

Joint Submission to the
Committee on the Elimination
of Discrimination against Women

88th session
13 – 31 May 2024

MALAYSIA

Family Frontiers, Nationality for All, the Statelessness
and Dignified Citizenship Coalition – Asia Pacific,
the Global Campaign for Equal Nationality Rights,
Equality Now and
the Institute on Statelessness and Inclusion



FAMILY FRONTIERS



NATIONALITY FOR ALL

Advancing the right to a nationality in the Asia-Pacific region



Global
Campaign
for **Equal**
Nationality
Rights



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at the 88th Session.

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Introduction

1. Family Frontiers (FF),¹ Nationality for All (NFA),² the Statelessness and Dignified Citizenship Coalition – Asia Pacific (SDCC – AP),³ the Global Campaign for Equal Nationality Rights (GCENR),⁴ Equality Now⁵ and the Institute on Statelessness and Inclusion (ISI)⁶ make this joint submission to the Committee on the Elimination of Discrimination against Women (CEDAW) to be used to inform the Committee’s review of Malaysia. This joint submission expresses our concerns regarding gender discrimination in Malaysia’s nationality law, as enshrined in the Constitution of Malaysia, including:
 - I. The inability of women married to foreigners to confer their citizenship on their children born abroad on an equal basis with men;
 - II. Women’s inability to confer citizenship on spouses, a right reserved for men; and
 - III. The inability of unmarried Malaysian men to confer citizenship on children born out of wedlock on an equal basis with unmarried women.

Malaysia’s International obligations

¹ [The Association of Family Support & Welfare Selangor & KL \(Family Frontiers\)](#) is a nonprofit organization established with the aim of advancing, promoting and strengthening the family unit so that no family is left behind. It acts as an umbrella body for the Foreign Spouses Support Group (FSSG) and the Malaysian Campaign for Equal Citizenship.

² [Nationality For All \(NFA\)](#) was formed from the work undertaken by the Statelessness Network Asia Pacific (SNAP) to build a regional civil society movement on addressing statelessness in the region. With the vision of ensuring nationality for all, NFA works closely with stateless persons, persons affected by statelessness, grassroots organizations, activists, and national NGOs.

³ [The Statelessness and Dignified Citizenship Coalition – AP](#) is a regional coalition focused on addressing statelessness in the Asia-Pacific region.

⁴ [The Global Campaign for Equal Nationality Rights](#) mobilizes international action to end gender discrimination in nationality laws through its coalition of national and international organizations.

⁵ [Equality Now](#) is an international human rights organization with ECOSOC status and whose mission is to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Equality Now is the author of [‘The State We’re In: Ending Sexism in Nationality Laws – 2022 Edition – Update for a Disrupted World’](#).

⁶ [The Institute on Statelessness and Inclusion \(ISI\)](#) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realizing and protecting everyone’s right to a nationality. The Institute has made more than 130 country specific submissions to UN human rights bodies on the right to a nationality and the rights of stateless persons.

2. In addition to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Malaysia is a party to only two of the other core human rights instruments: the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). Many of Malaysia's obligations as enshrined in the CEDAW, CRC and CRPD are provided for by existing domestic legislation. However, these are usually not applied in practice. Malaysia has not yet acceded to other international human rights instruments. For example, Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), the 1951 Convention relating to the Status of Refugees (Refugee Convention), the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the ILO Convention No. 169 on Indigenous and Tribal Peoples, among others.⁷ The human rights instruments to which Malaysia has acceded – CEDAW, CRC and CRPD – provide for the right to a nationality and equal nationality rights between women and men. However, the State has placed reservations on relevant provisions of these instruments as follows:⁸

- a) CEDAW: Article 9(2) (nationality of children); Article 16(1)(a) (right to enter into marriage); Article 16(1)(c) (rights during marriage and dissolution); Article 16(1)(f) (guardianship); Article 16(1)(g) (same personal rights between spouses); and Article 16(1)(h) (same property rights for spouses). Malaysia has also stated that the application of CEDAW in Malaysia is subject to compatibility with the Federal Constitution and Syariah (Islamic) law;
- b) CRC: Article 2 (non-discrimination); Article 7 (name and nationality); Article 14 (freedom of thought, conscience and religion); Article 28(1)(a) (free and compulsory education at the primary level); and Article 37 (freedom from torture or other cruel, inhuman or degrading treatment or punishment and arbitrary detention). With respect to Article 28 paragraph 1 (a) of the Convention, the Government of Malaysia has declared that primary education in Malaysia is made compulsory. Malaysia has also stated that the application of the CRC at a national level is subject to its compatibility with the Federal Constitution of Malaysia (Federal Constitution);⁹ and
- c) CRPD: Article 15 (freedom from torture, or cruel, inhuman or degrading treatment or punishment) and Article 18 (freedom of movement and nationality).

