



Committee on the Elimination of Discrimination against Women
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
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Re: Malaysia – 86th Pre-Sessional Working Group (27 Feb 2023 – 3 March 2023)

30 January 2023

Distinguished Committee Members,

We respectfully submit this letter to the Committee on the Elimination of Discrimination against Women (“the Committee”) in advance of its 86th Pre-Sessional Working Group (27 Feb 2023 – 3 March 2023). Family Frontiers, the Global Campaign for Equal Nationality Rights, Equality Now and Institute on Statelessness and Inclusion request that this letter be used to inform the Committee’s review of Malaysia. Our joint submission expresses our concerns regarding: gender discrimination in Malaysia’s nationality law, as enshrined in the Constitution of Malaysia, including: the inability of women married to foreigners to confer their nationality on their children born abroad on an equal basis with men; women’s inability to confer nationality on spouses, a right reserved for men; and the inability of unmarried Malaysian men to confer nationality on children born out of wedlock on an equal basis with unmarried women.

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. The [Global Campaign for Equal Nationality Rights](#) mobilizes international action to end gender discrimination in nationality laws through its coalition of national and international organizations¹. [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](#). 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.



The Federal Constitution of Malaysia provides the primary legal framework for the acquisition, confirmation and loss of Malaysian nationality and contains a number of gender-discriminatory provisions with respect to the ability of women and men to transfer their nationality 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 automatic nationality (by ‘operation of law’) on their children born outside Malaysia, a right reserved for “legally” married Malaysian men. Additionally, the Federal Constitution does not allow men to transfer their nationality to their children if the child is born out of a legally recognized marriage. Malaysian women are also denied the right to confer nationality on a non-citizen spouse, a right reserved for Malaysian men.

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.

By denying women equal nationality rights with men, Malaysia’s nationality law undermines women’s status as equal citizens and their equality in the family. A root cause of statelessness, gender discrimination in Malaysia’s nationality 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 nationality 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 nationality 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 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.

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 nationality 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 favor](#) of the plaintiffs in September 2021, holding that Malaysian women have equal rights to confer citizenship on their overseas-born children. The Court of Appeal overturned the decision in August 2022 following the Government’s appeal against the landmark decision. The Federal Court of Malaysia, in December 2022, granted leave for the plaintiffs to appeal the Court of Appeal’s decision.

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 fulfill 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''¹

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 nationality – 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 nationality.² However, the significant and wide-ranging deleterious impacts of gender discrimination in Malaysia's nationality law are extremely well-documented. Additionally, there is no justification to deny citizens equal rights on the basis of their gender, in violation of international law. We therefore maintain that there is no benefit to further studying this issue before enacting reforms to address this discrimination. Rather, any delay in upholding Malaysian women's equal nationality rights results in increased harm and suffering for Malaysian women, girls, and affected families.

We are heartened that Malaysia's current Government, formed in November 2022, has [stated its commitment](#) to advancing women's nationality rights as a matter of priority. Yet, we remain deeply concerned by the injustice and suffering faced by Malaysian women, girls and affected families every day Malaysian women are denied equal nationality rights.

The Committee has 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

¹ "Malaysia: UN experts denounce gender-discriminatory citizenship law", September 5, 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](#)

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



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.’³

Suggested Questions for the State Party’s List of Issues

We respectfully urge the Committee to raise with the Malaysian Government in its List of Issues the following questions with regard to violations of the Convention on the Elimination of All Forms of Discrimination against Women addressed in this letter:

1. What plans does the Government have, and under what timeline, to enact Constitutional reforms to uphold Malaysian women’s right to confer nationality on children born abroad on an equal basis with men?
2. What steps is the Government taking to use its discretionary power to grant citizenship to the children of Malaysian women born abroad without delay and under the same conditions required for the acquisition of citizenship of children born abroad to Malaysian men?
3. What steps is the Government taking to enact reforms needed to uphold gender-equal nationality rights in all circumstances, including citizen’s equal right to confer their nationality on their child, regardless of the citizen’s gender or marital status, and citizens’ equal right to confer nationality on a their spouse, regardless of gender?
4. What is the Government doing to ensure that families can access their economic and social rights until the Nationality Law is revised? What further proposals are being considered by the Government to alleviate the effects of the discrimination in the Nationality Law until it can be fully amended?

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,

Catherine Harrington
Global Campaign Manager
Global Campaign for Equal Nationality Rights

³ Concluding observations on the combined third to fifth periodic reports of Malaysia*, CEDAW/C/MYS/CO/3-5, 14 March 2018, available at:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMYS%2FCO%2F3-5&Lang=en