



**Resolution Adopted at the 78th Annual General Meeting of the Malaysian Bar
(Held on 16 March 2024)**

Resolution to Condemn the Government of Malaysia on the Proposed Regressive Amendments to Citizenship Laws

Whereas:

1. The Government of Malaysia had presented a set of regressive amendments to the Federal Constitution related to citizenship.¹ The proposed regressive amendments are as follows:
 - I. Section 19B, Part III of Second Schedule: To amend from citizenship by ‘operation of law’ to citizenship by ‘registration’.
 - II. Second Schedule Part II, Article 14(1)(b) Section 1(a): To delete the words ‘permanently resident’.
 - III. Second Schedule Part II, Article 14(1)(b), Section 1(e): To amend from citizenship by ‘operation of law’ to citizenship by ‘registration’.
 - IV. Second Schedule Part II, Article 14(1)(b), Section 2(3): To be repealed in its entirety.
 - V. Article 26(2) as it relates to Article 15(1): To replace the word ‘date of the marriage’ with ‘date of obtaining citizenship’.

¹ ‘The Government’s Proposed Amendments To Citizenship Provisions In The Federal Constitution’ July 2023 Briefer by the Malaysian Citizenship Rights Alliance (MCRA), as attached as **Appendix 1**; Malaysian Bar Press Release | The Malaysian Bar Urges the Government to Re-evaluate and Halt Recent Proposed Amendments to Citizenship Laws Deemed Regressive, 11 December 2023: [https://www.thestar.com.my/news/nation/2023/09/16/don't-make-statelessness-worse-govt-urged](https://www.malaysianbar.org.my/article/about-us/president-s-corner/pressstatements/press-release-the-malaysian-bar-urges-the-government-to-re-evaluate-and-halt-recent-proposed-amendments-to-citizenship-laws-deemed-regressive#:~:text=The%20negative%20impact%20%E2%80%94%20politically%2C%20economically,employment%2C%20and%20access%20to%20justice; 'Don't make statelessness worse, govt urged' by Arfa Yunus, The Star (16 September 2023): <a href=); <https://youtu.be/sD-bRoEvVbU?si=n0goadouUDdbIZ1j>; ‘Senator: NRD’s pursuit for ISO standard rendered thousands stateless’ by S. Vinothaa, Malaysiakini (15 September 2023): <https://www.malaysiakini.com/news/679417>; ‘The invisible children – Syerleena Abdul Rahid’, Malay Mail (16 September 2024): <https://www.malaymail.com/news/what-you-think/2023/09/16/the-invisible-children-syerleena-abdul-rahid/91195>

- VI. Articles 15(2), 15A, 19(1), 19(2), 23(1), and 23(3): Amend and reduce the age limit from '21 years' to '18 years' for the purpose of obtaining citizenship.
2. These regressive amendments were proposed in addition to the other prior or existing bureaucratic requirements that created and continue to create stateless persons in our country.
 3. Law Reform (Marriage and Divorce) Act 1976 (Act 164) came into force in 1982. Based on Act 164, there is absolutely no requirement to submit identification documents to register a marriage.
 4. However, there was an internal procedure/protocol within the Government from 1982 which required a list of identity documents in order to register a marriage. Specifically in the 'Prosedur Kualiti MS ISO 9001: 2015', there was a requirement by the National Registration Department² to produce the original and copy of:
 - I. MyKad;
 - II. Visa / MyKAS / MyPR;
 - III. Passport;

when no such requirement is provided for in Act 164. These requirements made it impossible for stateless persons to get married and hence created generations of stateless persons.

5. The unlawful denial of marriage certificates in this situation places children of such couples at risk of statelessness.
6. Further, in the Government's internal circular entitled '*Arahan Jabatan Pendaftaran Negara Bil. 6/2021*', the Government admitted that pursuant to Act 164, there was no requirement to submit identification documents to register a marriage.
7. Even after admitting this fact, the Government, under the guise of implementing a "new procedure" in the same circular, continued to impose the requirement for identity documents which accepted Birth Certificates or Adoption Certificates however specifically carved out children born out of wedlock.
8. By imposing these unlawful requirements, the JPN has been systematically creating generations of stateless persons in Malaysia since 1982. This is just one of the many other internal circulars that caused difficulties for those who were born in Malaysia and/or has a lawful Malaysia parent.