At its previous UPR in 2018, Malaysia rejected recommendations to remove the abovementioned reservations to CEDAW.¹⁰

3. It must be noted that in addition to treaty obligations, as a Member State of the United Nations, Malaysia is obligated by the UN Charter to promote *“universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to*

⁷ To know more about Malaysia's international obligations, see: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

⁸ Ibid.

⁹ Federal Constitution of Malaysia, 31 August, 1957, available at <http://www.refworld.org/docid/3ae6b5e40.html>.

¹⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum, UN Doc. A/HRC/40/11/Add.1, para. 7-8.

*race, sex, language, or religion.*¹¹ These human rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (UDHR), many of which are also recognised as principles of customary international law.¹²

4. Furthermore, as a member State of the Association of Southeast Asian Nations (ASEAN), Malaysia is a signatory to the 2012 ASEAN Human Rights Declaration. Although this declaration is a non-binding document, it nonetheless reflects consensus as to the importance of human rights in the region.¹³
5. The combined effect of Malaysia's lack of implementation of its domestic legislation that incorporates its international obligations, reservations to CEDAW, CRC and CRPD, and the lack of accession to other relevant human rights instruments is of great concern in the context of gender discriminatory nationality laws and statelessness in Malaysia, as it implies that the State does not view the right to a nationality of paramount importance.

Previous recommendations

6. In 2018, CEDAW recommended Malaysia to *“Amend all provisions of the Federal Constitution that deny women equal rights with respect to the transmission of their nationality to their children and foreign spouses. It also recommends that the State party ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.”*¹⁴
7. During the UPR in the same year, Malaysia received three recommendations on ensuring gender equality in national legislation and policies in respect of the conferral of nationality to children and/or spouses (Belgium, Haiti, Iceland), three recommendations on withdrawing reservations, inter alia, to article 9 CEDAW (Turkey, Sweden, Norway) and one recommendation on protecting the right to nationality and preventing statelessness of children born to Malaysian citizens (Kenya).¹⁵ All these recommendations were noted by Malaysia.¹⁶
8. Malaysia was also reviewed in January 2024 during the 4th UPR cycle. Malaysia received eight recommendations on allowing Malaysian women the right to pass on their citizenship to their overseas-born children. Three recommendations were made on removing the reservation to Article 9.2 of CEDAW. Finally, the country also received nine recommendations on addressing statelessness.¹⁷ To date, the Government's response to these recommendations has not been published.

¹¹ Article 55(c) of the Charter of the United Nations. According to Article 56 of the Charter, it is the obligation of all member states of the UN to take “joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

¹² International Law Commission, “Draft Articles on Diplomatic Protection with Commentaries”, 58th session, Yearbook of the International Law Commission, Vol. II, Part Two, 2006, p. 49.

¹³ ASEAN Human Rights Declaration, 2012.

¹⁴ Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the combined third to fifth periodic reports of Malaysia’, CEDAW/C/MYS/CO/3-5, para. 34.

¹⁵ Report of the Working Group on the Universal Periodic Review, A/HRC/40/11, 7 January 2019, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/001/96/PDF/G1900196.pdf?OpenElement>.

¹⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum, UN Doc. A/HRC/40/11/Add.1, para. 7-8.

¹⁷ Human Rights Council, ‘Report of the Working Group of the Universal Periodic Review: Malaysia’, A/HRC/56/11, 14 March 2024.

