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REPORT ON CITIZENSHIP LAW: MALAYSIA AND SINGAPORE

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Report on Citizenship Law

Malaysia and Singapore

Choo Chin Low

1. Introduction

The Malaysian citizenship regime is shaped by British colonialism, federalism, the politics of communalism and ethnic nationalism. *Ius soli* has been controversial in Malayan citizenship history due to the immigration history of British Malaya. Birthright citizenship for many generations of immigrants was contested because they were not readily assimilated into the Malayan way of life, which challenged the ethnic homogeneity of Malay nation-states. The adoption of territorial birthright principles was contested in the post-war period due to the emergence of politics of communalism and ethnic nationalism. As *ius soli* has been controversial in Malayan citizenship history, the Federation of Malaya (1948) resorted to the principle of double *ius soli*, followed by the principle of delayed *ius soli* in 1952 before fully institutionalising unconditional *ius soli* on the eve of Malayan independence in 1957.

Post-independence citizenship policies in Malaysia and Singapore are driven by domestic political concerns with limited external influences. Two hallmarks of British nationality policies — the expansive practice of dual nationality and the liberal *ius soli* principle — were absent from the citizenship legislations of Malaysia and Singapore. Though both nations gained independence within the British Commonwealth of nations, their citizenship legislations did not recognise dual nationality and *ius soli* is not fully applied. Singapore institutionalised a liberal citizenship regime that recognised dual nationality within the Commonwealth and applied the *ius soli* principle prior to its territorial merger with Malaysia. These two principles were reconfigured to be in line with the Malaysian constitution, which adopted a single nationality policy and territorial birthright citizenship based on a combination of *ius soli* and *ius sanguinis*. *Ius soli*, implemented in 1957, was later conditioned with *ius sanguinis*.

The Singaporean citizenship regime is heavily influenced by the Malaysian constitution and the British system of nationality. Several citizenship provisions of the Malaysian constitution became applicable to Singapore after its separation from Malaysia; the acquisition and loss of Singapore citizenship mirror the Malaysian citizenship rules. The patrilineal element of *ius sanguinis* operating in Singapore (and Malaysia) was modelled on the British Nationality Act. Under this system, children born overseas to Singaporean mothers were denied citizenship; and male spouses were subject to stricter criteria in the acquisition of citizenship compared to female spouses. This patriarchal system remained in the Singaporean and Malaysian constitutions until the early 2000s when both states introduced a gender

equality policy for children born abroad, thereby bringing their citizenship regulations in line with gender neutrality. The British colonial legacy is also visible in the current citizenship context in Malaysia. There are cases of Malaysian British Overseas Citizens (BOC) rendered stateless after failing to secure British nationality, having given up their Malaysian citizenship. As Malaysia strictly enforces a single nationality principle, any citizens exercising their right as a BOC and obtaining a British passport will lose their Malaysian citizenship.

Both the Malaysian and Singaporean constitutions outline a stringent deprivation mechanism against dual allegiances. The emigration of a skilled population, in a country with a low fertility rate, has sparked a public debate over Singapore's single nationality policy. A nascent debate in Singapore to introduce dual nationality for its diasporic community was not approved by Parliament. To strengthen relationship with its expatriate citizens, Singapore chose to introduce overseas voting instead of recognising dual nationality. There are no challenges to Malaysia's single nationality principle.

2. Historical Background

2.1 Federalism and Multilevel Citizenship

The Federation of Malaysia was formed in 1963 consisting of the Federation of Malaya, Sabah, Sarawak and Singapore. The former British colonies of Sabah, Sarawak and Singapore achieved Independence on Malaysia Day (16 September 1963) through merger with the Federation of Malaya. The Federation of Malaya became an independent Commonwealth country on Merdeka Day (31 August 1957). Prior to 1957, different nationality laws operated in Malaya due to the complex legal status of the Federation. The Federation of Malaya consisted of nine Malay States and the two British colonies of Penang and Malacca. In line with the legal status of the separate political entity, British nationality coexisted with state nationality of the nine Malay States. An understanding of the constitutional history of pre-independent Malaya is necessary as the development of its citizenship law is influenced by different constitutional stages under British rule. There were five phases of citizenship development in Malaysia in line with its constitutional developments; 1) pre-war Malaya, 2) post-1946 following the establishment of the Malayan Union, 3) post-1948 following the establishment of the Federation of Malaya, 4) post-1957 following the achievement of Independence and 5) post-1963 after the formation of Malaysia (refer to Table 1).

Pre-war Malaya consisted of three separate administrative units; 1) Straits Settlements, 2) Federated Malay States, and 3) Unfederated Malay States. The Straits Settlements was formed in 1826 consisting of Penang, Malacca, and Singapore. Dinding and Labuan joined the Straits Settlements in 1874 and 1905 respectively. In 1858, the Straits Settlements became part of the Crown's Dominions and since then, the nationality status of the population was determined by the British nationality law. Naturalisation as British subjects in the Straits Settlements was determined by the Naturalisation Act of 1867. Between 1874 and 1919, the nine Malay States came under British protection through a series of treaties with the local Malay Rulers. They became 'British Protected States' and for the purposes of British nationality law, the local population was regarded as 'British Protected Persons' (Fransman 2008; Sinnadurai 1990; Parry 1957). At the same time, the natives and locals were subjects of

the individual Malay Ruler (though there were no written state nationality laws). In 1896, the British unified four protected Malay States (Perak, Selangor, Negeri Sembilan and Pahang) to form the Federated Malay States (FMS). In 1904, a similar Naturalisation Enactment was introduced in each of the four Malay States, allowing aliens to naturalise as subjects of the Malay Ruler, thereby entitling them to become a ‘British Protected Person’. In the Unfederated Malay States (Kedah, Kelantan, Perlis, Johore, and Terengganu), no such naturalisation enactment was introduced (Sinnadurai 1990: 313) (refer to Table 2).

The politics of citizenship and federalism were intertwined. Citizenship developments in the Federation of Malaya were closely connected with the existence of multilevel citizenship. The concept of state nationality was distinct from federal citizenship. The concept of state membership existed before national membership was created at the federal level in 1946 (Sheridan 1979). In the early nineteenth century, Malay states played a central role in developing their distinct state citizenships without referring to Malayan nationality. In the Malay States, the Malay rulers were sovereign, claiming the allegiance of their subjects despite no legislated state nationality act. Though there was never a written law on the status of the subjects of Malay rulers, it was acknowledged that the citizenship institution in the States existed prior to British colonialism. Subjects of the Malay ruler included the Malays and aborigines living in the state. This institution was maintained by the British and they recognised the subjects of the Malay Rulers as ‘sons of the soil’. Foreigners were excluded from the definition of ‘*rakyat raja*’ (subjects of the Malay ruler) since the very concept of Malay nation-states was founded on Malay rulers, Malay states and Malay subjects (Adam 1993; Lau 1991).

There was no ‘Malayan citizenship’ prior to 1946. State nationality in the nine Malay states existed alongside British nationality in the Straits Settlements of Penang and Malacca (Carnell 1952: 505). Owing to the absence of a local Malayan citizenship status, several generations of immigrants born in Malaya were considered aliens. The status of the local Chinese was less clear as there was no written nationality law in the Malay States, but the majority of local Indians were British subjects originating from South India. In the Malay states, the absence of a citizenship legislation resulted in uncertainty for the local Chinese (Lau 1989: 217). The British colonial administration could not provide passports and diplomatic protection to local-born alien residents (especially the local Chinese) when travelling abroad. Accordingly, a Naturalisation Enactment was introduced in 1904 in the Federated Malay States (FMS) to enable the naturalisation of any person not a natural-born subject of a Malay ruler (Sinnadurai 1990). A foreigner who had resided in the FMS for at least five years was eligible to apply to have the privileges of naturalisation conferred upon him.¹ Once granted, the naturalised subject of the Malay ruler was deemed his natural-born subject and enjoyed all the rights, privileges and capacities of a natural-born subject within the Malay State.² The rationale for the enactment was to provide a British passport to foreigners residing in the FMS to enable them to receive British consular assistance when travelling abroad. In the Malay States, a British passport and consular assistance was only given to subjects of the Rulers. In other words, the British recognised the existence of the traditional citizenship concept of the Malay states by making their consular assistance dependent on the status of the subject of the Ruler (Low 2013: 25).

In the aftermath of the Second World War, the British merged the Federated Malay States, the Unfederated Malay States, together with Penang and Malacca to form a Federal structure of government, known as the Malayan Union. The Malayan Union constitutional

¹ Naturalization Enactment, State of Perak, Enactment No. 22 of 1904, 24 August 1904, art. 2.

² Ibid. art. 8.

plan, introduced in 1946, signified the first attempt at territorial unification, resulting in the creation of a national citizenship at the Federal level. A common citizenship at the federal level was prompted by the need of ‘Malayan’ nation-building: giving political rights to the immigrant community and creating a strong Federal government to unite the different administration units. The Malayan Union plan was short-lived and was replaced by a new constitutional arrangement called the Federation of Malaya on 1 February 1948. A local citizenship of the Federation of Malaya was created prior to the achievement of Independence within the Commonwealth. Since Malaya was not an independent state, the local citizenship was not a nationality in the international sense. The aim of a local citizenship law was necessary to “assist the crystallisation of a Malayan nation” and to serve as a “nation-building agency” (Carnell 1952: 504). A unified national identity was lacking. Malaya was instead a loose administrative unit made up of ten sovereign rulers—nine Malay rulers plus the British Crown—who separately demanded the allegiance of their subjects (Carnell 1952). In line with the Federal structure of government, the British introduced the concept of Federal citizenship, which existed along with state nationality (in the nine Malay States) and British nationality (in the two British colonies). The simultaneous operation of different nationality laws continued until 1957 when the Federation achieved independence on Merdeka Day (31 August 1957).

The politics of federalism in Malaysia has been the decisive factor in shaping the development of the citizenship principles of its member states. As federal forms of governance, state-level nationality and national-level citizenship continued to co-exist until 1957. Malay state nationality did not have any legal significance after Merdeka Day in 1957 (Sheridan 1979). Multilevel citizenship reemerged when Singapore joined the Federation of Malaya to form Malaysia. In 1963, the three former British colonies of Singapore, Sabah, and Sarawak merged with the independent Federation of Malaya to create a larger Federation of Malaysia to facilitate the de-colonisation process of these former British colonies. On Malaysia Day (16 September 1963), the population of Singapore, Sabah and Sarawak automatically lost their British nationality status upon becoming Malaysian citizens (Groves 1964). Singapore state citizenship was the only state citizenship having legal consequences in determining the qualifications for citizenship in Malaysia (Huang, 1970). This was due to the fact that Singapore had legislated its own citizenship ordinance in 1957 prior to its independence through merger. There was no separate citizenship legislation in both Sabah and Sarawak. Two years later, Singapore separated from Malaysia and became an independent state on Singapore Day (9 August 1965). Since then, the legal concept of state nationality ceased to exist and only federal citizenship mattered under the Malaysian constitution.

2.2 Immigration and birthright citizenship

Citizenship issues were an integral part of the complex questions of federalism and communalism. Citizenship principles, especially territorial birthright citizenship and dual citizenship, in Malaysia are dominantly influenced by the politics of communalism. While policymakers were struggling to define the relationship between state-citizens and federal-citizens, the influx of migrants, mainly Chinese and Indians, challenged the ethnic homogeneity of the nine Malay states that formed the Federation of Malaya. In fact, communalism frustrated the adoption of *ius soli* citizenship in the acquisition of Malayan citizenship. *Ius soli* has been controversial in the citizenship history of Malaya because of communal politics and because of the nature of Malaya as a multi-ethnic nation following the British open-door policy. Beginning in the nineteenth century, Chinese and Indian labourers

were brought in to work in the booming rubber and tin mining industries in Malaya. In 1921, the migrant community constituted 46 per cent of the total population of 2.9 million in Malaya (the Chinese, 29.4 per cent; the Indians, 15.1 per cent; and others, 1.5 per cent). The proportion of the migrant population rose to 50.8 per cent in 1931 and 50.2 per cent in 1947, bringing their number almost equal to those of the Malays and aborigines (Means 1976: 12).

In the post-war period, citizenship was complicated. Though the Malays claimed legal rights as natives of the Malay states, the mostly local-born non-Malays claimed the moral right to be granted Malayan citizenship based on their economic contributions. Their numerical strength almost equalled the Malays (Carnell 1952: 506). Within the context of rising ethnic nationalism, *ius soli* citizenship would controversially grant political rights to the non-Malay population, who “were in no way assimilated to a Malayan way of life” (Carnell 1952: 507). Citizenship became a significant issue after the Second World War in the wake of the British attempt to grant territorial birthright citizenship under the Malayan Union plan (1946). The Malayan Union citizenship was based on liberal citizenship provisions; *ius soli* for all local-born children of immigrants. *Ius soli* was a controversial subject in Malaya since the British had introduced the whole Malayan Union plan without prior consultation with the local Malay sovereigns (Cheah 2002).

