

THEMATIC REPORT ON MUSLIM FAMILY LAW AND MUSLIM WOMEN'S RIGHTS IN SINGAPORE

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A. INTRODUCTION

This shadow report is jointly submitted by Beyond the Hijab, an online platform sharing personal stories and perspectives of Singaporean Muslim women, and Musawah, the global movement for equality and justice in the Muslim family, for consideration by the CEDAW Committee in its review of the Government of Singapore, reporting before the 88th Session of the CEDAW Committee in May 2024.

B. BACKGROUND, LEGAL FRAMEWORK AND CONTEXT

Muslims in Singapore constitute 15% of the total population. The majority of Muslims in Singapore are Sunni Muslims of the Shafi'i school of law.¹ Article 12 of the Singaporean Constitution guarantees equal protection of all before and of the law and non-discrimination on the basis of religion, race, descent or place of birth.²

Article 12(3) of the Constitution allows for different personal laws based on religious belief.³ As a multi-religious society, Singapore has two legal regimes that govern marriage and divorce - civil law (Women's Charter) and Muslim law via the Administration of Muslim Law Act (AMLA). Muslims may marry non-Muslims; the marital union is a civil marriage and falls under the purview of the Women's Charter.⁴ With regard to the CEDAW Convention, Singapore has reservations to Articles 2(a)-(f), 16(1)(a), 16(1)(c), 16(1)(h), 16(2) and 29(2) of CEDAW⁵ on the following grounds: "In the context of Singapore's multiracial and multi-religious society and the need to respect the freedom of minorities to practice their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2, paragraphs (a) to (f), and article 16, paragraphs 1(a), 1(c), 1(h), and article 16, paragraph 2, where compliance with these provisions would be contrary to their religious or personal laws."

However, partial reservations to Articles 2 and 16 are still retained to protect the rights of minorities in the practice of their personal and religious laws. With the exception of Singapore's Muslim minority community, marriage and family relations of all communities in Singapore regardless of religion are governed by the Women's Charter, which exclusively recognizes civil marriages.⁶ Therefore Article 12(3) of the Constitution and CEDAW reservations apply expressly with regard to the Muslim family law on marriage, divorce and inheritance.

ADMINISTRATION OF MUSLIM LAW ACT (AMLA)

AMLA is the main codified law that governs matters relating to marriage and family relations of the Muslim minority community in Singapore.⁷ Muslim law, as set out in the AMLA, is administered by various agencies including the Islamic Religious Council of Singapore (MUIS), the Shari'ah courts and the Registry of Muslim Marriages (ROMM).

The Shari'ah courts, and Naib (deputy) Kadis considered as "officials of religious standings", administer the marriage registration and divorce procedures.

¹ Ahmad Nizam bin Abbas, "The Islamic Legal System in Singapore", (Pacific Rim Law & Policy Journal, 21:1, 2012), p. 166, <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1097/21PRPLJ163.pdf?sequence=1>

² Article 12 of Singapore's Constitution (1963), Gender equality is not specifically mentioned in the article. <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:f112e119-f024-4c49-9ac3-d4e0e94ebc85>

³ Article 12(3) of Singapore's Constitution (1963); Ahmad Nizam bin Abbas, "The Islamic Legal System in Singapore", (Pacific Rim Law & Policy Journal, 21:1, 2012), p. 163, <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1097/21PRPLJ163.pdf?sequence=1>

⁴ Section 3(4) of the Women's Charter (1961),

<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:f970e7b1-2a7b-49ec-b760-061d1a85888c>

⁵ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&clang=en

⁶ Women's Charter (1961), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:f970e7b1-2a7b-49ec-b760-061d1a85888c>

⁷ Administration of Muslim Law Act (1966) (Hereinafter "AMLA"),

<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:da899b47-f141-4218-a27a-99ed1aee6ce1>

C. KEY ISSUES AND RECOMMENDATIONS

ROMM has 12 Kadis and 34 Naib Kadis under its purview.⁸ Kadis can consider marriage applications and solemnize marriages with or without a wali (male guardian), while Naib Kadis can solemnize marriages only with a wali.

The Family Justice Court (FJC) adjudicates cases relating to marriage and family relations of Singapore's non-Muslim majority population. Generally, the Shari'ah courts adjudicate cases relating to marriage and family relations of Singapore's Muslim minority community.

However, parties to a Muslim marriage may commence civil proceedings in the FJC with regard to: (i) children (custody, care; control and access during a marriage); and (ii) disposition or division of property on a foreign divorce. In addition, maintenance of the wife and children during a subsisting marriage, and child maintenance pursuant to a divorce, are heard in the FJC.⁹

The Act is generally silent on the Muslim school of law that is applicable in the event that a particular personal status matter is not sufficiently addressed by AMLA.

