

# When States Prefer Non-Citizens Over Citizens: Conflict Over Illegal Immigration into Malaysia

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Why would a state encourage illegal immigration over the opposition of its citizens? According to the theories of immigration and citizenship, we should expect exactly the opposite: that states will monitor, control, and restrict illegal immigrants' access to citizenship on behalf of its citizens, as has been the experience of most countries. I use my research on Filipino immigration to Sabah, Malaysia to show how Malaysia utilizes census practices and documentation to incorporate an illegal immigrant population from the Philippines. Illegal immigrants play an electoral role in Sabah because of the loosely institutionalized nature of citizenship, a feature common to many other developing countries. Our examination of Malaysia reveals several elements of illegal immigration and citizenship that are common to migratory flows in other developing countries. I conclude by showing how this case is generalizable and what it tells us about illegal immigrant participation in the international system.

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Immigrants can and do alter political outcomes in their host states; this much has been acknowledged in the scholarship on comparative politics and international relations. But the conventional wisdom has never acknowledged that *illegal* immigrants can alter political outcomes by means of *voting*. This is for the simple reason that national- and state-level voting has always been thought to be the most protected privilege of citizenship in the post-World War II international system—a privilege that illegal immigrants by definition cannot enjoy.<sup>1</sup>

The purpose of this article is to demonstrate that the conventional wisdom, insofar as it purports to apply to developing countries, is wrong. The common assumption of comparativists and IR scholars that all democratic states protect the privilege of national- and state-level voting for their citizens cannot be sustained in

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<sup>1</sup> See, inter alia, Marshall and Bottomore (1996), Brubaker (1992), and Smith (1997). Citizenship has always been safeguarded such that all 'outsiders,' of whatever sort, were denied the right to vote until the middle of the twentieth century. For example, women and certain classes of people were denied the franchise in many developed states at the turn of the twentieth century, notably the United States, as Roger Smith has brilliantly documented (see *Civic Ideals*, 1997). The right to vote at the national level is, according to Carmen Tiburcio, 'granted only to citizens, that is nationals with full political rights, and aliens are left outside the electoral process entirely' (Tiburcio, 2001:190). She cites the constitutions of individual states to show that only citizens can vote in national elections in Austria, Belgium, Brazil, Canada, Denmark, Greece, Hungary, Israel, Monaco, Norway, Poland, Portugal, Switzerland, Turkey, Thailand, the U.K., and the U.S., among many others (189–190).

the face of empirical evidence from the developing world. This evidence demonstrates that illegal immigrants in developing states are voting in large numbers because—for various reasons that I shall describe below—they are able to illegally procure documents that allow them to enjoy all the privileges of citizenship. Moreover, many of these states lack the police capacities to combat document fraud and have not even developed the administrative systems necessary to properly document nationality in the first place. These facts present major problems for democracies and democratizing states that need to delimit their *demos* in an era of increasing globalization.

Weak documentation systems leave states open not only to illegal entry of economic migrants, terrorists, and other criminals via document fraud, but to massive electoral fraud as well, which has serious implications for the conduct of democratic politics. By acquiring and possessing seemingly legal documents that “prove” juridical membership in a state, a non-citizen<sup>2</sup> can easily acquire citizenship status. I shall call this process through which citizenship status is ascribed to a non-citizen *documentary citizenship*.

This process has important implications for our understanding of international security. Since September 11, there has been an intensification of border controls and a tightening of visa regulations. The prospect of a worldwide trend of increasing documentary citizenship thus raises serious security concerns regarding flows of people as tourists, travelers, illegal workers, businesspersons, and students. If, as this article demonstrates, illegal Filipinos can easily acquire Malaysian citizenship documents, then what prevents Al-Qaeda terrorists from doing the same? Foreign terrorist groups in “neutral” states such as India, Malaysia, Thailand, and the Philippines could fraudulently acquire the paperwork for the citizenship of these states and then obtain legitimate visas to enter United States or any other target country. Alternatively, they could use documents from “neutral” states to enter other “neutral” states (such as those in Eastern Europe or Central and Latin America) before making an attempt to enter the United States or any other target country. In fact, cities such as Delhi and Bangkok are major centers for fraudulent passports and other paperwork that enable illegal immigrants to enter the restricted borders of West European or North American states. Therefore, what are the implications of documentary citizenship for “the war on terrorism” and on the increasing human mobility that is part and parcel of globalization?

Through a detailed case study of immigration into Malaysia, I shall describe and explain the emergence of documentary citizenship, a growing reality in many developing countries in which illegal immigrants acquire citizenship documents that many of the native<sup>3</sup> rural poor lack. Even more striking is that in the Malaysian case, not only does documentary citizenship enfranchise illegal immigrants, but also the political participation of these individuals alters political outcomes in favor of governments that enable illegal immigrants to acquire proofs of citizenship and the ability to vote.<sup>4</sup>

Here it may be asked whether my case is unique or exemplifies a broader phenomenon. Malaysia is not a unique case. It is illustrative of the problems of migration and citizenship faced by many developing countries.<sup>5</sup> Malaysia is like many

<sup>2</sup> Non-citizen includes the following categories: legal immigrant, illegal immigrant, refugee, and tourist.

<sup>3</sup> ‘Natives’ are individuals whose ancestors were born in the country.

<sup>4</sup> An anonymous reviewer drew a parallel between what is happening today in Malaysia and the United States during the nineteenth century; some illegal European immigrants to America in this period stepped off the boats and were immediately permitted to vote by ethnic political machines. This occurred even as indigenous populations (Native Americans) were denied basic citizenship rights. The parallel is illuminating; however, the distinction between citizen and immigrant—and regulatory structures for dealing with these two categories—only became deeply institutionalized after World War II. This article covers the period from the 1970s until September 11, 2001.

<sup>5</sup> My dissertation compares voting in India by illegal immigrants from Bangladesh with voting by illegal Filipinos and Indonesians in Malaysia. States in Latin America, Sub-Saharan Africa, and other Asian states such as Pakistan and Thailand could serve as fruitful subjects for future inquiry into the phenomenon of illegal immigrant voting.

developing states in that it is a multiethnic developing country where citizenship is not well institutionalized and the arrival and incorporation of illegal immigrants from neighboring countries is possible through varieties of fake documentation or real documentation falsely obtained. These similarities make it extremely likely that documentary citizenship is a widespread phenomenon that can be found, for instance, in Pakistan, where Afghan refugees are exercising political rights; in India, where hundreds of thousands of Bangladeshis are continually accused of voting; in Cameroon, where Nigerians have illegally acquired documents of citizenship; in Ghana, where Togoans are illegally gaining access to citizenship; in the Ivory Coast, where political participation of illegal immigrants from Burkina Faso has caused violence; and in South Africa, where illegal immigrants from neighboring countries are accused of accessing citizenship through illegal means.

The fact that illegal immigrants in Malaysia receive the same privileges as citizens<sup>6</sup> adds a new dimension to the literature on citizenship that focuses on the social, political, and economic rights of citizens (Kymlicka, 1995; Marshall and Bottomore, 1996), highlighting gradations of immigrant membership (Schuck and Smith, 1985; Joppke, 1999), and the literature that views the erosion of the state because of global processes as creating a new form of membership not tied to the nation-state (Soysal, 1994; Jacobson, 1997; Sassen, 1998). None of this literature deals with documentary citizenship. Moreover, local Malay authorities were constantly being accused of encouraging illegal immigration from the Southern Philippines and Indonesia to Sabah, a region in East Malaysia.<sup>7</sup> At a time when both the European Union and North America were erecting immigration barriers, Malaysia was facilitating the entry of illegal immigrants.<sup>8</sup> Taken as a whole, these practices contradict the conventional wisdom about immigration, especially illegal immigration (Stalker, 1994).

So, why would a state give non-citizens preference over native citizens? Why is being native not enough? These facts are in direct contrast to what most scholars know about Malaysia: that it is a multiethnic country with successful preferential policies for its natives—the “sons of the soil.”<sup>9</sup> Yet, by encouraging illegal immigration, Malaysia was

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<sup>6</sup> Illegal immigrants, mainly from Indonesia, are exercising social, economic, and even political rights in West Malaysia (Kassim, 1998). Azizah Kassim (285), a leading scholar of immigration into Malaysia, says that ‘estimates on illegals in the *Peninsula* vary from between 300,000 and one million,’ indicating the difficulty in measurement. Over the years, illegal immigrants have gained access to Malaysian citizenship; in fact, Malaysian authorities have accused many Indonesian immigrants of being politically active in radical Islamic groups. Given that a number of Indian plantation workers and other native groups (e.g., Orang Asli) in West Malaysia are without citizenship documents, West Malaysia parallels some of the features of my empirical case from Sabah in East Malaysia. Weakly institutionalized citizenship is a common feature of people living in regions with high poverty (or particular ethnic groups afflicted with poverty) and inhospitable areas of the interior—common to both East and West Malaysia.

