



FAMILY FRONTIERS

Persatuan Kebajikan Sokongan Keluarga Selangor & KL (PPM-011-10-24072020)

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Government Must Act Decisively to Protect the Rights of Children Born Abroad to Malaysian Mothers and Prevent Childhood Statelessness

Family Frontiers is deeply concerned about the proposed amendments to citizenship provisions in the Federal Constitution and urges the Government to proceed with the amendments that will allow Malaysian women to confer citizenship to their children born abroad, while reevaluating the other proposed amendments that will curtail existing protections and citizenship rights of other vulnerable groups.

a. Proposed amendment affecting abandoned children

Of particular concern is the proposal to remove Section 1(e) of Part II of the Second Schedule and amend Section 19(B) of Part III of the Second Schedule. Such amendments will remove existing safeguards for stateless children, especially abandoned children and foundlings. This will have far-reaching implications on the rights of the child. This contradicts the Government's recently stated objectives of reducing childhood statelessness and risks creating a significant population of stateless children.

Family Frontiers rejects any attempts to position the proposed amendments on citizenship as a 'trade off' in rights for one group of children for another. The amendment to grant automatic citizenship to children born overseas to Malaysian women must not come at the expense of removing any existing protections for other vulnerable groups of children.

It is imperative for the Government to re-evaluate and meticulously scrutinise the proposed amendments, and engage in comprehensive discussions with relevant stakeholders. This will ensure that the amendments do not infringe upon the rights of the child and avoid further entrenching egregious rights' violations in our country's legal system.

The 2-1 majority Court of Appeal decision in *Suriani Kempe & Ors. v Government of Malaysia & Ors.*, which overturned the High Court decision that granted automatic citizenship to children-born overseas to Malaysian mothers, stated that the gender discrimination faced by Malaysian mothers can only be remedied through a constitutional amendment made by Parliament. Both the Perikatan Nasional and Pakatan Harapan administrations responded by committing to address this issue by initiating a constitutional amendment process. In light of this, Family Frontiers urges the Government to honour its commitment and proceed with the amendment to grant automatic citizenship to children born overseas to children born overseas to Malaysian mothers without further delay. This will effectively resolve this issue once and for all.

b. Proposed amendment on non-citizen wives of Malaysian men

Family Frontiers would also like to highlight the proposed amendment concerning the citizenship of non-citizen wives of Malaysian men under Article 15(1). While the exact details of this

proposed amendment remain unclear, it is crucial to address these issues carefully to ensure fairness and protection for the foreign spouses and wellbeing of the families involved.

The amendments being proposed require citizenship to be revoked if a marriage is dissolved within two years of a foreign spouse obtaining citizenship. While at first glance this may seem like an appropriate measure to address what is colloquially known as 'marriage of convenience' (marrying for the purpose of obtaining citizenship), it makes the foreign spouse extremely vulnerable to potential violence and abuse without the ability to extricate herself from the situation without now risking her citizenship.

The proposed amendment must ensure that once citizenship is granted, it cannot be revoked solely due to the dissolution of the marriage without considering other factors. While it is important to ensure the institution of marriage is not abused to obtain citizenship, it is just as vital to ensure that spouses who have acquired Malaysian citizenship through marriage are not left vulnerable and stateless if their citizenship is subsequently revoked.

Non-citizen spouses of Malaysians face significant barriers in obtaining Malaysian Permanent Residence (MyPR), which in turn denies them the pathway to citizenship under Article 15(1). Without the ability to obtain PR, the ability to obtain citizenship remains unattainable.

Family Frontiers also strongly believes that Article 15(1) should not discriminate between Malaysian men and women in their ability to confer citizenship on their spouses. Treating Malaysian citizens equally in their ability to confer citizenship, regardless of gender, ensures fairness and upholds the principles of equality and non-discrimination.

The government has a responsibility to ensure that citizenship laws and policies are fair and uphold the principles of justice and equality. As such, Family Frontiers urges the Government to proceed with the Constitutional amendments to grant born-abroad children of Malaysian mothers the automatic right to Malaysian citizenship. Any delays will have harmful effects on the children of Malaysian women and negatively impact their health, education and overall wellbeing.

At the same time, the Government must carefully re-evaluate and study the other proposed amendments, considering the potentially severe and harmful implications on the welfare and protection of other vulnerable groups, in particular abandoned children and foundlings.

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