

# We are IntechOpen, the world's leading publisher of Open Access books Built by scientists, for scientists

6,500

Open access books available

176,000

International authors and editors

190M

Downloads

Our authors are among the

154

Countries delivered to

TOP 1%

most cited scientists

12.2%

Contributors from top 500 universities



WEB OF SCIENCE™

Selection of our books indexed in the Book Citation Index  
in Web of Science™ Core Collection (BKCI)

Interested in publishing with us?  
Contact [book.department@intechopen.com](mailto:book.department@intechopen.com)

Numbers displayed above are based on latest data collected.  
For more information visit [www.intechopen.com](http://www.intechopen.com)



## Chapter

# Transnational Marriage in Malaysia: Case Study and a Critical Review Based on Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and Narrative Analysis of Topical Stories

*Nor Jana Saim, Norulhuda Sarnon, Ali Abbas,  
Nur Saadah Mohamad Aun and Afifah Idris*

## Abstract

This chapter examines child citizenship in transnational marriages involving Malaysian women and foreign spouses. The discussion is based on the critical reviews of the Malaysian laws in regard to transnational marriages and its adherence to the Convention on the Elimination of All Forms Discrimination against Women (CEDAW). In Malaysia, most marriages are endogamous (within the same ethnic group), but mixed marriages between diverse backgrounds are on the rise. The federal constitution shows differing citizenship provisions for children of transnational marriages based on the gender of the Malaysian spouse, indicating potential gender inequality in the legislation. Therefore, this chapter discusses the importance of addressing transnational marriage issues in line with the ratified CEDAW, which Malaysia adopted in August 1995. The review focuses on Malaysian mothers with non-Malaysian citizen children and identifies five themes from the data: divorce-related emotional distress, lack of awareness of child citizenship status, unresponsiveness from authorities, prioritizing child welfare, and uncertainty about the future. Gender inequality in legislative provisions impacting mothers and children with different nationalities is highlighted. The review urges the government to take decisive action to comply with the convention and ensure justice for affected mothers and their children.

**Keywords:** ransnational family, mixed marriage, gender inequality, CEDAW, Malaysia

## **1. Introduction**

In this review, we discuss the issue of transnational marriage in the context of determination of child citizenship as a result of the marriage of a Malaysian woman with a foreign spouse. The discussion is based on the critical reviews of the Malaysian laws in regard to transnational marriage and its adherence to the Convention on the Elimination of All Forms Discrimination against Women (CEDAW) as well as the narrative analysis of topical stories from the affected mothers. It is important to discuss the topic as it affects the future of the discriminated children.

The definition of transnational marriage can be defined as a nuclear family; be it a spouse, father, mother, or child; sometimes also includes grandparents who have different nationalities [1]. Studies show that transnational family members always ensure mutual well-being and unity despite being geographically separated [2]. One of the earliest transnational marriage took place in 1511 involving Spaniards: Gonzalo Guerrero and the daughter of King Mayan. According to Jones [3], the story begins when Gonzalo Guerrero was on a journey from Panama to Santo Domingo when his ship was broken. As a result, he and his friends have been stranded in Mexico. They were then captured by the Mayans and made as slaves. For their safety, Gonzalo Guerrero had to learn the Mayan language and taught the Mayan how to fight. He was later accepted by the Mayan people and considered a god. He also later married the daughter of the King Mayan, Zazil HA. They were blessed with three children from this transnational marriage. According to Jones [3], the marriage between Gonzalo Guerrero and King Mayan's daughter was probably the first transnational marriage in the Latin American region.

While the earliest transnational marriage in Asia took place in India in 1800. The transnational marriage took place among British diplomats; Colonel James Achilles Kirkpatrick with the princess of the King Mogul; Khair un-Nissa [4]. Although Colonel James Achilles Kirkpatrick was then a British Ambassador in Hyderabad, this marriage led to his dismissal. In Malaysia, a transnational marriage took place when the Ming Dynasty sent Admirals Zheng He and Princess Hang Li Po with 500 escorts to Malacca. Princess Hang Li Po later wed Sultan Mansor Shah and bore a child who was given the title Paduka [5]. The escorts who accompanied Princess Hang Li Po lived in Bukit Cina and married locals, resulting in the birth of descendants who came to be known as Baba and Nyonya. This information shows that transnational marriage is not something new in societies from ancient times and received various reactions.

In 1958, a mixed marriage in modern history; the couple Richard and Mildred Loving were arrested by police at their home for being found guilty of interracial marriage. They were later sentenced to several days in prison. At that time, 24 states in the United States banned interracial marriage until the law was repealed in 1967 [6]. Marriages in most communities are usually "endogamous," which is that marriage takes place between members of the same ethnic group. Hence, when there is mixed marriage, interracial marriage, or transnational marriage, all is seen as a diversion from the norm of marriage.

Most countries are not rigid in regard to transnational marriage such as marriages between Russian-Turkish [7] and Swedes and binational partners [8]. According to Jones and Shen [9], the statistics of international marriages in East and Southeast Asia in 2005 are about 0.1 to 32%. The lowest statistic was in China and the highest was in Taiwan. In Singapore, the statistic was about 17%. The Prime Minister of Singapore, Lee Hsien Loong gave a favorable comment on the trend saying that it was natural as

more Singaporeans now live and work abroad and many foreigners live and work in Singapore [9].

However, there are about 27 countries in the world that limit automatic citizenship transfer from women to their children. Most of these countries are in Middle East and North Africa such as Saudi, Jordan, Burundi, Liberia, and Togo. Malaysia is among four countries (other than Brunei, Iran, and Nepal) in Asia that limit mother's equal rights as father's in regards to conferring their nationality to their children [10].

Many other countries such as Indonesia and Singapore are providing equal rights for their citizens to confer their nationality to their children either from men or women. For example, according to Indonesian Law No. 12 of 2006, it is noted that a child born from a legal marriage from an Indonesian citizen father or mother with foreign citizen spouse is considered an Indonesian citizen [11]. Similarly in Japan, according to Article 2, Law No.147 of 2004 and Law No.88 of 2008, a child will be a Japanese national when, at the time of its birth, the father or the mother is a Japanese national [12, 13].

