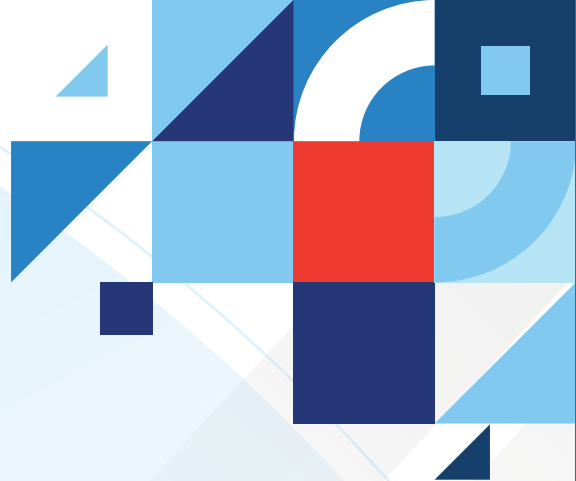


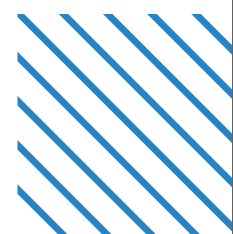
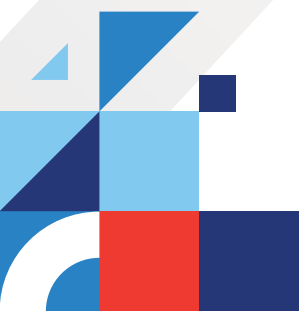


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RESEARCH PAPER SERIES ON THE UNDOCUMENTED POPULATION IN SABAH:

**Paper 1: Introduction to the Status of
Undocumented Persons in Sabah, Malaysia**



PAPER 1: Introduction to the Status of Undocumented Persons in Sabah, Malaysia

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1. INTRODUCTION AND RATIONALE

Globally, an estimated 850 million people are undocumented.¹ Many of these people face human rights violations that include the denial of access to education, healthcare, employment and freedom of movement.² Issues related to the lack of documentation must be urgently addressed to protect minority or disadvantaged groups, such as women and children, from poverty, discrimination, exploitation and abuse. These challenges constrain progress towards the 2030 Agenda's promise to 'leave no one behind'. Failure to respond to these issues will negatively impact national efforts to achieve the Sustainable Development Goals (SDGs) generally and specifically the target of providing a legal identity for all, including via birth registration, by 2030.

In the State of Sabah, Malaysia, a large population of undocumented persons continue to lack access to equal opportunities. They are deprived of access to basic services such as education, health and employment. Sabah ranks as Malaysia's poorest state, with a poverty rate of 19.7 per cent, nearly three times higher than the national average (2022 data). GDP growth is also slower, at only 1.4 per cent, against the national growth rate of 8.7 per cent (again 2022)³. There is no official estimate of the size of the undocumented population in Sabah. Department of Statistics Malaysia (DOSM) population estimates for 2023 show that Sabah's non-citizen population accounts for 25.6 per cent of the State's population of 3.6 million people, some 919,800 people⁴. However, this figure is not a good measure of the undocumented population, as it includes documented non-citizens, and likely also under-records certain groups of undocumented households. Regardless, this population in Sabah is significant and likely to be among the world's most concentrated.



Despite the State Government's efforts to find solutions, complex political dynamics compounded by sensitivities around undocumented persons have constrained meaningful dialogue and the adoption of effective policies to address the challenges undocumented persons face. The most significant initiative by the State Government of Sabah was the establishment of a Sabah Special Committee on Citizenship Status (JKKSK), and a Special Task Force on Undocumented Sabah residents. Jointly chaired by the Home Minister and Chief Minister of Sabah, the JKKSK is mandated to recommend the registration of children and individuals under the age of 21 as citizens, in accordance with Article 18 of the Federal Constitution – General Provisions on Registration. On the other hand, the Special Task Force is placed under the purview of the Committee of Foreigners Management in Sabah (JKPWAS), which is being co-chaired by the Home Minister and the Sabah Chief Minister, to address the longstanding issue of undocumented residents in the state.⁵

In line with the Sabah Maju Jaya (SMJ) Development Plan 2021-2025 and the Twelfth Malaysian Plan (12MP), a holistic approach and durable solution are needed to achieve the 2030 Agenda and the SDGs in Sabah. Moreover, the approach must recognize that documentation is a core development requirement for legal identity. This paper series aims to advance discussions and analysis towards the shared goal of identifying sustainable solutions and strengthening collaborative progress.

