A position paper on:

**The vulnerability of Bajau Laut (Sama Dilaut) children in Sabah, Malaysia**
Background
Statelessness is a global man-made phenomenon, variously affecting entire communities, new-born babies, children, couples and older people, and can occur because of a bewildering array of causes. According to UNHCR, at least 10 million people worldwide have no nationality. While stateless people are entitled to human rights under international law, without a nationality, they often face barriers that prevent them from accessing their rights. These include the right to establish a legal residence, travel, work in the formal economy, access education, access basic health services, purchase or own property, vote, hold elected office, and enjoy the protection and security of a country.

The Bajau Laut (who often self-identify as Sama Dilaut and are referred to by others as ‘Pala’uh’) are arguably some of the most marginalised people in Malaysia. Despite records of their presence in the region dating back for centuries, today many Bajau Laut have no legal nationality documents bonding them to a State, are highly vulnerable to exploitation and abuse. The Bajau Laut are a classic example of a protracted and intergenerational statelessness situation. Children, the majority of whom were born in Sabah and have never set foot in another country, are particularly at risk. However, reliable estimates of population numbers are hard to determine due to inconsistent reporting, variable data collection methods and conflicting definitions of who to count.

The very condition of ‘statelessness’ raises numerous challenges, including ascertaining who is actually ‘stateless’ or ‘at risk of statelessness’. While the definition set out in the 1954 UN Convention relating to the Status of Stateless Persons is uncontroversial, its interpretation (especially by States which are not signatory to the Convention) often broad and sometimes inconsistent. Without baseline information, stakeholders are struggling to move forwards on the issue or even know where to begin. Statelessness, nationality, and children’s rights are cross-cutting issues and have for decades generated significant policy debates globally, in Malaysia among various state and federal ministries, and within international agencies such as UNHCR and UNICEF.

The presence of non-citizens in Malaysia, especially Sabah, is a highly politicised, securitised and sensitive issue. Nevertheless, migration flows through the region have existed for hundreds of years - certainly long before the introduction of present day nation-state boundaries. The legacy of such migration has contributed to current complexities around documentation which are now being faced by both individuals and States.

Challenges
Sabah is a complex area, both geographically and socially, especially as it is located on the edge of a ‘fluid archipelago’. Historical population movements around Borneo and the Sulu region were recently brought to the forefront by the incursion into eastern Sabah by followers of a claimant to the sultanship of Sulu from the southern Philippines in February 2013. Findings of the ‘Royal Commission of Inquiry on Illegal Immigrants in Sabah’ (RCI), which investigated the long-standing problems relating to citizenship and immigrants in Sabah including ‘Project IC’ (the alleged systematic granting of Malaysian citizenship through the issuance of Identity Cards (IC) to foreigners in Sabah for political purposes), were published in December 2014. However, the report has provoked further intense debate on the security of

1 A ‘stateless’ person is generally defined as ‘a person not considered as a national by any state under the operation of its law’, UN Convention Relating to the Status of Stateless Persons (1954) Article 1(1)
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national borders, and the Sabah state government has established two committees to address issues and recommendations highlighted in the report. Meanwhile, the level of attention paid to non-Malaysians in Sabah remains high.

The ‘Sulu Zone’, which includes north-eastern Borneo and the southern Philippines, has been the historical homeland of the migratory, formerly nomadic and more recently sedentarised Bajau Laut for centuries.\textsuperscript{iv} Speakers of the Sama-Bajau languages are considered by some scholars to be the most widely dispersed ethno-linguistic group indigenous to the region.\textsuperscript{v} However, definitions of ‘indigenous’ remain elusive. Despite their long history in the area, many Bajau Laut now find themselves without legal recognition anywhere (effectively ‘stateless’). The Bajau Laut are frequently lumped together with other unrecognised migrant groups including current or former holders of IMM13 passes and their children (i.e. people of refugee descent), ‘street children’ and irregular migrants and often disproportionately targeted during operasi or raids. In Sabah, such groups are habitually referred to collectively as “illegal (im)migrants”. The construction of the nation-state is, in essence, exclusionary, and in Malaysia debates around citizenship are highly divisive, with rigid distinctions being drawn between a ‘citizen’ and ‘non-citizen’ and between a ‘legal’ and ‘illegal’ person.\textsuperscript{vi}

