



Press Statement, For Immediate Release

22 June 2022

### **COURT OF APPEAL HEARS FURTHER SUBMISSIONS IN SURIANI KEMPE CASE, TO ANNOUNCE DECISION IN TWO MONTHS' TIME**

On 22 June 2022, the Court of Appeal (before making its decision) 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. The Court has fixed August 5th to announce its decision.

In light of the Federal Court decision in Dhinesh a/l Tanaphill v Lembaga Pencegahan Jenayah & 2 others, the Government argued that the judgement in the case directly affects the Suriani Kempe case. According to Senior Federal Counsel Liew Horng Bin, the amendment to Article 8(2) in 2001 is "impermissible" as Article 8 forms the basic structure of the Constitution and hence cannot be amended.

In response, the legal counsel in the Suriani Kempe case 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 in the amendment to Article 8(2) in 2001.

Senior Counsel Datuk Dr Gurdial Singh Nijar, during the [press conference](#) following the hearing, stated that "*The Counsel for the Attorney-General Chambers wrote in and raised a point which we called startling. He says you cannot amend the constitution to allow for gender discrimination to be declared unconstitutional. All these amendments go through the AGC anyway, so I don't know what they are arguing.*" He also stated that "*When you want to enhance the right, improve the provisions of the Constitution and amplify the rights, you are perfectly entitled to do that.*"

The Senior Counsel also reiterated that the rights of the child and family structure are central and must be taken into consideration.

YB Hannah Yeoh, Member of Parliament for Segambut also attended the press conference where she spoke about the importance of upholding the rights of the child. "*The National Registration Department is funded by taxpayers; and I do not believe that taxpayers want these Malaysian mothers to suffer. The NRD should be serving the people. We are looking at survivors of domestic violence; at parents who have been separated from their kids. If the Prime Minister is serious, he should instruct the Home Minister to follow his own slogan of #KeluargaMalaysia. We want to see these children's suffering end,*" she said.

Suriani Kempe, the President of Family Frontiers, also emphasised that "*discriminatory policies by the Government are clearly fracturing #KeluargaMalaysia, and it is time to end*

*this. It is time for Malaysian mothers to have equal rights with regards to conferring citizenship on their children, regardless of where they are born.”*

While we continue to wait for the Court of Appeal's decision, the Government must expedite the issuance of citizenship documents to overseas-born children of Malaysian mothers. It is not to be forgotten that this is a case which determines the welfare of children, the right of women to confer citizenship and #KeluargaMalaysia. In line with its international obligations, the Government must uphold equal rights of Malaysian women and protect their children.

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Submitted by: The Association of Family Support and Welfare Selangor & KL (Family Frontiers)

## TIMELINE OF EVENTS

- **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 judgment.
- **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 judgment.
- **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 hears further submissions by both parties on the merits of the Government's appeal.
- **5 August 2022** : The Court of Appeal will announce its decision on the Government's appeal.

## BACKGROUND

The constitutional challenge, filed through Originating Summons by The Association of Family Support & Welfare Selangor & KL ('Family Frontiers') and six impacted Malaysian Mothers was heard at the Kuala Lumpur High Court in 2020. They sought a declaration that Malaysian women married to foreign spouses has equal rights as Malaysian fathers married to foreign spouses to confer citizenship on their overseas-born children by 'operation of law'. Along with six Malaysian mothers, Family Frontiers aims to uphold the spirit of Article 8(2) of the Federal Constitution, which promotes equality and prohibits discrimination.

For over 60 years, while Malaysian men have enjoyed the right to automatically pass down their citizenship to their overseas-born children, many binational families of Malaysian women have unnecessarily suffered as a result of long and arduous application processes under Article 15(2) of the Federal Constitution. These discretionary applications can take years and frequently end in rejection with no reason given. Moreover, applicants are often forced to apply multiple times, leading to prolonged hardships where they have limited access to a range of fundamental rights such as healthcare, education, and social protections. These hardships faced by Malaysian mothers and their transnational families were further exacerbated by the COVID-19 pandemic and its resultant travel restrictions.

Currently, overseas-born children of Malaysian women with non-citizen spouses are unable to acquire Malaysian citizenship by 'operation of the law'. The inability to confer citizenship on a child, on the basis of gender, is both disheartening and dehumanising. The freedom of movement for mothers in this position is impeded as it dictates that a child must follow the citizenship of their father. It may also cause them to feel less empowered to leave abusive relationships for fear of losing their children. The consequences of unequal citizenship laws do not solely affect families, mothers and their children by exposing them to the risk of statelessness, but it also affects the State. When a portion of Malaysia's population is excluded from fully contributing and participating in society, global and economic development is stifled and sustainable growth is stunted.

Malaysia is one of only 25 countries<sup>1</sup> worldwide that do not grant women the right to confer citizenship on their children on an equal basis as men. Since the turn of the century, 19 countries have amended discriminatory provisions towards equality in citizenship rights. In 2006, Indonesia reformed its citizenship law to uphold comprehensive gender equality, making Malaysia and Brunei the only nations in ASEAN to maintain gender-discriminatory citizenship laws.

International human rights law is clear in its prohibition of gender-based discrimination and views citizenship as a fundamental right. The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC)—to both of which Malaysia is a party—exemplify the steps that have been taken by the global community to ensure equality, progress, and justice for all members of society. By abolishing gender-based discriminatory citizenship laws, an inclusive society, family harmony and the wellbeing of children are respected and protected.

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<sup>1</sup> This puts Malaysia on a list alongside the Bahamas, Bahrain, Barbados, Brunei, Burundi, Eswatini, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Sudan, Syria, Togo, and the United Arab Emirates.