

A CALL FOR GENDER EQUALITY

Amend the Federal Constitution to allow women to confer citizenship on their children born overseas

- The Federal Constitution discriminates on the basis of gender, despite Article 8(2) prohibiting such discrimination.
- Article 14 and its related Schedule **limits the right of Malaysian mothers to confer their citizenship** by operation of law on their children born overseas. Instead, Malaysian mothers must utilise the process under Article 15(2) to confer their citizenship by registration, a long and arduous process.

What are Malaysia's obligations with regard to gender equality?

OBLIGATIONS UNDER THE FEDERAL CONSTITUTION

Prohibit gender discrimination

- Article 8 of the Federal Constitution was amended in 2001 to include **gender as a prohibited ground for discrimination** in relation to:

“any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”
- Despite this, there are still provisions of the constitution that run counter to the spirit of Article 8(2), including Article 14 and the Second Schedule (Part II), which together limit the right of Malaysian women to confer their citizenship to their children born overseas.

OBLIGATIONS UNDER THE PAKATAN HARAPAN MANIFESTO

Review all laws relating to gender equality

- In its 2018 manifesto, the Pakatan Harapan (PH) government included a “Special Commitment for Women” with five key commitments. As part of Commitment 4 on “Ensuring the legal system protects women's rights and dignity,” the government promised to **“review all laws relating to gender equality to ensure that every woman enjoys legal equality.”**
- The discriminatory provisions around transmission of citizenship in the Federal Constitution also implicate several other of the PH

government’s commitments made in its manifesto, including those related to ensuring women’s access to health care, promoting the integrity of the family institution, and implementing policies to optimise women’s labour force participation.

OBLIGATIONS UNDER THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Address discrimination and promote substantive equality in law and practice

- In 1995, Malaysia acceded to CEDAW, which comprehensively articulates women’s human rights through the principles of non-discrimination, state obligation, and substantive equality.
- CEDAW Article 9(2) states that, “State parties shall grant women equal rights with men with respect to the nationality of their children.”
- In its 2018 review of Malaysia and resulting Concluding Observations, the CEDAW Committee reiterated its concerns about the discriminatory provisions on nationality in the Federal Constitution.
- With regards to the transmission of citizenship, the Committee recommended that Malaysia, **“... 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.”**[1]

[1] CEDAW/C/MYS/CO/3-5, Paragraph 34. 9 March 2018. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MYS/CO/3-5&Lang=En

OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Uphold the best interests of the child in law, policy, and practice

- In 1995, Malaysia acceded to the CRC, recognised as the most comprehensive statement of children’s rights and the most widely-ratified human rights treaty in the world.
- Discriminatory citizenship laws also adversely impact children, in addition to their mothers.
- Article 7 of the CRC states 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) State 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.
- The current discriminatory provisions in the Federal Constitution delay children from acquiring nationality—even rendering some children stateless—and also result in the infringement of the children’s other rights as embodied in the CRC.

OBLIGATIONS UNDER THE UNIVERSAL PERIODIC REVIEW (UPR)

Implement the recommendations raised by other countries to remedy human rights violations in Malaysia

- Under the UPR process of the UN Human Rights Council, Malaysia undergoes a peer review every five years to identify human rights violations and receive recommendations to remedy these violations.
- During its third UPR in November 2019, Malaysia received several recommendations related to the protection of the right of all Malaysian citizens to transmit their nationality to their children. The recommendations received were as follows:[2]

Recommendation	Recommending Country
151.150 - Amend all provisions of the Federal Constitution that deny women equal rights with respect to the transmission of their nationality to their children	Belgium
151.151 - Take steps to harmonize laws and policies on nationality to ensure equal rights for Malaysian women and men in all situations	Haiti
151.152 - Protect the right to nationality and prevent statelessness of children born to Malaysian citizens by removing restrictions thereof	Kenya
151.208 - Continue its efforts for gender equality and allow Malaysian women to pass on their citizenship to their children and spouses	Iceland
151.262 - In order to better safeguard the unity of the family, take steps to speed up the application process for permanent residence	Haiti

The Government of Malaysia responded to the UPR recommendations on ‘transmission of nationality and application of permanent residency’ through the following comments:[3]

- 26. The Government wishes to emphasize that the registration for citizenship must be done in accordance with the relevant articles as stipulated in the Federal Constitution.
- 27. The Government would also like to highlight that subject to qualification, foreigners may apply passes such as Resident Pass from the Immigration Department which will enable them to reside in Malaysia with their family. Permanent Resident Identity Card (MyPR) is the basis of eligibility of an individual to apply for Malaysian citizenship. Therefore, each application is thoroughly scrutinized to ensure national security and protect the best interest of the citizens.

[2] United Nations General Assembly. (2019). Report of the Working Group on the Universal Periodic Review Malaysia. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/001/96/PDF/G1900196.pdf?OpenElement>

[3] United Nations General Assembly. (2019). Report of the Working Group on the Universal Periodic Review Malaysia. Available at:

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_11_Add.1_Malaysia_E.docx

- 28. Existing legislation framework for awarding citizenship in Malaysia is adequate in addressing this issue while laws on citizenship in Malaysia are based on provisions under Part III of the Federal Constitution. It is not awarded automatically and is subject to individual applications. With regard to the issue of equality, both men and women are given avenues under the Federal Constitution to confer Malaysian citizenship for their children. To ensure that sovereignty and national security are protected, all applications are properly reviewed especially with regard to foreign citizenships as Malaysia does not recognise dual citizenship.

- By stating that the existing legislative framework on nationality is adequate and citing the constitutional provisions, **the government continues to justify the unequal treatment of Malaysian women** and disregards the need for a constitutional amendment to address existing discrimination.
- The ‘dual citizenship’ argument is a common justification for the inability of women to confer nationality on children and is due to Malaysia’s policy of single nationality. However, this disregards the fact that children of male citizens are automatically conferred nationality upon registration, regardless of whether the child also obtains citizenship automatically from the foreign mother’s country. Therefore, **the inequality in nationality laws implicitly endorses the notion of women as inferior and second-class citizens** while contributing to women’s unequal status in the society.

- **SDG 5.1: End all forms of discrimination against women and girls everywhere -**
 - Gender equality cannot be achieved if gender-discriminatory nationality laws still exist.
- **SDG 10.3: Ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation policies and actions in this regard -**
 - When women are not allowed to transmit their nationality to their children born overseas, the children face barriers to education, healthcare, and economic opportunities.
- **SDG 16.9: By 2030, provide legal identity for all, including birth registration -**
 - For all births to be registered, women must be granted the right to transmit their nationality, and discriminatory attitudes and practices which prevent women from registering births must be eradicated.

**We must take action now so
Malaysia is not left behind,**

**The lack of gender equality in
Malaysia's citizenship laws results
in us being one of only 25
countries in the world that denies
women the right to confer
nationality on their children on an
equal basis with men**

OBLIGATIONS UNDER THE SUSTAINABLE DEVELOPMENT GOALS (SDGS)

Implement the SDGs into national action plans, budgets, and legislation

- The 17 SDGs adopted by the UN General Assembly strive to address key global challenges by 2030.
- Malaysia’s nationality laws are implicated in its commitment to SDGs 5, 10, and 16.

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