Studies found that transnational families typically have language barriers, differences in traditions, different parenting approaches, and legal constraints [14, 15] as well as financial constraints [16]. This critical review paper is an attempt to shed light on the transnational marriage of Malaysian women and foreign men from the perspective of Malaysian law enforcement and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

According to Tedong et al. [17] foreign spouses who are married to Malaysians face social marginalization in Malaysia due to discriminatory policies that enforce them to rely on their Malaysian partners either for obtaining a visa or job opportunities.

It is also possible for the transnational family having issues with conferring child citizenship that will affect education, health services, and future of their children such as in Malaysia. This situation can happen such as a child from a transnational marriage who does not have Malaysian citizenship might have difficulty to be registered in a government school. A student visa or long-term social visit pass is required for the child, which needs to be renewed annually or after a specific period set by the Immigration Department of Malaysia. In some cases, the widow or widower of a Malaysian citizen may be required to return to their home country if their long-term social visit pass is not renewed due to reasons such as the absence of a Malaysian citizen child, or the lack of an eligible sponsor who must be a Malaysian citizen [18]. Failing to address this issue could result in the loss of talent and human capital, as well as jeopardizing one's life. Therefore, this review paper aims to advocate for the idea that there is a gender bias in the Malaysian Federal Constitution [19, 20] that impacts the transnational marriages of Malaysian women with foreign spouses. This chapter also aims to examine and address the circumstances surrounding Malaysian women who are having children with foreign nationality due to being born outside of Malaysia.

## **2. Transnational marriages in Malaysia**

In Malaysia, it is estimated that in 2005, 14.3% (8733) of transnational marriages for non-Muslim couples were registered [21]. The number of transnational marriages keeps increasing by more than threefold. According to the Registration Department of Malaysia, there were about 29,698 transnational marriages among non-Muslim

couples registered from 2018 until November 2022 [22]. The same statistic also noted that about 20,273 registered marriages are between Malaysian men and foreign women. Whilst about 9425 marriages are between Malaysian women with foreign men. The Kedah Islamic Religious Affairs Department (JHEIK) data estimates that, in 2018, there was a 12.3% increase in transnational marriages compared to 2017 [23]. Statistic from the Malaysian Immigration Department (2016 in Todeng et al. [17] reported that the numbers of transnational marriages were 55,88 in 2012 and increased to 118,581 marriages in 2015. In addition, transnational marriage statistics can be viewed based on proxies such as the increasing number of members or followers of a Facebook account. For example, the Foreign Spouses Support Group Facebook page, which has around 16,000 people, even though it just started in 2019. The same trend can be seen on Facebook page; Love is Not Tourism Malaysia, Malaysian Mixed Marriages, which has members of around 11,000 (started in 2020 or 2021) and 1600 members, respectively. While, the Facebook page “Family Frontier Malaysia” has approximately 2800 members and followers. Based on these observations, the number of transnational marriages is increasing, and many people are planning for international marriages.

### 3. Convention on the elimination of all forms of discrimination against women (CEDAW) and Malaysia Federal Constitution Laws in regards of transnational marriages

Malaysia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) since 1995. As a state party that has ratified the convention, Malaysia is expected to adhere to and respect the articles within the convention. The convention consists of 30 articles, including equality, stereotypes and prejudices, smuggling and prostitution, politics, education, employment, and the economy (UN [24]). However, the discussion in this chapter focuses only on Articles 2, 9, 15, and 16 as shown in **Table 1**:

#### 3.1 Article 2: Government responsibility

Based on Article 2, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that after ratifying, the government is responsible for the immediate implementation of the content of the convention. This is to demonstrate the commitment of the ratified convention. In addition, it is a legislative bond between the government and the convention. The government is then responsible for reporting every four years to the convention. The responsibilities of the government in implementing the convention are as follows:

Article 2 Government responsibilities	Article 9 Citizenship
Article 15 Equality in law Women have the same right to contact, selection of property and residence	Article 16 Marriage and family life

**Table 1.**  
*Articles 2, 9, 15, and 16 CEDAW.*

### 3.2 Respect

The government is responsible for enacting laws that do not discriminate against women as well as implementing practices that do not discriminate against women. In addition, the government needs to be sensitive to laws that discriminate against women and repeal the law.

### 3.3 Protect

In order to protect women's rights, the government should look into complaints and provide mechanisms for dealing with such complaints. For the purpose of protection, the government should establish regulation for institutions and individual. These regulations should aim to prevent any form of discrimination against women and prohibit discriminatory practices.

### 3.4 Promote

The government should also promote public awareness of women's rights. This is to ensure that the community is aware of gender equality and gender discrimination.

### 3.5 Fulfilling

The government must strive to develop women's capacity to prevent gender discrimination. Thus, the government is also able to ensure that the legal and reality of gender equality can be achieved.

### 3.6 Article 9: determination of child citizenship

Article 9 in CEDAW states that:

1. "States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children."

For many transnational marriage couples, the determination of child citizenship is among the main issues. **Table 2** is the translation of Summary Information on Determining Citizenship by Operation of Law [Ringkasan Kaedah Penentuan Kewarganegaraan Secara Kuat Kuasa Undang-undang] released on the official Facebook account of the Malaysia National Registration Department on January 17, 2019 [25].

The Malaysian Embassy in Santiago also published the same table on their official website on January 25, 2021 [26], which may serve as a reference for transnational marriage couples residing abroad. Although, the statement "This table does not apply to specific cases" is included with the table, it was without further explanation of what those specific cases may entail. The table suggests that all children born from a legal

Citizenship status		Marital status	Citizenship of the child
Father	Mother		
Citizen	Citizen	✓/×	Citizen
Non-citizen	Non-citizen	✓/×	Non-citizen
Non-citizen	Citizen	✓/×	Citizen
Citizen	Non-citizen	×	Non-citizen
Citizen	Non-citizen	✓	Citizen
Permanent resident	Permanent resident	✓/×	Citizen
Non-citizen	Permanent resident	✓/×	Citizen
Permanent resident	Non-citizen	×	Non-citizen
Permanent resident	Non-citizen	✓	Citizen

*Adapted from summary information on determining citizenship by operation of law [25].*

**Table 2.**  
Child citizenship determination by operation of law.

marriage between Malaysian citizens and a foreign national, regardless of the gender of the Malaysian citizen, will acquire Malaysian citizenship status. The National Registration Department has issued a schedule stating that children born from a legal marriage between Malaysian citizens and a foreign national, whether male or female, will obtain Malaysian citizenship status. However, an issue arises when Malaysian women marry foreigners and give birth abroad.