<sup>7</sup> West Malaysia is over 1,000 miles from Sabah, a regional state in East Malaysia, and is separated from it by the South China Sea. It takes about two and a half hours to reach Sabah from West Malaysia by airplane.

<sup>8</sup> Now it is true that, after September 11, 2001, the Malaysian authorities cracked down on illegal immigration after Malaysia became a partner in the war on terrorism (*The New York Times*, 2002:A3). Immigrant groups in Malaysia are suspected of having links to rebel groups in the Southern Philippines and of supporting Islamic extremist groups within Malaysia—facts that gained salience after the events of September 11. But this transitory focus on deportation of immigrants was not at odds with the purpose of encouraging illegal immigration from the 1970s until September 11, because the ruling Malay-dominated parties had already achieved their demographic goals—many illegal immigrants had already become citizens. Furthermore, Sabah’s geographic position and traditional immigrant networks are such that Indonesian and Filipino illegal immigrants who are deported can return to Sabah within days and acquire ‘citizenship’ documents easily. Public shows of deportation of Muslim illegal immigrants from West or East Malaysia conceal the fact that these illegal immigrants can and do return very soon, and that their networks ensure their access to citizenship. With estimates of approximately one million illegal immigrants each for Sabah and West Malaysia, the ease of access to citizenship through documentation, and the complicity by sections of the state, Malaysia provides a contrast with the experience of developed states such as those in the EU.

<sup>9</sup> Articles 153 and 161 of the Constitution have been used to promote the ‘special rights’ of Malays and the natives of Sabah—the ‘sons of the soil.’ Article 153 of the Constitution speaks of the responsibility of the state “to safeguard the special position of the Malays and the natives of the states of Sabah and Sarawak.”

privileging non-citizens over citizens in certain situations. According to the various theories of immigration and citizenship cited above and the common experience of most countries, we should expect exactly the opposite: that states will monitor, control, and restrict immigration from another country rather than encourage illegal immigration (Cornelius, Martin, and Hollifield, 1994; Koslowski, 2000). These theories postulate that citizenship is about exclusion, or, to use Rogers Brubaker's term, "social closure" (Brubaker, 1992:21–34). Accordingly, in the modern international system, closure of territorial boundaries and political exclusion of non-citizens is essential to systemic stability. As Hannah Arendt (1968:278) argued, "sovereignty is nowhere more absolute than in matters of "emigration, naturalization, nationality, and expulsion." It is at the threshold of a state's membership and its territorial boundaries that the rules of entry and residence apply; the national interest is the interest of citizens only. The state, so it is said, belongs to the citizenry. Therefore, in matters of national- and state-level suffrage, military service, and positions in public office, legal citizenship is a *sine qua non*. For example, the President of the United States and of Indonesia must be a native-born citizen as must the Prime Ministers of Malaysia and Sweden. Many states debar naturalized citizens from public office. Most militaries defending territorial boundaries against security threats are comprised only of citizens.<sup>10</sup>

It is true, as some scholars have observed, that there has recently been a dramatic increase in the rights and privileges granted by many developed states to immigrants,<sup>11</sup> but at no time have these states opened national and state level voting, or high public offices, to non-citizens. Public office is considered a matter of state security, since access to it would allow entry into the guarded domains of foreign, defense, and security policy. States make their fundamental foreign and security policies based on recommendations by elected officials who are accountable to the voting citizenry and are assumed to represent the *demos* that the state regulates.<sup>12</sup> In short, citizenship continues to be—and is assumed by the conventional wisdom to be—the highest and most protected form of membership in a state because it ensures legal, political, and social priority for a citizen over all other persons within the polity. This assumption is fundamental to most of the literature on immigration, which, not surprisingly, is overwhelmingly dominated by cases from Western Europe and North America.<sup>13</sup>

The phenomenon of documentary citizenship, which I observed firsthand in Malaysia, reveals this assumption to be mistaken, at least insofar as it is applied to developing states. Illegal immigrants, I observed, were taking part in elections in Malaysia even as many natives continue to have no documents proving their citizenship. Illegal immigrants were being welcomed and *afforded the rights of citizens by*

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<sup>10</sup>Critics may point to the enlistment of resident aliens in the U.S. armed forces as contradicting my assertion. While resident aliens have historically been drafted into the U.S. military, they do so under the expectation that as loyal Americans they will pursue naturalization and become citizens. See Jennings (2002) and Lopez (2003). Most militaries continue to be manned by citizens, in fact potential recruits are carefully screened for citizenship and nationality.

<sup>11</sup>Specifically, the influx of immigrants into Western Europe prompted the states of that region to extend inclusive policies in social and economic spheres to immigrants over time (Koslowski, 2000:72–94). The extension of citizen-like rights such as a local franchise for immigrants in some developed states became an index of the collapse of the distinction between citizen and immigrant. The Netherlands and some Nordic countries granted immigrants the right to vote in local elections (Rath, 1990:127). Since states have anciently associated voting with *de jure* citizenship, the extension of this right, along with many other rights and privileges traditionally enjoyed only by citizens, was seen as a reformulation of the traditional conception of the state under pressures of globalization and international human rights norms (see Jacobson, 1997; Sassen, 1998).

<sup>12</sup>Naturalized citizens can go on to become elected officials, but naturalization entails meeting stringent eligibility requirements.

<sup>13</sup>Recent contributions by Sassen (1999), Castles and Davidson (2000), and Koslowski (2000, 2002) have challenged traditional notions about immigration and its impact on world politics, but these too have ignored the phenomenon of illegal immigrant voting.

*sections*<sup>14</sup> of the Malaysian state over the opposition of many native citizens. Illegal immigration to Malaysia from the Philippines and Indonesia highlights the paradox of states actively admitting illegal immigrants.

In this article, I explore the motives that drive state actors to adopt these policies of encouraging illegal immigration, and how these state practices are managed by migrants. I will show how the state uses illegal immigrants from neighboring countries to “Malayize” or homogenize Malaysia. In short, the authorities at the center collaborate with their regional partners to utilize census practices and documentation to incorporate an illegal immigrant population from the Philippines. The motive for such practices is to use illegal immigrants as voters to assure political control by a Malay/Muslim party such as the United Malays National Organization (UMNO). At the individual level, illegal immigrants: (i) use the census by giving self-reports that deny their illegal immigrant status; and more importantly, (ii) use documents to prove citizenship and acquire citizen’s rights, such as universal suffrage. The beneficiaries of such manipulation of ethnicity and migration at the sub-national level are the parties that get the vote of these illegal immigrants, the officials, the local illegal entrepreneurs that sell citizenship documents, and finally, the illegal immigrants who not only become citizens with voting rights but also have access to affirmative action policies with their status as Bumiputera, or “sons of the soil.”

I divide my analysis into the following sections. First, I outline the illegal immigration to Sabah, Malaysia, highlighting the visibility of the phenomenon, and discussing its impact on the state’s changing ethnic composition. Next, I analyze the politics of estimation and classification of the illegal population emphasizing the use of easily manipulated census categories in facilitating immigrant incorporation—an outcome that sections of the federal and state government favor while the law disfavors it. The third section of this article highlights the lack of institutionalization of citizenship that makes possible the incorporation of illegal immigrants through varieties of documents. Importantly, “documentary citizenship” denotes the process by which illegal immigrants are incorporated into the state, get on the electoral rolls, and gain access to the rights of citizens. As a consequence, these *suffraged non-citizens* wind up being privileged over native, *non-suffraged citizens*. I follow this by scrutinizing the effects of illegal immigration and documentary citizenship on the political process by focusing on electoral politics. The use of illegal immigrants as voters advantages certain political parties, thus providing an insight into why the manipulation of migratory flows takes place. I conclude by examining whether Malaysia is a unique case, an outlier on the graph of immigrant incorporation. I show how this case is generalizable and why it requires us to rethink our current understanding of immigration and citizenship.

### Illegal Immigration to Sabah

How “visible” is the presence of illegal immigrants in Sabah? Worried “locals” have this to say:

Ours must be the only place in the world where illegals have the courage to walk about in the streets with impunity, commit crimes, use our over stretched government hospitals, steal our water, attend our schools and milk us of our resources in numerous ways. (*Daily Express*, 1999a)<sup>15</sup>

<sup>14</sup>By sections of the state I mean officials belonging to law enforcement, the immigration department, legislators, and others.

<sup>15</sup>A letter to the editor by “very concerned citizens.”

