

## JOINT STATEMENT

### **One step forward, one step back: Malaysian law reform addresses gender discrimination in its citizenship law, while undermining nationality rights for vulnerable groups – where does this leave the struggle against statelessness?**

24 October 2024

On 17 October, the Malaysian lower house of parliament passed a controversial bill to amend its citizenship laws, in a close to unanimous vote. The bill will now proceed to the upper house, most likely in December 2024. Containing several amendments, the bill represents an important milestone for gender equality as it recognises Malaysian women's equal right as men to confer automatic citizenship on their children born overseas (Section 1(b and c) of the Second Schedule, Part II of the Federal Constitution). However, the bill also contains a multitude of regressive provisions that undermine nationality rights and may increase and perpetuate statelessness. They include the following:

- (i) Children born to Malaysian Permanent Residents ("PR") no longer gain automatic citizenship (Section 1(a) of the Second Schedule, Part II of the Federal Constitution). This may impact thousands of individuals in vulnerable populations including the indigenous community of Malaysia (Orang Asli and Orang Asal), and people who moved to Malaysia prior to its Independence in 1957 who only possess PR status.
- (ii) The age limit for citizenship applications has been lowered from 21 to 18 years (Article 15(A) of the Federal Constitution). This effectively removes three years from the available time for a stateless child to apply for citizenship and its effects are compounded by prevailing bureaucratic inefficiencies of the application process.
- (iii) Foreign wives of Malaysian men may be deprived of their citizenship if the marriage dissolves within two years of the wife acquiring Malaysian citizenship (Article 26(2) of the Federal Constitution). This renders the nationality of women who acquired it through marriage, less secure and contingent on remaining married. It can result in women being trapped in abusive or violent marriages for fear of becoming stateless due to Malaysia's prohibition of dual citizenship.

Additionally, the amendment on Malaysian women's equal citizenship rights is non-retroactive, excluding Malaysian women with children born overseas prior to the law coming into force.

Other changes included imposing a one-year time limit to register births of a child born overseas, adding a language proficiency requirement for the naturalisation of foreign wives, and requiring children born abroad to take an oath of allegiance before registering and receiving citizenship. The [bill](#) also introduces a presumption that foundlings are born in the country to a Malaysian citizen.

Addressing gender discrimination in Malaysia's nationality law was brought onto the legislative agenda as a result of the tireless campaigning, litigation and advocacy of Malaysian mothers, directly impacted by the law that denied them the right to confer nationality on their overseas-born children, guided and spearheaded by our partner organisation, Family Frontiers. Responding to this civic action, the Malaysian government had a unique opportunity to mark its unmitigated commitment to protecting equal nationality rights for all. However, it instead, introduced a bevie of regressive amendments into the mix, which undermines its stated commitment towards equality, runs contrary to its international obligations, and most significantly, has placed thousands in a place of precarity.

Recognising the dangers posed by grouping these amendments together, Malaysian civil society organisations were unified in their call to the government to decouple the amendments and proceed with only the Malaysian mothers' amendment while halting the other regressive amendments. However, the Government presented the bill as a bundle of amendments, and MPs were required to vote on the bill as a whole, rather than on each proposed amendment separately, resulting in this mixed outcome.

By refusing to decouple the amendments in the bill, Malaysia sent a clear message on its stance on citizenship: it is a privilege and not a fundamental right. We reiterate Malaysia's obligation under Article 15 of the Universal Declaration of Human Rights and several UN treaties, to protect everyone's equal **right** to a nationality, and to ensure that no one is born or made stateless.

As the bill now makes its way to the upper house, it is imperative that representatives are cognisant of the potential harm posed by the amendments and call on the Government to mitigate any risks. Emphasis must be placed on protecting the Constitutionally guaranteed fundamental rights of children and women, and long-standing Malaysian-born individuals, as well as addressing the fact that these regressive amendments contravene Malaysia's international obligations.