According to the Malaysia Federal Constitution:

Article 14 (1)(b)(1) – (b) and (c) [19] stated as follows:

- a. (b) every person born outside the Malaysia whose father at the time of birth is a citizen and whether born in the Federation or at the time of such birth is in federal service or service a State; and
- b. every person born outside the Federation whose father at the time of birth is a citizen and within 1 year after the birth occurs or within such further period as may be authorized by the Federal Government, the birth is registered in a Federal consulate.

Clearly Article 14 (1)(b)(1) – (b) and (c) specifically only refer to the term “father.” Due to that, a child born overseas from the transnational marriages of Malaysian women with foreign spouses is unable to acquire Malaysian citizenship by operation of law. On the other hand, a child born overseas from the transnational marriages of Malaysian men with foreign spouses have the privilege to register their children in any Malaysian embassy or consulate in order to obtain Malaysian citizenship status. In many cases, in order to ensure that a child obtains Malaysian citizenship status, Malaysian women are forced to travel long distances either by land or air while they are pregnant to return to Malaysia to give birth. Surely, this situation will endanger the safety of the women and the baby. There are also Malaysian women who are unable to return to Malaysia to give birth on the advice of medical officers due to the high risk to their health as well as to the babies. Although, despite having

supporting medical documents, a child born overseas from Malaysian mothers is still unable to obtain Malaysian citizen status.

Under the provision of Article 15(1) of the Malaysia Federal Constitution [19], it is stated that a child overseas-born could apply for citizenship. However, the percentage of citizenship approval is very small. According to Singh [27], the citizenship applications from 2018 to October 2021 recorded 2352 applications. Yet, the number approved is only about 21 applications, which is less than 0.89%. In addition, the Malaysian mother of a child born overseas also could not submit an application for resident pass or permanent resident. This is because those applications can only be submitted after the citizenship application is rejected. But the decision on the application for citizenship often waits for years for an approval with the possibility of rejection without explanation [28]. There are also applications that have no result until the child is over 18 years old and is not eligible to apply for citizenship due to having surpassed the age limit. This gender discrimination might lead to the increasing number of statelessness in Malaysia [28].

In April 2010, the Minister of Home Affairs announced that Malaysian women married to foreigners have the opportunity to apply for citizenship for their children born overseas. This can be done by submitting their applications at Malaysian embassies or high commissions located in the respective foreign country [29]. However, in 2020, a group of six Malaysian mothers through an NGO, Family Frontier Malaysia, made an application to the court and was decided in September 2021. On September 23, 2021, the High Court sided with Family Frontier Malaysia to allow citizenship status to be granted to children born overseas by Malaysian women. Sadly, two days later, on September 25, 2021, the Malaysia Government submitted an application to suspend the decision on citizenship rights and take the case to the Court of Appeal. On November 15, 2021, the High Court rejected the application to suspend the decision on citizenship rights (further details in Suriani Kempe and six others and Government of Malaysia in [28]). The case still keeps going until now.

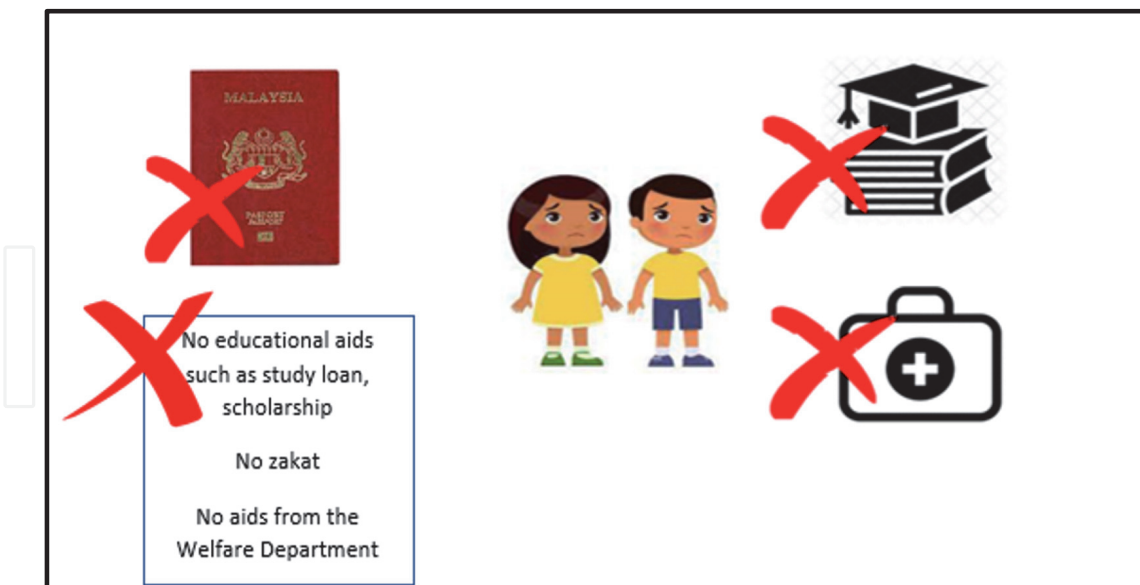
It is also worth noting that children with non-Malaysian citizenship will be discriminated against in terms of getting education in government schools, have to pay high medical fees, have no Malaysian passport, as well as no welfare aid from the Welfare Department, and not eligible for a funding for educational purpose such as from National Higher Education Fund Corporation [Perbadanan Tabung Pendidikan Tinggi Nasional, abbreviated PTPTN] [30] or zakat (Islamic funding for Muslims) [31]. A summary of this citizenship discrimination against children as a result of the marriage of Malaysian women with foreigners can be described in **Figure 1**.

### **3.7 Article 15 equality in law**

Article 15 is on the basis that women have the same legal rights on signing contracts, property selection, and choosing a place to live. However, due to the constraints set out in Article 14 (in Federal Constitution), it has denied the women's right to choose their place of residence. This is because Article 14 (Federal Constitution) has made it clear that the children of Malaysian women who are married to foreigners must be born in Malaysia in order to obtain citizenship. This has denied women's right to be in their chosen place of residence and environment during childbirth.

As a result, Malaysian women who marry foreigners and live abroad are forced to go through long-distance journeys either by land or air and possibly endanger themselves and their pregnancies just for giving birth in Malaysia. This situation can be life-threatening not only to the baby but also to Malaysian women.