The liberal Malayan Union citizenship threatened the traditional citizenship understanding of the Malay states, which were founded on the ethno-cultural notion of Malay-citizenry (Adam 1993). The Malayan Union citizenship, however, created a civic conception of citizenship that constituted a direct challenge to the sovereignty of the rulers and abolished the perceived State Nationality; future citizens could become a Union citizen without any allegiance to the rulers (Cheah 1978: 106). This civic conception of citizenship was liberal enough to include any person born in the Malayan Union or Singapore.³ Based on this clause, local-born immigrants would automatically qualify to establish a claim to citizenship. The Malayan Union scheme attempted to “promote a broad-based citizenship which will include, without discrimination of race and creed, all who can establish a claim, by reason of birth or a suitable period of residence, to belong to the country”.⁴ For the first time in Malayan history, the British acknowledged the presence of the immigrants and gave them local status with political rights. Owing to the emergence of Malay nationalism and strong opposition from the Malay community, the post-war ‘Malayan Union citizenship’ failed to materialise (Lau 1989: 220).

With the abolishment of the Malayan Union plan, birthright citizenship was replaced with double *ius soli* under a new constitutional arrangement called the Federation of Malaya, which came into force on 1 February 1948. Based on the concept of double *ius soli*, second generation migrants obtained federal citizenship automatically if both of their parents were born and had resided in the Federation for a continuous period of at least fifteen years.⁵ On 1 February 1949, less than one-third of local-born Chinese and Indians became Federal citizens by operation of law (Ratnam 1965). *Ius soli* citizenship was only applicable to subjects of the Malay ruler of any state, who were all sufficiently assimilated into a Malayan way of life. The Malays, aborigines and naturalised subjects of the Rulers were categorised as subjects of the Rulers and qualified for automatic citizenship.⁶ In the Malay states, assimilation determined the rules of federal citizenship in 1948.

³ Malayan Union and Singapore: Summary of Proposed Constitutional Arrangement, Cmd 6749. London: HMSO, 1946.

⁴ Malayan Union and Singapore: Statement of Policy for the Future Constitution, Cmd 6724. London: HMSO, 1946.

⁵ Federation of Malaya Agreement, 1948, art. 124(1)(e).

⁶ Federation of Malaya Agreement, 1948, art. 124(1)(a).

Subjects of the Malay rulers and British subjects enjoyed a privileged admission into the Federation citizenry by virtue of their connection with the sovereigns. The acquisition of federal citizenship based on *ius soli* was also extended to British subjects born in the colonies of Penang and Malacca.⁷ Birth in the British colonies of Penang and Malacca enabled any person, including non-Malays to acquire Federal of Malaya citizenship automatically by virtue of their status as British subjects; this was in sharp contrast to the position of non-Malays born in the Malay States. Under the Federation of Malaya constitution of 1948, the Federation was a joint administrative unit between the nine Malay sovereigns and the British government. The Federation was composed of the nine sovereign Malay states (under the Malay Rulers) and two British colonies of Penang and Malacca. In line with the federal structure of governance, subjects of the Malay rulers (in the nine Malay states) and British subjects (in Penang and Malacca) became federal citizens through operation of law (Ratnam 1965).

The next development in Malayan citizenship provisions was in September 1952. In a constitutional amendment in 1952, the double *ius soli* principle was replaced with delayed *ius soli*. Under the principle of delayed *ius soli*, local-born children became subjects of a Malay ruler if one of their parents was born in the Federation of Malaya.⁸ By virtue of the 1952 amendment, a total of 1,157,000 Chinese, 220,000 Indians and 2,727,000 Malays automatically became Federal citizens. Liberalisation of the citizenship law was done through widening the door of State Nationality to embrace non-Malays as subjects of the Ruler under the 1952 State Nationality Enactments introduced in the nine Malay States. Since unconditional *ius soli* for local-born non-Malays remained controversial, delayed *ius soli* was implemented rather than a full birthright citizenship (Ratnam 1965: 86).

This liberalisation was made possible as part of the government's campaign against the communist insurrection, which was initiated by the Malayan Communist Party (MCP) and mainly comprised the Chinese community. A State of Emergency was declared in 1948 following an armed insurrection of the MCP against British rule. During the Malayan Emergency (1948-1960), winning the support of the 'neutral' Chinese population was deemed essential. Citizenship concession was important to give the alien Chinese population a sense of belonging and encourage their identification with the country's anti-insurgency campaigns; it was impossible to ask them to defend a country in which they were denied citizenship. Opening the citizenship door served as a means to entice 'fence-sitters' to the Malayan anti-insurgency campaign (Heng 1988: 150).

Assimilation, rather than birth, was the decisive criterion behind the working principle of delayed *ius soli*. First generation non-Malays were eligible for State Nationality through registration and the second generation through operation of law. Birthright citizenship was not applicable to non-Malays because "a non-Malay of the first generation of local birth will not be assimilated to the Federation's way of life" (as cited in Low 2016: 56). Only the second generation of local-born children were eligible to Federal citizenship via operation of law because they would have assimilated to the Federation's way of life. The Malays (and aborigines) born in the States were granted *ius soli* citizenship since "it is reasonably certain that these will be readily assimilated to the Federation's way of life" (as cited in Low 2016: 56). Aborigines and the Malays were granted 'most favourable' entry conditions into the state citizenry. An aborigine was a subject of the Ruler if he was a member of any of the aboriginal tribes of Malaya and resided in the State. Malays were subjects only if they were born in the State (Groves 1964: 160). The Citizens of the United Kingdom and Colonies (CUKCs) in

⁷ Ibid. art. 124(1)(b).

⁸ Johore Nationality Enactment, 1952, art. 4(c).

Penang and Malacca, being under the rule of the Queen, also enjoyed favourable Federal citizenship conditions. CUKCs with connections to Penang and Malacca and all subjects of the Malay Rulers became Federal citizens by operation of law (Groves 1964: 160).

Ius soli was finally adopted in 1957 after eleven years of communal bargaining. Birth alone within the Federation on or after Independence Day (Merdeka Day) qualified non-Malays for federal citizenship.⁹ This concession was made possible on the eve of independence based on two factors. First, the British colonial power made the granting of independence contingent upon inter-ethnic cooperation. Ius soli was more compatible for Malayan nation-building purposes as it allowed a multi-ethnic community to be moulded into Malayan citizens. Second, the birthright clause was granted in return for the inclusion of the special rights (known as affirmative citizenship rights) for the sons of the soil i.e. the Malays and the aborigines. The 1957 Independence Constitution institutionalised affirmative citizenship rights, involving preferential quotas in terms of appointment to the public service, reservation of land, federal scholarships, admission into public universities and acquisition of trade or business licenses.¹⁰ Affirmative citizenship rights for certain classes of citizens ensure a balanced socioeconomic distribution between various races. Ius soli is an ethnic compromise achieved under the elite accommodation system, represented by the Alliance Party and composed of the United Malay National Organization (UMNO), Malayan Chinese Association (MCA) and Malayan Indian Congress (MIC). Each member party represented the interests of its own ethnic group and the ethnic elites of the Alliance Party negotiated a political bargain on behalf of the ethnic group. Communal politics, combined with an elitist political structure, has shaped the post-independence institution of citizenship (Freedman 2000: 56). According to the compromise or ‘bargain’ agreed upon by the member parties, UMNO consented to unconditional ius soli for non-Malays in return for MCA and MIC’s agreement to safeguard the special rights of the sons of the soil (Verma 2002: 61). Different from other liberal countries, the legal definition of Malaysian citizenship is characterised by the absence of egalitarian membership (Verma 2002: 80-81).

2.3 Dual citizenship

Multiple nationalities became the core characteristic of the increasingly multi-ethnic Malay States due to the overlapping of different sets of nationality laws (Parry 1957: 98). There were two types of dual citizenship in pre-independence Malaya: 1) state-level and federal-level political membership and 2) simultaneous holding of the nationality of two different countries.

The Federation of Malaya witnessed a shift from a liberal dual citizenship policy towards a restrictive policy. The Federation adopted a liberal dual citizenship policy in its 1948 constitution. Federal citizens were allowed to maintain a second citizenship as Federal citizenship, at the outset, ‘was not a nationality’.¹¹ The writers of the Federation of Malaya Agreement intended to create a local citizenship without any international status. Renunciation of a foreign nationality was not required; it would be problematic to require the Chinese and other immigrants to renounce their foreign nationality in exchange for local

⁹ Constitution of the Federation of Malaya, 1957, art. 14(1)(b).

¹⁰ Constitution of Malaysia, art. 153(1)(2).

¹¹ Constitutional Proposals for Malaya: Report of the Working Committee appointed by a Conference of His Excellency the Governor of the Malayan Union, Their Highnesses the Rulers of the Malay States and the Representatives of the UMNO. Kuala Lumpur: Malayan Union Government Press, 1947.

status. Dual loyalty was tolerated as long as Federal citizenship was not a full-fledged nationality status under international law (Ratnam 1965: 83). Citizenship was not synonymous with nationality in post-war Malaya. As the Federation of Malaya was not an independent state, local citizenship created at the federal level was not a full-fledged nationality (Parry 1957: 390). The 1948 Federal Agreement formally distinguished between the concepts of citizenship (*kerakyatan*) and nationality (*kewarganegaraan*). The status of citizenship without nationality marked the acceptance of dual nationality of federal citizens as the federal government was not in a position to require the renunciation of foreign nationality in return for a mere local citizenship status.

A single allegiance was only institutionalised in 1952 when the concept of citizenship was tied to the notion of nationality through the introduction of State Nationality Enactments. Federal citizenship only became associated with state nationality in 1952. State nationality, introduced in the form of State Nationality Enactments in the nine Malay states, was attached to federal citizenship. Subjects of a Malay ruler became federal citizens by virtue of their connection with the sovereign. Through the Federation of Malaya Agreement (Amendment) Ordinance 1952, there were two gateways into federal citizenship. One could gain federal citizenship by becoming either a subject of a Malay ruler or a citizen of the United Kingdom and Colonies.¹² Federal citizenship was based upon allegiance to either the Rulers or the British Crown; absolute allegiance was the foundation of State nationality. Applicants for registration and naturalisation as subjects of Malay rulers were required to take an oath of allegiance renouncing their foreign nationality and the rights, powers and privileges attached to it.¹³ The state nationality institution differentiated between those who wished to make Malaya their home country and those who wished to remain aliens. Chinese, Indians and Pakistanis had to choose between Federal citizenship and their original nationality (Carnell 1952: 515).

Since 1952, the only type of dual nationality allowed was British nationality, i.e. CUKC. Federal citizenship would be revoked if the person obtained the nationality of a foreign country (with the exception of British nationality). In other words, CUKCs in the crown colonies of Penang and Malacca, the majority of whom were Chinese, continued to enjoy dual British/Federal citizenship (Low 2013: 99). It was this category of dual nationals whose status remained controversial during the Malayan independence negotiations. When federal citizenship became a full-fledged nationality on the eve of Independence, the federal government disallowed any form of dual citizenship. Neither British nationality nor State nationality were tolerated by the ruling party; allegiance to the Malay rulers or Her Majesty was forbidden since it was inconsistent with the creation of a common nationality. The ruling Alliance Party (currently known as *Barisan Nasional*) stressed that “it is essential to have a nationality law which provides for a common nationality, to the exclusion of all others” (as cited in Low 2013: 126). For dual nationals in Penang and Malacca, the Alliance proposed an option clause: they were given one year to renounce their Federal citizenship if they wished to retain their British nationality. CUKCs in Penang and Malacca would lose their British status upon becoming Federal citizens if no choice was made within one year (Low 2013: 129).

The position of the Alliance party was in conflict with the view of the UK government, which recognised dual nationality within the Commonwealth. The question of whether or not the inhabitants in the two British colonies were allowed to retain their CUKC status was an issue of the negotiations for independence. The Alliance’s suggestion was in contradiction with the practice of other commonwealth countries. If the Federation were to

¹² Federation of Malaya Agreement (Amendment) Ordinance, 1952, art. 125.

¹³ State of Johore Nationality Enactment, Enactment No. 2 of 1952, art. 5(2) & art. 8(3).

gain independence within the Commonwealth, its citizenship must be in line with the Commonwealth citizenship scheme; therefore, CUKCs could retain their British nationality since the Federation had achieved independence within the Commonwealth and federal citizens could become citizens of other Commonwealth countries (Low 2013: 134). CUKCs had gained liberal admission into Federal citizenship under the 1948 Agreement, and allowing dual nationality for CUKCs after Independence would result in special treatment not available to other federal citizens (Low 2013: 136).

