Statelessness, there is an expectation to protect all children,

including stateless ones, as it is a State party to the CRC. Nevertheless, the *Pakatan Harapan* (PH) administration has expressed its commitment to human rights principles by providing access to primary education. The *Zero Reject Policy*, launched by the Education Ministry earlier this year, has allowed at least 2,635 undocumented children in Malaysia to enrol in public schools². Although this action is commendable, more needs to be done on the other aspects of their lives. Thus, considering the implications of statelessness on children, the issue must first be acknowledged to ensure that Malaysia is ready to address any potential adverse consequences, especially on its socioeconomic fabric and national security.

Defining Statelessness: *De Jure* & *De Facto*

The 1954 United Nations Convention relating to the Status of Stateless Persons (1954 Convention) defines ‘stateless persons’ as individuals who are not considered citizens or nationals under the legal operations

of any country. Considering its legal status and description, this terminology essentially defines *de jure* statelessness. The somewhat concise, brief, and unambiguous nature excludes any intrinsic elements of a citizenship, in which the limited and narrow term practically excludes the effectiveness and quality of citizenship. In other words, individuals can only be stateless if they have no legal or technical recognition from any country in fulfilling the requirements to be a citizen as per its legal systems. Real-life examples of *de jure* stateless persons are “permanently”-displaced communities, such as the Palestinians in Lebanon and the Kurds in Syria.

Nonetheless, the reality is not as clear as the law interprets it to be. That is, the notion of statelessness also extends beyond the absence of official documentations to include the lack of political, moral, and social recognition by a country on its own citizens. That is, the subjective nature of *de facto* statelessness entails a wide range of contributing factors. For instance, institutional or societal discriminations³ could cause *de facto* statelessness.

In other words, despite their legal citizenship status, individuals may find their citizenship virtually worthless if they are unable to enjoy the benefits and privileges that are usually associated with other citizens of the country. On the other hand, persons who cannot or are unwilling to accept the offer of protection from their country of nationality are also considered *de facto* stateless. Furthermore, individuals who cannot produce their proof of citizenship may not be *de jure* stateless, but the greater likelihood of being denied access to their entitled rights due to the lack of documentations may leave them *de facto* stateless. In the uncommon cases of country successions or dissolutions, people can be *de facto* stateless if they were granted a citizenship of a different country from that of their residence⁴. In most cases, *de facto* stateless persons tend to be refugees temporarily displaced by wars, such as the Syrian refugees throughout the Middle East and other host countries as they essentially lack any protection from the Syrian government. There is also the rare instance of the Rohingyas, who are arguably both *de facto* and *de jure* stateless due to their refugee status and the lack of citizenship.

Causes of Stateless Children in Malaysia

Conventional wisdom may suggest that stateless children in Malaysia mostly have foreign backgrounds, given the large numbers of unregistered Rohingya refugees from Myanmar and descendants of undocumented immigrants and refugees in Malaysia⁵. But there are instances of children being born to both Malaysian parents in Malaysia who ended up stateless because of technical and legal complications.

One of the causes of stateless children in Malaysia is the practice of *jus sanguinis* nationality principles, in which the marital status, place of birth, and citizenship status of the parents would determine the citizenship status of the child. More specifically, the children are only eligible for birthright citizenship if they were born

in Malaysia to parents who are legally married, with at least one parent being a Malaysian citizen or a permanent resident⁶. The delays in marriage registration between Malaysians and non-Malaysians would pose major difficulties in the future, with the children losing their citizenship. A child is at a greater risk of becoming stateless when the status of statelessness is inherited from the parents.

Second, the failure to register the child at birth is one of the common causes that leads to stateless children phenomenon in Malaysia. Illiterate and careless parents, arranged marriage, *perkahwinan adat*, poverty and broken family, children born abroad or out of wedlock are often cited as the impetus to the failure of registering childbirth. The need for immediate registrations of childbirth is simply not embedded in some of the cultural traditions of *Orang Asli* and *Bajau Laut*. Without proof of birth registration, the children are identity-less. Technically, no one knows 'who they are', 'where they came from', and 'who their parents are'⁷.

Third, lack or loss of documentation is another contributing factor to statelessness among children in Malaysia. The loss of identity documentation due to conflict, war, natural disaster in the country of origin or any documentation proof that get confiscated and destroyed during migration, would lead the unfortunate children to a vicious cycle of statelessness from one generation to the next⁸.

Impact of Statelessness on Children's Rights

There are several impacts of statelessness on children's rights. They are denied:

- **The Right to Formal Education**

Whether it is primary or secondary education, the right to education for children has been specified in Article 26 of UDHR and Article 28(1)(a) of CRC. It is estimated that 125,000 children in

Malaysia, tagged as "foreigner" on their birth certificates, have been denied access to education with most of them being children of Filipino and Indonesian descent in Sabah⁹. The lack of formal education access will merely aggravate the quality of life among stateless children. At best, they would enrol in informal and alternative education centres for basic learning while, at worst, they would have no formal schooling. Although the *Zero Reject Policy* in Malaysia intends to mitigate these compounding effects, it does not cover tertiary education. Thus, lacking formal education and employment prospects, they would have to resort to low-skilled and low-educated job for basic sustenance while facing credible risks of exploitation and abuse. Consequently, the persistent academic and employment gaps between stateless children and non-stateless children can then have adverse long-term consequences, given the further difficulties of stateless persons to break the cycle.