However Section 33 of AMLA provides that the religious rulings (fatwas) of the Islamic Religious Council of Singapore (MUIS) should follow the rules of Shafi'i jurisprudence (fiqh), unless it is in the public interest to follow the tenets of another accepted madhab (schools of law).

1. COMPREHENSIVE REFORM OF MUSLIM FAMILY LAW

Singapore recently reformed the Administration of Muslim Law Act (1966) in 2020. Regardless of the reforms, the provisions in the AMLA still render Singaporean Muslim women as second-class citizens by denying them the fundamental right to equality and non-discrimination in the realm of marriage and family.

The amendments specified by the government fail to address all legal inequalities as other provisions in the AMLA render Muslim women as unequal to their husbands in entering and leaving marriages. For instance, Section 46 of the Women's Charter states that upon solemnization of their marriage, a husband and wife will be mutually bound to cooperate with each other in safeguarding the interests of the marriage and in caring and providing for the children; they will also have equal rights in the running of the matrimonial household. The AMLA however does not contain an equivalent provision. Other countries with Muslim family laws, such as Algeria, Morocco and Turkey, offer more egalitarian interpretations of marriage.

Additionally, in Muslim pre-marriage courses conducted by Ministry of Social and Family Development (MSF)-approved operators and private operators, trainers still promote the outdated concept of husbands as the 'head of household' and wives solely responsible for caregiving.

⁸ List of Kadi/Naib Kadi, *marriage.gov.sg*, <https://www.marriage.gov.sg/muslim/kadi-list>

⁹ (i) Maintenance for children during a marriage (s68 WC: <https://sso.agc.gov.sg/Act/WC1961?ProvIds=pr68-#pr68->); custody, care and control, access of child during a marriage (section 5 of the guardianship of infants act: <https://sso.agc.gov.sg/Act/GIA1934?WholeDoc=1>); division of matrimonial property pursuant to a foreign divorce (Chapter 4A of WC: https://sso.agc.gov.sg/Act/WC1961?ProvIds=P110-P44A_121A-#P110-P44A_121A-); (iii) maintenance for wife and children during marriage (s69 of WC, <https://sso.agc.gov.sg/Act/WC1961?ProvIds=P18-#pr69->); (iv) maintenance for child(ren) pending matrimonial proceedings or pursuant to divorce (s127 of WC, <https://sso.agc.gov.sg/Act/WC1961?ProvIds=pr127-#pr127->)

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Remove remaining reservations on Article 2 and Article 16 of the CEDAW Convention;
- In line with the Women's Charter, reform the AMLA with a new framework that grants husband and wife equal rights and responsibilities in marriage, within a legal framework that recognizes marriage as a partnership of equals;
- Ensure that pre-marriage courses recognise both spouses as equal partners in a marriage and remove all forms of discursive violence¹⁰ from the curriculum
- Ensure consultations especially with diverse Muslim women in the reform process, taking into consideration experiences and challenges with regard to provisions in AMLA and practices in Syariah courts;
- Ensure mandatory gender sensitivity training for officers in MUIS, ROMM and Syariah courts.

MUSAWAH JUSTIFICATION FOR REFORM

The concept of male authority (*qiwamah*) and guardianship (*wilayah*) over women plays a central role in institutionalising, justifying and sustaining a patriarchal model of families in Muslim contexts.

Musawah believes that several verses in the Qur'an that dwell on the values of love, compassion, closeness, and mutual protection between women and men and the general principles of equality and justice should form the basis of marriage and family in Islam.

QUR'AN PROMOTES JUSTICE, EQUALITY AND COMPASSION

- Reforming discriminatory Muslim family laws in order to ensure betterment of women is not against Islam – it is in fact consistent with Qur'anic principles of justice ('*adl*), equality (*musawah*), dignity (*karamah*), and love and compassion (*mawaddah wa rahmah*).
- The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own, inherit and dispose property. This was the beginning of a trajectory of reform which, if carried forward 1400 years later to reflect changing times and contexts, should lead to the elimination of the legal logic of male guardianship, and to the introduction of equality in all areas.

CONTEMPORARY LIVED REALITIES DEMONSTRATES NEED FOR REFORM

- Women's lives and stories reveal that laws based on male authority and guardianship over women are untenable, unjust and discriminatory.
- In reality today, who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.
- Far from creating harmony in marriage, these laws are the main causes of marital breakdown and violence against women and thus there is urgent need for reforms.

