



NATIONAL COUNCIL  
OF WOMEN'S  
ORGANISATIONS  
MALAYSIA



## CALL TO REFORM MALAYSIAN CITIZENSHIP LAW TO ACHIEVE EQUAL NATIONALITY RIGHTS FOR WOMEN AND MEN

We, members of over twenty Malaysian civil society organizations, over ninety delegates of the Malaysian National Consultation on Achieving Equal Nationality Rights for Women and Men (24-25 July 2018), and citizens of Malaysia, affirm that:

- The institution of citizenship, in a rule of law-based democracy, demands that all citizens be treated as equals before the law and that they must have equal rights to confer nationality to their children and spouses regardless of gender. Such rights uphold the principle of non-discrimination and contribute to comprehensive and sustainable development; and
- The spirit of the Federal Constitution of Malaysia, which promotes equality and prohibits discrimination, is undermined by the prevalence of gender discrimination in nationality laws, which also contravenes specific provisions that are central to the “object and purpose” of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), both of which Malaysia has ratified.

### Malaysia must not be left behind

The lack of gender equality in the nationality law results in Malaysia being one of only:

- **25 countries** that denies women the right to confer nationality on their children on an equal basis with men;
- **3 countries** that denies men equal rights in conferring nationality on their children who are born out of wedlock;
- Roughly **50 countries** that denies women an equal right to confer nationality on their spouses.

International law is clear that gender-discriminatory nationality laws are to be prohibited. Further, global consensus is clearly moving in this direction, with 19 countries amending their gender-discriminatory nationality laws since the turn of the century, and not even one country introducing new nationality laws that are gender-discriminatory.

Indonesia reformed its nationality law in 2006 to uphold comprehensive gender equality. Now, in the ASEAN region, only Malaysia and Brunei maintain gender-discriminatory provisions regarding the conferral of nationality on children.

### Undermining the Principle of Equality and Non-discrimination enshrined in the Federal Constitution

Although Article 8(1) and (2) of the Federal Constitution entitles all persons to equal protection of the law and prohibits discrimination against citizens on the basis of gender, other Constitutional provisions and laws governing the conferral of citizenship discriminate on the basis of gender.

The Federal Constitution expressly provides citizenship to children born overseas in wedlock to Malaysian fathers (Article 14(1) (b), Part II, Second Schedule) but is silent on children born overseas to Malaysian mothers. This has led to the implementation of a discriminatory process of registration, whereby it is much more arduous for Malaysian women to register children born overseas as Malaysian citizens.

The Federal Constitution is also internally inconsistent. Article 15 (1)<sup>1</sup> entitles foreign spouses of Malaysian men to be registered as citizens, with the fulfilment of specific criteria, including two years residence in Malaysia. However, Malaysian women are denied the equal right to have their non-citizen spouses registered as citizens: their spouses only having the option of applying for citizenship by naturalization under Article 19(3),<sup>2</sup> which requires a ten year residence.

The law also does not allow for Malaysian men to pass on citizenship to children born out of wedlock,<sup>3</sup> a right reserved for Malaysian women.

## **Recommendations**

*Drawing* on the above facts;

*Reiterating* core principles of international and national law which protect equality and prohibit discrimination on all grounds including gender;

*Mindful* of Malaysia's commitments and targets under the Sustainable Development Goals; and

*Cognizant* of the historical opportunity presented through the recent political change in Malaysia, and in order to realize the promise of "*building our nation, fulfilling our hopes*";

We make the following recommendations to the Malaysian Government:

1. Honour the Pakatan Harapan Manifesto, Special Commitment to Women, which at Commitment 4 has promised to "*review all laws relating to gender equality to ensure that every woman enjoys legal equality*".
2. Amend the Federal Constitution to eliminate internal inconsistencies which allow discrimination based on gender, despite this being prohibited under Article 8(1) and 8(2). Specifically:
  - a) Amend Article 14 and the related Schedule of the Federal Constitution in order to ensure that the children of Malaysian mothers born overseas have the right to citizenship by operation of the law on an equal basis as the children of Malaysian fathers;<sup>4</sup>

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<sup>1</sup> See <http://www.jpn.gov.my/en/maklumat-warganegara/permohonan-taraf-kewarganegaraan-di-bawah-perkara-151-perlembagaan-persekutuan-isteri-kepada-warganegara/>

<sup>2</sup> Laws of Malaysia, Federal Constitution, Article 19(3) page 43, para 2,

<sup>3</sup> Based on the recent decision of the Court of Appeal in *Madhuvita Janjara Augustin v. Augustin Lourdsamy & Ors*, under Article 14(1)(b) of the Constitution, a Malaysian father was entitled to pass on citizenship to his child born out of wedlock in Malaysia. However, it is not clear if this judgment will be applied to similar citizenship applications.

