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Omitted Lives: Access to Civil Registration and its Implications for Inequality

Cheong, Amanda Rachel

Princeton, NJ : Princeton University

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OMITTED LIVES:
ACCESS TO CIVIL REGISTRATION AND ITS IMPLICATIONS FOR INEQUALITY

Amanda Rachel Cheong

A DISSERTATION

PRESENTED TO THE FACULTY

OF PRINCETON UNIVERSITY

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Adviser: Douglas S. Massey

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ABSTRACT

This dissertation addresses a topic of concern within international development today, which is that 1 in 4 children under the age of 5 worldwide have not been registered at birth (UNICEF 2017). I identify the causes for why so many people are left out of civil registration systems and the consequences of such exclusion for individuals' lives and states' development aspirations.

I conducted 18 months of ethnographic fieldwork in Malaysia, during which I provided paralegal assistance to migrants and other marginalized families who faced challenges in obtaining basic documents such as birth certificates, marriage certificates, and identity cards. I also conducted over 100 "document inventories" of households living on palm oil plantations, informal settlements, and urban areas, which is a method I developed to catalogue the evidence a family possesses to substantiate their identities. I supplement this fieldwork with a case study of Myanmar based on historical sources and qualitative interviews.

My main argument challenges the assumption that under-registration is the result of a lack of state capacity. I draw attention to how the recording of vital events, more than being a routine bureaucratic task, has profound socio-legal implications—most importantly for the determination of citizenship. I demonstrate that who gets counted, and how, are inherently *political* choices, and that these choices are often made in ways that exclude migrants and racial minorities from the nation by depriving them of the means to prove their legal personhood.

In highlighting the voices and experiences of the families I followed, I demonstrate how omission from civil registration has reverberant negative consequences for people's lives, including ineligibility to attend school, arrests and detentions, the denial of reproductive healthcare, and the intergenerational transmission of irregular legal status. At the state level, I show how bureaucratic procedures for maintaining civil registration systems have been influenced by racialized fears about the demographic threats posed by migrants, which have transformed attitudes about the counting of births from being administrative tools, to being declarations about the boundaries of national identity and belonging.

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Introduction

Categories, and the boundaries that demarcate them, are foundational for social scientists concerned with the reproduction of inequality (Barth, 1969; Lamont & Molnar, 2002; Massey, 2007; Tilly, 1998; Weber, 1978). In particular, scholars have highlighted the role of modern states in institutionalizing group distinctions, and thereby legitimizing the unequal distribution of resources across them (Bourdieu, Wacquant, & Farage, 1994; Starr, 1992). Arguably the most consequential state-imposed category is that of citizenship, an instrument of social closure which today constitutes a principal determinant of individuals' life chances (Brubaker, 1998; Milanovic, 2012; Shachar, 2009). The classificatory work engaged in by states extends far beyond regulating national membership. States and their subjects regularly create, destroy, and negotiate racial, ethnic, legal, and other identities and statuses—as well as their attendant rights and entitlements—in the process of carrying out basic tasks of governance. Tasks that have garnered the interest of sociologists include the administration of censuses (Kertzer & Arel, 2002; Loveman & Muniz, 2007; Nobles, 2000; Prewitt, 2005); immigration and border control (Broeders & Engbersen, 2007; Kim, 2011; Massey, Durand, & Malone, 2002; Nevins, 2002; Ngai, 2004; Torpey, 2000); and identity management (Caplan & Torpey, 2001; Lyon, 2009; Scott, Tehranian, & Mathias, 2002).

In this dissertation, I explicate an under-theorized mode by which inequality is reproduced: access to civil registration. The United Nations defines civil registration as "the continuous, permanent, compulsory, and universal recording of the occurrence and characteristics of vital events pertaining to the population"—namely, births, deaths, marriages, and adoptions. The observation that civil registration is an inherently political

process, rather than merely an administrative one, is not new. Scholars have conceptualized documentation practices as central to state expansion and consolidation (Caplan and Torpey 2001; Loveman 2007; Scott 1999; Szreter and Breckenridge 2012). A few studies have historically traced dominant groups' use of civil registration, specifically, to control and oppress racial minorities: In apartheid South Africa, Black South Africans were legally required to carry pass books containing details about vital events such as birth, marriage, and employment, which were used to reinforce racial segregation in all sectors of life (Bowker and Star 1999). The United States continues to classify people by race in their birth records. As late as the 1970s, civil servants in the South were found to have been attempting to discourage miscegenation by systematically policing who could be labelled as white on their birth certificates (Davis 1991). Such work, by paying attention to bureaucratic infrastructures and their (ab)use by officials working within them, has helped to illuminate the means by which systemic discrimination is made possible on a practical level.

This dissertation departs from previous research in that I do not primarily focus on the unequal sorting of populations into well-defined, institutionalized social categories, such as citizen/alien, black/white, male/female, and so on. It has become well-established in the literature that states manage and control their populations by hierarchically sorting them along gradients of membership and entitlement. Instead, my spectrum of interest spans between the counted and the omitted: those whose lives are officially recorded and therefore recognized, on one end, and those who are excluded from governments' registration systems, on the other. Counting is a matter of degree, rather than a dichotomous distinction. Registration, enumeration, and documentation are examples of forms of state-granted recognition that hold varying levels of importance in determining 1) an individual's status in

a particular society's stratification system; and 2) the amount of power a state has to regulate its membership and manage the extraction and distribution of resources within it.

I contend that the vulnerabilities that come with being omitted are unique in comparison to those of other subjugated groups, and are consequently inadequately understood using current theories of state-building and social stratification. At the extreme end, completely uncounted populations, in an administrative sense, exist outside of the social structure: there *is* no category to encompass them. Not only are they at greater risk of exclusion from mainstream institutions, such as education, healthcare, and the formal labour market, but their marginalization also often occurs without recourse to protection by any governmental body. By examining how uncounted populations are produced, and distinguishing between different levels and forms of counting, I challenge the taken-for-granted assumption that "seeing" is necessarily always in the interest of states (Foucault 1977; Scott 1999). Accordingly, I also question the assumption that underdevelopment is an adequate explanation for why there continue to be uncounted populations around the world today, and that investments in state capacity-building will inevitably result in their inclusion. Rather than interpreting unregistered populations as indicative of the absence of state power, I argue that their existence may conversely be the product of its deliberate exertion.

Research Questions and Central Thesis

My dissertation addresses two interrelated sets of question: the first set explores the causes of being omitted, while the second examines its consequences. My research questions are as follows:

1) Why do uncounted populations continue to exist today, despite: i) the global proliferation of increasingly advanced identification, surveillance, and border control technologies, i.e. states' enhanced *ability* to count; and ii) the wide acknowledgement by states of the importance of keeping accurate population statistics for effective governance, i.e. states' rational *interest* in counting?
    a. What are the conditions under which political actors choose to expand versus restrict access to civil registration?
    b. How is civil registration, an inclusionary project in principle, used to maintain the fundamentally exclusionary project of citizenship?
2) How does access to civil registration operate as a distinctive mode for reproducing inequality?
    a. What are the consequences of being uncounted for individuals' lives—particularly in the areas of education and health?

Before providing a chapter-by-chapter breakdown of the dissertation, I provide a brief overview of its central thesis: My main argument challenges the assumption that vital events go uncounted as the result of a lack of state capacity, which is the explanation that both social scientists and development practitioners predominantly put forth. More than routine bureaucratic tasks, I show how the recording of vital events have profound socio-legal implications—most importantly for the determination of citizenship. I demonstrate that who gets counted, and how, are inherently *political* choices. These choices can be made in ways that exclude unwanted populations—such as migrants and racial minorities—from the nation by depriving them of the documentary means to prove their legal personhood.

Omission—the state of being left out of registration systems—can have reverberant negative consequences for people's lives, and for countries' development aspirations. In highlighting the voices and experiences of the families in my study, I discuss how missing vital documents may result in ineligibility to attend schools, arrests and detentions, the denial of healthcare, and the intergenerational transmission of irregular legal status. For the Malaysian and Myanmar states, bureaucratic procedures for maintaining civil registration systems have become influenced by racialized fears about the demographic threats posed by unwanted minorities, which have transformed understandings about the counting of vital events from being administrative functions to being declarations about the boundaries of national identity and belonging. I argue that selective omission, however, will likely frustrate countries' developmental aspirations—for example, in monitoring and reducing infant and maternal mortality.

Data and Methods

Malaysia

To understand the causes and consequences of omission, I adopt a qualitative methodological approach, which is appropriate for a number of reasons. First, the goal of this study is not to develop a statistical portrait of the prevalence of under-registration, but rather to identify the quotidian processes by which human lives are rendered invisible from the perspective of the state. Second, omitted populations by definition are not represented in official data systems. An uncritical reliance on statistical data would amount to a disregard for a major finding of this dissertation, which is that the most marginalized segments of society tend to be those most vulnerable to being left out of official statistics. Furthermore,

texts of official laws and procedures governing civil registration, which are often ostensibly colorblind, may not provide insight into how they are actually implemented on the ground, thus masking potential biases that are perpetuated in the domain of administrative discretion. Through ethnographic observations and qualitative interviews, I am able to foreground the voices and experiences of individuals and families whose legal existences have gone unaccounted for in official counting systems.

For my major case study of Malaysia, I spent 18 months between July 2016 and December 2017 conducting ethnographic fieldwork and qualitative interviews in the state of Sabah and the capital city of Kuala Lumpur. A detailed justification for the selection of Malaysia as my main case is provided in chapter three. In addition to Malaysia presenting an opportune empirical puzzle to tackle, my own personal biography and skillset made it possible for me to study this case. First, as a Canadian-born descendant of stateless Chinese-Bruneians, I grew up with a personal understanding of how migration, statelessness, and documentation impact people's lives in this region of the world. Having a family history of statelessness enabled me to empathize and connect with families navigating challenges associated with citizenship, legal status, and documentation. At the same time, having been born, raised, and educated in Canada, I could also invoke an "outsider" positionality when engaging with representatives of the government, which was valuable given the highly politicized nature of questions of legal status and documentation in Malaysia.

My engagement with the Malaysian context stretches back long before I began my dissertation fieldwork. Between 2012 and 2013 prior to starting my PhD at Princeton, I worked with a child rights legal advocacy organization in Malaysia, during which I worked on projects on the issue of statelessness, which helped me broaden and deepen my

understanding of the Malaysian context beyond my childhood memories of visiting family on both sides of the Sarawak-Brunei border. This experience enabled me to develop important connections in the civil society sector, which I nurtured over the years and then relied on in order to regain access to the Malaysian political and legal landscape in which debates about citizenship and civil registration were playing out. While completing required coursework in the first two years of graduate school, I made my best efforts to stay up to date on research and advocacy being done on citizenship, migration, and statelessness in the Southeast Asian region, for example by participating in a week-long regional statelessness course on Southeast Asia in Bangkok, Thailand in 2013 organized by the Tilburg Law School, the UN Refugee Agency, Open Society Foundations; and the inaugural Global Forum on Statelessness in 2014 at the Hague, Netherlands, during which I presented on a panel on Malaysia alongside politicians, practitioners, and academics who later on would be key allies during my dissertation fieldwork phase. In 2015, I took an intensive Bahasa Malaysia course at the *Universiti Kebangsaan Malaysia* (National University of Malaysia) in Kuala Lumpur in order to refresh my language skills in preparation for dissertation fieldwork.

My data collection process began in Kuala Lumpur, the capital city of Malaysia and the epicenter of the legal battle over questions of citizenship and documentation. There, I volunteered with and observed four different organizations providing legal and social services to communities with documentation problems in Malaysia, which included a law firm, a legal advocacy initiative, and two community-based social service agencies. I conducted observations while sitting in on meetings with clients, riding along on trips to the National Registration Department or the courts, and assisting in report-writing and other office-related tasks. I also attended workshops, conferences, forums, and other events

organized by civil society actors engaged in a broad range of relevant issues. This enabled me to understand the political landscape in which issues of civil registration, citizenship, migration, and development were being publicly debated. In doing so, I became trained in the Malaysia nationality law and its implementation.

In Sabah, I partnered with a coalition of learning centers which provided informal education to noncitizen children around the state, who were predominantly of Filipino and Indonesian descent. The learning centers were located all around the state in urban centers, rural towns, and palm oil plantations, which enabled me to compare experiences of illegality across different geographical contexts. We spent time in three coastal urban centers, and two rural towns and their surrounding agricultural and industrial areas. The vast majority of interviews took place in families' homes.

Teachers at the schools, who were focal members of the community, provided crucial assistance in facilitating entry into the communities that they served. I conducted ethnographic observations and completed 105 household interviews using an instrument that I call a "document inventory." A document inventory is a semi-structured data-collection method that prompts families to take stock of the material evidence they possess to substantiate their identities and existences. I catalogued each household's documents throughout a semi-structured interview about the household's migration histories, everyday experiences living in Malaysia, the limitations and challenges that they face, and the nature and frequency of their interaction with government institutions. For households with children, special focus was paid to the use of reproductive health services before, during, and after pregnancy. The goal of the document inventory was to understand the extent to which a particular household is incorporated into government registration systems, the challenges

members face accessing civil registration, the meanings and values they ascribe to documents, and the impacts of being uncounted on their lives (see Appendix A for interview guide). While I met the majority of families through the learning centers, documentation issues are so pervasive in Sabah that I also came across a number of cases by chance, for example, through referrals from friends, local businesses, or taxi drivers.

For some of the families, I worked with them over time with their applications for basic documents and/or citizenship, sharing the training and knowledge that I had acquired in Kuala Lumpur. This involved accompanying families to government departments, including the National Registration Department, Welfare Department, the Police Office, and hospitals; facilitating interactions with civil servants, lawyers, consular officers, and non-governmental organizations; filling out forms; going to court dates; follow and, once each, launching a social media campaign to track down an estranged family member, and retrieving a marriage certificate from a returned family across the border in Indonesia. I also had the opportunity to volunteer on a birth registration campaign on a palm oil plantation, during which I assisted Indonesian migrant workers in filling out applications for birth certificates for their children to be submitted to the Indonesian consulate.

Interview and ethnographic data was supplemented with analysis of court cases, written correspondence between families and government departments at which they are filing applications, parliamentary debates, newspaper articles, reports, and other textual sources. Finally, I conducted around 30 interviews with government officials, doctors, nurses, lawyers, midwives, judges, social workers, politicians, and other stakeholders.

To complete this phase of data collection in Sabah, I worked with four local research assistants (though usually, would only one would accompany me in the field at any given

time) for two main reasons. First, while my foreignness provided me with privileged access to some spaces (for example, to high-level discussions with government representatives) my foreign identity was at other times a liability—not just to the quality of the data collected, but more importantly, the best interests of the families I worked with. As I discuss in-depth in chapter three, anti-foreigner sentiment is high in Sabah, and I had to constantly consider when entering into interactions about whether I, a foreigner, might at times undermine families' assertions of belonging by the optics of mere association. For the majority of interaction with civil servants at government offices, it was collectively decided that the research assistant accompanying me would be the one doing the talking so as to signal "local" support for the families' claims of Malaysian belonging, with me mostly listening and only speaking up if it seemed beneficial to "out" myself as a foreign person who had gotten involved in these families' lives.

Concerns might be raised about whether having research assistants mediate certain interactions in the field compromised my "ethnographic authority" (Clifford 1983). Hallmarks of rigorous ethnography involve the production of "thick descriptions" of social life from the inside-out, made possible by intimate and sustained engagement with the community under study (Geertz 1973). The use of research assistants might be criticized as an adulteration of my involvement as an ethnographer and the insights that I could have made as someone who would at times do more observing than active participating in interactions, particularly with civil servants. At the same time, fundamental ethnographic tradition is also a critical awareness of power inequalities between the researcher and the researched in representation. When deciding on my research design and methodological approach, I had to reckon with the limitations posed by both my identity and body in

conducting ethnographic research, and in ensuring that the best interests of the families I worked with were being protected.

My solution for asserting ethnographic authority, therefore, was to share my platform as a knowledge-producer with members of the communities that I engaged with, and to work together with them in order to collectively generate ethnographic insights. My research assistants were young Sabahan women, all with mixed indigenous and migrant heritage. Three of them had personally, or through family or friendship networks, experienced illegality or the lack of documentation, and therefore were able to provide crucial personal empathy for and understanding of the struggles that the families we worked with were going through. They also helped to facilitate many conversations with their family members and community members. After each interview or day in the field, we would discuss what we had experienced that day and compare our perspectives. I would also encourage them to write down their own field notes, and to include their own personal interpretations and reactions to our interactions that day. These practices functioned as a test of the reliability of our observations. I also learned a great deal of cultural knowledge on the go from working closely with my research team which facilitated my integration, including Sabah dialect, proper etiquette when entering people's homes, Malaysian superstitions, the custom of burying the placenta after the birth of a child, how to bathe with a *gayung* (water dipper), and so much more.

The second reason for why I decided to collect data in collaboration with local stakeholders rather than individually was that I felt strongly about ensuring that this project had positive and sustainable impacts on the communities that I worked with. My intention was not to conduct naturalistic observation—the unobtrusive documentation of people's

social behaviours in their "natural environment," free of manipulation by the researcher. My approach to my field site was more in line with the classic Boy Scout rule, which is that we should leave the campground in a better state than how we found it. By invoking this philosophy, I do not mean that I viewed getting involved in the lives and struggles of families as an opportunity for recreational enjoyment. Much the opposite, I was hyperaware of the vulnerabilities of my communities of interest, and the everyday risks and dangers they were exposed to as a result of their documentation and/or legal status. I was also conscious of the immense privilege that I, in stark contrast, carried as an educated Princeton University student who won the birthright lottery by possessing the unearned benefit of Canadian citizenship simply by having been born there (Shachar 2009). I did not want to be complicit in perpetuating the exploitation of marginalized communities by profiting off of their struggles, nor did I want to exacerbate power inequalities between myself and my research participants by failing to proactively redistribute my wealth of privilege.

What did the redistribution of privilege and power look like in practice? For me, this involved setting out to cultivate human and institutional capacities on the ground so that the work that we achieved while in the field would be continued even after I had left it. In Sabah, with the exception of the many grassroots providers of informal education, there has been limited civil society involvement in migrant-related issues. This is in large part because of a pervasive "Sabah for Sabahans" movement that pervades Sabah state politics, which is expressed in high anti-immigrant sentiment as well as opposition to the establishment of foreign organizational forces from the Peninsular side of Malaysia and from abroad. Compared to West Malaysia, there are very few service providers in Sabah that migrants and stateless persons can seek out for assistance for matters beyond basic education. Meanwhile,

in West Malaysia, a more robust pro-migrant movement has been established—made up of local and international nongovernmental organizations, lawyers, politicians, and journalists—which I had the good fortune of getting involved with and learning from in the first phase of my fieldwork in Kuala Lumpur.

In Sabah, I tried my best to share the knowledge that I had gained about the Malaysian nationality law and its implementation so that it could be adapted and applied in practical ways in the Sabah context by the young Sabahan women who I worked with. During our fieldwork, we also conducted outreach by giving two workshops with community youth groups on issues of statelessness and human rights, and one guest lecture at the Universiti Malaysia Sabah campus for an undergraduate course on human rights. After the end of the project, one research assistant secured a job in a non-profit organization supporting indigenous communities, while another began working for a non-profit serving women and children, including migrant families, which periodically does outreach to some of the learning centers that we partnered with. A third supported the creation of a new grassroots organization which aims to support stateless and undocumented children in Sabah, which is carrying on work with two of the families we had begun assisting. Rather than compromise the credibility of my ethnographic engagement, I believe that this collaborative approach enriched the kinds of insights and observations that informed this dissertation project.

Myanmar

The minor case study of Myanmar is based off of four months of data collection conducted in Yangon between the summers of 2014 and 2015, and 1.5 weeks in Washington,

DC in April 2015. My initial intention was not to study issues related to civil registration, but to understand how stateless populations politically mobilize to make claims on states that have deprived them the very right to act as political beings by denying them legal personhood—in other words, how people who have no citizenship participate in a world still divided into nation-states. A focus on the Rohingya in Myanmar was timely given recent resurgence in physical and symbolic violence against Muslim communities in Rakhine state, the politically-contested census of 2014, and the general elections of 2015. An extended justification for selecting this case is included at the end of chapter one and in chapter two.

My initial mode of entry into Yangon was an internship with an international agency, for which I did work that could not be used for external publication, and is thus separate from the data that I collected for this project. I did not do any data collection in Rakhine state where the majority of the Rohingya population lived at the time, which is a limitation of this chapter. This was due to a number of reasons. Government-imposed travel restrictions closed off access to the northern part of the state to journalists, much humanitarian aid, not to mention people on tourist visas. In the state capital city of Sittwe, where most humanitarian aid agency offices were based, safety was also a concern. In March of 2014, after rumours that an aid worker had allegedly taken down a Buddhist flag from a building, residents ransacked aid offices, destroying at least fourteen properties and setting into motion the evacuation of foreign aid staff.[1] This incident worsened the already-tense relationship between Rakhine state residents and foreign actors. Even if I had managed to get access to Rohingya residents in Rakhine state, or refugees living across the border around Cox's

[1] Fiona Macgregor and Shwe Yee Saw Myint (2014), "Foreign Aid Workers to be Evacuated from Sittwe," *Myanmar Times,* accessed 10 April 2019 at https://www.mmtimes.com/national-news/9978-foreigners-evacuated-from-sittwe-and-violent-tensions-erupt-in-rakhine-state.html.

Bazaar in Bangladesh, I did not feel it was ethically appropriate—on the grounds of respect for autonomy, beneficence, or justice—for me to attempt to conduct interviews with members of a population whose chronic persecution rendered the capacity to give free and informed consent highly compromised.

Instead, I focused on mapping the Rohingya political movement, which involved identifying the main individuals and groups involved, and how they allied with the transnational network of domestic and international government agencies, nonprofit organizations, and advocacy groups. After office hours in Yangon, I got to meet members of the Rohingya community in Yangon, including businessmen, politicians, workers for international agencies, writers, amateur historians, and youth. I sought to understand the strategies that they used to mobilize support and advocate for their rights in a national context that denied their very existence. I also found myself aiding in their efforts to organize by facilitating meetings with potential funders, helping with grant proposals, and accompanying one Rohingya activist on a 1.5 week-long trip to Washington, DC. During this trip, I observed his meetings with nine nongovernmental organizations, the US state department, and a US ambassador-at-large for international religious freedom, from whom he appealed for assistance for his community.

In pursuing these initial research objectives, I became aware of the striking contrast between the insistence on behalf of the Myanmar government of the nonexistence of the Rohingya, and the painstaking grassroots historical work being done by Rohingya activists to assert their indigeneity to the land today known as Rakhine state. Chapter two, my case study of Myanmar, is thus a story about the strategies deployed by the state and by Rohingya actors in order to undermine, and assert, claims to indigeneity to Myanmar, respectively. Original

qualitative data that I collected was used in conjunction with analysis of secondary materials, including legal texts, historical records, reports by international agencies, newspaper articles, conference proceedings, and census reports.

Dissertation Outline

In chapter one, I lay out the main theoretical framework for the dissertation, in which I introduce the concept of "omission," which I define as the process of being left out of state's administrative apparatuses—namely, civil registers, identity management systems, and censuses. I define omission as a "documentary strategy" that has been under-theorized, vis-à-vis the strategies of "recognition," "claims-making," and "evasion" that have been previously discussed in the literature on documentary politics between states and subjects.

The second chapter is a historical and qualitative case study of the ethnic cleansing of the Rohingya from Myanmar. I include this case study to illustrate how different documentary strategies are engaged in by political actors working both within the state, and on behalf of different segments of civil society, including the Rohingya minority. I demonstrate how strategic omission has been a means by which agents of the Myanmar state have undermined the Rohingya's assertions of indigeneity, and therefore citizenship, and legitimized acts of what some international observers have labelled as genocidal.

The remaining three chapters are devoted to Malaysia, the major case of my dissertation. In chapter three, I set up the empirical puzzle that is represented by Malaysia, an upper-middle-income country which has undergone rapid, if uneven, development since gaining independence from Britain in 1957. Malaysia has a demonstrated *capacity* to count its populations, as demonstrated by its economic wealth and modernized institutions, which

have enabled it to set up and maintain advanced identification and registration apparatuses. It also has a declared *interest* in counting, given its developmental aspirations to become a high-income nation by the year 2020. Yet, it a significant yet unknown number of people are left out of its civil registration systems. The empirical puzzle that I then tackle is, Why, in a state that boasts high technological capacity to identify and surveil its populations, and for which counting has been recognized as central to effective governance, do so many people face difficulties obtaining basic documents?

In chapter four, I explore how birth registration is used to regulate access to national membership. I demonstrate how the strategic omission of births from civil registration systems constitutes a kind of defensive strategy that a government can deploy against perceived demographic threats posed by migrants and noncitizens. In doing so, I conceptualize births as socially constructed events. Drawing on ethnographic fieldwork in Malaysia, I show how births only become legally recognized, and therefore legally consequential, through complex negotiations between multiple social actors and institutions over the production of official records. I then show how in Malaysia, the seemingly apolitical, colourblind act of registering a birth is infused with judgments about racial and moral deservingness to belong to the nation.

Chapter five emphasizes the importance of access to reproductive healthcare for inclusion within birth registration systems, and vice versa. I develop the concept of "population boundary disjunctures" to describe situations characterized by conflicting definitions of who "counts" within a population. I focus specifically on the misalignments between the territorial definition of "population" that is used when calculating national population health indicators, and the legal and symbolic boundaries of population

membership drawn by citizenship and immigration policies. I found that exclusion from reproductive healthcare services drove noncitizen mothers to have out-of-system birth, which amplified health risks and reproduced cycles of undocumented status intergenerationally. Such practices not only harm noncitizen women and children, but also frustrate the Malaysian state's developmental aspirations to monitor and improve maternal and infant mortality.

Key Terms and Definitions

a) Registration

The process of registration involves producing an official record of an individual or event. For example, to be counted in a civil registry means to have the circumstances of one's birth, marriage, divorce, adoption, or death recorded. In carrying out registering tasks, the state, depending on its policies, may or may not issue documentation to individuals to prove that they have been counted.

b) Enumeration

Enumeration processes involve establishing official counts of a given population—typically achieved by states through the administration of censuses. Inclusion within a census does not grant any status or identity at the individual level per se, but may provide opportunities for individuals to assert and gain recognition of *collective* identities, for example, along lines of race, gender, or indigeneity.

Undocumented Person

An undocumented person is someone who does not have the official documents required to prove her identity or legal status. While the term "undocumented" is usually associated with migrants, non-migrants may be undocumented as well. An individual does not need to be completely without any papers to be considered undocumented. Rather, this status is dynamic and context-dependent, becoming activated or deactivated according to the particular governmental body she is interfacing with. For example, an individual may have citizenship status and papers to prove it in one country, but if she crosses into another country without authorization, she will find herself without valid documentation with which she can gain recognition in that particular country. This situation applies, for example, to Mexicans who migrate to the United States either by crossing the border without authorization, or by being admitted through a formal channel and subsequently overstaying their visas.

Stateless Person

According to Article 1(1) of the 1954 UN Convention Relating to the Status of Stateless Persons, a stateless person is someone "who is not considered as a national by any State under the operation of its law."

Chapter 1

A Theory of Omission

Introduction

The power to produce and exercise knowledge about populations, territories, and resources, has been widely recognized as the *sine qua non* of state consolidation and day-to-day governance (Bourdieu, Wacquant, and Farage 1994). Over the past two decades, scholars have pointed to administrative systems as practical instruments by which states not only amass information about their jurisdictions, but also construct the social realities in which they operate (Bourdieu 1989; Giddens 1985; Loveman 2005). Maintaining civil registers, issuing identity cards, and carrying out censuses are more than mundane bureaucratic tasks: these actions discipline humans into political subjects and legitimize their stratification into hierarchies of membership and entitlement (Foucault 1977, 1982; Martin and Lynch 2009). More recently, scholars have drawn attention to how the global proliferation of increasingly sophisticated identification, surveillance, and border security technologies has endowed states with unprecedented knowledge of—and consequently power over—their domains (Breckenridge 2014; Bennett and Lyon 2008; Broeders 2007; Muller 2010).

Why, then, in a world in which fewer and fewer spaces have been left unaltered by the penetrative "reach" of the state (Scott 1999), do we witness the continued existence of peoples who remain unincorporated into administrative systems? An estimated 230 million children (one out of four) under the age of five worldwide have not been registered at birth

(UNICEF 2017). According to the World Bank Group (2018), one billion people do not possess the documentary means to prove their identities before government bodies. The global prevalence of under-registration has prompted the United Nations (UN) to name "[providing] legal identity to all, including birth registration" as a target in its 2030 Agenda for Sustainable Development.[2]

Dominant theories, which take as a central tenet that expanding surveillance is a fundamental imperative of the state, would lead one to explain away unregistered populations as by-products of a lack of state capacity. A common assumption implicit in the literature on the bureaucratic foundations of individual-state relationships is that states are necessarily expansionary in nature (Scott 2009). Such an assumption originates with Weber (1978), who saw the growth of bureaucracy as an inevitable response to the increasingly complex organizational demands of modern capitalist society. The knowledge-power nexus is made explicit in Foucault's (1977) *Discipline and Punish*: documentary procedures, he writes, position individuals "under the gaze of a permanent corpus of knowledge," thus making possible their subjection (p. 143).

The "turning of real lives into writing" (Foucault 1977, p. 192) is both an exercise of symbolic production (Bourdieu 1989), and of abstraction (Scott 1999). Regarding the former, bureaucratic systems are tools by which states accumulate the "informational capital" needed to legitimize their preferred social categories and modes of perception (Bourdieu, Wacquant, and Farage 1994). Regarding the latter, states administratively organize individuals using standardized modes of classification for the purposes of extraction—namely, the state-sustaining endeavours of taxation and military conscription (Scott 1999).

[2] United Nations (2017), "Sustainable Development Goal 16," *Sustainable Development Knowledge Platform,* accessed at https://sustainabledevelopment.un.org/sdg16.

The presumed expansionary impulse of states does not predicate that they are necessarily acting in inclusionary ways towards their subjects. Bureaucratic apparatuses of identification and surveillance make possible the social sorting of insiders from outsiders (Lyon 2003), and, relatedly, the maintenance of physical and symbolic boundaries that demarcate various levels of membership to the state.

In sum, according to this logic, the survival of states is contingent on their ability to render their peoples, territories, and resources "legible" via incorporation into administrative systems (Scott 1999). Unregistered populations, generally thought to be an increasing rarity in the modern world, are therefore considered indicative of the *absence* of state power being exerted upon them. This sentiment is expressed in Scott's (2009) concepts of "nonstate spaces" or "ungoverned peripheries," areas in which the state has been unable to extend its disciplinary reach. This assumption also informs the work of global development agencies, which have similarly diagnosed under-registration as a problem of development. That is, efforts to expand civil registration coverage are informed by the belief that states have a constant interest in counting their peoples, and only fail to do so when they lack sufficient technical expertise, resources, or administrative capacity. Accordingly, it is largely believed that under-registration will be eradicated with development brought on by greater investments in education, technology, and infrastructure (Plan International 2009; UNICEF 2013; World Bank Group 2018).