As such, it is crucial for the upper house to call on the Government to:

1. Process all existing citizenship applications within the next year, in line with the Home Minister Saifuddin Nasution's [commitment](#) during the winding-up debate on the Constitution (Amendment) Bill 2024, and in accordance with the legislative framework applicable at the time, to ensure smooth transition from one set of rules to the other.
2. In line with the Home Minister's announcement of new standard operating procedures (SOPs) to improve transparency and ensure clear communication on required documents for applications under Article 15A (Citizenship by Registration) and 19(1) (Citizenship by Naturalisation), implement these SOPs effectively to address concerns regarding inefficiencies, complex and discriminatory bureaucratic practices, and the lack of transparency in citizenship applications. This could also allay concerns related to the reduction of age limit for citizenship applications.
3. Resolve the status of individuals who hold PR status and are stateless, and establish effective and timely safeguards and clear pathways to citizenship to prevent further statelessness among children of stateless PR holders.
4. Establish clear, effective and timely pathways to citizenship and resolve the citizenship status of overseas-born children of Malaysian women who were born before the amendment takes effect, particularly those without existing citizenship applications and those above the age of 18 who can no longer apply for citizenship by 'registration'.

5. Ensure that all children, including those who are stateless or at risk of statelessness, are granted citizenship without discrimination, arbitrariness or delay.

We truly commend the efforts of all impacted people and civil society organisations in Malaysia, including our partner organisations Family Frontiers and Development of Human Resources for Rural Areas (“DHRRA”), for tirelessly working to protect against the perpetuation of statelessness and to advance gender equal nationality rights, and for navigating a complex and challenging advocacy landscape in solidarity with each other. We acknowledge the importance of celebrating the progress in this historic milestone for gender equal nationality rights, and equally, the importance of acknowledging the setbacks this has placed on the stateless communities of Malaysia.

We stand inspired and in awe of them, and their decades-long efforts to fight for the protection of stateless people and for the equal application of nationality laws, free from gender discrimination. We thank them for their efforts in working together in solidarity and encourage them to continue their efforts. We pledge our commitment in supporting them throughout, and particularly as they navigate the aftermath of these amendments.

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Co-issued by:

1. [Global Movement Against Statelessness](#)
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3. [Nationality For All](#)
4. [Statelessness and Dignified Citizenship Coalition – Asia Pacific](#)

## **ANNEX**

### **ADDITIONAL INFORMATION ON THE AMENDMENTS**

#### **1. EQUAL RIGHT OF MALAYSIAN WOMEN TO CONFER AUTOMATIC CITIZENSHIP ON CHILDREN BORN OVERSEAS**

Malaysia has been one of only four countries in Asia, and 24 countries globally that deny women the right to pass their nationality to their children, [on an equal basis as men](#). The amendment to recognise Malaysian women’s equal rights as Malaysian men to confer automatic citizenship on children born overseas is long overdue and we commend Malaysia on this progress.

Despite progress, this amendment falls short of the full notion of equality as it does not apply retroactively, meaning that children born prior to the law coming into force cannot benefit from automatic citizenship. Malaysia falls behind countries such as [Iran](#), [Egypt](#),

[Morocco](#), [Kenya](#) and [Sri Lanka](#), that successfully implemented [retroactive amendments on equal nationality rights](#).

The non-retroactive aspect of this amendment leaves many Malaysian mothers who have been awaiting their children's citizenship for decades now in a [state of disparage](#), especially impacting children without existing applications and those above the age of 18 who can no longer apply, some whose mothers have passed away. As such, the Government must establish meaningful and timely pathways to citizenship for the children who would be excluded, ensuring they are protected.

Other gender-discriminatory citizenship provisions also remain unaddressed by the bill, including the inability of Malaysian women to confer nationality on their foreign spouses on an equal basis with men, and the inability of children born out of wedlock to Malaysian fathers to obtain Malaysian citizenship.

Nonetheless, this amendment is a significant step toward achieving greater equality in nationality laws between men and women, bringing Malaysia closer in line with several international human rights treaties, including Article 9(2) of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), which obliges States to guarantee women equal rights to confer nationality to their children.

However, for true gender equality in line with Article 9 CEDAW to apply, the outstanding issues highlighted above need to be addressed. Ensuring comprehensive gender equal nationality laws is critical to eradicating statelessness, and we urge the Malaysian government to build on this important first step, and commit to eradicating all gender discrimination in its nationality laws, policies and practices, for all people.

## **2. REMOVAL OF THE ABILITY OF CHILDREN BORN TO MALAYSIAN PERMANENT RESIDENTS ("PR") FROM GAINING AUTOMATIC CITIZENSHIP**

At present, children born in the country to Malaysian Permanent Residents are able to automatically acquire Malaysian citizenship. If enacted, this Bill would remove the children's ability to access automatic citizenship. They would instead be subject to a discretionary application process. This may impact thousands of individuals with genuine ties to Malaysia, who were born in and have lived their entire lives in the country. This [group](#) consists of vulnerable populations including the indigenous community of Malaysia (Orang Asli and Orang Asal), and people who moved to Malaysia prior to its Independence in 1957 and did not obtain Malaysian citizenship due to illiteracy and lack of awareness.