Gender discrimination in Malaysia's Citizenship Law

9. The Federal Constitution of Malaysia provides the primary legal framework for the acquisition, confirmation and loss of Malaysian citizenship and contains a number of gender-discriminatory provisions¹⁸ with respect to the ability of women and men to transfer their citizenship to their children (Part II of the Second Schedule to the Federal Constitution). The Federal Constitution denies the right of “legally” married Malaysian women to confer citizenship by ‘operation of law’ (automatic citizenship) on their children born outside Malaysia, a right reserved for “legally” married Malaysian men.
10. Additionally, the Federal Constitution does not allow men to transfer their citizenship to their children if the child is born out of a legally recognized marriage.
11. Malaysian women are also denied the right to confer citizenship on a non-citizen spouse, a right reserved for Malaysian men. Unlike a non-citizen spouse of a Malaysian man who can apply for citizenship after two years on a Permanent Residence, a non-citizen spouse of a Malaysian woman can only acquire citizenship through naturalisation which would require residing in Malaysia on a Permanent Residence for 10 out of 12 years. Obtaining Malaysian Permanent Residence (PR) status is challenging for non-citizen spouses of Malaysian citizens due to an unclear and inconsistent application process. While the eligibility criteria include a minimum of 5 continuous years of residency in Malaysia, there is no defined timeframe for approval, often resulting in rejections without explanation.¹⁹
12. Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women recognizes such laws as a form of discrimination and provides that women are to have “equal rights with men to acquire, change or retain their nationality” and “with respect to the nationality of their children.” In its General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee confirmed that Article 9 extends an obligation to ensure equality between men and women in the ability to confer their nationality to their spouse.
13. By denying women equal nationality rights with men, Malaysia’s citizenship law undermines women’s status as equal citizens and their equality in the family. A root cause of statelessness, gender discrimination in Malaysia’s citizenship law results in severe consequences for affected children and their families, including obstacles to accessing education, healthcare, and social services. Women’s inability to equally confer citizenship on spouses further entrenches traditional stereotypes regarding the primacy of the male spouse’s legal identity. Women’s inability to equally confer citizenship on spouses also limits women’s ability, in practice, to freely choose a spouse in violation of Article 16. Additionally, by denying Malaysian men the right to confer citizenship on children born outside of legal marriage on an equal basis with Malaysian women, the State is implicitly endorsing the notion that the responsibilities of

¹⁸ Equality Now, ‘Annex of Laws, March 2022, available at:

<https://equalitynow.storage.googleapis.com/wp-content/uploads/2022/07/06161241/ANNEX-OF-LAWS-Updated-Dec-6th-2023.pdf>.

¹⁹ New Straits Times, ‘Be more welcoming of foreign spouses’, 21 December 2023, available at:

<https://www.nst.com.my/opinion/letters/2023/12/993109/be-more-welcoming-foreign-spouses>.

parenting 'naturally' belong exclusively to the mother when children are born out of wedlock. This is contrary to the idea of equality between the sexes, and undermines women's equality in professional, public, and cultural life.

Consequences of gender-discriminatory nationality laws

14. Due to gender discrimination in Malaysia's citizenship laws, Malaysian mothers have reported facing the heavy burden of bureaucratic processes, with regard to securing visas for their non-citizen children at Malaysian immigration. They have to make repeated visits to immigration for yearly renewals. Non-citizen children of Malaysians below six years old are only given a six-month visa, while those who are of school-going age are required to apply for a Long-Term Social Visit Pass (LTSVP) or student visa. It is valid for one year and requires both the Malaysian parent and foreign parent to be present at each renewal. This is especially dangerous for mothers who are experiencing domestic violence or whose husbands remain overseas to support their stay in Malaysia.
15. Malaysian mothers are also faced with the burden of the high cost of maintaining non-citizen children in Malaysia such as private education, healthcare, visa charges, processing charges for a student visa and medical insurance. This is especially difficult for single parents.
16. There are significant links between women's citizenship rights, gender-based violence and women's autonomy. Unequal citizenship laws put Malaysian women and their children in a position of extreme vulnerability to adversity and violate their human rights. Women are more prone to experience a lack of autonomy, risk of gender-based violence, forced migration, difficulty returning to Malaysia and receiving the support of their extended family. The inability of the child to access fundamental rights on an equal basis in Malaysia, the economic strains on the family and the difficulty for the non-citizen spouse to secure employment in Malaysia, cause Malaysian women to face limited autonomy in choice of domicile and forced migration. While overseas, they are then bound to their spouses with little access to their rights and security as a Malaysian citizen. In this regard, women find it difficult to leave an abusive marriage because they are made to wholly depend on their non-citizen husbands for the citizenship of their children. Some women have also reported that the non-Malaysian status of their children remains a barrier for the Malaysian mothers to gain custody of their children. In the event the woman divorces the non-citizen spouse, they may still have to rely on their foreign ex-spouse to process the child's passport or other applications.
17. Non-citizen children of Malaysian women do not have equal access to affordable healthcare and public education. These children have limited access to public education. The current system only allows these children to attend school months after their Malaysian classmates joined the academic year. Consequently, they lose approximately two years of education in total. Additionally, they are also ineligible for schemes such as the Textbook Loan Scheme, Supplementary Food Programme and health programmes (dental care and vaccinations). There is a levy of RM120 for primary school and RM240 as payment in addition to the visa cost and medical insurance costs. Non-citizen children of a Malaysian parent are designated as foreigners in public medical facilities, which carry additional fees compared to citizens, as per the

2016 amendments to the Fees Act (Medical) 1951. Certain services such as vaccinations and dental checks which are normally provided for free to Malaysian children in public schools are not extended to non-citizen children of Malaysians. Children with disabilities or long-term health issues will be faced with exorbitant medical costs.