The UK government insisted that dual citizenship was an international norm and that the British/Federal nationals of Penang and Malacca should not be divested from their rights (Fernando 2002: 125). The Alliance Party viewed dual nationality as a question of loyalty, whereas the UK government perceived it as a question of principle (Fernando 2002: 177). Following representation made by the Chinese community in the Straits Settlements in 1956, the UK government insisted on dual nationality for CUKCs in their former colonies (Sopiee 1976: 78). The 1957 Constitution, in its final form, recognised Commonwealth citizenship but not dual nationality. Acceptance of Commonwealth citizenship was not tantamount to dual allegiance, as the Prime Minister stated in a Legislative Council session that “Commonwealth citizenship is not comparable to nationality in such a way as to constitute one leg of a dual nationality status” (cited in Low 2013: 147). The status of a dual national, i.e. a federal citizen and CUKC, remained unchanged after Independence. Though dual nationals were not required to renounce their foreign nationality, Article 24(2) provided for the deprivation of citizenship on the exercise of foreign citizenship. Any citizens who claimed and exercised any rights in a foreign country being accorded exclusively to its citizens would be deprived of Federal citizenship.¹⁴ The deprivation clause is also applicable to federal citizens, claiming the rights in any Commonwealth country not available to other Commonwealth citizens.¹⁵

With the recognition of the concept of Commonwealth citizenship, every citizen of the Federation enjoyed the status of a Commonwealth citizen.¹⁶ Federal citizens, who were CUKCs or citizens of other Commonwealth countries, maintained their dual nationality status. Commonwealth citizens were not required to renounce their second nationality in order to continue to be a federal citizen. In a Commonwealth country, a federal citizen could only claim rights as a commonwealth citizen. In other words, only the exercise of rights exclusively accorded to the citizens of a country constituted grounds for deprivation. Using the deprivation clause, the *ius sanguinis* claim of the People’s Republic of China was satisfactorily resolved. Any Federal citizen of Chinese origin returning to China and exercising the rights of Chinese nationality would be deprived of Federal citizenship. The same rule applied to any Indian citizen exercising the rights given exclusively to Indian nationals (and not to Commonwealth citizens). As far as the Federation government was concerned, the deprivation clause ended dual nationality, though a federal citizen could still possess a second nationality (Low 2013: 146-147).

The 1957 Constitution prevented dual nationality in three ways. First, while the use of the deprivation clause under the Constitution did not require the relinquishment of dual status obtained via birth (Parry 1960: 1029), the acquisition of the citizenship of any country outside the Federation constituted grounds for deprivation.¹⁷ In addition, the acquisition of Federal citizenship through registration and naturalisation was contingent on the renunciation of foreign nationality via an oath of allegiance.¹⁸ Second, dual nationality was prevented with

¹⁴ Constitution of the Federation of Malaya, 1957, art. 24(2).

¹⁵ *Ibid.* art. 24(3).

¹⁶ *Ibid.* art. 25(1).

¹⁷ Constitution of the Federation of Malaya, 1957, art. 24(1).

¹⁸ *Ibid.* art. 18(1) & art. 21(1).

the elimination of state nationality and allegiance to individual rulers. Third, a person born in Penang and Malacca (which ceased to be a British colony) on or after Merdeka Day (31 August 1957) could no longer obtain British nationality by virtue of birth (Parry 1960: 1057; Fransman 1998: 694). Those having the status of CUKC before 31 August 1957 continued to possess dual CUKC and Federal nationalities, but this number would diminish and ultimately become extinct in the future as no new CUKC cases were being created (Fransman 1998: 694).

Independence and the formation of a Federal 'nationality' in 1957 ended two types of dual citizenship: state-level and federal-level political membership, and simultaneously holding the nationality of two different countries. After the Independence Constitution came into force, Malay State Nationality no longer carried any legal significance. Loyalty to the federal government overrode allegiances to the Malay rulers (Adam 1993: 21). A common federal nationality replaced the nine state nationalities and British nationality. The citizenship of the Independent Federation of Malaya is a full-fledged nationality under international law. Since Independence, there has been no difference made between 'nationality' and 'citizenship' (Sheridan 1979: 14). Dual citizenship resulting from the federal government structure resurfaced when Singapore joined the Federation of Malaya to form Malaysia. Singapore state citizenship was the only state citizenship having legal consequences in determining the qualifications for citizenship in Malaysia. (Huang, 1970).

2.4 Singapore and a common Malaysian nationality

Within the context of federalism, Singapore occupied a unique position in Malayan citizenship developments. Singapore formed part of the Straits Settlements (together with Penang and Malacca) and its inhabitants shared the common status of British subjects. When the Settlements were dissolved in 1946, Singapore formed a separate crown colony while Penang and Malacca joined the nine Malay States to form the Federation of Malaya. The separation of Singapore from the post-war federal constitutional plan then witnessed a separate development of nation-building and citizenship. Both political entities had developed different conceptions of citizenship, which complicated the future merger (Hill & Lian 1995).

Citizenship development in Singapore and the Federation of Malaya were closely connected. Though Singapore was excluded from the common nationality, the British colonial administration and the domestic political opinion in Singapore held to the idea of a future merger between the two territories. The constitutional plan was to achieve independence through a merger with the Federation under the common 'Malayan' nationality. Citizenship in Singapore could not be developed into a nationality until the colony merged with the Federation, after which all Singaporeans would be 'Malayan' (Yeo 1973: 147). The British and the mainstream of Singapore political opinion believed that issues of nationality must be solved within the context of the Federation; Singaporean citizenship status could only be developed into a full-fledged nationality when it became part of the Malayan nationality (Yeo 1973: 140). The local Chinese, however, wished to solve the citizenship problem prior to the merger. Unless a liberal citizenship policy was introduced, it would be difficult to secure the citizenship rights of alien Chinese in a Malay-dominated federation (Yeo 1973: 149).

Singapore had regarded itself as an 'incomplete' nation-state prior to merging with the Federation and did not have a local citizenship status until 1957. The rationale behind the introduction of the 1957 Singapore Citizenship Ordinance was motivated by the need to enlarge the political franchise, enabling those with a stake of belonging to the Colony to

become citizens and participate in the election (Goh 1970: 5). The local citizenship status was not a nationality as Singapore had yet to become an independent state. Under the 1957 Ordinance, 220,000 China-born permanent residents became citizens (Yeo 1973: 153). A separate citizenship legislation prior to national independence was subject to legal-political criticism from some political quarters in Singapore and the Federation. A liberal citizenship law would undermine the future prospect of a merger. At the outset, Singapore aimed to make their citizens ‘Malayan’ citizens. The Ordinance marked the first step in defining Singapore citizens before moving forward to defining Malayan citizens through merger. It was essential that Singapore legislation paralleled with Federation law if a territorial merger were to take place (Low 2013: 157).

3. Singapore Citizenship History

3.1 Singapore citizenship before the merger

Singapore and Malaysia have a shared historical, colonial and constitutional experience. Constitutional ties with peninsular British Malaya were severed in 1946 when Singapore was detached from the British post-war constitutional plan for Malaya. The constitutional ties were re-established in 1963 for only two years before Singapore separated from Malaysia. There were four phases of citizenship development in Singapore: 1) pre-1957 before the introduction of the Singapore Citizenship Ordinance of 1957; 2) following the introduction of the Singapore Citizenship Ordinance of 1957 (1957-1963); 3) after Singapore merged with Malaysia (1963-1965); and 4) post-1965 after Singapore separated from Malaysia and became an Independent State (Somarajah 1990: 430). As a result, the local-born population in Singapore has changed their nationality several times. Within this period, they were born a British subject before becoming a Singapore citizen when Singapore attained an internal self-government in 1959. When Singapore became part of the Federation of Malaysia with Sabah and Sarawak, citizens of Singapore automatically became Malaysian citizens on Malaysia Day (16 September 1963). After Singapore separated from Malaysia, they reverted to Singapore citizens on Singapore Day (Goh 1990 in Aguilar 1999: 310).

The Singapore Citizenship Ordinance 1957, introduced before the territorial merger, was in stark contrast with the citizenship principles of the Federation. The inherent contradiction lies in the different conceptions of citizenship. Singapore adopted an egalitarian and liberal model of citizenship based on the liberal regime of birthright citizenship, which is different from the Federation’s citizenship regime (Hill & Lian 1995). This complicated the 1963 merger when the Federation was enlarged to facilitate the de-colonisation process of Sabah, Sarawak, Brunei and Singapore (Brunei pulled out of the Malaysia project at the last minute). The 1957 Singapore Citizenship Ordinance was more liberal than the federal version of citizenship. First, the pre-merger Singapore Citizenship Ordinance adopted *ius soli* for all persons.¹⁹ In acquisition of citizenship through registration, special treatment was given to a person who was both born in the Federation and a citizen of the United Kingdom and Colonies. They were only required to fulfil a two-year residential requirement, compared to the eight-years required from other foreigners.²⁰ Meanwhile, the Federal Constitution did not

¹⁹ Singapore Citizenship Ordinance, 1957, art. 4.

²⁰ *Ibid.* art. 8(1) & art. 15(1).

grant territorial birthright citizenship to those born before Merdeka Day, nor did it grant any privileges to a CUKC in the acquisition of Federal citizenship. Ordinary naturalisation required a ten-year domicile.

Second, dual nationality within the Commonwealth of Nations was permissible in Singapore. A citizen of a foreign country acquiring Singapore citizenship other than by birth was required to divest of foreign citizenship within twelve months of becoming a citizen of Singapore. The naturalised and registered citizens ceased to be citizens of Singapore if they failed to do so.²¹ The deprivation provision, however, did not apply to CUKCs or citizens of a Commonwealth country, acquiring Singapore citizenship (Parry 1960: 1106). For citizens of Singapore, voluntary acquisition of a foreign citizenship (not including Commonwealth countries) constituted grounds for revocation.²² This is different from the Federal Constitution, which deprived federal citizenship from those acquiring the citizenship of any other country outside the Federation without differentiating Commonwealth and foreign countries.²³

On 3 June 1959, Singapore achieved the status of internal self-government. Birth in the colony on and after the date no longer bestowed British nationality. All existing CUKCs maintained their British nationality status. The liberal principles under the 1957 Citizenship Ordinance remained in force until 1963, when they were replaced by a stricter set of legislation upon merger with the Federation (Fransman 1998: 695). The Citizenship Ordinance determined the inclusion of Singapore citizens in the Federation of Malaysia. On Malaysia Day every citizen of Singapore under the existing Singapore Citizenship Ordinance of 1957 became a citizen of Malaysia by operation of law.²⁴ In accordance with the position of Singapore within the Federation, every citizen of Singapore enjoyed the status of a citizen of Malaysia.²⁵ The Singapore Citizenship Ordinance 1957 was repealed on 16 September 1963 with the coming into effect of the State of Singapore Constitution.²⁶ Under the State of Singapore Constitution, citizens of Singapore who had obtained citizenship under the 1957 Ordinance maintained their Singapore citizenship status. The status of state nationality remained relevant during the merger period since the acquisition and loss of Singapore citizenship (and subsequently, Malaysian citizenship) continued to be determined by the possession of Singapore citizenship. The Malaysian Constitution provided that “Citizenship of Singapore shall not be severable from citizenship of the Federation, but a Singapore citizen by loss of either shall lose the other also”.²⁷ In other words, citizens of Singapore lost their Singapore citizenship if they have renounced or been deprived of their Malaysian citizenship by the Federal government.²⁸

²¹ Ibid. art. 19(1).

²² Ibid. art. 21(1).

²³ Constitution of the Federation of Malaya, 1957, art. 24(1).

²⁴ Malaysia Act, 1963, art. 14(1)(c).

²⁵ Constitution of the State of Singapore, 1963, art. 53(3).

²⁶ Ibid. art. 69.

²⁷ Malaysia Act, 1963, art. 14(3).

²⁸ Constitution of the State of Singapore, 1963, art. 64.

3.2 Singapore state citizenship and merger

The concern that the inconsistencies between the two citizenship laws might complicate the unification of both territories was right. Liberal citizenship provisions under the Singapore Ordinance were cited as the reason to deny Malaysian ‘citizenship’ to the citizens of Singapore, leading to the creation of a ‘differentiated citizenship’ for Singapore citizens under the common label of Malaysian nationality. The 1961 Singapore White Paper proposed to grant Malaysian nationality without citizenship to the citizens of Singapore. A separate citizenship arrangement was necessary. Singapore was predominantly a Chinese state and its electorate reflected its unique population composition (Tan 2008: 94). In order to restrict the political activities of Singaporean citizens on the island, Singapore citizens became Malaysian nationals without citizenship. Due to opposition from the main opposition party, the White Paper proposal was altered to allow Singapore citizens to become Malaysian citizens. In its final form, the 1963 Malaysia Act changed the nomenclature while maintaining the restriction of political activities. The political rights of the citizens of Singapore were differentiated from the other categories of Malaysians under the Malaysia Act (Tan 2008; Hill & Lian 1995).

The 1963 Malaysia Act provided for two categories of citizens: a Malaysian citizen who is also a Singapore citizen, and a Malaysian citizen who is not a Singapore citizen. Citizens of the Federation of Malaya, Sabah and Sarawak were classified as one group whereas citizens of Singapore were considered a different group, separating residents of the 11 states in the Federation of Malaya from 624,000 Singaporeans. Along with the citizens of the Federation of Malaya, a resident of Sabah and Sarawak was categorised as “a Malaysia citizen who is not a Singapore citizen” (Jayakumar & Trindade 1964).

The legal dichotomy appeared because of differences in the citizenship rules of both countries, which significantly affected the qualification of electoral rights. From the Federation’s perspective, citizens of Singapore did not qualify to vote in the Federation because the criteria for citizenship were much more liberal compared to Federation citizenship. A total of 327,000 out of 624,000 citizens of Singapore were not entitled to Federal citizenship if the stricter 1957 criteria surrounding the acquisition of Federation citizenship were applied in Singapore; in this case, only 297,000 citizens born in Singapore out of 624,000 citizens could automatically become a Malaysian citizen. The remaining 327,000 would have to apply for citizenship under the Federal Constitution, which required fulfilment of stricter residential and Malay language requirements.²⁹ In its final form, the Malaysian constitution granted federal citizenship to all 624,000 citizens of Singapore. They maintained their Singapore state nationality in addition to being granted an additional status of Malaysian nationality (Lee 1998: 406-407).