² Jabatan Pendaftaran Negara (JPN)

Recognising that:

9. Any amendments to citizenship provisions in the Federal Constitution must prevent, not manufacture statelessness.
10. As highlighted by civil societies,³ the Government of Malaysia's proposed amendments to the Federal Constitution are regressive in nature as:

- I. Amending Section 19B of the Second Schedule, Part III of the Federal Constitution to alter citizenship by '*operation of law*' to citizenship by '*registration*', foundlings and abandoned children are deprived of automatic citizenship.

The term '*operation of law*' affords protection to foundlings as this provision grants them the benefit of the doubt in cases where the date and place of their birth, as well as the identity of their biological parents, are unknown and cannot be substantiated.

The suggested amendment seeks to place foundlings under the discretionary authority of the Home Minister for citizenship determination, unjustly imposing the onus of proving parentage on the child.

- II. Amending Section 1(a) of the Second Schedule, Part II of the Federal Constitution to delete the words 'permanently resident', children born to Malaysian Permanent Residents (PR) who are stateless will no longer have access to citizenship by '*operation of law*'.

In effect, vulnerable populations, including current stateless communities like the childhood statelessness categories, Orang Asli and Orang Asal, could also face the peril of being ensnared in a cycle of statelessness across generations.

- III. Amending Article 26(2) of the Federal Constitution to replace '*date of marriage*' with '*date of obtaining citizenship*' poses a risk to citizenship deprivation of foreign wives because if a Malaysian man's marriage dissolves within two years of his wife being granted Malaysian citizenship, the foreign spouse's citizenship will be revoked.
- IV. Amending Article 15(A) of the Federal Constitution to reduce the age limit from '*21 years*' to '*18 years*' for citizenship registration effectively shortens the timeframe for applications when bureaucratic delays and appeals, which could take years to process, subsist as well as introducing an illegitimate registration requirement that never existed previously.

³ '*Explainer: A breakdown of the proposed five citizenship law changes deemed regressive*', by Kenneth Tee, Malay Mail (8 November 2023): <https://www.malaymail.com/news/malaysia/2023/11/08/explainer-a-breakdown-of-the-proposed-five-citizenship-law-changes-deemed-regressive/100811>

11. Despite immense pushback from the various stakeholders at multiple platforms, the Government of Malaysia was determined in their course of action and proceeded to submit the regressive proposals to the Conference of Rulers.⁴

Therefore, the Malaysian Bar resolves that:

- A. The Malaysian Bar condemns the Government of Malaysia in the strongest possible terms on the regressive amendments proposed to Malaysian citizenship laws, which would constitute an alarming erosion of rights and pose an imminent threat to an already vulnerable segment of our society — stateless persons.
- B. The Malaysian Bar calls upon the Government of Malaysia to:
 - I. proceed with the amendment to enable Malaysian mothers to confer automatic citizenship to their overseas-born children, but
 - II. abandon the proposed regressive amendments to Malaysian citizenship laws; or
 - III. defer the proposed regressive amendments to enable further study on the full implications of the proposed amendments and enable meaningful participation of the relevant stakeholders in the drafting process.
- C. The Malaysian Bar demands the Government of Malaysia to adopt and implement the proposals contained in SUHAKAM's 2023 report entitled '*Human Rights and Statelessness in Peninsular Malaysia*',⁵ namely:
 - I. Abolishing the requirement for a legal citizenship status for access to education.
 - II. Prioritising citizenship for stateless individuals who are able to establish that they were born in Malaysia.
 - III. Allowing citizenship applicants to receive permanent residency (Red Identification Cards) while waiting for their citizenship approval.
 - IV. Providing temporary legal documents to enable employment for stateless persons waiting for their applications to be approved.