18. Due to the lengthy and inconsistent PR process and challenges in applying for and obtaining citizenship as spouses of Malaysians, non-citizen spouses, particularly women, face difficulties in accessing rights in the country. The lack of PR or citizenship makes financial and legal dependency on the Malaysian spouse inevitable. In the meantime, spouses remain on the LTSVP, which has a statement of prohibition from employment, leading to challenges in finding a job. This prohibition disproportionately impacts female non-citizen spouses, resulting in complete financial dependency on the Malaysian spouse.²⁰
19. The overall uncertainty surrounding PR and citizenship also puts non-citizen spouses at risk of separation from their Malaysian family, as they fear the inability to live long term in Malaysia with their Malaysian children following events like death, divorce or separation from a Malaysian spouse. Furthermore, male non-citizen spouses are not granted visas upon divorce and death of the Malaysian wife even when they share joint custody of the child. This places the burden of caregiving responsibilities solely on the divorced wife and adds to her challenges in meeting the child's emotional, financial and practical needs alone. In the tragic event of the Malaysian mother's death, if the non-citizen father cannot stay in the country to care for the child, it can disrupt the child's sense of stability, security and continuity of care, potentially causing long-term psychological effects.

Current developments in Malaysia's nationality laws

20. In December 2020, six Malaysian mothers and the civil society group Family Frontiers filed a case at the Kuala Lumpur High Court, challenging the constitutionality of Malaysian women's inability to confer citizenship on children born abroad on an equal basis with Malaysian men (*Suriani Kempe & Ors. v Government of Malaysia & Ors.*). The Kuala Lumpur High Court ruled in favour of the plaintiffs in September 2021, holding that Malaysian women have equal rights to confer citizenship on their overseas-born children.²¹ The Court of Appeal overturned the decision in August 2022 following the Government's appeal against the landmark decision.²² The Federal Court of Malaysia, in December 2022, granted leave for the plaintiffs to appeal the Court of Appeal's decision.²³ The case is scheduled to be heard at the Federal Court on 25 June 2024.

²⁰ Malay Mail, 'Allowing non-citizen spouses the right to work can strengthen Malaysia's economy while protecting families of Malaysians – Family Frontiers', 30 April 2022, available at: <https://www.malaymail.com/news/what-you-think/2022/04/30/allowing-non-citizen-spouses-the-right-to-work-can-strengthen-malaysias-eco/2056452>.

²¹ Ida Lim, 'Explainer: How the High Court decided Malaysian mothers' overseas-born children can be citizens too', Malaymail, 20 October 2021, available at: <https://www.malaymail.com/news/malaysia/2021/10/20/explainer-how-the-high-court-decided-malaysian-mothers-overseas-born-childr/2014564>.

²² Family Frontiers (FF), 'Update on the Saya Juga Anak Malaysia Campaign', August 2022, available at: https://files.institutesi.org/Decision_in_Family_Frontiers_Case.pdf.

²³ Ida Lim, 'Federal Court allows Malaysian mothers to pursue appeal for automatic citizenship for their overseas-born children', Malaymail, 14 December 2022, available at: <https://www.malaymail.com/news/malaysia/2022/12/14/federal-court-allows-malaysian-mothers-to-pursue-appeal-for-automatic-citizenship-for-their-overseas-born-children/45151>.

21. Following the Court of Appeal's September decision, a number of UN experts including the Working Group on discrimination against women and girls, the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and the Special Rapporteur on the human rights of migrants denounced gender discrimination in Malaysia's nationality law and called on the Government to fulfil its CEDAW obligations:

'We are deeply concerned that Malaysian women are not granted equal citizenship rights, which provide them with the much-needed safeguards and protection for them and for their offspring. The right to citizenship is a cornerstone for the enjoyment of other rights [...] Discriminatory nationality and citizenship laws embody patriarchal values that undermine women's basic human rights and expose them and their children to harm and further discrimination [...]