**Figure 1.**  
*Summary discrimination on children with no-Malaysian citizenship status as a result of the marriage of Malaysian women with foreigners.*

Due to the restriction in Article 14 (Malaysia Federal Constitution), it also resulted Malaysian women being forced to stay away from their families during the confinement period after giving birth; at least two (2) or three (3) months; due to financial constraints if they plan to bring all their family members back to Malaysia. Not only the journeys are harmful to themselves and their pregnancies but they also might need to go through the confinement period on their own if there is no immediate family who wants to help them. This discrimination makes the life of Malaysian women and their families, especially the children, seem worthless and become second-class citizens based on Article 14 (Malaysia Federal Constitution).

### 3.8 Article 16: marriage and family life

The Articles 19 (1) and (3) of Malaysia Federal Constitution of states as follows:

- i. he has been resident in the Federation for a period of not less than 10 years in 12 years
  - a. that he behaves well; and
  - b. that he has sufficient knowledge in the Malay language.

The Article 15 of Malaysia Federal Constitution states as follows:  
Citizenship through registration (wife and child of citizens)

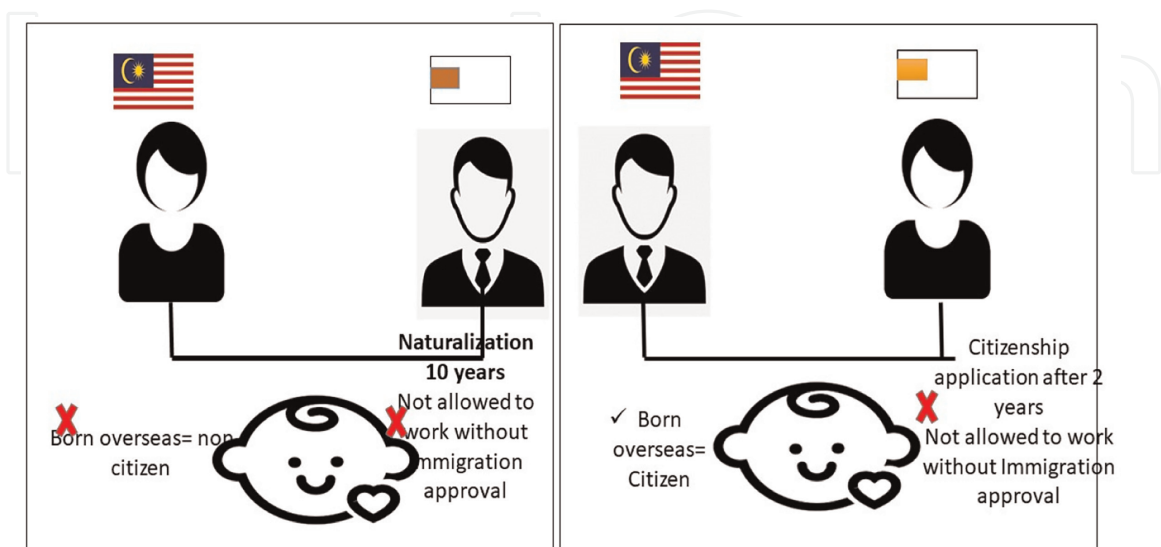
- a. that he has been resident in the Federation for a period of 2 years prior to the date of the application and intends to do so on a permanent basis; And
- b. that he is well behaved

Article 19 of Federal Constitution pertains to transnational marriages involving Malaysian women and foreigners, specifically in terms of citizenship status and the naturalization process [20]. According to Article 15 of the Malaysian Constitution, foreign spouses of Malaysian women are required to undergo a naturalization period that is five times longer than those of foreign spouses of Malaysian men. Additionally, male spouses of Malaysian women are subject to have knowledge of Malay language, which is not applicable to female spouses of Malaysian citizens (**Figure 2**).

### 3.9 Long-term social visit pass

Normally, the spouse of a Malaysian citizen would apply for a long-term social visit pass in order to continue residing with their spouse in Malaysia [32]. This application would include the couple's information, accompanied by a statement stating that "Any form of employment is strictly prohibited" although transnational couples may apply to the Immigration Department for permission to work in the event of a job opportunity, however, the fact is many employers are hesitant to offer employment due to the presence of this statement. It is due to the misleading statement that makes Malaysian companies hesitant. A study by Tedong et al. [17] noted that numerous Malaysian companies are not in favor to employ foreign spouses as they did not have permanent resident or citizenship status.

Thus, many foreign spouses with qualifications and the ability to work remain unemployed, resulting in a loss of valuable human resources in the job market. As a result, many transnational couples rely on a single breadwinner. While this may not pose a significant challenge for Malaysian men in such marriages, it can be burdensome for Malaysian women, who are typically expected to assume the role of the primary provider. This can create a role conflict that may result in divorce. Furthermore, due to this policy, transnational marriages involving Malaysian women are more likely to fall below the poverty line compared to those involving Malaysian men. **Figure 2** illustrates the discrimination in transnational marriages between a Malaysian woman and her foreign husband compared to a Malaysian man and his foreign wife.



**Figure 2.**  
The discrimination between transnational marriages between Malaysian woman and foreign husband vs. Malaysian man and foreign wife.

## 4. Method

In order to understand the circumstances surrounding Malaysian women who are having children with foreign nationality, the researchers have obtained information related to this matter. The main researcher contacted informants who were part of the Facebook page “Foreign Spouse Support Group.” After getting to know them, the main researcher reached out to them through email and WhatsApp group. In the beginning, there were four informants who agreed to participate in the study and gave their consent *via* WhatsApp group. However, one informant who initially agreed to participate later declined due to an ongoing divorce court case. Subsequently, the researchers added an additional informant who shared her experience through a sharing session on a Facebook page. She was later contacted by the main researcher and gave her consent via Facebook messenger. All the informants, except for Informant 4, sent their stories *via* email to the main researcher. The main researcher verbatim transcribed the sharing session of Informant 4. The letters and the verbatim were then analyzed using narrative analysis [33].

## 5. Findings

### 5.1 Informants’ background

**Table 3** provides an illustration of the background of the informants. It has been observed that the informants have between one to three children. All of them were born outside Malaysia and aged below 18 years old. Another notable fact is that among the four informants, only one is married, whereas the remaining three have been through a divorce. It is interesting to note that all of the individuals who underwent the divorce process did it outside of Malaysia, except for one who had their divorce proceedings within the country. Additionally, two of the informants are living in Malaysia, one is living in Italy and one living in Saudi Arabia.