¹ Clark, J., Metz, A., & Casher, C. (2023, February 6). *850 million people globally don't have ID—why this matters and what we can do about it*. World Bank Blogs. <https://blogs.worldbank.org/digital-development/850-million-people-globally-dont-have-id-why-matters-and-what-we-can-do-about>

² UNHCR, The UN Refugee Agency

³ Department of Statistics Malaysia. (2022). *Banci Malaysia 2022*. DOSM.

⁴ Department of Statistics Malaysia 2023, Principal statistics of population on census year, Sabah (p.47)

⁵ Lee, S. (2023, March 21). Sabah testing out digital systems for special foreigners card. The Star.

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2.BACKGROUND

The global understanding of the term 'undocumented person' is an individual without sufficient documentation proving their legal identity. Hence, they cannot enter and remain in a country to work and access key services. Crucially, undocumented persons are not necessarily foreigners; they are simply all individuals who lack legal identities.

This paper series recognizes that undocumented status is not a binary variable in Sabah but rather a spectrum and that several diverse groups (nationals and non-nationals) are affected. Nevertheless, all populations in this series of papers lack an *effective legal identity* - the ability to establish their basic rights to access services and livelihoods (refer to the Documentation Paper for further discussion). While the Government of Malaysia and others have embarked on several studies of the undocumented population, as noted above, there is no accurate estimate of the number of undocumented individuals living in Sabah.

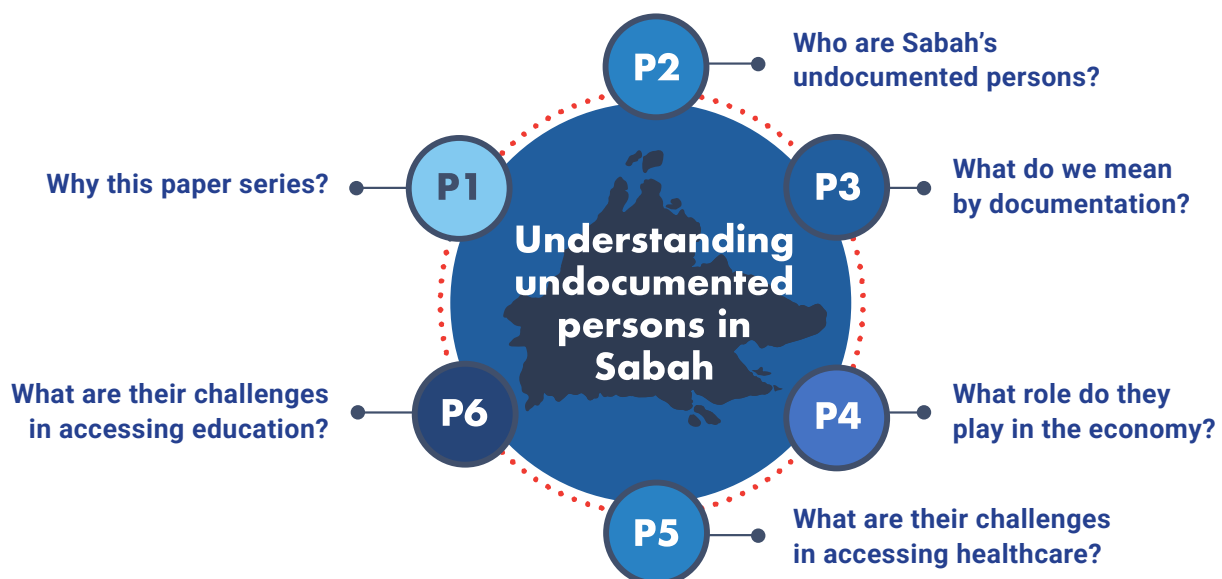
This series challenges perceptions of the undocumented as monolithic with little understanding of the differences among the various groups or the reasons they are undocumented. It has also limited the quality of the policy debate. Their varied lived experiences and circumstances

have not been fully assessed, and as a result, there is inadequate information to develop both more holistic and tailored solutions for undocumented persons.