The Malaysian Constitution sought to bridge the variances of different citizenship laws by creating two categories of citizens to ensure that Singaporeans could only vote in Singapore and federal citizens could only vote in the Federation. The Federation could not grant franchise to Singapore citizens because citizenship principles in Singapore were lenient. A person could become a Malaysian national more easily through Singapore compared to through the Federation of Malaya. The majority of Indian nationals—as Commonwealth citizens—were eligible for Singapore citizenship after two years of residency. From the Federation’s perspective, the number of Singapore citizens who qualified for Malaysian citizenship, and therefore voting rights, would be much smaller under the stricter Federal citizenship legislation. If the stricter citizenship law were applied in Singapore, only 297,000

²⁹ State of Singapore, Legislative Assembly Debates, 24 November 1961, pp. 690-692.

Singaporeans were eligible for voting rights while the remaining would lose their voting rights.³⁰

There were two types of citizenship within one nation-state under a common Malaysian nationality; Malaysian citizens who were Singapore citizens and Malaysian citizens who were not Singapore citizens (Jayakumar & Trindade 1964). The rights of these two categories of citizens varied in terms of electoral participation and franchise. Citizens of Singapore, for example, were not qualified to be 1) an elected member of House of Parliament except as a member for Singapore and 2) an elected member of the Legislative Assembly of any other state other than Singapore.³¹ Citizens of Singapore were not entitled to vote in any constituency outside Singapore. A similar restriction on political activity applied to Malaysian citizens who were not a Singapore citizen.³² The rationale was to contain and control the political influence of Singapore citizens in Federation politics and of Federation citizens in Singaporean politics. The ruling parties of the Federation and Singapore sought to delineate their own sphere of political influence (Hill & Lian 1995: 58).

The Singapore-Federation merger failed after two years. The containment of political activity did not prevent the ruling parties of the Federation and Singapore from interfering in each other's politics. The ruling party of the Federation participated in Singapore's election and the ruling party of Singapore took part in the Federation's election. Electoral campaigning then brought the issue of equal citizenship to the forefront of political debates, challenging the 1957 'social contract' and souring relations between Malaysia and Singapore. The competing conceptions of citizenship in Singapore and Malaysia (inclusivism and liberal versus exclusivism and non-egalitarian, respectively) reflect the divergent understanding of nation-building and Malaysian citizenry (Lee 2008; Hill & Lian 1995; Tan 2008).

The merger resulted in the modification of the liberal *ius soli* principle operating in Singapore (as well in Sabah and Sarawak). In order to align with the citizenship principles of Malaysia, a person born in Singapore after 16 September 1963 only became a Singapore citizen by birth if either one of the parents was a Singapore citizen or a permanent resident in Malaysia.³³ This provision is still in effect today after Singapore separated from Malaysia on 9 August 1965. Though CUKCs in Singapore maintained their British nationality status and Singapore citizenship when Singapore attained internal self-governance on 3 June 1959, they lost it four years later on Malaysia Day (Fransman 1998: 836).

Compared to the entry of Singapore citizens, the entry of the population of Sabah and Sarawak into Malaysian citizenry was less controversial. Sabah and Sarawak were British crown colonies and their citizenship status was determined by the British Nationality Act (BNA) 1948—there was no separate state citizenship. Prior to the entry of Sabah and Sarawak into Malaysia, local opinions supported the establishment of a local citizenship. Uncertainties surrounding the future status of the existing population were based on the fear of possible discrimination and restriction in the acquisition of Federal citizenship. A separate citizenship status was much appreciated as a safeguard for Chinese migrants who worried that their future generations would become second-class citizens under the Malaysian plan. Local anxieties could only be solved if the British guaranteed a satisfactory solution to the citizenship issue prior to transferring the sovereignty to the Federation government. A local citizenship status would safeguard their position after joining Malaysia.³⁴

³⁰ State of Singapore, Legislative Assembly Debates, 24 November 1961, pp. 690-692.

³¹ Malaysia Act, 1963, art. 31(1) & art. 31(2).

³² Ibid. art. 31(3).

³³ Constitution of the State of Singapore, art. 54.

³⁴ Federation of Malaya. *Report of the Commission of Enquiry, North Borneo and Sarawak*. Kuala Lumpur:

In Sabah and Sarawak, *ius soli* citizenship (provided under the 1948 BNA) was replaced and conditioned on the citizenship status of the parents. For those born after Malaysia Day, the amended principle of *ius soli* applied.³⁵ All CUKCs in both territories prior to Malaysia Day became Malaysian citizens through operation of law. Residents in Sabah and Sarawak became citizens by operation of law if they were CUKCs by birth, registration or naturalisation.³⁶ Naturalisation was a much stricter option. Under the existing rule, foreigners residing in Sarawak for five years were eligible for naturalisation.³⁷ Under the Malaysian rules, naturalisation was based on ten years of residence, good character and an adequate knowledge of the Malay language.³⁸

The merger restricted the practice of dual nationality. Dual nationality within the Commonwealth was no longer recognised in Singapore beginning in 1963; the newly formed Federation of Malaysia did not allow dual allegiance among its new citizens. The population of Singapore, Sabah and Sarawak automatically lost their CUKC status upon becoming Malaysian citizens on Malaysia Day (16 September 1963) (Groves 1964: 179). The United Kingdom Malaysia Act spelled out that a CUKC ceased to be such a citizen if on that day they became a citizen of the Federation.³⁹ However, CUKCs in Penang and Malacca were not affected: the Act did not withdraw British nationality from CUKCs in Penang and Malacca since they had become Federal citizens before 16 September 1963. British nationality was withdrawn from those becoming Malaysian citizens on Malaysia Day (Fransman 1998: 696).

Once Malaysians, the population of Singapore reverted to the status of Singaporeans. Singapore ceased to be a State of Malaysia on 9 August 1965 and became an independent state.⁴⁰ A citizen of Singapore ceased to be a citizen of Malaysia on Singapore Day (9 August 1965).⁴¹ To a large extent, post-1965 Singapore's citizenship regime inherited the citizenship principles of the Malaysian Constitution. The provisions in the Singapore Constitution, especially those relating to citizenship law, are modelled upon the Malaysian Constitution. Many provisions on Malaysian citizenship are applicable in Singapore by virtue of the Republic of Singapore Independence Act, 1965 (Sornarajah 1990: 428). The most obvious legacy is the mixed application of *ius soli* and *ius sanguinis* in determining territorial birthright citizenship and a strict single nationality policy.

Government Printer: 1962.

³⁵ Malaysia Act, 1963, sect. 1(a), Part II, Third Schedule.

³⁶ *Ibid.* sect. 2, Part I, Third Schedule.

³⁷ *Report of the Commission of Enquiry, North Borneo and Sarawak.*

³⁸ Malaysia Act, 1963, art. 19.

³⁹ United Kingdom Malaysia Act, 1963, sect. 2(2).

⁴⁰ Constitution and Malaysia (Singapore Amendment) Act, 1965.

⁴¹ Malaysia (Singapore Amendment) Act, 1965 (No. 53), sect. 12.

4. The Current Citizenship Regime in Malaysia

4.1 Birthright citizenship

Since 1957, citizenship amendments witnessed three major trends; citizenship is harder to acquire, citizenship is easier to lose, and the government's discretion in matters of citizenship is widened (Sheridan 1979: 13). The territorial birthright principle provided under the 1957 Independence Constitution was altered in 1962. According to the Constitution (Amendment) Act 1962, birth in the Federation, entitled one to Federal citizenship if one of the parents was either a citizen or a permanent resident in the Federation. *Ius soli* was no longer applied without condition and it was conditioned by elements of *ius sanguinis* (Sinnadurai 1978: 76). This aimed to exclude children born to persons who had no right to reside in the country and 'who had no attachment' from the automatic acquisition of citizenship by birth. Children of a foreign diplomat born in the Federation and children of an alien born in any place under enemy occupation could not obtain Federal citizenship automatically. In order to ensure that the child had genuine ties with the Federation, at least one parent must be either a citizen or a permanent resident (Lee 1976: 84). A person could no longer become a citizen by virtue of birth in the Federation beginning 1 October 1962.⁴² As a result, only those born between Merdeka Day and October 1962 acquired citizenship via unconditional *ius soli*. When the federal citizenry was enlarged to incorporate the population of Singapore, Sabah, and Sarawak, these new citizens of Malaysia were subject to the modified rule (Sinnadurai 1978: 81). The current nationality law is based on a combination of *ius soli* and *ius sanguinis*. *Ius soli* is not applicable to the children of foreigners born in Malaysia. The Federal Constitution provides automatic citizenship if the mother or father is a citizen.

Ius sanguinis was based on paternal heritage prior to 2010; citizenship by descent was applicable for children born overseas to a Malaysian father and whose birth was registered within one year at a Malaysian consulate.⁴³ However, this regulation did not correspond to the principle of gender equality in the transmission of citizenship. On 1 June 2010, gender equality was introduced to allow citizenship applications for the children of Malaysian women born overseas to a foreign father. The inability of Malaysian women married to foreigners to transmit their citizenship resulted in some of them returning to the country to deliver their children. Because of women activism, the constitution was amended to enable Malaysian mothers to transmit their citizenship to children born overseas.⁴⁴

In 2010, an administrative amendment under Article 15(2) of the Federation Constitution came to permit a citizenship application for the children of Malaysian women born abroad to a foreign father. Children born abroad to a Malaysian father obtain citizenship through operation of law, while children born abroad to a Malaysian mother have to submit an application under Article 15(2). In line with the national obligation under the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the Ministry of Home Affairs allows female Malaysian citizens marrying foreigners to transmit their

⁴² Constitution of Malaysia, art. 14.

⁴³ *Ibid.* art. 14(1)(c).

⁴⁴ Suganthi Suparmaniam, 'Children born abroad to Malaysian mothers qualify for citizenship,' *AsianOne News*, 9 April 2010
<http://news.asiaone.com/News/AsiaOne+News/Malaysia/Story/A1Story20100409-209293.html>

Malaysian citizenship to their children born outside of Malaysia. They are now allowed to choose the preferred citizenship for their children.⁴⁵

For children born out of wedlock, the nationality of the mother applies.⁴⁶ Citizenship of children born to non-citizen mothers (before marriage registration) remained complicated as such children are not considered Malaysian. In the case where bi-national marriages between Malaysian citizens and foreign wives are not registered in Malaysia, the children are not Malaysian citizens. Among the reasons for the denial of a child's right to citizenship are extra-marital affairs, unregistered marriages, the undetermined citizenship status of the mother, incomplete documentation of the parents, failure to register the birth of the children and abandoned children. Between 2003 and April 2014, the Government was confronted with 14,095 local-born children whose citizenships have yet to be determined.⁴⁷

There are two considerations for determining the citizenship status of children born to bi-national couples: whether the marriage is recognised by the government and whether the child is born before or after the marriage. If the marriage is not legal or if the child is born before marriage, the nationality depends on the mother. If the mother is a foreigner, the child can not acquire Malaysian nationality. However, there are still ways to rectify this. There are provisions under the Constitution which enable the child to apply, but it is under the discretion of the government to confer nationality on such children.⁴⁸ The Federal Constitution offers a constitutional safeguard against statelessness. Article 15A, introduced through a constitutional reform in 1962, grants special power to the Federal government to register a child as a citizen under special circumstances.⁴⁹ The provisions are very liberal as no qualifications are stated and 'special circumstances' are not defined (Sinnadurai 1978: 77).

The procedure to determine the nationality status of a child is based on the nationality status of the father or mother through a legal marriage. In order for a child to be a Malaysian citizen, one of the parents must be a national or a permanent resident and the marriage must be legally registered. If a child is born prior to the marriage registration, the nationality status of the child is determined by the mother's nationality status.⁵⁰ The increasing number of marriages between Malaysian citizens and male foreign labourers are not a serious concern to the government. The children of these marriages are not affected when the male labourers return to their home country after the working contract expires; children born of such unions are Malaysian nationals by operation of law. For children born out of wedlock, the national status of the father is irrelevant to the nationality of the children: as long as the mother is a national, the children are legally Malaysian nationals.⁵¹

⁴⁵ Federation of Malaysia. *Penyata Rasmi Parlimen (Hansard), Dewan Negara (House of Lords)*, 2 May 2002, pp. 32-33. <http://www.parlimen.gov.my/files/hindex/pdf/DN-02052012.pdf>.

⁴⁶ Constitution of Malaysia, sect. 17, Part III, Second Schedule.

⁴⁷ 'Illicit unions among reasons for stateless kids', *Star Online*, 30 July 2014

<http://www.thestar.com.my/News/Nation/2014/07/30/When-children-end-up-in-limbo-Illicit-unions-among-reasons-for-stateless-kids/>

⁴⁸ Federation of Malaysia. *Penyata Rasmi Parlimen (Hansard), Dewan Rakyat (House of Representatives)*, 1 October 2013, p. 37. <http://www.parlimen.gov.my/files/hindex/pdf/DR-01102013.pdf>

⁴⁹ Constitution of Malaysia, art. 15A.