<sup>4</sup> CEDAW Concluding observations on the combined third to fifth periodic reports of Malaysia adopted at the 69<sup>th</sup> Session, paragraphs 33,34.

- b) Amend Article 15 of the Federal Constitution to recognize the equal rights of women with regard to the acquisition of citizenship status of their non-citizen spouses<sup>5</sup>.
3. Pending Constitutional amendment, interpret Constitutional provisions relating to gender and citizenship generously and purposively, giving full measure to Article 8 of the Constitution and bearing in mind the values and fundamental liberties which the Constitution is intended to embody.
  4. Uphold the rights of all Malaysian citizens to confer nationality on their children on an equal basis, regardless of gender, marital status and the child's place of birth, thereby granting citizenship to children when:
    - a) Either parent is Malaysian;
    - b) Notwithstanding the marital status of the parent; and
    - c) Regardless of whether they are born in Malaysia or outside Malaysia.
  5. Withdraw Malaysia's reservations to CEDAW Article 9(2) and CRC Article 7.
  6. With immediate effect, grant citizenship to all children of Malaysian citizens with pending applications, enabling these children to avail their basic rights.
  7. As a temporary measure, pending law reform to uphold gender equality, immediately grant permanent residence, upon application, to children with one Malaysian parent; thereby ensuring they gain equal opportunity and protection.
  8. Grant parallel permanent residence and/or citizenship, upon application, to step-children of Malaysians, who are biological children (below 18 years) of a foreign spouse, when the foreign spouse acquires permanent residency or citizenship, enabling the parent and child to have the same legal status in the country.
  9. Ensure that all foreign spouses of Malaysian citizens are entitled to apply to be registered as citizens after two years of residence in Malaysia, in accordance with Article 15(1) of the Federal Constitution, regardless of gender.
  10. Grant citizenship to all adopted children where at least one adoptive parent is a Malaysian citizen.
  11. Immediately cease all arbitrary and discriminatory practices which link gender, ethnicity and religion with citizenship.
  12. Establish transparent rules, guidelines and standard operating procedures relating to permanent residence and citizenship applications involving foreign spouses, parents and children born abroad. The procedures should respect the Federal Constitution and international law, rules of due process, set out reasonable timeframes for decisions to be made and establish independent complaints and appeal mechanisms.
  13. Establish a tripartite (government, opposition and civil society) oversight committee to ensure the implementation of these recommendations in order to guarantee the timely realization of gender

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<sup>5</sup> ibid

equal nationality rights, in accordance with the Federal Constitution and the international obligations of Malaysia.

### **Gender-discriminatory nationality laws undermine citizenship and other rights**

When the State upholds gender discrimination in its nationality laws, it is implicitly endorsing the notion of women as inferior, having a second-class citizenship status. While violating the rights of Malaysian citizens to equality before the law and equal protection of the law, gender discrimination in Malaysia's nationality law can result in family disintegration, while also depriving affected persons of access to:

- Education
- Healthcare
- Employment
- Inheritance
- Property rights
- Civil rights
- Freedom of movement.

These laws further leave the children and non-citizen spouses of Malaysian women, as well as children born out of wedlock to Malaysian men, without access to the rights and protection of citizenship. Some are left in a state of citizenship limbo, waiting for years for decisions on citizenship applications. If the decision is not favourable to the applicant, it may result in them – especially the children – being stateless.

This discrimination negatively impacts the country as a whole, inhibiting national development and social wellbeing. Equal nationality rights are essential to achieving the Sustainable Development Goals (SDGs), which aim to leave no one behind.

**SDG 5** aspires to *“Achieve gender equality and empower all women and girls.”*

**Target 5.1** requires States to *“End all forms of discrimination against women and girls.”*

It is impossible for Malaysia to achieve SDG 5 without reforming its nationality law to uphold gender equality. Gender discrimination in the nationality law will prohibit Malaysia from achieving at least eight other SDGs. It further contradicts the Special Commitment for Women as promised by this Government, in particular Commitment 4.

Though a State Party to CEDAW, Malaysia retains a reservation on CEDAW Article 9(2), which obligates states to uphold equality between women and men in the conferment of citizenship to their children. The CEDAW Committee holds that Article 9, among other articles, is *“central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights.”* Malaysia is obliged to uphold CEDAW Article 2, which states:

*“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;”*

Malaysia is also party to the CRC, Article 7 of which requires that:

*1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.*

*2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

However, Malaysia also has in place a reservation to the CRC, according to which, Article 7, “*shall be applicable only if (it is) in conformity with the Constitution, national laws and national policies of the Government of Malaysia.*” It is therefore paramount that gaps and inconsistencies in the Federal Constitution and laws are amended, to ensure equal nationality rights which protect the best interests of every child (CRC Article 3), without discrimination on the basis of the gender of the child or parent (CRC Article 2).