The papers aim to lay the groundwork for addressing the above knowledge gap. Rather than focusing on the size of the undocumented population, which is difficult to determine, we focus on improving the understanding of undocumented persons' situational context, including their socio-economic conditions, based on the latest available official data and, more importantly, the supporting sample survey undertaken by Universiti Malaysia Sabah (UMS) as outlined further below.

These questions involve a broad range of issues, including migration, livelihoods and economic activity, living conditions, health, education and documentation. The responses aim to enrich the policy discussions while simultaneously demonstrating the complexity and interconnectedness of issues and factors that impact undocumented persons. Using an inclusive survey that draws on the lived experiences and views of thousands of undocumented persons, the series' six papers (see Figure 1) provide findings that challenge existing frameworks and interpretations.

Figure 1: The Sabah Series



The papers aim to foster new thinking on undocumented people in Sabah, recognizing their reality as a settled population and their value to Sabah's economy. Sadly, common analyses of undocumented persons are often at loggerheads, grappling with different assumptions about the community.

The media and public discourse commonly present three profiles:

- ◆ First, undocumented persons are viewed as a security problem, in violation of the law by remaining in Sabah and, in some cases, contributing to security risks for the State. These risks can include illegal economic activities, trafficking of persons and contributing to concerns about disease, such as COVID-19. Given its origins in views of the law, this frame can be seen as a “legal” one.
- ◆ Second, undocumented persons are perceived as being foreign workers, contributing to the State's development by engaging in essential jobs, especially in agriculture. This has resulted in various programmes to regularize workers, albeit for limited periods, to benefit the economy. This frame's narrow focus on the economy can be seen as an “economic” one.
- ◆ Third, undocumented persons are viewed as victims, unfairly subjected to inconsistent policies and lack basic rights. This ‘victims’ frame places undocumented persons within a strict interpretation of human rights obligations and prioritizes humanitarian issues above all others.

Each of these frameworks gives rise to different sets of policies over time. Policy responses have vacillated from treating undocumented persons as criminals to granting them greater access to work and improving their living conditions. The treatment of undocumented persons has spanned crackdowns and amnesties to the revival of old document schemes and the introduction of new programmes. The varied responses to undocumented persons have also been at loggerheads. Proponents of the ‘Security’ and ‘Economic’ narratives have argued they are realists, while those promoting rights and humanitarian issues are seen as idealists. These disputes have become increasingly politicized.

Our assessment examines the potential benefits of regularizing undocumented persons' status for the State of Sabah. We argue that improvements in well-being for undocumented persons will also contribute to shared prosperity and development for all Sabahans. By contextualizing the dialogue based on in-depth data analyses and drawing attention to the perspectives and experiences of undocumented persons, the paper series offers new entry points for policy engagement.

We believe a holistic positive approach that regularizes migration recognizes undocumented persons' realities and situations, strengthens economic opportunities and security for all in Sabah, and offers an entry point for equitably and sustainably addressing the challenges undocumented persons face. The objectives of the paper series align with our shared goal of implementing the 2030 Agenda and the progressive realization of human rights. This paper series underscores the shared commitment to supporting Sabah's progress towards the SDGs, notably reduced poverty (SDG 1), zero hunger (SDG 2), good health and well-being (SDG 3), quality education (SDG 4), gender equality (SDG 5), clean water and sanitation (SDG 6), decent work and economic growth (SDG 8), reduced inequality (SDG 10), responsible consumption and production (SDG 12) and peace, justice and strong institutions (SDG 16). SDG Indicator 10.7.2⁶ also explicitly highlights the need for a clear policy on migration, which the paper series seeks to inform and strengthen.