⁵⁰ Federation of Malaysia. *Penyata Rasmi Parlimen (Hansard), Dewan Negara (House of Lords)*, 2 May 2012, pp 61-62. <http://www.parlimen.gov.my/files/hindex/pdf/DN-02052012.pdf>

⁵¹ Federation of Malaysia. *Penyata Rasmi Parlimen (Hansard), Dewan Negara (House of Lords)*, 15 May 1996, pp. 1-3. <http://www.parlimen.gov.my/files/hindex/pdf/DN-15051996.pdf>

4.2 Registration and Naturalisation in Malaysia

The second pathway to Malaysian citizenship is through registration. An immigrant wife of a Malaysian citizen is entitled to apply for Malaysian citizenship if she has resided in the Federation for two years, intends to reside permanently in the Federation, is of good character, has renounced any foreign nationality and the marriage is still in force.⁵² Initially, the residence, intention of permanent residence and good character criteria were absent from the 1957 Constitution. These additional requirements were newly introduced by the Constitutional (Amendment) Act 1962, resulting in a more stringent set of qualifications (Sinnadurai 1978: 76-77). Beginning in 1962, a genuine attachment to the country was required for citizenship by registration and naturalisation. A continuous residence of two years prior to the date of application is required for the wife of a citizen, whereas applicants for naturalisation must reside continuously in the Federation for one year preceding the application date. The new condition ensured that the applicants made the country their home (Lee 1976: 85).

The third pathway to Malaysian citizenship is through naturalisation. There is no constitutional provision for a marital pathway to citizenship for foreign husbands. The citizenship of foreign husbands is regulated under the naturalisation rule with a much more restrictive qualification. Similar to other categories of foreigners, the naturalisation of male spouses is contingent on ten years' residence, the intention of permanent residence, good character and an adequate knowledge of the Malay language. Renunciation of any foreign nationality is also a prerequisite.⁵³ Marital citizenship by registration is only available to female spouses, while male spouses gain admission into Malaysian citizenry via naturalisation. The husband of a Malaysian citizen is essentially placed in the same category as other foreigners in terms of acquisition of citizenship (Daniels 2005: 39)

Different provisions governed permanent residence (PR) and citizenship status for female and male spouses. Prior to 2010, there was no provision for foreign husbands to obtain PR status. Foreign husbands were eligible to obtain PR not based on their marital status, but on their employment status in the country. The government policy has changed due to women's advocacy to embrace gender neutrality. As a result of lobbying by foreign spouses, the PR application procedure for both male and female foreign spouses has been equalised; five years' residence in the country on a long-term social visit pass is required.⁵⁴ The Malaysia citizenship regime was reconfigured to be gender-neutral to accommodate mixed marriages. A clearer guideline was issued by the Home Ministry in 2009 to ease the application for PR by foreign husbands. Effective from 1 January 2010, PR applications received from foreign husbands follow specific guidelines and are not reviewed under the category of foreigners. The period of marriage and residence on a long-term social visit pass for at least five years entitles foreign husbands to apply for PR.⁵⁵

The greatest barriers to naturalisation include the lack of clear guidelines, a lack of transparency, no reason given for rejection, no time limits set for the evaluation of

⁵² Constitution of Malaysia, art. 15(1) & art. 18(1).

⁵³ Ibid. art. 19.

⁵⁴ 'The challenges faced by foreign spouses', *New Straits Times*, 12 May 2013.

<http://www2.nst.com.my/nation/general/the-challenges-faced-by-foreign-spouses-1.277126>

⁵⁵ Federation of Malaysia, *Penyata Rasmi Parlimen (Hansard), Dewan Negara (House of Lords)*, 18 December 2012, p. 5. <http://www.parlimen.gov.my/files/hindex/pdf/DN-18122012.pdf>.

applications, and no rules on appeal procedures.⁵⁶ Citizenship by registration and naturalisation is highly discretionary. Immigrant spouses are subject to the discretionary naturalisation regime, even when fulfilling the application criteria. There were 32,927 citizenship applications filed by both locals and foreigners between 1997 and 2009. The application process does not have a clear timeframe, which resulted in many applicants waiting for a response for two decades. According to the Home Minister, the approval of a citizenship application is very subjective. The main reasons behind citizenship applications being rejected include patriotism, state security and financial considerations.⁵⁷ Between 2000 and 2009, 4,029 foreigners applied for citizenship; 1,806 applications were approved. In the same timeframe, 3,640 applications for citizenship involved children and 1,066 applications were approved.⁵⁸ The Home Ministry reiterated that Malaysian citizenship is a privilege and not a right.

4.3 Rights of native citizens

There are some differences between native and non-native Malaysian citizens. The Federal Constitution provides special treatment for Malays, the aborigines of Peninsular Malaysia, and the natives of the Borneo States (Sabah and Sarawak) in terms of appointment to the public service, reservation of land, federal scholarships, admission into public universities and acquisition of trade or business licenses. The constitutional provision is to ensure they are economically and educationally competitive with other communities (Sheridan, 1979: 12-13). The 1957 Independence Constitution institutionalised affirmative citizenship rights for the sons of the soil (*Bumiputera*), i.e. the Malays and the aborigines of West Malaysia, by virtue of Article 153. This Article states that safeguarding the special position of the Malays and natives of Sabah and Sarawak and the legitimate interests of the other communities is a responsibility of the *Yang di-Pertuan Agong* (the King of Malaysia). The constitutional monarch has the responsibility to ensure the reservation of quotas as the quotas may deem reasonable with respect to the privileges that these citizens receive.⁵⁹

When Sabah and Sarawak became part of Malaysia, a comparable constitutional protection was extended to include the natives of both states. Under the 1963 Malaysia Act, the natives of the Borneo States (East Malaysia) were only entitled to reservation of public service positions, but no reservation of scholarship or educational privileges were available to them. Prior to the Constitution (Amendment) Act 1971, the natives of Sabah and Sarawak had not been given the same status as Malays. The 1971 Act amended Article 153 to include ‘the natives of any of the Borneo States’. The constitutional amendment aimed to equalise the status of natives in East Malaysia with Malays in West Malaysia (Lee 1976: 107). The Constitution (Amendment) Act 1971 also added a new clause allowing the *Yang di-Pertuan Agong* to reserve places for Malays and natives of any of the States of Sabah and Sarawak in any university, college or other educational institution providing higher education if the number of places offered to candidates for any course of study was less than the number of

⁵⁶ Malaysian NGO CEDAW Alternative Report Group. *CEDAW & Malaysia: Malaysian Non-Government Organisations' Alternative Report assessing the Government's progress in implementing the United Nations CEDAW*. Selangor: Women's Aid Organisation, 2012, <http://wao.org.my/file/file/Malaysianpercent20NGOpercent20CEDAWpercent20Alternativepercent20Reportpercent202012percent206MB.pdf>. pg. 111-112.

⁵⁷ ‘The Buzz on the 12th Floor,’ *Star Online*, 6 September 2009.

⁵⁸ ‘KPIs for all Home Ministry depts, agencies in Nov’, *Star Online*, 21 October 2009.

<http://www.thestar.com.my/Story/?file=%2F2009%2F10%2F21%2Fnation%2F20091021131404&sec=nation>

⁵⁹ Constitution of Malaysia, art. 153(1)(2).

candidates qualified for such places.⁶⁰ A non-egalitarian definition of citizenship has been dormant. Citizenship is one of the four issues (among language, the special position clause, and the sovereignty of the rulers) categorised as ‘sensitive’ under the Constitution (Amendment) Act 1971 following the May 1969 ethnic riot. Since then, the subject of citizenship has been barred from public discussion and legislative immunity was removed (Lee 1976: 106).

Hefner (2001: 29) coined ‘ethnically differentiated citizenship’ to refer to the nature of citizenship in independent Malaysia, which granted basic citizenship rights to non-Malays in return for their acceptance of “Malay dominance in politics and culture”. “Bumiputera-differentiated citizenship”, according to Koh (2017: 9), has encouraged a “culture of migration” among the skilled population of non-Malays. The Malaysian emigrants are comprised of highly educated and skilled migrants (Hugo 2011: 227). Emigration of the skilled diaspora, mainly consisting of ethnic Chinese and Indian Malaysians, has been associated with the state’s differentiated citizenship, the prospect of higher wages abroad, employment opportunities overseas, the quality of life, and access to high-quality education (World Bank 2011: 120).

4.4 Loss of citizenship and dual citizenship

Citizenship amendments in the post-Independence Federation of Malaya signalled a greater intolerance towards dual nationality. On Merdeka Day, the 1957 Constitution stated that the voluntarily acquisition of another nationality was subject to the deprivation of Malaysian citizenship.⁶¹ The constitution did not prevent dual citizenship acquired at birth, but deprived potential dual nationals from exercising any rights accorded exclusively to the citizens of their foreign country.⁶² Beginning on 1 October 1962, new grounds were added for the deprivation of citizenship by virtue of the Constitution (Amendment) Act, 1962. Claiming and exercising the rights of foreign citizenship were further defined as the exercise of a vote or the application of a passport outside the Federation (Lee 1976: 86).

The amended Constitution asserted that voting in any political election outside the Federation was regarded as the voluntary claim and exercise of such rights. Any citizens applying to foreign authorities for the issue or renewal of a passport, or using a foreign passport as a travel document, were subject to deprivation of citizenship.⁶³ Second, citizens by naturalisation and registration are prohibited from serving in any office, post or employment of any foreign governments if such positions require an oath of allegiance. This provision came into effect on 1 October 1962; anything done prior to this date was not punishable by deprivation.⁶⁴ Third, a five-year continuous residence in countries outside the Federation was reason for deprivation of citizenship, unless one was overseas in the service of the Federation or registered annually at a consulate to retain one’s citizenship.⁶⁵ Fourth, changes in the parents’ citizenship status resulted in the loss of their children’s citizenship. Children who

⁶⁰ Constitution of Malaysia, art. 153(8A).

⁶¹ *Ibid.* art. 24(1).

⁶² *Ibid.* art. 24(2).

⁶³ *Ibid.* art. 3(A).

⁶⁴ *Ibid.* art. 25(1A).

⁶⁵ *Ibid.* art. 25(2).

obtained citizenship via registration could be deprived of their citizenship if the parent voluntarily renounced or was deprived of citizenship.⁶⁶

In a further constitutional amendment in 1976, the Malaysian government withdrew the existing privileges of Commonwealth citizenship from its citizens. Beginning on 27 August 1976, Commonwealth countries were put on an equal footing with non-Commonwealth countries for deprivation purposes. The exercise of rights (including voting rights) in any Commonwealth country constituted a ground for deprivation. Prior to 1976, the constitution differentiated between the exercise of rights accorded to Commonwealth citizens and to the citizens of Independent Commonwealth countries (Sinnadurai 1978: 85). The constitutional amendment in 1976 replaced the term ‘a foreign country’ with ‘any country outside the Federation’, effectively restricting the rights derived from Commonwealth citizenship. Article 24, which spells out the deprivation on acquisition or exercise of foreign citizenship, serves to penalise divided loyalty (Sheridan 1979: 94).

Loyalty is the cornerstone of acquisition of citizenship by registration and naturalisation. Disloyalty is a cause of deprivation pertaining to naturalised citizens. Grounds for termination of Malaysian citizenship include: conducting an act or speech of disloyalty towards the Federation; assisting an enemy country during a war in which the Federation was involved; imprisonment in any country for twelve months; a fine of MYR5000 during the first five years of residence; serving in any office, post or employment of any foreign governments; and residence abroad for five consecutive years.⁶⁷ Dual Malaysian-Chinese nationality was resolved with a Joint Communiqué signed with the People’s Republic of China (PRC) on 31 May 1974. Both governments committed to non-recognition of dual nationality for the Chinese in Malaysia. The PRC simply recognised the automatic loss provision in which the Chinese who had obtained Malaysian citizenship were considered as having automatically forfeited Chinese nationality.⁶⁸

5. The Current Citizenship Regime in Singapore

After separation from Malaysia in 1965, the citizenship policy in Singapore has moved towards a restrictive trend compared to the provisions under the 1957 Ordinance and the Constitution of Singapore 1963. Major modifications, affecting the working principles of citizenship, were introduced in 1966, 1967 and 1968 and resulted in stricter citizenship rules (Sinnadurai 1970: 167-168).⁶⁹ Under the current constitution of Singapore, *ius soli* and *ius sanguinis* are “applied in a limited manner” in Singapore; both birthright principles are “not always automatic but only available in specific instances” (Tan 2008: 77). Beginning in the 2000s, Singapore’s citizenship regime has moved towards liberation, motivated partly by economic pragmatism and partly by gender equality (Tan 2014: 3).

⁶⁶ Ibid. art. 26(A).

⁶⁷ Ibid. art. 25.

⁶⁸ Joint Communiqué of the Government of the People’s Republic of China and the Government of Malaysia, 31 May 1974, art. 5.

⁶⁹ For law cases on citizenship in Malaysia and Singapore, refer to Tan, Kevin Y. L., & Thio, L. A. *Constitutional Law in Malaysia and Singapore*. Singapore: Butterworths Asia, 1997; Jayakumar, S. *Constitutional Law Cases from Malaysia and Singapore*. Singapore: Malayan Law Journal Pte. Ltd, 1976.