### 5.2 Emotional distress caused by divorce

The informants that were going through the divorce process experienced emotional distress. It is most probably because the divorce happened outside Malaysia, and it makes them feel “lonelier” and without close family members to support them.

P, Informant 1, narrated her divorce situation as below:

	Nickname/place of living	Marital status	Number of children	Number of children with Malaysian citizenship	Number of children with foreign citizenship
Informant 1	P/Malaysia	Divorced	2	—	2
Informant 2	L/Italy	Divorced	1	—	1
Informant 3	R/Malaysia	Divorced	3	1	2
Informant 4	A/Saudi Arabia	Married	2	1	1

**Table 3.**  
*Informants’ background.*

*My basic goal was to start from the bottom like any other woman after divorce. Before leaving France with my two babies, I had to do it nicely; and amicable. I signed away proper basic monthly support which can help for monthly living expenses, and schooling or their basic needs to be able to have full child custody like they were under French law. We shared the lawyer but the lawyer seemed to be on his side. I will sign anything as long as I have my daughters with me in Malaysia. ... ..I had been through a divorce, and it was traumatic back then. My entire five years of my life packed in three (3) luggage under 30 kg and 70 euro in my wallet. I traveled two flights from Lyon - Amsterdam - Kuala Lumpur on economy flight with one toddler; 5 years old and one infant; 3 years old with no help. When I reached Kuala Lumpur International Airport, I cried buckets.*

*Marriage is not always guaranteed to be smooth sailing as in my case. Because of disloyalty, I live as a single mother, raising my girl. It was a stressful and traumatic experience going through the divorce, even though I got full custody of my child. It is not easy as a single mother in a foreign country without any support systems. I also know from the experiences of other mothers that I will have a hard time if I bring her back to Malaysia. It will be a huge struggle for both options (L, Informant 2).*

However, for L, Informant 2, although she has no support after her divorce, she decided to remain in Italy due to her daughter's citizenship status. In her opinion, because her daughter is considered a foreigner in Malaysia then there is no difference either staying in a foreign country or her homeland. Despite having gone through a divorce and having no support, she was compelled to face the challenges of raising her child abroad because of her citizenship status, leaving them with no other choice.

Whilst R, Informant 3, has had a different story. She, her husband, and three children moved back to live in Malaysia after years in the UK. They decided to move back to Malaysia because lack of family support while they were staying there. They hope to be close to her family as all her family members living in Malaysia. However, her marriage was shattered after 5 years of their moving to Malaysia.

*My marriage broke down towards the end of 2020. My husband and I decided to part ways. We signed the divorce paper in April 2021, with me having full custody of both our children. Now that I'm a single mother, my elder child's citizenship is even more important to me than ever before (R, Informant 3).*

### **5.3 Uninformed about the child citizenship status by Malaysian constitution**

The analysis revealed that the informants exhibited a lack of knowledge about the citizenship status operation by law. Consequently, due to that reason, informants were full of hope to get the citizenship for their children. One of informants signed away her rights to get financial support from her ex-husband in order to gain full custody of her children and brought them to Malaysia. She was unaware that her children were unable to get Malaysian citizenship by law.

*After returning to Malaysia not knowing at all they cannot get citizenship. My basic goal was to start from the bottom like any other woman after divorce. Before leaving France with my two babies, I had to do it nicely; and amicable. I signed away proper basic monthly support which can help for monthly living expenses, and schooling or their basic needs to be able to have full child custody like they were under French law.*

*We shared the lawyer but the lawyer seemed to be on his side. I will sign anything as long as I have my daughters with me in Malaysia (P, Informant 1).*

P, Informant 1, further stated her frustration as follows:

*In 2015, at the Department of Registration in Malacca State, I will never forget that eerie, sad feeling that almost felt like death when they said "Can't get [citizenship] for your kids". I returned to Malaysia not knowing at all they cannot get citizenship. I felt cornered and an end of the world feeling (P, Informant 1).*

Another informant received misleading advice from the Malaysian Embassy in Italy that she could register her child's citizenship there and it would take only a year. However, despite waiting for 7 years, until now her child has still not been granted Malaysian citizenship.

*I delivered my baby in Italy where I was living. The reason I chose to deliver my baby in Italy was I had a miscarriage during my first pregnancy in 2015 and was advised by doctors to not travel and take rest. -Prior to my delivery, I checked with the Malaysian Embassy in Italy and was told that I could register my child's citizenship at the embassy. The Embassy told me that the application process will take about a year. I still keep that email until now. Once assured there would be no legal complications, I remained in Italy for the remainder of my pregnancy.. (L, Informant 2).*

R, Informant 3, illustrated that she faced a difficult battle for her children's citizenship after getting married in the UK.

*I moved to the United Kingdom (UK). I found love and got married to an Irish citizen in March 2012. Honestly, I was naïve at that time, and did not think much of what would become one of the greatest, saddest and most tiring battles of my life – my children's citizenship and she is becoming a Permanent Residence in Malaysia. (R, Informant 3).*

On the other hand, M, Informant 4, was informed by the officer at the Malaysian Consulate in Jeddah to give birth in Malaysia.

*Alhamdulillah (Praise to Allah), Malaysian Consulate in Jeddah was very nice, giving advice and help at their level best. I asked their advice. And their advice was always the same – 'Madam, please go back to Malaysia'. 'Madam, if you can. Please go back to Malaysia'. 'Madam, please go back to Malaysia'. The same answer, the same tone and their faces look ashamed. Because they cannot help me for more. Limited. Because it is not under their capacity. The Constitution stopped them.*

However, although she was informed about the laws of Malaysia regarding children born overseas, but she had no other option during her second pregnancy where she gave birth in Saudi Arabia due to time and financial constraints. Her second daughter was registered as a refugee as her husband.