Migration from the Sulu Archipelago in the Philippines to Sabah has a long history. Barter trade existed as early as the ninth century; today it is the cornerstone of a regional economic trade forum among Indonesia, the Philippines, Malaysia, and Brunei called BIMP-EAGA.<sup>16</sup> The first migrants to Sabah from the Sulu Archipelago arrived in the late fifteenth century when the Spanish began pushing southwards toward Sulu and Tawi-Tawi in the southern Philippines. As a result, members of ethnic groups such as the Suluk and the Bajau came to straddle the modern boundaries of Sabah, Malaysia, and the Southern Philippines. The second wave of migration is associated with the Mindanao insurgency in the Philippines; many refugees migrated to Sabah during 1970–1977. Thousands of Suluk and Bajau women, men, and children took small wooden boats (*kumpits*) to flee the war-torn southern provinces of the Philippines for the relative safety of Sabah. This wave of political refugees arrived in the East Coast of Sabah and settled in towns such as Sandakan, Tawau, and Lahad Datu. However, the number of 1970s refugees is small compared with the number of migrants since 1978.

It is this third phase, the post-1978 period, which witnessed a massive influx of illegal migrants. These immigrants cannot, however, be technically treated as refugees because the rebel Moro National Liberation Front (MNLF) in the Southern Philippines had signed a peace agreement with the Philippines government, reclassifying the region *prima facie* as peaceful.<sup>17</sup> Thus, the latest phase of immigration to Sabah was perceived by local observers in Sabah as the movement of mainly economic migrants seeking a better life rather than political refugees. Each wave of this historical immigration established networks in sections of the economy, society, and importantly for modern times, the government. New immigrants followed networks established by earlier arrivals of co-ethnics (see Koslowski, 2002).

One of the reasons why there is such unregulated flow of illegal immigrants is because of geographical proximity.<sup>18</sup> Sabah's coastline runs almost 250 miles and its proximity to several islands in the Philippine waters allows for easy travel across state boundaries. There are almost 200 small islands off Sabah's east coast, of which only 52 are inhabited. The Sulu Sea, a pirate's haven, separates Sabah from the Philippines and in some places it takes less than 20 minutes by boat to reach Sabah's waters from the Philippines (*Daily Express*, 2000a).

Today it is commonly known among Sabahans that the coastal town of Sandakan (in the eastern part of Sabah) is overwhelmingly Filipino, while Indonesians comprise the majority of residents in Tawau, a Sabah town that borders Indonesia. According to illegal immigrants in Sabah, it takes approximately 2 days to reach Kota Kinabalu, the capital of Sabah, from the Philippines by boat. In fact, one of the landing points is just below the Yayasan Sabah, a sky scraper housing the Chief Minister's office and other key Sabahan ministries dealing with immigration or security!<sup>19</sup> For example, "Catherine," an illegal immigrant from the Philippines, came to Sabah 12 years ago after spending two nights on a boat.<sup>20</sup> She landed at Yayasan Sabah and later married a Muslim Filipino who was a legal worker, nominally converting to Islam. She says many Christian Filipino women convert to Islam, as conversion makes it easier to become "Sabahan." After a few years she "legalized" her presence through her husband's connections and is now a legal worker. Thus, it is probable that her achievement of legal status did not preclude extra-legal means to that end.

<sup>16</sup> Brunei, Indonesia, Malaysia, Philippines (BIMP); East Asian Growth Area (EAGA).

<sup>17</sup>As a consequence of this agreement, the head of the MNLF, Nur Misuari, became the Governor of the Autonomous Region of Muslim Mindanao in the Philippines.

<sup>18</sup>Even the United States with its large resources is unable to control illegal immigration. For a critical look at the effectiveness of immigration control measures on the U.S.–Mexican border, see Peter Andreas (2000).

<sup>19</sup>Based on the author's conversations with Filipino immigrants.

<sup>20</sup>Because of the sensitive nature of this research I will not reveal the names of some of my interviewees.

It is common for immigrants to become seemingly legal through fake documents. Labor operators or “towkays,” for example, help to facilitate this semblance of legality. Most of these “towkays” who transport Filipino immigrants to Sabah are paid in Philippine pesos. The boats anchor in the night near the shore and immigrants carry their modest belongings (only small bags are allowed) on their heads while wading to the shore. Most immigrants already know of friends and relatives in the region; thus, these connections enable recent immigrants to establish themselves in “safe houses,” from where they are directed to possible employers. The “towkays” receive part of the initial earnings of new immigrants as payment for their services.

Moreover, Christian immigrants often adopt Muslim names so as to more easily acquire documents. The Indonesian women, who are predominantly Muslim, have no such problems in assimilation or acceptance. Legalization, whether through government-instituted programs, or through marriages, bribery, or the granting of refugee status, is relatively easy for illegal immigrants. At every stage, there are co-ethnics—settlers from earlier waves of migration—who facilitate the acquisition and attainment of the rights of citizenship.

As immigrants settle, they move inwards and toward big towns on the West Coast. Both Indonesian and Filipino migrants have physical and cultural features similar to those of the Malays; the Indonesian language (Bahasa Indonesia)<sup>21</sup> is almost the same as Bahasa Malaysia, while Southern Filipinos speak dialects that have commonalities with Bahasa Malaysia. In major towns of Sabah, there are very visible pockets of illegal immigrant settlements such as Kampung BDC in Sandakan, Kampung Panji in Lahad Datu, Kampung Ice Box in Tawau, and Kampung Pondo at Pulau Gaya, Kota Kinabalu. According to some legislators, these settlements are security threats to Malaysia (*Daily Express*, 2000b).<sup>22</sup>

The public perception in Sabah is that an initial “trickle” of refugees has now turned into a “torrent” of immigrants. A range of figures is quoted on the number of illegal immigrants in the state. According to unpublished data for 1997 obtained from the state immigration department by Malaysian scholar Azizah Kassim (1998:282–285), there were only 120,719 registered alien workers in Sabah. According to the Malaysian census, between 1970 and 1980, the net immigration from Indonesia and the Philippines to Sabah was 45,000 Indonesians and 36,000 Filipinos (Department of Statistics, January 1983:58–59).<sup>23</sup> The total immigration to Sabah for the same period, after counting immigrants from other countries, was only 127,000 persons out of a total population of 950,000.<sup>24</sup> The 1991 census in Sabah identified 207,366 persons born in Indonesia and 161,533 persons born in the Philippines out of a total of 383,076 people born outside Malaysia (Department of Statistics, March 1995:144).<sup>25</sup> However, this is a distortion in at least one way—the Filipinos are a significant presence in Sabah now, while the official figures present the reverse picture.

Recognizing the problems of underestimation in state data, Azizah Kassim cites a former Chief Minister as estimating illegal immigrant numbers to be in the range of 400,000–500,000 (Kassim, 1998:285). Most leaders of the main opposition party, the Parti Bersatu Sabah (PBS),<sup>26</sup> give the figure of one million foreigners out of a

<sup>21</sup>The word “Bahasa” is Indian in origin and means “language” in Sanskrit.

<sup>22</sup>Wilfred Tangau, a member of Parliament, recently asked in Parliament whether the government would regard Kampung BDC in Sandakan, Kampung Panji in Lahad Datu, Kampung Ice Box in Tawau, and Kampung Pondo at Pulau Gaya, Kota Kinabalu, as security areas, owing to the large presence of illegal immigrants.

<sup>23</sup>See Table 5.3.

<sup>24</sup>See Table 5.2:58.

<sup>25</sup>See Table 4.1.

<sup>26</sup>PBS is the main Kadazandusun and Murut party. A confidential and comprehensive, almost census-like, project was carried out on these illegal immigrants when Parti Bersatu Sabah (PBS) was in power from 1985 to 1994: the *Transient Population Study* undertaken by the Chief Ministers’ Department, Kota Kinabalu, 1988. The study covers statistics regarding immigration until the period 1988–1989. The author’s personal copy.

current Sabah population of about 2.8 million.<sup>27</sup> Leaders of the Filipino community in the Philippines give similar estimates; their numbers in Sabah have passed the one million mark, making them the “biggest concentration of Filipino illegals in any part of the world” (*Philippine Daily Inquirer*, 1999).<sup>28</sup> This means that almost one in every three residents of Sabah may be a foreigner. Here “foreigner” would include both illegal migrants and legal workers.

What complicates the estimation issue further is that very often during “regularization” programs many illegal immigrants get “regularized” and therefore change their “illegal” status.<sup>29</sup> Over the years many have already made the transition from an illegal status to legal citizenship. Many illegal immigrants who are deported have been known to return to Sabah within a few months if not weeks or days. For example, Mustali, a 28-year-old Filipino who was recently arrested, had lived in Sabah since the age of 8 years (*Borneo Post*, 1999c).<sup>30</sup> Since then, he traveled between Malaysia and the Philippines with impunity, visiting his family several times in the Philippines. He has four children with him in Sabah; his wife returned to the Philippines to look after their older children who were being schooled in Jolo, Philippines. The judge ordered that Mustali, as an illegal immigrant, be jailed because he “had no respect for the laws of the country by going in and out of the country as though the Philippines and Malaysia were two different states in one country” (*Borneo Post*, 1999c; *Philippine Daily Inquirer*, 1999).

