

Universal Periodic Review Stakeholder Report on Malaysia:

*Persons impacted by discriminatory citizenship laws,
statelessness and Discriminatory Immigration Practices*

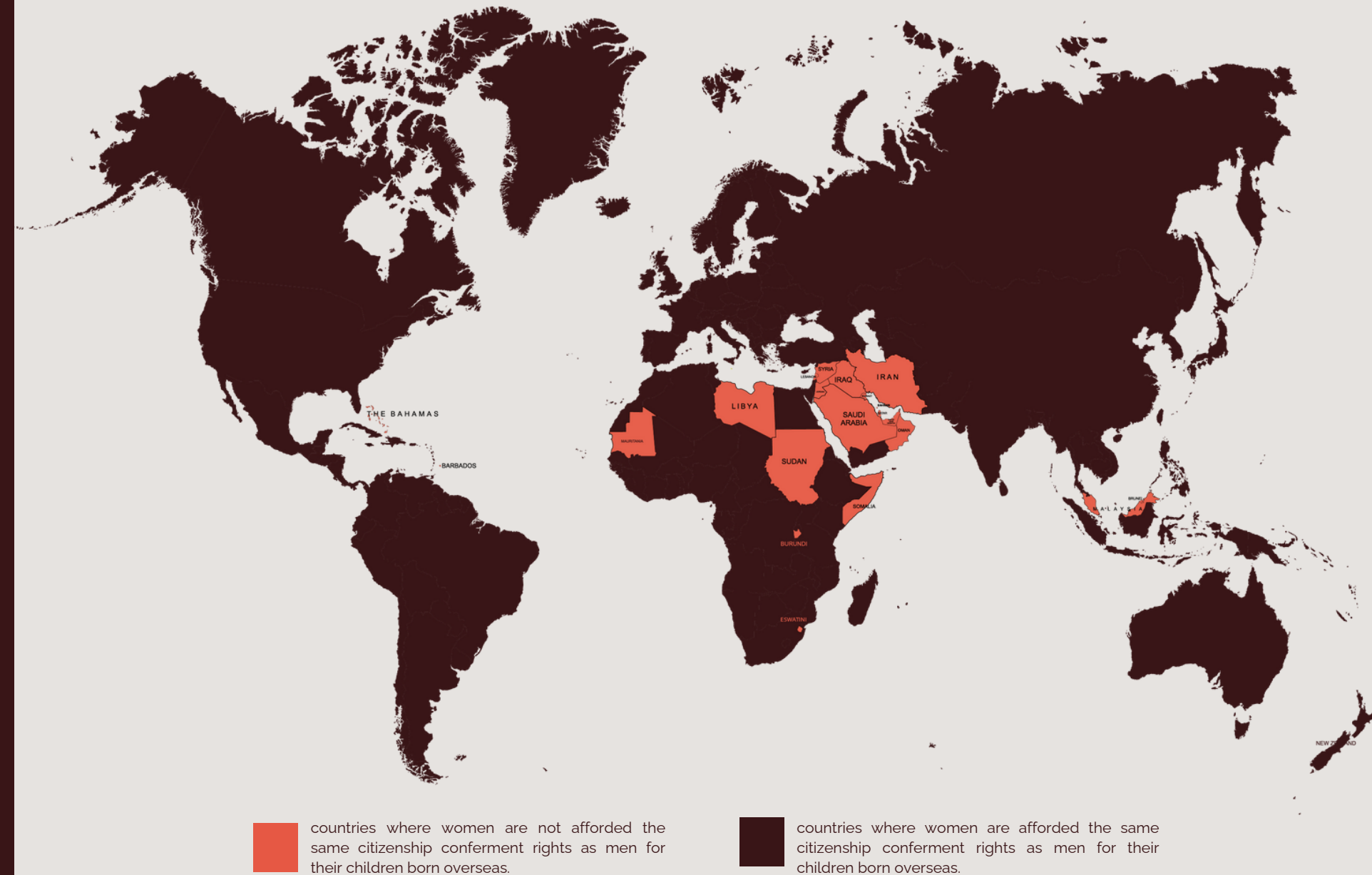
Introduction

This Universal Periodic Review joint submission was submitted by the Association of Family Support & Welfare Selangor & KL (Family Frontiers), Development of Human Resources for Rural Areas (DHRRA) Malaysia and Voices of the Children (VoC) to the United Nations Human Rights High Commission for review.