- **The Right to Health**

The right to health is embodied in Article 25 of UDHR and Article 24 of CRC. In cases of stateless children born to stateless parents, the lack of formal healthcare and pre-natal care can pose severe health risks to both mothers and babies, while the inability to obtain mandatory immunisation and other post-natal care could lead to poor health outcomes, or even worse, mortality. In addition, poor health has an inherent multiplier effect, exposing the stateless children to greater risks of sex exploitation, child marriages and HIV/AIDS.

- **The Right to Protection from Abuse, Trafficking and Exploitation**

Despite the protection of children from all forms of abuse under Article 19 of CRC and economic exploitation under Article 32 of CRC, stateless children often face discrimination. They are vulnerable and can easily fall into the trap of forced labour and debt bondage. In some instances, without proof of age,

the stateless children are prosecuted as adults.

• The Right to Movement

Article 13 of UDHR asserts the right to movement for everyone. However, the freedom of movement is restricted for stateless children as they do not possess and could not attain the necessary identification and paper documentation.

An Issue of Human Rights or Non-Traditional Security Threat?

Without a nationality, stateless children have no legal protection from and the avenue to reprimand the inability of the state to grant some basic human rights – formal education, health, protected from abuse, trafficking and exploitation, and freedom of movement – essentially stripping them of their individual dignity. The employment prospects of stateless children, once they entered adulthood, are inherently limited. Even if there are charity-based initiatives to empower these children with vocational or technical skills, their small scale suggests a limited impact on the overall population of stateless children. No doubt that the issue of statelessness among children in Malaysia is a question of human rights. However, if one were to study the United Nations official documents since the year 2000 and examine a discourse analysis of 34 United Nations Security Council’s documents on statelessness, the issue could be regarded as a security matter¹⁰. For instance, the 2014 UNU-GCM Policy Report stated that statelessness emerged as a concern of human security from the period of 2000-2003; an issue of international security from 2004-2007; and bounced back as a human security concern from the years 2008-2013¹¹. Unfortunately, associating statelessness with terrorism or extremism and other non-traditional security threats would further erode the fundamental rights of the stateless children and exacerbate their vulnerability in Malaysia. Although the relationship between socioeconomic grievances and participation in radicalised activities among non-

Western immigrant communities is more prevalent in the West, as captured in the 2002 National Security Strategy of the United States and the 2003 European Security Strategy of the European Union, the core root of social and economic “segregation” cannot be equally applicable in the Malaysian context without thorough studies.

Conclusion

Regardless if Malaysia wants to ratify the two UN Conventions on Statelessness, it must first acknowledge the scale of the issue and its possibility of being a non-traditional security threat to Malaysia’s national interest. Whether the resulting socioeconomic grievances from being excluded from the mainstream society and economy could trap stateless children into becoming radicals or violent extremists is something Malaysia needs to investigate. With an uncertain future and nowhere else to call home, the issue of stateless children in Malaysia is aptly illustrated as a ticking time bomb. Thus, frequent multilateral engagements with relevant stakeholders on statelessness in Malaysia – think-tanks, enforcement agencies, non-governmental organisations, international organisations, and legal entities – to determine its capacity and position on this issue, are needed. The factors and implications of statelessness must be examined to ensure that Malaysia adopts a win-win approach that would balance providing basic human rights to stateless children with mitigating any potential threats to Malaysia’s socioeconomic fabric and national security.

Endnotes

¹ Azian, H. (2018). Stateless children trapped in a vicious cycle. The Star Online. Retrieved on 3 June 2019 from <https://www.thestar.com.my/news/nation/2018/04/01/stateless-children-trapped-in-a-vicious-cycle/>

² Lee, C. H. (2019). Dr. Maszlee: Over 10,000 special needs children enrolled in schools under Zero Reject policy. The Star Online. Retrieved on 3 June 2019 from <https://www.thestar.com.my/news/nation/2019/05/07/over-10000-special-needs-children-enrolled-in-schools-under-zero-reject-policy/>

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³ Allerton, C. (2017). Contested Statelessness in Sabah, Malaysia: Irregularity and the Politics of Recognition. *Journal of Immigrant and Refugee Studies*, 15(3), 250-268.

⁴ Massey, H. (2010). UNHCR and De Facto Statelessness. Geneva: Division of International Protection, United Nations High Commissioner for Refugees (UNHCR).

⁵ Allerton, C. (2014). Statelessness and the lives of the children of migrants in Sabah, East Malaysia. *Tilburg Law Review: Journal of International and European Law*, 19(1-2), 26-34.

⁶ Mohamed Razali, R. (2017). Addressing Statelessness in Malaysia: New Hope and Remaining Challenges. Tilburg: Institute on Statelessness and Inclusion.

⁷ Vaahini, S. & Rangasamy, S. (2018) Human Rights of Stateless Children. In Ismail, S. M. (Ed.). *A Thematic Introduction to Human Rights Law: Malaysian and International Perspective*. Kuala Lumpur. Dolphin Press International Sdn. Bhd: pp. 95-114.

⁸ Ibid.

⁹ Ibid.

¹⁰ Bello, V. (2014). Is the discussion of ‘Statelessness’ in the UN Security Council a question of human security or international security? Policy Report No. 02/02. Barcelona: United Nations Institute of Globalization, Culture and Mobility (UNU-GCM).

¹¹ Ibid.

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