



FAMILY FRONTIERS

## SUBMISSION FOR CONVENTION ON THE RIGHTS OF THE CHILD ALTERNATIVE REPORT (2022)



Photo by Sze Ning

Overseas-born children of Malaysian women donning traditional Malaysian wear hold up signs that say “Ibu saya anak Malaysia, saya juga anak Malaysia.” (“My mother is a child of Malaysia, I am also a child of Malaysia.”)

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Submitted by:

**FAMILY FRONTIERS**—The Association of Family Support & Welfare Selangor & KL (Family Frontiers) is a registered not-for-profit entity that was established with the aim of advancing, promoting and strengthening the family unit so that no family is left behind. It acts as an umbrella body for the Foreign Spouses Support Group, that supports and advocates for the rights of foreign spouses married to Malaysian citizens and mobilises action for the Malaysian Campaign for Equal Citizenship.

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## INTRODUCTION

Child's rights issues pertaining to children of Malaysian citizens married to a non-citizen spouse are multifold. Through no fault of their own, children in Malaysian binational families have been facing repercussions as a result of discriminatory citizenship and immigration-related laws, policies and practices in Malaysia.

In the pursuit of children's access to basic universal rights, this report focuses on key problem areas and recommendations to address gaps in Malaysia's citizenship and human rights' policies that disproportionately affect children in Malaysian binational families. **It should be read with Malaysia's Combined Second to Fifth Periodic State Reports (2008-2018) (State Report).**

Malaysia ratified the United Nations Convention on the Rights of the Child (CRC) in 1995, with reservations to the following Articles:

- **Article 2** regarding non-discrimination
- **Article 7** regarding birth registration and the right to a name and nationality
- **Article 14** regarding freedom of thought, conscience and religion
- **Article 28(1)(a)** regarding compulsory and free primary education for all; and
- **Article 37** regarding torture or other cruel, inhuman or degrading treatment or punishment and unlawful or arbitrary deprivation of liberty

Contrary to paragraph 3 of the State Report, withdrawal of reservation to these core Articles are vital to Malaysia's progress towards realising the principles of the CRC, especially in relation to children of Malaysian citizens married to a foreign spouse.

## RECOMMENDATIONS

### ***Withdraw reservations to Articles 2 and 7 of the CRC, and Article 9(2) of the Convention on the Elimination of All Forms of Discrimination Against Women***

In maintaining its reservations to the above-mentioned Articles, Malaysia is held back in its progress to fully realise the underlying principles of the CRC, and will continue to struggle in its efforts to comply with all the other unreserved provisions of the CRC in a meaningful way.

### ***Amend the Malaysian Constitution to eliminate internal inconsistencies that allow discrimination based on gender so that it is in line with Article 8(2)***

In relation to Article 14(1)(b) read together with Second Schedule, Part II, Sections 1(b) and 1(c) of the Malaysian Constitution, ensure that children of Malaysian mothers born overseas have the right to citizenship by operation of law on an equal basis as children of Malaysian fathers.

Grant citizenship to children whose either parent is Malaysian, notwithstanding the marital status of the parent and regardless of where they are born.

### ***Expedite the processing of citizenship applications***

Allocate the necessary resources to clear the backlog of applications and approve the citizenship application of all children of Malaysian citizens. Citizenship applications should not be determined on a case-by-case basis. Reasons for rejecting an application should also be provided.

### ***Allow universal access to public healthcare regardless of citizenship or documentation status***

Allow all non-citizen children (up to the age of 18) with at least one Malaysian parent to access public healthcare at the same rate as Malaysian citizens, upon provision of the Malaysian parent's identity card. Non-citizen children should also be enrolled in the National Immunisation Programme free of charge, and allowed to take part in public-school-related health programmes such as dental check-ups and other initiatives.

### ***Amend the Education Act 1996 to allow all children in Malaysia equal access to basic education***

Allow access to basic education regardless of citizenship status or documentation, and develop collaborative systems with appropriate agencies to work with primary schools so new and current students (without the required documentation) can be expeditiously identified and assisted. The 2018 directive by the Ministry of Education is the first step towards the right direction, but there needs to be complete and holistic implementation across the nation. The amendment should portray a complete and holistic understanding of the root causes of statelessness, which is usually lack of documentation.

### ***Allow non-citizen spouses equal rights to employment and social services***

There are approximately 150,000 spouses of Malaysians living in Malaysia who have severe restrictions on employment.<sup>1</sup> This can be detrimental to the development of the child and is not in the best interest of the child as it creates instability for the child's education, healthcare, and living standards. By allowing non-citizen spouses equal rights to employment and social services, there is no threat to the financial and social security of each family member. As such, the Government must

1. Remove the prohibition from employment on non-citizen spouses' passes.
2. Grant non-citizen spouses the right to work upon registration of marriage.
3. Allow non-citizen spouses to open individual bank accounts.
4. Extend to non-citizen spouses the protection of labour laws including mandatory Employees Provident Fund and entitlements to severance packages.

## **FOUR CORE PRINCIPLES UNDER THE CRC**

The issues stated in this document affect Malaysia's commitment towards the four core principles enshrined in the CRC, namely the principle of non-discrimination, best interest of the child, life, survival and development, and inclusion and participation. As such, it cannot be said that paragraphs 34 and 38 paint the full picture..

Apart from that, the relevant Articles stated in the CRC relating to the issues faced by children in Malaysian binational families will be outlined at the start of every header.

## **LACK OF ACCESS TO CITIZENSHIP**

### **Related Articles**

<sup>1</sup> Official Portal of the Immigration Department of Malaysia. Statistic of online services transaction for year 2022.  
<https://www.imi.gov.my/index.php/en/statistic-of-online-services/statistic-of-online-services-transaction-for-year-2022/>



- 4 — Legislative, administrative and other measures to implement rights
- 7 — Name and nationality
- 8 — Identity

Despite Malaysia's reservations to Articles 2 and 7 of the CRC, its violations of the CRC are still found in the impact of the substantial obstacles to children acquiring Malaysian citizenship, specifically children born overseas to a Malaysian mother and a foreign father and children born in Malaysia to a Malaysian man and a foreign mother outside of a legally recognised marriage. In fact, Article 8 provides that children have the right to preserve their identity, including nationality.

However, the discriminatory citizenship laws in Malaysia have prevented children from accessing citizenship by operation of law despite having at least one Malaysian parent. Instead, their ability to obtain Malaysian citizenship is based on the discretion of the Home Ministry, under Article 15(2) and 15A of the Federal Constitution.