While the developmental logic is informative in many cases, particularly in the Global South where civil registration coverage is at its most limited, I argue that it is not an explanatory panacea. In a world order distinguished simultaneously by the persistence of the nation-state system (Joppke 1999; Koopmans and Statham 1999; Waldinger and Fitzgerald

2004) and the global diffusion of human rights norms (Beck, Drori, and Meyer 2012; Risse and Sikkink 2008; Wotipka and Tsutsui 2008), a critical tension exists between the interests of states (or those in positions to wield state power), and those of their subjects: On the one hand, states seek to establish authority by making their subjects visible and therefore disciplinable via incorporation into administrative structures. On the other, official recognition is a legal and symbolic resource that individuals can harness to make various rights claims on states—increasingly even if they are not full citizens (Szreter and Breckenridge 2012; Caplan and Torpey 2001). The strategic moves that both states and subjects make at the nexus of this tension provide fruitful opportunities for extending the literatures on state-building and the politics of documentary regimes and practices.

In this chapter, I explicate a new framework for making sense of the existence of unregistered populations: the *deliberate* withholding or retraction of the state's administrative reach. I introduce the concept of strategic omission, which represents an inversion of the conventional logics of state-building. I define omission as the condition of being deliberately left out of state administrative apparatuses—namely, civil registers, identity management systems, and censuses. I argue that especially in spaces with permeable borders, volatile migration flows, or bright ethnic boundaries (Alba 2005), political actors may choose to *contract* rather than expand the reach of the state, keeping unwanted populations in a condition of legal omission in an effort to undermine their claims to rights and belonging. An insidious logic underlies strategic omission. To prevent unwanted peoples from interfacing with and gaining rights and resources from governmental institutions, they must first be deprived of a more fundamental capacity: the ability to establish legal personhood before the state.

My argument proceeds as follows: First, I develop a new typology for systematizing kinds of strategies vis-à-vis legal recognition, in which I introduce the concept of strategic omission. Second, I identify the material and symbolic incentives for political actors operating within the bureaucratic machinery of the state to contract their reach. Third, I discuss how protracted omission can pose negative consequences both for individuals' life chances as well as for states' developmental outcomes. Then, I empirically flesh out this framework with a case study of Myanmar's policies and practices toward the Rohingya, based on historical and ethnographic data. I argue that the violent disenfranchisement of the Rohingya cannot be understood without incorporating the concept of strategic omission into existing theoretical paradigms on states' documentary practices. I conclude by considering future directions for research on omitted populations, as well as broader applications of this theory beyond the study of documentary politics.

Building a Typology of Documentary Strategies

Definitions and Scope Conditions

Recognition provides both advantages and liabilities to states and individuals. This typology of documentary strategies concerns a specific mode of recognition: the legal recognition of a person's existence by a nation-state, as signified by the creation of an administrative record. The administrative recording of a birth in a civil registry, of a new voter in an electoral roll, or a household in a census are biopolitical artefacts that are instrumental to the legal conception and management of individuals, and of populations as a whole (Foucault 2008). They function as evidence not only of the recognized individual's

personhood status, but also of the relationship between that individual and the recognition-granting state.

In this section, I synthesize and expand upon the literature on documentary politics by introducing a typology of documentary strategies, which puts into conversation the interests at stake from the perspective of both states and civil society actors (see Table 1). Situating these strategies within a common framework emphasizes their relational dynamic. Four possible strategies emerge from this dialectic. The first three are derived from existing theoretical work, while the last forms this paper's main theoretical innovation:

1) *Strategic recognition*: State actors may expand their administrative reach by extending legal recognition.
2) *Strategic claims-making*: Civil society actors subjected to the state's administrative gaze may adopt the classifications imposed on them, or assert preferred legal identities, to claim rights, membership, or resources.
3) *Strategic evasion*: Civil society actors may attempt to avoid administrative incorporation by states to evade surveillance, control, or exploitation.
4) *Strategic omission*: State actors may contract or withhold legal recognition to deny responsibility for or obligations to unwanted populations.

Table 1: Typology of Documentary Strategies

		Orientation of State's Reach	
		Expansionary	**Contractionary**
Structural Position of Strategic Actor	**State**	*Recognition:* To consolidate power for extraction, membership delineation, & redistribution	*Omission:* To deny responsibility for or obligations to unwanted populations
	Civil Society	*Claims-Making:* To demand membership, rights, or resources	*Evasion:* To resist surveillance, control, or exploitation

Forms of Legal Recognition

While all forms of legal recognition entail the rendering of social life into categories that are more legible and therefore manageable to the state, they differ with regard to their intended uses, the benefits and obligations they come with, and the political claims they make possible. Accordingly, they hold varying levels of importance in determining: a) an individual's position within a particular society's stratification system, and the rights and responsibilities associated with it; and b) the bureaucratic capacity and symbolic leverage a state has on an aggregate level to regulate its membership and manage the extraction and distribution of resources within it.

I distinguish primarily between the "different forms of human accounting" represented by legal technologies of registration on the one hand, and of enumeration on the other (Szreter and Breckenridge 2012, p. 18). In embarking on registration efforts, states are more concerned with the "fixing" and monitoring of individual identities for the purpose of delineating membership and status. These legal identities can in turn be invoked to make various rights claims, such as suffrage, public benefits, residency, or even citizenship. Registration may or may not involve the issuance of documents, which, depending on their

type and the degree of legitimacy wielded by their issuing body, can hold significant utility as material markers of identity in everyday transactions.[3]

In contrast, enumeration involves establishing official counts of a given population through, for example, the administration of censuses. States count people to achieve population-level goals, such as the estimation of population projections in the areas of fertility, mortality, and migration, or the drawing of constituencies. Enumeration does not grant any legal status or identity at the individual level, but may provide opportunities for individuals to assert and gain recognition of *collective* identities along lines such as race, ethnicity, gender, religion, or indigeneity (Loveman 2014; Mora 2014; Nobles 2000).

Axes of Variation

One of the two axes comprising this typology locates the *structural position of the strategic actor(s)*. The first category of strategic actors consists of those operating within the bureaucratic machinery of the state. The power to grant or withhold legal recognition is ultimately vested in the state. To speak about the state as a unitary actor, however, belies that states are composed of multiple constituent sub-units, often with competing interests and agendas (Clapp, Halperin, and Kanter 2007; Peters 2001). Documentary strategies emanate not just simply from the state as a whole, but can originate from actors positioned all along the state hierarchy, from the executive branch down to the street-level bureaucrat (Lipsky 1980). These strategies can thus be micro- or macro- in scale, ranging from national laws to decisions made at the discretion of individual officers.

[3] Identity documents may also pose liabilities to their holders. For example, identity cards denoting ethnicity, originally introduced by the Belgian colonial administration, were used to facilitate the identification of Tutsis during the 1994 genocide in Rwanda (see Longman 2001).

The other category comprises civil society actors who are subjected to, but who may act back on, acts of recognition by the state. While actors within this category can be individuals or collectives, citizenship status is not a precondition for consideration as a subject. Non-citizens, including migrants, may also mobilize in pursuit of or against classifications imposed by states. The extent of the state's reach is therefore negotiated through political struggles between strategic actors operating from top-down within the domain of the state, and from bottom-up within civil society.

The second axis concerns the *orientation of the state's administrative reach*. An expansionary orientation refers to what has been described as the state's penetration into, or capacity to "embrace," its societies (Scott 2009; Torpey 1999, 6). By contrast, a contractionary orientation is adopted through efforts to withhold, withdraw, or eschew legal recognition. A more detailed discussion of how these strategies function follows below.

1. Strategic Recognition (Expansionary Orientation, State Actor)

State actors may encourage the incorporation of populations into bureaucratic apparatuses in efforts to consolidate symbolic power. As previously mentioned, state strategies lending to an expansionary orientation has been given ample attention within the literature, mainly in association with the goals of extraction, membership delineation, and redistribution.

Historically, taxation and conscription needs drove ruling elites to develop methods for the reliable identification of individuals (Scott 1999). Scott, Tehranian, and Mathias (2002) argue that the institutionalization of permanent last names is one method by which states have historically disciplined individuals into governable subjects (Scott, Tehranian,

and Mathias 2002). For example, the use of patrilineal surnames was enforced in England to facilitate the levying of the poll tax under the reign of Richard II in the late fourteenth century (Matthews 1966).

In addition to facilitating resource extraction, information accumulated via strategic recognition has also been used to delineate who does and does not belong to the national community. The image of the Foucauldian panoptic state pervades much of the work on the bureaucratic dimensions of migration and border control. Passports and other forms of official identification have been instrumental to the creation and regulation of both physical and symbolic boundaries. As tools of surveillance and identity production, they reify and render enforceable socially constructed differences between citizen/foreigner, legal/illegal, and so on (Massey, Durand, and Malone 2002; McKeown 2011; Nevins 2010; M. N. Ngai 2014). Operating within this framework, scholars examining state responses to migratory "threats" have predominantly paid attention to the use of such top-down, expansionary strategies to selectively include or exclude peoples. Governments in the post-9/11 era have scaled up their surveillance infrastructures, harnessing technological innovations to collect and share personal information in unprecedentedly far-reaching and granular ways. These technologies have diversified states' loci of surveillance to include not only physical borders, but also domestic institutions such as labour and housing markets (Broeders 2007; Broeders and Engbersen 2007; Lyon 2009).

For example, since the signing of the Dublin Convention in 1990, the European Union (EU) has assembled an extensive legal and technological infrastructure to manage flows of irregular migrants, who predominantly arrive from the Middle East and Africa via the Mediterranean Sea. Since 2003, EU member states, along with a few other state parties to

the Dublin rules, have been required to record the fingerprints of migrants who have filed for asylum or have been apprehended using Eurodac, a centralized digital database. The original purpose of the data was to restrict migrants' asylum claims to be heard only in the country in which their claims were first lodged, thereby preventing them from "shopping" for asylum in multiple countries simultaneously (Baldaccini 2008; Broeders 2007). However, in June of 2018, the EU Council provisionally approved long-proposed regulations that would provide Europol, member states' law enforcement authorities, and third country governments access to Eurodac data for other security measures, including counter-terrorism.[4] This development has been described as a form of "surveillance creep," provoking concerns about the growth of the oversight power of the state relative to the limited rights afforded to asylum seekers captured within information systems such as Eurodac (Broeders 2007, 87).

In addition to extraction and membership delineation, state actors engage in strategic recognition for expanding their capacity to redistribute resources and provide social welfare. Arguably the most ambitious expansionary scheme to date is India's Aadhaar system (a word in Hindi meaning "foundation"), that nation's first nationwide biometric system for unique identification. In 2009, the government of India commenced the task of issuing its 1.3 billion residents with unique 12-digit numbers to facilitate the achievement of "good governance" and the "efficient, transparent and targeted delivery of subsidies, benefits, and services" (Unique Identification Authority of India 2016). While enrolment is voluntary, over 1.2 billion people have been registered in Aadhaar as of 2018, which translates into 90% coverage of the total population, and 99% of the adult population over the age of 18 (OECD 2018). The extent to which Aadhaar has been adopted is especially remarkable, given that

[4] European Parliament. (2018). "Asylum: Deal to Update EU Fingerprinting Database." Press Releases. Accessed 7 July 2018 at http://www.europarl.europa.eu/news/en/press-room/20180618IPR06025/asylum-deal-to-update-eu-fingerprinting-database.

270 million Indians (one-fifth of the population) live below the poverty line, and that 28% of children under the age of five were unregistered at birth in 2014 (World Bank 2018a).

A unique identity number provides ordinary residents access to a number of benefits and services, including government subsidies, pension funds, employee compensation, bank accounts, driver's licenses, voter cards, and more. Aadhaar has been touted by the government as a poverty alleviation tool, with hopes that it would reduce inefficiencies in social welfare provision, combat identity fraud, and provide undocumented Indians their first form of legal identity.

Aadhaar is not without its detractors. Criticisms of Aadhaar have been directed at its potential to inadvertently systemically exclude non-Aadhaar holders in the process of striving for the integration of an increasing range of services—including mobile phone accounts—into its biometric infrastructure (Singh and Jackson 2017). Other concerns have been raised about the lack of regulatory frameworks to constrain Aadhaar's surveilling potential. Nandan Nilekani, former chairman of the Unique Identification Authority of India who led the development of Aadhaar, wrote in a 2018 op-ed defending the program amidst an ongoing challenge in the Supreme Court of Aadhaar's constitutional violation of individual privacy: "Aadhaar is not a surveillance tool by the state. On the contrary, it is an assertion of your individual identity vis-à-vis the state." After a forty-day hearing spanning four months, the second longest in the country's history, the Court reserved its verdict in May 2018 indefinitely.

Strategic Claims-Making (Expansionary, Civil Society)

Top-down efforts to enhance the state's administrative capacity do not go unchallenged. With the rise in liberal democracy in the nineteenth century, norms of legitimate rule have shifted from traditional patrimonial relations, or the divine right of the sovereign, to ideals of popular sovereignty, or "authority in the name of the people" (Bendix 1978, 16). Following the adoption of the Universal Declaration of Human Rights in 1948 by the UN General Assembly, domestic and transnational social movements have harnessed human rights treaties and discourses to dismantle the exclusivity of the citizen-state relationship, and to advocate for expanding the rights of migrants and other non-citizens (Simmons 2009). Official recognition of one's personhood affords legal and symbolic capital that can be leveraged to make claims for membership, rights, and resources by actors both within and beyond the state. A typology of documentary strategies must therefore include the types of strategies pursued by civil society actors to expand the state's gaze and be incorporated into the body politic.

Strategic claims for legal recognition can be directed toward legislative or administrative reform, or demand for legal papers. Satisfying the legal criteria for citizenship is one matter; the ability to successfully navigate the bureaucratic process for obtaining it is another. While the boundaries of political membership may be formally defined on the basis of territory or descent, bureaucratic technicalities also influence the social sorting of individuals into the world-system of nation-states. The seemingly "neutral" or accidental circumstances of these technicalities often belie their political, and sometimes discriminatory, underpinnings.

For example, between February 2011 to 2014 in the Persian Gulf state of Kuwait, activists organized a number of protests to draw attention to the five decades of

disenfranchisement experienced by more than 100,000 stateless persons officially classified as Bidoon Jinsiya (Arabic for "without nationality"), referred to as the Bidoon for short. The bureaucratic origins of contemporary statelessness in Kuwait date back to the country's transition to independence in 1961 from Britain. "Original Kuwaiti nationals" are defined by the 1959 Nationality Law to be those legally resident in the territory from prior to 1920 to the date the law came into effect. The state's on-the-ground efforts to register its national population inevitably did not reach all of those who were eligible, leaving many without official recognition of their eligibility for citizenship (Albarazi and Tucker 2014).

While access to public benefits by non-citizens and citizens did not differ in the 1960s and 1970s, this distinction became materially salient beginning in 1986. Amidst increasing economic uncertainty and regional resource-driven conflict, particularly with Iraq, the Kuwaiti government reclassified the Bidoon as "illegal residents" subject to the Alien Residence Act (Beaugrand 2017). Those without material evidence to prove their long-term presence in the territory were deprived of legal residence, employment, and access to public services including education and healthcare. Bidoon were also deemed ineligible for vital documents, including civil identity cards, driver's licenses, marriage certificates, and travel documents (Human Rights Watch 1995).

Emboldened by the fervour of the Arab Spring, Bidoon numbering in the hundreds staged street rallies, sit-ins, and social media campaigns to make their disenfranchisement hyper-visible in the public eye. While demands for citizenship and the papers to prove it were largely met with repression, the government also offered some short-term concessions, including the passing of a parliamentary bill in March 2013 to naturalize 4000 "foreigners" in the country. This naturalization quota, however, has yet to be met. Long-term prospects for

legal inclusion remain unpromising, with the Kuwaiti government planning to "export" a certain number of Bidoon to the Comoros Islands off of the east coast of Africa, which has been willing to absorb them as citizens in exchange for financial investment (Amnesty International 2013).

Similar instances of political mobilization occurred in Malaysia in the months preceding the 2013 general elections. On 12 December 2012, hundreds of stateless people of Tamil Indian descent descended upon the federal headquarters of the National Registration Department to petition for national identity documents. While Malaysian Indians trace their heritage to indentured rubber plantation labourers brought to Malaya by the British colonial administration during the nineteenth and early twentieth centuries, thousands have been rendered stateless due to lacking material proof of their genealogical roots.

This lack of documentation is exacerbated by systemic racism and presumptions of their foreignness by government officials.[5] Lawyers and case workers reported that their clients' applications for citizenship are often processed with the assumption that they are immigrants rather than nationals without papers. Instead of being treated as people automatically entitled to citizenship under the operation of law, and being given forms to replace missing documentation, they are often instead issued forms for citizenship by registration or naturalization, which come with more stringent evidentiary standards and are subject to the Home Ministry's opaque discretionary power. Heightened public scrutiny of the registration department and the courts at this time facilitated the success processing of some applications.

More importantly, Prime Minister Mahathir Mohamad, who led the *Pakatan Harapan* coalition to the opposition's first victory since Malaysia's independence, announced in May

[5] Author's fieldwork conducted in 2012-2013.

2018 that he would head a special task force to resolve the issue of statelessness among marginalized communities in Malaysia, including those of Tamil descent. While concrete action has yet to be taken, this development marks an important political milestone for advocacy on behalf of stateless persons in Malaysia.

In sum, mobilizing to be counted as persons, and leveraging such legal recognition in order to make claims for rights and resources, are strategies that groups in lower positions of power can wage to counteract or benefit from the subjectifying consequences of inclusion within bureaucratic apparatuses. In the following two sections, I shift to a discussion of the two main processes by which omission is manufactured.

Strategic Evasion (Contractionary, Civil Society)

The third quadrant in a typology of documentary strategies represents bottom-up attempts to "keep the state at arm's length" (Scott 2009, x). Instead of directly acting back on the state's extractive designs by leveraging the symbolic currency of legal recognition to claim rights and entitlements, civil society actors can alternatively opt to strategically evade the state's reach. Further, civil society actors located within the political confines of the state may mobilize in favour of the contraction of the state's reach.

Scott's (2009) history of the "deliberate and reactive statelessness" of hill societies in Southeast Asia provides an archetypical account of strategic evasion. He argues that upland peoples' peripheral position is intentionally maintained: their difficult-to-reach location, peripatetic lifestyles, swidden agricultural practices, oral cultural traditions, and flexible family arrangements are designed to "avoid incorporation into states and to prevent states from springing up among them" (Scott 2009, x).

Populations already subjected by the state may attempt to strategically undermine further accretions of its power. Loveman (2007) shows how the "war of the wasps," a popular revolt in 1852 against the Brazilian empire's attempts to introduce compulsory civil registration, exemplifies the tensions that can arise between modernizing states and unwilling subjects. She argues that the imperial government's belief in the modernizing promise of civil registration, and overestimations of its own legitimate authority, rendered it "blind" to the interests and world views of the rural poor. Ensuing protests derailed the state's plans to institutionalize civil registration, which failed to be actualized until the birth of the Republic of Brazil in 1889 (Loveman 2007).

Migrants may also strategically render themselves illegible in situations where it may be advantageous to be untraceable by one's name, age, ethnicity, or national origin. The international refugee regime in particular has created incentives for the destruction and reinvention of identities. Papadopoulos and Tsianos (2007) describe the evasive strategies that migrants used following the Spanish government's imposition of visa restrictions in 1991 for individuals from Maghreb countries:

> …migrants from Morocco, Mali, Senegal, Mauritania (etc.) gather in Tangier waiting for an appropriate moment to cross the Mediterranean. They are called *'Herraguas'* (the burners); people prepared to burn their documents when they reach the Spanish Schengen border in order to avoid being returned to their country of origin…The strategy of de-identification is a voluntary 'de-humanization' in the sense that it breaks the relation between your name and your body. A body without a name is a non-human being; an animal which runs. (226-227).

Punitive asylum or migration policies in other countries beyond the European context, such as Australia, have incentivized migrants to destroy their passports or even burn their fingerprints in order to evade identification and subsequent deportation (Hollins 2018). Strategic evasion enables migrants to transcend borders that have been built on the premise that every individual belongs to at least one state. While papers are often key to accessing fundamental rights, this same recognition may prove to be a liability for those who have been marked as members of states on the bottom of the global hierarchy.

Strategic Omission (Contractionary, State)

In this section, I address the remaining quadrant in this typology, which has been left undertheorized in the literature on documentary politics. I develop the term "strategic omission" to describe state actors' efforts to withhold or contract their administrative reach. Omission refers to the process of being unregistered or uncounted in state administrative apparatuses, such as civil registers, identity management systems, or censuses. I use the term omission to signal its distinctiveness from the dynamics of inclusion and exclusion that have been the focus of a vast body of work on implicit and explicit forms of social categories, boundary-making, and stratification (Bowker and Star 1999; Brubaker 2015; Massey 2008; Tilly 1999). Turning to the kinds of formal classificatory work engaged in by states, many scholars have examined how states' bureaucratic practices create "types" of persons to which different bundles of rights and entitlements are attached (Loveman 2014; Mora 2014; M. N. Ngai 2014; Nobles 2000). These lines of inquiry imply that some form of administrative processing precedes the granting or denial of legal standing to individuals or groups. To be

omitted, on the other hand, in an administrative sense, is to exist outside of the social structure managed by states embedded in a stratified international system.

According to the hegemonic logic pervading the body of work on documentary practices, the persistence of unregistered populations can be attributed to states' inadequate capacities to count them. This logic also informs the work of development practitioners, whose proposed solutions to under-registration involve lending technical and financial assistance and scaling up investments in education and infrastructure (see, for example, Plan International 2009; UNICEF 2013; World Bank Group 2018). Discourses promulgated by development practitioners regarding under-registered populations are for the most part depoliticizing. By portraying governments as wanting to count, but being merely unable to, development agents echo the same assumptions that underlie sociological theorizing about states and their desire to "see."

I challenge the taken-for-granted assumption that "seeing" is necessarily always in the state's agenda. Accordingly, I also question the assumption that underdevelopment is an adequate explanation for why there continue to be uncounted populations around the world today, and that investments in state capacity-building will inevitably result in their inclusion. Indeed, in a comparison of countries' level of wealth (measured by gross national income per capita and purchasing power parity) and their birth registration rates, (Hunter and Brill (2016) find that, below high income levels, economic development is an imperfect predictor of birth registration coverage. Rather than interpreting unregistered populations as indicative of the absence of state power, their existence may conversely be the product of its deliberate exertion.

What motivations might lead state actors to willingly relinquish the opportunity to expand their administrative power over their territories, resources, or—in this case—populations? While the postnational turn of the 1990s (see Soysal 1994; Jacobson 1997) has largely given way in the post-9/11 era to a reaffirmation of the primacy of citizenship as a mechanism of social closure and determinant of individuals' life chances, the rights regime remains an integral feature of the contemporary international system. States, rather than declining in significance, remain the domains in which sovereignty and human rights obligations come into conflict (Joppke 1999). Human rights instruments have provided civil society actors with vocabularies and transnational networks to be used to normatively constrain state behaviour (Keck and Sikkink 1998; Simmons 2009). Legal omission has emerged as a counter-strategy to subvert civil society actors' claims-making capacities.

The paradox inherent in the classical liberal assertion that one's status as a person naturally bears with it fundamental rights is that personhood holds little bargaining power unless it is recognized within the framework of the state. The circumstances of legally omitted persons are akin to the mass numbers of stateless persons created after World War II that Arendt (1951) describes:

> The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion—formulas which were designed to solve problems within given communities—but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them" (295-6).

Strategic omission is the practical means by which this Arendtian form of legal indeterminacy is manufactured. To evade obligations toward unwanted populations, state actors may seek to render them illegible, placing them outside of the domain of human political organization. In rationalized societies in which the relationships between individuals and states are substantiated by the maintenance of bureaucratic records and the issuance of documents, strategic omission deprives persons of the material evidence needed to substantiate their personhood.

Methods of Strategic Omission

The first of the two main processes by which strategic omission is carried out is through the denial of access to registration, which may or may not involve confiscating documents or restricting access to official documentation. The restriction of access to registration or documents may be *formally* codified into state policy, or be the result of *informal* discretionary actions of state agents.

The second major way that illegibility is produced and maintained is through erasure from enumerative records, such as censuses or surveys. Similar to the strategies of dispossession, this type of exclusion can be carried out as part of formal policy—namely, through the omission of certain categories from official use—or it can be the result of individual bureaucrats overlooking individuals or groups during the implementation of enumerative exercises.

Table 2: Methods of Strategic Omission

	Denial of Access to Registration	**Erasure from Enumerative Records**
Formal	Institutionalizing policies to deny, confiscate, or restrict access to registration &/or documentation	Institutionalizing policies to omit certain categories from official use

Informal	Interpreting and implementing policies in ways that lead to the denial of registration &/or documentation	Overlooking or excluding individuals or groups from being counted during the implementation of enumerative exercises

Incentives to Omit

There are both material and symbolic incentives for state actors to engage in strategic omission. First, governments do not have to extend access to scarce resources to populations that legally do not exist according to their own records. Exploiting the assumption underlying today's international system that every individual belongs to at least one country, state actors may attempt to shunt responsibility for unwanted peoples elsewhere by remaining ignorant, in a bureaucratic sense, to their existence.

Legitimacy is also at stake. State actors can conveniently appear to be adhering to Weberian norms of bureaucratic rationality when they cite a lack of appropriate documentary evidence as their reason for rejecting claims by individuals, despite having played a role in rendering them illegible to begin with. They may insist that they are simply upholding the law, while simultaneously ignoring the possibility that these laws were designed to structurally privilege certain groups to the omission of others.

Furthermore, state actors may not have to factor populations which they cannot "see" into government statistics such as census reports or development indicators. Taking into consideration that the generation of official figures serves "complex political functions in the allocation of money and power, the setting of norms, the making of policy, and the evaluation of government performance," states may choose to subtract from their bottom denominators the very populations that are often the most disadvantaged (Starr 1987, 10). For example, it may be easy for a state to claim that it has achieved universal primary

education coverage if it only includes into its calculation those fortunate enough to be embedded in mainstream institutions in the first place. But even given these perceived benefits, reproducing protracted illegibility has profound negative implications for nation-states and their members.

This typology of documentary strategies applies to deliberate acts. Not all forms of omission, of course, are intentionally produced. *De facto* omission, in contrast to strategic omission, refers to the state of illegibility as an unintended consequence stemming from, for example, state incapacity or chronic marginalization.

Consequences of Protracted Omission

There are micro- and macro-level consequences that states and their communities bear when spaces of illegibility are maintained. For individuals, the lack of official documents can lead not only to exclusion from the polity, but more fundamentally to the lack of recognition of one's very existence as a human being. A legal identity provides access to power as well as protection. Without one, individuals may have difficulties enrolling in school, accessing healthcare, establishing their relationship to their parents, crossing borders, claiming a nationality, or enjoying other fundamental rights and freedoms. Illegibility can be transmitted from parents with irregular status to their children, perpetuating a cycle of precarity across generations. These violations can occur without recourse to protection accorded by any governmental body.

At the macro-level, states' development agendas may be hindered. Without accurate information about its populations, states are compromised in their ability to formulate targeted policies, deliver public services, allocate their budgets, and perform other essential

tasks of governance (Stuart et al. 2015). Omission exacerbates inequality, as communities which tend to be excluded from official data collection efforts are often those that are the most marginalized within society due to race, poverty, or legal status (Stuart et al. 2015).

Conclusion

This paper presents a new typology for understanding the different strategies that state and civil society actors may engage to either expand or withhold legal recognition. I introduce the concept of strategic omission, which may be used by state actors to keep unwanted populations beyond the state's reach to undermine their claims to membership, rights, or resources.

In an accompanying study, I apply this typology in an analysis of the ongoing conflict between the Southeast Asian state of Burma/Myanmar and the Rohingya ethnic minority. Until today, the Myanmar government has refuted citizenship claims made by a population that ethnically identifies as Rohingya. The Rohingya aver that they are a distinct Muslim minority that has for centuries settled in the region today known as Rakhine state in western Myanmar, which is the region of the country that borders Bangladesh in the northwest. According to the government's official position and domestic popular opinion, however, the name "Rohingya" is merely an invention made by recent "illegal" immigrants from Bangladesh, who are unentitled to lawful residence, much less citizenship.

Since Burma gained independence from the British Empire in 1948, the Rohingya have been subjected to military-led violence, residential segregation, forced labour, and the restriction of basic rights including education, healthcare, freedom of movement, marriage, and reproductive autonomy. Conflict over religion, territory, and resource allocation by

international aid groups, has regularly broken out between the Rohingya and the Buddhist Rakhines, who, unlike the Rohingya, are recognized within the current citizenship legal framework as *taing-yin-tha* (meaning "national ethnic group" in Burmese).

To date, the majority of Rohingya have been displaced abroad to refugee camps in Bangladesh, as well as further afield to countries such as Malaysia, Pakistan, and Saudi Arabia. In the aftermath of the most recent outbreak of violence, an estimated 688,000 individuals had fled to Cox's Bazar in Bangladesh from Rakhine between August 2017 and January 2018, making the Kutupalong camp in Bangladesh the largest refugee camp in the world at a population of 919,000 (Inter-Sector Coordination Group 2018). Debates abound within humanitarian, diplomatic, and academic circles over whether the conditions experienced by the Rohingya amount to genocide.[6]

Focusing on this empirical case enables me to throw into high relief a set of logics employed by actors vis-à-vis registration that are unintelligible through the lens of current theorizing on states' documentary practices. The proposed typology provides analytical purchase for understanding why and how documentation (as an act and as a commodity) became a central fixation in the ongoing conflict over the Rohingyas' claim to citizenship in Myanmar.

At first glance, bureaucratic tribulations may seem trivial in comparison to what UN Commissioner for Human Rights Zeid Ra'ad Al Hussein described in December 2017 as "shocking atrocities" and "acts of appalling barbarity" being committed against the

[6] See, for example, "Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 37th Session of the Human Rights Council," *United Nations Human Rights,* accessed at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22806&LangID=E.

Rohingya, which he enumerated to include murder, torture, rape, and the razing of villages.[7] Here, I concur with Loveman (2005) that the ideological workings of state power merit attention because they make possible the material exercise of power in the military, political, and economic domains that have been the traditional foci of studies of the modern state. The Rohingya's symbolic erasure, achieved through the denial, confiscation, and invalidation of official documents, serves to legitimize their physical victimization and geographical displacement.

Drawing upon historical sources and ethnographic data, I demonstrate that strategic omission has been a means by which agents of the state have undermined the Rohingyas' assertions of indigeneity to the territory known today as Rakhine State. The absence of the Rohingya from apparatuses of legibility, I argue, should not simply be read as solely emblematic of a weak state. Rather, bureaucratic "blindness" towards the Rohingya has been the cumulative outcome of a series of political choices made by actors positioned both along the state hierarchy, and supported from below by ultranationalist segments of civil society.

[7] "Special Session of the Human Rights Council on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar, Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein," *United Nations Human Rights,* accessed at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22487&LangID=E.