⁶ United Nations. (n.d.). SDG Indicator 10.7.2 on Migration Policies | Population Division. Retrieved December 18, 2023, from <https://www.un.org/development/desa/pd/data/sdg-indicator-1072-migration-policies>

3.OBJECTIVES

Following the State Government of Sabah's request to the United Nations (UN) in 2018 to strengthen knowledge of issues related to undocumented persons towards developing a holistic approach and solution to pressing challenges, the UN established a multi-agency team comprising eight agencies to partner with researchers from the UMS. The UMS undertook a large sample survey of undocumented persons in Sabah from 2018-2020 (herein referred to as the UMS UP Survey) and held preliminary focus-group discussions with relevant government officials. The UN team subsequently analysed the survey and focus group findings to prepare policy recommendations to strengthen and expand policy responses to support Malaysia's sustainable development.

The analysis of these findings is presented in five further (thematic) papers: (i) Profiling and Mapping, (ii) Documentation, (iii) Livelihoods and Economy, (iv) Education and (v) Health (see Table 1 below). The six papers (i.e., including this Introduction) come together as a series that presents analyses and findings. They aim to serve as a strong foundation for further studies and for drawing important analytical inferences. The analytical reassessment of the issues is evidence-driven and showcases multifaceted challenges. These are summarized in the table below.



The objectives of the paper series are to:

- ◆ Understand the character and real-life challenges undocumented persons face and assess the economic and social cost of inaction.
- ◆ Assess the social parameters (specifically referring to health and education) of Sabah's undocumented persons through qualitative and quantitative methodologies.
- ◆ Identify and more comprehensively define profiles of undocumented persons.
- ◆ Develop a profile of undocumented persons' demography, livelihoods, well-being, access to basic services, documentation status and economic role.
- ◆ Bring together existing scholarship on issues related to undocumented persons and integrate previous analysis/research into the current research conducted for the paper series.
- ◆ Develop policy recommendations to address issues impacting undocumented persons.

Table 1: Overview of the Sabah Paper Series on the undocumented population**Paper 1: Introduction**

As provided here, setting out the aims, research directions and structure of the paper series.

**Paper 2: Profiling and mapping**

Drawing on the UMS Survey, this paper profiles and maps the undocumented population and sub-populations, and reviews available demographic data to understand their regional connections and origins. The paper develops an eight-way classification rooted in ethnicity: Suluk-Tausug, Bajau Laut, Bajau Ubian, Bugis, those with ties to Indonesia, those with ties to the Philippines, the Timorese and indigenous persons. It also aims to provide additional insights into differences among undocumented persons in Sabah, which are then taken up in later papers.

**Paper 3: Documentation**

Focusing on legal identity that arises from documentation status, and the profiles of various communities, this paper examines the differences in documentation, and highlights risks associated with not having documentation. It provides background information on documentation practices in Sabah and lists the various types of documentation issued to undocumented persons. The paper considers document accessibility linked to various origin profiles and communities, including women and children, and crucially develops the key concept of *effective legal identity*.

**Paper 4: Livelihoods and the economy**

This paper examines undocumented persons' livelihoods including earnings, saving and lending, at the household and individual levels. It explores poverty and inequality among the undocumented population. The paper also highlights issues and challenges related to informality and productivity at the macro-level. In building a win-win case for reform, the paper considers how and why addressing documentation, reducing informality and improving undocumented persons' livelihoods can contribute positively to Sabah's economy.

**Paper 5: Education**

This paper focuses on the schooling and educational attainment of the undocumented population. It examines provision via Alternative Learning Centres (ALCs) and the outcomes, and consequences. It draws both on the UMS UP survey and pathbreaking (unpublished) research commissioned by UNICEF. It makes bold recommendations for reform.