Illegal immigration is changing the ethnic makeup of Sabah in significant ways (see Table 1). At the beginning of the twentieth century, Kadazandusuns were the dominant ethnic group, comprising about 42 percent of the state population. They fell to 32 percent by the 1960 census, 29.9 percent by 1970, and then, to their alarm, by 1990 they had fallen to 19.6 percent (see Table 1). Similarly, Muruts have seen their share of decline from 4.9 percent in 1960 to 2.9 percent in 1990. Both of these non-Muslim groups overwhelmingly support the non-Muslim, non-Malay regional party, the PBS, which opposes the migration and settlement of illegal immigrants in Sabah.

In contrast, the UMNO, which derives its support from Muslim groups, has seen the ethnic makeup of Sabah change in its favor. The Muslim Malays have risen from just 0.4 percent of the population in 1960 to 6.2 percent of the population in 1990; the Indonesians have risen substantially from comprising only 5.5 percent of the population in 1960 to 21.3 percent in 1990; and the Filipinos, who had a negligible presence until 1960 (1.6 percent), represented 8.2 percent of Sabah’s total population by the 1990 census. Continuing Filipino and Indonesian illegal immigration further increases the stock of various Muslim ethnic groups (Bajau, Bugis, Other Muslims, Suluks, etc.), while non-Muslim groups such as the Kadazandusun, Muruts or the Chinese are declining into demographic and political insignificance. The incorporation of illegal immigrants as citizens is critical to the changing ethnic demography and subsequent political map of Sabah.

### Citizenship by Census

Illegal immigration produces a wide range of estimates concerning the magnitude of the immigrant population. As this section will demonstrate, manipulation of census categories is one mode of incorporating illegal immigrants into citizenship status. The census is a federal endeavor, but it is conducted with the cooperation of

<sup>27</sup> Interviews with Henrynus Amin, a prominent legislator of the native Parti Barsatu Sabah and their spokesman and other members of the party during my stay in Sabah in 1999.

<sup>28</sup>This is the first of a four part report on the Filipino illegal migration to Sabah conducted by correspondent Jerry Esplanade.

<sup>29</sup>Interview with Maximus Ongkilli, Vice President, PBS.

<sup>30</sup>The name of this illegal immigrant has been changed.

TABLE 1. Political Affiliation and Ethnic Group Representation in Sabah

	<i>Political Party</i>	<i>Ethnic Group</i>	<i>Census Years</i>			
			1960	1970	1980*	1991
Regional	PBS	Kadazandusun	32.0	29.9		19.6
		Murut	4.9	4.8		2.9
National	UMNO	Malay	0.4	2.8		6.2
		Bajau	13.1	11.8		11.7
		Other Muslims	15.8	13.5		13.6
		Indonesian	5.5	6.1		21.3
		Filipino	1.6	3.1		8.2
National	MCA	Chinese	23.0	21.4		11.5

*Source:* Based on Uesugi Tomiyuki (2000:37).

PBS, Parti Bersatu Sabah; UMNO, United Malays National Organization; MCA, Malaysian Chinese Association.

\*The 1980 census collapsed all those who were not Chinese or Indians into a single category called Pribumi, thus making it impossible to obtain data for individual ethnic groups.

regional governments in Sabah. Census categories can be introduced and withdrawn according to the political goals of the dominant political party in Sabah. This section illustrates how ruling parties dominated by West Malaysian Muslims such as the UMNO use census categories to incorporate large-scale illegal immigration from the Philippines to Sabah. The political calculation to provide citizenship through census manipulation was part of a long-term goal to Malayize Sabah and ensure the political hegemony of Malay-based parties such as the UMNO. Reciprocally, the non-Malay Sabah party, the PBS, opposes categories that might allow the incorporation of illegal immigrants or might minimize their presence. Such census manipulation also provides incentives for self-reporting by illegal immigrants to fit in the Malay-Muslim categories such as Pribumi or Bumiputera.

Sabah's population is growing dramatically (see Figure 1).<sup>31</sup> It is experiencing an alarming annual growth rate of 5.5 percent (between 1981 and 1991) against the Malaysian average of 2.6 percent for the same period. Between 1991 and 1995, Sabah had an annual growth rate of 6.2 percent compared with the low Malaysian rate of 2.7 percent, and Sabah is projected to have a rate of 5.4 percent against the national average of 2.3 percent. Sabah's growth rate is almost three times that of other states.<sup>32</sup> According to the *Seventh Malaysia Plan* (1995–2000), Sabah will have an estimated 3.3 million people while the neighboring state of Sarawak will trail with a low 2.06 million. In fact, as recently as 1980, Sabah's population was smaller than Sarawak's. Sabah and Sarawak had, until recently, similar fertility rates and death rates. While Sarawak has higher in-migration from Peninsular Malaysia than Sabah, Sabah's annual population growth rates are three times that of Sarawak. The question of where the extra 1.3 million people came from when the population growth rates of both Sabah and Sarawak should have paralleled one another has become pre-eminently important to the "natives" of Sabah, according to Henrynus Amin, a prominent legislator of the native Parti Barsatu Sabah.<sup>33</sup> The obvious reference was to the rampant pervasiveness of illegal immigrants in the state.

<sup>31</sup>According to the *Population and Housing Census of Malaysia 1980* (13–14): "The figures for the years prior to the formation of Malaysia in 1963 are aggregates of the census figures for Peninsular Malaysia, Sabah, and Sarawak. For years where no census figures were available, the estimates were derived by using the intercensal growth rates of the region."

<sup>32</sup>Population growth rates for other states are shown by the bar graphs of Peninsular Malaysia covering all the states in West Malaysia, and the bar graphs of Sarawak, Sabah's neighboring state in East Malaysia—in each case the contrast with Sabah is striking.

<sup>33</sup>Interview, June 13, 1999.

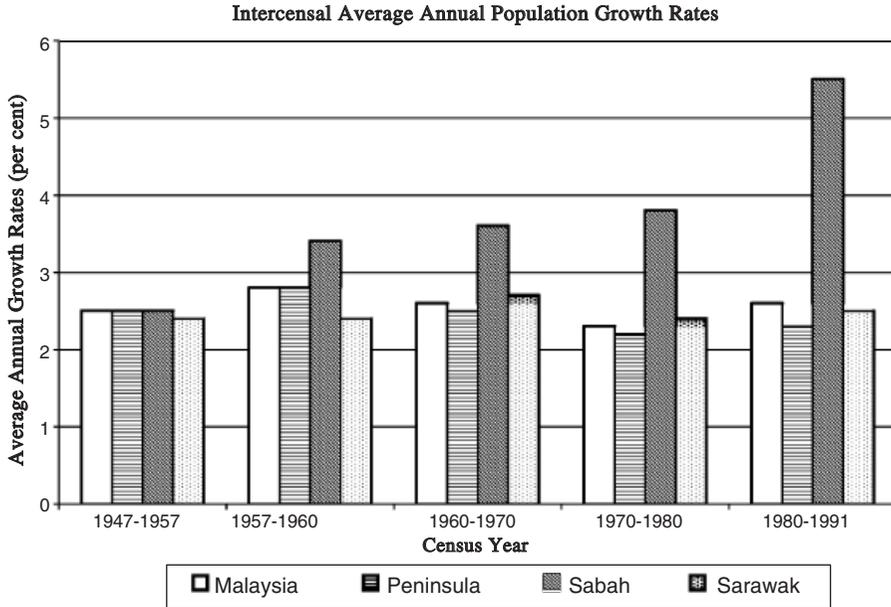


FIG. 1. Intercensal Average Annual Population Growth Rates

Sources: Population and Housing Census of Malaysia 1980, Vol.1 (Department of Statistics, Malaysia, January 1983), especially pp. 13–14; Population and Housing Census of Malaysia 1991, State Population Report, Sabah (Department of Statistics, Malaysia, March 1995). Note: Malaysia gained independence in 1963. Malaysian Peninsula is also known as West Malaysia while Sabah and Sarawak are in East Malaysia.

Although the state government estimated the population of Filipino refugees in the 1970s to be 70,000, the United Nations Commissioner for Refugees (UNHCR) estimated their numbers to be closer to 100,000 and the local community leaders in Sabah claimed a figure in excess of 130,000 (Kurus, Goddos, and Koh, 1998:161).<sup>34</sup> The state *Population and Housing Census* of 1991 estimates a figure of only 57,197. Controversy surrounds the changing categories used to classify and incorporate this “alien” population. Federal authorities, in collaboration with their regional partners—the United Sabah National Organization (USNO), Bersatu Rakyat Jelata Sabah (BERJAYA), and later the UMNO—created census categories that would deny or minimize illegal immigration. The category “Pribumi,”<sup>35</sup> or “sons of the soil,” introduced in the *Population and Housing Census* of 1980, functioned to downplay the distinction between natives and immigrants since it was not a discrete category and included indigenous as well as immigrant groups. This category was introduced by a Sabah state government directive on October 7, 1982 (Regis, 1989:15–16).<sup>36</sup> It had the effect of collapsing all the indigenous groups classified under various headings in censuses conducted before 1980 and grouping them along with recent immigrants, thereby creating a large undifferentiated Malay stock. Pribumi was a political category as much as an all inclusive nomenclature in the census. Many groups, including immigrants from the Philippines and Indonesia who were included in the category “Others” in the 1970 census, are now subsumed under this category.