Chapter 2

Strategic Omission and the Ethnic Cleansing of the Rohingya from Myanmar

In this chapter, I empirically flesh out the typology of recognition strategies by analysing the evolution of the conflict between the Southeast Asian state of Burma/Myanmar and its Rohingya ethnic minority. Until today, the Myanmar government has refuted citizenship claims made by a population that ethnically identifies itself as Rohingya. The Rohingya aver that they are a distinct Muslim minority that has for centuries settled in the region today known as Rakhine state in western Myanmar, which is the region of the country that borders Bangladesh in the northwest. According to the government's official position and domestic popular opinion, however, the name "Rohingya" is merely an invention made by recent "illegal" immigrants from Bangladesh, who are unentitled to lawful residence, much less citizenship.

Since Burma gained independence from the British Empire in 1948, the Rohingya have been subjected to military-led violence, residential segregation, forced labour, and the restriction of basic rights including education, healthcare, freedom of movement, marriage, and reproductive autonomy. Conflict over religion, territory, and resource allocation by international aid groups has regularly broken out between the Rohingya and the Buddhist Rakhines, who, unlike the Rohingya, are recognized within the current citizenship legal framework as *taing-yin-tha* (meaning "national ethnic group" in Burmese). To date, the

majority of Rohingya have been displaced abroad to refugee camps in Bangladesh, as well as further afield to countries such as Malaysia, Pakistan, and Saudi Arabia (Asrar 2017). In the aftermath of the most recent outbreak of violence, an estimated 688,000 individuals had fled to Cox's Bazar in Bangladesh from Rakhine between August 2017 and January 2018, making the Kutupalong camp in Bangladesh the largest refugee camp in the world at a population of over 900,000 (International Organization for Migration 2018). Debates abound within humanitarian, diplomatic, and academic circles over whether the conditions experienced by the Rohingya amount to genocide.[8]

Focusing on this empirical case enables me to throw into high relief a set of logics employed by various state and civil actors vis-à-vis registration and documentation that are novel in comparison to those presumed by the extant literature. While Burma/Myanmar may seem an outlier within the universe of nation-states—given, for instance, its history of ostensibly socialist military authoritarianism, protracted civil war with ethnic insurgents, and its current only nominally democratic regime—the conflicting interests that emerge out of administrative processes of recognition are not unique to this case. I further appraise the generalizability of this thesis, and furnish alternative examples of such practices in other contexts, in the conclusion.

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[8] See "Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 37th Session of the Human Rights Council," accessible at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22806&LangID=E. On 26 February 2018, The Berlin Conference on Myanmar Genocide was convened. Prominent speakers from academic and diplomatic circles were in attendance, including Professor Yanghee Lee (UN Special Rapporteur on human rights situation in Myanmar 2014-2018) and Ambassador David Scheffer (US Ambassador at Large for War Crime Issues from 1997-2001). Well-known diasporic Rohingya activists were also in attendance, including Ro Nay San Lwin (founder of the Rohingya Blogger website), and Ro Tun Khin (President of the Burmese Rohingya Organization UK). The conference programme is accessible at http://permanentpeoplestribunal.org/wp-content/uploads/2018/02/ENGLISH-AGENDA-Berlin-conference-on-myanmar-genocide-26-Feb-2018.pdf.

The typology elaborated on in chapter one provides analytical purchase for understanding why and how documentation (as an act and as a commodity) became a central fixation in the ongoing conflict over the Rohingyas' claim to citizenship in Myanmar. At first glance, bureaucratic tribulations may seem trivial in comparison to what UN Commissioner for Human Rights Zeid Ra'ad Al Hussein described in December 2017 as "shocking atrocities" and "acts of appalling barbarity" being committed against the Rohingya, which he enumerated to include murder, torture, rape, and the razing of villages.[9] Here, I concur with Loveman (2005) that the ideological workings of state power merit attention because they make possible the material exercise of power in the military, political, and economic domains that have been the traditional foci of studies of the modern state. The Rohingya's symbolic erasure, achieved through the denial, confiscation, and invalidation of official documents, serves to legitimize their physical victimization and geographical displacement.

Drawing upon historical sources and original qualitative data, I demonstrate that strategic omission has been a means by which agents of the state have undermined the Rohingyas' assertions of indigeneity to the territory known today as Rakhine State. The absence of the Rohingya from apparatuses of legibility, I argue, should not simply be read as

[9] During a "special session of the Human Rights Council on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar," held on 5 December 2017 in Geneva, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein reaffirmed convictions about the severeity of the human rights abuses occurring against the Rohingya: "…considering the decades of statelessness as well as systematic and systemic discrimination against the Rohingya; policies of segregation, exclusion and marginalization; long-standing patterns of violations and abuses with little or no access to justice and redress; and considering the recent allegations of killing by random firing of bullets, use of grenades, shooting at close range, stabbings, beatings to death, and the burning of houses with families inside; the serious bodily or mental harm inflicted on Rohingyas including children; the subjection to various forms of torture or ill-treatment, being beaten, sexually abused, raped; considering the forced displacement and systematic destruction of villages, homes, property and livelihoods; considering also that Rohingyas self-identify as a distinct ethnic group with their own language and culture, and are also deemed by the perpetrators themselves as belonging to a different national, ethnic, racial or religious group—given all of this, can anyone rule out that elements of genocide may be present?" Accessed 3 June 2018 at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22487&LangID=E.

solely emblematic of a weak state being unable to achieve its governance goals (though, to be sure, Myanmar fares poorly on a number of measures of state capacity). Rather, bureaucratic "blindness" towards the Rohingya has been the cumulative outcome of a series of political choices made by actors positioned both along the state hierarchy, and supported from below by ultranationalist segments of civil society.

Not all forms of omission, of course, are intentionally produced. However, in certain cases it may be analytically less important to inscribe intentionality into laws and policies than it is to examine their consequences. In the Rohingya's case, omission has not only been the outcome of strategic choice, but has also been the indirect consequence of decades of marginalization. To avoid committing theoretical overreach, I distinguish between instances of strategic omission and instances in which omission is the indirect consequence of state incapacity, restrictive policies, or chronic marginalization. Cumulatively, I demonstrate that these causes of omission have undermined efforts to assert the Rohingya's rights to Myanmar citizenship.

Historical Background

Conflicts over the Rohingyas' collective right to political membership—and the paperwork to symbolize it—derive from more fundamental contestations over the social location of Myanmar's national boundaries. Before proceeding with my main analyses, I provide context by reconstructing the historical evolution of the Rohingya identity as an ethnopolitical project, and discuss the ways in which this project has been refuted by actors seeking to contract Myanmar's national boundaries to achieve the exclusion of this ethnic category 5/14/19 1:26:00 PM.

Ambiguity surrounding whether the Rohingya are or are not indigenous to Myanmar is owed to numerous reconfigurations of territorial borders in the region, and the frequent movement of people across them. The majority of the population facing this crisis of categorization straddles the boundary between Myanmar and Bangladesh, concentrated in the area known today as Rakhine state on the west coast of Myanmar next to the Bay of Bengal, as well as across the Bangladesh border near Cox's Bazar in refugee camps and precarious settlements. Rakhine is the modern incarnation of Arakan, an independent kingdom centered at Mrauk-U that in 1430 intermittently held control over Chittagong (alternating with Bengal) until the territory was absorbed by the Mughal Empire in 1666 (Smith 1995).

In 1784 Arakan became incorporated into the Burmese kingdom after it was conquered by King Bodawpaya of the Konbaung monarchy, the last existing dynasty prior to colonial occupation (Hall 1981). Arakan was among the first Burmese territories to fall to the British in 1826 by the end of the First Anglo-Burmese War (Phayre 1841). Over the course of two more wars, which unfolded between 1852 and 1885, Burma ultimately became annexed to British India in 1886, and continued to be governed as one of its provinces until growing nationalist fervor precipitated its administrative separation in 1937.

While migration had been commonplace prior to 1886, the dismantling of exterior borders made possible the large-scale redistribution of human labor from India into several sectors of Burma (Egreteau 2011). Indians were preferentially installed in key sectors of public administration, fulfilling roles within civil service, the police, the military, among other departments (Egreteau 2011; Yegar 1972). Indian merchants also came to dominate trade, banking, and money-lending (Egreteau 2011). They not only occupied high-skilled positions, but also performed manual jobs in agriculture, railroad construction, service, and

mining (Kaur 2006; Yegar 1972). The dramatic demographic changes in this social field, in which notions of ethnoracial identification were previously fluid in practice, were made materially consequential as a result of colonial practices of distributing occupational access and political status along racial lines, as well as the bureaucratic ascription of race via tools such as the census (Scott 2009).[10]

Colonial administrative systems of classification and the racially stratified economy amplified notions of racial difference, particularly along the boundary between "locals" and "foreigners." According to the 1931 census, the Indian population in Burma had grown to 1 million, a significant number considering that Burma's population as a whole numbered 14,650,000 at the time. While Indians were technically residents rather than migrants in British Burma, they were perceived as interlopers by the Burmese, who were deliberately overlooked by the British colonial administration for positions of power in the new government (Yegar 1972). Racial resentment, exacerbated in particular by the 1930 global economic crisis, led to violent anti-Indian riots in urban areas such as the capital of Rangoon (Egreteau 2011). The invasion of Japanese forces in 1942 provoked the mass exodus of somewhere between 100,000 to 200,000 Indians, uncertain about their well-being after British withdrawal, out of Burma (Tinker 1975).

These tensions were echoed in Arakan during and after the end of World War II, in which the divergent alignment of wartime political allegiances deepened racial cleavages

[10] Perhaps surprisingly, the 1911 census report contains a brief reflection on the challenge of accurately capturing Burma's racial landscape: "Race in Burma is not a fixed definite phenomenon capable of presentation in a set of tabular statements. It is vague and indeterminate, and in a stage of constant fluctuation. Its method of record is liable to vary from district to district and sometimes from enumerator to enumerator. The census figures are but a presentation of a momentary phase of racial distribution. They do not necessarily represent a distribution of the population into separate and mutually exclusive racial groups" (Webb 1912).

between the Rohingya, who supported the British, and the Rakhines, who, along with the pro-independence Burmese, initially cooperated with the Japanese (Murray 1971). Following the reclaiming of Burma by Allied forces and the eventual transition to independence under the Anti-Fascist People's Freedom League, Muslims in Arakan were gradually deposed from their posts in the military, civil service, police, and other local leadership positions (Yegar 1972). Residents displaced in 1942 faced barriers to returning to their former villages, which had been reallocated to Rakhine settlers. A militant faction of the Muslim Rakhine population raised what became known as the Mujahid rebellion in 1947, demanding that Buthidaung and Maungdaw in the northern part of Arakan be designated a separate state, with some vying for this state to be annexed to the newly-formed Pakistan (British Foreign Office 1952). The rebellion persisted until the Mujahid surrender in 1961, with a promise from U Nu that Maungdaw, Buthidaung, and western Rathedaung would be designated the Mayu Frontier Administration Area separate from Arakan, which was to be granted statehood. However, the legal process for actualizing this promise was derailed in 1962 when General Ne Win led a military coup to overthrow U Nu's parliamentary democratic government.

Classificatory disputes owing to the unsettled nature of borders and populations led to fatal consequences in Rakhine state after independence and continuing into the 21st century. Four major population disruptions have occurred since independence, during which communities were displaced and then repatriated across the border between Bangladesh and Rakhine. The earlier movements in particular have been seized upon by anti-Rohingya figures to point to the porosity of Rakhine state's northwest border, and to contend that the Rohingya are therefore actually likely to be more recent arrivals from Bangladesh. For

example, in 1992, the government issued the following statement in the state-run *The Working People's Daily*: "The Rohingya problem is no more than the problem of unregistered illegal immigrants that is in existence for the past forty years now."[11] Conflict and displacement, by upsetting daily lives, also created the conditions for the loss or destruction of identity documents that would eventually become central to determining citizenship status.

In 1978, the Ministry of Home Affairs and Ministry of Religious Affairs, under the administration of the Burma Socialist Program Party (BSPP), implemented the Naga Min ("Dragon King") operation in Arakan. Ostensibly intended to be a census operation to update population estimates in the border areas, the violent nature of its implementation by the Tatmadaw (army) resulted in the fleeing of 200,000 Muslims from Arakan into Bangladesh from March to July of 1978. Refugees became confined in twelve government-managed camps near the Teknaf border and Cox's Bazar (Lindquist 1979).

By December of that year, the mortality rate within the refugee camps had reached 17 out of 10,000 per annum, which at the time was eight and a half times the national average in Bangladesh, predominantly due to malnutrition and starvation (Lindquist 1979). By March 1979, nearly 12,000 refugees had perished, over half of them children. Facing pressure from the Bangladeshi authorities, the Burmese government reluctantly signed a repatriation agreement in July 1978, and began taking back refugees determined to be "genuine residents"—those who could produce Burmese National Registration Cards—at the rate of 2000 every three days from November 1978 onwards.[12] According to UN figures, however,

[11] The Working People's Daily, Vol. 6 No. 1, January 1992, accessible at 18 April 2019 at http://www.ibiblio.org/obl/docs3/92-01.txt.

[12] The repatriation at the earliest of the lawful residents of Burma who are now sheltered in the camps in Bangladesh on the presentation of Burmese National Registration Cards…" The agreement also

only 107,368 had returned by date?, with 83,223 surviving refugees remaining in the camps (Lindquist 1979).

In 1991, the State Law and Order Restoration Council (SLORC), which supplanted the BSPP after staging a coup in 1988, scaled up military offenses in attempts to suppress multiple ethnic insurgencies inside the newly-named Republic of the Union of Myanmar. In Rakhine state, as in other border areas, military crackdowns were fueled by an ideology of "Burmanization" (see Holmes 1967) which was expressed through violence and xenophobia toward Muslims. Abuses—including torture, forced labour, rape, arbitrary arrest, and land confiscation—sent 250,000 Muslims across the border to Bangladesh from Rakhine (Phiri 2008). After the signing of an agreement in 1992 between Bangladesh and Myanmar, the UNHCR facilitated the return of 230,000 refugees throughout the remainder of the decade (UNHCR 1999).

On top of regular seasonal departures by Rohingya seeking refuge outside of Rakhine state, the 21st century has so far witnessed two major displacement crises. In 2012, the rape and murder of Thida Htwe, a Buddhist Arakanese woman, allegedly by three Muslim men, sparked mass riots between Buddhist and Muslim communities, which ended up driving 140,000 people across the border to Cox's Bazar (Human Rights Watch 2013). In August 2017, a group of armed men operating under the name of the Arakan Rohingya Salvation Army attacked around thirty security posts in northern Rakhine state, which elicited a

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elaborates on a repatriation agreement for "illegal immigrants": "After completion of repatriation of all the aforesaid residents of Burma from Bangladesh, the two Governments shall co-operate, for the prevention of the illegal crossing of the border by persons from either reside. Both Governments agree to receive the repatriation of their residents who cross the boundary subsequent to the date when the Border Ground Rules comes into force and who are found illegally in each other's country." See 1978 Repatriation Agreement," accessed 4 June 2018 at https://dataspace.princeton.edu/jspui/bitstream/88435/dsp01th83kz538/1/1978%20Repatriation%20Agreement.pdf.

military backlash that broadly targeted Muslim civilian communities (Amnesty International 2018). Survivors provided eye witness accounts of individuals, including women, children, and the elderly, being deliberately trapped and burned to death inside their houses, and of being shot at by military personnel while attempting to flee.[13]

Satellite imagery revealed that at over twenty square kilometers of structures had been burned down by October 2017 in at least 156 large fires (Amnesty International 2017; UNITAR 2018).[14] On 13 September 2017, presidential spokesman Zaw Htay acknowledged that 176 Muslim villages had been deserted, accounting for nearly 40% of Muslim settlements in Northern Rakhine.[15] Since August 2017, an estimated 720,849 refugees had arrived in Bangladesh from Rakhine, bringing the total population in the camps to 886,778 as of 31 May 2018 (UNHCR 2018). Of course, these estimates only take into account individuals registered by the UNHCR, and does not include those who have been unable or unwilling to undergo registration.

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[13] In response to a 2013 report submitted to the UN Human Rights Council by Special Rapporteur on the situation of human rights in Myanmar Tomás Ojea Quintana, the government of Myanmar responded: "We cannot share the Special Rapporteur's view that the fact that 'Rohingyas' put their lives at risk to take to the seas in unseaworthy boats itself indicates the extent of their suffering in Myanmar. This view does not reflect the reality. Firstly, one cannot outrightly assume that the so-called boat people have been taking to the seas because of their suffering. The fact is that most of them are economic migrants who are being exploited by the human trafficking gangs in the region. Secondly, we do not accept the notion that all of them came from Myanmar. They could come from everywhere in the region. One cannot discount the possibility that, if or when arrested in another country, these boat people would hide their true identity; they would instead falsely identify themselves as Myanmar nationals." See Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, accessed 19 April 2019 at http://www.burmapartnership.org/wp-content/uploads/2013/03/Remark-by-Myanmar-on-SR-Report-March-2013.pdf.

[14] According to UNOSAT, heavy cloud cover during the period in question means that this is an underestimate of the total destroyed area.

[15] Htoo Thant and Lun Min Mang "'Safety Zone' Proposal Shot Down," 14 September 2017, *Myanmar Times,* accessed 8 June 2018 at https://www.mmtimes.com/news/safety-zone-proposal-shot-down.html.

In sum, moveable borders, volatile population flows, and interethnic hostilities roused by British colonial interventions created grounds for Burmese Buddhists to dispute the "authenticity" of Rohingya identity and the legitimacy of their claims to citizenship in Myanmar. In light of the ambiguity surrounding the Rohingya's belonging, actors vying for their enfranchisement as well as for their exclusion have commonly referred to official documents—albeit in differing ways and toward opposing ends—as evidence to shore up their respective positions.

In the following section, I use the recognition strategies framework to make sense of the Myanmar state's policies and practices toward the Rohingya regarding citizenship and population management. I demonstrate that while earlier post-independence approaches to managing an ethnically and politically fractured population followed conventional logics of legibility, state actors later turned to strategic omission in order to undermine the Rohingya's claims to indigeneity. In addition to deliberate practices of omission, I also demonstrate how individual Rohingyas' quotidian confrontations with frontline representatives of the state often resulted in their *de facto* omission, even when the ostensible goal of policies being implemented was to increase state control and surveillance, rather than to withdraw recognition.

Strategic Recognition: Conventional Logics of Legibility in Post-Independence Nation-Building Efforts

For most of the second half of the 20th century, state actors tackled the contentious and nearly continuously violent project of nation-building by conventionally aiming to *expand* the state's administrative reach—particularly into ethnic minority-controlled Frontier

Areas. Up until recently, the downgrading of the Rohingya's membership status took place well within the purview of the state's gaze: Rohingyas were routinely administered National Registration Cards (NRCs) alongside other nationals when it became mandatory for all residents of Burma to register with the government. Their membership status was downgraded after the introduction of the 1982 Citizenship Law, when their NRCs were replaced with Temporary Registration Cards (TRCs), casting them into a state of classificatory uncertainty.

In the period leading up to 1948, architects of Burma's first constitution strained to consolidate a democratic socialist nation while assuaging non-Bamar ethnic nationalities' own aspirations for self-determination. The original vision of citizenship put forth in the 1947 Constitution of the Union of Burma (henceforth referred to as the "1947 Constitution") was written to be singular in form and flat in hierarchy "irrespective of birth, religion, sex or race."[16] Citizenship was granted automatically to persons both of whose parents belonged to any of the Union's "indigenous races," or who were born in the Union with at least one grandparent belonging to an indigenous race. The definition of "indigenous race" was later specified in the 1948 Union Citizenship Act (henceforth referred to as the "1948 Citizenship Act") to include the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan. The act also counted as indigenous racial groups that had "settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A.D," though did not specify which these were.

[16] The Constitution of the Union of Burma, 24 September 1947, effective 4 January 1948. Clause 10 of the Constitution states that "there shall be but one citizenship throughout the Union; that is to say, there shall be no citizenship of the unit as distinct from the citizenship of the Union." In the second half of Clause 13 under the section of "Rights of Equality," it is stated that "there shall not be any arbitrary discrimination between one citizen or class of citizens and another."

In addition to allocating citizenship on the basis of race, the 1948 Citizenship Act allowed for the automatic acquisition of citizenship on a *jus soli* basis for persons born within the territory whose ancestors had made Burma their "permanent home" for at least two generations. Furthermore, it outlined a number of ways in which citizenship could be acquired through naturalization, provided that the applicants met certain age, residency, language, or other non-ascriptive requirements. Thus, while the Rohingya did not qualify for citizenship on racial grounds, the ambiguous definition of who constituted a settled racial group in the texts of these laws, and the existence of avenues for the acquisition of citizenship via non-ascriptive means, left open the possibility for inclusion. It is important to note, however, that state discourses promulgating national unity translated into the attempted religious and linguistic assimilation of ethnic minorities into a Buddhist, Bamar-dominated majority (Holmes 1967).

National membership was regulated via material means under the 1949 Registration Act and 1951 Registration Rules, which created the Registration List of the Residents of Burma, and required for the first time that all residents of Burma register with the government and carry identity cards. It also necessitated that each home keep a household list, which tallied the names and information of all household members. Information recorded within the Registration List included a person's name, sex, age, date of birth, country of origin, nationality, occupation, address, name of spouse (if applicable), and military service (if applicable).

Citizens aged 12 and above were issued National Registration Cards (NRCs), known colloquially as the "Three-Folded Card," which came in green for men and pink for women. Temporary Registration Certificates (TRCs), also known as "White Cards," were given to

those who had lost or damaged their NRCs to be used in the interim until a new NRC was issued, while non-citizens were issued Foreign Registration Cards (FRCs). Notably, information on race and religion were not recorded on the Registration List or displayed on these cards. Rohingyas in Rakhine, and peoples of Indian descent in other parts of the country, were routinely issued NRCs during the 1950s.

Rohingya activists, along with international agencies, scholars, and journalists, point to the advent of the 1982 Citizenship Law as the key turning point in the timeline of the Rohingya's disenfranchisement. The 2013 Rakhine Commission Report, which was established on 17 August 2012 through an Executive Order by the President to investigate the "root causes" of the 2012 violence, alleged that the 1948 Citizenship Law's failure to "[safeguard the long-term interests of the indigenous *tai-ying-tha*" was the motivating factor behind the drafting of a new legal framework for regulating citizenship.[17] Introduced by General Ne Win in a speech that took place on October 8 during a meeting at the President House's House on Ahlone Road in Rangoon, the 1982 law stratified Burma's population into three tiers of membership based on the supposed purity of their racial origins. In a speech delivered on October 9, Ne Win announced that the law was designed to address the "problem" of "foreigners"—specifically referring to *kalas* (a derogatory term used to refer to Indians) and *tayoke* (the Chinese)—that had befallen Burma after it was rendered "a subject

[17] See Advisory Commission on Rakhine State (2017), "Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on Rakhine State," accessible at http://www.rakhinecommission.org/the-final-report/. The Commission was made up of "prominent historians, social scientists, legal experts, and civil society leaders," though it did not include any Muslim representatives.

nation" in 1824.[18] Foreign status, in his view, still applied to descendants of non-Burmese migrants, even if they "had settled down here since after 1824, 1830, 1835, 1840, and had been here for more than 100 years." This new conception of citizenship was meant to reflect an individual's immutable racial makeup, which was taken to be an indicator of their trustworthiness and loyalty to the nation.

According to Ne Win, "pure-blooded nationals" were to be automatically accorded full citizenship, which denoted the highest tier of belonging. Nationals were defined in the law to include the Kachin, Kaya, Karen, Chin, Burman, Mon, Rakhine and Shan, as well as other "ethnic groups" that had made Burma their permanent home prior to 1823. The exhaustive list of qualifying ethnic groups, totaling 135, was released separately from the 1982 law and its accompanying 1983 implementing procedures. The method by which this list was determined is not known, though it is suspected that it was transposed from the latest census to be published by the British administration in 1931—which, as the influential scholar on Burmese studies Robert Taylor noted was "created by British colonial officials and amateur linguistics and ethnographers" (2015, p. 8). In section six of the 1982 law, however, citizenship was also to be given to those who were recognized as citizens under the previous 1948 Citizenship Act.

To Ne Win, the migration of foreigners since colonial contact, and their intermarriage and procreation with natives, posed classificatory problems that the 1947 Constitution and 1948 Citizenship Law failed to remedy.[19] Illiteracy and ignorance of the need to apply for

[18] See Translation of the speech by General Ne Win provided in *The Working People's Daily,* 9 October 1982, accessible at http://www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf.

[19] "So at the time of independence there were not only true nationals, but also guests, issues of unions between nationals and guests, and issues of unions between guests and guests. This

citizenship among foreigners, he alleged, resulted in people "living in panic because most of them [had] no definite status" in independent Burma. He noted that many of them no longer had ties to their origin countries. The 1982 law created two lesser forms of citizenship: First, persons who had lodged an application for citizenship under the 1948 law but had not yet received a decision were eligible to apply to become "associate citizens." Second, persons who were present in the Union prior to independence but had not yet applied for citizenship, or who were married to a full citizen, could apply to become "naturalized citizens." Ne Win reasoned that these new legal categories constituted a "magnanimous" compromise which would resolve foreigners' anxieties about their legal standing, while simultaneously preserving Burma's national identity and security:

> Such being their predicament, we accept them as citizens, say. But leniency on humanitarian ground cannot be such as to endanger ourselves. We can leniently give them the right to live in this country and to carry on a livelihood in the legitimate way. But we will have to leave them out in matters involving the affairs of the country and the destiny of the State. This is not because we hate them. If we were to allow them to get into positions where they can decide the destiny of the State and if they were to betray us we would be in trouble…We will therefore not give them full citizenship and full rights. Nevertheless, we will extend them rights to a certain extent. We will give them the right to earn according to their work and live a decent life. No more."

Thus, associate and naturalized citizens occupy a contingent place in the nation in that, unlike full citizens, their status can be revoked at the discretion of the state for a number of reasons.

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became a problem after independence. The problem was how to clarify the position of guests and mixed bloods" (Ibid.)

Grounds for denaturalization include fraternizing with "enemy" countries or organizations, jeopardizing the sovereignty or security of the state, disloyalty to the state, "moral turpitude," among others. While all three tiers of citizens are eligible to vote and own a passport, only full citizens are able to stand for elections.

Upon the eventual implementation of the law beginning in 1989 onwards, through the issuance of a new set of cards, the Rohingya population living in Rakhine state became materially marked as being of indeterminate status. Throughout the country, NRC-holders underwent the process of exchanging their old cards for pink-coloured Citizenship Scrutiny Cards (CSCs). Associate citizenship was denoted with a blue-coloured card, and naturalized citizenship with a green-coloured card. Unlike the previous three-folded NRCs, the new sets of cards featured a space in which the holder's *lu-myo/ba-tha* (translated from Burmese to mean race/religion) is filled out by a Ministry of Immigration and Population official. In the absence of the right for an individual to self-identify his or her race/religion, Muslims and people of "mixed blood" were often involuntarily labelled as Bengali, Indian, and/or Pakistani on this line, in effect rendering legible their adulterated claim to full citizenship status.

Contrary to their expectations, Rohingyas in Rakhine were not issued CSCs. Instead, those who participated in the scrutinization exercise had their NRCs confiscated and were wholesale given white cards, or TRCs, instead. Meanwhile, individuals who opted to retain their NRCs instead of succumbing to the pressure of trading them in found that their cards were no longer recognized by the government as proof of citizenship. Returnees from the refugee camps in Bangladesh were also issued white cards beginning in 1994, along with those living in Rakhine who did not have any documents at the time. By 1995-1996, an

estimated 362,000 white cards were issued in the Northern Rakhine townships of Maungdaw, Buthidaung, and Rathedaung.[20] Such moves were perversions of provisions made in the 1951 Rules for implementing the 1949 Residents of Burma Registration Act. The TRC was originally intended to be a temporary form of identification issued for a finite period of time to people who had lost, worn out, or damaged their NRCs. In Rakhine, TRCs enabled the state to strategically recognize their holders as non-citizens within the legal framework, albeit via deliberate manipulation of the law. Rohingya NRC-holders living in Rakhine—alongside those who did not have NRCs or who had been repatriated across the border from Bangladesh beginning in 1992—were not issued CSCs. Instead, participant of the scrutinization exercise were wholesale given white cards, or TRCs. Meanwhile, individuals who opted to retain their NRCs instead of trading them in found that their cards were no longer recognized as markers of citizenship.

Despite being told initially by government officials, and by international organizations assisting in the 1993 repatriation process, that the TRCs were an interim measure, they remained the Rohingya's only form of individual-level identification until President Thein Sein suddenly announced on 11 February 2015 that the white cards would expire by 31 March of that year. Thus, for the majority of Myanmar's lifespan, the Rohingya's progressive exclusion was achieved via their strategic recognition as non-citizen Others. While they were downgraded to an indefinitely temporary status, this degradation of their membership occurred within, and was made possible by, the state's administrative gaze. In the following section, I demonstrate how state policies and practices intended to enhance

[20] See Protection Context Analysis, Rakhine State (2015), accessible at http://themimu.info/sites/themimu.info/files/documents/Ref_Doc_Protection_Sector_-_Context_Analysis_Rakhine_2015.pdf

surveillance and therefore control over the Rohingya have indirectly facilitated their dispossession of vital documents.

De Facto Omission as an Indirect Consequence of Policies of Control

In the following section, I demonstrate how state policies and practices intended to enhance surveillance and therefore control over the Rohingya have indirectly facilitated their dispossession of vital documents—a process that I term de facto omission. I reiterate here that legal omission is not necessarily the outcome of top-down deliberate state strategy. States are not cohesive rational actors but are composed of multiple individuals and subunits whose interests may conflict. Omission can also be the by-product of individual actions of bureaucrats or other government representatives (Lipsky 1980), or stem from systemic prejudice embedded within policies that result in the unintended consequence of de facto omission. I exemplify the processes by which de facto omission can occur by examining the impacts of a series of local orders which came into effect in northern Rakhine state beginning in 1993. Fears of high rates "illegal" in-migration and natural population growth among the Rohingya served as both the impetus and justification for the escalation of surveillance and military occupation of Rohingya villages.

In the decades following the reclassification of the Rohingya from citizens to temporary residents, individuals' possession of documentary evidence became progressively eroded due to chronic oppression and discrimination. Paradoxically, policies and practices of hyper-surveillance and control often resulted in the exclusion of the Rohingya from being counted within administrative systems. Such peculiar and stringent regulations may on the surface appear to be manifestations of the state's efforts to expand its reach. Their

application, however, has either forced individuals to avoid the state entirely, or has involved violence or extortion that has resulted in the confiscation, destruction, or deprivation of documents. I will discuss three sources of dispossession that have developed in the post-1982 period: marriage and childbirth restrictions; regulation of residence and travel; and conflict and displacement.

Restrictions on Marriage and Childbirth

In the mid-1990s, population control measures were implemented in northern Rakhine state which explicitly targeted Rohingya communities. Such measures were undergirded with popular fears that the Rohingya posed not only a moral and cultural, but also a demographic, threat within the region. Common stereotypes in circulation are that Rohingya men take on multiple wives and produce high numbers of children, threatening to tip the balance of the region's population from Buddhist to Muslim.