This provision would take away a crucial safeguard against statelessness and would contribute to intergenerational statelessness—a cycle of statelessness handed down from one generation to another—in the event a child is born to stateless parents with Malaysian PR status. Further, it will be the root of a future societal challenge, depriving them of their basic rights and the ability to economically, socially and politically participate as equal citizens of their own country. This unnecessary regression will move Malaysian law into direct contravention of the UN Convention on the Rights of the Child, in particular, its Articles 2 (non-discrimination), 3 (best interests of the child), 7 (right to nationality and avoidance of statelessness) and 8 (identity).

In Parliament, the Home Minister assured MPs that the amendments will not affect the abovementioned groups, but there was no clear or satisfactory explanation of how this would be the case. Further, even if there are political remedies provided for such groups, it is counter-intuitive and in contravention of Malaysia's international law obligations, to create a problem by stripping people of their right to acquire a nationality, and subsequently assure them that a political solution will be presented. Citizenship through PR status was also a [route for the Bajau Laut community](#), a stateless seafaring community in East Malaysia, who are ineligible for naturalisation, to obtain citizenship. However, due to the amendments, this option will now be unavailable.

As reported in the media, the Home Minister estimates that there are 30,000 persons born in Malaysia with PR and with no citizenship; they have no entry permits or foreign travel documents. They comprise of [the following groups](#): those who have been living in Malaysia since before independence in 1957 or the formation of Malaysia in 1963, and children who have been adopted but have not applied for citizenship. Out of these, 10,000 have already applied for citizenship. While the Minister has assured that he will resolve the citizenship issues affecting the 30,000 individuals, it is imperative that the Government implements effective safeguards and timely pathways to citizenship to prevent risk of statelessness among children.

### **3. LOWERING OF THE AGE LIMIT FOR CITIZENSHIP APPLICATION FROM 21 TO 18**

Under the current legal framework, stateless children in Malaysia are able to apply for citizenship before they turn 21. The amendment will lower this age limit to 18, effectively removing three years from the available time for a stateless child to apply for citizenship. The rationale of the Malaysian government was to lower the age limit in order to be consistent with the lowered voting age as well as the definition of a 'minor' in the Child Act 2001. However, it fails to take into account that citizenship applications with the National Registration Department ("NRD") can [take many years](#), even decades to process, often only to receive a rejection without any explanation and no further recourse, after the age limit threshold has been crossed, due to no fault of the applicant.

Whenever there is an age limit attached to a citizenship process, there will be individuals who are excluded due to not meeting this criterion. This could be due to the arbitrariness and delays of authorities, the ignorance or negligence of the parents or guardians of the child, or due to practical barriers. When the objective of a legal provision such as this, is to ensure that a person entitled to citizenship is able to acquire it, imposing age limits runs contrary to this objective. Therefore, good practice is to eradicate age limits, or to – if imposing age limits – ensure meaningful and comprehensive safeguards to protect those who fail to comply. By reducing the existing age limit instead of eradicating it, and failing to provide any safeguards, this amendment will only heighten the risk of statelessness.

Therefore, this is a significant step backwards for the protection of children's rights in Malaysia. Malaysia is signatory to the CRC and has a duty to protect all children's access to nationality (Article 7), and other basic rights such as access to healthcare (Article 24) and access to education (Article 28).

#### 4. DEPRIVATION OF CITIZENSHIP OF FOREIGN WIVES OF MALAYSIANS, IF THE MARRIAGE DISSOLVES WITHIN TWO YEARS OF THE ACQUIRING MALAYSIAN CITIZENSHIP

At present, foreign women married to Malaysians who obtain Malaysian citizenship through marriage would have their citizenship revoked if their marriage were to be dissolved within two years of the date of marriage. The amendment changes this to two years from the date of gaining citizenship.

This change adds a different element of gender discrimination to Malaysia's nationality law, by rendering the nationality of women who acquired it through marriage, less secure and contingent on remaining married. It could also result in women being [trapped in abusive or violent marriages](#) for fear of becoming stateless due to Malaysia's prohibition of dual citizenship, and even trap women in situations of trafficking and exploitation. Consequently, this provision raises significant concerns in relation to Malaysia's obligations under CEDAW 9 (nationality), 6 (trafficking and exploitation), and 16 (marriage and personal rights).