

Mandates of the Working Group on discrimination against women and girls; the Working Group of Experts on People of African Descent and the Special Rapporteur on violence against women and girls, its causes and consequences

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(Please use this reference in your reply)

12 June 2024

Excellency,

We have the honour to address you in our capacities as Working Group on discrimination against women and girls; Working Group of Experts on People of African Descent and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 50/18, 45/24 and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **proposed amendments to article 14 and article 29 of the Federal Constitution of Malaysia.**

According to the information received:

After a lengthy deliberation process which included consultation with different stakeholders, the Home Minister confirmed on 25 March 2024 that Malaysia's Unity Government would be pursuing several changes to citizenship laws under the Federal Constitution. At the time of writing, the proposed amendments would, among other changes:

1. Replace the term "father" with "one of the parents" under sections (1)(b) and (1)(c) under article 14, part II of the Second Schedule of the Federal Constitution on "Citizenship by Operation of Law," allowing both parents to confer citizenship to overseas-born children. This amendment would not apply retroactively.
2. Replace the word "date of marriage" with "date of citizenship" in article 26 (2) as it relates to article 15 (1). The proposed amendment would allow the Home Ministry to revoke a foreign wife's citizenship if her marriage is dissolved within two years of her date of obtaining citizenship.

Proposed amendments to article 14

We commend your Excellency's Government for taking steps to ensure that children born overseas to any Malaysian parent, regardless of gender, may obtain Malaysian citizenship, in congruence with relevant international obligations that require equality between women and men. The absence of retroactivity in this provision, however, would inhibit the full realization of equality in citizenship rights between Malaysian women and men, contrary to international human rights standards.

The non-retroactive application of the proposed amendment would have a discriminatory effect on Malaysian women who had children before the passage of this Constitutional amendment. They would still not be able to pass on their citizenship to

their children, leaving in place a status quo that discriminates against Malaysian women compared to Malaysian men.

In this respect, we wish to refer to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Malaysia on 5 July 1995. Article 9 (1) of the Convention provides that States ensure that women be able to access citizenship rights on the same basis as men, while 9 (2) requires that States grant women equal rights with men as to the citizenship of their children. While we recognize that your Excellency's Government has entered a reservation on article 9 (2), the failure to completely eliminate discrimination against women in citizenship rights would also contravene Malaysia's obligations under article 2 (f) of CEDAW, which requires States "to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Furthermore, article 26 of the International Covenant on Civil and Political Rights (ICCPR) guarantees equality before the law and equal protection of the law, and prohibits any discrimination under the law on any ground including sex and national origin. While Malaysia has not ratified the ICCPR, the rights to non-discrimination and equality before the law are enshrined in the Universal Declaration of Human Rights and further expressed in several global and regional human rights treaties, confirmed in declarations and resolutions, and are considered reflective of customary international law.

Proposed amendments to article 26

Legal provisions that allow for revocation of citizenship for foreign-born wives are prejudicial to women's rights. Under the current Federal Constitution, article 26 (2) allows for the revocation of the Malaysian citizenship of foreign-born women married to Malaysian men if the union is dissolved within two years of the date of marriage. The proposed amendments, however, would make citizenship revocable if the marriage was dissolved within two years of the wife's attainment of Malaysian citizenship, increasing the period of time within which foreign-born women may be deprived of their citizenship.

By increasing the period of time in which a woman's citizenship may be revocable, the proposed amendment risks forcing women to stay in otherwise unsafe or undesirable marriages for the sole purpose of retaining their citizenship. This implicates numerous international human rights norms, including the right to enter into and remain in a marriage only by free and full consent as guaranteed by article 16, paragraph 1 (b) and (c) of CEDAW, as well as article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Furthermore, article 23 (4) of the ICCPR guarantees the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. The Human Rights Committee, in its General Comment No. 19, noted that "no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage" (para. 7). We also wish to recall the Universal Declaration of Human Rights, particularly article 15 (1), which provides that all people have the right to a nationality. As Malaysia does not permit dual citizenship, the revocation of a foreign-born woman's Malaysian citizenship runs the risk of rendering her stateless in contravention of article 15.

Finally, under the current law, as stated in article 15 and applied in article 26, Malaysian women are not able to pass on their citizenship to their foreign spouses. The proposed amendments do not amend the Federal Constitution to allow Malaysian women to confer nationality on their spouses, which would maintain the status quo and continue to imply the primacy of the husband under Malaysian citizenship law. This would run contrary to your Excellency's State obligations under both article 5 and article 9 (1) of CEDAW which require States, respectively, to eliminate all practices based on the assumed inferiority of women, and to ensure women and men have equal citizenship rights.

We would also like to remind your Excellency's Government that, in its concluding observations on the sixth periodic report of Malaysia, the Committee on the Elimination of All Forms of Discrimination against Women called on Malaysia to amend all portions of its Federal Constitution which discriminate against women by not granting them equal nationality rights (CEDAW/C/MYS/CO/6, para. 34). Similarly, several recommendations made to Malaysia in the context of the Universal Periodic Review of 2024 (A/HRC/56/11) emphasized the need to ensure equal citizenship rights for Malaysian women.

In letters sent in 2021 (OL MYS 6/2021) and in 2014 (OL MYS 7/2014), the Working Group on discrimination against women and girls also urged your Excellency's Government to implement the recommendations issued by numerous UN human rights mechanisms in relation to nationality legislation. As the Working Group previously recognized, citizenship and nationality status condition and define women's ability to participate in all aspects of life, including public and political life (A/HRC/23/50). Restriction on their citizenship necessarily affects other fundamental rights of women and girls, including equality within the family, freedom of movement, and access to public services.

Furthermore, in the report on statelessness, nationality laws and violence against women and girls, the Special Rapporteur on violence against women and girls, its causes and consequences, underlined the human rights consequences of gender discrimination on women (A/78/256). The Special Rapporteur emphasized that "women who do not have their spouse's nationality, may experience difficulty in claiming the custody of their children" (A/78/256, para. 40). The inability to confer citizenship on children may discourage women to leave toxic or abusive marriages in exchange for secured nationality for their children. The Special Rapporteur also indicated that, the inability to confer nationality on foreign-born children leads to complications in securing the children's entry, short term or long-term residence permits (A/78/256, para. 44).

Taking into consideration the above-mentioned international human rights standards, we urge your Excellency's Government to reconsider the proposed Constitutional amendments. In particular, we hope that the provisions which might have a discriminatory impact on women will be amended to ensure gender equality in access to citizenship. We hope that the executive and legislative authorities will seize this reform process to ensure that domestic law is brought in line with Malaysia's international obligations and that it will not lead to potential retrogressions or future violations. We also strongly encourage the inclusion of women lawyers, civil society advocates, and policy experts to help ensure harmony with relevant international law. Furthermore, in line with recommendations of the Universal Periodic Review to Malaysia and treaty body recommendations, we urge your Excellency's Government

to withdraw remaining reservations on articles 9 and 16 of CEDAW and to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. We remain at your disposal to provide any technical assistance to the authorities upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information updates and/or comment(s) you may have on the current status of the reform of the Malaysian Constitution.
2. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to ensure that the revised constitutional amendments will be in compliance with international human rights law, particularly the obligation to ensure equality between women and men.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to allow women to acquire and transmit Malaysian citizenship to their foreign-born children and spouses.

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](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Dorothy Estrada-Tanck
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