⁴ 'Amid calls to refine proposed citizenship amendments, PM Anwar says govt must honour Rulers' position, will explain to backbenchers', Malay Mail (6 November 2023): <https://www.malaymail.com/news/malaysia/2023/11/06/pm-anwar-says-govt-to-explain-proposed-citizenship-amendments-to-backbenchers/100534>

⁵ Nungsari, M., and Fong, N. (2023). Human Rights and Statelessness in Peninsular Malaysia. SUHAKAM - The Human Rights Commission of Malaysia.

- V. The application process for citizenship under Articles 15A and 19 of the Federal Constitution should
 - a) taking into account the interest of the applicant, have shorter waiting period and a clear time frame for the application process effectively implemented; and
 - b) rejected applicants should be provided with the reasons for the rejection of their application.
 - VI. There should be increased transparency surrounding the path to citizenship especially with regard to the practices of the National Registration Department.
- D. The Malaysian Bar demands the Government of Malaysia to:
- I. establish an independent Ombudsperson Office to investigate into any children who are stateless and ensure that they do not remain stateless, fast-track citizenship applications to not more than 9 months, increase transparency surrounding the path to citizenship, include general timelines for the process, circulate better and more precise information surrounding the path to citizenship and for the overall improvement of the citizenship application process; or
 - II. to carry out the abovementioned functions, appoint a Chief Commissioner for Stateless Persons within SUHAKAM through the necessary amendments to the Human Rights Commission of Malaysia Act 1999 as was done for the appointment of the Chief Children Commissioner and two Children Commissioners to deal with human rights matters relating to children.⁶
- E. The Bar Council should consider and if thought fit institute or participate in all necessary court proceedings with a view to eliminating Malaysia's shameful legacy of Stateless Persons.

⁶ Section 4 of the Human Rights Commission of Malaysia (Amendment) Act 2023

APPENDIX 1

THE GOVERNMENT'S PROPOSED AMENDMENTS TO CITIZENSHIP PROVISIONS IN THE FEDERAL CONSTITUTION

JULY 2023 BRIEFER



Two (2) of the proposed amendments will give effect to the **constitutionally guaranteed right to equality** under Article 8

We support efforts by the Government to amend citizenship provisions in the Federal Constitution to grant Malaysian mothers the equal right to confer automatic citizenship on their children born overseas, just like Malaysian fathers. We urge the Government to proceed with the proposed amendments to Article 14(1)(b), Sections 1(b) and 1(c) of Part II of the Second Schedule.



Five (5) of the proposed amendments are **regressive** and seek to **remove existing protections** within the Federal Constitution, and threaten to **worsen statelessness** in Malaysia.

1

Section 19B, Part III of Second Schedule: To amend from citizenship by 'operation of law' to citizenship by 'registration'

FACTS

Out of 193 UN Member States, over 70% have domestic provisions granting nationality to persons of unknown parents born or found in the territory, including all Middle East countries, Kenya, Iraq, Finland, and the UK.

In Southeast Asia, Singapore, Indonesia, Cambodia, Laos, Philippines, and Vietnam confer nationality on foundlings as an automatic right.

EFFECT

Foundlings & Abandoned children

will no longer be entitled to automatic citizenship

- The Federal Constitution currently protects foundlings. Section 19B is an evidentiary provision that gives a foundling the benefit of the doubt when the date and place of the child's birth and the status of the child's parents are unknown and cannot be proven.
- The amendment will subject foundlings to discretionary citizenship, and unreasonably place the burden of proof on the child as to its parentage. Moreover, the process of registration is ridden with delays, and there is no guarantee of approval.

RECOMMENDATION:

Provision requires no amendment.

EFFECT

Children Born to Malaysian Permanent Residents who are stateless

will no longer have access to automatic citizenship

- Children born to Malaysian permanent residents who are stateless will no longer have access to citizenship by 'operation of law', thus passing on statelessness to a second generation and creating a new class of statelessness.
- This amendment will be detrimental to existing stateless communities, including Orang Asli and Orang Asal in Malaysia.