*We call on the Government to fulfil its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child by interpreting the law to ensure there is no contradiction between Article 14(1)b and Article 8(2) of the Federal Constitution, as amended by Parliament to prohibit discrimination against citizens based on descent, place of birth or gender in any law.'*²⁴

22. Malaysia's sixth periodic report of State parties – submitted to the Committee in April 2022 while the Government maintained its court challenge opposing women's equal right to confer citizenship – states that the Government is taking "continuous efforts to address the issue on citizenship" and planned to study proposed amendments related to women's ability to confer citizenship.²⁵ However, the significant and wide-ranging deleterious impacts of gender discrimination in Malaysia's citizenship law are extremely well-documented. Additionally, there is no justification to deny citizens equal rights based on their gender, in violation of international law.

23. We are heartened that Malaysia's current Government, formed in November 2022, stated its commitment²⁶ in February 2023 to amend the law to grant Malaysian women equal rights as men to confer automatic citizenship to overseas-born children; the Government has now begun the process of tabling the amendment in Parliament in March 2024.²⁷

24. Upon committing to amending the Constitution, the State established a special

²⁴ "Malaysia: UN experts denounce gender-discriminatory citizenship law", 5 September 2022, available at: <https://www.ohchr.org/en/press-releases/2022/09/malaysia-un-experts-denounce-gender-discriminatory-citizenship-law>; The experts: Melissa Upreti (Chair), Dorothy Estrada Tanck (Vice-Chair), Elizabeth Broderick, Ivana Radačić, and Meskerem Geset Techane, Working Group on discrimination against women and girls; Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children; Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Felipe González Morales, Special Rapporteur on the human rights of migrants.

²⁵ Sixth periodic report submitted by Malaysia, CEDAW/C/MYS/6, 16 May 2022, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMYS%2F6%20&Lang=en.

²⁶ Qistina Nadia Dzulqarnain, 'GE15: Pakatan includes citizenship rights, separation of AG, DPP's powers in manifesto', *The Vibes.com*, 2 November 2022, available at: <https://www.thevibes.com/articles/news/75978/ge15-pakatan-includes-citizenship-rights-separation-of-ag-dpps-power-in-manifesto>.

²⁷ Ragananthini Vethasalam & others, 'Home Ministry tables constitutional amendment to citizenship laws', *The Star*, 25 March 2025, available at: <https://www.thestar.com.my/news/nation/2024/03/25/home-ministry-tables-constitutional-amendment-to-citizenship-laws#:~:text=The%20bill%20seeks%20to%20amend,their%20citizenship%20for%20their%20children.>

committee²⁸ to review citizenship laws, and in June 2023, additional proposed amendments²⁹ to Part III of the Federal Constitution were revealed. Five of the proposed amendments are regressive,³⁰ aiming to curtail citizenship rights for different stateless categories, including abandoned and adopted children, thereby exacerbating the issue of statelessness. On 25 March 2024, two of the regressive amendments that would deny automatic citizenship for foundlings and stateless children were dropped due to growing pressure.³¹ However, three other regressive amendments remained, including the denial of automatic citizenship to children born in the territory to stateless permanent resident cardholders.

25. Another concerning amendment is proposed to Article 26(2), allowing the revocation of citizenship from a non-citizen wife of a Malaysian who acquires citizenship through registration if the marriage dissolves within two years of acquiring citizenship.³² Since Malaysia does not allow dual citizenship, women affected by this provision risk statelessness if their Malaysian citizenship is revoked without reacquiring their former nationality or obtaining a new one. This provision poses a significant risk for women, as it may trap them in abusive marriages, fearing the loss of citizenship status if they seek to leave such relationships.

26. Moreover, it was also revealed that the amendment to grant Malaysian women equal rights to confer citizenship on their overseas-born children will not be retroactive, thus failing to protect the citizenship status of existing children.³³ While we welcome the Home Minister's efforts in processing citizenship applications³⁴ under Article 15(2) for overseas-born children of Malaysian women and commitment to clear a backlog of 14,000 citizenship applications of various categories by December 2024, it remains the case that many more Malaysian mothers are still waiting on their children's citizenship status. The non-retroactive nature of the bill means that these citizenship issues will persist even if the amendment is passed. Additionally, it is concerning that many adult overseas-born children of Malaysian women, who do not currently have citizenship applications in process and have surpassed the age limit of applying for citizenship by registration, will be left out of consideration

²⁸ Soo Wern Jun, 'Home minister: Special committee set up to look into citizenship matters', *Malaymail*, 9 January 2023, available at:

<https://www.malaymail.com/news/malaysia/2023/01/09/home-minister-special-committee-set-up-to-look-into-all-citizenship-matters/49203>.