<sup>34</sup>This is a report by Bilson Kurus, Ramlan Goddos, and Richard T. Koh for the state think tank, Institute for Development Studies, recently published in *Borneo Review*, 1998.

<sup>35</sup>Pribumi means “native” and has the same meaning as the term Bumiputera (both words have roots in Sanskrit).

<sup>36</sup>Directive CMDC 503/60. While the nomenclature “Pribumi” was adopted by the center in the 1980 census, the directive to adopt it at the regional, Sabah level, was introduced in 1982.

By ignoring descent and ethnic boundaries between groups for classification purposes, the census facilitated the inclusion of illegal immigrants and their children who would qualify for citizenship and *Bumiputera* status since their parents would be classified as *Pribumi*. In the 1980 census, *Pribumi* accounted for as much as 82.9 percent of the Sabah population. The category *Pribumi*, much like the term *Bumiputera*, was a code for Muslims (Table 2). The category was officially dropped on April 24, 1985, after the opposition regional party, the PBS, came to power and made illegal immigration a major issue. By forcing the national census to back down, PBS was seeking to protect its regional interests who were mainly non-Malay local natives such as the Kadazandusuns and Muruts.

The reconfigured census of 1991 continued the incorporation but separated some of the immigrant groups out for illustrative purposes. In the *Population and Housing Census* of 1991, recent Filipino and Indonesian immigrants were placed in the category “non-Malaysian Citizens.” From a total population in Sabah of 1,734,685 in 1991, the non-Malaysian Citizens numbered 425,175, which, after adjusting for underenumeration, is about 25.1 percent of the population (Table 2). This large percentage of non-citizens in Sabah’s population excludes illegal immigrants who have self-reported themselves as Malay, Bajau, Suluk, or some Other Bumiputera category in the census. According to the explanatory notes and definitions of the 1991 census, citizenship “refers to the *self-identification* of an individual regarding his citizenship and was *not based on any official document*” (Department of Statistics, 1995:xxxi). Clearly, there was an incentive to self-report as a member of a Bumiputera group. The 1991 census would also exclude illegal immigrants who over the decade acquired Malaysian citizenship, either by naturalization or by fraudulent means.

Within the Malaysian Citizens category the breakdown was as follows (*Population and Housing Census 1991*:18–20): (i) Others numbered 32,210; (ii) Other Bumiputeras numbered 255,555 or 14.7 percent; (iii) Bajau’s numbered 203,457 or 11.7 percent; (iv) Indonesians numbered 139,403 or 8 percent; and (v) Malays numbered 106,740 or 6.15 percent.

Why are Indonesians categorized as Malaysian citizens in the 1991 census? While some may have regularized their status from illegal to legal through marriage with a local, others might have benefited from the many “regularization” exercises that Malaysia conducts, which have the effect of legalizing and normalizing illegal

TABLE 2. Census Categories for Muslim Filipino Immigrants in Sabah

1970 Census	1980 Census	1991 Census
Malay (listed for the first time) →	<div style="display: flex; align-items: center;"> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 10px;">                     Malay                       Bajau                       Indonesian                       Other Indigenous Suluk                       Native of Philippines                       Others                 </div> <div style="margin: 0 10px; font-size: 3em;">}</div> <div style="text-align: center;">                     Pribumi 82.9%                 </div> </div>	<div style="display: flex; align-items: center;"> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 10px;">                     Malay                       Other Bumiputera:                      Indonesian                      Bajau                      Suluk                       Others:                      (Filipinos, Indonesians)                 </div> <div style="margin: 0 10px; font-size: 3em;">}</div> <div style="text-align: center;">                     Malaysian Citizens 74.9%                 </div> </div>
Bajau		
Other Indigenous: (Suluk born in Sabah and the Philippines) →		
Others: (Includes native of Philippines) →		

Sources: Population and Housing Census of Malaysia 1980, Vol.1 (Department of Statistics, January 1983), Population and Housing Census of Malaysia 1991, State Population Report, Sabah (Department of Statistics, March 1995). Patricia Regis, “Demography,” Appendix 1 in Jeffrey Kitingan and Maximus Ongkili, *Sabah 25 Years Later: 1963–1988* (Kitingan and William, 1989).

immigrants. Malaysia is not unique in seeking to manage illegal immigration through regularization schemes.<sup>37</sup> This regularization paves the way for Filipinos and Indonesians alike to be eligible for naturalization as citizens. Therefore, in the census, Indonesians, a majority of whom are Muslim illegal immigrants, are listed under the “Others” category of “Malaysian Citizens” and constitute as much as 8 percent of the “Malaysian Citizens.” Excluding the large Indonesian category, many of the sub-headings within “Malaysian Citizens” are meant to incorporate the large influx of illegal Filipinos into Sabah, Malaysia. Bajau, Malay, and Suluk are all “ethnic groups” that would neatly overlap with the recent illegal immigrants from the Philippines. Within the Bumiputera category, many subheadings include immigrant groups, formerly illegal, who are now “legal” citizens having spent decades in Sabah. A recent estimate in the *Monthly Statistical Bulletin Sabah* of October 1999 gives a total of 864,000 non-Malaysian citizens out of a mid-year population estimate of Sabah at 2,970,400. The percentage share of “non-Malaysian” has increased to 29.08 percent. “Others” constitute as much as 8.7 percent (259,200). It is clear that census terms such as Pribumi, Bumiputera, Bajau, Indonesian, Other Bumiputera, and Malay are code words for Muslims. This practice allows us to understand how *the census is in effect conferring citizenship upon various illegal immigrant groups*.

It is curious that 192,800 people (6.5 percent) in Sabah are categorized as Malays (Government of Sabah, 1999:9) when there are no records of large-scale migration of Malays from West Malaysia to Sabah after the initial migration of civil servants in the early years of the formation of independent Malaysia. This category includes armed forces personnel who are stationed in Sabah; yet the number of Malays is too high to be accounted for by the mere transfer of officers to Sabah. As Patricia Regis points out, “the term ‘Malay’ is being increasingly used as a generic term to describe traditionally Muslim groups who speak Malay” (Regis, 1989:417). She further states that “it is also likely that a number of Indonesians may have claimed to be Malays in order to be indigenized. In the census classification system for Peninsular Malaysia they are classified as Malays” (emphasis added). The same practice holds true for Muslim Filipinos.

Another category in the mid-year population estimates that raises questions is the group “Other Bumiputeras,” which was negligible at one time but now has 393,300 people, or 13.2 percent of the state’s population, listed under it. Filipino immigrants, whether through the connivance of elements in the state bureaucracy or through fraudulent documents, are being counted under “Other Bumiputeras,” “Others,” or “Malays,” in the Malaysian Citizens category. In addition, the overwhelming majority in the “non-Malaysian” category are the fresh illegal Filipino and Indonesian immigrants.

The working and reworking of ambiguous census categories in recent years demonstrate the difficulty in accounting for such a large influx of illegal immigrants who have become citizens over time. It is also suggestive of a political strategy to absorb illegal immigrants. Complicity by sections of the state such as the bureaucracy, police, politicians, immigration officials, etc. has enabled the incorporation of illegal immigrants as citizens. The tension between Malay-Muslim sympathetic sections of Sabah and the non-Malay-based “sons of the soil” parties such as PBS helps explain the changing categories adopted to classify immigrants; Malay-based parties such as UMNO wanted to capture the illegal vote while the PBS wanted to neutralize their impact. However, there is incentive for mass self-(mis)reporting by

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<sup>37</sup>Malaysia regularized about 320,000 illegal immigrants in 1992, the United States regularized 2,483,348 illegal immigrants in 1986, and Spain regularized 108,848 illegal immigrants in 1991 (Stalker, 1994:152). Italy, Spain, Greece, France, and the United States have conducted several regularization exercises whereby hundreds of thousands of illegal immigrants have become legal resident aliens who could become naturalized citizens after meeting residency requirements.

Filipino illegal immigrants, as Patricia Regis (1989) observes, regarding Indonesians claiming to be Malays. While the evidence from newspaper reports and from local conversations that the author had suggest that there is a political calculation behind classifying illegal immigrants as citizens, there is an obvious incentive for illegal immigrants from the Philippines to self-report themselves under any of the sub-categories falling under the generic term *Pribumi* or *Bumiputera*.

Furthermore, the dubious role of illegal immigrants as voters in national and state elections infuriates the non-Muslim local population. In order to analyze their roles as voters, we must first examine the crucial function that documents play in making citizens.