International and National Protection

Despite the existence of two international treaties on statelessness – the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness – Malaysia is not a signatory to either. However, in 1995 Malaysia did ratify the 1989 UN Convention on the Rights of the Child (CRC), which states that “the best interests of children must be the primary concern in making decisions that may affect them” (Article 3). This article particularly applies to budget, policy and law-makers. The Convention also states that “a child shall be registered immediately after birth and shall have the right from birth to a name, and the right to acquire a nationality” (Article 7). All births in Malaysia (of citizens and non-citizens) must be registered at the National Registration Department within 2 weeks of birth. Article 8 of the CRC provides that every child has the right to preserve his or her identity, and that governments should respect children’s right to a name, a nationality and family ties. ASEAN Member States have also declared through the ASEAN Human Rights Declaration that, “every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality”.\textsuperscript{vii}

Although Malaysia is not a party to the 1961 Convention, the Malaysian Federal Constitution contains key protections to prevent and reduce statelessness in Malaysia, which conform to the Convention standard. Articles 14 and 15A provide that a child born in Malaysia “who is not born as citizen of another country”, and cannot acquire citizenship of another country by registration within one year of birth, is a citizen of Malaysia by operation of law, thus underscoring the legal as well as moral imperative for the Sabah government to act on this issue without delay.

When Sabah together with Sarawak and the Malaya Federation formed the Federation of Malaysia in 1963, a special interest concerning immigration to the state was requested as a precondition to joining the Federation, which is safeguarded through the Federal Constitution and the Immigration Act 1959/1963. As such, Sabah maintains autonomy over its immigration and has the power to control who enters the state’s borders. It is for this reason that Malaysians from other states are required to produce their IC and be granted a Pas Lawatan
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(visit pass) to enter Sabah and must apply for Permanent Residency (PR) to remain in Sabah long-term. This is one of the points that has fuelled the debate on the issuance of birth certificates to non-Malaysians, as there is widespread fear that this will result in non-Malaysians claiming a right to remain in Sabah, which is seen by many as being discriminatory to other non-Sabahan Malaysians.

The concerns of Sabahans (especially indigenous Kadazan, Dusun and Murut people from the ‘interior’ areas of the state, but also Sabahans of all ethnicities including those of Chinese descent, Bugis, Bajau, Suluk, as well as expatriates) are being elevated through media channels, while in both print and online media non-Malaysians (whether irregular migrants or stateless people, including the Bajau Laut) are widely demonised. The media play a critical role in the perceptions of non-Malaysians, often portrayed through caricatures of criminals who are “up to no good”. What is publicised and what is silenced are largely dictated by the (state-controlled) media in Malaysia. It would also appear that there is political capital in being seen to address the fears of Sabahans over immigration, and there is political mileage specifically for those who can be seen to be ‘tougher’ on immigration matters.

Rationale for recommendations and action
The current situation is dynamic and extremely sensitive. This paper is an attempt to move debates forwards and to acknowledge the sensitivities surrounding current debates, especially the concerns of Sabahans. It also urges further consideration of the intricacies of the different categories of non-Malaysians in Sabah, and an examination of the distinctions between ‘stateless’ and ‘irregular migrants’ (also referred to as “illegal” migrants).

As illustrated by the debates on immigration and citizenship, different populations residing in Sabah are being marginalised from mainstream society, while there are also attempts to construct a ‘Sabahan’ identity. As can be seen elsewhere in the world, marginalisation can create social unrest and lead to instability at an international level, including conflict and displacement. In Sabah, the politics of social and political exclusion are connecting regular and irregular immigrants, former refugees and asylum seekers, and ‘stateless’ people through a rhetoric that demands that all these people are viewed as a threat to state security and a burden on Sabah’s limited resources: only ‘genuine’ or ‘authentic’ Sabahans should have access to civil registration (for birth, marriage, death, etc.), education, legal employment and affordable healthcare. A diverse group of people are being grouped into a single ‘dangerous Other’ category. Paradoxically, diversity in Sabah is also widely marketed as a tourism strategy (Sabah Tourism promotes “32 officially recognized ethnic groups in Sabah”), while the ambiguous position of the Bajau Laut in Sabah has fuelled a ‘grey industry’ focused on empty promises to procure documentation for them.

Many children born in Sabah (including those of ‘indigenous’ Sabahans) are currently unregistered if they were not born in a hospital and/or if their parents are unable to produce the necessary documents at the National Registration Department. Policy work has emphasized that such cases of statelessness render individuals extremely vulnerable. Regardless, many non-Malaysian stateless and unrecognised people (especially children), consider no place other than Sabah as their home, and may have never crossed and international border. It should be noted that addressing statelessness in Sabah would also help the government assess the size and profile of the stateless population in their territory and thus determine the government services required, as well as strengthen Malaysian society making it possible to draw on currently untapped energy and talents. The UNHCR ‘I Belong’
global campaign, which calls for an end to statelessness worldwide by 2025, states, “It is both an obligation and an opportunity for governments everywhere to put an end to this exclusion”.