*Meanwhile, my second daughter, Maryam was born in Saudi Arabia due to some reasons. For that, Maryam is a refugee, having no country, having no passport. She has no place to go for help if anything happened to her (A, Informant 4).*

#### 5.4 The struggles of raising children with foreign citizenship

All informants expressed their struggles raising children with foreign citizenship. Most of the informants were worried about the short-term visa or the non-permanent document that their children need to apply for residing in Malaysia. For instance, L, Informant 2, was worried about her daughter's visa if they choose to back to Malaysia. She described her feeling as below:

*Early 2020 when the COVID-19 pandemic brought disaster to Italy, I was of course affected like everyone else. I got to know that Malaysians were being repatriated free of charge, but I could not and was scared to take up the offer to return. As I was informed that my daughter would only be given a short-term visa. And where I am supposed to go for a visa run (exit the country and return to get a visa) when her visa expired during the pandemic?*

*I was desperate to avoid the rampant of Covid-19 situation in Italy, however I was unsure of my daughter's visa status upon our return. One government source told me that my daughter would be able to acquire a one-month visa. However, to be honest, I felt our legal status in a third country, Italy, is more secure where both my daughter and I have Permanent Residence permits. Compared to the uncertainty of her visa in Malaysia; even obtaining a long-term visit visa is a question mark, let alone to apply for Malaysian citizenship which for now remains a distant dream (L, Informant 2).*

P, informant 1, also narrated her struggles with visa renewal after coming back to Malaysia. It was because her 5- and 3-year-old daughters were unable to get any other visa other than tourist visa. For that reason, they need to go out of Malaysia every 90 days to make it eligible for visa renewal.

*I have been struggling so much since coming back to Malaysia in 2015 after my divorce from France. After returning I had to go in and out 90 days either in Singapore or Thailand for two years plus, with my 5 and 3 year old which affected their kindergarten and my career. My daughters were under tourist visa as I cannot get any other visa for them. Immigration did not help or aid my girls with a visa from a Malaysian mother (P, Informant 1).*

A, Informant 4, depicted that there is no word that can describe her feeling when her daughter with refugee status was not allowed to be in Malaysia for more than 30 days.

*Emm..I cannot be in my own country more than 30 days without requested visa. It was because Maryam is not allowed to be in Malaysia more than 30 days. I feel sad.. No words can express my feeling. ... The first time I felt like I was hit on my head was when I arrived in Malaysia, the Malaysian Immigration Department stamped on Maryam's passport with a validity 30 days. Only 30 days we allowed to stay in my own country, 'tempat tumpahnya darah ku'. It was like we staying in Malaysia and started to count 30, 29, 28... That how it was to me, my kids, Sarah and Maryam. If they stamped on Maryam's passport validity only 30 days, it goes the same to me. I cannot just put it alone to Maryam and say; "Ok. Goodbye Maryam. I am going back to Malaysia to enjoy my life" (A, Informant 4).*

During her sharing session, she mentioned that “Tempat tumpahnya darahku” is a line from Malaysian National anthem, which literally means “the place where my blood will be spilled.” Her expression conveys a sense of betrayal by her own country, the place where she should rightfully belong and receive protection. However, instead of receiving support, she feels let down as her country denied her opportunity to confer citizenship by operation by law to her daughter, simply because she is a woman who married a foreigner and gave birth to her baby outside the country.

R, Informant 3, voices her disappointment as follows:

*My first born? Still unwelcomed in Malaysia. This year my eldest turns 17 years old, which strips it away from being eligible for a Long-Term Social Visit Pass. The only way for it to continue staying in Malaysia is through a student visa (R, Informant 3).*

*Now that I'm a single mother, my elder child's citizenship is even more important to me than ever before. To me, he is my flesh and blood, and he has spent more of his time in Malaysia than in his birth country. He is learning the culture and language here, building relationships with his extended family and friends here. He barely has any memory or association with his birthplace – and yet, he is being seen as a foreigner in this country. Not a 'he', but still an 'it'. (R, Informant 3).*

Some informants also described their difficulties in regard to health and education.

*Not only has he limited options when it comes to education, he also must pay double the cost on medical, insurance or even local attractions, just because the government refused to recognize the rights of a mother. Not only has he limited options when it comes to education, he also must pay double the cost on medical, insurance or even local attractions, just because the government refused to recognize the rights of a mother (R, Informant 3).*

*Currently, every year I have to pay for my kids' schooling expenses: the visa renewal is a huge headache. Every 12 months they require more and more difficult documents. I need to pay RM1000 for the kids' student visa and RM1600 for the medical insurance (AIA). This medical insurance is a must to have otherwise the student visa will not be approved (P, Informant 1).*

Since their children are not Malaysian citizens, they incur higher expenses as they have to bear the costs of education, health insurance, and visa renewals. They typically have to pay a higher cost when they go on vacation since their children are charged based on tourist rates instead of local rates. They are also not entitled to receive financial assistance meant for children such as *Bantuan Awal Sekolah* (Early School Aid) or PTPTN; education loan for higher education. In addition, they also do not qualify to apply for zakat assistance even if they are Muslims.

### 5.5 Absence of a response to their application

All informants were aware of their children's citizenship status, and they promptly applied to the appropriate authority to obtain citizenship status under Article 15 (Malaysia Federal Constitution). However, they have not received any response from the authority despite their efforts to make calls and emails. Their applications are either pending or unanswered.

*In February 2015, I registered our marriage at High Commission of Malaysia in London, and submitted my child's Malaysian citizenship application through the same place. I was told by the officer that the whole process would take two years. I was right to make that choice. One year has passed. my husband fell ill, and we had no family support in London. We decided to move back to Malaysia, where there will be support to raise our child, and where there will be help to let my husband focus on his recovery. We have not left the country [Malaysia] since that day. Upon returning home to Malaysia, I contacted the High Commission of Malaysia in London to inform them that I had moved, so they could update the contact address of my application. I have lost count of how many times I called JPN Putrajaya, time and time again, to get a status update. Each time I called; I would always receive the same, short answer: "Pending". When I asked how long it would take, I was told on the phone that it would take up to 6 years, contrary to the 2-year timeframe I was given in London (R, Informant 3).*

*Now, my daughter is four years old, and I have applied for her citizenship since the time she was born, but I have yet to receive any response from the government. What hope is there for my child to get Malaysian citizenship and for me to return to Malaysia? I always write to JPN and the Embassy to check the status of my citizenship in the last four years. I really need help!! (L, Informant 2).*

According to A, Informant 4, although the staff that she was dealing with at the Malaysia Consulate in Jeddah were nice and tried to help her, however, they were unable to do much as it is not in their capacity to make decisions. For her, it was Malaysia Federal Constitution that limits the staff for further processing her application, and yet she has not received answer although she applied since last 3 years.