This collaborative submission addresses critical issues, including:

- statelessness,
- gender-discriminatory nationality laws,
- the restricted access of non-citizen children to education and affordable healthcare
- severe restriction on employment
- significant limitations imposed on the rights of foreign spouses of Malaysians.

DISCRIMINATORY CITIZENSHIP LAWS



Malaysia is one of **24** countries where women are not afforded the same citizenship conferment rights as men for their children born overseas. The Malaysian Federal Constitution does not provide equal basis to Malaysian women in granting citizenship by operation of law to their children born abroad, as it does for Malaysian men.

Malaysian women have to seek citizenship for their overseas-born children under **Article 15(2)**, a process that is ridden with long delays, rejections without reasons and without the guarantee of approval.



Article 15(1) grants Malaysian men the right to confer citizenship to their foreign spouse, however in practice it remains largely inaccessible to most. While the foreign spouse of Malaysian men are supposed to be able to obtain PR after five years of living in the country, in reality, it is a process that can take decades with no guarantee of approval.

Conversely, Malaysian women lack the same entitlement to register a non-citizen spouse through an 'application.' Instead, their spouses are made to seek citizenship by naturalisation at the discretion of the Malaysian government.

Malaysia is also one of only two countries that denies men the right to confer citizenship on their children born outside of a legally registered marriage, and this is one of the root causes of statelessness in the country.

Recommendations

- **Grant Malaysian women equal citizenship rights** as Malaysian men to confer citizenship on their children born overseas, without further delay.
- **Establish standard operating procedures** for processing citizenship and visa applications for non-citizen spouses and children of Malaysians, incorporating clear and reasonable timeframes, as well as guidelines for the appeals process that include explicit reasons for rejection.
- **Expedite the pending backlog** of citizenship applications within a reasonable timeframe in the best interest of children and the wellbeing of the family.
- **Allow Malaysian women to confer citizenship** on their spouses through citizenship by 'registration' on par with the rights of Malaysian men.

STATELESSNESS IN MALAYSIA

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The issue of statelessness in Malaysia is a pressing concern that has persisted due to a significant lack of government data with no remedy to address this growing population of stateless individuals.

Within Malaysia, numerous groups are identified as being at risk of or affected by statelessness. These include individuals who have **resided in the country since pre-independence, along with their descendants, (including those of Tamil ethnicity). Indigenous communities (encompassing mobile maritime populations, Orang Asli and Orang Asal communities)** are also vulnerable.

Additionally,

statelessness affects children born to Malaysians married to non-citizens and impacted by gender-discriminatory citizenship laws. The issue also extends to foundlings and children who have been abandoned or separated from their parents, stateless children adopted by a Malaysian parent, as well as persons lacking documentation (undocumented individuals) who consequently fall into statelessness.



MALAYSIAN MEN

who have a child born outside a legally recognised marriage do not have right to confer their citizenship to their child. The child is at high risk of statelessness in the event the child is unable to access the foreign mother's citizenship.

Proposed Amendments and its Consequences

In addition to the commitment to the progressive reform to grant Malaysian women the ability to confer citizenship to their overseas-born children on an equal basis as Malaysian men, other constitutional amendments also have been proposed, five of which are regressive and will exacerbate statelessness:

- Elimination of a safeguard for granting citizenship by operation of law to abandoned children or foundlings, making citizenship acquisition for these children solely through 'registration' (**Section 19B of Part III of Second Schedule**)

This will affect foundlings and abandoned children under the care of welfare homes and those who are informally/formally adopted by Malaysian parents. Citizenship by 'registration' is discretionary and places the burden on the child to prove their parentage or place of birth.