In a parliamentary response, it was revealed that "based on the records of the National Registration Department (JPN) from 2017 to 15 February 2022, a total of 46,596 citizenship applications under Articles 15 (1), 15 (2), 15A and 19 of the Federal Constitution were received and from that number, 5,656 applications were approved, 4,507 applications were rejected and 33,966 applications are still being processed."<sup>2</sup>

## Children born overseas to a Malaysian mother and a foreign father

### Related Articles

- 7(1) — Right to acquire a nationality
- 7(2) — Ensuring implementation
- 8(1) — Preservation of identity (nationality, name and family relations)
- 24(2)(a) — Diminishing infant and child mortality
- 24(1)(d) — Ensuring pre and post-natal healthcare
- 24(3) — Abolishing traditional practices prejudicial to health of children

While paragraph 78 of the State Report claims that it emphasises family perspective in all areas, Malaysia is one of 24 countries in the world with laws that prevent Malaysian women from conferring citizenship on their children on an equal basis as men.<sup>3</sup> Article 14(1)(b) of the Malaysian Constitution allows a person born outside of Malaysia to be a citizen by operation of law provided that their *father* is a citizen at the time. This limits Malaysian mothers to Article 15(2) and its related provisions under the Second Schedule of the Malaysian Constitution, where citizenship is provided by registration—a system fraught with inconsistencies, delays, and no guarantee of securing citizenship.<sup>4</sup> While paragraph 48 of the State Report provides that Malaysian women may apply for their overseas-born children's citizenship overseas, anecdotal evidence collected by Family Frontiers shows that the application process can be longer than

<sup>2</sup> Parliament of Malaysia. "Question No. 32., Notice of Oral Questions. First Meeting of the Fifth Session of the Dewan Rakyat 14th Parliament." Hansard 17 March 2022. <https://www.parlimen.gov.my/files/jindex/pdf/JDR17032022.pdf>

<sup>3</sup> Global Campaign for Equal Nationality Rights, The Problem, <https://equalnationalityrights.org/the-issue/the-problem>

<sup>4</sup> Family Frontiers. "Malaysian Campaign for Equal Citizenship: Procedural Inconsistencies and Challenges to Citizenship Application via Article 15(2) - Children Born Overseas to Malaysian Women." Family Frontiers, 2020.



two years, with some lasting more than five years merely to get a response on the application, and is usually, rejected, and not accompanied with a reasoning.

In answering a question in Parliament,<sup>5</sup> the Home Minister revealed that between 2013 and 15 February 2022, a total of 4,870 citizenship applications were made for children of Malaysian mothers who were born overseas. Out of those applications, 117 applications were approved and 1,728 applications were rejected. This leaves the status of 3,025 overseas-born children's citizenship applications outcomes unknown.

### The Suriani Kempe case

*Please refer to Annexure 3 for the full breakdown of the court proceedings*

*Suriani Kempe & Ors vs Government of Malaysia & Ors* is a landmark case filed at the Kuala Lumpur High Court by Family Frontiers (a Malaysian civil society organisation) and six Malaysian mothers challenging Malaysia's gender-discriminatory citizenship provision that denies Malaysian women equal rights as men with regards to conferral of automatic citizenship on children born outside the country. The case sought a declaration that the discriminatory provision<sup>6</sup> is to be read harmoniously with Article 8(2) of the Federal Constitution that was amended in 2001 to include 'gender' as a prohibitory ground for discrimination.

The Kuala Lumpur High Court ruled on 9 September 2021 that Malaysian women have equal rights as men to confer citizenship on their children born outside the country. The Court of Appeal, on 5 August 2022, overturned this High Court decision following the Government's appeal against the landmark ruling. The Attorney-General's Chambers (representing the Malaysian Government), as part of the appeal, argued that the 2001 amendment to Article 8(2) is impermissible according to the 'basic structure argument'<sup>7</sup>, invalidating decades of effort to promote gender equal laws and policies in Malaysia.

The Government has vehemently resisted the case since it was filed, from attempts to strike out the case altogether calling it "frivolous, vexatious and troublesome" prior to the High Court decision<sup>8</sup>, to appealing the landmark decision, to applying for stay of execution to halt the implementation of the High Court decision pending the appeal<sup>9</sup> and refusing to issue citizenship documents following the rejection of the stay application.<sup>10</sup> As of now, the case is pending

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<sup>5</sup> Parliament of Malaysia. "Questions No: 90. Notice of Oral Questions, First Meeting of the Fifth Session of the Dewan Rakyat 14th Parliament." Hansard 2 March 2022. <https://www.parlimen.gov.my/files/jindex/pdf/JDR02032022.pdf>

<sup>6</sup> Article 14(1)(b) read with Second Schedule, Part II, Section 1(b) and 1(c) of the Federal Constitution

<sup>7</sup> Citing *Dhinesh a/p Tanaphil v Lembaga Pencegahan Jenayah & 2 Ors*, a recent Federal Court judgement, the Government argued that the 2001 amendment to Article 8(2) is impermissible as Article 8 forms the "basic structure" of the Federal Constitution and as such cannot be amended.

<sup>8</sup> On 22 January 2021, the Government filed an application to strike out the *Suriani Kempe* case stating it was "frivolous, vexatious and troublesome" and that it was an "abuse of the court process". However, on 6 May 2021, the Kuala Lumpur High Court delivered a judgement in favour of the applicants ruling that the case can proceed. In response to the failed strike out, the Government filed an appeal at the Court of Appeal against the High Court judgement. In the interim, the Government filed a stay application to temporarily halt the High Court judgement (on the strike out) until the Court of Appeal disposed the strike out. However the High Court dismissed the Government's stay application. Subsequently, the Court of Appeal dismissed the Government's appeal against the High Court judgement on the strike out and ruled that the merits of the case can be heard.

<sup>9</sup> Along with its appeal against the landmark High Court decision, the Government, on 13 September 2021, filed a stay of execution pending appeal to halt the implementation of the High Court order (which ordered the issuance of citizenship documents to all children born outside Malaysia to Malaysian women). On 15 November 2021, the High Court dismissed the Government's stay application with RM5000 as costs to the plaintiffs. On 16 November, the Government filed an application for a stay at the Court of Appeal. On 22 December 2021, the Court of Appeal unanimously dismissed the Government's application for a stay of execution of the Kuala Lumpur High Court judgement.

<sup>10</sup> The Government was reluctant to comply with the High Court judgement following the dismissal of their stay application which prompted Family Frontiers and the community of impacted Malaysian women to launch the #ManaDokumenKami campaign (translates to "Where are our documents"). The campaign urged the Government to expeditiously issue citizenship-related documents to all children born outside Malaysia to Malaysian women. At the same time,



disposal at the Federal Court following the Court of Appeal overruling the landmark decision on 5 August 2022.

## Children born in Malaysia to a Malaysian father and a foreign mother outside of a legally recognised marriage

### Related Articles

- 7(1) — Right to acquire a nationality
- 7(2) — Ensuring implementation
- 8(1) — Preservation of identity (nationality, name and family relations)
- 8(2) — Assistance and protection to speedily re-establish identity

Section 17, Part III, Second Schedule of the Malaysian Constitution states that a person born outside of a legally recognised marriage shall automatically be accorded the citizenship of their mother. However, this does not solve the problem as the foreign mother has to register her child at her country's embassy or consulate to confirm its nationality or the child will be at risk of becoming stateless. Problems arise if the mother abandons the child or the couple divorces and the child's foreign mother returns to her country of origin. In such cases, the child's parentage cannot be proven without a valid marriage certificate, thus, leaving the child to be unable to live with the mother or to be granted Malaysian citizenship.