Equality of spouses in marriage

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

ALGERIA



The **Family Code** requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.

MOROCCO



The **Family Code (Moudawana)** recognises marriage as a **partnership of equals and specifies the 'mutual rights and duties' between spouses** which includes:

- (i) cohabitation, mutual respect, affection and the preservation of the family interest;
- (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and
- (iii) consultation on decisions concerning the management of family affairs.

TURKEY



Under the Constitution and the Civil Code, the family is based on equality between spouses.



2. WOMEN'S CONSENT AND CAPACITY TO ENTER INTO MARRIAGES

Regardless of their age, both prospective brides and grooms must consent to the marriage. However a Muslim prospective bride still requires the consent of a male guardian (wali) to enter into marriage.¹⁰

When a woman does not have a wali, a *Kadi* may act as guardian in the absence of one. In addition, if the guardian of a prospective bride opposes the marriage on grounds that the *Kadi* considers to be unreasonable, the *Kadi* may solemnize the marriage.¹¹

The requirement of the consent of a wali regardless of the age of the bride denies women full autonomy and rights as an individual to enter into a marriage out of her own free will and choice.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Ensure that Muslim women have equal right to enter into marriage on their own accord without permission of male guardian or Kadi.

¹⁰ Section 95, AMLA (1966)

¹¹ Section 95(1)(c), AMLA (1966)

Capacity to
enter into
marriage

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

**Afghanistan, Egypt, Iraq,
Morocco, Tunisia, Turkey:**

All adult brides and grooms do not need the permission of a marital guardian (wali) to marry

**Bangladesh, Pakistan,
Sri Lanka:**

All Hanafi women who have reached puberty do not need a wali to marry.

3. EARLY AND CHILD MARRIAGES

The minimum legal age for marriage is 18 years for Muslim females and males.¹² However, Section 96(5) of AMLA provides that a Kadi may authorize the marriage of a girl below 18 years but has attained the age of puberty.¹³ The law does not stipulate an absolute minimum age below which a marriage may not be authorized.

In paragraph 128 of the state's Replies to List of Issues, the government stated that "such marriages are rare" and that "the number has declined from 12 (0.2%) in 2017 to 5 (0.08%) in 2021" under AMLA and "from 11 (0.05%) in 2017 to 1 (0.005%) in 2021" under Women's Charter.¹⁴

Since the numbers are low and declining, raising the minimum age of marriage for girls to 18 years, without any exceptions, will ensure that the law prevents the few cases that may occur regardless of the circumstances.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Enforce 18 years as the absolute minimum age of marriage for Muslim girls and remove all legal loopholes that allow for exceptions;
- Mandate *Kadi* and *Naib Kadi* to report cases of early marriage to the relevant authorities to take immediate action.

¹² Section 96(4), AMLA (1966)

¹³ Section 96(5), AMLA (1966)

¹⁴ Singapore Reply to the List of Issues on Singapore's Sixth Periodic Report (2023), Paras 128, 130, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSGP%2FRQ%2F6&Lang=en

MUSAWAH JUSTIFICATION FOR REFORM

Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.'

NEW HISTORICAL EVIDENCE NOW AVAILABLE

- Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old.
- However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (source: <http://www.sistersinislam.org.my/news.php?item.997.41>).
- The question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices.

QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE

- While the *Qur'an* does not provide any specification for the age of marriage, Surah an-Nisa' 4:6 requires that orphans should be of sound judgment before they marry.
- This indicates that a person must have sufficient judgment and maturity to marry.
- Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine.
- The onset of puberty is no indication of sufficient maturity for marriage.

CHILD MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

EGYPT



The minimum age for marriage is 18 for both females and males.

The registration of the marriage of a person below 18 is prohibited and penalised.

PAKISTAN: SIND PROVINCE



The minimum age for marriage is 18 for both females and males.

The law criminalises and penalises the following:
(i) males over 18 who contracts a child marriage;
(ii) whoever performs, conducts or directs a child marriage; and
(iii) parents or guardians who promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.

KENYA



The minimum age for marriage is 18 for both females and males, regardless of religion.

Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).