First, though the enforcement of this measure has allegedly declined in recent years, individuals seeking to get married have been made to obtain licenses from the local authorities. Human rights groups, drawing upon interviews with Rohingyas and humanitarian aid workers operating in Rakhine state, have reported that applying for a marriage license is often a demeaning and exploitative experience (Fortify Rights 2014). The application often takes up to two years to be approved, requiring multiple visits to the local authorities and exorbitant bribes (Human Rights Watch, 2013). The policy has also stipulated that applications must include a photograph of the couple, in which men are to appear clean-shaven. Though it does not appear in the text of the policy, it has been reported that women have been forced to be photographed without their hair covered (Fortify Rights 2014). Such

requirements are counter to Islamic customs. Due to the high costs, both in terms of money, bodily integrity, and personal dignity, couples have either gotten married unofficially (which is punishable of up to ten years of jail time) or have made the attempt to be smuggled abroad to countries such as Malaysia or Bangladesh (Lewa 2008).

Measures have also been put in place to restrict the number of children born to Rohingya families to no more than two. Consequences for the violation of this policy include not only fines, imprisonment, but also the erasure of babies' legibility (Lewa 2012). Illegitimate babies—including additional children after the second child, children born out of official wedlock, or children born to parents who are unable to produce evidence of their marriage—are not included on household registration lists. This is a vital document is meant to be found in every household in the country, containing details about each individual member (and sometimes livestock). Furthermore, the issuance of birth certificates to Muslim children in Northern Rakhine state has stopped altogether since 1994 (Lewa 2009).

Regulation of Residence and Movement

Daily life in Rakhine state is marked by constant surveillance and interference by local police and military officials. The matter of documentation has often been the focal point of violence, extortion, and arbitrary arrest. For example, unannounced household inspections have been a form of intimidation (Fortify Rights 2014). Officials have been reported to cross individuals off of household lists if they have been deemed to have left the residence. As with illegitimate children who are not recorded at all, being eliminated from the list deprives individuals of the ability to establish their legal residence in Rakhine. Because it is illegal for non-household members to be found staying overnight in a particular house without

permission, they are at risk of punishment by the authorities (Fortify Rights, 2015). Such permission, however, is difficult to obtain.

Of all the local orders that impinge on the lives of the Rohingya, respondents often cite restrictions on the freedom of movement as the most egregious. Rohingya individuals must apply for permission in order to travel from one village to another, though they are often denied. This severely impinges on their livelihood abilities, as they cannot leave the confines of their villages look for work, go to school, or secure material means for survival. Families have also been kept apart by this rule. One Rohingya activist, who had moved from his hometown in Maungdaw to Yangon in the 1970s to study before the travel restrictions were implemented, describes the anguish of forced separation:

> In 2014, my father, who was over 90 years old, became ill. He called me and said, 'Son, I'm going to die. Please come back to see me." I told him, "They will not allow me to come, because to get a license from Rangoon is quite impossible.' Then he died. Shortly after, my mother said, 'I have 12 grandchildren in Rangoon who I have never seen before. For once in my life I want to see them.' I said, 'Mom, how can I come? I'm not allowed to go there.' Then my mom died too. Before this, my nephew who's 12 years old and living with me said, 'My grandparents are old. I want to see them. Let's go there.' I said, 'Hey, son, we're not allowed to go there.' He was confused. He asked, "Why can we not go there? Is Maungdaw not in Burma?' I explained, 'Yes, Maungdaw is in Burma but we are not allowed to go there.'

Attempts to move across borders may result in the dispossession of documents. Checkpoints on roads are heavily guarded. NRCs have been reported to be confiscated or destroyed once the new citizenship law had been implemented, leaving Rohingya individuals without the primary form of evidence needed to prove their long-term residence in Myanmar.

Conflict and Displacement

One under-looked consequence of instability and violence is the potential disruption of people's legal statuses. Documents can be destroyed along with victims' other material properties. People fleeing violence may not think to, or may not have the opportunity to, bring their documents with them. When international borders are crossed without authorization, migrants may not be assigned a clear legal status, either because they do not meet the proper legal criteria to be designated refugees or other statuses, or because the functional limits of the bureaucratic state that are tested by large influxes of people.

The disruption of Rohingyas' lives due to violence and conflict has become normalized. Rohingya members routinely use social media and virtual messenger platforms to share graphic photographs and accounts of torture, extrajudicial killing, and destruction of property, though this practice is not exclusive to this community. During the 2012 conflict, intercommunal riots broke out in various parts of the state, resulting in the internal displacement of 140,000 Rohingyas from their villages. Often with only tarps to shelter them, Rohingya families and their possessions—including documents—were insufficiently protected from heavy rains and flooding.

Immediate threats of violence, as well as protected conditions of poverty and underdevelopment, drive Rohingyas to seek better lives abroad. Each year during the "sailing

season" when waters on the Bay of Bengal are at their calmest, Rohingya men, women, and children attempt the journey out of Rakhine state with the aid of smuggling networks. Most seek to go to Malaysia, a middle-income Muslim-majority nation that has quietly tolerated the arrival of Rohingyas. Between 2014 to the mid-2015, the UNHCR estimated that 94,000 had attempted the journey. In June 2015, mass graves were found along the Thai-Malaysia border, and presumed to contain the bodies of Rohingyas who died while waiting to be released from smuggling camps. One Rohingya respondent describes how the futility of trying to survive in Arakan that might drive his people might take such mortal risks:

> One woman from my village told me, 'Now, we are dying. Tomorrow, my children will die. The day after, my husband will die in front of me. Or I could die in front of them. It's so painful. But if we go by dinky boat [into the Bay of Bengal], all five people could drown together and there will be no more pain.'

Those who do successfully make the trip to Malaysia do not escape fates of legal indeterminacy. The irony of the settlement of countless numbers of asylum seekers in Malaysia is that the country has not ratified the 1951 Convention on Refugees, and therefore does not legally recognize the category on its own soil. Even those who do acquire UNHCR cards, which designate a person as a refugee, this status is not officially recognized by the host state. Refugees, registered or otherwise, are subject to abuse, exploitation, arrest, and deportation by corrupt authorities at any given moment. They are unable to work legally and cannot go to public schools. The UNHCR cards give some informal protection in that the government has allowed holders to access subsidized health services. Aside from hospital subsidies, however, the card is mostly symbolic and lacks much legal purchase, as the

recognition refugee status is up to the whims of individual law enforcement officers. Otherwise, irregular migrants and their descendants in Malaysia are illegible in the eyes of a state that has refused to officially recognize them.

The 2015 Elections and Formal Policies of Dispossession

In the months leading up to the 2015 elections, the Rohingya were again subjected to a systematic degradation of their legal status in Myanmar. On February 11th of 2015, President Thein Sein caught domestic and international observers by surprise when he decreed by executive order that all TRCs would be invalidated as of March 31st. White cards, predominantly held by Rohingyas and other "non-indigenous" ethnic minorities, were to be surrendered to local authorities by the end of May—at first in exchange for a receipt, and later on for an "Identity Card for National Verification" (ICNV, also referred to as "green cards"). Such a card, however, has no standing in Myanmar law, and has been met with great suspicion and distrust among members of the Rohingya community who still have memories of the campaign of dispossession that occurred with the introduction of the 1982 law.

The abrupt cancellation of white cards represents a formal move towards illegibility carried out by the state. The decision was precipitated by rising political contention surrounding questions of national membership and suffrage in the newly democratizing Myanmar. Despite not having full citizenship status, the Rohingya and other white card holders have actually been permitted to vote in the general elections in 1990 and 2010. Furthermore, NRC holders were eligible to run for political office, with three Rohingya members of parliament representing the ruling party in Rakhine state. This was intended to offset the political power of the Buddhist Rakhines, a national ethnic minority that the

Bamar-dominant central government has also worked to discipline under a national framework.

However, in the months leading up to the 2015 elections, right-wing Buddhist nationalist groups sought to capitalize on the newly-liberalizing political space in order to provoke nativist sentiments against Muslims and exclude them from the democratic process. Fearing a loss of popular support, the President disenfranchised the Rohingya by invalidating their documents. Rohingyas were denied the opportunity to contest in the elections—even on behalf of the military's Union Solidarity and Development Party—on the grounds that their parents were not citizens prior to their birth. There are no Muslim representatives in the parliament that was formed in 2015.

With the introduction of ICNVs, the government announced that all former white card holders would undergo a "citizenship verification" process in order to identify true Myanmar nationals and to expel those undeserving of nationality. The process so far, however, has been met with great resistance at every step of the way. The vast majority Rohingyas refused to give up their white cards or to participate in the process, fearing that this was a scheme by the government to legitimize their exclusion. In the attempt to assert the government's legitimacy as a rational bureaucratic state, officials insisted upon upholding the rule of law and ensuring that citizenship would be accorded only to those who were deemed eligible by law. However, Rohingya community leaders viewed these statements as disingenuous, pointing out that the 1982 law was inherently discriminatory and in contravention of human rights norms. As one politician remarked, "They are simply putting us in a trap. You see, they know my mother and father were born here. My grandfather and grandmother were born here. The records are still with them in the National Registration

Department office. It's a trap: After I sign this document, I will automatically become a foreigner."

Furthermore, strict application of the law would require individuals to furnish evidence of having roots in Burma stretching back prior to 1823—evidence that few, if any, had. This would constitute a win-win situation for the government: being opportunity to demonstrate adherence to the rule of law in the eyes of the electorate, and the conclusive exclusion of the Rohingya. So far, the citizenship verification process has ground to a near halt, with Rohingya leaders and government representatives refusing to come to a compromise over how to proceed. In the meanwhile, this has left the majority of the Rohingya with undetermined legal status, and therefore with uncertain futures.

The 2014 Census: Illegibility as Erasure from Official Records

Finally, the omission of unwanted peoples can be achieved not only via the deprivation of vital identity documents, but also through the lack of recognition of their collective existence as a group in official records. In 2014, the first census in the country in 30 years was conducted, with technical support provided by the United Nations Population Fund (UNFPA). The census prompted government officials to confront the question of who does and does not constitute a legally recognized citizens or residents of Myanmar.

The Rohingya were categorically excluded from the census, with enumerators instructed by government officials to record Rohingya households only if they self-identified as Bengali. In response, leaders mobilized their communities to insist upon their Rohingya identities, even at the risk of being left uncounted. According to official census results, 60% of the 2,098,807 residents in Rakhine were holders of CSCs, 37.7% held no identity

documentation, with the remainder of the population holding other types of cards (Myanmar Department of Population 2015). It is obliquely acknowledged in the report, however, that "members of some communities were not counted because they were not allowed to self-identify using a name that is not recognized by the Government," with the accompanying explanation that this decision was made "in the interest of security and to avoid the possibility of violence occurring due to inter-communal tensions" (Myanmar Department of Population 2015). The UNFPA presumably used such deliberately vague terminology in order to avoid further provocation at the end of an already highly politicized process. Without mentioning the terms "Rohingya" or "Muslim," the report provided the estimate that 1,090,000 people were likely to have been excluded from the enumeration process, a figure that potentially amounts to one-third of the state's total population.

Propelling the Rohingya's omission from bureaucratic records have been nationalist groups crusading for the elimination of the name "Rohingya" from public discourse altogether. In April of 2016, approximately three hundred protestors gathered outside of the US embassy in Yangon, carrying signs and wearing white-coloured bandanas that read "No Rohingya." The protest was precipitated by a statement issued earlier in the month by the embassy, which expressed concern and sadness about an estimated 21 Rohingya who had drowned after their boat had capsized near Thae Chaung in Sittwe Township. A member of Ma Ba Tha, the most influential Buddhist nationalist organization, was quoted by Reuters as remarking, "today we, from here, want to declare to the US embassy and the ambassador to Myanmar, to all the other countries, that there is no Rohingya in our country. If the US accepts the term 'Rohingya,' you should take them back to your country" (Zaw &

McLaughlin, 2016). Similar demonstrations have been held prior to and after this incident around the country.

The government itself has also taken steps to delegitimize the use of the name "Rohingya." In November 2015, five men were arrested in Yangon for their involvement in printing calendars with the word "Rohingya" on them.[21] In June 2016, according to an order issued by the Information Ministry ahead of the UN Special Rapporteur on Myanmar Yanghee Lee's visit to the country, the use of the names "Rohingya" or "Bengali" will be banned from use by UN officials, to be replaced with the term "people who believe in Islam in Rakhine State."[22] Aung San Suu Kyi, to the disappointment of international observers in Washington and elsewhere, has chosen to refrain from the use of the term "Rohingya," deriving criticism and calls for her Nobel Peace Prize to be revoked for her failure to take a more proactive inclusionary stance towards religious minorities in Myanmar. Strong domestic pressures, and the threat of future outbreaks of violence, have likely factored in to her hesitancy to invoke the term during the country's transition to democracy.

Conclusion

In summary, the Rohingya have over the past half century been rendered illegible in Myanmar via multiple processes, cumulatively resulting in the deprivation of nationality and its associated rights and protections. In the interest of weakening their claims to the nation and justifying their expulsion, government officials, supported by anti-Muslim domestic

[21] Carroll, Joshua (2015), "Arrests in Myanmar Over Calendar Recognizing Rohingya," *Anadolu Agency,* accessed 19 April 2019 at https://www.rfa.org/english/news/myanmar/calendar-11252015140911.html.

[22] "Myanmar Bans Officials from Saying 'Rohingya," *Aljazeera,* accessed 19 April 2019 at https://www.aljazeera.com/news/2016/06/myanmar-bans-officials-rohingya-160621131628167.html.

groups, have confiscated documents, restricted access to civil registration, changed citizenship laws to include ethnic criteria, and held Rohingyas to unreasonably high standards of proof of their indigeneity. They have also invalidated their existence as a group by preventing individuals to self-identify as Rohingya in the census, and by discouraging the use of their name by domestic and foreign actors in the public sphere. As a result, the Rohingya lack material and symbolic resources to effectively make a case for national inclusion, leaving them in a precarious legal status with few foreseeable opportunities for resolution in the near future.

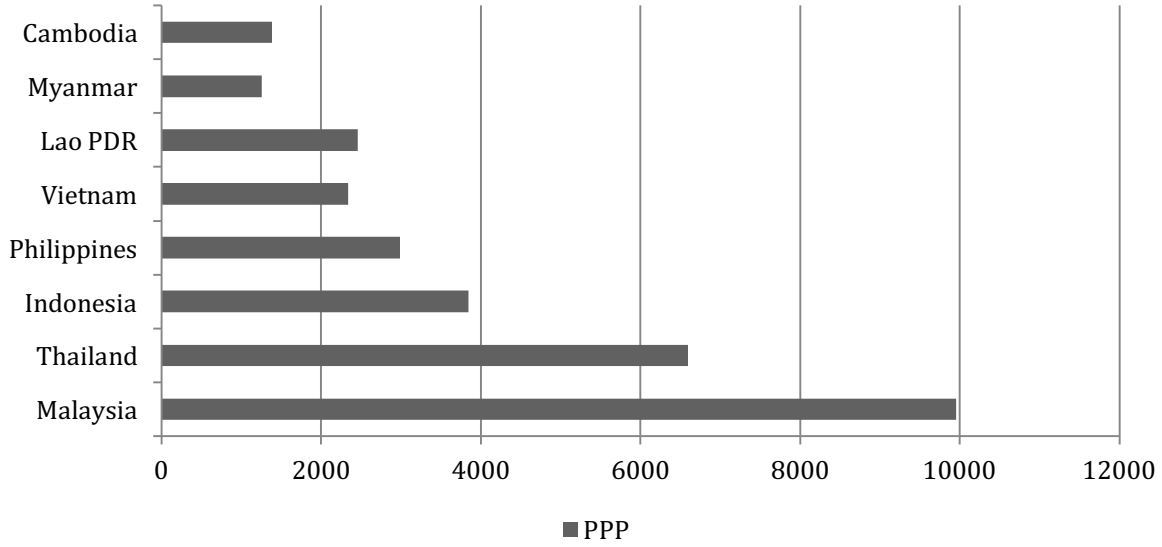
Chapter 3

Malaysia and the Puzzle of the Registration Gap

Southeast Asia, together with Sub-Saharan Africa and South-Asia, contain the majority of the world's unregistered peoples. Of the Association of Southeast Asian Nations (ASEAN) member states, Malaysia is an ideal case study because it presents a curious empirical puzzle to tackle. Malaysia (population: 32.6 million) is an upper-middle-income country which has undergone rapid, if uneven, development since gaining independence from Britain in 1957 (Malaysia Department of Statistics 2018b). Its GDP per capita is the third highest in the region at 9952 USD, more than 50% greater than neighbouring Thailand, and only exceeded by the small-state outliers of Brunei Darussalam (an oil-rich sultanate with a population of 440,000 and a territory spanning just 5,765 square kilometres) and Singapore (a city-state that operates as a global financial centre and key shipping port in the region) (see Fig. 4) (World Bank 2017).

In 2010, the Malaysian government unveiled its New Economic Plan, which lays out its ambition of transitioning to being a fully-developed, high-income nation by 2020. According to the government's own estimates, national poverty levels have already shrunk from 12.4% in 1992 to just 1.7% in 2012. The economy has grown at a brisk average of 5.5% per year from 2000 to 2008, and 5.7% annually following its rebound from the Global Financial Crisis since 2010 onwards (World Bank 2016). More than two-thirds of the population now live in urban areas (World Bank 2019).

Figure 1: ASEAN Member States, GDP Per Capita, 2017



(World Bank 2017). Excluding small states of Brunei Darussalam and Singapore.

Relative to its neighbours, Malaysia's wealth and modernized institutions, combined with its inheritance of strong colonial-era bureaucratic foundations, have endowed it with the capacity to set up and maintain advanced identification and registration apparatuses. Malaysia has had a national identification card system in place since prior to independence. In 1996, then Prime Minister Mahathir Mohamad launched the Multimedia Super Corridor (MSC) program, with the objective of spurring Malaysia's information and communication technology sector development to facilitate the country's modernization. In 2001, the government unveiled the MyKad, the world's first government-issued smart identity card system, as a cornerstone of the MSC initiative. At the time, the card was unrivalled in its technological innovativeness, promising to "transform the way Malaysians work,

communicate, commute, and conduct business."[23] Each card contains a computer chip with a 64kb microprocessor, 3kb rapid access memory, and a 16-bit crypto engine to perform fast encryption or authentication functions. It is of ISO-7816 standard, meaning that it responds to UV light, x-rays, and electromagnetic fields. The card also contains biometric information, as well as a range of other state-of-the-art security features, including rainbow printing, micro-lettering, latent text, holograms and ghost images. The MyKad contains eight different applications, with the potential to serve as an identity card, driver's license, ATM (Automated Teller Machine) card, MEPS (Malaysian Electronic Payment System), Touch 'n' Go (a payment system for using the public transportation), PKI (Public Key Infrastructure), frequent traveller's card, and a holder of passport information and basic health data. Starting from the age of 12, every Malaysian citizen must hold a blue-coloured MyKad, which is compulsory for enrolling in government schools, enjoying subsidized hospital rates, and facilitating other basic interactions with the state agencies.

The Malaysian government is not the only body in the country that counts in consequential ways. The growing number of asylum seekers living in urban areas of Malaysia has prompted the UN Refugee Agency (UNHCR) to develop technologically innovative methods for identifying refugees. In June 2016, the UNHCR unveiled a new refugee card system that that one UNHCR official proudly described as "the first of its kind in the world" during a briefing with civil society organizations in Kuala Lumpur in September. Developed to tackle the growth of the informal market for counterfeit cards, the new UNHCR card features anti-counterfeit deterrents such as 3D holograms and UV ink. In a news article covering the introduction of the card, a Senior Protection Officer in the

[23] Jabatan Pendaftaran Negara Malaysia (2011), "MyKad Malaysia Corporate Video," accessed 11 January 2017 at https://www.youtube.com/watch?v=Tl8DtwvntEs.

Oversight division remarked, "This is state-of-the-art technology, one of the highest and best globally, backed with a retina, 10 fingers and face scan."[24] Most notably, each card comes with an SQR (Secure Quick Response) code, which can be scanned using a free and publicly-available Android app called "UNHCR Verify-MY." A law enforcement official, or anyone else who has downloaded the app on her mobile smartphone, can verify the authenticity and of a card, and therefore the legitimacy of a person's claim to refugee status, on the spot directly rather than having to contact the UNHCR office. As of January 2017, the app has been downloaded between 10,000 to 50,000 times from Google's online app store.[25]

In addition to its capacity to count, the Malaysian government has expressed a vested interest in counting. In 2014 at the Ministerial Conference on Civil Registration and Vital Statistics for Asia and the Pacific, the Deputy Minister of Home Affairs issued a country statement reaffirming Malaysia's longstanding commitment to the keeping of complete and accurate civil records[26]:

> Cognizant of the **importance of vital statistics to the sustainable development and well-being of our Nation and its people**, the Government of Malaysia has embarked on improving and structuring civil registration and vital statistics systems since civil registration was first made mandatory by law in three Straits Settlement states of Singapore, Penang and Malacca in the late 1860s. The administration of **civil**

[24] Tasnim Lokman (2016), "UNHCR Rolls Out New ID Card for Refugees With Increased Security Features," *New Straits Times,* accessed 11 January 2017 at http://www.nst.com.my/news/2016/06/153416/unhcr-rolls-out-new-id-card-refugees-increased-security-features.

[25] The app is available for download at https://play.google.com/store/apps/details?id=org.unhcr.verify&hl=en.

[26] Deputy Minister of the Ministry of Home Affairs (2014), "Country Statement 2 for Ministerial Segment on Policy Priorities for Improving Civil Registration and Vital Statistics in Asia and the Pacific," accessed 11 January 2017 at http://www.getinthepicture.org/sites/default/files/resources/Item6_Malaysia_Eng_0.pdf.

> **registration and vital statistics remains a requisite and central priority for good governance**, thus the relevant structure and systems are consistently reviewed and enhanced through the years when manual records were maintained and to the present **use of ICT to record all significant events of an individual in every niche of the country**. [Emphasis added]

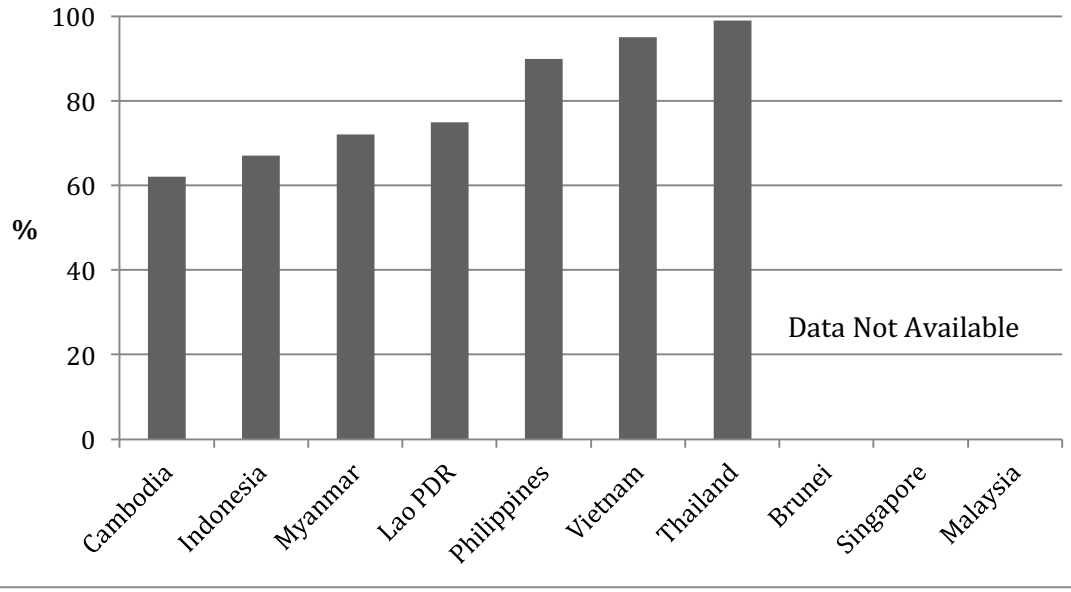
The statement goes on to highlight its commitment and coordination at all levels (federal, state, and district) and branches (legislature, administrative, budgetary) of government to the endeavour of achieving universal civil registration. In line with dominant discourses portraying CRVS as a developmental challenge, the statement cites geography, resource constraints, and "communication barriers" as obstacles to the actualization of this goal. It identifies information communications technology (ICT) as instrumental to their success so far in maintaining a "robust" CRVS system, contributing overall to their push to becoming a developed nation by 2020:

> The National Registration Department was one of the agencies that benefitted from the government's push for the **pervasive use of ICT in all aspects of administration and economy**, by fully adopting ICT in its systems. Currently the Department runs 10 ICT systems to ensure operations in 229 centres with 1400 counters for registrations [sic] in all parts of the country. In addition, the Department has mobile outreach programs to ensure coverage in **rural towns or remote areas**. This year alone, 230 mobile outreach programs were done in remote areas in the country.

Malaysia's advanced technological arsenal for identification and surveillance, and its rhetoric about proactive and inclusionary counting, belie the magnitude of the exclusions faced by its uncounted and stateless populations. There are an unknown number of uncounted

people living in Malaysia. While birth registration rates have been reported for other ASEAN countries, no publicly available estimates have been released by the Malaysian government (see Fig. 2).[27] This may be because the government has chosen not to disclose this figure, but it is more likely that no such estimate exists. The number of stateless people living in the country has also been the subject of political debate.

Figure 2: Birth Registration Rate (< Age 5) in ASEAN



(UNICEF 2016) Demographic and Health Surveys and Multiple Indicator Cluster Surveys.

Documentation and citizenship are perennially salient in the public discourse, and are inextricable from issues of race and immigration. Since the colonization of the Malay Peninsula by the British between the 18th and 20th centuries, during which large numbers of migrants were imported from China and India to work in the mining and agricultural sectors,

[27] Brunei and Singapore are also not included in the UNICEF birth registration database. However, these two countries are outliers in the region, owing to their wealth, small populations and small geographical size.

race continues to be the main organizing principle of all areas of life.[28] Economic and social distortions resulting from the colonial division of labour continue to manifest themselves in Malaysia's racialized post-independence nation-building project. Malaysian society in the post-independence era continues to operate under primordialist assumptions of race as a fixed and fundamental identity. Miscegenation between Muslims (the official religion of the Malay people) and non-Muslims is not permitted by law, with non-Muslims being required to convert before marrying a Muslim. A Malay person, according to the Federal Constitution, by definition professes Islam, and cannot renounce his or her Islamic faith. Even after the official abolishment of the colonial regime, the United Malays National Organization, the political coalition that has governed continuously since independence, has maintained the support of the *bumiputera* (a Malay term meaning "sons of the soil," and used to refer to the Malay people) by codifying racial distinctions, and accordingly differential access to resources, into national law—for example, through affirmative action policies that prioritize the advancement of the *bumiputera* over Chinese and Indian minorities. Birth certificates, identity cards, and most government forms, require individuals to state their race and religion.

Since the 1970s, spurred on by the acceleration of Malaysia's industrial growth, rising immigration has created new rifts in the country's racial landscape. It is a major migrant

[28] Depictions of the "Malay peasant, Indian labourer, and Chinese coolie" were circulated via essentializing discourses in order to discipline and confine these groups to separate sectors of the colonial economy (Nair, 2009, p. 86). On one hand, British colonizers propagated Orientalized notions of Malays, framing them as "noble savages" in need of Western liberal enlightenment and protection while simultaneously upholding their claims to being Malaysia's first natives (Goh, 2008, p. 235; Said, 1978). On the other hand, Chinese and Indian minorities were relegated to the status of temporary labour migrants, stereotypes which continue to resonate today despite their multi-generational presence in the country (Nair, 2009).

destination in the region, attracting foreign workers to its agricultural, construction, and service sectors. Top sending countries include neighbouring Indonesia, the Philippines, Bangladesh, India, Nepal, and Myanmar. Officially, there are an estimated 3 million non-citizens living in the country (2.1 million of which were born outside of the country) making up almost 10% of the population (see Table 3). Over half of non-Malaysians live in the state of Sabah on the north-eastern part of Borneo island.

Table 3: Demographic Breakdown of Population in Malaysia, 2018

Racial Group	N	%
Bumiputera	20,071,900	62.0
Chinese	6,685,500	20.6
Indian	2,010,400	6.2
Non-Citizens	3,322,700	10.3
Other	294,500	1.3
Total	32,385,000	0.9

(Malaysia Department of Statistics 2018a)

These official figures give Malaysia the fourth largest number of migrants, and the seventh highest migrant-total population ratio, in the East Asia and Pacific Region (World Bank 2015). These figures, however, do not take into account the considerable number of irregular migrants and their descendants in the country. “Illegal” immigration has become an essential and normalized part of the domestic labour market, with unauthorized workers occupying predominantly labour-intensive, low-skilled jobs that Malaysian citizens have increasingly

eschewed. The irregular migrant population also includes people fleeing conflict and persecution from countries such as Myanmar, Sri Lanka, Pakistan, Somalia, and Middle Eastern countries such as Yemen, Syria, Iraq, Afghanistan, and Palestine. As of the end of January 2019, 164,620 refugee and asylum-seekers have been officially registered with the UNHCR, 90% of whom hail from Myanmar (UNHCR 2019). In addition to the known number of registered asylum-seekers, an unknown number of people living in Malaysia are struggling to obtain asylum seeker status. The UNHCR estimates that it receives around 800-1000 people at its Kuala Lumpur office on a daily basis.[29] The average estimated wait time for a refugee status determination appointment is currently two years. Between 10,000 to 12,000 people are currently stuck in 11 immigration detention centres across Malaysia.

Sabah, East Malaysia

Sabah is the second largest of Malaysia's thirteen states, and is located on the north-eastern side of the island of Borneo (see Fig. 3). It is the country's richest state in terms of natural resources—with an abundance of oil and gas, timber, and palm oil—and yet has the highest poverty rate in the country at 8.1%. The next poorest state is Kelantan at 2.7%, followed by Sarawak (2.4%), the only other Malaysian state in Borneo (Economic Planning Unit—Prime Minister's Department 2014).[30]

Figure 3: Map of Malaysia

[29] 9 September 2016, UNHCR Briefing to CSOs on New UNHCR ID Cards, Case Processing Procedures, and Protection Strategy, Kuala Lumpur Bar Council Building.
[30] http://hq.lpkp.gov.my/index.php/en/15- trivia/55-rancangan-malaysia-ke-11-merupakan-rancangan-pembangunan-lima-tahun-negara- yang-ke-13.

"Image removed due to copyright concerns"

(Australian National University 2017)

Strikingly, one out of three people in Sabah is a non-citizen (see Table 4). If one includes the uncounted and undocumented individuals living in Sabah, its ratio of non-citizens to citizens would be even higher. The majority of non-Malaysians are Indonesian and Filipino migrants and their descendants, with illegality being a pervasive experience among both communities. Cross-border movement is a dangerous but common fact of life for many migrants, who can enter Sabah with relative ease over the vast and poorly-patrolled land border with Kalimantan from Indonesia, or across the Sulu Sea from the Philippines. Migrants have joked to me that if you are deported in the morning, you can just take the afternoon boat back later. Others have recounted harrowing experiences of being arrested on the way to work and locked up in *rumah merah* (the "red room," referring to detention centres) for months before finally being expelled from the state en masse via boat or bus. Though their labour is indispensable to the state's economy, they are at the same time scapegoated as criminals, drug addicts, carriers of disease, fraudulent voters, and even terrorists.