RECOMMENDATION:

Defer this proposed amendment to further study the implications and impact.

Second Schedule Part II, Article 14(1)(b) Section 1(a):

2

To delete the words "permanently resident"

FACTS

This provision aimed at preventing intergenerational statelessness among minorities in Malaysia within the pre-independence context.

Allowing PR's to confer citizenship provides certainty, long-term stability, and assurances to their children regardless of changes in immigration policies or regulations.

Any amendments to the Federal Constitution must centre the best interests of the child.

3

Second Schedule Part II, Article 14(1) (b), Section 1(e): To amend from citizenship by 'operation of law' to citizenship by 'registration,' and Section 2(3): To repeal

FACTS

*"Vulnerable and affected individuals" include:

1. Children born out of wedlock
2. Adopted stateless children
3. Abandoned stateless children
4. Indigenous communities

EFFECT

Vulnerable & Affected Individuals*

will no longer be constitutionally protected against statelessness

- At present, vulnerable and affected individuals are afforded a pathway to citizenship through the existing provision, which is a safeguard against statelessness.
- The proposed amendment will ensure that those affected will no longer be able to access citizenship by operation of law.

RECOMMENDATION:

Provision requires no amendment.

EFFECT

Foreign spouse of a Malaysian man

Citizenship will be revoked if the marriage is dissolved less than 2 years after the spouse has been granted Malaysian citizenship.

- The act of revoking Malaysian citizenship granted to a foreign wife if the marriage is dissolved within 2 years of obtaining citizenship will 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.

RECOMMENDATION:

Defer this proposed amendment to further study the implications and impact.

Article 26(2) as it relates to Article 15(1):
To replace the word “date of the marriage” with “date of obtaining citizenship”

4

FACTS

The amendment is being proposed to deter ‘marriage of convenience.’ In practice, to be eligible for citizenship, a non-citizen wife has to first:

1. Reside in Malaysia for 5 years to be eligible for PR status;
2. Approval of PR status (2 - 5 years);
3. Reside in Malaysia on PR status for 2 years;
4. Apply for citizenship.

Any amendments to citizenship provisions in the Federal Constitution must prevent, not manufacture statelessness.

5

Articles 15(2), 15A, 19(1), 19(2), 23(1), and 23(3): Amend and reduce the age limit from “21 years” to “18 years” for the purpose of obtaining citizenship.

FACTS

The additional 3 years are often essential for a young person to resubmit an application that has previously been rejected. This amendment risks exacerbating statelessness among young people.

EFFECT

Stateless child applicants

will have reduced years to apply for citizenship

- Currently, the time taken to process citizenship applications is fraught with bureaucratic delays, and one application cycle can take up to or longer than 5 years before it is typically rejected (without grounds), and the applicant must resubmit the application.
- The amendment will have the effect of shortening the time available for process and appeals, shutting the path to citizenship.

RECOMMENDATION:

Defer this proposed amendment to further study the implications and impact.

We call upon the government to **separate** the proposed package of amendments:

- **Proceed** with the amendment to enable Malaysian mothers to confer automatic citizenship to their overseas-born children.
- **Defer** the 5 amendments that propose to take away existing rights to citizenship to study the full implications and impact, so as to ensure that amendments are just and centre on the best interests of the child.



"Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

Article 15 of the 1948 Universal Declaration of Human Rights



"These alleged proposals will augment the suffering and deprivation of many helpless, dehumanised and victimised persons and groups, namely: abandoned children, children born out of wedlock (even if the parents then marry), adopted children, children of generational undocumented families and stateless persons and their offspring whose statelessness will spiral down the generations..."

- Prof. Datuk Shad Saleem Faruqi, Constitutional law expert (Malay Mail, 28 June 2023)

This brief was prepared by the Malaysian Citizenship Rights Alliance (MCRA)

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