**Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights**

**in advance of the Visit to Malaysia**

**Independent Stake Holder Submission**

**Introduction**

On an annual basis, there are approximately 100,000 marriages between Malaysians and non-citizens. Non- citizen spouses of Malaysians face many challenges in Malaysia, despite living here for years, raising children and establishing permanent homes; their immigration status remains uncertain and they are dependent on their Malaysian spouses for legal status. They face severe restrictions on right to work and are constrained by the inability to open individual bank accounts and own affordable housing. These spouses encounter widespread discrimination by public and private service providers, creating precarious and vulnerable situations, which disadvantages them throughout their lifetime in domestic, social, economic aspects, keeping some of them in situations of poverty.

**Short term visas detrimental to the stability of family and restricts employment**

Foreign spouses are issued what is called a LONG TERM SOCIAL VISIT PASS (LTSVP). However, unpredictable duration of the LTSVP, from 3 months (for a period of one year for Vietnamese spouses) to 6 months (for newly married and repeatedly in many cases until a child is born).   Only when spouses are on the one-year visa they are eligible to be employed with the permission and discretion of the immigration department.

Foreign spouses are also subjected to un-necessary repeated costly trips to home country, repeated visa runs and state enforced unemployment are a regular feature in the first year of marriage and beyond.

There are no specific time frames for approval of the spouse visa, e.g. at Johor Immigration it can take from 3-4 months while the spouse has to make visa runs to neighbouring countries putting unnecessary **financial burden** on the family and making employment difficult.

***The lived reality***

*I am a foreign spouse facing problems because of short-term visa & no permission to work. My wife is working but she’s sick: has stomach, breast problem and can’t get pregnant. She is the only one who works and supports all expenses. I want to work but she insists that if I’m caught we’ll face even more problems, which we can’t afford at this stage while she’s sick too. Immigration insists that we have a baby so can get a permit for more than 6 months. Companies where I applied for jobs insist for a one-year visa. So is this our fault that we can’t get pregnant? We stay in a shared accommodation because that’s what we can afford and think twice about every expense.*

**Severe restrictions on employment for foreign spouses couples until Permanent Residence is secured**

The visa for non-citizen spouses comes with the statement “any form of employment is strictly prohibited”[[1]](#footnote-1). This leads to severe difficulty in securing jobs, although immigrations states that spouses can work, employers are reluctant to employ spouses upon seeing this statement on their visas[[2]](#footnote-2). This is coupled with the cumbersome process for the endorsement to work[[3]](#footnote-3), and other bureaucratic hurdles such as the requirement to work in the same state makes it difficult for spouses to seek employment.  There are state enforced long waiting periods of unemployment for newly married spouses of up to 18 months.

There is the Mandatory requirement of letter of permission to work from Malaysian spouse, which makes foreign spouses, especially women totally dependent on their Malaysian spouse for their right to livelihood.

There is anecdotal evidence of inordinate delays of many months, for the approval of the spouse visa (the state of Johor) and work endorsement in the states of Sabah and Sarawak. Due to this some of the spouses who are the only breadwinners have to leave the country to seek employment abroad. Certain sectors remain inaccessible to non-citizen spouses: insurance, banking, finance, law and other licensed and professional sectors until they obtain Permanent residence, which in itself is mired with long delays. Furthermore the Employees provident fund, which is a form of savings post retirement, is only an optional contribution by employers for foreign spouses.

All these barriers to employment and long periods without employment, forces some spouses to work in the informal sector, which also exposes them to abuse and exploitation, in urban areas, salaries are not high so if the couple or family are on single income, it could put them in situations of poverty.

**Dependency on Malaysian spouses and lack of access to justice for foreign spouses**

A Malaysian spouse is required to be present for every visa renewal, endorsement to work, and application for Permanent Residence until citizenship is obtained, which could take more than a decade.  **A Malaysian spouse can cancel the visa of the non-citizen spouse, while the marriage is still valid and even children are involved.** Sometimes the wife and child are returned to home country on a one-way ticket with no access to maintenance or justice. At times children are forcibly separated from their foreign parent who is forced to leave the country.  Should the Malaysian spouse refuse to be present at the Immigration Department during any stage of the renewal process, the non-citizen spouse’s immigration status in the country may be at risk, leaving especially women vulnerable to domestic violence or without much choice but to remain in an estranged and in toxic relationship, for fear of separation from the children, which could make her undocumented and without work rights.   ***In*** *particular for the non-citizen wife, such long term dependence on the Malaysian husband leaves the woman, especially if the marriage is estranged, in a vulnerable position. It could potentially compound into domestic violence, including physical, emotional, financial, and social abuse.* There is also no Government Legal Aid available to foreigners.

***The lived reality***

*I am a foreign spouse, married to my Malaysian husband for over 15 years; I am now in the process of getting a divorce. However, without my knowledge my husband went to Immigration and cancelled my spousal visa. Is this even legal?*

*I had applied for a work permit, since I need to work while matters are pending in court.*

*However, my company received a letter from ESD, that the applicant (me) has issues with immigration. Looks like I’m in for big trouble. Is there any hope to resolve this?*

**Divorced and widowed spouses.**

Divorced and widowed spouses are mostly given short-term visas without the right to work. Although the Immigration website claims that the Resident Pass could be given to divorcees and widows[[4]](#footnote-4), not many of these disadvantaged spouses have been given this pass. These spouses are unable to provide for themselves and their Malaysian children without formal work rights, they work in the informal sector for megre wages.

**Inability to purchase affordable housing.**

Non-citizen spouses and Permanent Residents are unable to purchase affordable housing are subjected to foreign investment directives and no lower in cost than RM1 Million and in some states RM2-3 Million. This rule is applicable even when buying housing jointly with Malaysian spouses. This has a direct impact on middle or low-income families and if the Malaysian spouse does not earn enough to buy housing directly under his /her name.