Table 4: Demographic Breakdown of Population in Sabah, 2018

Racial Group	N	%
Bumiputera	2,294,600	58.8
Chinese	307,000	7.8
Indian	13,800	0.4
Non-Citizens	1,158,700	29.7
Other	125,100	3.2
Total	3,899,300	

(Malaysia Department of Statistics 2018c)

Documents have been a central point of contention throughout the decades-long controversy surrounding illegal immigrants in Sabah. In the 1990s, it was alleged that the United Malays National Organization, the country's ruling party, had fraudulently issued identity cards to immigrants in exchange for electoral votes (known as "*Projek*/Project IC"). Suspicion and resentment towards immigrants continue to be high. In 2012, Prime Minister Najib Razak set up a Royal Commission of Inquiry to investigate into allegations about Project IC. The inquiry culminated in a 366 page report, based on the testimonies of 211 witnessed interviewed over the course of 9 months, which concluded that Project IC may likely have occurred, though no hard evidence was found to incriminate any individuals or political parties. Providing an insight into mass sentiment towards immigrants, the opening section of the report reads:

> Sabah is often referred to as the "Land below the Wind," a kind of paradise on earth. It is endowed with great beauty, both in terms of land and people. It is rich in natural resources. Tourists flock to see its natural wonders and heritage. They are in awe of **its multi-racial, multi-cultural and multi-religious settings**. Under those circumstances, Sabahans should have good reasons to feel contented. And yet, underlying all these, there is, at least from one perspective, **a sense of gloom. For decades, Sabahans have been plagued and haunted by an insidious problem which has turned out to be an all-consuming nightmare. It is endemic. It has grown into a crisis of humongous proportions.** Indeed, Datuk Seri Yong Teck Lee, a former Chief Minister of Sabah, has described it in medical terms as having reached

> **"ICU stage."** It is of course the **lingering problem of illegal immigrants** in Sabah.[31] [Emphasis added]

The RCI, which was delayed in its release and which ultimately provided few concrete resolutions, did little to assuage the public's anxieties. In 2014, questions were raised by politicians about whether children born to foreigners on Malaysian soil might attempt to acquire citizenship using their Malaysian birth certificates, even though Malaysia does not grant citizenship *jus soli.* Former Chief Minister Yong Teck Lee, in a quote published *The Daily Express* newspaper, remarked:

> The people of Sabah, who are increasingly suspicious of the failure of the government to release the Royal Commission of Inquiry on illegals in Sabah report after a long delay, **are now hit with another slap** by the Home Minister who declared that stateless children will be issued birth certificates. Some are foreign-born who came here with their parents. Some have been abandoned by their parents. Some have lost their parents because the parents have been detained and deported from their places of work like construction sites. Whatever lawyers and the Home Minister have to say, **it cannot be denied that many illegal immigrants are getting MyKads even without any birth certificate. If even illegals can get citizenship without any birth certificates, what more these street children once they have been given birth certificates? Is this not a case of 'birth certs now, MyKads later?'**[32]

The same fears were reiterated by political party Parti Bersatu Sabah's information chief Datuk Jahid Jahim, who stated, "The people of Sabah are fed up since even illegal

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[31] Commission of Enquiry on Immigrants in Sabah Report (2015), accessed 11 January 2017 at http://www.sapp.org.my/rci/RCI-Eng.pdf, p. 3.
[32] "More Scorn on Birth Cert Move" (2014), *Daily Express,* accessed 11 January 2017 at http://www.dailyexpress.com.my/news.cfm?NewsID=92962.

immigrants could get their hands on the MyKad, what more those who already have a document [birth certificate]?"[33] In response to these criticisms, the Sabah state government was forced to engage in damage control work, assuring the public that Malaysian birth certificates do not automatically entail eligibility for Malaysian citizenship. Non-Malaysians are entitled to receiving birth certificates, though they will differ from those issued to Malaysian nationals because they indicate that the holder is "bukan warganegara" (non-citizen). In 2011, the administrative procedure was changed so that non-Malaysian children would be issued RED birth certificates, with their non-citizenship status clearly indicated, while Malaysian children would be given green birth certificates. According to the 1957 constitution, birth is not sufficient for claiming Malaysian citizenship—if you were born within wedlock, at least one of your parents has to be a Malaysian citizen too. But this administrative change was more about appeasing public perceptions. The Prime Minister stated that the change in colour of the birth certificate was done to counter assumptions that a birth certificate would lead to automatic citizenship.

To summarize, it is within this national context of bright racial boundaries, porous borders, and anti-immigrant sentiment that uncounted, undocumented, and stateless people struggle to gain recognition, status, and/or vital documents such as birth certificates in Malaysia. Today, there are an unknown number of people who have lived in Malaysia for their entire lives—often with parents and grandparents who were also born in the country—and yet are unable to acquire civil documents, Malaysian nationality, or any other nationality, even if they may have an entitlement to them (see Appendix B for a summary of relevant parts of the nationality law). The empirical puzzle presented by the Malaysian case is as follows: Why, in a state that boasts high technological capacity to identify and surveil its

[33] Ibid.

populations, and for which counting has been recognized as central to effective governance, do so many people face difficulties obtaining basic documents?

Chapter 4

Citizenship and Contested "Facts" of Birth

Introduction

Human beings have in common the experience of having been born. From a statistical standpoint, births are considered to be "vital events," alongside other milestones such as marriages, adoptions, and deaths. The frequency and characteristics of births that occur within a population, and the metrics that are derived from them—such as birth rate, fertility rate, mortality rate, immunization coverage, percentage of births attended by skilled health personnel, percentage of children under the age of five underweight, etc.—provide considerable insight into that population's level of economic development. At the individual level, the circumstances of one's birth—including birth weight, length of gestation period, and even sibling birth order—is predictive of outcomes later on in life. Birth is also a key mechanism by which rights and entitlements are allocated. Perhaps most notably, *where* and *to whom* an individual is born determines his or her citizenship status, which on its own is one of the most influential determinants of a person's life chances (Shachar 2009). Despite the micro- and macro-level significance of birth, the facts about a significant portion of the global population remain unknown to governments. UNICEF (2017) estimates that one in four children under the age of five worldwide have not been registered at birth.

How and why do births go unregistered? This chapter makes the case that unregistered births are not only the products of a *lack* of state capacity to count them, as sociological

theories might lead us to assume. Instead, I will argue that who gets counted, and how, are political choices, and that unregistered births therefore may also come about as a result of the exercise, rather than the absence, of state power. More specifically, I demonstrate that the refusal to recognize the occurrence of births on its national territory constitutes a state's defensive strategy against perceived demographic threats posed by migrants and noncitizens. Drawing on ethnographic fieldwork conducted in Malaysia, I advance this argument in two parts. First, while the occurrence of birth might seem unambiguous from a biological perspective, I conceptualize births as socially constructed events. That is, births only become legally recognized, and therefore legally consequential, through complex negotiations between multiple social actors and institutions over the production of official records. Second, I show how in Malaysia, the seemingly apolitical, procedural act of registering a birth shaped by judgments about who is racially and morally fit to belong to the nation.

This chapter is organized as follows: I situate the goal of achieving universal birth registration within the broader global development agenda, and demonstrate how development actor offer depoliticizing explanations for why gaps in birth registration persist. I then show how the depoliticization of unregistered births is mirrored in the assumptions of scholars theorizing about states and their documentary practices. Next, I draw attention to the profound sociolegal implications of recognizing a birth, and contextualize acts of omission as one potential strategy that state actors may use to defend against demographic threats posed by illegal migrants. I then analyze the experiences of the families I encountered in my fieldwork to show how births are socially constructed, and how decisions about whether or not to recognize a birth is coloured by judgments of racial and moral deservingness.

Discourses Surrounding Birth Registration in the Global Development Agenda

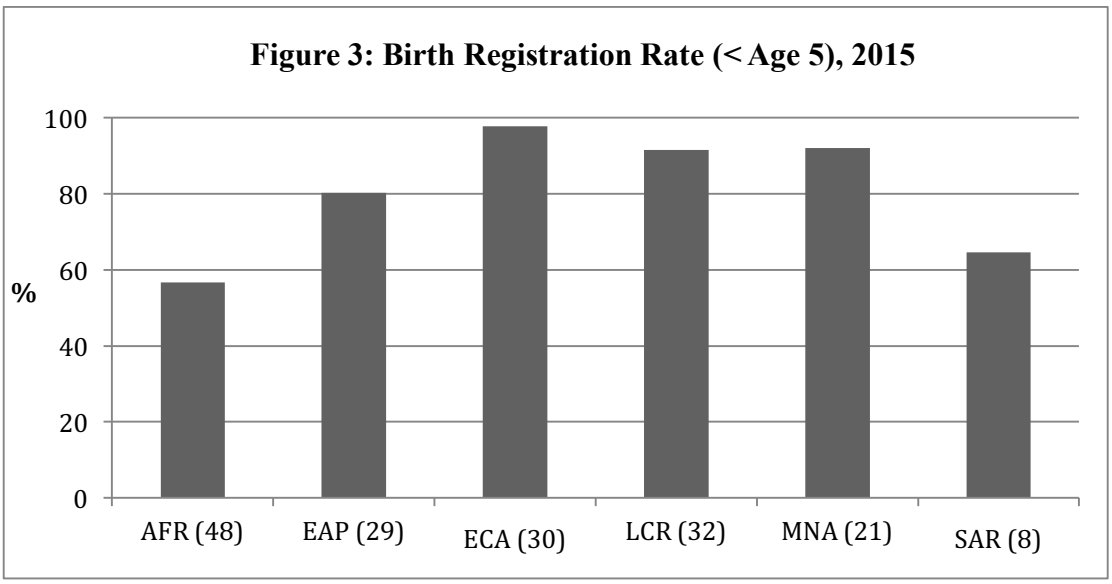
Recognizing the persistent gaps in birth registration coverage, in 2016, the United Nations (UN) made it a target to "provide legal identity to all, including birth registration" by 2030 in its Sustainable Development Goal Agenda. According to this target, birth registration is key to gaining recognition of one's personhood before the law. Indeed, birth registration has been enshrined as a right in and of itself under international law, and as a prerequisite for the enjoyment of other fundamental rights and freedoms, including education, healthcare, and citizenship. Development agents have linked the expansion of birth registration coverage to the achievement of other SDGS, such as ending poverty, empowering women and girls, reducing inequality, promoting peaceful and inclusive societies for sustainable development, among others.

In the lead-up to the unveiling of the SDGs, governments and international agencies have ramped up their investment in civil registration-related initiatives, particularly in developing regions. For example, in July 2014, the World Bank Group launched the Identification for Development (ID4D) initiative, which mandates them to provide technical expertise as well as financial and operational support to governments with the aim to strengthen their civil and identification registries. So far, they have conducted 30 country assessments, and are actively running projects in 12 of these countries. In November 2014, the UN Economic and Social Commission for Asia and the Pacific convened a Ministerial Conference on Civil Registration and Vital Statistics, bringing together representatives from over 40 governments in the region. The conference proclaimed 2014-2024 to be the CRVS Decade for Asia and the Pacific, with member states committing to working towards the following three goals: universal civil registration; provision of all individuals with legal

documentation in order to claim identity, civil status, and associated rights; and reliable dissemination of vital statistics. In November 2014, the UN Refugee Agency launched a 10-point Global Action Plan to End Statelessness by 2024, action #7 being to "ensure birth registration for the prevention of statelessness."[34]

These agendas are ambitious, as there continue to be vast disparities in civil registration coverage at both global and subnational levels. While the deprivation of vital documents also affects migrants (for example, the UNHCR estimates that over 75% of babies born to Syrians in Lebanon since 2011 do not have birth certificates), the majority of uncounted peoples have never crossed an international border in their lives. According to UNICEF (2013), 230 million children (1 out of 3) under the age of five have not been registered at birth. For example, just 3% of children under five in Somalia are registered, while India is home to the highest number of unregistered children at 71 million. Out of 198 economies, the World Bank Group (2016) estimates that around 1.5 billion people, mostly living in Asia and Africa, are unable to prove their identity.

[34] UNHCR (2014), Global Action Plan to End Statelessness 2014-24, accessed 19 April 2019 at https://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html.



AFR—Africa; EAP—East Asia and Pacific; ECA—Europe and Central Asia; LCR—Latin America and Caribbean; MNA—Middle East and North Africa; SAR—South Asia (World Bank, 2016)

The existence of uncounted populations has for the most part has been diagnosed as a consequence of underdevelopment. The common barriers cited by international agencies to universal civil registration, as well as the solutions proposed, portray governments as having an interest in counting their people but lacking the resources and capacity to do so (see, for example, (Plan International 2009; UNICEF 2013; World Bank Group 2018).

Many of these cited barriers are infrastructural: First, registration offices may be too few in number or located predominantly in urban areas, rendering it inconvenient and costly to access for populations living in remote or rural areas. For example, Papua New Guinea has one birth registration office in the country which is meant to serve a population of seven million people spread across 460,000 square kilometres (UNICEF 2013). Furthermore, the record-keeping and information management systems employed in these offices may be inefficiently-designed or technologically obsolete (i.e. still reliant on paper-based rather than

computerized records), making the registration process time-consuming, error-prone, and cumbersome for both governments and individuals.

Other barriers stem from a purported lack of prioritization by governments of the need to maintain up-to-date and comprehensive civil registration systems. Due to corruption or scarcity of resources, state officials may allocate insufficient funds to civil registration ministries, or may put off reforming administrative procedures that are impractical or outdated. In many countries, for example, late fees are charged in order to incentivize registration immediately after birth, a policy which inadvertently discourages families from registering their children at all after they have missed the cut-off date. In other countries, such as Indonesia, an official marriage certificate is required for parents to be able to register the birth of their children. Particularly in rural areas, couples undergo customary religious weddings but do not register officially with the state, leading to legal complications later on if they try to register their children (Duff, Kusumaningrum, and Start 2016).

In addition to causes relating to the inaction or inadequacies of states, the primary set of barriers that developmental agencies commonly identify are ignorance or neglect on behalf of families themselves, placing emphasis on individual rather than structural explanations. According to reports, parents may be unaware of the repercussions of allowing their children to remain unregistered, or may choose not to register due to material constraints or cultural beliefs. For example, UNICEF (2013) writes:

> Religion and ethnicity appear to have some influence over birth registration levels. In certain cultures and population groups, more emphasis and value may be placed on traditional customs or practices (such as naming ceremonies) than the formal process of birth registration. Ethnicity can affect birth registration levels in other ways since,

> in some countries, minority groups are more likely to live in remote areas where birth registration services are either lacking or difficult to access (p. 22).

Development actors also point to a lack of education and illiteracy when explaining low demand for birth registration by parents and guardians for their children. People with lower levels of educational attainment, or who do not speak the national vernacular, are said to be more likely to lack awareness of the importance of birth registration. Even if they do possess the awareness, they often do not possess the cultural and financial capital necessary for navigating the complex bureaucratic process of applying for papers.

Accordingly, measures for addressing these barriers stem from the logic that greater socioeconomic development will enable states to expand their civil registration systems. Such logic is apparent, for example, in the World Bank Group's description of its latest program on CRVS:

> Recognizing the **transformational potential of modern, 21st century identification systems** for the delivery of basic services to the poor, the World Bank Group launched the *Identification for Development* (ID4D) agenda in 2014. The program aims to support progress toward identification systems using **21st century solutions** that enable access to services and rights for all. It will bring **global knowledge and expertise** to bear across multiple sectors and countries to tackle this **fundamental development challenge**. It also will engage operationally in this area, collaborating with development partners, donors, and governments to provide unified **technical and financial support** to low- and middle-income countries (p. 12) [emphasis added].

There are two key messages embedded within this statement. First, that the universal

possession of legal identity is both an indicator and facilitator of development. Second, that the problem of under-registration will be eradicated with modernization brought on by investments in infrastructure, technology, and education.

Official discourses surrounding CRVS in the global development agenda are therefore for the most part depoliticizing. They portray governments as having a rational interest in counting their populations, but lacking the capacity to do so. In this framework, birth registration consequently becomes reduced to a "technical," rather than a political problem, which demands "technical" solutions that development actors are conveniently ready and willing to provide. The depoliticizing discourses surrounding problems of birth registration are accompanied by apolitical solutions. The operating assumption is that the problem of under-registration will be eradicated with modernization brought on by greater investments in government infrastructure and technological expertise, and in educating families about the importance of registering their babies.

Birth Registration and the Expansionary Logic of the State

In contrast to development practitioners, sociologists have long been making the case that registration practices, more than mere mundane procedural matters, are inherently political acts. Nevertheless, sociological theories similarly lead to the assumption that unregistered births are due to insufficiencies in state capacity.

Bureaucratic systems are the foundations for modern governance. Scholars have drawn attention to the centrality of bureaucratic documentary systems in state consolidation and control. Weber (1978) characterized the modern nation-state system as guided by principles of bureaucratic rationality—the calculable, scientific, impersonal, rule-based

method with which various dimensions of life have come to be governed. Speaking in ideal-typical terms, regardless of how states define their criteria for membership, these criteria are codified into law and applied in an objective and predictable manner by administrative bodies that are detached from the interests of the people who occupy them. Thus, the "turning of real lives into writing" enables states to discipline the complexity of social life into more manageable—what Scott (1999) calls "legible"—social categories.

A number of studies have shown how civil registration has been used for political means, particularly in efforts to police racial and gender boundaries. For example, as late as the 1970s, civil servants in the US south have attempted to discourage intermarriage by policing who could be labeled as white on their birth certificates. In South Africa, the 1950 Population Registration Act required all persons to be classified by race, which provided the bureaucratic foundations for enforcing apartheid in many areas of life (Bowker and Star 1999). Birth certificates have also been the site of political contestations over gender identification, which have played out in debates over what legal criteria should be used to allow changes to sex designations on birth certificates (Currah and Moore 2009; Westbrook and Schilt 2014).

As I demonstrate in chapter one, the current theoretical framework for understanding states and their documentary practices would lead scholars to presume that unregistered births come about as a result of an inability of governments to register them. In short, the logic informing this framework is that states have an impulse to expand their administrative reach over their populations. The more states know about their populations, the better able they are to exert control over them in a variety of ways, including resource extraction and redistribution. Therefore, if there are births that have gone uncounted, it is due to a lack of

state capacity to count them, owing to poor infrastructure, insufficient political legitimacy, or efforts by people to avoid being colonized by the state (Loveman 2005; Scott 2009).

In portraying governments as wanting to count, but merely unable to, scholars echo development actors' assumptions about states and their desire to "see" (Foucault 1977; Lyon 2009; Scott 1999; Torpey 1999). As I show, however, economic development does not completely explain why some births get registered while others do not. Indeed, in a comparison of countries' level of wealth (measured by gross national income per capita and purchasing power parity) and their birth registration rates, Hunter and Brill (2016) find that—below high income levels—economic development is an imperfect predictor of birth registration coverage.

In keeping with the overarching argument of the dissertation—which is that states accumulate power not only by rendering populations legible, but also by *selectively* seeing—I argue that birth registration is also an arena in which political struggles over recognition play out. Birth registration, therefore, should not be assumed to be a universal or automatic impulse, but as the product of racially- and morally-inflected decisions about whose personhood deserves to be recognized.

Theorizing Defensive Strategies Against Demographic Threats of Birth

To make evident why governments might opt to selectively render legible individuals, I draw attention to the significant sociolegal implications of the act of recording a birth. Birth registration, an inclusionary project in principle, provides the bureaucratic foundations upon which states maintain the fundamentally exclusionary project of citizenship.

By inclusionary, I mean that development agents and (at least, ostensibly) governments strive to count, and therefore account for, the occurrence of every birth and

death that occurs within their jurisdictions, regardless of race, nationality, gender, religion, ability, and so on. As I demonstrated in chapter one, however, the outcome of registration is recognition. By registering a birth that occurs within its territory, a government is in effect bestowing that individual with personhood status, and establishing a legal relationship to her. Recognition becomes a crucial legal and symbolic resource that individuals can use to make various rights claims back on the state. The most consequential right that can be claimed is citizenship, which is predominantly regulated by principles of birthright (Shachar 2009). That is, *to whom* and *where* one is born largely determines her citizenship status.

The potential for the descendants of migrant Others to enter into a nation's political community via birth within the territory constitutes a kind of demographic threat. In an era characterized by historically high levels of global migration and displacement, as well as rising anti-immigrant sentiment, receiving states have become increasingly wary of incursions of (fertile) migrants on to their soil and into their citizenries (Blinder and Richards 2018; Connor and Krogstad 2018; Esipova, Fleming, and Ray 2017). In this section, I systematize the three main defensive strategies that states have deployed in response to these threats.

The first strategy for states to defend against demographic threats of birth is by *preventing them from physically occurring on their territory.* A signature feature of modern states is their "monopoly of the legitimate means of movement" (Torpey 1999, p. 1). In other words, one way that the state exercises and preserves its territorial sovereignty is by controlling the movement of people across its geographical borders. Pregnant women's bodies in particular have become the target of suspicion and heightened surveillance in the domains of immigration and border control. For example, in 2015, the Stop Birth Tourism

Act was introduced in the US Congress by the Republican Party, which would empower consular officers with the ability to deny tourist visas to women if they suspected they were pregnant, and likely to give birth in the US if admitted. In 2018, the US Immigration and Customs Enforcement (ICE) Agency ended the routine exemption of pregnant migrants from immigration detention.[35] Between October 2017 and August 2018, ICE reported booking more than 1600 pregnant women into immigration custody—more than double the 559 pregnant women detained between 2012 and 2014—28 of whom had a miscarriage prior to or during detention.[36]

The second strategy is to *legally devalue birth as a criterion for determining citizenship*. Today, only thirty countries in the world grant citizenship on an unrestricted *jus soli* basis (Feere 2010). From the 1980s onwards, Portugal, the United Kingdom, Malta, India, France, Ireland, New Zealand, and Australia have all added additional requirements for obtaining citizenship by *jus soli*. For example, a child born within the territory of the United Kingdom (UK) can only claim citizenship if at least one of her parents is a UK citizen or permanent resident. There are ongoing movements to dismantle unrestricted *jus soli* citizenship in the United States in Canada. In 2018, President Donald Trump reanimated opposition to birthright citizenship by threatening to repeal the 14th Amendment of the US Constitution, which guarantees the right to US citizenship by birth.[37] Though the potency of the threat has little political or legal basis, it marked the latest provocation of over a century-

[35] US Immigration and Customs Enforcement (2018), "FAQs: Identification and Monitoring of Pregnant Detainees," accessed 19 April 2019 at https://www.ice.gov/faqs-identification-and-monitoring-pregnant-detainees.
[36] Mihir Zaveri (2019), "Woman Delivers Stillborn Baby While in Custody," *New York Times,* accessed 19 April 2019 at https://www.nytimes.com/2019/02/25/us/mother-birth-ice-custody.html.
[37] Julie Hirschfeld Davis, (2018), "President Wants to Use Executive Order to End Birthright Citizenship," *New York Times,* accessed 19 April 2019 at https://www.nytimes.com/2018/10/30/us/politics/trump-birthright-citizenship.html.

long debates about the deservingness of migrants for US citizenship (M. M. Ngai 2006). In August 2018 in Canada, the Conservative Party policy book was amended to pledge that the party, if elected, would roll back unrestricted *jus soli* in order to counter the alleged abuse of Canadian citizenship by so-called "birth tourists."[38]

In this chapter, I bring attention to a third strategy states can use in response to demographic threats of birth, which is by omission. Omission involves *denying legal recognition of the very occurrence of birth itself.* At the practical level, omission can be achieved by raising the administrative burdens and evidentiary standards for registering births. This process constitutes a form of strategic omission, which I define in chapter one as the process of deliberately leaving an individual out of state administrative apparatuses—namely civil registers, identity management systems, and censuses. In this context, the motivation underlying the strategic omission of unwanted minority offspring from a country's birth registration system is to deprive them of the material evidence needed to claim the birthright of citizenship. If the capacity to claim rights is predicated on being recognized as a citizen (Arendt 1951), the capacity to claim citizenship may at times rest on whether one possesses the material means to substantiate this claim.

Under what conditions do states choose to implement one defensive strategy versus another? Under what conditions does documentation become a necessary precondition for claiming citizenship rights? Unfortunately, these questions are beyond the empirical scope of this dissertation. It is reasonable to suggest that denying certain types of bodies the right to entry, or constricting legal channels to obtaining citizenship, are moves that incite

[38] Eric Stober (2018), "Conservatives Vote to End Policy that Allows 'Birth Tourism' in Canada," *Global News,* accessed 19 April 2019 at https://globalnews.ca/news/4410446/conservative-convention-birth-tourism-canada/.

accusations of illiberality. In contrast, states can conveniently appear to be adhering to Weberian norms of bureaucratic rationality when they cite a lack of appropriate documentary evidence as their reason for rejecting claims for legal recognition. By raising administrative burdens for registering births, states may insist that they are upholding the law and preventing fraud, never mind that these laws were designed to structurally privilege certain groups to the disadvantage of others. I venture that omission may be embarked on as a strategy when the other two strategies prove to be legally, practically, or morally inviable. In the following sections, I make the case for omission as an under-recognized cause for why births go unregistered.

Births as Socially Constructed Events

I argue that births should be thought of as socially constructed events, rather than objective biological occurrences. Given the settledness of biological definitions of human birth, the idea of births as social constructions may not be immediately intuitive. There exists consensus among the medical community of the medial definition of birth. According to the World Health Organization (WHO), a live birth refers to "the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of the pregnancy, which, after such separation, breathes or shows any other evidence of life —e.g. beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles—whether or not the umbilical cord has been cut or the placenta is attached" (WHO 2018). Furthermore, even immigration scholars think about birth as a universal human experience and therefore a fact to be taken as given. For example, in Brubaker's (1998) seminal *Citizenship and Nationhood in France and Germany,* he reasons that the institution of birthright citizenship is so dominant in part because it is convenient to administer. This is

because, according to him, birth is "an unambiguous event about which states maintain relatively clear administrative records" (p. 32).

As I show, however, the event of birth can be deeply ambiguous in the absence of administrative records of its occurrence. Documents are not merely reflective, but moreover, are generative of social reality. Before births become officially recognized as births in the eyes of the state, they must first be authenticated via a series of complex negotiations between social and institutional actors—including parents, healthcare professionals, and civil servants—over the production of official records.

From observations conducted while volunteering with an NGO in Kuala Lumpur that provides legal aid to stateless persons in West Malaysia, it became apparent that facts of birth were not taken for granted by the government when it came to issuing birth certificates and processing citizenship applications. One NGO worker, drawing from her background working with stateless Malaysian Indians, expressed frustration at the difficult-to-satisfy evidentiary burdens the government places on her clients:

> "Many decades ago, Indians migrated to urban areas from the plantation. Today, they are 60, 80, 90 years old. The government asks them for proof of birth. But the estate is no more already. The plantation is no more already. We cannot get proof of birth because the hospital is closed down. Then the government sometimes asks for eye witnesses [of the birth]. Say you're 60. The eye witness is aged 75 by then. Also, when they move to another place, they may not be moving together. Some already in Johor, or Kedah, so you cannot bring the eye witness.
>
> The third issue is actually among the Indians. Sometimes the siblings are not on good terms so they don't want to support. The JPN [National Registration Department]

asks you to bring the ten siblings. Say number 8 is not on good terms, so they don't want to come. The JPN officer will ask, why doesn't this family member want to come? Maybe this is a false case.

Another issue is financial problems. Even sometimes they cannot travel to the JPN. Sometimes, you have to go 2 times, 3 times, and a lot of money is involved. And then there's an interview [for citizenship applications]. The communication is in BM [Bahasa Malaysia]. Old people—not just Indians, but Chinese also—cannot speak BM. Normally, because the interview will take place a couple of times, the witness statement might be different because they cannot understand."

During a practitioner's roundtable on statelessness in Sabah, an NGO worker echoed similar barriers to proving facts of birth. "You have to prove the birth [to the National Registration Department] right? But usually, the mother or father is dead or no longer there, or they've moved to another village, so the midwife has lost contact. Or the *ketua kampung* ("village chief") is no longer the same. So this is the situation, la."

The lack of documentation does not negate the lived existence of a human being—an existence that is characterized and affirmed by social relationships with relatives, friends, neighbors, colleagues, and others. In her study on the struggles for legal status among Salvadoran immigrants in the US, Coutin (2000) discusses how people can be both socially embedded in familial and community networks while simultaneously legally unrecognized:

"The undocumented are not, of course, confined to spaces of nonexistence…Though they are not legally present, the undocumented get jobs, rent apartments, buy property, go to school, get married, have children, join churches, found organizations, and develop friendships. On a day-to-day basis, their illegality may be irrelevant to

> most of their activities, only becoming an issue in certain contexts, such as when changing jobs, applying for college, or encountering an immigration official. The undocumented thus move in and out of existence. Much of the time they are undifferentiated from those around them, but suddenly, when legal reality is superimposed on daily life, they are once more in a space of nonexistence" (p. 40).

The omitted peoples that I encountered in my fieldwork were intimately embedded within social networks from which they could derive numerous credible witnesses to their lives. Yet, from the perspective of the state, they did not exist, and people who do not "exist" legally are not owed rights, resources, or membership. Many of the families that I encountered were engaged in multi-year battles in order to obtain documents to prove their children's births within Malaysia because they came up against obstacle after obstacle placed in front of them by the National Registration Department and other governmental bodies.

Examining the text of the Federal Constitution (which governs citizenship) and the Birth and Death Registration Act of 1957, the language is strikingly colourblind. And yet, there are clear racial disparities in terms of who is omitted: people of migrant (non-*bumiputera*) heritage, such as those who are ethnically Filipino, Indonesian, and even Indian and Chinese—are disproportionately afflicted by problems of under-registration. I argue that the ostensible neutrality of these laws obscure what has amounted on the aggregate to the systematically unequal access to evidence needed to claim Malaysian citizenship, which is maintained through administrative discretion.

Romie's story exemplifies the lengthy struggles that many families in Sabah go through in order to gain official recognition of the births of their children. Romie was born on the 22nd of February 2008 at 5:05pm. This fact is known because it is handwritten on the

front of a tattered newborn health record pamphlet that his grandmother, Josie, keeps in an old plastic bag along with all of the other documents that Romie has to his name—which is not many. Also in this bag is a card from a private clinic, which he got the time he visited three years ago for a cough, and six receipts for fees paid to the CLC that he attended up until September of 2017.

When the lumber mill that his grandmother worked at closed down in September of 2016, Josie relocated the both of them across town to live on her late mother's land with one of Josie's brothers. When Josie tried to cheer Romie up by saying that at least he wouldn't have to take the test that was scheduled for the following week at school, Romie broke down into tears. However, Romie rightfully shouldn't be at this school, because according to Josie, he is Malaysian. Furthermore, more than just Malaysian, he was Dusun, which she claims on the basis of their shared blood and the way that she raised him. Unfortunately, Romie does not have a birth certificate to prove his claim to indigenous status or citizenship.

