



**Resolution Adopted at the Extraordinary General Meeting of the Malaysian Bar
(Held Virtually on Saturday, 25 Sept 2021)**

**Resolution to Protect the Rights of the Child and Abolish Gender Discrimination in
Malaysian Laws**

Whereas:

- (1) Children should not be discriminated against, on the basis of whether they were conceived and/or born within a legally registered marriage, or otherwise. The child is blameless, and as such should not suffer the consequences of how or when he/she came into being by actions of his/her biological father and mother, and irrespective of the fact whether he/she was conceived/born within or outside a legally registered marriage.
- (2) It is an undeniable fact that a child can be conceived or born to a man (father) and woman (mother) outside a marriage, be it by reason of a consensual relationship, or otherwise. The child could also be a result of an illegal relationship, noting that in Malaysia today, the existence of the crime known as statutory rape.
- (3) As such, in the best interest of the child, his/her rights as a child must be recognised and protected, including the rights to acquire citizenship, education, healthcare, welfare and other rights. Likewise, the rights of the child against his/her biological parents also need to be preserved.
- (4) The parentage of children today can easily be verified by scientific methods, including DNA tests and, as such, who the father and/or mother is/are can be determined. There are other means of determination of the parents of a child.
- (5) The Federal Constitution, with regard to a child's citizenship rights, provides that a child whose father or mother is a citizen or a permanent resident, is entitled to Malaysian citizenship if born in Malaysia.
- (6) In 2001, Article 8 was amended to do away with discrimination by reason of gender. However, a perusal of the Federal Constitution demonstrates that there still exist many provisions that discriminate on the basis of gender, including Article 14 (citizenship by operation of law) and Article 15 (citizenship by registration (wives and children of citizens)). Two decades have lapsed, and the needed amendments to the Constitution and law to reflect the end of gender discrimination have still not been done.

- (7) As an example, in the Second Schedule of the Federal Constitution, Part II, Section 1(c), “every person born outside the Federation whose **father** is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government; ...” [emphasis added] mentions only the “father”, and as such is discriminatory against the woman-mother. The right of the citizen mother must be recognised.
- (8) Likewise, there is also discrimination based on whether the father or mother is in government service, or otherwise. This undermines the reality that in a globalised world, there are many Malaysians who are overseas studying, or working in the private sector or other entities and, as such, discrimination based on where one is employed should also be abolished.
- (9) In this world, in some countries, a child born therein automatically acquires citizenship and, as such, this should not expunge the right of the child to Malaysian citizenship. Practically, many a parent and/or child may not want to revoke such acquired foreign citizenship, as this right may also bring about entitlement to other rights like education, healthcare and welfare. This should not deprive the child from his/her right to Malaysian citizenship.
- (10) It was reported that the Federal Court in May 2021, by majority, ruled, amongst others, that a 10-year-old boy born to a Malaysian father and a Filipino mother is not entitled to Malaysian citizenship as the boy was illegitimate at the time of his birth and the parents were only married five months later.
- (11) On 9 Sept 2021, the Kuala Lumpur High Court ruled that Malaysian mothers now have the right to grant citizenship to their children born abroad, which was previously granted only to Malaysian men. It has been reported that High Court Judge YA Dato’ Akhtar Tahir had ruled that “... Article 8(2) on equality that prohibits discrimination based on gender would also mean that the word “father” in the Federal Constitution under the Second Schedule, Part II, Section 1(b) should also include mothers and that their children are entitled to citizenship by operation of the law...” (*The Edge Markets*, 9 Sept 2021). Courts must ensure justice and human rights, including the rights of the child. It has been reported that the Government may appeal this decision.
- (12) Whilst courts judgments can ensure justice in certain cases, it is best that the Federal Constitution and relevant laws be speedily amended to recognise and protect the rights of the child, and also end discrimination based on gender. Once amended, families would not be burdened with the cost and effort taking up court actions to get their child citizenship. It should be noted that many a poor family may not even be able to access courts and, as such, many a “non-citizen and/or such stateless child”, whose biological father or mother is in fact Malaysian, will face discrimination with regard to education, healthcare and many other matters.

- (13) The usage of the terms “illegitimate child” or “illegal child” is also derogatory, and the use of such description on a child conceived/born out of wedlock ought to end. The negative impact on a child himself/herself when such terms are used to describe him/her, must be acknowledged.

Therefore, it is hereby resolved that:

- (A) Malaysia recognise and respect child rights, and not discriminate against a child simply because the child was not conceived or born within a legally registered marriage;
- (B) Malaysia practise no discrimination based on gender, and do the needed amendment of the Federal Constitution and other relevant laws, to ensure that the mother has equal rights as the father, especially when it comes to a child’s entitlement to citizenship;
- (C) Malaysia ensure that a child of a Malaysian father or mother, irrespective of whether the man and woman are married or their marriage has been registered, are acknowledged as the father and mother of the said child, and that the child shall be entitled to Malaysian citizenship if either his/her biological father or mother is a Malaysian citizen; and
- (D) Malaysia stop referring to a child as illegitimate or illegal, considering the negative impact on the child himself/herself, which may affect his/her development and well-being and is certainly not in the best interest of the child.