

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 – 69th Pre-Sessional Working Group (24-28 July 2017)

10 July 2017

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Elimination of Discrimination against Women's (CEDAW) discussion on Malaysia at its 69th pre-sessional working group from 24-28 July 2017. The Global Campaign for Equal Nationality Rights, Development of Human Resources for Rural Areas, Malaysia (DHRRA Malaysia), and Equality Now are greatly concerned about the gender-based discrimination in Malaysia's nationality law, as enshrined in the Constitution of Malaysia, including: the inability of women married to foreigners to pass on their nationality to 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 abroad out of wedlock on an equal basis with unmarried women. Gender discrimination in Malaysia's Nationality results in severe consequences for those children and their families. The Constitution violates the non-discrimination principles of the Convention of the Elimination of All Forms of Discrimination against Women including article 2, which Malaysia does not have a reservation on, and deprive women from enjoying their rights as equal citizens with men under article 9 on the right to nationality and article 16 on the elimination of discrimination in all matters relating to marriage and family relations.

The [Global Campaign for Equal Nationality Rights](#) mobilizes international action for the removal of gender discriminatory provisions from all nationality laws, through its coalition of national, regional and international organizations and activists, including Steering Committee members Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, and Women's Refugee Commission. [DHRRA Malaysia](#) is a voluntary non-profit and non-political organization, working towards organizing a strong rural and self-reliant community through poverty alleviation and people's empowerment initiatives ensuring social inclusion. [Equality Now](#) is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.

Nationality

Malaysia's combined third-fifth periodic report of State parties, submitted to the Committee in September 2016, states in regard to nationality that a Malaysian woman can only apply for her child to be registered as a citizen under article 15(2) and 15(a) of the Federal Constitution, and this application must be done before the child's twenty-first birthday. The government further states that an interim administrative procedure, implemented June 2010, permits Malaysian women married to foreign men, whose children were born overseas after January 1 2010, to apply for the child's citizenship at a Malaysian Consulate up to a year after the date of the child's birth. In most circumstances, married Malaysian men automatically confer their nationality on their children.¹ Malaysian men are denied the right to confer their nationality on children born out of wedlock. Women are also denied the ability to confer nationality on non-national spouses, a right reserved for men. The Government also notes an administrative order (Pekeliling Imigresen Malaysia Bil. 29 tahun 2001), which allows foreign men married to Malaysian women to stay in the country for one year as opposed to the previous limit of three months.

Gender discrimination in the nationality law often results in obstacles to accessing education, healthcare, and social services. Furthermore, many stateless women are falsely given hope that marrying a Malaysian man might provide security for themselves and their future children, resulting in stateless girls being married off at young age.

Profile of an Affected Person

Nina²:

Nina, a Malaysian woman, met and married Brian in the US. They have a daughter, Julia, who was born in the US. The family moved to Malaysia, to the state of Johor, in mid-2009, when Julia was 2 years old.

When Nina was pregnant, the Malaysian Embassy told her that she could register Julia when she returned to Malaysia. Unlike Malaysian men, Malaysian women with foreign spouses who give birth to a child outside Malaysia cannot automatically confer citizenship to that child; they need to apply. Upon returning to Malaysia Nina went to the National Registration Department to apply for citizenship for Julia, where she was asked to fill out and submit a form.

Brian struggled to find employment in Malaysia – he didn't have long term legal immigration status necessary for him to work. This forced Nina to be the main breadwinner of the family. At the same time, her relatives had cultural expectations of her to perform the traditional roles of a wife and mother, such as cooking and cleaning. This dynamic severely strained her marriage. Soon, Nina took a job in Kuala Lumpur, the capital city four hours north of Johor.

¹ (b) every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State; and

(c) every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government; and

² Case study provided by Women's Aid Organisation (www.wao.org.my) in Equality Now, The State We're In, (2016), pgs. 20-21, available at <https://www.equalitynow.org/campaigns/state-were>

Almost a year after submitting the form to the National Registration Department, Nina was called for an interview. Three months later, she was told the application had been rejected. She was not given a reason, but at the interview she was asked about her marriage status (she was still married at the time although living separately from Brian) and was told that was a factor in the Department's decision. She was told she could only reapply for her daughter's citizenship after a year.