*Throughout my application, I never met any rude or questioning my decision to marry a foreigner. All of them tried their level best. I have never felt offended because all of them understand my situation. They also wanted the best for me and my daughter, but the Constitution stopped them. May Allah rewards their kindness. I had been applying Maryam's citizenship since last 3 years. So far, there is no news about my application. I tried to call from time to time. But I am making calls from overseas. Sometime due to different time zone, some time Malaysia still on public holiday [so I did not manage to talk to them] (A, Informant 4).*

The lack of communication from the authority has left them in limbo and unable to proceed to the next stage.

## **5.6 Uncertainty and apprehension of the future**

As mentioned in the previous section, their applications for their children's citizenship are still pending or unanswered. Consequently, the informants feel uncertainty and apprehension about their future. Most of the informants have this fear that they will be separated from their children once they turn 18 years old if they are not granted Malaysian citizenship status.

*I am imagining when they are over 17 years old, their school is over, I have to say 'bye bye' to them at KLIA and that is it if I cannot get them Malaysian citizenship. They will be aliens in France a, Informant 3)s they cannot even speak one word in French. They are 100% more Malaysian. I have no problem with the French Embassy or my*



*ex-husband because we still need his signature for the passport renewal but my kids get Malaysian citizenship, then we do not need to worry any more (P, Informant 1).*

*To me, he is my flesh and blood, and he has spent more of his time in Malaysia than in his birth country. He is learning the culture and language here, building relationships with his extended family and friends here. He barely has any memory or association with his birthplace – and yet, he is being seen as a foreigner in this country. Not a 'he', but still an 'it' (R, Informant 3).*

The informants are concerned about how their children will cope if they were compelled to relocate to an unfamiliar country.

*Maryam knew that she is not a Malaysian citizen based on different colors on her passport compared to her sister. The color of Sarah's passport is red, and her passport is blue. Mama's passport is red and Dad's passport is blue. She keeps asking 'Why I am not Malizie?' Malizie is Arabic word for Malaysia. Help me to explain this to a 3 year old girl. Sometime she said; 'I will follow Dad, isn't? and you will take Kakak [her sister; Sarah]. The day when the High Court was siding on our side, I hugged her and said, 'Maryam, you are a Malaysian now'. She was happy and she was dancing. She said, 'Can I call Teta (her Palestinian grandmother)? She called her and said, 'Teta, I am Malaysian now!' She keeps repeating, 'I am Malaysian now. Kakak [her sister, Sarah], I am the same as you! After three days, the bad news comes when the government withdraw the decision of the High Court (A, Informant 4).*

A, Informant 1, further expressed that if something happened between her and her husband, they somehow knew that her refugee daughter will go to her husband and her Malaysian daughter will go to her. For her, it is almost impossible to have both daughters due to vast adversities because of their citizenship status.

## 6. Discussion and conclusion

The provisions of the law should be equal without any discrimination or second-class citizens being denied their rights. It should be in line with Article 8 (1) and (2), which states the right to equality before the law. Therefore this study urges the Government of Malaysia and all parties involved to uphold the law so that there is no discrimination against citizens solely on the grounds of religion, race, place of birth, or gender in any law.

Therefore, it is time for stakeholders to raise the issue of gender inequality so that Malaysian legislation is seen as standing in the eyes of the world equally with the other countries in accordance with Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women [34]. For the elimination of gender inequality, it is proposed to amend Part II of the Second Schedule of the Federal Constitution by substituting the word "father" for "parent" so that the children from transnational marriages are not discriminated against simply because they have a Malaysian mother who married a foreign husband. With the amendment, it will be in line with the aspirations of Article 8 (2) of the Federal Constitution, there is no gender-based discrimination. Improvements from the discussion in this review are taking the same stance as Nik Salida Suhaila, Syahirah, and Wan Abdul Fattah's articles [35].

The same goes for the granting of citizenship status. Investigations need to be refined to ensure that transnational marriages actually take place regardless of whether it is a transnational marriage of a Malaysian man or a Malaysian woman. Granting citizenship status should be based on the ability of the spouse to be a Malaysian citizen in understanding and appreciating citizenship as a Malaysian and not based on gender as a mere partner.

Based on the analysis of the topical stories from the affected mothers who have children with foreign citizenship, regardless of their marital status, the child citizenship is still weighty issue for the mothers. In some situations, the mothers are informed about the citizenship status of the baby being born out of Malaysia. However, due to health, financial, and other reasons, they have no other option other than to give birth to their babies out of Malaysia. We strongly urge the government and related authorities to take serious action to adhere to the ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The failure to address these gender-bias discriminations has resulted in denying all affected individuals to enjoy the rights that they rightfully deserve. As saying goes, justice delayed is justice denied.

## Author details

Nor Jana Saim<sup>1\*</sup>, Norulhuda Sarnon<sup>1</sup>, Ali Abbas<sup>2</sup>, Nur Saadah Mohamad Aun<sup>1</sup> and Afifah Idris<sup>1</sup>


1 Social Work Program, Faculty of Social and Human Sciences, National University of Malaysia, Bangi, Selangor, Malaysia

2 School of Distance Education, Science University of Malaysia, Penang, Malaysia

\*Address all correspondence to: [janasaim@ukm.edu.my](mailto:janasaim@ukm.edu.my)

## IntechOpen

---

© 2023 The Author(s). Licensee IntechOpen. This chapter is distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/3.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. 