In Malaysia, only legally married parents can be listed as spouses on their child's birth certificate. This condition becomes the only way to prove the father's identity and for the child to receive Malaysian citizenship. Legal and valid marriage certificates are the deciding factor on whether a child is entitled to Malaysian citizenship. If there is no legal marriage certificate, then the Malaysian government considers the child to be the same nationality as the mother.

The only recourse for these children is Article 15A of the Federal Constitution, which provides the Home Ministry with discretion to register children as citizens under "special circumstances".<sup>11</sup> This, too, is a process fraught with inconsistencies, delays and no guarantee of approval. Based on the records of the National Registration Department (JPN) from 2018 to June 2022, a total of 12,154 applications for citizenship under Article 15A of the Federal Constitution are still in the process.<sup>12</sup>

## The Government's practice of appealing against decisions related to citizenship

### Related Articles

- 4 — Legislative, administrative and other measures to implement rights
- 8(1) — Preservation of identity (nationality, name and family relations)
- 8(2) — Assistance and protection to speedily re-establish identity

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Family Frontiers' legal team served the Government with a letter highlighting the discrepancies. On 21 February 2022, in response to the letter and immense public pressure, the National Registration Department issued the citizenship certificate (*Sijil Pengesahan Taraf*) to three of the plaintiffs in the Suriani Kempe case. As it stands, all six Malaysian mothers who are plaintiffs in the case have received their children's citizenship.

<sup>11</sup> Malaysian Constitution, art 15A.

<sup>12</sup> Parliament of Malaysia. "Question No. 28., Notice of Oral Questions. Second Meeting of the Fifth Session of the Dewan Rakyat 14th Parliament." Hansard 19 July 2022. <https://www.parlimen.gov.my/files/jindex/pdf/JDR19072022.pdf>



Besides *Suriani Kempe & Ors v Government of Malaysia & Ors*, other citizenship-related cases were also met with resistance from the Government of Malaysia.<sup>13</sup>

Whenever the decision was in favour of the individuals seeking declarations that they are Malaysians, the Government of Malaysia would appeal to the higher court. This forces them to exhaust their energy, time and resources fighting against the Government's appeals against the granting of their citizenship by the Malaysian courts. Many of these cases ended up in the Federal Court. Meanwhile, the Government of Malaysia had been utilising taxpayers' money to draw these citizenship cases to a close at the highest court in the land.

## Potential statelessness

### Related Articles

- 7(1) — Right to acquire a nationality
- 7(2) — Ensuring implementation to prevent statelessness
- 8(1) — Preservation of identity (nationality, name and family relations)
- 8(2) — Assistance and protection to speedily re-establish identity

The National Registration Department of Malaysia (NRD) often arbitrarily determines the nationality of an individual by registering them as "non-citizen" or "undetermined" on their birth certificate. This caused the number of statelessness to increase in Malaysia. One of the most common reasons for statelessness among children in Malaysia are failure to register marriages and birth of children.

On another note, unsuccessful citizenship applications by Malaysian women married to foreign citizens for their overseas-born children's citizenship lead to children potentially being rendered stateless should the foreign father have no access to his own country's citizenship. This causes the children to be 'invisible', lacking access to fundamental rights such as education, healthcare and legal retribution.

*Sharon Chin is a Malaysian with a foreign husband. Three of her children were born overseas and are currently stateless, while one of them was born in Malaysia and is Malaysian. She and her husband expected that they would be able to acquire Malaysian citizenship. She made an application for Malaysian citizenship for all of them in 2015, but it was rejected three years later without a reason. She tried again a year later, going through the Malaysian courts, and spent her life savings of RM35,000 on legal fees to ensure that her second round of application would succeed, but the court's decision was not in her children's favour. Her second application for Malaysian citizenship for the three children is pending in the Home Ministry office until today. Her biggest fear is that they remain stateless their entire lives. She knows that every aspect of their lives will be crippled due to the lack of citizenship. Without Malaysian citizenship, their welfare is not protected should they be raised in Malaysia as they would have limited access to healthcare and education.*

<sup>13</sup> New Straits Times. Federal Court declares stateless teenager a Malaysian citizen. 19 November 2021. Retrieved from <<https://www.nst.com.my/news/nation/2021/11/746764/federal-court-declares-stateless-teenager-malaysian-citizen>>; Malay Mail. Sabah-born man's 15-year-wait for Malaysian citizenship continues as govt appeals to Federal Court. 18 February 2022. Retrieved from <<https://www.malaymail.com/news/malaysia/2022/02/18/sabah-born-mans-15-year-wait-for-malaysian-citizenship-continues-as-govt-ap/2042416>>; Malay Mail. Perak-born stateless girl wins in court again, judges say correct to declare her a Malaysian citizen. 15 February 2022. Retrieved from <<https://www.malaymail.com/news/malaysia/2022/02/15/perak-born-stateless-girl-wins-in-court-again-judges-say-correct-to-declare/2041686>>.





## Risk of deportation or denial of entry

### Related Articles

9(1) — Prevent family separation

9(4) — Provision of essential information concerning whereabouts of absent family member

10(1) — Entry and exit of country for family reunification

10(2) — Maintenance of regular relations and contact with both parents

20(1) — Special protection and assistance for child temporarily or permanently deprived of family environment

27(1) — Adequate standard of living

27(3) — Assistance to parents to implement adequate standard of living

### Challenges during the COVID-19 pandemic

Children born overseas to Malaysian mothers have no option but to remain in the country under a dependent pass or student pass, which has to be renewed frequently. Should their pass expire, they are at risk of deportation until the pass is renewed. As such, they are usually forced to exit and re-enter the country.

This is made worse during the COVID-19 pandemic, as they are placed at risk of contracting the virus or forced to remain overseas when the borders close unexpectedly due to the frequent changes in standard operating procedures.

*Dr Jennifer's daughter was born in Taiwan, and her application to be a Malaysian citizen is still pending with no results. She decided to return to Malaysia upon receiving a letter from the Ministry of Health to serve during the COVID-19 pandemic as a frontliner. However, her application for her then 3-year-old child to enter Malaysia was left with no results for months, despite holding a valid LTSVP. They arrived at the airport, but were not allowed to enter the aircraft as the Malaysian immigration department insisted that only Malaysians are allowed to enter Malaysia. She could not return to Malaysia with her child despite being her only guardian. Since then, her child suffered post-traumatic stress disorder, where she would wake up every midnight to ensure that her mother was there with her. It gradually stopped only when they were back in Malaysia.*

A directive was made on 21 April 2021 for non-citizens on social visit passes which expired during the Malaysian Movement Control order, 10 days to leave the country or remain with punitive consequences. While those unable to do so were given the option to appeal to the immigration authorities and the outcome would be determined on a case-by-case basis,<sup>14</sup> anecdotal evidence shows that some people were informed that no such special pass existed, and only limited appointments were available at the immigration department, which made it difficult to access their services. .

It is clear that there are not sufficient measures to prohibit and eliminate all forms of harmful practices.

### Detention of non-citizen parent

Family Frontiers has received reports of non-citizen spouses of Malaysians being detained

<sup>14</sup> The Star. Expired social visitor pass holders who can't leave by April 21 can apply for special pass to extend stay, says Home Minister. 12 April 2021.