To date, there has been limited engagement on these issues from the Sabah state government. Yet recent comments from the Federal Minister of Home Affairs have triggered intense reactions from both state government and opposition politicians, further exacerbating the divide between Putrajaya and Kota Kinabalu. Nevertheless, it is hoped that recommendations in this paper will be welcomed in response to Tan Sri Joseph Pairin Kitingan’s call, in his capacity as Chairman of the Working Committee to study the RCI Report, for “suggestions from individuals, non-governmental organisations or political parties to help resolve the pertinent issue”.xiv

With international attention currently focused on Malaysia in the aftermath the MH370 and MH17 tragedies, the trials and conviction of Dato’ Seri Anwar Ibrahim, Malaysia’s recent appointment to the UN Security Council as well as chairing ASEAN for 2015, now is an opportune time for Malaysia to proactively and innovatively address these immediate social, human rights and security issues. It is also apparent that statelessness and documentation issues could, while acknowledging the discourse linking stateless/unrecognised populations with national security, be more successfully addressed if examined through a human security lens with wellbeing, ethnical and legal frameworks remaining paramount. Malaysia would undoubtedly benefit from an increase in civil registration, the generation of ‘vital statistics’ on populations and a greater understanding of who is living within its jurisdiction. Furthermore, by Sabah taking the lead in these areas, this would also provide the opportunity to raise Sabah’s profile within the international development and aid community, thereby enhancing prospects for future activities being initiated in Sabah specifically, as opposed to elsewhere in Malaysia.

There is a growing momentum within civil society to explore ways to address these issues. Therefore, it is recommended that the following measures be undertaken:

Key Recommendations:
1. **Develop a project to assist ‘stateless’ and unrecognised people, specifically Bajau Laut, with documenting their personal histories and build cases for (late) birth registration, recognition by the state, and/or claims for Malaysian nationality**
   As a case study, see the ‘Mapping and Registration Project’ carried out by DHRRA with people of Tamil/Indian origin in Peninsular Malaysia.

2. **Acknowledge and holistically address drivers of poverty and marginality**
   For example, through supporting water, sanitation and hygiene (WASH), public health and family planning, educational, environmental and livelihood initiatives. The lack of such initiatives to date has contributed to high levels of under-five mortality rates, spread of communicable diseases, illiteracy and the prevalence of solvent abuse (glue-sniffing) and associated behaviours among some Bajau Laut populations.2

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2 ‘Under-five mortality rate’ is defined by the World Health Organisation as the probability per 1,000 that a newborn baby will die before reaching age five.
3. **Direct engagement with ‘stateless’ and unrecognised populations in Sabah**

Local Sabahan NGOs are best placed to facilitate regular opportunities for face-to-face interactions with Bajau Laut populations to generate a greater understanding of the lived realities and far-reaching implications of statelessness on individuals, families and communities. Personal testimonies can also break down the fear and ‘otherness’ of stateless people, especially the Bajau Laut.

4. **Engagement of Sabah state government with international agencies, regional networks and local civil society organisations**

Alongside direct engagement with stateless populations, formation of a Task Force to include representatives from Sabah government, UNICEF and UNHCR, regional networks (such as the Asia Pacific Refugee Rights Network), and local Sabah NGOs to explore both local and regional solutions, good practices and protection measures.

5. **Multi-lateral discussion to reduce/defuse tensions between Putrajaya, Sabah and the Philippines**

Greater solutions-oriented dialogue is encouraged in order to diminish the political capital perceived to be gained from the demonisation of stateless and unregistered people in Sabah, specifically the Bajau Laut.

6. **Explore potential for a regional Sulu-Sulawesi Forum and/or exchange visits**

In recognition and celebration of the joint cultural heritage in the region, involve civic and NGO leaders from localities in Malaysia and the Philippines in cross-border experiences.

**These recommendations are endorsed by:**

- Members of the Asia Pacific Refugee Rights Network (APRRN)
- A coalition of concerned Malaysian citizens
- Permanent Residents and friends of Malaysia

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**References**


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ix Borneo Post (2013c) Committee to be reactivated as sea gypsies ‘return’, 26 July 2013


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