***The lived reality***

*"We foreign spouses are considered foreigners. For e.g. at leisure parks and tourist attractions we pay the tourist price, we cannot invest in Amanah Saham, or apply for the Tabung Haji to perform our religious obligations with our spouses, we cannot buy property unless its RM1 million and above. We are now married to a Malaysian and have Malaysian kids. "We are not tourists to stay here to be sent back. Give us the recognition so that we can serve our family and the country”.*

**Lack of access to Banking and financial services.** Non-citizen unemployed spouses are not permitted to open individual bank accounts until they find employment, keeping them financially dependent on their Malaysian spouses. Nigerian Spouses were informed that they were not even allowed to open joint accounts with their spouses. Non-citizen spouses are required to deposit RM 10,000 to secure a credit card.

**Lack of access to Education**.

Spouses are not allowed to study in Malaysia while on the spouse visa, they are required to withdraw from the spouse visa (LTSVP) and get on to the student visa, this effectively jeopardizes their Permanent Residence eligibility and their work rights. SDG 4, calls on Member States to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” (UN 2016)[[5]](#footnote-5).

**Citizenship and inequality in the Nationality Laws**

The Malaysian constitution does not have a provision for Malaysian women to transmit nationality to their foreign spouses and to their children born overseas on an equal basis as Malaysian men.   Malaysian men cannot transmit citizenship to their children who are born out of a legally recognized marriage. It is also difficult for parents to transmit nationality to an adopted child, if the Malaysian birth certificate is not available. All of the above have rendered thousands of Malaysian children stateless[[6]](#footnote-6).

Without a Malaysian identity, these children are denied the right to reach their full potential; they have limited access to education, healthcare, legal employment and freedom of movement. Without a nationality it is harder to gain formal employment[[7]](#footnote-7), leaving affected persons in vulnerable and unstable situations. Statelessness is an intergenerational issue, trapping generations of stateless families in poverty[[8]](#footnote-8) and it will be equally harder for the country to achieve Goal 1 - End poverty in all its forms everywhere.

**The lived reality**

I was seconded to a Multi-National Organisation to work in the Philippines, when I gave birth there. I applied with the Malaysian High Commission for my son’s citizenship in Dec 2017 when he was just 2 months old however I was told that he cannot be registered as a Malaysian because I gave birth to him abroad. However I have yet to hear regarding his citizenship application, although more than 18 months have lapsed. It’s quite painful that just by serving my company and trying to earn a living that I can’t seem to pass on my citizenship when I’ve always planned to live in Malaysia.

**RECOMMENDATIONS TO GOVERNMENT OF MALAYSIA:**

1. ***Provide non-citizen spouses the right to employment upon registration of marriage to Malaysians and remove all restrictions and limitations on employment that puts families at risk of poverty.***
2. ***Allow foreign spouses to purchase housing based on rules that apply to Malaysians.***
3. ***Exclude foreign spouses from overarching policies and regulations governing foreigners.***
4. ***Make Employer's contribution to EPF for non-citizen spouses mandatory.***
5. ***Ensure that divorced and widowed non-citizen spouses (upon provision of supporting documents), are able to reside and work permanently and independently, taking into account the best interest of the children and the family unit.***
6. ***Simplify the spouse visa – (Long Term Social Visit Pass – LTSVP) application process eliminating costly and un-necessary trips to home country and shorter term visas that discriminate against gender, nationality and couples without children.***
7. ***Uphold the rights of all Malaysian citizens to confer nationality on their children on an equal basis, regardless of gender, marital status and the child’s place of birth.***
8. ***With immediate effect, grant citizenship to all children of Malaysian citizens with pending applications, enabling these children to avail themselves of their basic rights.***
9. ***Grant citizenship to foundlings and adopted children where at least one adoptive parent is a Malaysian citizen***

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**Foreign Spouses Support Group (FSSG)** was formed in 2009, by two mothers who felt stigmatized as foreigners and at their unsurmountable difficulties in raising up Malaysian children within the country. They formed FSSG so that other spouses would not have to face challenges without help. FSSG aims to advance, promote and protect the rights of foreign spouses married to Malaysian citizens and their children by influencing policy and advocating for change.

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1. <https://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/> [↑](#footnote-ref-1)
2. <https://aliran.com/thinking-allowed-online/2016-ta-online/consider-other-segments-of-migrants-for-employment/> [↑](#footnote-ref-2)
3. <https://www.imi.gov.my/index.php/en/main-services/33-perkhidmatan-utama/artikel-untuk-menu-pas/292-working-permit-for-spouse-of-malaysian-citizen.html> [↑](#footnote-ref-3)
4. <https://www.imi.gov.my/index.php/en/pass.html?id=284> [↑](#footnote-ref-4)
5. <https://sustainabledevelopment.un.org/sdg4#targets>. UN (2016). Sustainable Development Goal 4: Targets and indicators  [↑](#footnote-ref-5)
6. To a question raised in Parliament in August 2018, JPN responded it had received 90681 citizenship applications in the past five years, of which 45,849 were below the age of 21 years, the number of applications approved was not specified. Even the previous Home Minister Datuk Seri Dr Ahmad Zahid Hamidi in a written Parliamentary reply stated that between the years 2012 and 2017 there were 15,394 children born in Malaysia who were denied citizenship even though their fathers are Malaysian citizens. [↑](#footnote-ref-6)
7. <https://www.thestar.com.my/opinion/letters/2019/03/26/let-women-confer-nationality/> [↑](#footnote-ref-7)
8. <https://equalnationalityrights.org/images/zdocs/SDGs--Gender-Discrimination-in-Nationality-Laws.pdf> [↑](#footnote-ref-8)