Retrieved from

<<https://www.thestar.com.my/news/nation/2021/04/12/expired-social-visitor-pass-holders-need-to-leave-malaysia-by-april-21-says-immigration-dg>>.



under the Immigration Act 1959/63 after initially being charged for non-immigration related offences. Despite possessing valid visas, they are taken to the immigration detention depot and may be issued deportation orders, even after serving their sentence—usually a hefty fine and a few days' jail sentence. This has raised concerns about the liberty of those who cannot renew, extend or apply for visas, especially due to the disruptions during the COVID-19 pandemic.

The forceful and wilful tearing apart of the familial structure causes women and children to suffer long-lasting devastating psychosocial consequences with a detrimental impact on their well-being and is a huge setback for Malaysian binational families.

## Adverse treatment by peers and authorities due to lack of Malaysian citizenship

### Related Articles

- 19(1) — Protection against violence and abuse
- 27(1) — Adequate standard of living
- 28(2) — Humane school discipline administration
- 29(1) — Aims of education

The initiatives stated in paragraph 74 of the State Report are also insufficient to address issues of bullying among non-citizen children. A focus group discussion conducted by Family Frontiers among non-citizen children of Malaysian women revealed that a portion of these children have experienced racism and differential treatment among their peers as a result of their identity and lack of Malaysian citizenship. These include negative remarks on their ethnicity and appearance. Some of these issues remain unresolved to this day.

Children without citizenship face issues of bullying, racism, confusion over their identity and fear of being separated from their families due to them being on student visas and the lack of Malaysian citizenship.

Most participants express that they want Malaysian citizenship so that they will feel like they belong in the country and in their family, and do not have to face anxiety and fear of being separated from their families or forced out of Malaysia. They want a less racist environment where they will not be called derogatory names by their peers for being of a different ethnicity or having a different nationality.

## LACK OF ACCESS TO EDUCATION

### Related Articles

- 19(1) — Protection against violence and abuse
- 28(1) — Right to education
- 28(2) — Humane school discipline administration

Contrary to paragraphs 34(ii) and 131(1) of the State Report, non-citizen children, including children born to Malaysian mothers overseas and Malaysian fathers out of wedlock have limited access to education in Malaysia.



A directive made by the Ministry of Education in 2018 allowed non-citizen children of Malaysian parents or guardians to register by requiring only relevant documents such as the child's birth certificate, adoption papers or a court order. Together with the application, which must be submitted yearly, a fee of RM 120 for primary school and RM 240 for secondary school must be paid. Due to the documents required, more than 300,000 children in Malaysia are currently denied education as a result of being stateless, refugees, asylum seekers or undocumented.<sup>15</sup>

There are two concerns that remain with this system: non-citizen students are ineligible for services such as the Textbook Loan Scheme, Supplementary Food Programme and health programmes mentioned in paragraph 132(ii) of the State Report, and proper documentation and citizenship must be filed with the NRD within two years, or the child may face difficulties to continue accessing public schools.

Though this new practice was established in 2018, it has not been not fully implemented or enforced. An event as basic as the first day of school is still riddled with bureaucratic challenges for these children. A non-citizen child of a Malaysian woman requires a student pass to be enrolled in school. Those who wish to be admitted into national schools will be going back and forth between the school, Education Department and Immigration Department. However, in the event that they cannot get a place in a national school, they must opt for private schools, which is costly and unaffordable for many families.

*Please refer to Annexure 2 for a brief breakdown of the expenditures for non-citizen children of Malaysians.*

*As a Malaysian mother with an overseas-born child, Esther had been rushing around trying to complete the to-do list that was handed to her by the Education Department. She was shocked at the sheer amount of documents needed just for her child to be able to start the first year of primary school. She made calls to many schools in a small town, but many of them were not familiar with the enrollment of foreign students and were reluctant to offer a place. After much difficulty and with the help of a passionate teacher, she finally found one school which was willing to accept her child, but it was subject to availability. "Why should my child be punished for simply being born to a Malaysian mother and not a Malaysian father?" Esther asked.*

*Since October 2021, the process of applying for her child's student pass has spanned across three different cities, at least eight trips to the Education Department, several trips to different Immigration Department branches and various governmental offices and schools as she had to make enquiries, submit documents and produce more documents.*

The 2018 directive also does not apply to stateless children who do not have a Malaysian parent or guardian.<sup>16</sup> Their education is still contingent upon alternative learning centres, which have been shown to be limited to basic resources that restrict the full potential of the centres.<sup>17</sup>

<sup>15</sup> Free Malaysia Today. Putrajaya not following policy on education for all children, group laments. 2 March 2022. Retrieved from <<https://www.freemalaysiatoday.com/category/nation/2022/03/02/putrajaya-not-following-policy-on-education-for-all-children-group-laments/>>.

<sup>16</sup> Parliament of Malaysia. "Questions No: 31. Notice of Oral Questions, Third Meeting of the Third Session of the Dewan Rakyat 14th Parliament." Hansard 25 November 2020.

<sup>17</sup> Ngui Yi Xe, W., et al. "Alternative education for undocumented children: an input evaluation." *Journal of Advanced Research in Social and Behavioural Sciences* 9(1) (2017).



## LACK OF ACCESS TO HEALTHCARE

### Related Articles

- 6(1) — Inherent right to life
- 6(2) — Survival and development of child
- 23(1) — Full and decent life of dignity for special needs children
- 23(2) — Right of children with special needs to special care
- 23(3) — Financial assistance of children with special needs
- 24(1) — Enjoyment of highest attainable standard of health and healthcare facilities
- 24(2) — Pursuance of full implementation of right to healthcare

Regarding paragraph 6(iv) of the State Report, the enactment of the Persons with Disabilities Act 2008 does not protect the rights, interests and welfare of special needs non-citizen children in Malaysian binational families. Additionally, contrary to paragraph 34(ii) of the State Report, non-citizen children, including children born to Malaysian mothers overseas and Malaysian fathers out of wedlock have limited access to health services in Malaysia.

Non-citizen children of a Malaysian parent are designated as foreigners in public medical facilities, which carry additional fees compared to citizens, as per the 2016 amendments to the Fees Act (Medical) 1951. For example, outpatient treatment for Malaysian citizens cost RM 1, while for foreigners it is RM 40.<sup>18</sup> Certain services such as vaccinations and dental checks which are normally provided for free to Malaysian children in public schools are not for non-citizen children, including the National Immunisation Programme mentioned in paragraphs 107 and 117(i) of the State Report. It is estimated that parents will have to pay a total of RM 1,000 in vaccinations alone for their children—each vaccine costing RM40 and following the schedule set by the Ministry of Health for vaccinations, there are a total of twenty-five vaccines required from birth to the age of 15. Parents who have children with disabilities or long-term health issues will be faced with exorbitant medical costs.