²⁹ The Star, 'Proposals accepted for constitutional amendments over citizenship', 12 June 2023, available at:

<https://www.thestar.com.my/news/nation/2023/06/12/proposals-accepted-for-constitutional-amendments-over-citizenship>.

³⁰ Kenneth Tee, 'Explainer: A breakdown of the proposed five citizenship law changes deemed 'regressive'', *Malaymail*, 8 November 2023, available at:

<https://www.malaymail.com/news/malaysia/2023/11/08/explainer-a-breakdown-of-the-proposed-five-citizenship-law-changes-deemed-regressive/100811>.

³¹ Ilyia Marsya Iskandar, 'Govt drops proposed amendments to citizenship law for foundlings', *New Straits Times*, 22 March 2024, available at:

<https://www.nst.com.my/news/nation/2024/03/1029103/govt-drops-proposed-amendments-citizenship-law-foundlings>.

³² Rahmat Khairulrijal, 'Malaysian Bar calls for govt to halt amendments regarding citizenship', *New Straits Times*, 13 March 2024, available at:

https://www.nst.com.my/news/nation/2024/03/1025240/malaysian-bar-calls-govt-halt-amendments-regarding-citizenship#google_vignette.

³³ Luqman Hakim, 'Citizenship amendment for children of Malaysian mothers not retroactive', *New Straits Times*, 25 March 2024, *New Straits Times*, available at:

<https://www.nst.com.my/news/nation/2024/03/1030420/citizenship-amendment-children-malaysian-mothers-not-retroactive>.

³⁴ Faiz Zainudin, '80% of nearly 4,000 citizenship applications approved, says Saifuddin', *FMT*, 19 March 2024, available at:

<https://www.freemalaysiatoday.com/category/nation/2024/03/19/80-of-nearly-4000-citizenship-applications-approved-says-saifuddin/>.

27. The Citizenship Amendment bill was tabled for its first reading in the lower house of the Malaysian Parliament on 25 March 2024, and its second reading on 27 March 2024. However, the 27 March session was unexpectedly adjourned without an opportunity for Members of Parliament to debate the bill. The next Parliament session is expected to convene from 24 June to 18 July 2024.³⁵
28. We remain deeply concerned by the injustice and suffering faced by Malaysian women, girls, and affected families due to the denial of equal nationality rights. We hope the Government proceeds with the debate of the bill in the next parliamentary session and ensures the amendment to grant Malaysian women equal rights to confer citizenship on their children **retroactively**. Additionally, we hope the Government drops the other regressive amendments that could exacerbate statelessness.

Recommendations

29. Based on the above information, the co-submitting organisations urge the Committee to make the following recommendations to Malaysia:
- I. Amend all provisions of the Federal Constitution that deny women equal rights regarding the transmission of citizenship to their children and non-citizen spouses, specifically:
 - a) Amend Sections 1(b) and 1(c) of Part II of the Second Schedule of the Federal Constitution to grant Malaysian women equal rights as men to confer citizenship by 'operation of law' on their overseas-born children without further delay. The amendment must be retroactive to ensure all Malaysian women and their existing children are protected and enjoy equal rights;
 - b) Amend Article 15(1) of the Federal Constitution to grant Malaysian women equal rights as men to confer citizenship by 'registration' on their non-citizen spouses.
 - II. Implement a streamlined Permanent Residence (PR) process for non-citizen spouses, ensuring timely access and transparency. This includes establishing a definite processing time, providing reasons for rejections and offering PR based on fulfilment of application requirements without prejudice based on gender, nationality, religion or ethnicity.
 - III. Re-evaluate and scrutinize the implications of the amendments proposed to Malaysian citizenship provisions by the Malaysian Government, specifically:
 - a) Proceed immediately with the constitutional amendment to grant Malaysian women equal rights to confer automatic citizenship on their overseas-born children, in line with the commitments made by the Government nationally and internationally.
 - b) Reconsider the amendments that would deny the conferral of automatic citizenship from a stateless Permanent Resident cardholder to their children and the revocation of citizenship from a non-citizen spouse of a Malaysian if the marriage dissolves within two years of acquiring citizenship.

³⁵ Choy Nyen Yiau, 'Vote on citizenship law amendments postponed to June Parliament session', The Edge Malaysia, 27 March 2024, available at: <https://theedgemaalaysia.com/node/706209>.