### Citizenship by Documents

Most studies of immigration based on the experience of developed states in Western Europe or North America consider naturalization or extension of citizen like rights by states the only means for making immigrants full members of states (Koslowski, 2000:87–93). In turn, these studies assume that the acquisition of the most protected of citizenship rights—the franchise, the eligibility for public office, and military service—comes only with naturalization. I shall now demonstrate the nature of documentary citizenship, where the weakly institutionalized character of citizenship in developing states facilitates the entry of illegal immigrants and allows them to bypass naturalization and gain citizenship rights.<sup>38</sup>

Documentary citizenship is an informal device, a back channel, to many of the benefits associated with the narrower and more difficult path to legal citizenship. It expands and accelerates the incorporation of illegal immigrants into the citizenry of a state. More importantly, it allows many illegal immigrants access to political suffrage. Political suffrage, as we know it, is closely linked to legal citizenship since it opens the door to many protected domains of state activity such as the legislature and other public offices involved in defense, foreign, and security policy making. By transforming illegal immigrants into citizens, documents challenge the traditional view of the relationship between immigrants and the state.

Citizenship is not well institutionalized and defined in Sabah, Malaysia. Nor is Sabah alone in this—many developing countries, such as India, Indonesia, Bangladesh, Thailand, Ecuador, Paraguay, Nigeria, and Ghana among others, are weak on institutionalization of citizenship through documentation. The problems of estimation and classification in Sabah, discussed in an earlier section, are symptomatic of the fact that the use of legal documents is absent or only vaguely present among the “natives.” This fact contrasts with the West European or American experience, where identity cards (ICs), passports, and documents are widely circulated and accepted as markers of citizenship (Torpey, 2000). Debates about national ID are related to a state’s goal of controlling populations through surveillance. This Western “high modernism” (Scott, 1998) has enabled those states to minutely categorize and classify their populations. They can more readily monitor “foreigners” than can develop states such as Malaysia.

After independence, the Malaysian state sought to render “citizens” distinct from local populations. This effort was tied to its conception of a “nation.” Who, the implicit question ran, “owned” the nation (Hall, 1999)? This debate over Malaysia’s conception of nationhood is intertwined with that over illegal immigrants. Malaysia’s effort to define and restrict citizenship is problematic because a large section of its population, as in so many developing countries, does not possess birth certificates or passports. Weakly institutionalized citizenship in Malaysia is the condition whereby some legally eligible natives have no documentary proof of citizenship

<sup>38</sup>As a status, documentary citizenship is distinguished from Tomas Hammar’s “denizen” concept by the fact that “documentary citizens” acquire national level suffrage, as Hammar’s denizens do not (Hammar, 1989:83–84).

while others have multiple documentary proofs of citizenship (issued by multiple state agencies). Since many natives do not have a standardized document such as the passport, a birth certificate, or a national IC, the state will not insist on a standard document for the exercise of an individual's civil, political, economic, or social rights. Another important aspect of weakly institutionalized citizenship is that some services provided by the government that require standardized documentation are unavailable to these sections of the population. This is especially true for urban areas. Inasmuch as illegal immigrants do, or hope to, gravitate toward urban areas, they are likely to have a greater incentive to acquire documents that prove their citizenship than are long-time inhabitants of difficult-to-reach areas, such as the interior of West Malaysia or the many islands of Sabah. On the other hand, since natives are accustomed to other natives either not possessing documents or, alternatively, having multiple documents, the distinction between legal and illegal is hazy. Coherent legality depends on monitoring, surveillance, and maintenance of certain state-established standard rules and regulations. However, given (i) the absence of proof of citizenship in some regions and, (ii) the varying nature of documentation in their other parts, it becomes impossible to firmly establish these rules and regulations under the condition of weakly institutionalized citizenship. It is difficult, based on paperwork, for authorities in developing states to monitor and distinguish those who are legal citizens from those who are not.

This brings us to an important question. Why is the weakly institutionalized character of citizenship in Malaysia important? Theories of immigration and citizenship assume that *the receiving state has standardized documentation for its population*, which permits citizens to be distinguished from immigrants—legal or illegal. In the real world, however, illegal immigrants are not so easily distinguishable from those locals who themselves do not carry any documents in many developing states. Even network analysis, which explains the process of immigration by illuminating how social and personal networks enable entry and settlement of immigrants, ignores the lack of standardized citizenship in countries like Malaysia. Additionally, illegal immigrants know that the local population in some parts of Malaysia has no documents and that settlement will therefore not likely be a major hurdle. Information flowing through networks of family, kin, and/or fellow-villagers ensures that illegal immigrants have reliable knowledge about their future host state. Illegal immigrants' confidence of not being detected during residence because the local population is also in a similarly weakly institutionalized condition facilitates their settlement.

A birth certificate is an essential document for obtaining a Malaysian IC, which is the main citizenship document. The IC is the basic document needed for entering the school system, exercising the franchise, and becoming eligible for licenses. Illegal migrants are poor people from neighboring countries who are seeking a more stable life. They therefore have a strong incentive to acquire citizenship documents by any means necessary. As illegal immigrants in a foreign country, they are often subject to harassment: while entering, while traveling, while seeking employment, while on the job, etc. Therefore, the search for "documents" is always a primary task for illegal immigrants. This functional aspect of documents, their practical consequences, and enabling power are completely ignored by scholars of international migration and politics.

In April 1999, an official of the National Registration Department (NRD) in Sabah complained that over two million people residing there did not possess birth certificates (*The Sun*, 1999). This is significant considering that the total population of Sabah is estimated to be about 2.8 million (Government of Sabah, 1998).<sup>39</sup> Many Sabah residents are born at home in villages or on remote islands and not in

<sup>39</sup>The mid-year population estimate for 1998 was 2,812,000 persons.

hospitals or maternity clinics, where birth certificates can be provided. Ignorance of the law, which requires registration certificates of birth and death, also causes the absence of citizenship-related documents. According to the Director General of the NRD, any birth must be reported at a NRD within 14 days; in case of problems, parents are allowed to register their child within 42 days (*Borneo Post*, 1999a). After that, the NRD requires evidence and has to interview parents to determine the child's citizenship. This is obviously a difficult process for natives living in the interior as well as the poor living in remote areas or islands, etc. The result was that almost 10,000 out of 500,000 babies born each year in Malaysia were not registered within the stipulated period (*Borneo Post*, 1999a). Before April 1987, no birth certificates were required for a Malaysian IC and the records show that most people did not possess birth certificates. Since then, however, the birth certificate has become an essential document for acquiring a Malaysian citizenship/IC. It is an offence to fail to obtain a Malaysian IC after the age of 12 years. There were 39,120 applications for ICs in 1998 from 12-year-olds alone throughout Sabah (*The Sun*, 1999). Therefore, it may take as much as 2–3 years before an IC is issued.

The NRD is “worried” about the possibility of people using other persons’ birth certificates to acquire Malaysian ICs as well as the problem of “forged” ICs (*The Sun*, 1999). Immigrants say that it is quite easy to obtain an IC. A “blue” IC is for citizens only. But migrants can get a fake one for as little as 10 Ringgit (\$2.63) (*Borneo Post*, 1999b).<sup>40</sup> The Registration Department seeks the help of community leaders, village chiefs, and other agencies to verify or to register people in remote areas who may not have birth certificates, and therefore, no ICs. However, the verification process itself can be corrupted with bribery and collusion of native chiefs and other local community leaders responsible for verification, thus resulting in issuance of “real” ICs for illegal immigrants. Complicating the issue of ICs is the problem of unclaimed Malaysian ICs. Malaysia has shifted to a new “high security” IC and as of February 1999, there were 52,320 new unclaimed ICs that were applied for since the beginning of 1991 (*The Sun*, 1999). There were 9,344 ICs from Kota Kinabalu (capital of Sabah), 7,143 from Sandakan (East Coast town bordering Philippines), 8,371 from Tawau (East Coast town bordering Indonesia), and 4,709 from Lahad Datu (West Coast town).

The non-possession of birth certificates or ICs by many natives, the slow process of acquiring birth certificates, the registration for everchanging new high security ICs, the conversion from old ICs to new ICs, the many cases of forged ICs, and the wrongful acquisition of ICs based on someone else's birth certificates—these have all created a citizenship card mess that allows illegal immigrants and various sections within Sabah to misuse the citizenship system for their own electoral benefit. Since it is difficult to physically distinguish a Malaysian Bajau from a Filipino Bajau or a Malaysian Bugis from an Indonesian Bugis—the language, physical features, and food habits are all the same—we may surmise that many illegal Bajau and Bugi immigrants possess one or more of these documents, which makes them eligible to vote in Malaysian elections. Otherwise, they can make use of fake papers since state agencies on the street cannot distinguish between fake and real documents.