*“My child was born overseas to me, a Malaysian mother. She is a special needs child who requires continuous treatment. The cost of raising her in Malaysia as a single parent is financially burdensome,” says Camelia (not her real name).*

There are two classifications of non-citizen children who are allowed to enjoy health care services alike to citizens: those born in Malaysia under the age of 12, holding a Malaysian Birth Certificate and with at least one parent who is a citizen or PR holder, and those under the age of 18, adopted by Malaysian parents and with certified adoption papers. However, it does not apply to overseas-born children of Malaysian mothers.

<sup>18</sup> Ministry of Health Malaysia. “Outpatient Charges.” Ministry of Health Official Portal. Website. <<https://www.moh.gov.my/index.php/pages/view/160?mid=291>>



# 'PROHIBITION OF EMPLOYMENT' ENDORSEMENT ON LONG-TERM SOCIAL VISIT PASSES

## Related Articles

27(1) — Adequate standard of living

27(3) — Assistance to parents to implement adequate standard of living

The difficulties posed towards foreign spouses of Malaysian nationals in terms of employment is also found to have a significant impact on the welfare of the children in Malaysia. There are approximately 150,000 spouses of Malaysians living in Malaysia who have severe restrictions on employment.<sup>19</sup>

Foreign spouses of Malaysians usually hold Long-Term Social Visit Passes (LTSVP) to remain in Malaysia with their families. The LTSVP contains a statement that *'any form of employment is strictly prohibited'*. Foreign spouses may request prior approval from the Immigration Department to work, but employers remain reluctant to hire them upon seeing this prohibition notice. Besides, the approval to work is still attached to highly restrictive conditions—it is tied to the validity of the LTSVP, to one state within the country, and these foreign spouses are unable to acquire professional licences.

On 2 March 2022, the Minister of Home Affairs stated that the Government has no plans to remove the statement/endorsement on the "prohibition of employment" on the LTSVP for foreign spouses of Malaysians.<sup>20</sup> This is an alarming statement as it shows that the Government lacks understanding on the importance of easing the process of applying for work for foreign spouses.

The difficulties faced by foreign spouses in obtaining employment has caused non-citizen children to be economically dependent on the Malaysian parent. Consequently, binational Malaysian homes are forced to rely upon one income. This dependence can increase the risk of domestic violence as the non-citizen spouse is left with no choice but to depend on the Malaysian spouse for their legal status and economic security in the country, placing the children's welfare at risk.

## CUSTODIAL ISSUES

### Related Articles

9(1) — Prevent family separation

9(4) — Provision of essential information concerning whereabouts of absent family member

18 — Common responsibility of parents in child's upbringing

19 — Protection against violence and abuse

<sup>19</sup> Official Portal of the Immigration Department of Malaysia. Statistic of online services transaction for year 2022.

<https://www.imi.gov.my/index.php/en/statistic-of-online-services/statistic-of-online-services-transaction-for-year-2022/>

<sup>20</sup> Parliament of Malaysia. "Questions No: 69. Notice of Oral Questions, First Meeting of the Fifth Session of the Dewan Rakyat 14th Parliament." Hansard 2 March 2022. <https://www.parlimen.gov.my/files/jindex/pdf/JDR02032022.pdf>



20(1) — Special protection and assistance for child temporarily or permanently deprived of family environment

## Where a Muslim child is born out of wedlock, the mother and her relations have exclusive custody

### Related Articles

9(1) — Prevent family separation

18 — Common responsibility of parents in child's upbringing

The marriage registration process of a Malaysian binational couple is also cumbersome. If the Muslim marriage of a Malaysian binational couple takes place overseas, and the marriage is subsequently deemed null and void when they return to Malaysia after the birth of the child to register their overseas marriage, the child is also deemed to be born out of wedlock. As a result, under Islamic family law, the child is usually placed under the exclusive custody of the mother and her relations, despite being raised by both parents. In case of a divorce, the child will have no freedom to choose between either parent.

Children born overseas to Malaysian mothers and children born out of wedlock to Malaysian fathers and foreign mothers are both at risk of being separated from their parents against their will, in gross violation of not only Articles 9 and 10 of the CRC but also the best interest principle as encapsulated in Article 3 of the CRC.

## Child's lack of Malaysian citizenship as an issue in custody battles

### Related Articles

9(1) — Prevent family separation

18 — Common responsibility of parents in child's upbringing

19 — Protection against violence and abuse

In the event that their Malaysian mother and foreign father go through a divorce, their non-Malaysian citizenship becomes an issue in resolving the matter of custody.

*Camelia (not her real name) is a Malaysian mother of a young overseas-born child. They are both victims of severe domestic violence. "We fled from the household and returned to Malaysia, my home country, to seek protection, after I was seriously injured. My child was traumatised after witnessing many occasions of violence. It resulted in her being severely anxious and fearful. I have submitted the citizenship application for my child a long time ago, but we are left awaiting its results for many years until today. Meanwhile, we are trapped in a dire and cruel situation, where my child's father demanded custody of the child, citing various obstacles to raise my child as a "foreigner" in Malaysia as the reason she should stay with him. Without Malaysian citizenship, my child is affected in every aspect, including the assurance to even remain in her 'refuge' that is Malaysia, all because of the unequal Malaysia law that does not allow Malaysia mothers equal rights to even protect their children." says Camelia.*



## Denial of visas for divorced foreign parents

### Related Articles

9(1) — Prevent family separation

9(4) — Provision of essential information concerning whereabouts of absent family member

10(1) — Entry and exit of country for family reunification

10(2) — Maintenance of regular relations and contact with both parents

18 — Common responsibility of parents in child's upbringing

The immigration authority also frequently denies visas to divorced foreign parents, even those with joint custody of their children. In a parliamentary response,<sup>21</sup> the Home Ministry confirmed that the Immigration Department does not issue any pass equivalent to Long Term Social Visit Passes for widows to non-citizen men who have divorced Malaysian citizens. Instead, it is based upon the discretion of the Immigration Department on whether they are allowed to remain in the country even though they have joint custody of their children. This denies them visitations and co-parenting of their Malaysian children. Following this, the children are denied their rights under Articles 9, 10 and 18 of the CRC.

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<sup>21</sup> Parliament of Malaysia. "Questions No: 23. Notice of Oral Questions, Second Meeting of the Fourth Session of the Dewan Rakyat 14th Parliament." Hansard 29 November 2021.

## ANNEXURE 1

### Voices of the children: Overseas-born children of Malaysian mothers

Note: Names marked with \* have been changed to preserve the identity.