- IV. Reform Section 17 of Part III of the Second Schedule of the Federal Constitution to grant children born outside of a legally recognised marriage the right to inherit the Malaysian father's citizenship.
- V. Take steps to ensure that everyone who has been denied access to Malaysian nationality due to gender discriminatory laws, fully enjoy their human rights on a non-discriminatory and equal basis.
- VI. Withdraw all reservations to the CEDAW, CRC and CRPD, particularly concerning the right to a nationality, and accede to all relevant human rights, refugee and statelessness instruments, including the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Annex I: Lived experiences of women and children impacted by Malaysia's gender-discriminatory citizenship laws

1. The case of Maya, a Malaysian mother with five Malaysian children and one child who is stateless

Maya is a Malaysian woman married to a refugee, and together they have six children. Five of their children hold Malaysian citizenship as they were born in Malaysia. However, their fifth child, Osman, has been rendered stateless because he was born overseas. In February 2019, Maya and her family travelled to Turkey to visit her husband's family after a decade. During this time, Maya was pregnant with Osman. Before departing Malaysia, Maya made several visits to the National Registration Department, where she was informed that her child could obtain Malaysian citizenship even if born abroad. Only after receiving this assurance did Maya and her husband leave for Turkey with their children.

In May 2019, Maya gave birth to Osman in Turkey. Subsequently, she reached out to the Embassy of Malaysia in Ankara via phone, discovering the misinformation she had received from the National Registration Department. The Embassy clarified that the only option available was citizenship by application (via Article 15(2) of the Malaysian Federal Constitution). In September 2019, Maya travelled over 700 kilometres to Ankara and submitted an application for citizenship at the Malaysian embassy. However, she was informed that the citizenship process is not immediate and could take multiple years to complete. Despite adhering to the embassy's advice, Maya was then required to make another trip to apply for an Emergency Travel Certificate for Osman to travel to Malaysia. However, despite following the Embassy's guidance, Osman was denied emergency travel documents on the grounds of not being a Malaysian citizen.

Osman is unable to inherit his father's citizenship as he is a refugee. Consequently, Maya and her family found themselves stranded in Turkey without citizenship or travel documents for Osman. Adding to their difficulties, Turkey permits newborns to reside within the country for only 180 days before requiring a visa. After extensive advocacy efforts involving NGOs, CSOs, and public support through social media platforms, Osman was granted an Emergency Travel Certificate based on sympathy. This development allowed Maya and her family to return to Malaysia.

In 2023, Osman was granted citizenship under Article 15(2) 'Citizenship by Registration' when he was four (4) years old. This journey illustrates the immense struggles Malaysian women face when giving birth overseas because of gender-discriminatory citizenship laws, navigating through precarity and bureaucratic hurdles. It sheds light on the discretionary and inconsistent nature of the application process, underscoring the necessity for retroactive gender-equal citizenship amendments for women and their overseas-born children. Other existing stateless children will still be left behind by the non-retroactive amendment as they would not be considered citizens by 'operation of law' and would need to rely on the discretionary citizenship application process.

2. The case of Laila, a single Malaysian mother living with her non-citizen child in a third country, unable to return to her homeland due to her child's non-citizen status

Laila, a Malaysian woman, resides in Italy as a single mother with her child, Farah. Due to a

miscarriage the previous year, Laila was unable to travel to Malaysia to deliver her child. Following her divorce, Laila has obtained full custody of Farah. However, she faces challenges in performing government administrative tasks, such as renewing Farah's passport, as she requires the consent of her former spouse.

When the pandemic struck in 2020 and the Embassy of Malaysia offered to repatriate all Malaysian citizens back to Malaysia, Laila desperately wanted to leave Covid-19-stricken Italy with Farah. However, her daughter was granted only a 30-day visa to Malaysia. Concerned about the potential increased exposure to the virus if visa runs (exit and re-entry) were necessary, Laila made the decision to remain in Italy. She believed that she and her daughter would have more legal security in a third country where they both hold Permanent Residence, rather than in her own country of citizenship.

Laila and Farah remain in Italy with plans to permanently return to Malaysia, but only once Farah is granted Malaysian citizenship. The challenges of living in Malaysia with a non-citizen child as a single parent are daunting for Laila. Undergoing a divorce while raising a child with a different passport, without a support group, and during a pandemic has placed Laila in an alarmingly precarious situation.

Annex II: Lived Experience of Sofia: A female foreign spouse of a Malaysian and her struggle for economic autonomy due to restrictive immigration policies and practices.