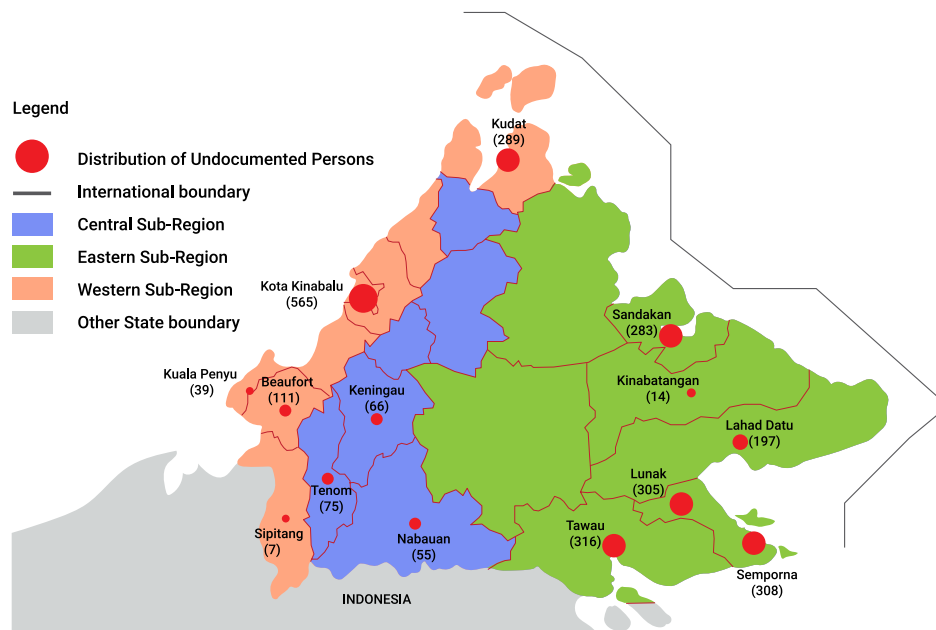
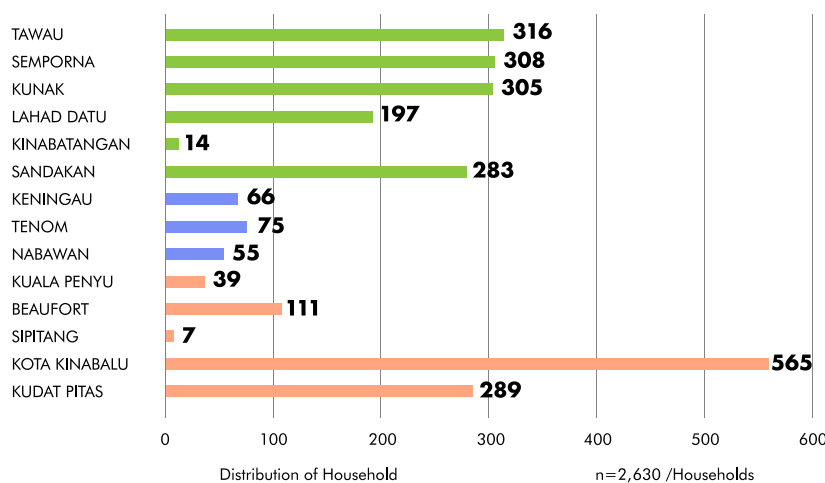
**Paper 6: Health**

This paper examines the health status of undocumented persons in Sabah, including their access to essential health services, and discusses the benefits of expanding health coverage. These issues are purposely examined in the wider Sabahan health context – the systemic challenges and the epidemiology of the State. The importance of inclusive healthcare has been underscored by outbreaks of measles and polio and specifically, the COVID-19 pandemic, which disproportionately impacted Sabah from late 2020. These experiences have demonstrated that extending health care to all people, including undocumented persons, benefits all Malaysians.