5.1 Birthright citizenship

The liberal *ius soli* principle operating in Singapore prior to Malaysia Day was replaced by a restrictive policy of the Federation's constitution: one of the parents must be a citizen of Singapore or a permanent resident of Singapore.⁷⁰ Territorial birthright citizenship was further restricted by a 1967 amendment. Effective 17 March 1967, the acquisition of citizenship by birthplace only occurred when one of the parents was a Singapore citizen (Sinnadurai 1970: 172). This principle remains unchanged. The current constitution provides that a person who is born in Singapore to a parent who is a citizen of Singapore acquires citizenship—unless the child was born to a father who is a foreign diplomat, or to a father who is an enemy alien and the child was born in a place then under occupation by the enemy.⁷¹

Citizenship by descent was also subject to restriction in the post-1965 period. As of 15 August 1968, fathers who were citizens by descent could no longer transmit their citizenship to their offspring. Children born abroad to a Singapore citizen could only acquire citizenship if their father was a citizen of Singapore by birth or by registration (Sinnadurai 1970: 175). By contrast, under the Singapore Constitution of 1963, citizenship by descent could be acquired by children of any citizen of Singapore. The 1968 amendment affected the citizenship rights in two ways. First, the acquisition of citizenship by descent was limited to a child born of a father who was a citizen of Singapore by birth or by registration. Second, a new condition was added to the *ius sanguinis* principle to prevent dual nationality at birth: a child born abroad of a father who was a citizen of Singapore by registration would not acquire Singapore citizenship if the child acquired the citizenship of his birthplace by *ius soli*.⁷²

Patrilineality dictated the *ius sanguinis* principle until 2004. Only male citizens were eligible to transmit their Singaporean citizenship to foreign-born children, and the father was required to be a citizen by birth or by registration. In cases of international marriages involving female citizens, their children born abroad were not entitled to Singapore citizenship via operation of law, but could acquire citizenship via discretionary registration (Tan 2008: 77; Ho 2008: 157). Under the patrilineal-based society, the government believed that Singaporean women who had emigrated and married a foreign national had “opted out of Singapore and cut ties with their families and Singapore” (Tan 2008: 78). Subsequently, their children born abroad no longer had any ties with the state and were excluded from the automatic right of citizenship. Prior to 15 May 2004, the attribution of citizenship by descent was based on the paternal line. The Constitution of the Republic of Singapore (Amendment) Act 2004 introduced gender equality in the transmission of Singapore citizenship (Tan 2008: 78).

The patriarchal citizenship regime is transformed not only owing to the rationale of gender equality but also to pragmatic considerations in the state competition for talent retention. Economic consideration is decisive in explaining the citizenship amendments. The majority of Singaporean female citizens are a highly-skilled diaspora; severing political ties with them would not benefit Singapore's human capital. By granting Singaporean women the right to transmit their citizenship, the state fosters its links with the Singapore diaspora while simultaneously “open[ing] the door to the prospect of return migration or talent circulation” (Tan 2008: 81). Gender equality in the transmission of Singapore citizenship to foreign-born children is viewed as a move towards re-conceptualising Singapore's citizenship in pursuit of

⁷⁰ Constitution of the State of Singapore, 1963, art. 54(1)(c).

⁷¹ *Ibid.* art. 122.

⁷² Constitution (Amendment No. 2) Act, 1968 (No. 24/1968), Singapore Statutes Online, <http://statutes.agc.gov.sg/>

human capital. In the wake of emigration trends, the State recognises the importance of her ‘homegrown talent’. In the quest for talent, children born abroad to Singaporean mothers are human capital who ought to be brought into state membership (Tan 2008: 82). In addition, constitutional amendments in 2004 expanded the application of *ius sanguinis* citizenship to children born to a Singapore citizen by descent. The concerns about “generations of absentee Singaporeans with no real links to Singapore” were resolved and Singapore citizens by descent were now able to transmit their citizenship. The reality of the increased number of Singaporeans working and living overseas would inevitably result in international marriages and foreign born children. Between 1991 and 2003, the number of foreign-born children granted citizenship increased from 1,900 to 2,700 children (Tan 2008: 77).

According to the explanatory statement of the Constitution of the Republic of Singapore (Amendment) Bill No. 12/2004, the Bill aims to allow Singapore citizenship to be acquired by children born overseas to citizen mothers. Article 122 was amended to enable persons born outside Singapore to acquire citizenship by descent if either of the person’s parents was a citizen by birth, registration or descent. However, there is an additional residency requirement to satisfy, if the person’s parent is a citizen by descent. The parent must have resided in Singapore for either 5 years before the person’s birth or for at least 2 of the 5 years preceding the person’s birth.⁷³ Children born abroad acquire Singapore citizenship only if the birth is registered within 1 year after birth and if the child has not acquired the citizenship of the country of birth.⁷⁴

5.2 Naturalisation in Singapore

Naturalisation rules are in favour of high-skilled migrants as they permanently exclude low-skilled immigrants. Foreign workers are regarded as transient, and as such are not allowed to apply for citizenship, marry Singaporeans or bring in their dependents (Mathew & Soon 2015: 37). Residential requirements are shortened to five years at the discretion of the government for highly qualified professional people from overseas and civil servants working in Singapore compared to the normal ten-year requirement.⁷⁵ A constitutional amendment in 1967 created ‘investor citizenship’ and gave discretionary power to the government to exempt any applicant from the ordinary 10 out of 12 year residency requirement by adding two provisions. First, the government could waive the requirement and grant citizenship to any person who has resided in Singapore for 5 out of 6 years. This provision targeted foreign investors and skilled migrants who were able to contribute to the economy of Singapore. Second, there was a special case clause in which the government could entirely exempt any applicant from any residential requirement. In this special case, the applicant only had to reside in Singapore for the 12 months preceding his application date (Sinnadurai 1970: 182). Ordinary naturalisation (registration) requires continuous residence for 12 months immediately prior to the application, residence in Singapore for 10 out of 12 years prior to the application, good character, elementary knowledge of English, Malay, Mandarin or Tamil, intent to make Singapore a permanent home, renunciation of citizenship of another country

⁷³ Constitution of the Republic of Singapore (Amendment) Act 2004 (Bill No. 12/2004), Singapore Statutes Online, <http://statutes.agc.gov.sg/>

⁷⁴ Constitution of the Republic of Singapore, 2015, art. 122.

⁷⁵ *Ibid.* art. 123(1)(c).

and an oath of allegiance. Acquisition by registration is not possible if the person once renounced or was deprived of Singapore citizenship.⁷⁶

The liberal immigration and citizenship regime faced resistance from the local population. Anti-immigration sentiment during the May 2011 general election resulted in the reversal of the liberal policy on skilled migrants. The tightening of immigration rules and the criteria on the issuance of employment passes to skilled workers resulted in fewer persons eligible for PR and citizenship. The number of immigrants obtaining Singapore citizenship decreased in 2009 and 2010 prior to the May 2011 general elections. Before this, the state recorded a steady increase in the number of citizenship application approvals: 7,600 (2004), 12,900 (2005), 13,200 (2006), 17,334 (2007), and 20,153 (2008) (Yeoh and Lin 2012).

In Singapore, a liberal provision for male spouses married to a Singapore citizen is viewed unfavourably. Such a special consideration would give alien husbands an advantage compared to other resident foreigners, and it is government policy to limit the granting of citizenship. Alien husbands would only be granted citizenship if they fulfilled the same qualifications as other resident foreigners (Sinnadurai 1970: 186). Female spouses of a male citizen are subject to more liberal admission conditions, including continuous residence in Singapore for two years immediately prior to the application, good character, intent to reside permanently in Singapore, renunciation of citizenship of another country and an oath of allegiance.⁷⁷ If the marriage dissolves within two years, other than by death, female spouses are subject to deprivation of citizenship.⁷⁸

In the pursuit of citizenship and PR status, the route is never automatic for foreign spouses. This may seem to contradict the state population policy when the state is facing a low fertility rate and a decline in marriages. However, a recent change in the legislation granted a foreign spouse with at least one Singaporean child a three-year Long Term Visit Pass beginning April 2012. Immigration and citizenship policies are based on 'particular economic criteria and rationale, rather than on strictly humanitarian or family-reunification grounds' (Yeoh and Lin 2012). The issue of securing citizenship might be a low priority when marriage migrants find it difficult to secure even PR status. For the purpose of social economic rights, a PR status is deemed very significant in terms of access to paid jobs. The granting of PR is complex, and it is dependent on male spouses to secure it. Some marriage migrants are not keen to apply for Singapore citizenship for the fear of emotional and material loss associated with citizenship rights in their home country (Yeoh, Chee, & Vu 2013: 149-151).

Since 2011, all naturalised citizens must participate in a newly introduced naturalisation assessment called the Singapore Citizenship Journey (SCJ). Rather than a formal naturalisation test like those used in other countries, the SCJ is designed in a much simpler way with no compulsory language exam or citizenship quizzes. There are four components intended to familiarise new citizens with the national symbols, values and institutions of Singapore. It consists of an online component, a tour of Singapore's historical landmarks and national institutions, a community engagement session and finally a citizenship ceremony (Mathew & Soon 2015: 42).

⁷⁶ Constitution of the Republic of Singapore, 2015, art. 123(1) & art. 126.

⁷⁷ *Ibid.* art. 123(2) & art. 126.

⁷⁸ *Ibid.* art. 129(6).

5.3 Loss of citizenship and dual citizenship

Dual nationality is not permitted for natural-born citizens or naturalised citizens. Constitutional amendments between 1966 and 1968 made citizenship easier to lose and resulted in the stricter enforcement of dual nationality restrictions. These amendments prevented dual nationality among children born overseas. Dual citizenship at birth is prevented in cases of children born abroad who have acquired the citizenship of the country via *ius soli*. Transmission of Singapore citizenship by descent is conditional on the child having no other foreign nationality at birth.⁷⁹ This was introduced in 1968 and remains unchanged in the current Singapore legislation (Sinnadurai 1970: 177). In addition, the option model is applied to dual national children acquiring citizenship by descent. The status of one's Singaporean citizenship acquired by descent lapses if the child does not renounce citizenship of another country within one year of reaching the age of 21. Failure to take the oath of allegiance within 12 months after the child has reached 21 years old, as required by law, will result in the loss of Singapore citizenship.⁸⁰ A similar automatic loss provision is also applicable to children, who acquire citizenship by registration.⁸¹ This provision became obligatory following an amendment passed in 1966 and backdated from Singapore Day, 9 August 1965 (Sinnadurai 1970: 176 & 189).

Mechanisms of deprivation and the power of the government to deprive registered or naturalised citizens of their citizenship was significantly widened in 1966. Beginning in 1966, the government had the discretionary power to deprive any naturalised citizens if they had engaged in activities threatening the security of Singapore or the maintenance of public order. In addition to deprivation on the grounds of fraud, means of citizenship acquisition and conviction for certain offences in any country, a new condition of deprivation was created based on national security concerns, similar to the Malaysian model (Sinnadurai 1970: 193-195). A person's citizenship acquired by registration or naturalisation will be revoked if he has engaged in activities prejudicial to the security or public order of Singapore or within the first five years of residency or if he has been sentenced to imprisonment in any country for at least one year or to a fine of at least 5,000 USD.⁸²

Loyalty is the cornerstone of Singapore citizenship. Divided allegiance serves as the ground for deprivation for all categories of citizens (Sornarajah 1990: 438). Acts of divided loyalty, such as acquiring foreign citizenship and exercising the rights of foreign nationality, constitute sufficient grounds for deprivation. The Constitution withdraws Singapore citizenship from a person acquiring citizenship of another country by a voluntary and formal act other than by marriage.⁸³ Citizens who have voluntarily claimed and exercised rights in another country that are accorded exclusively to that country's citizens (including a vote in foreign elections), or applied to the authorities of a foreign country for a passport, are subject to deprivation.⁸⁴ In 1985, additional grounds for deprivation of citizenship were introduced. By virtue of the Constitution of the Republic of Singapore (Amendment) Act 1985, a continuous period of ten years' ordinary residence outside Singapore was prohibited. This was crucial due to "considerable problems with persons outside Singapore who were away for many years and later alleged that they were born in Singapore" (Tan & Theo, 1997: 62). Thus, the new Article 135 dealt with deprivation of citizenship on the following grounds:

⁷⁹ Constitution of the Republic of Singapore, 2015, art. 122(2).

⁸⁰ *Ibid.* art. 122(4).

⁸¹ *Ibid.* art. 126(3).

⁸² *Ibid.* art. 129(3).

⁸³ *Ibid.* art. 134(1)(a).