## References

- [1] Mazzucato V. Child well-being and transnational families. In: Michalos AC, editor. *Encyclopedia of Quality of Life and Well-Being Research*. Dordrecht: Springer; 2014. DOI: 10.1007/978-94-1007-0753-5\_3870
- [2] Bryceson D, Vuorela U. Transnational families in the twenty-first century. In: Suhakam CEDAW, Bryceson D, Vuorela U, editors. *The Transnational Family: New European Frontiers and Global Networks*. Oxford: Berg; 2002
- [3] Jones GD. *The Conquest of the Last Maya Kingdom*. California: Stanford University Press; 1998
- [4] Dalrymple W. *White Mughals: Love and Betrayal in Eighteenth-Century India*. India: Penguin Publishing Group; 2004
- [5] Kong Y. *Zheng He and the Malay World Cruise*. Bangi: Penerbit University National Malaysia; 2000
- [6] Sue DW, Rasheed MN, Rasheed JW. *Multicultural Social Work Practice: A Competency-Based Approach to Diversity and Social Justice*. 2nd ed. New Jersey: John Wiley; 2016
- [7] Deniz A, Özgür EM. Mixed marriage and transnational marriage migration in the grip of political economy: Russian-Turkish case. *Turkish Studies*. 2021;22(3):437-461
- [8] Haandrikman K. Binational marriages in Sweden: Is there an EU effect? *Population, Space and Place*. 2014;20(2): 177-199
- [9] Jones GW, Shen H. International marriage in East and Southeast Asia: Trends and research emphases. *Citizenship Studies*. 2008;25(1): 9-25
- [10] UNHCR. *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*. Geneva: UNHCR; 2014
- [11] Susi Dwi Harijanti. *Report on Citizenship Law: Indonesia*. Global Citizenship, Observatory (GLOBALCIT) Robert Schuman Centre for Advanced Studies. Badia Fiesolana: European University Institute; 2017
- [12] Ministry of Justice. Law.No. 147 of 2004: The Nationality Law. 2023a. Available from: <https://www.moj.go.jp/ENGLISH/information/tnl-01.html> Nationality Law
- [13] Ministry of Justice. Law No. 88 of 2008: The Nationality Law. 2023b. Available from: <https://www.moj.go.jp/ENGLISH/information/tnl-01.html> Nationality Law
- [14] Bryceson D, Vuorela U, editors. *The Transnational Family: New European Frontiers and Global Networks*. New York: Routledge; 2020
- [15] Jørgensen MB. 4 Danish regulations on marriage migration: Policy understandings of transnational marriages. In: *Transnational Marriage*. London: Routledge; 2013. pp. 60-78
- [16] Tschirhart N, Diaz E, Ottersen T. Accessing public healthcare in Oslo, Norway: The experiences of Thai immigrant masseuses. *BMC Health Services Research*. 2019;2019(19):1-10
- [17] Tedong PA, Roslan K, Abdul Kadir AR. Marriage migration: Lived experience of foreign spouses married to Malaysian citizens. *Pertanika Journal of Social Sciences & Humanities*. 2018;26(2):945-960

- [18] Wahid AS. Adik jaga kakak cerebral palsy selepas ibu ditahan Imigieren [Younger brother taking care of cerebral palsy sister after their mother been detained by the Immigration]. *Sinar Harian*. 2021. Available from: <https://m.sinarharian.com.my/mobile-article?articleid=169015>
- [19] Federal Legislation. Federal Constitution. 2020. Available from: <https://lom.agc.gov.my/federal-constitution.php>
- [20] Law of Malaysia Federal Constitution. National Printing. Kuala Lumpur: Malaysia Berhad; 2009
- [21] Chee HL. International marriages in Malaysia: Issues arising from state policies and processes. In: Jones WJ, Terrence HH, Mohamad M, editors. *Changing Marriage Patterns in Southeast Asia: Economic and Socio-Cultural Dimensions*. London: Routledge Contemporary Southeast Asia Series; 2011
- [22] Abd Halim NH. Ramai Lelaki Tempatan Kahwin Wanita Vietnam [Most Local Men Married to Vietnamese Women]. Kuala Lumpur: Utusan Malaysia Online; 2023
- [23] Nur Amirah Abdullah. More and more people choose foreigners. 2019. Available from: <http://www.sintoknews.com/marriage-citizen-local-together-citizen-foreigner-kian-increased/>
- [24] UN Women. Convention on the Elimination of All Forms of Discrimination against Women. 2009. Available from: <https://www.un.org/womenwatch/daw/cedaw/>
- [25] National Registration Department. Summary on Determining Citizenship by Law. 2019. Available from: [https://www.facebook.com/ModeratorJPN/](https://www.facebook.com/ModeratorJPN/posts/ringkasan-kaedah-penentuan-ke-warganegaraan-secara-kuat-kuasa-undang-undangtaraf-/2042018939177478/)
- [26] Malaysian Embassy in Santiago. Summary on Determining Citizenship by Law. 2021. Available from: [https://www.kln.gov.my/web/chl\\_santiago/news-from-mission/-/blogs/ringkasan-kaedah-penentuan-kewarganegar](https://www.kln.gov.my/web/chl_santiago/news-from-mission/-/blogs/ringkasan-kaedah-penentuan-kewarganegar)
- [27] Singh R. Question of mother's rights. November 13, 2021. Penang Women's Development Corporation-PWDC. 2021. Available from: <https://www.facebook.com/PWDCMalaysia/videos/659830105019251/>
- [28] Rahman SAKBA, Sharifuddin SBA, Hafidz MBBM. Citizenship rights in Malaysia: A constitutional reform. *Current Legal Issues*. 2021;3:41-49
- [29] Malaysian Women Can Register Children Born Abroad. *The Star Online*. 12 April 2010. Available at: <https://www.thestar.com.my/news/nation/2010/04/12/malaysian-women-can-register-children-born-abroad/>
- [30] UKMShape. Maklumat umum & Tatacara Memohon Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN) [General information & Application Procedures for the National Higher Education Fund (PTPTN)]. 2018. Available from: <https://www.ukm.my/ukmshape/ptptn-maklumat-umum-tatacara-memohon/>
- [31] Lembaga Zakat Selangor. 2015. Mesyuarat Pertama Penggagal Ketiga Dewan Negeri Selangor tahun 2015 [The First Meeting of the Third Term of the Selangor State Assembly for 2015]. Available from: <http://dewan.selangor.gov.my/question/lembaga-zakat-selangor-2/>
- [32] Immigration Department of Malaysia. Long Term Social Visit. 2021.

Available from: <https://www.imi.gov.my/index.php/en/main-services/pass/visitor-pass/social-visit-pass/long-term-social-visit-pass/>

[33] Smith B. Narrative analysis. In: Lyons E, Coyle A, editors. *Analysing Qualitative Data in Psychology*. 2nd ed. London: Sage; 2016

[34] Human Rights Commission of Malaysia. *Convention on the Elimination of all Forms of Discrimination against Women*. Kuala Lumpur: SUHAKAM; 2009

[35] Saleh NSSN, Shukor SA, Ismail WAFW. Equality and citizenship for women in Malaysia: Where and when? *Malaysian Journal of Syariah and Law* | 9;2021. بماليزيا والقانون الشرعي مجلة | 9;2021 (1):103-113