4. METHODOLOGY AND SAMPLING

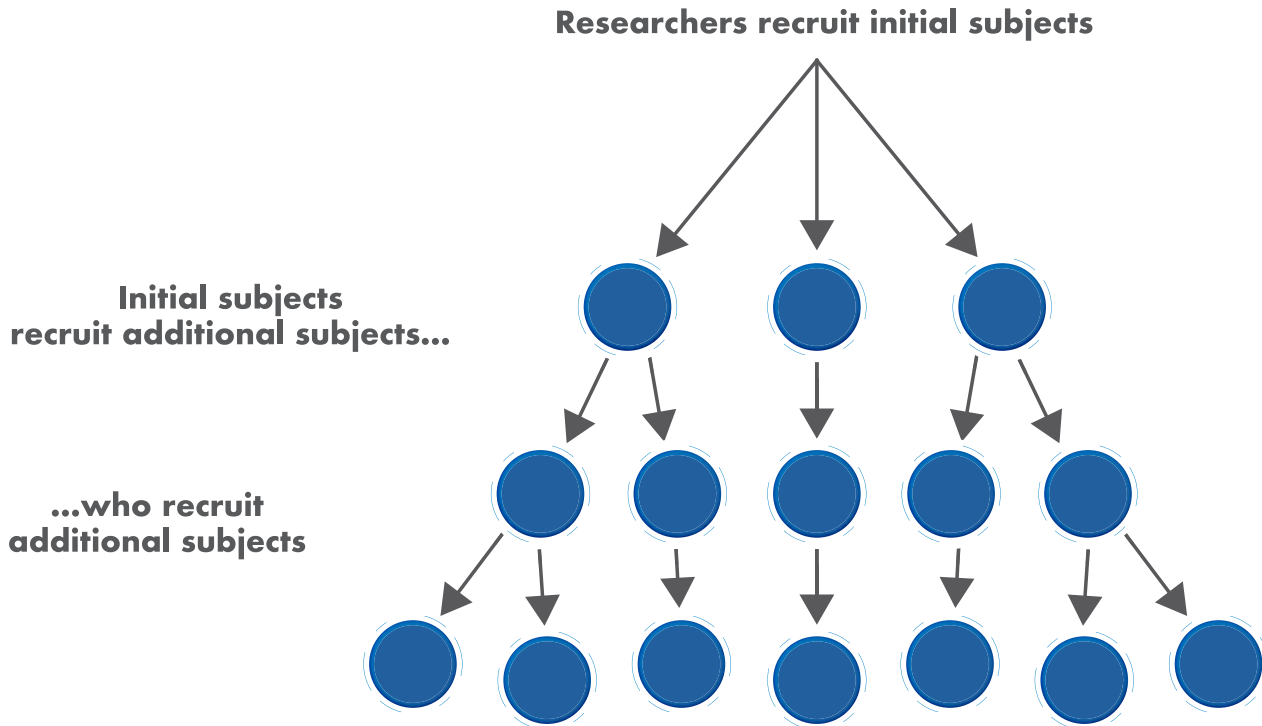
The paper series adopts multiple sources and methods. The primary source involves a survey of 13,398 undocumented persons living in 2,630 households conducted in Sabah from 2018-2020. Working with State government authorities, the UMS team selected 14 districts for the survey based on perceived population/settlement concentrations of undocumented persons and their overall accessibility. Individual respondents were selected in collaboration with local authorities, community leaders and village head persons. Only undocumented persons above the age of 18 were surveyed. The survey questionnaire included requests for information on respondents' households, including their children and other dependents.

Figure 2: Survey Sampling



Given the challenges of surveying a hidden population, a 'snowball sampling method' was selected for the UMS UP survey (see Figure 2 below). This approach is also referred to as *chain sampling*, *chain-referral sampling* and *referral sampling*, and it is a nonprobability sampling technique where existing study subjects recruit future subjects from their networks. Thus, the sample group is said to grow like a *rolling snowball*. As the sample builds up, enough data are gathered to be useful for research. This sampling technique is often used in hidden populations, such as drug users or sex workers, which are difficult for researchers to access.

Figure 3: Snowball sampling methods



Unfortunately, as sample members are not randomly selected from a sampling frame, snowball samples are subject to numerous biases. For example, people who have many friends are more likely to be recruited into the sample. It was widely held that making unbiased estimates from snowball samples is impossible. A variation of snowball sampling called respondent-driven sampling has been shown to allow researchers to make asymptotically unbiased estimates from snowball samples under certain conditions – such as randomizing initial selection and subsequent referrals as far as possible and undertaking efforts to *clean* the collected data to ensure greater representativeness.

While the UMS made efforts to secure greater representativeness, the sampling method was often compromised by the ground realities faced. Government officials and local authorities provided referrals. In addition, respondents were often selected based on accessibility, with those living in more remote areas less comprehensively assessed. The resulting data cannot, therefore, be regarded as scientifically representative.