⁸⁴ *Ibid.* art. 135(1)(a)-(b) & art. 135(2).

voluntary exercise of rights of foreign nationals; the application for or use of foreign passports; and non-residence of ten years.⁸⁵ In other words, a citizen, who has been ordinarily resident abroad for a continuous period of ten years before or after the age of 18, and has during that period not entered Singapore with a Singapore travel document nor been in the service of the government or an international organisation of which Singapore is a member, is subject to deprivation.⁸⁶

Singapore's citizenship legislations are heavily influenced by Malaysian law. By virtue of the Republic of Singapore Independence Act 1965, several provisions of the Malaysian constitution, especially citizenship provisions, are applicable to Singapore (Jayakumar 1979: 117). Naturalised citizens in Singapore are deprived of their citizenship if they have been disloyal or disaffected (in act or speech) towards Singapore, assisted the enemy in a war in which Singapore was engaged, or accepted, served in or performed the duties of any office, post or employment involving an oath of allegiance in any foreign country without permission of the Singapore government.⁸⁷ Article 129 on deprivation in the Singapore Constitution mirrors Article 25 of the Malaysian Constitution. There is one exception in which deprivation of citizenship in Singapore differs from that of Malaysia, namely residence in a foreign country constitutes a ground for deprivation in Singapore (Sinnadurai 1970: 195). Residence abroad for a continuous period of 5 years also constitutes a ground for deprivation for naturalised citizens, unless they are in the service of Singapore and have registered their intention to retain citizenship at a consulate.⁸⁸

While the Singapore deprivation provisions closely mirrored those in Malaysia, the renunciation provisions differed. The Constitution (Amendment) Act, 1979 introduced a new provision for the renunciation of citizenship, effectively replacing the provision of the Constitution of Malaysia. Voluntary expatriation was subject to an additional criterion that the person had fulfilled their full-time national service obligations or had rendered at least 3 years of operationally ready national service in lieu of full-time service. This provision aimed to prevent a person subject to the Enlistment Act from avoiding national service responsibility. The government had the right to withhold such a renunciation and Singapore citizens could not renounce their citizenship to escape national service (Jayakumar 1979: 116). This feature is absent in Malaysia, which has not introduced compulsory national service. Voluntary renunciation made during any war in which Singapore is engaged is subject to the government's approval. Expatriation is restricted to prevent citizens from escaping national service during any war and to prevent citizens who assist the enemy from placing themselves under the Prisoners of War Convention to make themselves immune from punishment for treason. Renunciation made during the war period would not be effective without the government's consent (Sinnadurai 1970: 192). The current legislation provides that renunciation may be withheld in times of war and if the person is under an obligation to fulfil military or civil service.⁸⁹

⁸⁵ Constitution of the Republic of Singapore (Amendment) Act 1985 (No. 10 of 1985), Singapore Statutes Online, <http://statutes.agc.gov.sg>

⁸⁶ Constitution of the Republic of Singapore, 2015, art. 135(1)(c).

⁸⁷ Ibid. art. 129(3)(a)ii, art. 129(4) & art. 129(7).

⁸⁸ Ibid. art. 129(5).

⁸⁹ Ibid. art. 128.

6. Current Debates in Singapore

6.1 Dual citizenship and expatriate citizens

Singapore citizenship policy serves two ends: engaging its overseas citizens and encouraging skilled immigrants to become citizens. In the quest for talent competition, the state is liberalising its citizenship rules to attract talented immigrants and retain high-skilled expatriate citizens. Expatriate citizens are to be embraced as part of the diaspora developmental strategy and naturalised citizens are to be integrated into society. Expatriates are no longer viewed negatively as second-class citizens, evident from two changes in the citizenship rules that relaxed the eligibility to acquire Singapore citizenship by descent and liberalised the criteria of overseas voting. Framed within the context of economic pragmatism, the state no longer “marginalised its citizens on grounds of non-residence and gender” (Tan 2014: 10). The Singapore diaspora constitutes highly skilled citizens and 6 per cent of Singapore’s total population in 2009. The number of Singaporeans living abroad has risen from 36,000 in 1990 to 180,400 in 2009 (Tan 2014: 8). In 2011, the state recorded 192,300 expatriate citizens, mostly high-skilled workers. The phenomenon of permanent emigration carries with it the risk of losing locally nurtured talent to other countries. The dual nationality restriction results in the renunciation of Singapore citizenship for 1,200 Singaporeans, including 300 naturalised citizens, annually (Yeoh and Lin 2012).

Singapore’s citizenship regime is considered exclusionary since it bans dual nationality and reduces social benefits for non-citizens. The state maintains that an undivided loyalty is the key to preserving Singapore’s national identity. Since the 1990s, there have been debates in Parliament that dual citizenship should be liberalised to encourage naturalisation of foreigners and increase the low fertility rate. Home Affairs has maintained that divided loyalty is unacceptable because “Singapore is a young and small nation” (Mathew & Soon 2015: 38). Naturalised citizens are required to identify with Singapore’s national identity, committing to Singapore as their home and pledging their future to Singapore. Other alternatives to encourage skilled migrants to take up Singapore citizenship include offering government scholarships to non-citizens and requiring the holders to obtain Singapore citizenship. At the same time, the government incentivised permanent residents to obtain Singapore citizenship by clarifying the social benefits (housing, healthcare and education of children) enjoyed by citizens compared to permanent residents. There would less incentive to become a Singapore citizen if PRs could enjoy almost identical social benefits as citizens without giving up their original citizenship and without performing military service (Mathew & Soon 2015: 39-40).

The citizenship liberalisation, however, fell short of recognising dual citizenship. The changes to Singapore citizenship policies were welcomed by overseas Singaporeans since they enabled them to maintain emotional and political connections with Singapore. Research done by Ho (2008: 157) showed that the state’s single nationality principle has been subject to lobbying and criticism by overseas Singaporeans and supported locally by some legislators. The first generation of Singapore emigrants and their children born abroad are affected by this legislation, though it is in particular the latter who are more likely to be affected. Children acquiring Singapore citizenship by descent must choose whether to retain or renounce their Singapore citizenship when they reach 21 years of age (Ho 2008: 157). Failure to take the oath of allegiance within 12 months after the child has reached 21 years old, as required by

the law, will result in the loss of Singapore citizenship.⁹⁰ A similar automatic loss provision is also applicable to children acquiring citizenship by registration.⁹¹ Clauses 122(4) and 126(3) mirror the option model for minors acquiring citizenship by descent or registration. Dual citizenship at birth is only tolerated until the child reaches adulthood. This provision became obligatory following an amendment passed in 1966 (Sinnadurai 1970: 189).

Subject to academic criticism, the citizenship policy in Singapore is “simultaneously expansive, indicated in the liberalisation of citizenship by descent, and contractive, indicated by the dual citizenship restriction” (Ho 2008: 157). In retaining the allegiance of its overseas citizens, the state’s policy on dual nationality may seem to be contradictory. Emigrants argued that the continuance of the state single nationality policy may be disadvantageous to the state competition for talent retention. The majority of emigrants are highly-skilled professionals; maintaining a link with human capital would enhance Singapore’s competitiveness in the global economy. Though the dual citizenship policy remains unchanged, the state has engaged with its overseas citizenry through other means (Ho 2008: 164-165).

Overseas voting legislation was enacted in 2001 and implemented in the 2006 general election. Limited overseas voting for parliamentary and presidential elections is subject to certain residential and geographical conditions. Voters must have lived in Singapore for two out of five years prior to their registration, and overseas voting is only available to voters residing in particular countries with the presence of Singapore diplomatic missions. Allegiance is an important criterion for expatriate citizens who were excluded from casting their ballots if their names were in the electoral registers of another country. Overseas voting rules were liberalised in 2008, taking into consideration the reality of the mobile Singapore diaspora, by shortening the residency criterion to 30 days out of three years, removing the rule which exempted public servants from the residency criterion and simplifying the registration process (Tan 2014: 12-13). Citizenship amendments are thus motivated by “pragmatic considerations of political economy” (Tan 2014: 3).

7. Current Political Debates in Malaysia

7.1 British Overseas Citizens (BOC) and statelessness

The current debate concerns Malaysian BOCs in the UK who have renounced their Malaysian citizenship. Failure to secure UK citizenship resulted in statelessness among the Malaysian BOCs since both governments refused to recognise them as nationals. Prior to 4 July 2002, BOC passport holders were eligible to apply for UK nationality contingent upon renouncing their Malaysian citizenship. Since the 2002 amendment to the British Nationality Act of 1981, the UK government stopped considering nationality applications from Malaysian BOCs. Between 2005 and 2013, 673 Malaysian BOCs renounced Malaysian citizenship in favour of British nationality. The Home Minister of Malaysia reiterated that they are expected to wait 17 years to ‘re-apply’ for their Malaysian citizenship subject to a Malay language test and an oath of loyalty. During this period, a five-year renewable residency pass would be issued to

⁹⁰ Constitution of the Republic of Singapore, 2015, art. 122(4).

⁹¹ *Ibid.* art. 126(3).

those wishing to re-apply for Malaysian citizenship.⁹² Malaysian BOCs applying for British nationality after 2002 are caught between the operations of two different nationality laws. Those who failed to secure a British passport do not have the right to live in the UK and are treated as illegals. After the implementation of the new rule in 2002, many Malaysians continued to apply for British nationality at the Malaysian High Commission in London via their BOC passport. They were advised by UK immigration authorities and legal advisors to renounce their Malaysian citizenship before their application could be considered. Accordingly, many Malaysians surrendered their Malaysian passports at the Malaysian High Commission in London.⁹³

The situation of statelessness among the Malaysian BOCs is a result of British colonial legacy. As discussed above, the status of the population of pre-independent Malaya was determined by the British nationality law, which existed along with the local citizenship law (Low 2014). There are Malaysians holding the citizenship of the United Kingdom and Colonies by virtue of their connections with the former crown colonies of Penang, Malacca, Singapore, Sabah and Sarawak. During the British de-colonisation process, certain categories of the population retained their CUKC status, regardless of whether they also held a Malaysian citizenship status. On Independence Day (31 August 1957), those who were CUKCs through their connection with Penang and Malacca maintained their CUKC status along with citizenship of the Federation of Malaya. Certain persons with connections to the Malay Protected States were also eligible to become CUKCs through registration and naturalisation under the BNA 1948. Once the 1981 BNA came into effect on 1 January 1983, all CUKCs became BOCs.⁹⁴ On Malaysia Day (16 September 1963), CUKCs in Sabah, Sarawak and Singapore retained their British nationality status only if they opted not to become a Malaysian citizen. All of these CUKCs without Malaysian citizenship later joined the ranks of the CUKCs from Penang and Malacca, becoming BOCs. As of 1981, there were 1,300,000 dual CUKC-Malaysian citizens and another 130,000 persons holding a single CUKC nationality in Malaysia (Fransman 1998: 694-696).

As Malaysia strictly enforces a single nationality principle, any citizens exercising their right of BOC and obtaining a British passport will no longer be a Malaysian citizen. In April 2014, the Malaysian government stated that it would not grant Malaysian nationality to BOCs as they had renounced their Malaysian nationality to become UK nationals. In the legal sense, BOC passport holders are Malaysian citizens choosing to renounce Malaysian citizenship to apply for UK citizenship. The BOC passport is a travel document and not equivalent to a full nationality status, nor does it grant the right to reside in the UK. According to a media statement made by the Home Affairs Minister, these former Malaysians are required to satisfy strict application criteria if they wish to re-apply for Malaysian citizenship. A minimum of 17 years is designated as the minimum timeframe for former citizens to ensure that they give undivided loyalty to the state and do not repeat their act of

⁹² 'Zahid: BOC holders in for a long wait to be Malaysians again', *Star Online*, 12 April 2014, <http://www.thestar.com.my/News/Nation/2014/04/12/17-years-to-regain-citizenship-Zahid-BOC-holders-in-for-a-long-wait-to-be-Malaysians-again/>

⁹³ For reported cases on Malaysian BOCs in the UK, see 'Malaysians left stateless in Britain in row over colonial law', *UNHCR Refugees Daily*, 11 October 2009. <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4ad2ccb45>

⁹⁴ The British Nationality Act 1981 created three categories of British nationals; 1) UK citizenship, 2) British Dependent Territories citizenship (for CUKCs in countries which are British colonies), and 3) British Overseas citizenship (for CUKCs in the Commonwealth countries, who maintained their British nationality after the colonies achieved independence).

renunciation.⁹⁵ Loyalty is the cornerstone of Malaysian citizenship, which means that renouncing Malaysian citizenship demonstrated an act of disloyalty to the country. There is no constitutional provision for former Malaysian citizens to recover their citizenship. The stipulated timeframe is longer than the ordinary naturalisation requirement of ten years provided under the constitution.⁹⁶

Prior to the 2002 amendment to the BNA of 1981, the BOC passport enabled its holders to apply for UK citizenship based on the condition that the applicants renounce their Malaysian nationality on or before 4 July 2002. After this date, any such application made by the Malaysian BOC passport holders would not be considered, even though they had renounced their Malaysian citizenship. For these former Malaysian citizens who failed to secure British nationality, they have no choice but to return to Malaysia voluntarily or face deportation.⁹⁷ The marker of a ‘British Overseas Citizen’ (BOC) is a result of the British de-colonisation process that allowed certain people in their former colonies to retain their British nationality. Nevertheless, the gateway to British nationality for those in former colonies has been gradually closed following stricter immigration rules in the UK since the 1960s. Amendments to the UK immigration regulations have sought to limit the rights of citizens of former British colonies from enjoying full citizenship rights in the UK; the BNA of 1981 reduced the number of CUKCs eligible to claim UK citizenship (Macdonald & Blake 1982). Though BOC status provides privileges, such as access to a British passport and consular protection, BOCs are subject to immigration control without the right of abode or the right to work and are not considered British nationals by the member states of the European Union.⁹⁸ Under the 1981 BNA, BOC status enables the holders to acquire British nationality via registration after five years of residence in the UK.⁹⁹ The Home Office recorded the number of British passports issued to BOCs as follows: 840 (2007), 739 (2008), 611 (2009), 581 (2010), 564 (2011), and 510 (2012).¹⁰⁰ For Malaysian BOCs, the Home Office record showed that 108 BOC passports were issued to Malaysian citizens in 2007, 72 in 2008 and 59 in 2009.¹⁰¹

Following the 2002 amendment to the 1981 BNA, BOC passport holders from Malaysia are no longer qualified as British nationals except in certain circumstances. Statelessness among the Malaysian BOCs is attributed to changes in the UK immigration and citizenship legislation rather than the restrictive citizenship policy of Malaysia (Low 2014). From the British perspective, the point of contention was whether Malaysian citizenship could be renounced unilaterally. They believed that these BOCs were not categorised as ‘stateless’

⁹⁵ Ministry of Home Affairs, ‘Kenyataan Media Menteri Dalam Negeri Isu Pemegang Pasport British Overseas Citizens (BOC)’ [Media Statement by Home Affairs Minister on the Issue of British Overseas Citizens (BOC) Passport Holders] 11 April 2014. <http://www.kkdn.gov.my/index.php/ms/kenyataan-media-akhbar/1561-kenyataan-media-menteri-dalam-negeri-isu-pemegang-pasport-british-overseas-citizens-boc>.