This ambiguity in citizenship creates two new types of membership in weakly institutionalized developing countries, the distinctiveness of which the scholarly literature has yet to recognize—*suffraged non-citizens* and *non-suffraged citizens*. Suffraged non-citizens are the illegal immigrants and refugees who are beneficiaries of documentary citizenship; non-suffraged citizens are legal citizens who lack proper documentation of their status. The process I call *documentary citizenship* does not focus on rights and duties of citizenship per se, but rather on acquiring documents

<sup>40</sup>The Filipino laborer Amillusin Umar was jailed for 4 months for acquiring a high-quality fake IC. *The Borneo Post* and other local newspapers carry news about illegal immigrants every day. Much of the local news reporting is devoted to crimes committed by illegal immigrants.

that subsequently enable their holder to access state benefits and travel freely. In countries where citizenship is weakly institutionalized, citizenship is not defined by the exercise of social, political, and civil rights; instead, it is defined by the acquisition of documents and paper to prove one's membership. Furthermore, in a globalizing world, it is increasingly documentary citizenship that allows illegal migrants mobility across states and access to the privileges of a citizen in their host states. Sometimes it may give them access to two states if the immigrant has dual paperwork. It is the documentation, real or fake, which has become the major signifier of citizenship, a point missed by most scholars of immigration and citizenship.

### Illegal Immigrants as Voters

In this section, I explain why the incorporation of illegal immigrants through manipulation of the census and the deceitful racket in citizenship documents occurs and how this incorporation is connected to the electoral politics of Sabah. Legalizing illegal immigrants becomes the preferred strategy of the dominant Malay parties when overt Malayization (through conversion, internal migration, etc.) does not proceed quickly enough.<sup>41</sup> The goal of the Malays, who dominate the federal government, is to change the demographic and political character of Sabah so that it becomes Malay Muslim-dominated, and because of cultural-religious commonalities, these immigrant Indonesians and Filipinos can easily be *Malayized* over time and will support Malay-Muslim parties.

The tacit support of fraudulent activities by sections in the federal government and by Malay elements in the state government produces a very insidious politics from within: a section within the state is trying to undermine the political rights of the major ethnic groups in a regional-state through migration. According to Herman Luping, (1994:444), a former Attorney General of Sabah: "the popular belief among Sabahans, of course, was that both UMNO and USNO (the premier Malay parties) leaders wanted these people (illegal immigrants) to stay in Sabah and become citizens so that they could swell the votes for their Muslim-based party." Contrary to the experience of other countries, it seems that the decision as to who will be the ruling government in Sabah is now being determined by the crucial illegal immigrant vote. What is lost is the distinction between citizens and immigrants.

It appears to Kadazandusuns and other natives that there is active involvement of some state officials in the process of "legalizing" illegal immigrants. In a recent court case (Harris Mohd Salleh vs. Ismail bin Majin) the petitioner, Dr. Chong, told the court how a number of senior UMNO (the ruling Malay party) members from Sabah were detained under the ISA for their involvement in the falsification of ICs (*Daily Express*, 1999b; *The Borneo Post*, 1999d).<sup>42</sup> The list included the UMNO Deputy Chief of Tawau, Shamsul Alang, as well as Datu Akjan, Jabar Khan, and Dandy Pilo, among others. Some NRD officers and businessmen were also detained under ISA for their part in this operation. According to Hassnar, a former ISA detainee and a participant in this operation, a total of 130,000 illegal foreigners were issued blue ICs in 1985 alone (*The Borneo Post*, 1999d).<sup>43</sup> Hassnar testified in court that he played a leading role in the operation, which was aimed at increasing the Muslim

<sup>41</sup>There were many attempts to convert Kadazandusun and other natives to Islam. The process was called "*masuk melayu*" or "entering Malayness." The "born again" Muslims were called *saudara baru*. I thank Herman Luping, a former Deputy Chief Minister as well as a former Attorney General of Sabah, for this information. See his book *Sabah's Dilemma*, 1994:530-535 and 564-567.

<sup>42</sup>The author was present in Sabah for a period when the court hearings on this matter were taking place. Dr. Chong went on to win part of his petition and the Likas constituency election result was nullified by the order of the judge on June 8, 2001. The judicial decision by the High Court judge was delivered despite pressure on him from "sources" to dismiss the petition. *Daily Express*, June 9, 2001.

<sup>43</sup>Hassnar was a former district native chief in Sandakan.

population in Sabah. He further alleged that this endeavor involved foreigners, government officers, and members of the ruling Barisan Nasional (BN) party.

Making citizens out of non-citizens has become a major industry in the state. With a potential market of 400,000 foreigners, the illegal IC business can be very lucrative (*Daily Express*, 1998).<sup>44</sup> Jeffrey Kitingan, a prominent Kadazandusun leader who was incarcerated under the ISA, says he was “privileged to meet fellow ISA detainees. . . who were directly involved in the *project IC*—businessmen, government servants and Indonesians” (Kitingan, 1997:23). A local daily reported the arrest of seven officials from the NRD under the ISA for their involvement in the issuance of fake ICs to foreigners (Kurus et al., 1998:174).

While the fake documentation business is partly driven by sheer profit motives, many non-Muslim natives allege that there are indicators of a deliberate political strategy of demographic change. For example, these officials are not put on trial because that would involve media and publicity, which risk the possibility of all the details of the “IC project” being made public in a court hearing. The ISA under which these persons are interned conveniently permits the government to hold these officials without trial and then release them after a few years. Current juridical practice permits the government to refrain from releasing reports or figures on these internments, as would be the case if these officials were charged in a court of law. Taken as a whole, these appear to be face-saving forms of support for a well-functioning citizenship card-making machinery. Jeffrey Kitingan (1997:23–24) alleges: “what the Malaysian Schemers are doing is tantamount to *selling out our birth rights to aliens*” (emphasis added).

Many Kadazandusuns and other natives feel that this deliberate strategy is a way of demographically overwhelming them. In an outburst after losing power in 1985, Harris Salleh, a former Chief Minister and one of the most prominent politicians of Sabah, acknowledged such a demographic strategy when he said:

The Kadazans will become like the Sikhs are now in India, a race forever under suspicion by the majority race. There is no doubt that Sabah is moving towards being dominated by the Muslims who already make up more than 50% of the population. It all depends on the federal government, how fast the process continues. Remember we have nearly 300,000 Filipino and Indonesian refugees and workers here in Sabah and most of them are Muslims. Most have been here for many years and will become eligible for citizenship. They are happy living and working here and do not want to leave. . . the federal government can register any of the refugees in three hours, three days, three months or three years. There is no law stating the time and *if the federal government wants to alter forever the voting patterns of Sabah then it can do it as easily as signing the papers* (Raffaele, 1986:424–426; emphasis added).

The largely Muslim makeup of this illegal immigration into Sabah is viewed as an instrument for changing the voting pattern of Sabah to benefit Malay parties such as UMNO—the ruling Malay party of Peninsular Malaysia. The motive is to increase the UMNO’s vote banks. The UMNO’s obvious goal is to override the Kadazandusuns and Muruts<sup>45</sup> in favor of a coalition of Muslims groups represented

<sup>44</sup>Statement by Joseph Sitin Saang, Vice President of Parti Democratic Sabah (PDS).

<sup>45</sup>A recent report in the newspaper *Daily Express* quotes two researchers from University Malaysia Sabah making the same argument. W. Shawaluddin Hasan and Ramli Dollah argue that the “possession of original ICs via forged documents among the immigrants indirectly resulted in the group gaining control of the economic affairs, education, politics, and job opportunities and, *most importantly, the rights of the Bumiputeras*.” They further said, “In this respect, we do not have the right anymore to question them because they have already become a part of the state natives because of the original and valid documents in their hands.” See “Bumis are the Real Losers,” *Daily Express* 2002. In this context, “Bumiputeras” means “Kadazandusuns and Muruts.”

and led by UMNO. Just before the state elections, PBS submitted a list of 49,270 illegal immigrants who had been issued ICs enabling them to vote. A recent best-selling book about illegal immigrants<sup>46</sup> has identified hundreds of illegal immigrants who have fake ICs and may have voted in recent elections (Mutalib, 1999).<sup>47</sup> It lists their IC numbers, their affiliation to UMNO, provides the photographs of these individuals, and in some cases even lists their “foreign” passports (Mutalib, 1999).

These false-document-holding illegals who vote are called “phantom voters” in Sabah. I use the term *suffraged non-citizens* to capture the contradiction of non-citizens’ voting. There are three kinds of *suffraged non-citizens* in Sabah according to the main opposition party (*Daily Express*, 1999c; *Borneo Post*, 1999e):

- (i) foreigners who were illegally issued identification cards/receipts and were registered as voters in Sabah;
- (ii) foreigners who were issued fake ICs or receipts bearing the names of others who appear on the electoral rolls; and
- (iii) foreigners who were illegally issued fake identification cards/receipts bearing the name of dead voters whose names are still in the electoral rolls.