However, the sample covers the geographical areas where undocumented people live, including multiple remote, disproportionately rural locations; ex-post efforts were also made to clean the dataset, correcting and removing unreliable records. While the reported results and inferences should be treated cautiously, they still indicate trends and patterns. We remain confident that the survey provides valuable data to improve the understanding of undocumented persons and is the most comprehensive study of this population to date.

The survey included 170 questions in 12 sections and was organized into two parts: the first was completed by the lead respondent alone, recording their personal circumstances; the second referred to their households as a whole, recording details of all the people they live with. It is emphasized that the lead respondent was not necessarily the head of the household. A copy of the questionnaire is available as an annex to the paper series.

The UMS team also conducted a series of focus group discussions with government agencies, further complemented by in-depth interviews of government and civil society representatives in Sabah following the analysis of the survey findings. More than 50 interviews were undertaken with stakeholders in Sabah.

The report also draws on data collated by the Department of Statistics Malaysia (DOSM) and prepared by other Malaysian government departments to complement the survey research. There is a special focus on available non-citizen data, the closest parallel source of information. Non-citizen data includes both documented and undocumented persons. Research has shown gaps in the statistical data for Sabah, including that the engagement of non-citizens should be seen as part of an ongoing effort to enrich the available data.⁷

Finally, several papers use separate, often primary and sometimes unpublished, research undertaken and/ or commissioned by UN agencies. This is particularly so in the education and health papers; additional sources are fully attributed accordingly. Several papers also supplement graphical and tabular presentations of the UMS data with statistical analyses of varying complexity. These include indexing and ordering (in the documentation paper) and regression and correlation (in the economy and health papers). More detailed descriptions of the approaches and techniques are provided within each paper.

The paper series also draws on published authoritative sources, such as academic research, policy papers and materials authored by NGOs and think tanks. These are also referenced within the respective papers.

5. DEFINITIONS AND TERMINOLOGY

Throughout this paper series, ‘undocumented person’ refers to any individual who lacks sufficient officially recognized documentation and *effective legal identity*. This can include either a lack of a right to legal identity documentation, absence of legal status documentation, or no documentation altogether. This is an intentionally broad definition to capture the variation of experience among undocumented persons. Importantly, this report does not look at statelessness or the risk of statelessness, as the issues involved are beyond the purview of this project.

In practice, undocumented persons are considered by the authorities as those who do not possess a legal identity document (e.g., identification card/ document or passport) nor legal permission to stay or work (right to status/stay) in the State of Sabah. But the de facto position is more complex. Paper 3 on Documentation provides a more detailed explanation.⁸

The terminology used to describe undocumented persons in Sabah has generally been pejorative. In Sabah, these individuals are considered ‘*pendatang asing tanpa izin*’ (foreign migrants

without permission or “PATI” or “PTI”). This label reflects the predominant lens of addressing undocumented persons as a legal one. This assumes undocumented persons to be “illegal”, “foreign” and “migrants”. The papers reassess the validity of these assumptions by asking about documentation, the origin of undocumented persons and their history of migration.

Indeed, the core premise of this paper series is anchored around a deliberate shift from assumptions about undocumented persons to facilitate a better understanding of their identities, experiences and needs, underpinned by research and data. This includes eliminating language that further stigmatizes the undocumented community. It facilitates open discussion, offering a new perspective to promote diverse viewpoints and viable policy solutions. By embracing fresh perspectives, we enrich the discourse and address complex challenges more effectively, leading to a more inclusive and dynamic society. The paper series proposes equitable and sustainable solutions that deliver win-win outcomes for all Sabahans.

⁷ Tey, Peng, N., Talha, R., Rahman, E. N. A., & Ismail, M. F. (2021). Spatial Demographic Data for Planning and Research. *Planning Malaysia*, 19(15), 89–101.

⁸ This operational definition is based on the requirements of the Sabah State government and its agencies, such as the Immigration Department and the National Registration Department. It draws from focus group discussions between the UMS team and government officials.

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