When I first met Josie, she told me that she had never met Romie's mother, nor knew any information about her other than that she was Indonesian. At that time, the only material information I was able to obtain about her was gleaned from the faded writing on the front of Romie's health record pamphlet—that her name was Farah, and that her race was Bugis, which is an ethnicity that originates from Sulawesi, Indonesia. When Romie was a baby, Nisa and Haris had a falling out. Nisa left Romie with Haris, who brought him to his mother to care for him.

When Josie and Haris took Romie to the National Registration Department to apply for his birth certificate, the officer told them that their application was incomplete due to missing supporting documents. The health record pamphlet was only proof that the boy had

been treated at the clinic as a newborn, but not that he was actually *born* at the clinic, and by extension, in Malaysia. The officer told them that a different booklet was required: a red-coloured booklet that tracks mothers' health throughout the pregnancy period. Without this book, the JPN refused to issue Romie a birth certificate, despite Haris's insistence that Romie was his child, and that he had been born in Sabah.

When Romie was five years old, he became sick, which prompted Josie to take him to a government hospital. When she tried to admit him, she was asked to provide his birth certificate so that he could enjoy the Malaysian citizen rate. Josie explained that the boy did not have a birth certificate. Usually, Josie said, she was able to use her own Malaysian identity card to admit him into clinics. The staff told her that such a practice was permissible for newborns, but now that the boy is older, they would prefer for him to be admitted using his own personal documentation. When Josie asked the hospital for help to obtain a birth certificate for Romie, the staff told her that they were unable to assist her, and that she would need to go to the original hospital in which Romie was born.

With time running out to get his birth certificate before he was supposed to enroll in the first grade at the local government school at age six as is typical of Malaysian children, Josie, as a measure of last-resort, implored Haris to travel the six hours across the state to retrieve Romie's birth records from the district health clinic that Haris insisted Romie was born in. Not long after, she received a phone call from Haris, who informed her that he found out that the clinic had actually burned down in 2012, and that all records prior to that year were destroyed in the fire. Haris did not come home after that, and had effectively disappeared from Josie's life. His cell phone number went out of operation. The only evidence that Josie had left over her son's identity is a low-quality black-and-white

photocopy of an expired version of his MyKad. This left Josie to be the sole caregiver of Romie, and the sole advocate for the boy's as-yet unrecognized legal existence.

Josie went one more time by herself to the JPN, armed with the pamphlet and the copy of her Haris's identity card. The JPN turned her away again, saying that since the card was expired, they would not be able to recognize it. Even if the identity card was valid, Josie could produce only a photocopy of it. They requested for the father to come to the JPN directly to handle this matter himself.

Over the years, Josie has faced hurdle after bureaucratic hurdle trying to obtain official recognition of his identity from the registration department. In 2017, Josie made efforts to become Romie's legal guardian, hoping that this would improve his chances of being recognized as a Malaysian. She went to see her *ketua kampung* ("village chief"), who issued her a letter that was she then laminated. It read:

To whom it may concern,

CERTIFICATION OF GUARDIANSHIP OF CHILD ABANDONED BY HIS MOTHER AND FATHER

I confirm that the below-named is the guardian of the child who was abandoned by his mother and father until this day. The following are the details of the guardian:

Name: Josie binti Linggan

Race: Dusun:

ID Number: xxxx

Furthermore, the relationship of the guardian to the child who was abandoned is that she is his grandmother. From our current knowledge, both parents are alive, but their current statuses are not known.

Furthermore, the child does not have a birth certificate or valid identity documents and because of this, the child cannot continue his schooling. The following are the details of the child:

Name: Romie Harris

Age: 9 years

Your consideration and cooperation are highly appreciated.

Thank you. In the nation's service,

Village head.

[Village Name]

Date: 31/03/2017

Upon the village chief's instructions, she brought the letter to the High Court of Keningau to get it officially stamped. There, she was advised to head to the National

Registration Department once again to appeal for Romie's birth certificate to be issued. The trip, as usual, proved to be fruitless. The letter from the village chief was insufficient proof of legal guardianship, and was not considered to be an official legal document for the purpose of applying for a birth certificate and citizenship for Romie. One possible next step that she could take was to formally adopt him under the Registration of Adoption Act of 1952.

Josie had several reservations about adopting her grandson formally, however. Principally, she was concerned about the stigma that might ensue from changing Romie's last name. As per Dusun naming customs, the boy's full name was Romie bin Haris. If she were to adopt him, she was not sure how this would affect his name, given that she was a single (grand)mother. If Martino, Romie's grandfather and Josie's husband, had been around, such a concern might not have arisen, since Romie would naturally take on his name if he were to be adopted by the couple. However, Martino himself was an undocumented Indonesian migrant from East Timor who stayed in Sabah after his passport had expired. Second, they did not formally register their marriage because she was Christian and would have had to convert to Islam, her partner's religion, in order to marry, which she did not want to do. Third, Josie and Martino had separated, and he had moved to a different town to work in a lumber mill. Josie was able to transfer Malaysian citizenship to Haris because, according to the Malaysian Constitution, children born out of wedlock follow the nationality of their mother. Haris, on the other hand, was ineligible to transfer his citizenship to his son because he did not obtain a marriage certificate with Romie's mother. Since his mother's identity was not known, Romie was in practice unable to inherit her citizenship status, rendering him stateless in addition to illegitimate.

Josie had also turned to one of her brothers to ask whether he would be willing to

adopt Romie and sponsor his citizenship application. Her brother had his own family troubles as a single father, however, and was concerned about the cost that Romie might incur him if he were to get involved. She also put out an ad in the local newspaper appealing for her son to return home. Unfortunately, the ad received no responses.

Josie's anxiety about the sociocultural repercussions of adopting Romie became immaterial when she discovered that adoption might not even be possible in the first place. This is because the legal adoption process in Malaysia requires that the adopted child possess a birth certificate, putting the family in a catch-22 situation: Abandoned by his biological parents, the responsibility of sorting out the fate of Romie's legal identity—including obtaining a birth certificate—fell to his grandmother. But in order to obtain legal guardianship over him, his birth certificate was required for his adoption application, which he did not have.

I sought advice from Steven, a local NGO worker who had experience in handling similar cases, to understand what possible courses of action could be taken for Romie. He reiterated that the odds of a successful adoption were low given that Romie lacked "proof of birth." He warned, "The [National Registration Department] is very cautious. Questions they would ask would be like, 'Why didn't you process the adoption earlier if this was your grandchild?' So, she must be prepared to answer all this. Also, bring lots of proof—baby pictures, pictures of the mother and father, etc." When I explained that Josie was poor and had no such photos, nor details of his parents save for the photocopy of the identity card and the health record pamphlet, Steven replied, "*Alamak* ('Oh dear.')" He went on to remark, "[There are] many cases like this. It is difficult, because the National Registration Department cannot process [such applications] without certain criteria being met. Not until

we change the law. [These] rules apply to the whole of Malaysia, but it's tougher here [in Sabah] because there are many cases of fraud." He also cautioned that Josie might risk being charged with human trafficking if she went to the authorities without the proper paperwork. Steven suggested that we start by filing a police report, then consulting with the Welfare Department. "If it goes sour," he added in consolation, "you can always go to the newspapers."

To illustrate the prohibitively convoluted nature of the Malaysian bureaucracy that families can become entangled within when attempting to apply for basic documents, I detail a chronology of interactions with institutional actors with regards to Romie's case. In doing so, I demonstrate how both administrative rules and frontline discretion operated to the systematic exclusion of people of migrant descent from obtaining vital documents.

On 10 November 2017, my research assistant Rania and I went by ourselves to the state Welfare Department office to inquire as to what steps would need to be taken in order to rectify Romie's status. At the counter sat two male officers, one of whom beckoned for us to sit down in front of him. With a disinterested tone, he asked us what we wanted, not looking up from his computer the entire time we explained Romie's situation. Upon hearing that adoption was a matter we wanted to learn about, he gestured over to his colleague sitting beside him, who had his Facebook app open on his mobile phone and who was also engrossed in his computer. This second officer at least made eye contact. However, he admitted that he had never handled civil adoption cases before, only Shariah cases. He said, for Shariah cases, a birth certificate is required for adoption, and that it would probably be similar for civil cases. He told us to inquire with the Courts to see how adoption might be able to occur without one. Once the court approves the adoption, then we should come back

to the Welfare Department and they would get involved from there. We stopped by the Court buildings, which were in the same compound as the Welfare Department, but the office in charge of adoption was vacant with everyone on a business trip in Kota Kinabalu.

On 13 November, we attempted to provisionally enroll Romie in the local government school while we sorted out his citizenship case, which I elaborate on further in the following section. In short, we were turned away because of Romie's lack of a birth certificate, and because Josie did not have a copy of hers either. The officer directed us to the police office in order to make a report about these missing birth certificates "You must, must, must do this," she urged, dismayed at what she perceived to be Josie's flagrant negligence. She invited us to return with these documents in order to prove to the Education Department that both grandmother and grandson were Malaysian as they claimed to be. She also requested that we obtain a letter from Josie's current village chief, since the one that she had was from a different village, and not suitable for application to the government school in their current village.

Immediately afterwards, we drive to the police office in town in order to file the required report. Upon entering, a female police officer immediately recognized Josie from the last time she had come in asking for help with finding her son. We told the police officer that we were here to report Josie's missing birth certificate. The officer waved us away in a friendly manner. "You're Dusun," she said to Josie. "Just go straight to the JPN [National Registration Department] to get yours. There's no need to make a police report." Wishing us good luck, she added, "How is your grandson by the way? Have you adopted him yet?" to which Josie bashfully replied that she was still in the process.

The National Registration Department was located within the same complex. We took

a number at the electronic ticketing machine, but did not have to wait long before Josie was called to a counter. A young man in his early thirties, was kind, patient and respectful to Josie, addressing her as Auntie. He took her identity card, and looked it up on his computer. His brow furrowing, he remarked that there was no birth certificate in the system. "Do you have a birth certificate?" he asked Josie. She insisted that she did have one at one point. The officer, perplexed, said that the number associated with her MyKad indicated that she did not have a birth certificate. He picked up to call the head office in Kota Kinabalu, and asked for the staff there to check out her file. After some time on the phone, he hung up and explained in a reassuring tone to Josie that she in fact never was issued a birth certificate, only a *surat akuan* ("statutory declaration"). This was normal *dulu-dulu* ("back then") for *orang kampung* ("villagers") of Josie's generation to not have been registered at birth. Instead, many held these *surat akuan*, declarations that they had been born in Malaysia. He told us to go to the Pejabat Daerah (District Office) in order to make a new *surat akuan*, which the office would sign and "chop" (stamp).

Romie's birth certificate was a more complicated matter. The junior officer went to the back of the office in order to consult with his manager. He returned, and told us to go to the Welfare Department. Unfortunately, he said, the National Registration Department was unable to help because the boy does not have any documents—the irony of this statement being that the office was the very one that was responsible for giving or withholding documentation. Rania, in a practiced even tone, reasoned that the Welfare Department had sent us here for the very same reason.

The officer, trying to be helpful, pulled up Haris's file in the system, and told us that there was a phone number associated with him. Unfortunately, the number was out of

service. The officer suggested then that we file a police report about Romie's missing father to show to the Welfare Department, the rationale being that it was important to build a paper trail of the events that led to Romie's birth, failure to register him, and his subsequent abandonment by his biological father.

On 16 November, Josie manages to get an appointment with her local village chief, an elderly Dusun man. When he learned of Romie's situation, he mentioned that he had attended a course managed by the director of the National Registration Department from Kota Kinabalu, along with other village chiefs in the district. He said that the director had spoken of a way to obtain identification for children who did not possess proof of birth, one piece of evidence being a letter from the village chief. It was only then that he admitted that he could issue such letters to Josie, since the locale that she lived in was actually governed by another chief, whose address we obtain from him. The village chief wishes Josie good luck, and urges her to inquire at the National Registration Department about the process for *orang asal* (native) children to obtain late birth certificates.[39]

This village chief in the correct jurisdiction was also an old man, who speaks a little bit of English. After Josie introduced herself and we provided context of their situation, the village chief remarked that he didn't initially think that she was Dusun because of her Indonesian-sounding slang. They then launch into a friendly conversation in Dusun. The village chief said that he would be able to approve a letter affirming her status as guardian; the only problem was that, being old, he did not know how to use a computer. If we typed one out for him, though, he was gladly sign it. We quickly drive to town, and I type out the letter (similar to the first letter from the village chief) on my computer in a restaurant over

[39] At a later point, when we bring this up to a National Registration Department officer, he did not recall such a workshop taking place.

lunch. We take two printed copies back to the chief. Handing back the signed letters, he says, "*Kesian,*" expressing pity for Romie and his circumstances.

To get the letter stamped, and to make a statutory declaration for Josie about the details of her birth, we drive back to the complex where the Native Courts were located, where a clerk asks to see her MyKad and, quickly satisfied of its authenticity, begins entering her biographical information onto a statutory declaration template on his computer. While we wait for the clerk to type up her, another staff member remarked humourously, "Auntie, when you came in here, I thought you looked Bugis. Do you speak Dusun?" Josie begins to chat with him in their shared indigenous language. After some wrangling of dates and spelling, and after obtaining a signature and stamp from the Commissioner of Oaths, the finished statutory declaration read:

STATUTORY DECLARATION

I, Josie binti Ewon (Number: xxxxx, [Village Name], [State], Sabah) do solemnly and sincerely declare that:

I did not possess have a birth certificate since birth.

Residency Status: Malaysian citizen

Ancestry: Dusun

Gender: Female

Age: 53 Years

Religion: Christian

Place of Birth: [Name of village]

Name of Father: Ewon Gubat

Village: [Name of Village]

Name of Mother: Jairin Malanjun

Village: [Name of Village]

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declaration Act, 1960

Subscribed and solemnly declared by the above named: Josie binti Ewon

As for the police report, we lodge it on 16 November, which provides a comprehensive summary of the actions that Josie had taken so far:

Police Report

On 16/11/2017 around 2:45 in the afternoon I came to the police counter at [town] to make a report that on this day, around 2:30pm in the afternoon, I went to the National Registration Department in [town] to apply for documents for my grandson named Romie bin Haris (boy,

aged 9), who has been under my care since 2008 after he was abandoned by his biological mother and father since he was 8 months old. The father of my grandchild is my biological son, named Haris bin Martino (MyKad number xxxx). Until today, I am sure that the mother and father of my grandchild are still alive, but I am not sure what their status is. I also tried putting an ad in the newspaper in the Sabah times to look for my son, but did not receive any replies. The national registration department supplied me with his phone number which was in their system (xxx-xxx-xxxx), but it is no longer in service.

From November 2015 until September 2017, my grandchild schooled at a learning center in town. Because I am aware that my grandson needs to be sent to a government school because I am a Malaysian citizen, I tried to obtain information about how to become his legal guardian. I also have tried to get evidence of his birth from the clinic in [town] where he was born, but the clinic had accidentally burned down in 2012, destroying all of their records.

On 13 November 2017, around 2:30 in the afternoon, I tried to go to the Education Department, which advised me to get a letter of confirmation from my current village chief that I am his guardian. On 16 November 2017 around 1:30 in the afternoon, I met with the village chief of [name of village] to get the letter requested by the Education Department. After getting this letter, around 1:40 in the afternoon, I went to the Native Court to make a statutory declaration attesting to my birth, because the Education Department also needed the birth certificate of his legal guardian. I had to get this statutory declaration because when I was born, I only had a statutory declaration—however, this is noted in the National Registration Department's records.

This report was made to show to the National Registration Department, the Welfare Department, and the Education Department for further action.

On 24 November, we go once again to the Welfare Department before making an application to the Education Department for Romie's enrolment, just to ensure that all possible documentation could be collected before it passed under the eyes of the supposedly-strict District Education director. Josie is now armed with a newly-acquired stack of evidence: letters from Josie's former and current village chief, a police report, a statutory declaration of her birth in Malaysia, a photocopy of her identity card, and a photocopy of the photocopy of Haris's old identity card. The same officer who had been Facebooking on his phone recognized us this time. He said he would pass the documents to his colleague, Fadeela, who handles adoption cases, advising us to follow up again on Monday.

On 27 November, Amira, a middle-aged women wearing a *tudong* (headscarf) sits down with us. She tells us that Fadeela is still on vacation, so she would be assisting us today. She did not smile, and smoke in a monotone voice for the whole conversation. "I don't know what Welfare can do at this point, because the child is already almost ten years old, and there is no record of his birth. There's no proof he was born here. Anyone can make a *surat akuan* ("statutory declaration"). Anyone can basically claim this child is theirs. Where is the clinic book? Where is the mother? The father?" Rania explained on Josie's behalf that Romie's parents' whereabouts were unknown, and that the hospital had burned down, potentially destroying any records it might have kept of Romie's birth. Amira waved her hand dismissively at this last detail. "It's been almost ten years. They wouldn't have kept the

records anyway for this long, anyway."

Amira pressed Josie for an explanation as to why she did not bother to get these documents in order when Romie was still a baby. Josie tried to explain that she *had* tried, having gone to the National Registration Department multiple times, trying to search for her husband in the newspaper, and so on. But Amira merely repeated that he was already ten now, that Welfare would need to see proof that he had gone to school, even though the desire to enroll him in school was the very reason why we were appealing for help from the Welfare office.

"If you had followed the proper way of handling this when he was still a baby, then maybe we would be able to help. If he wants to enter school now, he would need a letter of enrollment from his previous school." Amira repeated again that he had no documents, so Welfare department could do nothing for him. She suggested for Josie to go to a member of parliament and obtain a letter of support for Romie to apply for citizenship. Rania asked sardonically, exasperated by the lack of help that the Welfare office was providing, "Is that the proper procedure?" Amira did not answer her question.

I provide an in-depth chronology of one family's interactions with a number of government agencies in order to demonstrate the futile runaround that families are subjected to in trying to obtain birth certificates, or claim rights that they would be entitled to had they had the papers to prove it. For Romie and unregistered children like him, there is no straightforward or transparent process for resolving their cases. Throughout the process, these families are degraded and dismissed, treated as negligent, dishonest, immoral, and often assumed to be illegal. The lack of a birth certificate results in a compounded undocumentedness, in that it becomes difficult to acquire other forms of documentation—

namely, a MyKad—that are essential to full participation in Malaysian society.

Recognition of Birth as a Judgment of Racial and Moral Fitness

In this section, I argue that birth registration processes in Malaysia are coloured by judgments about who can legitimately claim belonging to the nation along both racial as well as moral dimensions. The instrumentality of birth registration in the allocation of Malaysian citizenship served to transform its perceived function from serving inclusive to exclusive ends: more than a means for generating a statistical portrait of the population, birth registration became a securitized resource used to ward off the "undeserving"—namely, illegal immigrants—from obtaining Malaysian citizenship.

As I show, judgments of deservingness took place on both racial and moral planes. While the laws for citizenship and birth registration are officially colourblind, I found that people of racial minority or migrant descent were burdened with the presumption of foreignness when interacting with the National Registration Department. Structural discrimination also rendered them more at risk of lacking required supporting documents. For example, marriages officiated in the *kampung* ("village") or in Christian churches were not recognized to be official unless a marriage certificate was obtained from the National Registration Department. Couples who thought themselves to be "properly" married according to their culture or religion would discover that their children were considered to be "illegitimate," which had dire consequences for their eligibility for citizenship. Birth registration processes were also infused with judgments of moral fitness with regards to legal status. Undocumented migrants and their stateless descendants were often unsuccessful in registering the births of children born on Malaysian soil, similarly due to a lack of supporting

documents. They also faced condescension and even threats of arrest when approaching frontline civil servants, making them hesitant to even attempt to register their children's births in the first place.

Romie's, and even Josie's, racial fitness for recognition as a Malaysian came under trial during the first time we inquired at the district education office to try to provisionally enroll Romie in school while we sorted out his case, which I mentioned in the previous section that I would elaborate on here. That day, Josie had made sure that Romie looked his best. His hair was combed neatly to the side, and he wore a red polo, one of his nicest t-shirts, which he received from the community learning center. The school's name was embroidered onto the back of the shirt. Though I did not verbalize it, concern arose in my head about whether this association with the learning center would undermine Romie's case for being a Malaysian.

The officer, a young female Sabahan, who saw us was incredulous that Josie had not sent him in formal school before this. After her initial shock was expressed, the female officer asked Josie to take out her identity card, which Josie produced from her purse. She studied the card carefully. Suddenly, a male officer in the cubicle next to hers interjected, remarking, "Her slang sounds Indonesian." A second male officer sitting across the aisle perked his head up and added, "Her IC might be fake." The first male officer demanded for Josie to show him her birth certificate, which was an unusual request given that Malaysians do not typically carry their birth certificates around with them. Josie said that she had lost it a long time ago, which only further aroused the officers' suspicions.

They began to interrogate her about where she lived, why she had an Indonesian accent despite her claim that she was Dusun, and why her grandchild had been going to the

school that they knew was set up just for who they called "illegals." Josie meekly replied that she had worked in a lumber mill alongside Indonesian migrants for many years, and that was why her slang was the way it was. This only elicited more questions about why she was doing the job that illegals usually do. Josie, who was fluent in the Dusun language and perhaps could have disabused the officers of the suspicion that she was foreign, instead stayed silent, with an uncomprehending smile on her face. She was not used to Finally, the officers turned back to their computers, muttering that her card was probably stolen, that she was probably an illegal, and that the female officer should be careful in dealing with her. The female officer, who was sympathetic but firm, ordered Josie to make a report to the police office about her birth certificate, to get a new birth certificate, and to obtain a letter from the village chief confirming their residence in the area and Josie's status as guardian. She said that her manager would review the enrolment appeal carefully, and if he is not convinced that the boy is actually Dusun, then he would reject it.

The racial and moral deservingness of undocumented and stateless children for Malaysian citizenship was also contested in a conversation with a senior official of the National Registration Department—who I managed to chat with during a government-NGO consultation. Over the tea break, I told her about Malaysian children that I knew who were having difficulty getting birth certificates. The officer responded, in a polite but pointed way: "I beg your pardon, miss, but, how do you know that they are Malaysian?"

She went on to say that she agreed with the local officers who had rejected our attempts to apply for a birth certificate for these children on multiple occasions. She said, "You have to understand, we have *peraturan* ("rules") to follow. We cannot just simply give birth certificates to anyone." In a more furtive tone, she told me, "The Philippines and

Indonesia are so close. You can come to Malaysia by boat in just 15 minutes. The government tries to protect the border, but they can't stop people from coming in." The official's remarks encapsulated broader societal fears about the erosion of Sabahan identity and control over the territory. Raising the administrative burden for registering births became a viable defensive strategy against the demographic threats posed by illegal immigrants.

Racial and moral judgments of deservingness for birth certificates also played out in the case of children born out of wedlock to Malaysian men and foreign women. According to the Malaysian nationality law, illegitimate children born on Malaysian soil inherit the citizenship of their mother (see Appendix B for summary of the nationality law). Many stateless children in Malaysia are the offspring of Malaysian men who have children with non-Malaysian women, often from nearby countries such as Indonesia, the Philippines, and Thailand. In the majority of the cases that I identified in West Malaysia (where births typically occur within hospital facilities), the children had no issues obtaining birth certificates, though the certificates would be labeled *bukan warganegara* ("non-citizen").

One exception is the case of Mr. Liow, a middle-aged Chinese man who sought the help of Mr. Raj, a politician who regularly assists families in assembling citizenship applications. I observed their conversation during one of Mr. Raj's citizenship clinics, which took place that morning at an Indian restaurant in Kuala Lumpur. Mr. Liow, pale and thin, appealed to Mr. Raj in the Malay language on behalf of his teenage son, who he had brought with him. The boy was denied a birth certificate because, according to Mr. Liow, he was born just two days before he and his mother, a Thai woman, got married, and therefore was illegitimate. His mother is no longer in the country. Mr. Liow attempted to apply for a birth certificate and Malaysian citizenship for his son four times, but was rejected each time. He

had tried hiring a lawyer, and had even taken an expensive DNA test to prove that his son was biologically his. Mr. Liow became visibly distressed when he admitted that his son refuses to go to school anymore. "He is my only son," he would repeat with anguish, and it brought him pain and sorrow to see him in this situation. Mr. Raj gently advised him to photocopy the documents that he had brought with him, and he would take a closer look at his case. After they left, Mr. Raj confided to me that he understood where the kid, who is currently working at a phone accessory store, was coming from with his attitude towards school: "Why should he care about getting his high school diploma, when he has no documents and no future?"

Mr. Liow's predicament is not an isolated one. Human interest articles about statelessness regularly appear in the mainstream media in Malaysia. Going to the media with one's case is often a strategy for families with stateless members to put political pressure on the Home Ministry to solve their cases, which is sometimes effective.

In July 2017, *Malaysiakini*, a major newspaper, published the story of 20-year-old A-Qing (pseudonym) and her family. A-Qing's father is a Malaysian citizen, now married to an Indonesian national woman.[40] At the time they registered their marriage at the National Registration Department, however, A-Qing's father had not yet become legally divorced from his first wife. The officer who had registered his second marriage, however, did not realize this at the time, resulting in A-Qing's father inadvertently committing bigamy, a crime that can be punished with a fine, or severe years in jail, or both. A-Qing's father and the National Registration Department only became aware of this offense when they had children. While the National Registration Department admitted error on their part for registering his second

[40] Chiew Hui-Yee (2017), "'An Invisible Jail – Stateless Children in Malaysia," *Malaysiakini,* accessed 24 April 2019 at https://www.malaysiakini.com/news/387600.

marriage, they refused to register the births of his first three children—A-Qing and her two younger brothers (their youngest daughter, born much later, received a birth certificate without issue). This is despite the fact that they had handwritten confirmations of their birth from their doctor. This led to a decade-long struggle (between 2003 to 2013) to register their births. The newspaper reported that "A-Qing's father has worked for years to apply for their birth certificates, driving his minivan back and forth from the JPN [National Registration Department] multiple times with A-Qing and her brothers in tow. His minivan was a portable office, A-Qing's father tells us. He had a printer and laptop in the back for printing any application documents at a moment's notice." Finally, the three children were issued birth certificates. To their father's confusion, however, the certificates stated *bukan warganegara* (non-citizen). Ultimately, they were forced to resort to applying for Indonesian citizenship, despite having grown up in Malaysia, so that they could register for the *Sijil Pelajaran Malaysia* (Malaysian Certificate of Education), the standardized exam that students take at the end of secondary school.

To demonstrate how birth registration became imbued with moral judgments of who is deserving of Malaysian citizenship, I recount the challenges experienced by Auntie Rosamie, a Filipino grandmother, in registering the birth of her grandchild. Auntie Rosamie, now in her mid-forties, had originally come to Malaysia when she was nineteen years old from Zamboanga in the Southern Philippines. While in Sabah, she had three children—two boys and a girl—with her first husband, a Filipino man from whom she ultimately separated. Unable to care for her children on her own, she sent them back to the Philippines to be raised by their grandmother.

Currently, she lives with her second husband, Uncle Teoh, who is a Malaysian-

Chinese citizen, with whom she has four children. While Auntie Rosamie has a valid visitor visa sponsored by her husband, all but her youngest boy, a six-year-old, do not have birth certificates.

Shortly after I met Auntie Rosamie, her oldest son from her first marriage eloped to Sabah with his seventeen-year-old wife, Christine, who was heavily pregnant when they made the dangerous journey by boat from Zamboanga. Because Rosamie's most recent pregnancy had ended in an intrauterine death last year, she was adamant that Christine attend all of her prenatal checkups, and give birth in a hospital no matter the cost.

A couple of months after their arrival, Christine gave birth to a baby girl in a government hospital as planned, and they named her Arielle. Though she was born a few weeks prematurely, and came out, according to Rosamie, the size of a can of Coca-Cola, they were allowed to bring Arielle home the following day. The nurse at the hospital gave them a number of forms, and told them to bring this paperwork, and the red book, to the registration department to get a birth certificate.

The next day, when Rosamie took Christine and her granddaughter to the registration department, the officer refused to register Kim, even though they had the hospital paperwork, the baby, and the biological mother in front of them. They were told, "Wait until the parents have documents. Hold on to these papers until then. Once the parents have documents, then they can come back and try for late registration." When Rosamie asked what kind of documents he meant, the officer replied, "A passport," and told them to go back to the Philippines to get one.

When Rosamie pushed back, the officer referred them to his manager at the branch, who threatened to arrest them if they tried to push the matter further. Rosamie, recalling this

encounter, insisted that she was not afraid of going to the office because she did not feel like she was doing anything wrong. She reasoned, "We just only ask if this child can have a document…because she was born in Malaysia, right? It's supposed to be she has the right to have some kind of document, right? Because the government clinic received them, right? Then the hospital also received them, right? But, why is it the NRD ["National Registration Department"] cannot receive them?…We definitely have proof that the baby was born in Malaysia because of these papers. If the government hospital gave these papers to her to register the baby, but the Registration Department refused to accept them, then what are these forms good for anyway? For this baby, who was *born here*, the NRD ["National Registration Department"] is not going to give any receipt or what to show that?"

On the other side of the state on the east coast of Sabah, seven-year-old Arif's birth certificate was confiscated on the basis of alleged fraud conducted on behalf of his biological mother, Jamila, who is stateless and ethnically Filipino. Arif was born in Sabah two months premature. At birth, he weighed just under two kilograms, and spent the first month of his life inside of a hospital. Though he had developmental complications early on, including asthma, he is now a healthy boy who, albeit on the skinny side, stands taller than his friends his age at the informal learning center he attends.

Unable to care for him herself, Jamila gave Arif away to her niece, Dina, as a form of *zakat* ("religious gift"). Dina and her husband Azfar, who could not have children of their own, gladly assumed responsibility for Arif's care and upbringing, including taking care of the hospital fees incurred during his first month of life. Like Jamila, however, they do not have valid legal status in Sabah, which causes them to worry constantly about Arif's future.

As undocumented persons, Dina and Azfar tried their best within their meagre means

to provide for Arif. They sent him to a learning center for undocumented and stateless children established by a group of philanthropic Malaysian-Filipino women. Dina would go with him to school every single morning and watch him from the back of the makeshift classroom. "I'm worried he'll be naughty if I don't," she said. In the evenings after his long shifts working at a Malaysian-Chinese-owned barbershop, Azfar would come home and tutor Arif in his limited English. Numerous photos of Arif as a toddler are taped to the walls of their plywood house. Dina curates even more in photo albums, which she showed me with pride one afternoon at her house. What is impossible for them to provide is also the most important determinant of his life chances: a valid legal status.

Arif is actually half-Malaysian, and would have been able to claim Malaysian citizenship had his parents gotten formally married prior to conceiving him. This is because his biological father, Yashar, is *orang sungai* (an indigenous group in Sabah, which translates into "people of the river"), which makes him a Malaysian citizen. According to the Malaysian Constitution, children born out of wedlock follow the citizenship of their mother. Jamila, born in Sabah to refugees from the Philippines, is stateless, and has no status to pass on to Arif.