⁹⁶ Constitution of Malaysia, art. 19.

⁹⁷ Media Statement by Home Affairs Minister on the Issue of British Overseas Citizens (BOC) Passport Holders, 11 April 2014.

⁹⁸ United Kingdom, Home Office, ‘British Overseas Citizen’, 23 September 2016, <https://www.gov.uk/types-of-british-nationality/british-overseas-citizen>.

⁹⁹ United Kingdom, Home Office, ‘BN 12 Registration of someone who is a British overseas territories citizen, a British overseas citizen, a British subject, a British protected person or a British national (overseas)’, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279933/bn12.pdf.

¹⁰⁰ United Kingdom, HM Passport Office and Home Office, ‘Passports issued under the 6 British citizenship categories, 2007 to 2012’, 11 February 2014 <https://www.gov.uk/government/publications/passports-issued-under-the-6-british-citizenship-categories-2007-to-2012>.

¹⁰¹ United Kingdom, Home Office, ‘Information on British Overseas Citizen (BOC) passports issued to applicants born in Malaysia’, 4 October 2010. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118651/16064-boc-malaysian.pdf.

as Malaysia does not allow renunciation of citizenship prior to securing another citizenship. As far as the Malaysian government is concerned, they were British.¹⁰² According to the Constitution (Amendment) Act 1962, however, Malaysian citizens could renounce their citizenship before becoming a citizen of another country. The aim of amending Article 23 was to facilitate the process of renunciation. It takes into consideration the nationality laws of certain countries which require renunciation of the original citizenship before naturalisation is allowed. Prior to the Act, renunciation was not subject to the acquisition of another citizenship (Lee 1976: 86). Malaysian BOCs, therefore, lost their nationality unilaterally.

Campaigns have ensued since March 2011 when a group of Malaysian BOCs urged the British government to recognise them as British nationals. Since the BOCs resided in the UK and contributed economically to the country, they appealed to the UK to allow them the right to stay.¹⁰³ From the view of Malaysian BOCs, the solution possibly lies in the UK: the British nationality law created the status of BOC, but has gradually restricted this status as a gateway to British nationality. Former Malaysian nationals were neither recognised by the UK as British nationals nor accepted by the Malaysian government, leaving them stateless. They were misinformed that the renunciation of Malaysian citizenship would enable them to secure British nationality. As they were no longer Malaysian nationals, they appealed to the UK based on the grounds of compassionate and colonial responsibility. Losing Malaysian citizenship and failing to obtain British status left them with no right to reside and work legally in either country.¹⁰⁴

Since April 2011, bilateral diplomacy has taken place to solve the citizenship issue. The UK government proposed sending BOC passport holders to Malaysia, which agreed to issue a resident pass to those affected. Until 11 April 2014, only three BOCs were accepted by the Malaysian government. The pass is not equivalent to the status of PR or citizenship. In order to re-apply for Malaysian citizenship, the holder of the Resident Pass must go through the same process as other foreigners. The Home Minister reiterated that the government would not automatically grant Malaysian citizenship to them.¹⁰⁵

8. Conclusions

The Independence Constitution of 1957 reflects a significant departure from the citizenship principles of pre-independent Malaya (known as the Federation of Malaya in 1948 and the Federation of Malaysia in 1963). The pre-independent Malayan citizenship regime was characterised by the following principles: 1) distinction between the concepts of citizenship and nationality; 2) recognition of dual citizenship; 3) absence of territorial birthright citizenship for local-born children of immigrants; 4) overlapping applications of the British nationality system and the local citizenship law; and 5) recognition of state nationality and federal citizenship status. All these principles were eliminated under the Independence Constitution of 1957.

¹⁰² 'Malaysians left stateless in Britain in row over colonial law', *UNHCR Refugees Daily*, 11 October 2009.

¹⁰³ 'Strangers into Citizens take action with British Overseas Citizens', *Citizens UK*, 9 March 2011.

<http://www.citizensuk.org/2011/03/strangers-into-citizens-take-action-with-british-overseas-citizens/>.

¹⁰⁴ For cases of deportation, see 'Immigration rules leave stateless Malaysians in limbo', *The Independent*, 13 March 2011, <http://www.independent.co.uk/news/uk/politics/immigration-rules-leave-stateless-malaysians-in-limbo-2240532.html>.

¹⁰⁵ Media Statement by Home Affairs Minister on the Issue of British Overseas Citizens (BOC) Passport Holders, 11 April 2014.

The Malaysian citizenship regime has gone through significant changes since independence. Citizenship is difficult to acquire. The state has widened the grounds for deprivation of citizenship. Birth in the Malaysian territory is immaterial for determining citizenship rights. Emphasising a genuine attachment to the state, the state combines *ius soli* and *ius sanguinis* elements. A high level of immigration explains the controversial adoption of *ius soli* in the nation. *Ius sanguinis*, on the other hand, was not an issue until the twenty-first century when waves of emigration and international marriages, coupled with the inability of citizen mothers to transmit their citizenship, brought up the issue of the patrilineal *ius sanguinis* system. Singapore and Malaysia abolished the gender inequality policy accordingly in 2004 and 2010 in the wake of NGO lobbying and activism.

In both countries, *ius soli* and *ius sanguinis* are applied in a restricted sense. Singapore restricted the application of *ius sanguinis* to children born overseas to prevent dual nationality acquired at birth. An option model for children born abroad is introduced, requiring these children to choose between the nationality of a parent and of their birthplace upon reaching the age of majority. Malaysia, on the other hand, does not have the option clause. The Malaysian constitution provides for deprivation of citizenship upon exercising the rights of foreign nationality. The children may have acquired dual nationality at birth. As far as the government is concerned, the deprivation mechanism serves to prevent them from claiming a second passport.

The trend in both countries has been not towards liberalisation but towards gender equality. Citizenship amendments since the 2010s have configured their policies to be in line with gender neutrality. However, this is only applicable in the transmission of citizenship. Gender equality in the acquisition of marital citizenship is absent in both countries; there is also no constitutional provision for automatic citizenship via marriage. While female spouses have easier access to citizenship via registration, male spouses are placed on equal footing with other foreigners. Citizenship acquisition for foreign spouses is highly discretionary and fulfilling all the requirements is by no means a guarantee of a successful application.

With regards to a single nationality policy, Singapore has witnessed some challenges from the diasporic community, supported by some parliamentarians. Lobbying by the Singaporean diaspora, however, failed to relax the dual nationality restrictions. Singapore, a young nation-state, demands undivided loyalty from its expatriate citizens and imposes compulsory military service for male citizens. A single nationality policy, institutionalised in the 1957 Federal Constitution, has not been subject to Malaysian political or public debates. For those residing in Malaysia, a more urgent issue concerns the citizenship status of children born to bi-national couples and the protracted citizenship application process of immigrants, especially foreign spouses. For the Malaysian diaspora, they are more concerned with the lack of an egalitarian model of citizenship institutionalised under the 1957 Constitution. The peculiarities of Malaysia's citizenship regime are embedded within the context of Malaysia's unique immigration history, communalism, ethnic nationalism, consociationalism, and the elite accommodation system.

Table 1: Status of the political entities of Malaysia and Singapore under British rule

Date	Political Entity	Nationality Law in force	Member States	Status under the British Nationality Law
2.9.1858-31.3.1946	Straits Settlements	Naturalisation Enactment (for naturalisation as British subjects), 1867	Penang, Malacca, Singapore, Labuan (since 1905), Dindings (1874-1935)	Crown's Dominion
1.7.1896 - 31.3.1946	Federated Malay States	Naturalisation Enactment (for naturalisation as subjects of the Malay Ruler), 1904	Perak, Selangor, Negeri Sembilan, and Pahang	British Protected States
1909-31.3.1946	Unfederated Malay States	No written nationality law was in force	Kedah, Kelantan, Perlis, Johore, and Terengganu	British Protected States
1.4.1946-31.1.1948	Malayan Union	Malayan Union Constitution, 1946	Nine Malay states (4 Federated States and 5 Unfederated States), Penang, and Malacca	The Malay states were British Protected States Penang and Malacca were British colonies Singapore became a separate Crown Colony in 1946 following the abolishment of the Straits Settlements. Labuan joined North Borneo in 1946. The Dindings were returned to Perak in 1934.
2.1.1948-30.8.1957	Federation of Malaya	1. Constitution of the Federation of Malaya, 1948 2. State Nationality Enactment of 1952 (in the nine Malay States) 3. British Nationality Act of 1948 (in Penang and Malacca)	Nine Malay states, Penang, and Malacca	The Malay states were British Protected States (under the British Protectorates, Protected States, and Protected Persons Order in Council 1949) Penang and Malacca were part of the United Kingdom and Colonies (under the British Nationality Act of 1948)
31.8.1957 (Merdeka Day) -15.9.1963	Federation of Malaya became an independent state	Constitution of the Federation of Malaya, 1957	Nine Malay states, Penang, and Malacca	Independent Commonwealth Country

1.4.1946- 2.6.1959	Colony of Singapore	British Nationality Act, 1948	Singapore	Singapore was part of the United Kingdom and Colonies (under the British Nationality Act of 1948)
3.6.1959- 15.9.1963	State of Singapore	Singapore Citizenship Ordinance, 1957	Singapore	Singapore achieved full internal self-government
15.7.1946- 15.9.1963	Colony of North Borneo (Sabah)	British Nationality Act, 1948	North Borneo	North Borneo was ceded to the British Crown in 1946 and formed part of the United Kingdom and Colonies
1.7.1946- 15.9.1963	Colony of Sarawak	British Nationality Act, 1948	Sarawak	Sarawak was ceded to the British Crown in 1946 and formed part of the United Kingdom and Colonies
16.9.1963 (Malaysia Day)	Federation of Malaysia	Federal Constitution of Malaysia, 1963	Federation of Malaya, Sabah, Sarawak, and Singapore	Independent Commonwealth Country
9.8.1965 (Singapore Day)	Federation of Malaysia & Republic of Singapore	Constitution and Malaysia (Singapore Amendment) Act, 1965 Republic of Singapore Independence Act, 1965	Singapore separated from Malaysia	Singapore became an independent Commonwealth Country

Source: Adapted from Fransman, L. (1998), *British Nationality Law*. London: Butterworth, pp. 688-689.

Table 2: Status of the population of Malaysia and Singapore under the British nationality law

Types of British territories	Geographical area	Acquisition of the status of British nationality	Effective date	Legislations involved
Crown's Dominion	Penang, Malacca, Singapore, Sabah (North Borneo), & Sarawak	Birth and other connections with these territories entitled one to become a British subject	Penang, Malacca, Singapore, 2.9.1858 Sabah 15.7.1946 Sarawak 1.7.1946	Common law; British Nationality and Status of Aliens Act 1914 North Borneo Cession Order in Council 1946 Sarawak Cession Order in Council 1946
British Protected States	Sabah Sarawak Nine Malay States	The citizens of Sabah and Sarawak (defined under the state naturalisation enactments) were BPP (British Protected Persons). Only subjects of the Malay Ruler and citizens of the Federation of Malaya were BPPs.	Sabah 1888-14.7.1946 Sarawak 1888-30.6.1946 Nine Malay States (the date of the treaties signed – 30.9.1957)	Common law; British Nationality and Status of Aliens Act 1914 North Borneo Naturalisation Ordinance, 1931 Sarawak Nationality and Naturalisation Order, 1934 Constitution of the Federation of Malaya, 1948
United Kingdom and Colonies	Penang, Malacca, Singapore, Sabah, & Sarawak	British subjects in the five colonies were reclassified as a CUKC (Citizen of the United Kingdom and Colonies)	1.2.1949	British Nationality Act 1948
British Overseas Citizen (BOC)	Penang, Malacca, Singapore, Sabah, & Sarawak	CUKCs in these post-independent territories were reclassified as a BOC (British Overseas Citizens).	1.1.1983	British Nationality Act 1981

Source: Adapted from Fransman, L. (1998), *British Nationality Law*. London: Butterworth, pp. 688-689.

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