

STAKEHOLDER REPORT ON MALAYSIA

FOR THE 31ST SESSION IN THE 3RD CYCLE

OF THE HRC'S

UNIVERSAL PERIODIC REVIEW IN 2018

ON THE OF RIGHTS OF FOREIGN SPOUSES IN MALAYSIA

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1. Introduction and Background

1.1 There are increasing numbers of trans-national marriages in Malaysia, quite similar to other parts of the developed world and a reflection of the global phenomenon. Statistics of transnational marriages in Malaysia obtained from the Department of Immigration are 118, 581 transnational marriages in Malaysia for the year 2015, of which 91,214 of the marriages are foreign brides.²

1.2 Non-citizen spouses of Malaysians face many challenges in Malaysia, despite living here, for years, raising children and establishing permanent homes; their immigration status remains uncertain and in situation of dependency being bounden on their Malaysian spouses for their legal status.³ They face severe restrictions on their right to work and are constrained by the inability to even open individual bank accounts and own affordable housing.

1.3 This disproportionately affects both non-citizen wives with Malaysian husbands and even Malaysian wives with non-citizens husbands who are faced with similar problems. Additionally, these spouses encounter widespread discrimination by public and private service providers, creating precarious and vulnerable situations which disadvantages and affects them throughout their lives and in all spheres— domestic, social and economic precarity.

2. Equality and Non-discrimination

2.1 The Federal Constitution expressly provides that children born abroad to Malaysian fathers are entitled to citizenship by operation of law (Article 14(1d), Part I, Second Schedule)⁴ but is silent on children born abroad to Malaysian mothers.⁵ Malaysia has simultaneously and persistently retained its reservation on Article 9(2) of CEDAW which ensures equality in the conferment of citizenship to their children. Consequently, the process for registering children born overseas as Malaysian citizens is far more arduous for Malaysian women.

2.2 The situation has worsened since the last UPR process⁶ with birth applications for citizenship of children born overseas to Malaysian mothers fraught with delays and rejections.⁷ There are several instances where Malaysian mothers have had to wait two years to get a result on their application for citizenship of their children only to be rejected without any grounds being provided.⁸ The delay significantly reduces the success rate of appeals and necessitates another long two-year wait while resubmitting the same documents only to be rejected again. There are examples of such rejections where the children are above the age of six and are faced with the difficulty of accessing the national education system which is only available to citizens.

2.3 The law does not allow for a Malaysian father to pass on citizenship to his child born out of wedlock⁹ even when he marries the child's foreign mother, subsequently. Therefore, a child born under such circumstances would derive citizenship from the foreign mother. However this is not the case, when a Malaysian mother bears a child out of wedlock

2.4 The discrimination that exists in the laws governing the conferment of citizenship has left many children in a citizenship limbo. Many of these children are effectively rendered stateless which has a direct impact on their access to critical and basic services, such as education and healthcare.

2.5 The Federal Constitution provides women foreign spouses with the right to citizenship by registration with the fulfilment of certain criteria, including two years of residency as a permanent resident (Article 15 (1, 5)). However, male foreign spouses can only apply for citizenship by naturalization, the latter granted at the discretion of the Malaysian government. To qualify, male foreign spouses must demonstrate residency of not less than ten years in the twelve years preceding the date of application (Article 19 (3)) – a much longer residency requirement.¹⁰

3. Right to Life, Liberty and Security

3.1 Non-citizens married to Malaysians are completely dependent on their Malaysian spouses to maintain their legal status in the country. The Malaysian spouse is required to be present for every application for the Long Term Social Visit Pass, its frequent renewals and endorsements to work.¹¹ Should the Malaysia spouse refuse to be present at the Immigration Department at any point, the noncitizen spouse's immigration status in the country may be at risk.

3.2 This continues for years and even decades (for male spouses) until they receive Permanent Residence (PR) and Citizenship, consequently exposing them to vulnerable situations of spousal and domestic violence, disempowering especially women spouses in all spheres domestic, social, economic and even institutional precarity, that persists throughout their life time.

3.3 Non-citizen women spouses with children who are divorced or widowed having children but do not have Permanent Residence are compelled to apply for Social Visit Passes with the support of a Malaysia sponsor with an income of at least MYR2,000 (USD644), this pass is for six months and does not confer the holder with the right to work.¹² This results in such spouses being dependent on the goodwill of a Malaysian citizen for their right to reside in Malaysia. Only a few spouses were granted the 10 year Residence Pass with the right to work.

3.4 Furthermore, this provision does not apply to women spouses without children and men in similar circumstances, who would be forced to leave Malaysia. Women foreign spouses in violent relationships are able to stay for a very short term in Malaysia when they seek remedy for domestic violence; they tend to lose custody of their children and are often forced to return to their country of origin.

4. Right to work and to just and favourable conditions of work

4.1 Although, though Malaysian Immigration claims that Marriage migrants can work, the visa for spouses of Malaysians has the statement “**any form of employment is strictly prohibited**”,¹³ leading to severe difficulty in securing jobs. This as well as restrictions such as the employment being tied to the duration of the visa and employment only in the same state, the inability to acquire Professional Licenses until Permanent Residence is an acute economic disadvantage to the Malaysian family.¹⁴

5. Right to social security and to an adequate standard of living

5.1 The employer's contribution to the social security fund (EPF) is not mandatory, and without social security protection (SOCSO) this negatively impacts and especially disadvantages women in transnational marriages and their families. (Non-citizen wives and Malaysian women with non-citizen husbands).