Particulars of Birth Certificate of Arif

CHILD

Name: Arif bin Abdullah

Date and Time of Birth: 30 May 2011

Race: Filipino

Place of Birth: Mile 54, Sandakan

Status of Citizenship: Non-citizen

Gender: Boy

Religion: Islam

FATHER

Name: Yashar bin Azizan

Identity Card No.: xxx

Age: 44 years

Status of Citizenship: Citizen

Type and No. of Other Document: Information not known

Status of Residence: Information not known

Race: Sungai

Religion: Islam

MOTHER

Name: Jamila binti Farid

Identity Card No.: Information not known

Age: 31 years

Status of Citizenship: Non-citizen

Type and No. of Other Document: Birth Certificate Malaysia No. xxxxx

Status of Residence: Information not known

Race: Filipino

Religion: Islam

Jamila showed me a black-and-white photocopy of Arif's birth certificate when I visited her house with Dina and Arif one afternoon to learn more about their family's situation. Now in her forties, she lives in a *setinggan* ("informal settlement") near town. On the certificate's copy, his name reads Arif bin Abdullah ("of Abdullah") rather than bin Yashar ("of Yashar"), a surname marking him with stigma by revealing his illegitimate status. Under citizenship status, he is *bukan warganegara* ("not a citizen"), inherited from his mother, who herself was also born in Malaysia.

Extract of Birth Certificate

CHILD

Name: Jamila

Date and time of Birth: 31 July 1979

Gender: Female

Place of Birth: Gaya Island Village, Kota Kinabalu—NON-CITIZEN

FATHER

Name: Ammar bin Hamid

Identity Card No.: Not known

Age: None

Type and No. of Other Document: Certificate of Identity xxxx

Residency Status: Non-citizen

Ancestry: Filipino

Religion: -

MOTHER

Name: Nur

Identity Card No.: Not Known

Age: None

Type and No. Of Other Document: Not Known

Residency Status: Non-citizen

Ancestry: Filipino

Religion: -

Place of Residence: Information not given

Date of Registration: 1 August 1979

Date of Extraction: 18 September 2008

Jamila explained how Arif's birth certificate had been confiscated from her. This happened around the time Arif became old enough to enroll *tadika* ("kindergarten"), which required approval from the National Registration Department because he was a noncitizen child of a Malaysian national. Since Yashar had already left Jamila at that point, the burden

fell upon her as his biological mother to liaise with the registration office.

When the officer at the counter asked her for her identity card, Jamila furnished an extract of her birth certificate, the only piece of identification she owned. Jamila herself was born on the largest of the collection of islands located just a 20-minute speedboat ride from the coast of Kota Kinabalu, the capital city of Sabah. Today, the islands are a popular tourist destination, particular among Chinese and South Korean vacationers. On Gaya Island, high-end resorts coexist side-by-side informal *kampung air* ("water villages"), made up of wooden stilt houses built by settlers of Filipino descent. Like many of her coethnics, Jamila was born in Malaysia to refugees who fled to Sabah from Mindanao beginning in the 1970s to escape the conflict between the Philippines army and Moro separatists. Her parents received IMM13 cards—indefinitely renewable passes issued by the Immigration Department that enable Filipino refugees and their descendants to live and work in Sabah.

When the officer looked up her birth certificate number, he found that it was associated with a red identity card (which indicated permanent residence), which contradicted Jamila's story that she did not have one. What was more damaging to the credibility of her case was that the card-holder had reported the birth certificate to be stolen. According to Jamila, however, *she* was the rightful owner of the birth certificate. She believed that someone else had managed to co-opt her identity by using her birth certificate to apply for a red identity card, and then filed a police report in order to cover her tracks. The officer confiscated both her and Arif's birth certificates, and threatened to call immigration to arrest her, which prompted Jamila to leave the office in a hurry, empty-handed. Since then, her fear of the authorities has been amplified, and she has since refused Dina's pleas to get involved in Arif's case out of fear of approaching government offices again.

Jamila lamented how she would be hard-pressed to prove that the birth certificate was actually hers due to discrepancies in the spelling of her father's name on her birth certificate. On her birth certificate, her father's name reads "Ammar," but on the copy of his IMM13 pass that she kept, his name is "Amir." Jamila's mother's name was also differently written on her birth certificate, though she did not have a copy of her IMM13, so she had no way to prove this. It is not surprising, Jamila said, because her parents were illiterate, and did not have the capacity to verify whether their names were spelled correctly or consistently.

Putting the matter of the veracity of Jamila's claim aside, her presumed illegality resulted in the repudiation of not only her identity, but Arif's as well. This is despite the fact that the National Registration Department had initially acknowledged his existence at birth through the issuance of a birth certificate. By confiscating the piece of paper used to underwrite his identity in state-society transactions—which was obtained for him by his Malaysian father—the National Registration Department disarmed Arif of his only material evidence of his legal existence, and consequently his legal claims-making capacities.

Conclusion

This chapter argues that unregistered births may be the result of the expression, rather than the insufficiency, of state power. By recounting the struggles families undergo in order to apply for basic documents, I argue that births are socially constructed events, and that the institution of birthright citizenship rests on the bureaucratic infrastructure of birth registration. I also show how birth registration access in Malaysia is intertwined with judgments about who can legitimately claim belonging to the nation. I discuss the legal and bureaucratic processes by which missing documents become converted into grounds for

denying citizenship. I explore how discrimination—intentional or otherwise—enter into seemingly colourblind laws and practices, rendering minorities at greater risk of being denied citizenship.

Chapter 5

Population Boundary Disjunctures: Reproductive Healthcare Access and the Construction of Population Health Measures

Introduction

Infant mortality is a key indicator of global development. As part of the Sustainable Development Goals (SDGs), the successor to the Millennium Development Goals of 1990 to 2015, the United Nations (UN) resolved to "end preventable deaths of newborns and children under 5 years of age" by 2030. While this target is global in scope, the onus to act has fallen upon individual member states, with "country ownership" constituting a central guiding principle of the SDG framework (UN General Assembly 2015). Accordingly, the SDGs include two country-level targets for monitoring progress towards ending preventable infant mortality: the reduction of neonatal mortality to at least as low as twelve per 1,000 live births; and under-five mortality to at least as low as 25 per 1,000 live births.

Neonatal and under-five mortality rates are derived using the number of births and deaths that take place in a specified geographical area during a specified time period.[41] For

[41] The neonatal mortality rate (per 1000 live births) is defined as the "probability that a child born in a specific year or period will die during the first 28 completed days of life if subject to age-specific mortality rates of that period, expressed per 1000 live births." The numerator is the number of children who died during the first 28 days of life, and the denominator is the number of live births (years of exposure). See WHO, "Neonatal Mortality Rate, accessed 20 April 2019 at http://origin.who.int/healthinfo/indicators/2015/chi_2015_28_mortality_neonatal.pdf.
The under-5 mortality rate (probability of dying by age 5 per 1000 live births) is defined as "the

national-level estimates, calculations take into account births and deaths that occur within the territorial boundaries of the nation, typically within a given year. The moral imperative embedded within these national population health indicators, therefore, is that countries are responsible for the health and well-being of those who are resident within their territory. In nearly all countries worldwide, however, not all residents enjoy equal legal entitlement to government health services. A large literature has drawn attention to disparities in health and access to healthcare between citizens and immigrants (particularly those who are undocumented) in a wide range of national contexts (Cuadra 2012; Grit, den Otter, and Spreij 2012; Hacker et al. 2015; Siddiqi, Zuberi, and Nguyen 2009).

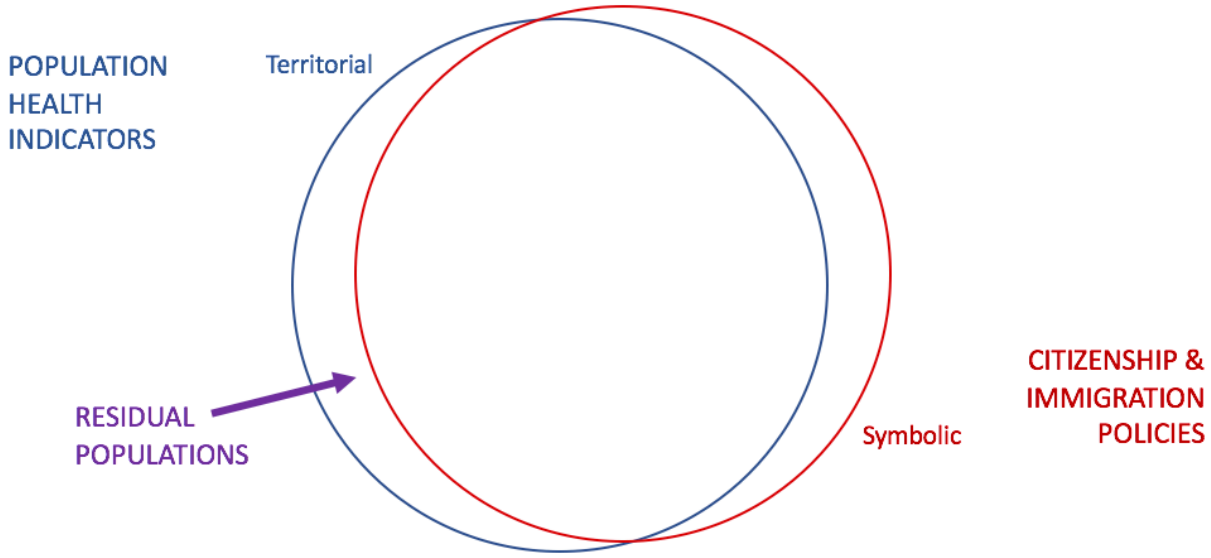
In this chapter, I argue that conflicting definitions of who "counts" within a population can have consequences for life outcomes, as well as how they are measured. I term these conflicts "population boundary disjunctures," which occur when two or more counting systems become applied within the same social field in an overlapping arrangement. I deploy the term "counting" to leverage both of its meanings: 1) the act of quantifying the number of people; and 2) the act of according value or status—such as group membership—to someone or some peoples. In doing so, I accommodate the multiple planes along which institutional actors draw boundaries—including spatial, legal, moral, and racial. Population boundary disjunctures produce what I call "residual populations," which consist of individuals that count within the boundary of one system, but that remain unaccounted for in another.

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probability of a child born in a specific year or period dying before reaching the age of 5 years, if subject to age-specific mortality rates of that period, expressed per 1000 live births." The numerator is the number of deaths among children aged 0-59 months, and the denominator is the number of live births (person-years of exposure). See WHO, "Under-five Mortality Rate," accessed 20 April 2019 at https://www.who.int/healthinfo/indicators/2015/chi_2015_26_mortality_under5.pdf.

To develop this argument, I illuminate the misalignments between the *territorial* definition of "population" employed in the calculation of national population health indicators, and the *legal* and *symbolic* boundaries of population membership constructed by citizenship and immigration policies. The residual population produced in this instance comprises territorially-present noncitizens whose well-being is presumed to fall under the responsibility of the state according to the accepted methods by which population health indicators are calculated, but who are unentitled to various public rights and benefits—many of which are crucial to well-being—because they are not considered to be members of the nation. Their discrepant classification may hinder the progress of governments in both improving and monitoring population health.

Figure 4. Population Boundary Disjuncture



What analytical advantage do the concepts of population boundary disjunctures and residual populations offer in this case over the citizen/denizen distinction that has already

been so extensively studied by immigration scholars (Hammar 1990; Isin 2002; Turner 2016)? For one, they direct the focus of analysis to the level of symbolic boundary-making (Lamont and Molnar 2002) and allow for the consideration of multiple counting systems, as well as the consequences that stem from their overlapping arrangements. Humans are counted in numerous ways by numerous systems simultaneously. The boundary disjuncture framework shifts attention from the stratifying impacts that occur when people are classified within a single system (for example, what Fourcade and Healy (2013) call the "classification situations" within which market institutions position people), and instead to the potential conflicts, misunderstandings, and exclusions that occur when populations are discrepantly counted by two or more systems. Thus, while similar, residual populations as identified in this context are not wholly equivalent to products of what Shachar (2009) calls "problems of under-inclusion," referring to the tendency for states with *jus sanguinis* citizenship regimes to exclude domestically-born non-coethnic residents from political membership. In this paper, their residual quality inheres in the frictions created by their inclusion in population health indicators' calculations by virtue of their territorial residence, but simultaneous exclusion from the national citizenry.

The empirical case I draw on is noncitizen women's access to reproductive healthcare in Malaysia. I focus on reproductive health in particular because births are central to a multiplicity of counting systems: First, reproductive healthcare access is important for maintaining functional vital registration systems, which are the preferred source of data for calculating many demographic indicators, such as rates of fertility and infant mortality. At the same time, comprehensive, reliable, and up-to-date statistics about pregnancies and births are difficult to maintain, especially in developing contexts where the majority of maternal and

infant deaths are believed to take place. Encouraging contact with healthcare institutions is a widely recommended intervention for improving both maternal and infant health, as well as government's ability to monitor them. The underlying rationale is that hospital personnel are often the first public witnesses to a child's birth, and are more likely to be qualified to produce accurate information about the circumstances of vital events. Thus, the production of statistical representations of a population's dynamics often depends on the state's ability to systematically record the occurrence and characteristics of pregnancies and births.

Second, birthright—*to whom* one is born, and *where* one is born—is the hegemonic mechanism by which citizenship status is transferred intergenerationally (Shachar 2009). All nation-states use what Shachar describes as the "accident of birth" as the primary criterion for according political membership. The majority of the global population inherits citizenship via bloodline through a parent, or, to a lesser extent, by their territorial place of birth. Biological reproduction, therefore, produces not only humans, but also citizens—and, on the aggregate level, citizenries. The observation and recording of moments of birth by health personnel can therefore be important not only for the production of population statistics, but also for the determination of national membership.

Drawing on ethnographic fieldwork with noncitizen families in the State of Sabah, Malaysia, I find that heightened barriers to receiving antenatal and obstetric services maintained by restrictive immigration policies served to both further and frustrate the Malaysian state's goals of monitoring and reducing infant and maternal mortality. With limited access to skilled care, noncitizen women are driven to having pregnancies and births out of, or on the edge of, the medical system—that is, with no or limited contact with healthcare institutions or skilled birth attendants. The state's measures to guard the

boundaries of its citizenry produce three major consequences for Malaysia's developmental aspirations:

1) *The amplification of health risks:* Restricted access to reproductive health services exposes noncitizen women to the risk of experiencing complications during pregnancy and birth. Heightened barriers to preventative care-seeking also overburden providers and systems by increasing the prevalence of acute and emergency cases.
2) *The reproduction of undocumented status:* Out-of-system pregnancies and births put mothers at risk of being deprived of the documentation needed to register their babies. This creates a feedback loop wherein restrictive healthcare policies produce undocumented populations, which in turn are left outside of registration system owing to difficulties establishing their personhood when interacting with healthcare and other public institutions.
3) *The distortion of population health measures:* Administrative burdens for registering births render out-of-system children at risk of being omitted from vital statistics systems—meaning that infant mortality and other population health measures may fail to capture vita events to those within the population who are most vulnerable.

Measurement Challenges in Estimating Infant Mortality

Monitoring progress towards eliminating preventable infant mortality remains an enduring methodological challenge owing to a lack of complete, accurate, and up-to-date data. Further, data insufficiencies are most severe in developing countries, where it is

believed the vast majority of the world's maternal and infant deaths takes place (Ronsmans and Graham 2006; WHO 2018).

In recent years, governments and development agencies have made significant investments in improving the completeness, accuracy, and timeliness with which countries collect vital statistics, which are the preferred data source for measuring maternal and infant mortality (Partnership for Maternal, Newborn & Child Health 2008). Healthcare providers have been recognized as key stakeholders in tackling the issue of underreported births and deaths, the main cause of uncertainty around these indicators (Wendland 2018).

A substantial literature within public health, however, has documented persistent disparities in women's use of antenatal and obstetric services. The "Three Delays" model to care-seeking was monumental in shifting blame for maternal mortality from individual to institutional factors (Thaddeus and Maine 1994). The first delay comes in deciding to seek care in the first place. Individuals and families take into account a number of factors when deciding whether to attempt to access a healthcare institution. These include material considerations such as costs of transportation and service provision, and distance to the facility. They also include perception-based judgments, such as recognition of the need for medical attention, and anticipation of the quality of care that the individual or family might expect from the facility. The second delay concerns reaching the point of care. Even when a family does decide to visit a health professional, factors such as geographical distance, poor roads, or availability of transportation may lead to a failure in doing so. The third delay comes in receiving adequate treatment once the individual or family reaches the healthcare facility. Shortages in trained personnel, inadequate facilities, or poor quality of care also contribute to maternal mortality risk.

While maternal and infant mortality have improved substantially in the Millennium Development Goal era, the three delays model has substantial explanatory capacity as a conceptual framework for understanding the persistence of preventable maternal and infant deaths. Poverty and rural residence are strongest predictors of having inadequate access to healthcare (Amorim and Machado 2018). In a systematic review of studies on out-of-hospital births, Amorim and Machado (2018) found that women in developing countries are more likely to have out-of-system births due to poverty, unavailability of quality health services, shortages of trained personnel, low education levels, rural residence, and excessive distance to the nearest clinic, among other structural and material constraints. The goals of improving reproductive healthcare access and expanding the capacity for health monitoring for the purpose of producing statistics go hand in hand with one another.

The Malaysian Healthcare Policy Context

Malaysia is an upper middle-income country with an official population count of 32.6 million, of which 29.1 million are citizens, and 3.3 million are non-citizens (Malaysia Department of Statistics 2018). Over the past five decades, Malaysia has undergone a substantial economic transformation, evolving from a largely agricultural nation to a diversified export-oriented economy. In quoting the following statistics, I do not mean to uncritically endorse them as accurate representations of the population. Rather, I interpret them as representations that the Malaysian has projected of itself. The average life expectancy is 75 years (78 years for females and 73 years for males), putting it slightly above the global average (72 years), and around the average for countries in the upper middle-income bracket (Malaysia Department of Statistics 2018d). Some 75.5% of the population

now live in urban areas (World Bank 2018b), and estimates suggest that only 0.4% of Malaysian households live below the poverty line (Malaysia Department of Statistics 2017c). Malaysia's latest reported infant mortality rate in 2014 is 6.2 infant deaths per 1,000 live births (Malaysia Department of Statistics 2017a). The UN Inter-agency Group for Child Mortality Estimation (2018) estimate, based off of vital records, (mid-2017) is 6.7. This is almost half that of the average for upper middle-income countries (11.6), and nearly five times as low as the global average (29.4). The government's latest reported maternal mortality ratio in 2014 is 22.7 per 100,000 live births in 2014 (preliminary estimate) (Malaysia Department of Statistics 2017b). According to UN estimates, this figure is 40 per 100,000 live births as of 2015 (WHO 2015). This compares to the global MMR of 216 per 100,000 live births, and an upper middle-income MMR of 41 (UN Population Fund 2015). East Asia and Pacific is 59 as of 2015 (63, excluding high income countries).

Since independence, the Malaysian government has been committed to expanding its healthcare infrastructure nationwide. Today, citizens enjoy a universal public healthcare system, with a competitive private sector. Outpatient treatment at a public clinic or hospital costs a nominal fee of 1MYR (0.25USD) for citizens, with surgeries and other procedures heavily subsidized. The Malaysian governments has boasted that 99.5% of births are attended by skilled healthcare personnel (Malaysia Department of Statistics 2017d). Such healthcare benefits, however, extend only to the Malaysian citizenry. Since January 2016, the cost of going to government hospitals for foreigners increased somewhere between 130% to 230%

depending on the treatment, with the Ministry of Health announcing that it was eliminating subsidies for foreigners.[42]

Hospitals are not only institutions that are financially prohibitive for noncitizen, but they have also become surveilling agents for the government. In September 2001, the Ministry of Health released a circular to state health directors outlining guidelines for the reporting of *pendatang tanpa izin* (a derogatory term in Bahasa Malaysia for unauthorized immigrants) to the police by all staff members employed by the Ministry.[43] A detailed rationale was provided for the issuance of this directive. The circular stated that foreigners, especially illegal immigrants, had been putting a strain on the public funds allocated for the health and welfare of Malaysians, and that illegal immigrants threaten Malaysia's national security.

The reporting procedures are as follows: Hospitals and clinics designate officers responsible for lodging police reports when patients are identified as illegal immigrants. All illegal immigrants are to be reported to the police, as per provisions outlined in Section 6(3) and Section 15(4) of the Immigration Act. The report should be made as soon as possible after the patient's illegal status is determined, usually at the point of patients' registration. The circular stipulated, however, that admission and treatment should not be denied to illegal immigrants. Failure to report illegal immigrants to the police can be regarded as an act of protecting illegal immigrants, chargeable under Section 56(1)(d) of the Immigration Act.

It is not clear the extent to which hospitals and health clinics actively practice reporting illegal immigrants seeking care to the police, though there are known recent cases.

[42] "Health Ministry Hikes up Hospital Fees for Foreigners up to 230pc," *Malay Mail,* accessible at https://www.malaymail.com/news/malaysia/2017/04/08/health-ministry-hikes-up-hospital-fees-for-foreigners-up-to-230pc/1351929.

[43] Director General of Health Circular No. 10/2001: Garispanduan Melaporkan Pendatang Tanpa Izin Yang Mendapatkan Perkhidmatan Kesihatan di Hospital dan Klinik Kesihatan.

However, an analysis of subsequent health memos up to the publication of this report yielded no evidence that this directive has been formally repealed. In fact, the requirement to report undocumented immigrants was reiterated in the Ministry of Health's Guidelines for the Implementation of Fees Order in 2014.

The Amplification of Health Risks

Restrictive access to healthcare in Sabah places noncitizen mothers, as well as their fetuses, at higher risk of morbidity and mortality during pregnancy and birth. The primary reason that women cited for avoiding clinics and hospitals was their high cost. Financial considerations became particularly salient following the reduction of government subsidies for foreigners by the Ministry of Health in 2016. The second and related major reason that women invoked was their lack of legal status. While "not having a passport" was often uttered as shorthand for noncitizen status and therefore ineligibility for government-subsidized healthcare, being "illegal" posed constraints on a more practical level—that is, the ability to make the physical journey to a healthcare provider, and then successfully negotiate admittance to treatment, without being extorted or detained by the authorities.

Many noncitizen mothers in Sabah thus turned to alternative sources of health care. One strategy was to patronize small private clinics for antenatal care services, which are known to be more affordable than government establishments, and to accept women without valid identity documents. The disadvantage of private clinics, however, is that the quality of facilities and services vary. Furthermore, private clinics do not issue official government antenatal care booklets, which—as I demonstrate later—are essential for registering births.

Another strategy was to avoid institutionalized care entirely, and rely instead on the guidance and help of *bidan kampung* (traditional midwives) during both pregnancy and birth. While *bidan kampung*, often elderly women, played important and respected roles in their communities, they tended to lack professional training, and practiced beyond the regulatory reach of the Ministry of Health. As with private clinics, exclusive reliance on traditional midwives not only exposes women to greater health risks, but also means that their pregnancies and births take place without the proper documentary proof that they had occurred in Malaysia.

Illegality as a Pregnancy Risk

Adie was eight months pregnant when the fall happened. The week before the incident, Adie's mother and father had set off to *balik kampung* ("return home") to their village in Adonara after having worked for four years at a lumber mill in western Sabah. Adie was 21 by then—well old enough to be able to manage her own household, which now consisted only of her husband, 31-year-old Silas, and her little sister, Ana, who was 17 and completing her final year of schooling at the informal learning center set up for undocumented children in town. We first met through Pak Immanuel, a Timorese teacher at the learning center, who had been taking us to visit a number of students' houses that day. Upon Pak Immanuel's recommendation, I hired Hairul, a *prebet sapu* ("unlicensed taxi driver") and the brother of another teacher at the school, to drive me and my research assistant, Rania, the few short yet bumpy miles out of town to an area with a number of small *ladang sawit* ("palm oil plantations") where many of the families lived and worked.

Adie, Silas, and Ana occupied a two-room concrete workers' housing unit on the plantation where Silas was employed as a *buruh* ("manual labourer"). Of the fourteen families that lived along the row of worker's houses, one of three were Timorese and the remainder were Filipino Muslims. It was already past four in the afternoon when we approached their open doorway, above which perennially hung a colourful tinsel banner with the words "MERRY CHRISTMAS," even though it was July. As was typical of many households, the living room was practically unfurnished save for a small CRT television and pair of standing speakers in one corner. On one wall hung a faded poster of the Virgin Mary. I began by introducing Rania and myself, and told the three household members that we were interested in learning about their lives in Sabah, and especially about Adie's experiences carrying a baby. Adie laughed shyly, touching a hand to her stomach, and said that she couldn't wait to be a mother.

We were just ten minutes into our conversation, with Adie and Silas in the middle of describing their village back in Indonesia, when suddenly a commotion broke out outside. My head turned to the door in reaction to voices shouting, *"Operasi! Operasi!"* Men and women rushed out of their houses, running toward the trees. I turned back just in time to catch a glimpse of Adie and Ana dash through the door of the kitchen in the back of the house. Not a minute later, silence settled over the nearly-deserted neighbourhood. A fellow worker briefly poked his head into the doorway, who Silas acknowledged quietly. We learned that a neighbour received a phone call from a friend in a nearby plantation that had just been visited by the immigration police, and it was believed that they would stop here next. As the man walked away, the sky quickly darkened, and heavy rain began to pour down in torrents.

Pak Immanuel seemed wryly amused at the entire situation. On his lap were the items he carried with him everywhere at all times: a notebook, a pack of cigarettes, and his passport. Though Pak Immanuel spent most of his time teaching at the learning center, his ostensible primary job was to tend to a small *kebun* ("orchard") near town, for which he had a work visa sponsored by a Malaysian. How it worked was that his wife, who had no documents herself, tended to the land, which allowed Pak Immanuel to devote his time to the school. His boss did not mind, so long as his durian and papaya trees were being cared for. Though migrant workers are not permitted to bring their family members with them, or have children in Malaysia, managers commonly turned a blind eye to these transgressions of the law.

Pak Immanuel received a phone call, which lasted for a few minutes. After he hung up, he told us that Ibu Mariam, an amiable woman whose home we had visited on a nearby plantation just one hour ago, had just been visited by the police. Ibu Mariam, a mother of four, had a valid passport and was safe. Her eldest son, however, too old at aged 18 to be considered a dependent of his mother's and without a permit of his own, had been forced to run. Pak Immanuel said not to worry, however, as they—meaning Ibu Mariam's son, Adie, and Ana—were likely together in the same hiding spot.

The hiding spot was a *pondok* ("shack") built by workers deep in the trees for undocumented family members to hide. These days, the *operasi* were more frequent than usual. Since raids were often staged in the middle of the night to catch undocumented migrants off-guard, the three of them had routinely slept in the *pondok,* and would only return to the house during the daytime. Indeed, they had spent last night in the *pondok.*

Later, when I texted Ibu Rebekah, the former school principal who had founded a number of learning centers for undocumented and stateless kids across the state, confirmed this. Last week, she said, only eight children showed up for class at the learning center in a nearby town which catered to over forty students. The day after, a total of thirty showed up, though there were still a few families who did not dare leave the *pondok* yet. Pak Immanuel and Hairul made lighthearted small talk, while Silas disappeared into the kitchen in the back of the house. Hairul boasted defensively that although he was half-Filipino, he has citizenship from his mother, who is Dusun—the largest indigenous group in Sabah.

Realizing that the rain was not going to die down any time soon, Pak Immanuel proposed that we leave so as to not disturb Silas any longer. But just as he was about to announce our intention to depart, Silas emerged from the kitchen. He carried a plastic tray, on which balanced a stack of plastic cups, a large plastic pitcher full of hot sugary black coffee, and a plate of individualized packs of strawberry cream cookies. Upon Silas's insistence, we decided to stay a little longer. Silas was cordial and talkative, though one could glean from his fidgety hands and tensed jaw that he was worried about his wife and sister-in-law out in the dark and rain.

After serving the coffee, his eyes rested on two phones plugged into the wall beside the television, and he realized at that moment that Adie and Ana had left in such a hurry that they had forgotten to take their phones with them. "Are they going to be alright?" I inquired gently. Silas sighed with resignation. "*Ini biasa."* This is normal.

The following week when I called on their house again, Adie, safely back in her home and in good spirits, recounted what happened to her that day. As soon as the warning had been raised, she and Ana hastily slipped on her flip-flops lying at the backdoor and ran as fast

as they could for the trees. They did not make it very far before the rainstorm began, which quickly turned the already-soggy ground into deep, heavy mud. As she ran, one of Adie's feet became submerged in the mud, causing her to pitch forward. Luckily, she managed to lock her arms out in front of her just in time to break her fall, mostly protecting her stomach from impacting the ground.

They reached the *pondok* soaked through and with their clothes and covered in mud. The shack lay not far from the houses—perhaps a ten-minute walk—because it was known that authorities did not bother venturing far into the trees. It is made out of plywood and equipped with basic amenities such as futons, candles, chairs, and bottles of water, but no electricity or means for cooking. Silas came to check up on them later that night, bringing the phones they had left behind in their haste. He was distressed to hear that she had taken a fall in the trees, but Adie tried her best to reassure him that they were okay. She could feel the baby moving around inside her, which gave her comfort. Though it is rare for heavy downpours in Malaysia to last longer than an hour, the rain did not subside until nine in the evening. In the moment, Adie hadn't felt any immediate pain from the fall, though it caught up to her later. She especially ached in her thighs, and below her stomach. She didn't catch any sleep that entire night due to the discomfort.

A few days after the incident, Adie sought out her *bidan* ("midwife"), Mama Tijah, who had been with her since her early days of pregnancy. Mama Tijah told her that it looked as if the baby had shifted out of place in her womb, and helped to *urut* ("massage") the baby back higher up in Adie's stomach. She was an elderly Filipino woman who was well-known in the neighbourhood for her experience in helping woman give birth (among other skills, including curing infertility, healing broken bones, and exorcising people possessed by

spirits), though she had never had any formal training herself. Mama Tijah did not demand any payment for her services, so the women she helped gave her what they could. For her assistance this time, however, Adie gifted her *bidan* 30 ringgit as a token of her appreciation, which is the equivalent of over 7 US dollars, amounting approximately to a day's wages for Silas.

Though she was not professionally trained, Mama Tijah played an important role in Adie's pregnancy, giving her advice along the way about how to care for herself and prepare for the arriving child, especially now that her mother had gone back to their village. Adie had no close family nearby that she felt comfortable relying on in these last critical weeks, save for an uncle who lived on another *kebun* who had remarried a woman whose bossy temperament Adie did not like. Unlike her sister Ana, who was still in school and had many friends, Adie had mostly stayed at home during her time in Malaysia and did not have close friends her age. Adie did not only rely on her *bidan* for care during the pregnancy period, though it was Mama Tijah whom she trusted the most. She had sought out prenatal checkups three times over the course of the past eight months. Fearing the high cost of government hospitals, Adie chose a small private clinic in town, which was known to treat undocumented immigrants without asking too many questions or demanding to see valid forms of identification. Each visit cost around 70 ringgit, with 20 ringgit to hail a car to and from town.