Meanwhile Nina's husband and daughter stayed in the country legally through social visit passes. These passes had to be renewed every six months and required a fee, and Nina had to be present during renewal. Nina now lived in Kuala Lumpur, but because she had initially registered for the social visit passes in Johor, she had to travel to Johor whenever she needed to renew the passes. A year after she moved to Kuala Lumpur the Immigration Department in Johor sent her file to a Kuala Lumpur office so she did not have to keep travelling back to Johor. Unfortunately, they did not specify which branch they sent it to, and eventually Nina was informed that her file had been lost and that she would have to resubmit all her documents.

Nina attempted several times to obtain an extension of the social visit pass validity period from six months to one year. The Immigration Department noted that this would be possible only after three six-month visa cycles processed at the same Immigration Department office, and Nina's request was thus denied.

Nina also faced difficulties trying to register Julia for public school. The school Nina went to refused to register Julia because she was not a citizen. Nina had to submit several forms to the District Education Department, which required her to obtain a signature from a village head to verify that she was a citizen, among other requirements. Nina worried that she might have had to send Julia to private school, which she could not afford.

A year after Julia's application for citizenship had been rejected, Nina publicly approached the Home Minister with her case. A senior-ranking immigration officer informed Nina that she should have had an option to confer citizenship to her daughter; Nina told him she was not given that option. She was asked to resubmit Julia's citizenship application. Eight months later, after many calls and inquiries by Nina, Julia received her citizenship.

It took three frustrating years for Nina to obtain Malaysian citizenship for her daughter, putting enormous and unnecessary emotional and financial strain on her. Had Nina been a man, the process would have been automatic.

In its Concluding Observations following its review of Malaysia in March 2006 the Committee commended the State party on the withdrawal of some reservations, including 9(1) regarding nationality, and called upon the State party to review all its remaining reservations with a view to withdrawing them, and especially reservations to article 16, which are contrary to the object and purpose of the Convention. (CEDAW/C/MYS/CO/2 ¶10) The Committee further called on the State party **“to take immediate measures to ensure that the Convention and its provisions are incorporated into national law,”** (CEDAW/C/MYS/CO/2 ¶8) and **“to implement comprehensive measures to bring about change in the widely accepted stereotypical roles of men and women.”** (CEDAW/C/MYS/CO/2 ¶16)

In addition to being in violation of Article 9 (1) CEDAW, per General Recommendation 28, 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. While women's inability to equally confer citizenship on children and spouses is particularly relevant to the reinforcement of traditional stereotypes, the nationality law's discrimination against single fathers is also pertinent to the perpetuation of traditional stereotypes that negatively impact women. By denying single fathers the right to confer nationality on children on an equal basis with single mothers, 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. Denying single fathers the right to confer nationality to their child born out of wedlock abroad puts their child at risk of statelessness if the mother herself is stateless or otherwise unable to confer her nationality to her child.

Pending elimination of gender discriminatory provisions in the Nationality Law, and in line with recent government efforts to address statelessness such as the recommendations in the recently launched Malaysian Indian Blueprint³ and the Mega MyDaftar campaign⁴, the Malaysian government could take further steps to facilitate nationality applications by simplifying administrative processes which impose additional procedures for overseas Malaysian women married to foreign men when registering the births of their child.

We therefore respectfully request the Committee explore further with the State Party any harmful impacts of its sex discriminatory nationality law.

Suggested Questions for the State Party's List of Issues

We would respectfully urge the Committee to raise with the Malaysian government in its State Party's 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 to remove the discrimination in the Constitution so that Malaysian citizens can enjoy equal rights to: pass their nationality to their children, regardless of gender or marital status; and confer their nationality on their spouse?
- 2) 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?

³ See "Najib: We'll Resolve Stateless Indian Issue", 23 April 2017, available at: <http://www.freemalaysiatoday.com/category/nation/2017/04/23/najib-well-resolve-stateless-indian-issue/>

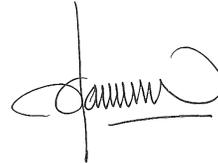
⁴ See "Govt to embark on Mega MyDaftar Campaign to help Indians with no MyKad", 7 May 2017, available at: <http://www.thestar.com.my/news/nation/2017/05/07/govt-to-embark-on-mega-mydaftar-campaign-to-help-indians-with-no-mykad/>

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

Sincerely,



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