

Mandate of the Working Group on discrimination against women and girls

REFERENCE:
OL MYS 6/2021

21 September 2021

Excellency,

I have the honour to address you in my capacity as Chair-Rapporteur of the Working Group on discrimination against women and girls, pursuant to Human Rights Council resolution 41/6.

In this connection, the Group would like first to hail the **ground-breaking ruling by the Kuala Lumpur High Court which granted women equal nationality rights**, in line with the pledge the Government has made towards gender equality and women's empowerment as it vies for a seat on the Human Rights Council, as well as express concerns over your Government's appeal against this decision.

On 9 September 2021, the Kuala Lumpur High Court ruled that Article 14(1)(b) of the Federal Constitution together with the Second Schedule, Part II, Section 1(b) of the Federal Constitution, must be read in a harmonious manner with Article 8 of the Constitution which prohibits gender-based discrimination. In doing this, the High Court judge announced that the word 'father' must be read to include mothers and that their children are entitled to nationality by operation of law.

On 13 September 2021, the Government of Malaysia, namely the Home Minister and the Director-General of the National Registration Department, filed a Notice of Appeal against the High Court decision.

Up until the ruling, the nationality law in Malaysia has been found discriminatory against women in that, although a child born in the country to either a Malaysian father or mother and a child born abroad to a Malaysian father acquires Malaysian nationality, children born abroad to Malaysian mothers can only acquire nationality at the discretion of the Federal Government through registration at an overseas Malaysian consulate or at the National Registration Department in Malaysia. Children born overseas to Malaysian women have not been able to become automatically Malaysian nationals by "the operation of law" under the Article 14(1) (b) of the Federal Constitution.

This law has been deemed discriminatory by a number of human rights mechanisms, as Malaysian women have not been recognised as equal to Malaysian men under the law and allowed to transmit nationality to their children.

The obligation to ensure equality in nationality rights was raised by the Committee on the Elimination of all forms of discrimination against women during Malaysia's review in 2018, the Committee on the Rights of the Child review of 2007 as well as in the context of the 2018 Universal Periodic Review of Malaysia.

CEDAW's 2018 Concluding Observations on Malaysia (CEDAW/C/MYA/CO/3-5) and the CRC's 2007 Concluding Observations ((CRC/C/MYS/CO/1) urged Malaysia to ensure the Convention and its provisions are incorporated into national law and are fully applicable in the domestic legal system to eliminate all forms of discrimination against women and recommended in particular 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 (para. 34 of the CEDAW review) similarly to the recommendations made to Malaysia in the context of the Universal Periodic Review of 2018 (A/HRC/40/11).

In a letter sent in 2014 (OL MYS 7/2014), this Group urged your Excellency's Government to implement the recommendations issued by numerous UN human rights mechanisms in relation to nationality legislation.

In this context, we would like again to draw to your attention the existence of many good practices by States in your region that uphold equality between men and women in relation to nationality rights.

The recent decision from the High Court also offers Malaysia an excellent opportunity to remove its reservations on CEDAW Article 9 (2) and on CRC Article 7.

In order to clarify the measures being taken by your Excellency's Government in terms of the discriminatory legislative provisions on nationality, the Working Group would be grateful if you could address the following matters:

1. Please provide information on the Government's possible intention to withdraw the appeal to the High Court's ruling.
2. Please provide any information on the enforcement of the High Court ruling should it be upheld and any planned revision of the relevant legislation?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all steps be taken to eliminating discrimination against women and girls, in law and practice, in all sectors of life.

Please accept, Excellency, the assurances of my highest consideration.

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls