

EQUALITY AND CITIZENSHIP FOR WOMEN IN MALAYSIA: WHERE AND WHEN?

*Nik Salida Suhaila Nik Saleh, ⁱSyahirah Abdul Shukor & ⁱWan Abdul Fattah Wan Ismail

ⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai, 71800, Negeri Sembilan

*(Corresponding author) e-mail: salida@usim.edu.my

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ABSTRACT

Malaysia has agreed that all men and women are accorded equal right to citizenship under the Federal Constitution. Article 14 (1) (b) and Part II of the Second Schedule of the Federal Constitution provide for citizenship by operation of law for every person born outside Malaysia whose father is at the time of the birth a citizen of Malaysia. However, a Malaysian woman can apply for her child to be registered as a citizen under Article 15(2) of the Federal Constitution. In this regard, the Government has enhanced the implementation of Article 15(2) by way of an interim administrative procedure that was implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian women who are married to foreigners. The core analysis in this article is to examine whether Malaysian laws on women and their children's rights to citizenship is harmonious with the Women's Convention. We analyse whether Malaysia has taken all appropriate measures, including laws, policies, administrative decisions and programmes, to eliminate women's disadvantages based on the principal areas of concern and recommendations of the CEDAW in the concluding comments made against Malaysia following the list of issues and questions in relation to the combined third to fifth periodic reports of Malaysia following the Sixty-Ninth Session in Geneva from 19 February to 9 March 2018 and the application of equality informed by the Women's Convention.

Keywords: *Equality, citizenship, women's rights and children*

Introduction

The United Nations (hereinafter UN) is an international organization whose stated aims are facilitating cooperation in international law, international security, economic development, social progress, human rights and the achieving of world peace. It was founded in 1945 after World War II to replace the League of Nations, to stop wars between countries and to provide a platform for dialogue. It contains multiple subsidiary organizations to carry out its missions. Malaysia acceded to the UN Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) on 5 July 1995 with reservations entered into Article 2 (f), Article 5 (a), Article 7 (b), Article 9 and Article 16 (United Nations Treaty Collection). The Women's Convention was adopted at New York on December 18,

1979 and entered into force on 3 September 1981 (GA Res. 34/180, 34 UN GAOR Supp. (No. 710.46) at 193, UN Doc. A/34/46 (1979)).

Reservations are declarations made by State Parties to a treaty, certain provisions of which, they do not accept as binding on them. The meaning of reservation may be found in the Vienna Convention on the Law of Treaties 1969 which states:

'Reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State' (Article 2 (1) (d)).

Reservations are allowed so long as they are not incompatible with the object and purpose of the treaty. Incompatible reservations may be challenged by other State Parties.

In the Conference on *'Human Rights in Malaysia: The Last 10 Years'* organised in conjunction with the Malaysian Human Rights Day on September 9, 2009, recommendations were made to the Government of Malaysia to discuss the reservations, improve enforcement of laws, enact laws for prevention of infringement of Muslim women's rights and amend relevant inequality laws. Even though the Government withdrew a few reservations on 6 February 1998 (Article 2 (f), Article 9 (1), Article 16 (b), (d), (c) and (h)) and on 19 July 2010 (Article 5 (a), Article 7 (b) and Article 16 (2)), it did not consider it necessary to withdraw a reservation entered into Article 9 (2) and Article 16 (1) (a), (c), (f) and (g).

Reservation entered by the Government of Malaysia will not disadvantage women if the reservation does not have an effect or purpose of denying women's exercise and enjoyment of all rights to the same extent as men. Different entitlements to rights for women and men are not necessarily a distinction that amounts to discrimination, because equality is not only about sameness. Calling for cultural eradication of any practice without fully understanding how the practice enhances gender identity in some cultures could lead to the violation of other people's valued way of life (Sachedina, 2009: 138). Indeed, reservations do not necessarily mean the rejection of women's rights protection and equality; however, understanding the principles of equality under the Women's Convention is important in order to accommodate the practices of other traditions and those of the West.

The core analysis in this article is to examine whether Malaysian laws on women and their children's rights to citizenship is harmonious with the Women's Convention. Until today, Malaysia still secure reservation of Article 9 (2) which requires State Parties to grant women equal rights with men with respect to the nationality of their children. According to Ahmad (2005: 9), there are two ways of resolving this conflict: one can either make the national laws comply with the international laws or redefine cultural understandings that would mirror compatibility. We analyse whether Malaysia has taken all appropriate measures, including laws, policies, administrative decisions and programmes, to eliminate women's disadvantages based on the principal areas of concern and recommendations of the CEDAW in the concluding comments made against Malaysia following the list of issues and questions in relation to the combined third to fifth periodic reports of Malaysia following the Sixty-Ninth Session in Geneva from 19 February to 9 March 2018 and the application of equality informed by the Women's Convention.

Principle of Equality and Non-Discrimination under The Women's Convention

Under the Women's Convention, rights for women are based on three fundamental principles: non-discrimination, equality and state obligation (Byrnes, 2002; Facio and Morgan, 2009). The Women's Convention spells out the meaning of equality and how it can be achieved through its principal provisions which guarantee women's rights and needs. Even though there are various debates on whether the term *'equality of gender'* should be changed to *'equity'*, the Women's Convention is

comfortable in its use of the word ‘*equality*’, which sets broad standards for Member States (Facio and Morgan, 2009: 5-9). The Women’s Convention recognizes in its Preamble that ‘*a change in the traditional role of men and women as well as the role of women in society and in the family is needed to achieve full equality between men and women*’. The substance and framework of the Convention expressly convey feminist voices and messages on rights (Lacey, 2004: 53). According to Lacey, it locates the realization of rights and recognises important differences among women. Following the obligation of the state under the terms of the Convention, State Parties must submit a national report within one year of acceding to the Convention and within every four-year period thereafter (Article 18 (1) of the Women’s Convention). This process ensures that State Parties implement the Convention. These principles provide the framework for formulating strategies and give meaning to the Articles of the Convention (International Women’s Rights Action Watch).

The Convention defines discrimination against women and sets up an agenda for national action to end such discrimination (Saksena, 2007: 483). In its Title, the Convention underscores states’ obligation to prohibit discrimination against women. Under the Convention, equality is non-discrimination (Coomaraswamy, 1994: 47) and discrimination against women violates the principles of equality of rights and respect for human dignity. In the Preamble, the Convention explicitly acknowledges that ‘*extensive discrimination against women continues to exist*’ and emphasizes that such gender discrimination ‘*violates the principles of equality of rights and respect for human dignity*’. Article 1 provides that,

‘For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’.

Here, according to the definition of discrimination stated in Article 1, there is a close relationship between equality and non-discrimination.

In this analysis, we explore of the principles of the Women’s Convention which are best demonstrated by Facio and Morgan (2009). Facio and Morgan established six important substances of Article 1. The first concerns the forms of discrimination which can arise from the distinction, exclusion or restriction of the person (Facio and Morgan, 2009: 10). As discussed earlier, it is important to bear in mind that discrimination may still occur even if different people are treated differently, unless the disadvantaged people are guaranteed special measures to achieve equal results like those of advantaged people. Bindman (1992: 52) and Fredman (2001: 160) explained that this direct discrimination could be proved by evidence that the victim of discrimination has been or would be treated less favourably than another person. Less favourably, stressed Bindman, means that ‘*different treatment must be proved between the complainant and others; it must be shown to be less favourable.*’

Secondly, the Convention defines discrimination as any act or omission that has the ‘*effect*’ or ‘*purpose*’ of denying women’s exercise and enjoyment of all rights (Facio and Morgan, 2009: 10). From this perspective, acts or omissions constitute ‘*discrimination*’ not only if they either expressly single out women for disparate treatment but also if they appear to be gender-neutral but, nevertheless, have a discriminatory impact on women. In other words, formal equality may discriminate against women if the outcome of affording equal treatment results in discrimination. This is what Bindman (1992) called indirect discrimination. Indirect discrimination seeks to address practices that have discriminatory effects (Lacey, 1992: 102; Fredman, 2001: 161).

Thirdly, Facio and Morgan stressed the degrees of discrimination, in that the Women’s Convention prohibits not only total but also partial discrimination. For instance, if women can be citizens of a country but the citizenship is not extended to their children. The fourth issue concerns the stage of occurrence of discrimination. Article 1 refers to the existence of rights as the ‘*moment of creation of*

laws that establish the right’ as recognition, *‘necessities for satisfying right*’ as enjoyment and *‘active aspect of right*’ as exercise (Facio and Morgan, 2009: 10). Thus, states’ impairment of recognition, enjoyment or exercise of women’s rights goes against the principle of equality under the Women’s Convention. Fifthly, Article 1 specifies that the Women’s Convention intended to eliminate all kinds of discrimination against women in all aspects of life, to be precise, in civil, political, economic, social and cultural life. Finally, the Women’s Convention recognises women as legal subjects who have legal capacity and dignity equal to men.

Based on the substances of Article 1, discrimination can be defined as an act that violates the principle of equality. In Article 1, equality is presented more as substantive equality (*de facto* equality), which requires the delivery of equal outcome rather than equal treatment. we quote Paragraph 8 of the General Recommendation No. 25 of Article 4, Paragraph 1 of the Women’s Convention:

‘In the Committee’s view, a purely formal legal or programmatic approach is not sufficient to achieve women’s de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming under representation of women and a redistribution of resources and power between men and women.’

Indeed, the substance of the Women’s Convention encapsulates the meaning of substantive equality by aiming to eliminate *de jure* and *de facto* discrimination (Byrnes, 2002: 124 and General Assembly, Report of the Committee on the Elimination of Discrimination against Women. U. N. Doc. A/59/38/Annex: 2004). In order to promote substantive equality, the Convention recognises that women do not share equal treatment with men, and women must be treated differently from men (Facio and Morgan, 2009: 14-15).

Article 4 states that *de facto* equality between women and men shall not be considered discrimination. Women must not necessarily be treated in the same way as men, with an understanding that women’s lack of empowerment arises precisely because they do things that cannot be compared to the things that men do. Hence, equality informed by Article 1 and Article 4 of the Women’s Convention suggests that different entitlements to rights for women and men as outlined by the UIDHR and CDHRI in marriage and family relations do not necessarily discriminate against women because different entitlements to rights are purposely provided to uphold equality of outcomes by giving special measures to women as a disadvantaged group. Therefore, Steiner and Alston (2000: 179) stressed that one of the vital characteristics of Article 1 is its reference to *‘effect’* as well as *‘purpose’*, thus directing attention to the intentions and consequences of governmental measures to eliminate discrimination. Therefore, we suggest that, as stated in Article 4, temporary special measures are important.

Based on equality, the Women’s Convention requires State Parties to take all appropriate corrective measures in the political, social, economic and cultural fields to ensure full development of women (Lacey, 2004: 48). Here, discrimination is not limited to *‘state action’* but can also be performed by *‘non-state actors’*. The modification of social and cultural patterns of women and men’s conducts which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men (Article 5 (a)) is part of the basis of gender equality. However, women are still to be guaranteed equality with men before the law (Article 15). Article 15 states that,

1. States Parties shall accord to women equality with men before the law

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to

conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile’.

Here, we submit that State Parties must not only take actions to achieve equality for both genders but should also ensure that actions are taken to correct the inequalities.

Nationality of Children Born Oversea by Malaysian Mothers Who Are Married to Foreign Fathers

Malaysia’s reservation to Article 9 (2) was made on the basis that the Article was in contradiction to the Federal Constitution of Malaysia that refers to paternalistic values in granting citizenship. To date, the Malaysian Government has yet to review this reservation to include citizenship through a maternal link. A person can be a Malaysian citizen through operation of law (Article 14), by registration (of wives and children of citizens) (Article 15) or neutralisation (Article 19) of the Federal Constitution.

Malaysia has agreed that all men and women are accorded equal right to citizenship under the Federal Constitution. Article 14 (1) (b) and Part II of the Second Schedule of the Federal Constitution provide for citizenship by operation of law for every person born outside Malaysia whose father is at the time of the birth a citizen of Malaysia. However, a Malaysian woman can apply for her child to be registered as a citizen under Article 15(2) of the Federal Constitution. In this regard, the Government has enhanced the implementation of Article 15(2) by way of an interim administrative procedure that was implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian women who are married to foreigners. Applications can be made by the Malaysian woman at the respective Malaysian Consulate within a year from the date of the child’s birth. This administrative procedure further reinforces equal rights of women in determining the citizenship status of children (Combined Third and Fifth Periodic Reports of State Parties – Malaysia, 2016).

In a consultation held on 17th April 2014 with various government agencies and civil societies, the Ministry of Home Affairs (MOHA) indicated that several factors will be investigated to determine the status of a child, which includes:

- a) Citizenship status of the parents.
- b) Marriage status of the parents.
- c) Place of birth of the child; and
- d) Age factor of the child.

MOHA further commented that while Article 14 (b)(1) of the Federal Constitution does not apply to a child of Malaysian women and foreign husband that were born in a foreign soil, the application of citizenship can be made under Article 15 (2) of the Federal Constitution. The Government in their reply on the different conferment of citizenship to a child of a Malaysian women on a foreign husband were as follows:

- a) Malaysia does not approve dual citizenship as stated in Article 24 of the Federal Constitution.
- b) Malaysia is among the countries that still refers its status of citizenship through paternal link and a child from a legal marriage is given privilege of that citizenship.
- c) Although citizenship can be granted based on special circumstances under 15A of the Federal Constitution, nevertheless, the Government has been very careful in granting citizenship since

Malaysia is an entry point for illegal immigrants. Hence, having a strict policy on citizenship is one way to control the number of illegal immigrants in the country.

The Human Rights Commission of Malaysia (SUHAKAM) (2015) is of the view that there is differential treatment with regards to awarding nationality under Article 14 (1)(b) of the Federal Constitution to children by Malaysian fathers and non-Malaysian fathers. Children who were born by Malaysian father through a valid marriage will automatically assume the citizenship, regardless of whether the birth was in Malaysia or on foreign soil (provided the birth was registered at the Malaysian Embassy within one year). However, a child by a Malaysian mother and foreign father will not automatically acquire the citizenship as the child will have to apply the citizenship under Article 15 of the Federal Constitution. This is seen as discrimination to women in Malaysia as they do not acquire equal privilege for their children to have similar citizenship as their mother.

The Commission is aware of the administrative procedure introduced in 2010 to allow Malaysian women who are married to foreigners to apply for Malaysian citizenship for children born outside the country. On a constitutional basis, however, discrimination persists against women with foreign spouses. Article 15 of the Federal Constitution provides that citizenship may be conferred on the foreign wife of a Malaysian man upon application to the Government. However, there is no similar provision for the foreign husband of a Malaysian woman. In view of these situations, the Commission urges the Government to review the provisions of laws generally and the Federal Constitution specifically to make these consistent with the principle of non-discrimination, in line with Malaysia's treaty obligations.

The Commission has urged the Malaysian Government to review this matter under Article 8 (2) of the Federal Constitution that expressly states that there shall be no discrimination against its citizen on the ground of religion, race, descent and place of birth or gender in any law. Thus Articles 14 and 15 of the Federal Constitution should be read together with Article 8 (2) to give a wider effect on gender equality in citizenship. In addition, the Commission urges the government to use the inherent powers provided for under Article 15A of the Federal Constitution to grant citizenship to children in special circumstances to ensure that the law on citizenship is not deemed discriminatory.

Sixty-Ninth Session in Geneva from 19 February to 9 March 2018

Malaysia has submitted its combined third and fifth report and received by the Committee on the Elimination of Discrimination against Women on 1st September 2016. In the 'List of Issues and Questions in Relation to the Combined Third to Fifth Periodic Reports of Malaysia', CEDAW Committee has asked Malaysian Government to clarify how children born overseas before 1 January 2010 are able to acquire citizenship, and whether the State party has taken any additional measures to revise its legislation to allow Malaysian women to automatically confer nationality to a child born outside of the State party on an equal basis as their male counterparts.

The Committee also needs clarification on how children born overseas before 1 January 2010 can acquire citizenship, and whether the State party has taken any additional measures to revise its legislation to allow Malaysian women to automatically confer nationality to a child born outside of the State party on an equal basis as their male counterparts. Steps taken to grant Malaysian women equal rights with men regarding the transmission of their nationality to their spouses of foreign nationality, in line with Article 9 of the Convention must also be explained. Malaysian Government must further clarify what measures are being taken to ensure that foreign women who are married to Malaysian men are not economically and legally dependent on their spouses, including the opening of bank accounts and the renewal of their long-term social visit passes (List of Issues and Questions in Relation to the Combined Third to Fifth Periodic Reports of Malaysia, 2017).

In reply, Malaysia stressed that even though Article 9 (2) requires State Parties to grant women equal rights with men with respect to the nationality of their children, but the reservation to Article 9 (2) is based on the policy decision of the Government. Children born overseas to Malaysian mothers who are married to foreigners may acquire citizenship by way of registration under Article 15 (2) of the Federal Constitution (FC). Article 15 (2) stated that the Federal Government may cause any person under the age of twenty-one years of whose parents one at least is (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by his parent or guardian. If the child is above the age of 18 years old, he/she needs to take the oath set out in the First Schedule to the FC as required by Article 18 of the FC. Nevertheless, a child born to a mother who is married to a foreigner may also be registered as a citizen in special circumstances as the Federal Government thinks fit under Article 15A, FC. What constitutes special circumstances under Article 15A is a matter of policy consideration within the sole discretion of the Federal Government as held in the case of *Yu Sheng Meng (Suing through next of kin, Yu Meng Queng) v. Ketua Pengarah Pendaftaran Negara & Ors.* [2016] 1 CLJ 336.

There is no legal provision which confers citizenship automatically by way of law to a male foreign citizen married to a Malaysian woman. The foreign citizen husband however may apply to become a Malaysian citizen by way of naturalization as provided under Article 19 of the Convention upon meeting certain conditions provided therein. Among the requirements to be fulfilled are that the person has been residing in Malaysia for the required period (aggregate of not less than 10 years in the 12 years immediately preceding date of the application, including 12 months prior to the date of application) and, if the certificate of naturalization is granted, intends to do so permanently, is of good character and has an adequate knowledge of the Malay language. The requirement to take an oath as set out in the First Schedule to the FC is applicable to such cases.

The Long-Term Social Visit Passes for foreign women who are married to Malaysian men fall under the Immigration Act 1959/63 which states that foreign husbands/wives to Malaysians can be given the Long-Term Social Visit Pass for a period of five (5) years on condition that they comply with all the requirements stipulated under the Act.

In the Concluding Observations, the Committee remains concerned about the discriminatory provisions in the Federal Constitution regarding nationality, including the inability of Malaysian women married to foreigners to transmit their nationality to their children born abroad and to confer nationality to their spouses on a similar basis with Malaysian men. The Committee recommends that the State party amend all provisions of the Federal Constitution which deny women similar rights with respect to the transmission of their nationality to their children and foreign spouses. It also recommends that the State party ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Concluding Observations on the Combined Third to Fifth Periodic Reports of Malaysia: Committee on the Elimination of Discrimination against Women, 2018).

Unequal Citizenship: Impact on Women and Children

1. Discrimination against non-citizen wives who become Malaysian citizens.

Article 15 (1) of the Federal Constitution entitles non-citizen wives of Malaysian citizens the right to apply for Malaysian citizenship, so long as ‘she has resided in the Federation throughout the two years preceding the date of the application and ... that she is of good character.’ However, they will only be able to apply for citizenship after they have received permanent residence, which requires that the non-citizen has lived in Malaysia for five years prior to applying.

Article 24 (4) of the Federal Constitution contravenes Article 9 (1) of CEDAW as it does not grant women equal rights with men to retain their nationality. Article 24 (4) of the Federal Constitution reads:

'If the Federal Government is satisfied that any woman who is a citizen by registration under Clause (1) of Article 15 has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.'

Article 26 (2) of the Federal Constitution is equally incompatible with Article 9 (1) CEDAW:

'The Federal Government may order to deprive of her citizenship any woman who is a citizen by registration under Clause (1) of Article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.'

2. Discrimination against Malaysian women whose non-citizen husbands apply for citizenship.

According to Article 19 (1) of the Federal Constitution, non-citizen husbands of Malaysian women are required to seek citizenship by naturalisation, while non-citizen wives may acquire citizenship by registration if the marriage is still subsisting, she has resided (with Permanent Residence status) in Malaysia for two years, and she is of 'good character' (Article 15 (1)). Application for citizenship by naturalisation, as non-citizen husbands must do, requires 10 years of residence in Malaysia with permanent residence status (Article 19).

This disparate treatment of foreign husbands and foreign wives has been openly acknowledged by the government. The then Deputy Minister of Home Affairs Dr. Haji Wan Junaidi Tuanku Jaafar responded to a question on the matter in Senate in April 2015 (New Straits Times, 21 April 2015) saying that a significant percentage of the Malaysian citizenship awards granted to foreigners between 2004 and 2014 (16,702) went to non-citizen wives, as under Article 15 (1) in the Federal Constitution. The number of citizenships awards granted to foreign husbands was not provided.

3. Discrimination against rural stateless women

Rural women and especially former plantation workers have historically been discriminated against when attempting to ensure their children obtain Malaysian citizenship. This is due to many of them being stateless themselves, usually because of not having registered or obtained the relevant documentation despite being born and raised in Malaysia. Women may also be married in customary ceremonies and thus not legally register their marriages either. Accordingly, their children will be considered to have been born out of wedlock, and remain stateless. Such women are furthermore marginalised within their own communities, as they are blamed for their children not having citizenship and having limited access to education and health services as a result. This remains a reality for women who are unable to provide birth certificates and other such documents.

4. Discriminatory constitutional provisions regarding the citizenship of children born overseas to Malaysian mothers.

Current provisions in the Federal Constitution on the conferral of citizenship by operation of law to children born outside of Malaysia stipulate that fathers can confer their Malaysian citizenship to their children but remain silent on mothers conferring theirs. '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,' will be a Malaysian citizen (Article 1 (b)).

In April 2010, Malaysian Home Minister Hishammuddin Tun Hussein announced that Malaysian women married to foreigners could apply for citizenship for their children born abroad by submitting their applications to Malaysian embassies or high commissions in the foreign country (The Star Online, 12 April 2010). Though it was not practiced, this option has always existed in law under Article 15(2) of the Federal Constitution:

'...the Federal Government may cause any person under the age of twenty-one years of whose parents one at least is (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by his parent or guardian.'

Despite the purported change in policy, the process for registering children born overseas to Malaysian fathers differs significantly from that Malaysian mothers must go through. Malaysian fathers can register their children under Article 14 of the Federal Constitution and complete 'Form D' to apply for citizenship, which is a fairly streamlined process that can be completed in a few days. In contrast, Malaysian mothers must register their children under Article 15 (2) of the Constitution and complete 'Form B' to apply for citizenship. In essence, then, fathers simply must declare their children to have them receive citizenship, while women must apply to have their children recognised, and have no guarantee of them receiving Malaysian citizenship.

Moreover, the application process for children born overseas to Malaysian mothers is fraught with delays and rejections (The Guardian, 11 February 2016), where many women have to return to Malaysia to submit the documents at the National Registration Department. They often wait for two or more years to receive an answer on their application, which usually also fail to provide grounds for rejections (Malaysian Digest, 13 April 2017). The latter reduces the success rate of appeals and necessitates another two-year wait. As such, mothers may resubmit the same documents only to receive another rejection. Cases have been reported where the children in question grow older and cannot be admitted into public education facilities because they are not citizens.

In some cases, out of frustration and an unwillingness to have their children be stateless in a foreign country or remain without travel documents, Malaysian mothers will opt for having their children take on the citizenship of their father. Consequently, if the marriage breaks down and the mother decides to bring a child back to Malaysia, she must deal with a host of other issues, including an inability to access public schools and affordable public health care.

Conclusion

In conclusion, recommendations to the Malaysian Government regarding Article 9 of CEDAW is to lift Malaysia's reservation to Article 9(2) CEDAW and amend Article 15 of the Federal Constitution to grant women the same rights as men with regard to the citizenship status of their spouses. Schedule II of the Federal Constitution must be amended too to explicitly allow both men and women to confer their citizenship on their children born outside of Malaysia through the same process. Government is proposed to grant non-citizen wives of Malaysians who are estranged or separated, abused, divorced or widowed the right to apply for permanent residence and to work. Regular training on procedures and policies and to cultivate sensitivity on challenges faced by non-citizen spouses of Malaysians and their children in the management of their cases is also important to be provided to. It is time for the Government to amend the current administrative practices of the Malaysian National Registration Department to be in line with the Federal Constitution, which provides a safeguard for statelessness, as there are no administrative guidelines or procedures regarding the implementation of the relevant constitutional provisions.

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