5.2 Non-citizen spouses of Malaysians face difficulty in opening individual bank accounts and are subjected to foreign investment directives which limits their purchase of affordable housing.¹⁵

5.3 Muslim Foreign Spouses and Permanent Residents are unable to register and contribute to Tabung Haji together with their Malaysian Spouses to fulfil their religious duty for the holy pilgrimage of Haj.

5.4 Malaysian Spouses are charged tourist tax for hotels, charged tourist rates at leisure and tourist attractions. They also cannot avail the senior citizen discounts for various services and facilities.

6. Right to healthcare

6.1 We thank the Government for the positive measures taken for Foreign Spouses of Malaysian Citizens who are now able to get same rates for medical fees as locals upon producing their marriage certificates, in Government Health Care Institutions.

6.2 Children whose citizenship applications are delayed and children who are non-citizens with one Malaysian parent are not being provided with compulsory vaccinations in schools and are provided health care only until the age of twelve.

RECOMMENDATIONS

We urge the government of Malaysia to:

1. Amend the Federal Constitution in order to ensure that the children of Malaysian mothers born overseas are able to gain citizenship by operation of law on an equal basis as Malaysian men,¹⁶ and to clear the backlog of citizenship applications of these children.
2. Consider amending the Federal Constitution to eliminate discrimination based on sex, in accordance with Article 8(1), (2) which states that all persons are equal before the law. Accordingly, Article 15 of the Federal Constitution should be amended to allow women to have the same rights as men with regard to the acquisition of citizenship status of their non-citizen spouses.^{17,18}
3. Allow Malaysian men to pass on citizenship to their children when born out of wedlock on the same basis as Malaysian women who are not married.
4. Remove reservation 9(2) under CEDAW.
5. Simplify the Long Term Social Visit Pass process and provide the 5-year visas to spouses that fulfill stipulated conditions, without discriminating on the basis of nationality, ethnicity, gender, number of children or income. Allow for automatic conversion to Permanent Residence when eligible, without further delay.

6. Ensure that divorced and widowed non-citizen spouses of Malaysians (upon provision of supporting documents), are able to reside and work more permanently and independently, taking into account the best interest of the children and the family unit.
7. Amend laws and policies to grant foreign spouses equal rights to work; remove the statement of prohibition from employment on the visa and requirement to obtain permission to work from their Malaysian husbands, and make employers' contribution to EPF and SOCSO for non-citizen spouses mandatory.¹⁹
8. Restrictions on foreign spouses married to Malaysian citizens to open individual bank accounts and purchase property in Malaysia, should be removed as it has an impact on the financial independence and economic rights of the foreign spouse.
9. Non-citizen Spouses should be given same treatment as Malaysians, such as allowed to contribute to the Tabung Haji, provided with senior citizen discounts for various services and facilities and charged local rates for tourist attractions, in the best interest of their Malaysian Families.
10. Enable children with one Malaysian parent to be given Permanent Residence and allow them access to education and health care on a similar basis as Malaysians.

¹ Foreign Spouses Support Group (FSSG) was formed in 2009, by a group of foreign spouses of Malaysian citizens under the auspices and guidance of Migration Working Group, Malaysia and Women's Aid Organisation, to advance, promote and protect the rights of foreign spouses (married to Malaysian citizens) and their children. We uphold the basic rights of foreign spouses as espoused in the Universal Human Rights Declaration.

² Roslan, K. (2017) *Problems and coping strategies of foreign spouses in Kuala Lumpur*, unpublished master's thesis, University of Malaysia.

³ NGO CEDAW Shadow Report, for the Malaysian Government's Review by the CEDAW Committee, at the 69th CEDAW Session in February 2018, Paragraph 9.2

⁴ Laws of Malaysia, Federal Constitution, Article 14(1d) page 35, para 2

⁵ COMANGO 2016 UPR Mid-term Review, page 58

⁶ A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendation 146.172 (Sierra Leone). Ensure birth registration of all children to facilitate the access to social services. The Government accepted this recommendation in full.

⁷ In April 2010, the government announced that Malaysian women married to foreigners could apply for citizenship for their children born abroad, and that citizenship applications for children can be submitted to Malaysian high commissions. Despite the government's purported change in policy, in practice, the process for registration of children born overseas to Malaysian mothers differs

significantly to Malaysian fathers which is a more simplified process. Footnote 74 and 76- CEDAW Joint NGO Submission_List of Critical Issues and Questions_12.6.17.docx,

⁸ 146.73 Ensure prompt registration of all new-born children (Australia). The Government accepted this recommendation in full.

⁹ Plight of the ‘illegitimate’ child? Posted on 29 May 2017

<http://www.thesundaily.my/news/2017/05/29/plight-%E2%80%98illegitimate%E2%80%99-child>

¹⁰ COMANGO-2016-UPR-Mid-Term-Review – page 57

¹¹ NGO CEDAW Shadow Report, for the Malaysian Government’s Review by the CEDAW Committee, at the 69th CEDAW Session in February 2018. Paragraph 9.2

¹² COMANGO-2016-UPR-Mid-Term-Review – page 54

¹³ <https://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

¹⁴ COMANGO-2016-UPR-Mid-Term-Review, page 53 Employment and Economic Implications

¹⁵ NGO CEDAW Shadow Report, at the 69th CEDAW Session in February 2018 – paragraph 13.4 &13.5

¹⁶ CEDAW Concluding observations on the combined third to fifth periodic reports of Malaysia adopted at the 69th Session, paragraphs 33,34.

¹⁷ *ibid*

¹⁸ COMANGO-2016-UPR-Mid-Term-Review, page 58,59.

¹⁹ NGO CEDAW Shadow Report, for the Malaysian Government’s Review by the CEDAW Committee, at the 69th CEDAW Session in February 2018, recommendation 19.