**Scarlette\*, 7 years old, Johor, Malaysia**

*"I was born in Germany. I sit on an aeroplane and return home when I was 3 years old. I hope I can get my Malaysian passport soon just like my sister."*



**Juwon, 12 years old, Sabah, Malaysia**

Child of Ng Mei Mei, one of the plaintiffs in *Suriani Kempe & Ors v Government of Malaysia*

*"Children holding hands to request that fair citizenship be granted to them."*

**Qu YiHan, 6 years old, Johor, Malaysia**

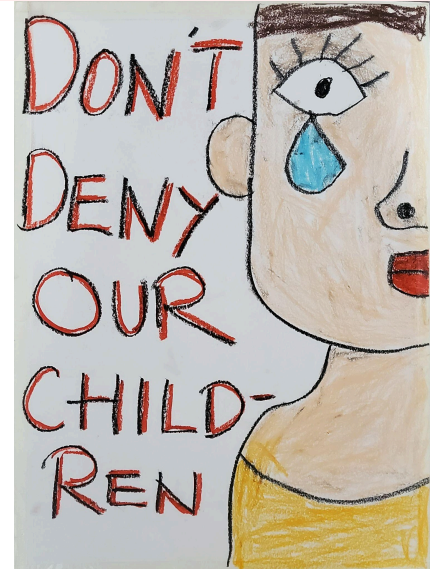
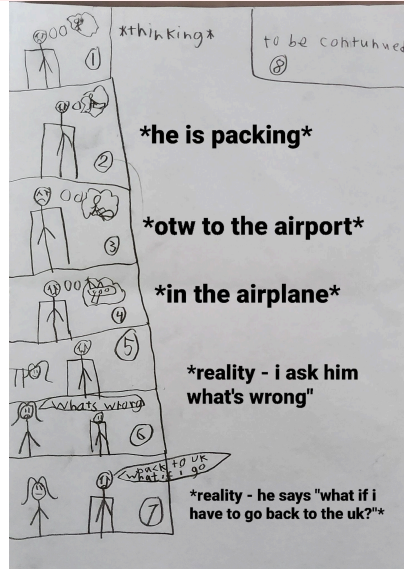
*"My name is Qu YiHan. I was born in China. My mummy is Malaysian. I came along with my mummy from China when I was 4 months old. I study in Malaysia and I have a lot of good friends in school. We play and learn together. This is one of my best friends in school. We go to the park with our mummies. I love Malaysia. I am Malaysian too."*





**Leto, 8 years old, Selangor, Malaysia**

*“Demonstrates the emotional stress the impacted children go through. The sexist citizenship law doesn't just affect the mothers.”*



*“The joy my child felt when he was told on 9/9/21 of the High Court ruling, that he is a Malaysian. And he won't have to be separated from me.”*



**XinLei, 5 years old, Italy**

*“I miss my grandfather's house in Malaysia...”*



**Zayn, 4 years old, Pahang, Malaysia**

*“We are Malaysian Children.”*



**Gianna, 4 years old, Selangor, Malaysia**

*“The day I get my Malaysian citizenship will be a happy day for me and my mum.”*



**Dalila, Mika and Daud**  
8, 7 and 5 year-olds, Kuala Lumpur, Malaysia

*“Both Malaysian and non-Malaysian children.”*



**Ayden, 10 years old, Selangor, Malaysia**

*“The Sultan Haji Samad building, head piece (tanjak) and hand piece (Malaysian flag).”*

## Capacity building session with non-citizen children of Malaysians

A capacity building session to gain insight into the children’s understanding of their rights and welfare and their experiences living in Malaysia as non-citizens.



The focus group discussion was centred around topics of the children’s living standards, education, health, child participation and protection. The Forest of Life activity consists of the children drawing out things that are important to their lives, including their needs and important figures in their lives. As a debriefer, the children created cards for their mothers as a way to express their appreciation for their mothers for taking care of their well-being. They were also introduced to the Convention on the Rights of the Child and its contents through a simple presentation and a **video produced by UNICEF Malaysia on child rights**.



## Children holding their handmade placards during the #SayaJugaAnakMalaysia and #ManaDokumenKami campaigns



## Human Rights Festival 2022



Photo by Sze Ning

The Malaysian Bar Council invited Family Frontiers to perform on stage and set up an advocacy booth at its Human Rights Festival on 10 December 2022, in conjunction with Human Rights Day.



Photo by Sze Ning

A briefing was held among Malaysian women whose children are invited to be a part of the recital as well as volunteers for the advocacy booth. Following that, 4 practice sessions were held in preparation for the performance.

On the day of the event, approximately 30 people from the public witnessed the performance, while about 50 people dropped by Family Frontiers' advocacy booth managed by the impacted community and Family Frontiers' staff members to learn more about the campaign.



### 8 overseas-born children of Malaysian women

The children performed a recital on the Convention on the Rights of the Child and its relation to the impacts of gender-discriminatory citizenship laws that they experienced. [Link to the performance available here.](#)

## ANNEXURE 2

### Costs Borne by Malaysian Parents for the Education of Their Non-Citizen Children

<p><b>School fees (Cost for private schooling if a seat at a public school cannot be secured)</b></p>	<ul style="list-style-type: none"> <li>Between RM20,000-RM40,000 per year.</li> </ul> <p><i>Fees will increase gradually as the child's age increases. Fees for secondary school can go up to RM40k per year.</i></p>
<p><b>School fees (Costs for education in public schools)</b></p>	<ul style="list-style-type: none"> <li>RM120/year for primary school</li> <li>RM240/year for secondary school</li> </ul> <p><i>Additional costs for textbooks, dental and health check ups, vaccinations etc will be borne by parents as non-citizen children are not eligible for schemes such as the textbook loan scheme, supplementary food programme and health programmes.</i></p>
<p><b>Medical insurance (required for student pass)</b></p>	<p>Estimated insurance cost: RM700-RM2,500 per year <i>*depending on the insurance company and plan</i></p>
<p><b>Visa costs and charges</b></p>	<ul style="list-style-type: none"> <li>Student visa/pass cost: ~RM60-RM100 per year <i>*may differ according to nationality</i></li> <li>Processing fees charged by private schools/agent costs for student visa applications = ~RM550-RM1,500 per year</li> </ul>



## ANNEXURE 3

### **Public Interest Case Filed by Civil Society Organisation Family Frontiers and Six Malaysian Women Challenging Malaysia's Gender-Discriminatory Citizenship Laws**

On 18 December 2020, Family Frontiers ("FF") along with 6 affected mothers, brought a legal action at the High Court in Kuala Lumpur via an originating summons against the Government of Malaysia, Minister of Home Affairs and Director-General of the National Registration Department seeking a declaration that:

*Article 14(1)(b) read with Second Schedule, Part II, section 1(b) and (c) of the Federal Constitution is to be read harmoniously with Article 8(2) of the Federal Constitution that was amended in 2001 to include "gender" as a prohibited ground for discrimination.*

Family Frontiers resorted to seeking justice through the Malaysian courts due to the critical cases of impacted women and children with limited access to justice during COVID-19. This was also during the political crisis in Malaysia that led to the fall of the democratically-elected Pakatan Harapan government and the formation of the Perikatan Nasional government; this resulted in Family Frontiers losing its major focal points in government. A state of emergency was also declared subsequently that suspended parliamentary sessions and further denied opportunities for Family Frontiers to engage in parliamentary mechanisms and push for legislative reform.

#### **MALAYSIAN GOVERNMENT'S RESISTANCE AGAINST MALAYSIAN WOMEN'S FIGHT FOR EQUAL CITIZENSHIP RIGHTS**

The Government attempted to strike out the case filed by Family Frontiers at the Kuala Lumpur High Court on 22 January 2021 by calling the case "frivolous, vexatious and troublesome" and that it was an abuse of the court process. The main arguments from the government included that Family Frontiers and the Malaysian mothers did not have the locus standi to commence legal action and did not have a reasonable cause of action and that the court had no jurisdiction and was not the appropriate forum for the Plaintiffs to express their frustration regarding the existing citizenship provisions. The strike out application was dismissed by the High Court on 6 May 2021. The Government then filed an appeal against the High Court decision (on the strikeout) on 7 May 2021 which was dismissed on 20 August 2021.