Sofia, a female foreign spouse of a Malaysian, has resided in Malaysia since 2006. She is married to her Malaysian classmate, and together they have a Malaysian child. Despite being the wife and mother of Malaysians, few rights have been realized for Sofia, primarily her right to gainful employment. In 2006, Sofia relocated to Malaysia as a student to pursue an undergraduate degree in finance. Subsequently, she furthered her qualifications with a postgraduate degree.

Despite her qualifications, Sofia faces great difficulty finding an employer willing to hire an entry-level non-citizen with a prohibition of employment on her visa. In 2013, Sofia secured employment with a foreign bank, but the organization closed its office in Malaysia in 2015. Since then, Sofia has not had a steady income.

Since completing her education, Sofia has been on a Long-Term Social Visit Pass (LTSVP) accorded to spouses. In 2015, Sofia submitted an application for Permanent Residence hoping it would improve her employability. However, five years later, she received notification of its rejection. The letter suggested applying for a Residence Pass, which would maintain her dependency on her husband for five years. Instead, she appealed to the Ministry of Home Affairs and received a notification in 2020 that they are taking action, with results to be released upon completion of all necessary actions. Both communications lacked reasons for rejection or delay. Until Sofia secures Permanent Residence, a career in finance will remain inaccessible to her.

Her stability and security in the country depend solely on her Malaysian spouse; she relies on him for her legal status and finances. This added stress has strained her marriage, and she worries that if anything were to happen, she would not be at liberty to support her son. Her concerns deepen as she and her son hold different passports, requiring visas to remain in each other's countries.

Once a highly ambitious woman, Sofia has been effectively forced to put her career goals on the back burner at the cost of her self-fulfilment. The longer she remains unemployed in Malaysia, the more difficult it becomes for her to secure employment elsewhere, as employers are hesitant to hire entry-level professionals with significant resume gaps. Despite Sofia's efforts to build her skills by taking specialist courses in her industry, employers remain hesitant to hire her—not because of her ability, but due to her legal status and the statement on her visa prohibiting all forms of employment, despite prior approval from the Department of Immigration to work.

The policies and practices implemented by the Malaysian Government have inflicted immeasurable emotional trauma upon her over the years and perpetuated her struggle for autonomy and self-realization.

Annex III: Parliamentary record stating the Malaysian Government's disinclination towards removing the statement of prohibition from employment on the spouse visa

Oral Questions from the Lower House of Parliament – First Meeting, Fifth Term, Fourteenth Parliament 2022

Date: 2 March 2022

QUESTION

TUAN CHARLES ANTHONY SANTIAGO [KLANG] asks the MINISTER OF HOME AFFAIRS express the Government's willingness to remove the statement of prohibition from employment written on the visa issued to non-citizen spouses of Malaysians as it has adverse effects on women in binational marriages and it was also included as part of the 2018 CEDAW Concluding Observations.

ANSWER

Mr. Speaker,

For the information of the Honourable Member of Parliament, the Long-Term Social Visit Pass (LTSVP) is a facility issued by the Immigration Department of Malaysia (JIM) to foreign spouses married to Malaysian citizens and residing in the country for a certain period.

The Immigration Department implements the procedure note/endorsement of the statement of prohibition to work or be employed as written on the non-citizen spouse's pass with the intention to inform pass holders that they are not automatically allowed to work but instead need to apply, to enable control in terms of the job type/sector and so on. Indirectly, this can ensure that the foreign spouse (husband/wife) of the Malaysian citizen is not engaged in any employment or business which is invalid under the related laws and regulations in force in Malaysia. In addition, this is also to ensure that the marriage is valid in terms of the law and not just a marriage of convenience aimed to obtain a pass.

For the information of the Honourable Members, the Government is always concerned about the welfare of a foreign spouse to a Malaysian citizen. Accordingly, the Government has decided to allow all foreign spouses of Malaysian citizens to legally and regularly work in this country without having to go through complicated processes and procedures such as having to change their Long-Term Social Visit Pass to the appropriate work pass and needing to get a new work pass every time, they change position/employer. The foreign spouse only needs to go to the nearest Immigration Department in Malaysia to apply for an endorsement to work.

Therefore, the practice of having a statement of prohibition from employment on the visa issued to a foreign spouse of a Malaysian citizen does not actually discriminate against foreign spouses (especially women), in fact, relaxation has been given to those on a spouse visa to work in Malaysia.

However, for safety reasons and to protect the welfare of the foreign spouse of a Malaysian citizen from being exploited and trapped in activities that harm the family institution and country, at this point, the Government does not intend to remove the statement of

prohibition from employment on the visa issued to a foreign spouse of a Malaysian citizen.