- Removal of the right to citizenship for children born to stateless Permanent Residents of Malaysia (**Section 1(a) of Part II of the Second Schedule**)

This will affect children born to stateless parents who are categorised as "permanent residents," such as those from Tamil-Indian, Chinese, Siamese, and certain indigenous communities or mixed descent communities, potentially prolonging and exacerbating intergenerational statelessness within these communities, many of whom have been in Malaysia since before its independence.

- Elimination of a protective measure to prevent statelessness in the case of children born within the country who would otherwise lack a nationality (**Section 1(e) Part II of the Second Schedule**)

Article 14(1)(b) and Section 1(e) of Part II of the Second Schedule of the Constitution provides citizenship "by operation of the law" to "every person born in the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph". Removal of this will consign children born stateless to acquire citizenship by 'registration', which is subject to the broad discretion of the Home Minister.

- Lengthening the period during which foreign wives can be deprived of their Malaysian citizenship, rendering them stateless (**Article 26(2) as it relates to Article 15(1)**)

Citizenship may be revoked if the marriage is dissolved within two years after the wife has been granted Malaysian citizenship. This may render the wife stateless, as Malaysia does not allow dual citizenship. The amendment may have the effect of trapping a previously foreign wife in a potentially violent marriage.

- Reducing the time frame for children's citizenship applications, amending the age limit from "21 years" to "18 years" (**Articles 15A and 19(2)**)

Processing times for citizenship applications can take up to three to six years and the rejection rate is high. Multiple attempts typically need to be made and lowering the age limit will significantly compress the window of opportunity for a successful result. Once the child turns 18, they would only be allowed to apply for citizenship by naturalisation.

The page features two stylized human silhouettes. On the left, a smaller silhouette of a child is partially visible. On the right, a larger silhouette of an adult stands with arms slightly away from the body. A horizontal orange banner with white text is positioned between the two figures, overlapping the child's silhouette on the left and the adult's on the right.

FOUNDLING, ABANDONED CHILDREN

will no longer be able to obtain citizenship by operation of law if the proposed amendment of Section 19B, Part III of Second Schedule of the Federal Constitution is amended, and children could face challenges in obtaining citizenship. The country's Federal Constitution defines a "parent" as the child's biological parents. This means that these children need to prove their biological parents' citizenship, a requirement which becomes nearly impossible to meet when the biological parents are unknown or do not possess citizenship. This situation applies to children in government-registered welfare homes as well as those adopted by non-citizen parents.

Recommendations

- **Ensure that all children**, including those who are stateless or at risk of statelessness, such as foundlings and adopted stateless or undocumented children, are granted citizenship by operation of law, without any form of discrimination, in line with Malaysia's constitutional provisions against statelessness.
- **Reform the law to address the issue of statelessness** by amending Section 17 of Part III of the Second Schedule of the Federal Constitution to redefine father or parent to include: (a) a natural parent(s); (b) adoptive parent(s); (c) putative parents.
- **Provide clear standard operating procedures** with reasonable timelines for the response to all citizenship applications, whether by operation of law, or by registration; and with clear reasons provided for rejections. These procedures should give paramount consideration to children's best interest and ensure that at all times, all children in Malaysia are protected by the law.
- **Halt the proposed amendments** to the Federal Constitution which will create new categories of childhood statelessness and exacerbate the problem of accessing citizenship for statelessness and at-risk children.

NON-CITIZEN AND STATELESS CHILDRENS' LIMITED ACCESS TO EDUCATION AND AFFORDABLE HEALTHCARE

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Although non-citizen and stateless children with one Malaysian parent are allowed to attend national schools, the complex enrollment procedures involving bureaucratic checklists and multiple visits to schools, education offices, and immigration departments create significant barriers, especially for children with disabilities, leading to delays in their education.