#### **THE LANDMARK HIGH COURT JUDGEMENT**

On 9 September 2021, the Kuala Lumpur High Court judge Dato' Akhtar Tahir in a landmark decision ruled that Article 14(1)(b) together with the Second Schedule, Part II, Sections 1(b) and 1(c) of the FC, must be read harmoniously with Article 8(2) of the Federal Constitution. In doing this, the High Court judge announced that the word 'father' must be read to include mothers and that the overseas-born children of Malaysian women are citizens by 'operation of law'.

#### **THE GOVERNMENT'S APPEAL AGAINST THE LANDMARK HIGH COURT JUDGEMENT**

On 13 September 2021, the Government filed an appeal against the landmark High Court decision. They also applied for a stay of execution to temporarily halt the implementation of the High Court's decision pending appeal. This was despite open support for the court decision from



federal ministers<sup>22</sup> including the de facto Law Minister, Datuk Seri Wan Junaidi Tuanku Jaafar.<sup>23</sup> Meanwhile, the Government announced their intention to amend the Federal Constitution to facilitate citizenship by 'operation of law' for children born outside Malaysia to Malaysian women, but failed to meet its own commitments. [Refer Annex C]

On 15 November 2021, the Kuala Lumpur High Court in *Suriani Kempe & Ors v Malaysian Govt & Ors* dismissed the Government's bid to stay the execution of its decision on 9 September 2021 to grant Malaysian mothers equal rights to confer citizenship to their overseas-born children, pending the Government's appeal. The Government then filed an application for a stay at the Court of Appeal.

## THE GOVERNMENT'S UNSUCCESSFUL STAY APPLICATIONS

On 22 December 2021, the Court of Appeal unanimously dismissed the Government's stay of execution application and ordered the issuance of citizenship-related documents to impacted children.<sup>24</sup> Following this, on 29 December 2021, three Malaysian mothers who are plaintiffs in the Suriani Kempe case submitted their documents to the National Registration Department (NRD) under Article 14(1)(b) of the Federal Constitution, in order to obtain citizenship documents for their children.

While Malaysian fathers who submit the required documents can receive the confirmation of citizenship for their overseas-born children anywhere between 3 to 10 days, the plaintiffs and other Malaysian mothers in similar circumstances who submitted their documents to the NRD were told that the process would take 3 to 6 months.

On 11 February 2022, Family Frontiers' legal team served the Government with a letter highlighting the continuing discrepancies between the processing of relevant documents by Malaysian mothers and Malaysian fathers, in contradiction to the High Court's ruling. The legal team also requested updates on the plaintiffs' submission of relevant documents.

On 21 February 2022, in response to the letter, NRD issued the citizenship certificate (Sijil Pengesahan Taraf) to three of the plaintiffs in the Suriani Kempe case.<sup>25</sup> As it stands, the six Malaysian mothers who are plaintiffs in the case have received their children's citizenship; the other impacted Malaysian mothers continue to await their children's citizenship.

## THE COURT OF APPEAL HEARING

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<sup>22a</sup>Rina Harun welcomes High Court citizenship decision, says sheds new light on aspirations of women." The Star. 11 September 2021. Available at: <https://www.thestar.com.my/news/nation/2021/09/11/rina-harun-welcomes-high-court-citizenship-decision-says-sheds-new-light-on-aspirations-of-women> ; "Annuar wants Cabinet to decide on citizenship issue." Free Malaysia Today. 14 September 2021. Available at:

<https://www.freemalaysiatoday.com/category/nation/2021/09/14/annuar-wants-cabinet-to-decide-on-citizenship-issue/>

<sup>23a</sup>Law minister lauds KL High Court's decision on automatic citizenship for children born to Malaysian mothers abroad." MalayMail. 9 September 2021.

Available at:

<https://www.malaymail.com/news/malaysia/2021/09/09/law-minister-lauds-kl-high-courts-decision-on-automatic-citizenship-for-children-born-to-malaysian-mothers-abroad/2004321>

<sup>24a</sup>Government loses bid to delay giving citizenship papers to kids born abroad to Malaysian mums." MalayMail. 22 December 2021. Available at:

<https://www.malaymail.com/news/malaysia/2021/12/22/government-loses-bid-to-delay-giving-citizenship-papers-to-kids-born-abroad-to-malaysian-mums/2030265>

<sup>25a</sup>Three children born overseas to Malaysian mums finally get citizenship certs after hours-long wait at NRD over 'printing issues'." MalayMail. 21 February 2022. Available at:

<https://www.malaymail.com/news/malaysia/2022/02/21/three-children-born-overseas-to-malaysian-mums-finally-get-citizenship-cert/2042978>



On 23 March 2022, the Court of Appeal heard the Government's appeal against the High Court decision on the merits of the case.<sup>26</sup>

On 22 June 2022, the Court of Appeal heard further submissions by both parties on the Government's appeal against the High Court decision in *Suriani Kempe & Ors v Government of Malaysia & Ors*.<sup>27</sup> The Court fixed August 5th to announce its decision.

The Attorney-General's Chambers, as part of its appeal, included a new argument against the landmark 2021 Kuala Lumpur High Court judgement in *Suriani Kempe & Ors v Government of Malaysia & Ors*. Citing *Dhinesh a/p Tanaphll v Lembaga Pencegahan Jenayah & 2 Ors*, a recent Federal Court judgement, the Government argued that the 2001 amendment to Article 8(2) is impermissible as Article 8 forms the "basic structure" of the Federal Constitution and as such cannot be amended.

In response, the legal counsel for the Respondents disagreed with that understanding of the Federal Court decision and submitted that by looking at the *Dhinesh* case as a whole, amendments to the Federal Constitution are allowed provided that they are not inconsistent with the basic structure, and the fundamental identity of the Federal Constitution is not altered. Therefore improvements are allowed, as was the case in the amendment to Article 8(2) in 2001. He also reiterated that the rights of the child and family structure are central and must be taken into consideration.

## THE COURT OF APPEAL DECISION

On 5 August 2022, the Court of Appeal, in a 2-1 decision, ruled in favour of the Government and overruled the High Court decision, stating that the word "father" in Article 14(1)(b) of the Federal Constitution and its related provisions in the Second Schedule is clear and unambiguous and cannot be construed to include 'mother'. Additionally, the grievances of Malaysian mothers can only be remedied through an amendment to the Federal Constitution by Parliament, and not via the courts. Following this, all applications made by Malaysian mothers for their overseas-born children under Article 14(1)(b) of the Federal Constitution are frozen pending the conclusion of this issue.