Here it may be asked what motivates these illegal immigrants to vote. Do they have rational, self-interested reasons to exercise the franchise? While UMNO benefits, what is the benefit for them? Besides gaining material benefits such as the distribution of water tanks, rice, money, and fishing nets of various sizes (many Filipino immigrants are excellent fishermen), an issue well covered by various local dailies during the elections (*Daily Express*, 1999d), there is the additional lure of access to better living conditions in Sabah, if one can secure Malaysian ICs. The IC comes with the expectation that these immigrants vote for their benefactors, which in Sabah happens to be the ruling Malay party—UMNO. Some of these “illegal” voters earn lucrative pay by working for the ruling party during elections, making billboards, mounting posters, distributing pamphlets, etc.<sup>48</sup> Also, connections with powerful members of the UMNO and other officials bring with them other privileges for these illegal immigrants. It is quite beneficial for these illegal immigrants to be involved in the Sabah elections.

In response to this involvement, the former Chief Minister of Sabah, Pairin, urged the government to stop allowing holders of temporary identity documents such as JPN 1/9, JPN 1/11, and JPN 1/22 to vote in elections (*The Borneo Post*, 1999f). JPN 1/9 is a document issued to new applicants of ICs, JPN 1/11 is issued to those who report a loss of IC, and JPN 1/22 is given to those who change their blue IC to the new “Bunga Raya” card (*Daily Express*, 1999e). All are temporary documents and yet persons with such documents are allowed to vote. Dr. Chong, a PBS candidate from the Likas constituency, submitted evidence alleging misuse of these temporary documents (*Borneo Post*, 1999g).<sup>49</sup> These were documents surrendered to him by anonymous individuals after the Sabah state elections in March 1999. In

<sup>46</sup>This book is titled *IC Palsu: Merampas Hak Anak Sabah*. IC Palsu means “False IC.”

<sup>47</sup>The electoral role of illegal immigrants is corroborated by the author’s conversations and interviews with both immigrants and local natives.

<sup>48</sup>Author’s conversation with an illegal immigrant. It is not easy to get an illegal immigrant to acknowledge that she/he is illegal and voting.

<sup>49</sup>Copy in the author’s possession. The evidence includes 18 pairs of receipts; each pair of receipts has the same photograph of a person bearing two different names and corresponding National Registration numbers that also appear on the electoral rolls. Among these 36 JPN receipts, three names with the corresponding IC numbers appear twice but with different photographs, different addresses, and dates of births. The news reports covering this issue include: (1) “Police report on fake documents,” *The Borneo Post*, September 22, 1999:A5; (2) “Petitioner alleges illegality,” *The Borneo Post*, September 22, 1999:A5; (3) “Sanctity of electoral rolls challenged,” *The Borneo Post*, September 23, 1999:A4; (4) “Phantom voters influenced election,” *The Borneo Post*, September 29, 1999:A1; and (5) “Flush out fake voters: Pairin to BN,” *The Borneo Post*, September 23, 1999:A2.

Harris Mohd Salleh vs. Ismail bin Majin—a historic decision on the petition filed by Dr. Chong—the High Court declared the election result of the Likas constituency null and void, ruling that “non-citizens had cast their votes in the polls” (*Daily Express*, 2001). Accepting Dr. Chong’s submission that the 1998 electoral rolls of the N13 Likas electoral seat were illegal since they contained names of illegal immigrants and persons who had been convicted for possession of fraudulent ICs, Judge Awang of the High Court wrote:

The instances of non-citizens and phantom voters in the electoral roll as disclosed during the trial may well be the *tip of the iceberg* . . . It is common knowledge that an influx of illegal immigrants has plagued Sabah for some years. It is a well known fact as it had appeared in the local dailies too frequently. . . (*Daily Express*, 2001; emphasis added).

The judge noted in his decision<sup>50</sup> how people convicted of possessing fake ICs in 1996 continued on the electoral rolls of Likas constituency in 1998.<sup>51</sup>

Natives’ resentment of this phenomenon is understandable, considering that Article 119 (1) of the Malaysian Constitution accords the right to vote in any State or Parliamentary (national) election *only* to citizens (Percetakan Nasional Malaysia: 101). Furthermore, recent constitutional jurisprudence holds that non-citizens or those who have been convicted of possessing fraudulent citizenship documents are *ineligible* to vote (see Harris Mohd Salleh vs. Ismail bin Majin). In practice, illegal immigrants are enjoying political suffrage. For example, a female illegal immigrant confessed to having voted in the last five elections in Sabah, the first three times from Sembulan and the fourth and fifth times in a place called Kuala Penyu in Sabah (see *Borneo Post*, 1999h).<sup>52</sup> We can therefore assume that there are cases of Indonesian immigrants who have voted both in Sabah as well as in the elections in Indonesia if we consider that an estimated 1.4 million Indonesian immigrants voted in the 1996 Indonesian elections while still living in Malaysia (Kassim, 1998:285).

The Malaysian experience that this article documents highlights three remarkable features of international migration: (i) illegal immigrants can vote, (ii) documents enable their political participation as citizens, and (iii) parties and immigrants both have an interest in preserving the irregularities of documentation and collaborate to that end. Leading scholars of the mobility of labor and capital have pointed out the transnational character of such flows but have ignored the critical role that documents play in enabling the mobility and incorporation of labor (Sassen, 1998). In actual practice, voting and political participation are not products of some abstract group membership, but rather are products of the documents an individual holds, documents that are plentiful wherever there is illegal immigration. Around the world, documents, fake as well as real, are facilitating the incorporation and absorption of illegal immigrants into the state.

## Conclusion

Malaysia, like most other states, restricts voting rights to citizens; however, distinctions between citizens and non-citizens are largely meaningless in developing

<sup>50</sup>This decision was an exception and not the rule and in his decision, Judge Awang draws attention to the pressure imposed upon him to throw out these petitions: “In my view it is an insult to one’s intelligence to be given a directive over the phone that these petitions should be struck off without a hearing. . .” (*Daily Express*, 2001).

<sup>51</sup>These immigrants were (Harris Mohd Salleh vs. Ismail bin Majin, 1999):

Kassim Bin Ali	Identity card number H0508335
Anwar Identity	Identity card number H0512235
Kadir Labak	Identity card number H0454652

<sup>52</sup>The alien was identified as Sabturia and the news report identified her IC number.

countries such as Malaysia where citizenship is weakly institutionalized. Therefore, it becomes possible for illegal immigrants to gain access to social, political, and economic rights through false or falsely obtained documentation, a process I have called Documentary Citizenship.

Yet according to most studies of immigration politics, documentary citizenship should not be occurring, because they presume that when it comes to national and state voting, the lines between citizen and immigrant are sharply drawn. One has political suffrage; the other does not. But most developing countries have only recently begun to control migration and to certify identity. Many developing states with large rural populations are thin on documentation of any aspect of identity: there are no birth certificates, marriage certificates, or death certificates. The distinctions between citizens and immigrants do not matter for sections within the state that seek to change the ethnic composition of the region for political reasons. If conversion to Islam or internal migration from West Malaysia does not suffice, then immigration of fellow Muslims from Southern Philippines will. But in the eyes of the local natives of Sabah—the non-Muslim Kadazandusuns and the Muruts, who at one time formed the largest ethnic group(s) in the state—native groups have become foreigners in their own land. As natives, if they lack a birth certificate because they live in rural areas or in the interior (as many do), they cannot vote or become citizens. Yet a Filipino who takes a boat from Zamboanga in the Philippines and reaches Sabah with just a few hundred Ringgit can acquire a blue IC and the right to vote. By acquiring documentary citizenship, illegal immigrants can and do become a part of the electoral process in the host state, a right that, according to the laws of the state, should be restricted to real citizens.

The problem this article poses is this: the international system is based on distinct states having exclusive citizenries. According to international norms, a person can only belong to one state at a time. Concomitantly, naturalization is the only path to citizenship with full political rights. True, dual citizenship is increasing, but this is possible only with the permission of either one or both states. In sum, political exclusion of non-citizens is the basis of an international politics that equates national interest with the interest of citizens only. But if non-citizens and citizens *both* represent the state, then the traditional system of mutually exclusive citizenries will need considerable reconceptualization. Being an illegal immigrant is, in many developing countries, no different from being a citizen. In weakly institutionalized states, this is what we are witnessing. Non-citizens come through porous borders and reside in unmarked populations. Acquisition of documents, which is to say documentary citizenship, allows illegal immigrants the status of citizens. Possession of identical documents erodes the sharp distinctions between citizens and non-citizens, allowing both equal access to political rights. If illegal immigrants have access to political suffrage, they are able to determine who holds public offices, and thus indirectly to control national policies. In such circumstances, the notion of the national interest and the state's pursuit of it are thrown into crisis. The reality of both citizens and illegal immigrants competing on an equal footing to set the policies of states requires major rethinking of the role of illegal immigration in international politics.

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