Stateless and non-citizen children in Malaysia face challenges accessing affordable healthcare, as they are classified as foreigners they are made to pay high healthcare fees. Non-citizen children must also pay for mandatory immunisations, unlike Malaysian children who receive them for free. Stateless and non-citizen children cannot register as Persons With Disabilities, leading to significant medical expenses for their families.

Recommendations

Grant all children in Malaysia equal access to basic education and affordable healthcare regardless of citizenship status.

DEPRIVATION OF BASIC RIGHTS FOR MALAYSIAN BINATIONAL FAMILIES

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Malaysian binational families are families with a Malaysian spouse and a non-Malaysian spouse. Foreign spouses of Malaysians are dependent on their Malaysian spouses for their residential status. Typically they reside in Malaysia on the **Long-Term Social Visit Pass (LTVSP)**, which comes with a statement of **prohibition from employment and with uncertain visa durations** and requires renewal through their Malaysian spouse, greatly limiting their independence. In the unfortunate event of a divorce, or the death of their Malaysian spouse, foreign spouses have limited rights to remain in Malaysia or to seek employment, even if they have Malaysian children.



SEVERE EMPLOYMENT RESTRICTIONS

are faced by foreign spouses on the Long-Term Social Visit Pass (LTVSP). Their visas explicitly prohibit them from employment; although immigration claims they can obtain the permission to work, it is a process that is notably challenging, limiting their opportunities to employment, obtain necessary licences to practice, or financially support their families. These restrictions can hinder their ability to work in specific sectors until they obtain Permanent Residence (PR) status.

Recommendations

- **Remove the statement of prohibition on employment** on the visa (LTSVP) and allow non-citizen spouses of Malaysians equal rights to work without restrictions.
- **Allow non-citizen spouses to work in all sectors**, including those requiring professional licences.
- **Include non-citizen spouses under labour laws and social protection** such as ensuring mandatory EPF, SOCSO benefits, and other entitlements.
- **Remove the requirement for consent** from the Malaysian spouse to work.

Restricted Access to Permanent Residence

The Permanent Residence (MyPR) process is mired in bureaucratic delays, with no guarantee of approval and high rejection rates; where applications are rejected, no reasons are provided. Pending PR applications are withdrawn upon the death or divorce of the Malaysian spouse, even if there are children involved.

Delays in obtaining Permanent Residence (PR) impede access to professions that require PR status, impacting sectors such as banking, insurance, law, medicine, and e-hailing.

Recommendations

- **Establish a streamlined MyPR approval process within six months, including a stipulated timeframe and reasons for rejection.** Accord MyPR after 5 years on LTSVP, irrespective of nationality, qualifications, income, or children, and utilising existing documentation.
- **Recognise the status of long-term resident spouses in Malaysia** and rectify disparities in expedited approvals for high-net-worth professionals, ensuring fairness for all.

Limited Access to Legal Status Among Separated, Divorced and Widowed Non-Citizen Spouses of Malaysians

Non-citizen spouses without children must leave Malaysia upon divorce or widowhood. Even fathers with shared child custody lack visa rights, placing the sole responsibility of childcare on Malaysian mothers. Abandoned non-citizen spouses face visa renewal challenges, as the presence of their Malaysian spouse is obligatory. Some spouses manipulate the system by cancelling visas or forcing non-citizen spouses to leave. The statement of prohibition from employment on the LTSVP that is issued to foreign spouses disproportionately impacts single foreign spouses, leading to financial precarity.

Recommendations

- **Grant separated, divorced, and widowed non-citizen spouses the right to reside and work** in Malaysia, regardless of nationality, gender, income, custody status, or number of children.

Read the full report here:



bit.ly/UPRStakeholderReportMalaysia

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