Adie characterized the treatment she received from the clinic, however, as cold, curt, and impersonal. Morning sickness near the end of her first trimester drove her to make her first visit, for which a nurse gave her some *ubat* ("medicine"), though she couldn't recall now what the medicine was called. During the subsequent two visits, a nurse conducted

ultrasound scans upon Adie's request, but that was all. When asked if she received any medical advice or discussed birthing plans from the nurse, Adie replied, "None. She didn't tell me anything. I asked for a scan, just like that. It was *diam-diam* ('silent') between us." Other than copies of her ultrasounds, the clinic did not give her any other documentation that she had been seen by a health professional. As I show later on, having an official paper trail of women's pregnancy periods was critical for their babies' chances of having their births registered in Malaysia.

Adie was well-aware of the risks of having an out-of-system birth. Nevertheless, she had strong convictions about having a home birth, provided that Mama Tijah would be there with her. She said, "To go to the hospital is really expensive. What's more, you need a passport to be admitted. I'll try my best first to give birth at home. If I really can't do it on my own, then I'll go to the hospital." Gesturing to a house across from hers, she expressed sympathy for an undocumented neighbour whose baby had died during labour a few days before the rumored *operasi* crackdown. The woman had initially gone into labour at home as planned, but had difficulties pushing. She had tried for a long time, but the baby's head did not emerge. In the end, she was taken to the government hospital in town, but by then it was too late, as the baby had suffocated (*"lemas"*).

The neighbour returned from the hospital after being monitored for two nights. For the hospital stay, she had been charged 2800 ringgit (nearly 700 US dollars)—an amount that her household couldn't possibly afford. Her husband made on average the equivalent of 5USD a day. After paying for daily expenses and sending money back home to their Indonesian relatives each month, there was usually nothing leftover to save for unanticipated expenses such as this. She and her husband managed to negotiate with the administration,

who agreed to let them pay off their debt in installments. After she was discharged, she and husband buried the body in a tiny grave near the main entrance to the plantation. The woman's postpartum stitches were still in her body when she had to run for the trees alongside her undocumented neighbors.

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It was mid-afternoon, a few months after I had first met the Teohs, when I was sitting in their living room with their daughters, 14-year-old Jacey and 11-year-old Ima, and the family's five cats. The Teohs live in a single-story four-room wooden structure located along a nearly-deserted row of workers' houses on the compound of Sumatra timber mill. The mill had gone bankrupt last year, but Uncle Teoh, a Chinese-Malaysian man in his early fifties and long-time employee of the company, was being retained indefinitely to supervise the remaining lumber stock. Though he was promised ongoing employment for the time being, it had been three months since he had received his last pay check. I had dropped by to go over a draft pro bono agreement from the lawyer who had agreed to assist them in resolving their multitudinous documentation problems, and was waiting for Uncle Teoh and his wife, Auntie Rosamie, to finish cooking in the kitchen.

Although they spoke no Chinese and their mother had been born in the Philippines, Jacey and Ima were known as the "Chinese" students at the Sumatra Community Learning Center (CLC), where the teachers addressed them using their Chinese names. They were perhaps known as such because they were the only ones with a parent who was a citizen, while the rest of the students were children of the neighbourhood's Indonesian and Filipino workers—the vast majority of whom were undocumented. A complex chain of events, however—originating with Uncle Teoh's and Auntie Rosamie's illegitimate marriage and

culminating in the girls' current statelessness—meant that the CLC was the only educational opportunity open to them.

That afternoon, Ima and I were hunched over the miniature laptop I carried with me for my fieldwork while I helped her practice her English and typing skills. Jacey was reclining nearby on a futon, watching a Filipino soap opera with Malay subtitles on television. Their 7-year-old younger brother, Aaron, was in their parents' bedroom playing games on an old smartphone. Their 16-year-old brother, Jordan, was out of the house as usual, though up to what the family did not know. I quizzed her by naming common nouns in Malay, such as different types of fruits, for her to type in English in the laptop's word processor. Like other children her age, Ima was a quick learner with electronics, and, though she was shy in speaking it, could accurately translate into English each word I gave her.

After we had exhausted the list of fruits in our repertoires, we turned to names. I asked Ima, "*Macam mana tulis nama ibu bapa*?" ("How do you write your mother's and father's names?) In all upper-case letters, she carefully typed out "TEOH CHEE KEONG" for her father, and "ROSAMIE DOS SANTOS" for her mother. I then prompted, "How do you write the names of your siblings?" Ima, going by order of age, listed her siblings' formal Chinese names, reading them aloud as she typed: "TEOH JUN NIAN" (Jordan) "TEOH YAN YONG" (Jacey), and "TEOH TSE MUN" (Aaron).

Without looking up from the cellphone on which she was playing a game, Jacey called out in the impatient tone with which she typically addressed her little sister, "You're missing one!" Ima, widening her eyes in realization of her mistake, typed out "TEOH JIA YI." "Teoh Jia Yi?" I said with a puzzled tone. I was puzzled by this, as up until that point I had the understanding that that there were only four children in the house. Jacey told me in a

lowered voice with a conspiratorial tone: “She died last year. In this house, when mother tried to give birth to her. She suffocated before she could come out.” Auntie Rosamie had not previously mentioned the intrapartum death, and to respect her privacy I did not raise the issue with her. It was only a few months later, at the end of November of 2017, when she talked to me about the incident for the first time.

We had walked down the road to visit her neighbour, a Bugis woman in her fifties known as Mama Hadi. Auntie Rosamie wanted me to talk to her because her children had documentation problems as well. Ima, who was very attached to her mother, tagged along with us. The sun had set already, though it was only seven in the evening, and we were seated on the stairs outside of her raised wooden house to enjoy the evening breeze. I had finished formally interviewing Mama Hadi about her migration and family history, which lapsed into a catch-up session between her and Auntie Rosamie. The women talked very quickly, and often over one another, and it was difficult for me to follow along.

But then, Mama Hadi asked, “Didn’t you lose a baby last year?, The question provoked Auntie Rosamie to launch into a long and excited monologue about the incident. Rather than sad, she seemed more incredulous about what had happened:

> *“She got stuck. She was late coming out. Maybe it was because the midwife wasn’t skilled. If she was skilled, maybe the baby’s head would’ve been able to come out… It was so hard to breathe. I felt very hot, to the point where I had to push people away from me. I needed air. I couldn’t stand it anymore. I couldn’t push, couldn’t push anymore. Really, I couldn’t push anymore. I couldn’t breathe. My husband wanted to help me, but I pushed him away too. Really, really, I couldn’t. Really, really, really, couldn’t.*

This [birth] was the first time I had felt like this. Normally when I give birth, it takes at most 30-45 minutes. I've had 7 children before this. It was the 8th that I had failed. All the rest were just half hour, half hour. Usually, when I feel pain, that's like the signal [for when the baby's ready to come out]. When the pain starts to come every 5 minutes, 3 minutes, and when I get sweaty, when my head starts feeling hot…that's when I know the baby is on its way. And then by the time the pain comes every 2 minutes, I can already feel the baby's hair [between my legs].

Also, this time, I noticed there was no blood. No blood! When I finally did see blood, it came out in these little, little drops. This is when I realized that something's wrong. The blood was just tiny black, black drops. Like when you cut a chicken, and cook it for a long time—the blood was black like that, not red anymore.

When the baby finally came out, she tried to hisap ("resuscitate") her. I didn't know what was going on. She said she was trying to help give the baby breath. But the baby was hitam ("black") already. She wasn't inverted in the womb or anything. She came out normally. But, she was 5.9 kilos. Ima was only 5 kilos, and I gave birth to her at home too. Daddy received the baby [when Ima was born]. Then the nurse [from the local government clinic] arrived at my house, and helped clean her up. It was so easy to give birth then.

At the house, there was just my husband, Putri [her neighbour and friend], and the bidan. By the time the baby came out, she had already passed away. But Putri, she took the baby, and started carrying her here and there. We hadn't even cut the umbilical cord, but Putri still held her and walked back and forth, talking to her. It was like a ghost story. Really, it was like all of us had lost her minds. Then another

neighbour saw and said, 'Hey! The baby has passed away already! Why haven't you cut the umbilical cord?' The placenta was trailing along behind them. There was something wrong with all of us.

[That night] I lost my memory. I lost my memory. I remembered there were a lot of people in our house around 10 in the evening. Then suddenly, after I gave birth, I went to another room. Yeah, I took my sarong ("robe"), I wrapped it around me, and then I went to go and lie down in the other room. I said I just wanted to take a rest. I completely forgot about my child! Then suddenly, I collapsed, and they sent me to the hospital. After that, around 1 o'clock in the morning, I heard a baby crying. I realized I was in the hospital. And then I remembered, 'Oh no! I had given birth just now! My baby's dying…No... She's dead. She'd already gone.' And then I started crying. The nurse said she wanted to catch the person who had helped me give birth. But I didn't tell her who it was. I told her I had given birth by myself—that no one helped me. The midwife had told me not to tell anybody about what happened."[44]

Overburdened Healthcare Providers and Systems

From the perspective to frontline doctors, nurses, and pharmacists, efforts on the part of the Ministry of Health to save on health expenditures by reducing subsidies for foreigners had the unintended consequence of raising the burdens of hospitals and clinics in Sabah. It is in understanding their dual, conflicting roles as healers and surveilling agents of illegal immigrants that the inimical repercussions of population boundary disjunctures become especially apparent. Healthcare personnel found themselves struggling between competing

[44] Rosamie did not report this death to the National Registration Department. Therefore, the intrauterine death likely was recorded by the clinic in their own records, but it would not have been reflected in Malaysia's vital statistics.

obligations in the workplace. On one hand, as healthcare providers, they saw their professional mandate as consistent with the more expansive territorial understanding of who counts within the population: that is, they felt obligated to treat clients regardless of their citizenship or legal status.

A young West Malaysian doctor who had been stationed in Sabah for two years explicitly tied his work at the hospital to the country's broader development aspirations. "It's the policy of the Malaysian government and the ministry of health to cover for moms and children. It's because to achieve developed nation status, they have to reach a certain level of preventable neonatal deaths, or deaths of moms who are pregnant. Because of that, the Malaysian government places a lot of emphasis on healthcare. We're trying to follow the system in the UK, which places a lot of emphasis on primary healthcare. We're trying to follow that UK model." A fellow doctor who was being interviewed at the same time agreed, bringing up the one ringgit (0.25USD) fee to see a doctor as an example of how the government has aimed to make public healthcare accessible to Malaysians.

On the other hand, healthcare providers were aware that they were technically supposed to report illegal immigrants who approached their clinics or hospitals. As one obstetrician put it,

"I feel it's so unfair for the government to ask doctors to report patients [who are undocumented]. It's a political issue. It's not a healthcare issue. I don't want to be involved. Our job is to provide for healthcare. The admin or finance department can worry about the money. That's not my job. I don't really care if the patient can or can't pay. We shouldn't have to treat patients based on what treatments they can or can't pay for."

According to those interviewed, however, the handing over of immigrants to the authorities was not commonly practiced. Another doctor working at a rural hospital recalled the time that his workplace had reached out to the Indonesian embassy regarding a patient they suspected was a migrant, though not for the purposes of apprehension:

> "In the hospitals, we don't normally call the police, because mostly, even though they are illegal immigrants, they are just working in the palm oil estates. They're mostly there from Monday to Friday. It's just Saturday and Sunday when they would come to the city and go to the hospital. I think we've never encountered instances where we've had to call the police in, but there were times when we need to call the embassy. The patient was in the ward for two months, and there were no known family members. We call this kind of case a withdrawal—stopping the life-saving machine because he's actually brain-dead, and just his lungs and heart are still functioning. He passed away ultimately, and had no documents, so we didn't know who was his next of kin. We did get hold of the Indonesian embassy, but I don't remember getting help from them in the end."

Regardless of whether immigrants themselves were deterred from seeking care based on fear of apprehension or not, however, the primary deterrent for them was the cost. On the 2016 hike in fees for foreigners, the obstetrician noted:

> "In the last two years, they've changed the policy so now non-citizens have to pay more. A lot of people without documents don't come for antenatal care, or they go to a cheap general practitioner who may not be experienced in antenatal care. They might opt out of doing ultrasound scans because they have to pay extra for that."

Without antenatal checkups, pregnant women were deprived of accessing information crucial for their own health, and that of their unborn children. One doctor explained:

> "Usually, we will induce patients if they are past their due date by 9 days, because the risk of having a death becomes too high, or the baby would be too big, or they would pass feces inside the uterus which would cause complications. But all of these patients who don't' come in for antenatal care because of no documentation just wait for their labour to happen. Often, they won't know their due date. By the time they come in, they're past their due date. The most I've seen is a mother who came in 22 days past her due date, and 22 days is too long. The baby was gone already."

In addition to tracking their due dates, antenatal checkups were also crucial for alerting providers of the need for interventions. Another young doctor at a rural hospital lamented how many neonatal deaths his workplace saw were actually preventable:

> "Usually a woman would go to the clinic. Once she's tested positive in a urine pregnancy test, she would be registered to come in for regular visits, say every ten weeks. That's the pink book you see everywhere [referring to the government-issued antenatal healthcare booklet]. This allows us to start monitoring the baby's progress. Let's say if the doctor knows this is going to be a big baby, they would plan the delivery accordingly. Maybe they would have warned the patient earlier, and schedule an elective caesarian section, instead of [it becoming] an emergency."

The providers were also aware that noncitizen women would deliberately plan to have home births in order to avoid the risks and high financial costs of delivering in a public facility. As the obstetrician put it:

"Another common issue with patients who don't have any documentation is they'll try and try to deliver at home, but they don't succeed. So, when they're pushing for hours and hours, the uterus tends to be very lax, so they're at risk of postpartum hemorrhage. I've personally experienced two cases where they've tried to push at home for 7-8 hours. By the time they came to us, the baby was already gone. One of the mothers developed an infection and it was no longer safe for her to deliver vaginally, so we end up having to go for a caesarian to deliver the inter-uterine death…Postpartum hemorrhages are one of the most scary things in obstetrics. The uterus is the size of a bit bigger than a football. If it doesn't contract, then the entire place where the baby and placenta were is just going to bleed. There are litres in a matter of minutes. It can be really torrential. In the hospital, we have a red alert system where if we feel at all like the bleeding has become uncontrollable, we sound the red alert. Then everyone on call that day, the whole team, will come and see the patient and make sure that she is stable, and send her to be operated on if needed. The problem is, if they deliver at home, they can't recognize whether the blood loss has become too much. They don't realize that the patient has deteriorated. By the time they bring the mother here, she's basically almost dead."

The doctor goes on to reiterate how encounters with emergency cases was not exceptional, but a routine phenomenon.

"We've had to CPR for almost 30 minutes. This has not happened once or twice. We would see this happen so often. We would use so much of our resources to try to revive them. We would transfuse 6-7 bags of blood. They're in a horrible state that they require ICU care for up to a month sometimes. The cost is so high, whereas if

they had just delivered her in a hospital in the first place, it wouldn't have been an issue at all."

A young doctor working in an urban coastal hospital recalled witnessing a patient who'd come to the hospital after having laboured at home for two days. When she was admitted, her child's head was halfway out of her vagina. It had died inside of her and had already begun to decompose, so that when the doctors operated on the woman in order to remove the fetus, the amniotic fluid had turned black and emitted a strong odour. "The woman was so traumatized, you know, because she had carried this baby to term for nine months." One doctor reflected on the impact such experiences had on the women. "It's very hard to tell whether the mothers know that their baby is gone by the time they come in. The patients generally have poor insight. Their education levels are sometimes nonexistent. Sometimes they're surprised that the baby is gone. Most of the time they sort of expect it, or they're too much in shock to voice out their grief. I'm not very sure."

A West Malaysian physician, who managed the internal medicine ward in a hospital in rural Sabah for over a year, noted how the restrictive national boundary population drawn by the Malaysian state became difficult to discern on the ground in Sabah:

> "In terms of my colleagues and superiors [in the hospital administration], no one is preventing [illegal immigrants] from seeking medical care. A foreigner would have to pay the full medical expense, whereas a Malaysian would get very subsidized speaking. Honestly speaking, I sort of agree to that. Because there are many Malaysians who are deprived of healthcare. In [a previous hospital where I worked in West Malaysia], I saw mostly foreigners and illegal immigrants, mostly foreign workers., especially if I was working in the orthopedic ward because they'd cut their

fingers or hands. And then I see Malaysians getting deprived of being admitted because the wards were full of mostly foreigners. At that time, I agreed [with the policy], because it curbs illegal immigrants. It forces them to get documentation so they can get legal jobs, which means they get funding for the healthcare if they need it."

In the above statement, he rationalized bought into the ideology that restrictive access to rights functioned as a deterrent to illegal immigration, thereby justifying the rise in costs for foreigners to seek healthcare. Upon transferring to Sabah, however, the physician admitted that it was harder to ascertain where the boundary between citizen and noncitizen lay in the everyday work of admitting patients to hospitals:

"But then the perspective in Sabah is a bit different. Actually, they are Malaysians. I'm saying this because probably they're the second and third or fourth generation. They just did not bother to get a birth certificate or IC, or even go to school for that matter. As I learned further, I feel they don't need it. They're working their farms. They don't need any form of registration. It's only when they have a medical problem that it gets complicated. It's not that they're illegal immigrants, since they've been here for many generations. The word the government uses is "unregistered." Even the government doesn't know whether they are Malaysian or not."

In the next section, I discuss the measures that agents of the state took to enforce the national population boundary through the reproductive healthcare system.

The Securitization of Prenatal Health Booklets & the Reproduction of Undocumented Status

“We always tell our patients that your antenatal book is more important than your ID card. We tell them to bring it wherever they go.” - Physician, Kota Kinabalu.

A major consequence of raising barriers to reproductive healthcare access for noncitizen women is the intergenerational reproduction of undocumented status. Contact with healthcare institutions during the pregnancy stage was a crucial prerequisite to being able to register the birth of a child in Malaysia. Mothers who had out-of-system pregnancies and births found themselves being turned away from the National Registration Department when trying to obtain birth certificates for their babies. In addition to requiring a notice of birth from the hospital, officers also demanded an abundance of other supporting documentation, such as government-issued prenatal health booklets, which are distributed to mothers and used to track their progress throughout their pregnancies. These “red books” turned out to be a highly valuable, and highly securitized resource that noncitizen women often did not realize was required for the registration of their babies until it was too late. For those who were aware of its importance, the high cost of seeking antenatal healthcare made them difficult to obtain.

Romie’s situation, which was introduced in the previous chapter, is illustrative of the crucial importance of antenatal health booklets for determining access to birth registration in Sabah. In November of 2017, Rania and I were driving back to Kota Kinabalu from the east coast of Sabah, where we had volunteered for a birth registration campaign for Indonesian migrant workers’ children on a palm oil plantation. The clinic where Romie had supposedly been born happened to be on the way, so we stopped by. A nurse on-duty at the time

confirmed that the clinic had burned down in 2012. Even if the clinic had held on to records of Romie's birth nearly a decade ago, they would have been lost in the fire.

Nevertheless, we gave her a photocopy of his newborn health record pamphlet, and my phone number, so that she could consult with her superiors to see if they would be able to provide any alternative form of evidence of Romie's birth. Unfortunately, a few days later, the nurse texted to apologize and confirm that the clinic was not authorized to provide confirmation of Romie's birth since the pamphlet was not conclusive evidence of the case.

Nearly a year later after I had left the field, Rania texted me via WhatsApp in October, 2018 to provide me with an update of Romie's case. She happened to be passing through the area again, and decided to drop by one more time. That day, Rania happened to find the nurse who had filled out Romie's pamphlet ten years ago. The nurse confirmed that the handwriting on the pamphlet was her handwriting. She also admitted that she remembers Romie as a newborn baby. However, she said that she was not authorized to provide any official verification of this fact, since she was not the one who delivered Romie.

Why did the possession of red books become a necessary precondition for registering a child's birth in Sabah, when the absence of a prenatal health book does not negate the occurrence of a birth? I argue that, in the shadow of *Projek IC*, the Malaysian state securitized prenatal health books in order to guard access to national population membership. Longstanding paranoia about the fraudulent acquisition of MyKads by *pendatang tanpa izin* ("illegal immigrants") led to the raising of evidentiary standards for obtaining a birth certificate, which in practical terms is the material document that is used to transfer citizenship status from parent to child.

The families that I talked to and worked with in this study were well aware of the importance of documentation. This is not surprising, given that the lack of legal status pervades their everyday lives. Rather than ignorance or lack of education on behalf of parents, babies went unregistered because parents were being turned away from the JPN for not having the sufficient evidence of their children's birth in Sabah, thereby reproducing undocumented status intergenerationally. This creates a reverberative feedback loop wherein unregistered children become more at risk of being excluded from mainstream institutions due to an inability to establish their legal identity.

Nurses in maternity wards and clinics took on dual roles as healthcare providers and as gatekeepers to legal status in Malaysia. In an interview with a nurse at a women's and children's clinic early on in my fieldwork, I naively asked if I could have a copy of a blank red book, because I was interested in how maternal health is monitored throughout the pregnancy process in Malaysia. She got surprisingly very flustered at this request. She told me that they can't just give out books however they like. Each one has a number attached. She said that sometimes they could fall in the wrong hands, so they keep them in a locked cabinet in the matron's office. If the book gets updated to a new version, they have to burn any old unused copies.

In a clinic in a large city, another nurse corroborated this, saying that it is of utmost importance that these books are carefully handled. She explained:

> "In this clinic, there is one big book kept by the doctor, because we want to know how many people have become mothers in our district. In this book, we record the names of the mothers, and the number of their clinic book. So, if there are any problems later, we can detect if another person is using her book. We can see, this is

the number, and it corresponds to a different person. Because sometimes this book will be lost or sometimes, a non-local will buy or borrow someone else's book. There are cases like this in Sabah. So that non-locals can be admitted into the hospital but pay local fees. Because, in the clinic books, we don't have thumbprints or other information [to link it to the owner]. So now we ask for photographs these days. Because sometimes there are people who use books that aren't theirs."

When I asked what happens if a mother accidentally loses her book, she said:

"We would have to report [missing books] to the police. Because we wouldn't want another person to use the book. The book is very important. Sometimes, when a book goes missing, a non-local will pick it up. If we don't report a missing book to the police, the next thing you know, we'll find two babies registered under the same mother at the NRD [National Registration Department…There are cases where a local mother has a baby. After she has the baby, she lends her clinic book and her identity card to another person who doesn't have anything, no ID. A local woman who has already given birth can lend her clinic book to a woman who hasn't yet given birth. The woman who hasn't yet given birth can then go to the clinic, go to the hospital, and say that this is her card, her ID. But when the baby is born, and the non-local woman wants to get the baby checked, we see on the record that the baby has already been checked."

In summary, access to reproductive healthcare and birth registration are closely intertwined in the Sabah context, with exclusion from one leading to a risk of exclusion from the other, with negative intergenerational consequences both for access to legal status and healthcare. In this process, practices originally intended for promoting health, such as the

keeping of antenatal health records, have become coopted by the state's other ongoing agenda of controlling the illegal immigrant population.

Conclusion: The Distortion of Population Health Measures

The macro-level implications of restricting access to institutionalized reproductive healthcare is an impaired ability of the state to monitor maternal and infant health. Undocumented and/or stateless persons can be born, live full lives, and die beyond the administrative reach of the Malaysian government. For Malaysian policymakers pursuing a nativist agenda, who in effect conceive of the "population" along national lines, the exclusion of territorially-resident denizens from subsidized public healthcare is seen as legitimate. The consequent omission of such persons from vital statistics systems, however, handicaps the task of calculating population health measures, which are based on territorial conceptions of who counts within the population in question.

Estimates of infant mortality and other measures produced by the Malaysian Ministry of Health, therefore, may not take into account those segments of the population that are the most vulnerable. While it is not possible to make inferences about the extent to which population health measures are distorted by the omission of residual populations in Sabah based on my fieldwork, it is important nevertheless to bring attention to this possibility. The mathematical formulas by which development indicators are calculated, therefore, can be conceptualized as moral statements about who should count. Undocumented and/or stateless persons in Sabah, who technically should be factored into the numerators and denominators of formulas for infant mortality, are in practice at greatest risk of being overlooked. This is precisely because they are not deemed to "count" as part of the population on a symbolic

level, which can be observed in their ineligibility to access the rights and benefits of public institutions that are also responsible for producing the data on which population health measures are based.

The under-registration of vital events cannot be sufficiently explained to be the result of ignorance on behalf of illiterate and uneducated parents. A common pattern that emerged from my fieldwork was that families would make concerted efforts on their part, under considerable financial and legal constraints, in order to prove their children with official recognition of their identities. However, civil registration became seen as a pathway to claiming the privilege of citizenship, and was thus carefully policed by civil servants and even frontline healthcare providers. The neglect of this population, however, ultimately does not get reflected within development indicators, which potentially paint a more optimistic picture of Malaysia's developmental progress than is actually the case.

The omission of undocumented and/or stateless populations from vital statistics frustrates Malaysia's aspirations to become a fully-developed, high income nation by handicapping its ability to monitor population-level outcomes, such as maternal and infant mortality. While it is not possible from my data to discern the direction of the way that omission of births and deaths biases mortality estimates, it is possible to argue that current figures do not capture the mortality experiences of the entire territorially-resident population. Maternal and infant mortality may be underestimated if the noncitizens' deaths are omitted at a higher proportion than their births are. On the other hand, overestimates of maternal and infant mortality may be produced if noncitizens tend to seek institutional help when they are near death at a higher rate than they do when giving birth, raising the likelihood of their

morbidity or mortality being officially recorded, while their healthy births are being under-reported.

Either way, restrictions of access to reproductive healthcare and birth registration also undermined the Malaysian government's developmental goals not just to monitor, but to reduce infant mortality. Raising the cost of visiting a clinic or hospital in 2016 would prove to be fatal for noncitizen pregnant women and their fetuses and babies. Women who would have otherwise sought routine checkups or given birth under the supervision of a skilled attendant became at risk of missing out on receiving potentially life-saving information and medical interventions. While the relegation of noncitizen women outside of the system may have been an attempt to assert control over its borders and resources, it ultimately weakens the government's power by creating administrative blind spots in its vision.

Conclusion: Omission and the Reproduction of Inequality

In this dissertation, I illuminate the micro- and macro-level consequences that states and their communities face when people are omitted from registration systems. A focus on the spectrum between omitted and counted reveals processes of stratification that unfold in different ways than those that occur across lines of race, class, and gender, though these traditional dimensions of stratification strongly influence how legal status is allocated. Rather than relegating individuals into a discrete social category, the deprivation of a legal identity is tantamount to exclusion from the social system altogether.

From the micro-level perspective, the lack of official documents can lead not only to exclusion from the polity, but more fundamentally to the lack of recognition of one's very existence as a human being (Arendt 1951). A legal identity provides access to power as well as protection. Without one, individuals may have difficulties interfacing with and gaining rights and resources from mainstream institutions. As I demonstrate in chapters two and four, omitted individuals face challenges enrolling in school, accessing healthcare, establishing their relationship to their parents, claiming a nationality, and enjoying other fundamental rights and freedoms. Omission can be transmitted from generation to generation. Omitted persons often transmit their lack of status to their children, creating a cycle of legal indeterminacy.

At the macro-level, societies may also be disadvantaged in the long-run if a certain proportion of their members are left omitted. As I show in chapters five, top-down efforts to restrict access to scarce resources may end up confounding states' developmental efforts. Without accurate information about its populations, states are compromised in their ability to

formulate targeted policies, deliver public services, allocate their budgets, and perform other essential tasks of governance (Stuart et al. 2015). Omission exacerbates inequality, as communities who tend to be excluded from official data collection efforts are often those who are also the most vulnerable and marginalized within society.

There are policy implications to these findings. Namely, it is necessary to shift the target of policy interventions directed at eliminating the registration gap. Improvements in infrastructure and technology will not necessarily lead to universal registration. It is important to confront the political, rather than merely the technical, causes of under-registration. This will involve uncovering the symbolic visions of national identity and belonging that are enforced through civil registration systems.

Consequently, there is a need to contend with the contradictions of modernized bureaucratic society. Governments wield unprecedented power to classify, surveil, and control their populations. There are fewer and fewer spaces today that are not incorporated within the expansionary reach of the state, which has raised serious concerns about the encroachment of the state into people's lives, and the stratified ways in which this encroachment happens. Departing from this line of inquiry, this dissertation suggests that perhaps a fate worse than being counted is to not count at all.

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Appendix A: Document Inventory Interview Guide

DEMOGRAPHIC INFORMATION	
Household ID #	
Place of Interview	
Gender	
Date of Birth	
Place of Birth	
Current Place of Residence	
Race/Ethnicity	
Religion	
Language(s) Spoken	
Marital Status and History	
Educational Attainment	
Place of Schooling	
Occupational History	
Current Salary/Wage	
Migration History	
Family Tree (generation above/below) *For each member, indicate:* • Nature of relationship • Date of birth • Place of birth • Current place of residence	

DOCUMENT INVENTORY	
For each of the following documents: 1) Do you possess (name of document)? - If not, why? - Does not having it affect you? How? *If yes:* 2) Who issued it? 3) How did you obtain it? 4) Did you face difficulties obtaining it? 5) What did it cost you, if anything? 6) Why did you obtain it? 7) What do you use it for? 8) When and how often do you use it? 9) Where do you keep it? 10) What value does it have to you? *Repeat for each member listed in family tree (indicate if responses are made by family members or by main respondent).*	a. Birth certificate b. Notice of birth from hospital/clinic c. Identity card d. Passport e. Work permit/visa (current/previous) f. Other visas (if app.) g. Marriage certificate h. Death certificate (for relatives) i. Adoption certificate (if app.) j. Household registration list (if app.) k. Other documents?

APPENDIX B: Malaysian Nationality Law

Malaysian citizenship is governed by part III of the Federal Constitution. There are three ways to acquire citizenship: by operation of law (Article 14), by registration (Articles 15-19), and by naturalization (Article 19). Below, I briefly summarize the most relevant parts of the law to this project:

The most common way that individuals are considered to be Malaysian nationals by operation of law today is by being born within wedlock within the Federation with at least one parent who is a Malaysian citizen or permanent resident at the time of birth.

The Constitution states that individuals are considered to be Malaysian nationals if they were born within the federation and are not citizens of any country. While strategic litigation has been used to appeal for citizenship using this clause for stateless children in Malaysia, the judiciary so far has deployed a very limited interpretation of this clause. No case so far has been successful in obtaining for citizenship this way.

Children born out of wedlock within Malaysia are assumed to follow the citizenship of their mother, and cannot inherit Malaysian citizenship from their father (in the case of a child born to a Malaysian father and a foreign mother out of wedlock). While the Constitution does not specify whether parents are biological or can be adoptive parents, the judiciary has interpreted parent to refer to biological parents. This has meant that stateless children adopted into Malaysian households have been unable to inherit citizenship from their adoptive parents, even if they do not know their biological parents.

Article 15A gives the Federal Government "special power to register children." For children under the age of 21, the Home Minister can use discretion to grant children

citizenship by registration if they apply with the National Registration Department. This process is opaque, length, and sometimes costly for families who submit DNA tests (with no guarantee of approval).