YA Azizah Nawawi adopted the literal interpretation of the word "father", stating that the framers of the Constitution had ascribed a distinct meaning to the words 'father', and that this simply means biological father who is a Malaysian citizen. Her ladyship also stated that Article 8(2) must not be read to give primacy or priority over Article 14(1)(b) and its relevant provisions, as all provisions are of equal standing as between themselves, not subordinate to any other. She also stated that Part III on Citizenship has additional security whereby any amendment can only be passed with the consent of the Conference of Rulers. It was also reasoned that citizenship matters were clearly excluded when Article 8(2) was amended to include "gender" via Act A1130. She stated that Parliament was acutely aware of the existing reservation to the citizenship provision in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

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<sup>26</sup> "Court to decide June 22 if Malaysian mothers can pass on citizenship to overseas-born children, just like Malaysian fathers." MalayMail. 23 March 2022. Available at:

<https://www.malaymail.com/news/malaysia/2022/03/23/court-to-decide-june-22-if-malaysian-mothers-can-pass-on-citizenship-to-ove/2049075>

<sup>27</sup> "Arguing against automatic citizenship for Malaysian mothers' overseas-born children, AGC claims 2001 constitutional amendment to stop gender discrimination in Malaysia invalid." MalayMail. 22 June 2022. Available at:

<https://www.malaymail.com/news/malaysia/2022/06/22/arguing-against-automatic-citizenship-for-malaysian-mothers-overseas-born-children-agc-claims-2001-constitutional-amendment-to-stop-gender-discrimination-in-malaysia-invalid/13607>





YA Kamaludin Md Said was in the view that while the 'grievances' faced by the mother were real, the court cannot be readily empower itself to find a remedy to address these grievances by altering the historical and philosophical context of Article 14(1)(b) and its relevant provisions as well as the underlying fundamental principles which have been accepted as an integral part of the constitution. The power to amend the Constitution rests solely with Parliament by virtue of Article 159 of the Federal Constitution; the court cannot at its own whims and fancies attempt to rewrite the clear written text of the Federal Constitution as it would only lead to absurdity. On the contrary, Article 15(2) can be improved as it is a fair and just remedy. The mothers' issue lies against the approving authority, which often reject their application as well as the application process that is discretionary, tedious and takes an inordinate prolonged period. He stated that the system can be improved or changed, and agrees that the issue needs to be addressed by the relevant authority. He also stated that Article 14(1)(b) and its relevant provisions are not gender discrimination against women. Similar with YA Azizah, he reasoned that the Minister had clearly stated that citizenship matters are very complex and shall not be touched at that time as it required specific and detailed studies. He stated that a harmonious or organic interpretation of the impugned provisions is a clear violation of the underlying intention of Act A30 that amended Article 159(5). Additionally, he also stated that the careful and balanced provisions of the Constitution guaranteeing legitimate interests of all races in Malaysia are the very foundation upon which this nation rests.

Dissenting judge YA S. Nantha Balan reasoned that there is a plain and patent conflict between Article 8(2) and Article 14(1)(b) and its relevant provisions "as the latter gives rise to the interpretation that the bloodline of the Malaysian mother is to be treated as inferior to that of the father...", adding that it is "illogical, perverse and degrading to the rights, aspirations, expectations and dignity of Malaysian fathers that the father's bloodline, regardless of who he marries and where his child is born, could be reckoned for citizenship by operation of law, but not that of the Malaysian mother." He stated that the 2001 amendment to Article 8(2) was to ensure that Malaysia complies with its obligations under CEDAW in order to bring it up to date to forbid gender discrimination. As the Malaysian mothers are citizens, they are entitled to the full protection and rights accorded under Article 8(2). While legislative history is important to interpret and understand a constitutional provision, it must necessarily yield to later legislative developments. After the amendment to Article 8(2), it is no longer relevant or necessary to hark back to the thought process or intention of the original framers of the Constitution.

## **LEAVE TO APPEAL AT THE FEDERAL COURT**

On August 26, Family Frontiers filed for leave to appeal to the Federal Court against the Court of Appeal decision. The Federal Court, on December 14, granted the leave application.

## **COMPLETE TIMELINE OF EVENTS IN THE PUBLIC INTEREST CASE OF *SURIANI KEMPE & ORS. V GOVERNMENT OF MALAYSIA & ORS***

- 18 December 2020 : The Association of Family Support & Welfare Selangor & KL ('Family Frontiers') filed a constitutional challenge with the Kuala Lumpur High Court, seeking a declaration that Malaysian women married to foreign spouses can automatically confer citizenship on their children who are born overseas. Along with six Malaysian mothers, Family Frontiers aims to uphold the spirit of the Federal Constitution, which promotes equality and prohibits discrimination. They have named the Government of Malaysia, the Minister of Home Affairs and the Director-General of the National Registration Department as its defendants.
- 22 January 2021 : The Government attempted to strike out the case stating it was "scandalous, frivolous and vexatious", and that it was an "abuse of the court process". However, the High Court delivered a judgement in favour of the applicants on 6 May



2021, ruling that the case can proceed.

- 7 May 2021 : In response to the failed strike out, the Government filed an appeal at the Court of Appeal against the High Court judgement.
- 7 May 2021 : In the interim, the Government filed a stay application to put the High Court hearing of the merits of the case into abeyance until the Court of Appeal has disposed of the strike out matter.
- 19 August 2021 : The High Court dismissed the Government's stay application and ruled that the merits of the case be heard on 24 August 2021.
- 20 August 2021 : The Court of Appeal dismissed the Government's appeal against the High Court judgement dismissing the strike out of the case.
- 24 August 2021 : The Kuala Lumpur High Court heard the merits of the originating summons.
- 9 September 2021 : The Kuala Lumpur High Court ruled that Article 14(1)(b) of the Federal Constitution together with the Second Schedule, Part II, Section 1(b) of the FC, must be read in a harmonious manner with Article 8 of the FC. In doing this, the High Court judge announced that the word 'father' must be read to include mothers and that their children are entitled to citizenship by operation of law.
- 13 September 2021 : The Defendants (the Government of Malaysia, the Home Minister and the Director-General of the National Registration Department) filed a Notice of Appeal against the High Court decision and a stay of execution pending appeal application at the High Court.
- 15 November 2021 : The High Court dismissed the Government's stay of execution application with RM5000 as costs to the plaintiffs.
- 16 November 2021 : The Government filed an application for a stay at the Court of Appeal. The hearing date was fixed to be on 18 March 2022.
- 17 November 2021 : The Government filed an application for an interim stay at the Court of Appeal.
- 6 December 2021 : The Court of Appeal made no order for the interim stay, and instead brought forward the hearing date of the stay application from 18 March 2022 to 22 December 2021.
- 22 December 2021 : The Court of Appeal unanimously dismissed the Government's application for a stay of execution of the Kuala Lumpur High Court judgement.
- 23 March 2022 : The Court of Appeal heard the Government's appeal on the merits of the case.
- 22 June 2022 : The Court of Appeal heard further submissions by both parties on the merits of the Government's appeal.
- 5 August 2022 : The Court of Appeal, in a 2-1 decision, allowed the Government's appeal and overruled the High Court judgement.
- 26 August 2022 : Family Frontiers applied for leave to appeal the decision at the Federal Court.
- 14 December 2022 : The Federal Court granted Family Frontiers leave to appeal at the Federal Court.