4. POLYGAMY

Polygamy is a criminal offence for non-Muslims in Singapore. But as per the AMLA, a Muslim man may marry up to four wives at one time. He is required by law to seek the permission of the *Kadi* to enter into a polygamous marriage.¹⁵ As per procedure, the *Kadi* must hold an inquiry and may require the prospective groom, the prospective wife and her wali, the existing wife or wives as well as any other

¹⁵ Section 96(3), AMLA (1966), Rule 5 of the Muslim Marriage and Divorce Rules, <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:3b0d2473-a95f-4655-8521-f90e3d76a1d5>

relevant person to attend the inquiry and give any evidence.¹⁶ The *Kadi* considers certain conditions, such as financial capacity and reasons of husband, prior to authorizing the marriage:¹⁷

Based on official data, polygamous marriages are rare and have decreased from 0.4% in 2010 to 0.18% of Muslim marriages in 2020.¹⁸

However, according to local women's groups, illegal and unregistered polygamous marriages are common especially across national borders. Despite the need to get approval for subsequent marriages, Singaporean Muslim men bypass this procedure by marrying Muslim women from other countries such as Indonesia or Thailand, where approval is not needed. These non-registered marriages leave Muslim women and their children in highly vulnerable situations socially, financially and psychologically and there are little or no consequences on men.¹⁹

Such transnational polygamous marriages also have an effect on the second wife, who is often a foreigner, and the children of the marriage. According to local legal practitioners, individuals who have entered into polygamous marriages abroad and subsequently seek recognition of their marriage under Singaporean law often encounter unsuccessful outcomes. While that is justifiable, in such instances, the second wife's ability to obtain rights in relation to entrance and length of stay in Singapore may be limited. This, in turn, impacts the family's daily life, separates children from one parent for extended periods, and challenges the husband's ability to treat his wives fairly, especially if they reside in different countries. More public education must be done by the State to highlight the adverse effects of being in a marriage that is not recognized under Singapore law.

According to information on the ground, there are some civil society programmes that seek to raise awareness among prospective brides to add a term in their marriage contracts that if their husbands marry a second wife without their permission, they are entitled to seek divorce in accordance with their marriage contracts.²⁰ However, this means that wives who do not want to be in plural marriages, have little choice other than divorce to object to her husband's decision to take a subsequent wife.

The declining rate of polygamous marriages indicates that more Muslim couples are refraining from plural marriages and/or the practice is losing social acceptance. Given the low rate of the practice and the negative impacts that polygamy has on Muslim women and children, Singapore is in an opportune position to eliminate the practice of polygamy completely.

¹⁶ Section 95(3), AMLA (1966), Rule 5 of the Marriage and Divorce Rules.

¹⁷ Marriage.gov, "Polygynous marriage process", <https://www.marriage.gov.sg/muslim/marriage-process-polygynous>

¹⁸ Singapore State party report, U.N. Doc. CEDAW/C/SGP/6 (2021), para 223, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FC%2FSGP%2F6&Lang=en

¹⁹ SaSa meeting 17 April 2016 organized by AWARE: 'Single and Single Again; A safe space for Malay women who are not or have never been married'

²⁰ Seminar on "Rethinking the Muslim Marriage Contract" co-organized by AWARE, the National University of Singapore's Department of Malay Studies and the Faculty of Arts and Social Sciences (Religion Cluster) and the Leftwrite Centre LLP held on 14 April 2012 at the National University of Singapore with speakers including Kyai Haji Hussien Muhammad, Dr Ziba Mir-Hosseini and Halijah Mohamad, <http://www.aware.org.sg/2012/07/rethinking-the-muslim-marriage-contract/>

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Amend AMLA to prohibit polygamy by Singaporean Muslim men, following examples of other Muslim countries which have abolished the practice in the best interest of family well-being;
- Alternately provide a model, standard marriage contract with options for the couple to prohibit polygamy within the marriage and for a wife to explicitly enunciate a monogamous marriage.
- On the State's web page on polygynous marriage, (1) state that consent of the first wife is required; and (2) clearly outline other factors that are considered by the Kadi; and (3) an explanation of the legal and practical consequences of those who choose to circumvent Singapore's laws by marrying overseas.
- Provide education and discussions on (1) the strict preconditions of polygamy; and (2) an explanation of the legal and practical consequences of those who choose to circumvent Singapore's laws by marrying overseas, in marriage preparation programs and public education campaigns.

MUSAWAH JUSTIFICATION FOR REFORM

Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa'* 4:3 in the Qur'an states:

'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly [with your wives] then marry only one.... That will be more suitable, to prevent you from doing injustice'.

QUR'AN PROMOTES MONOGAMY

- When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy.
- The verse in Surah an-Nisa' that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans.
- As men were breadwinners in that society, the widows found it difficult to provide for their children. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.

CHALLENGING POLYGAMY

- Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe.
- Polygamy was a practice that existed in various civilizations, religions, and cultures in many parts of the world until it was abolished by law as governments acknowledged the injustices it inflicted on women and children.
- Tunisia has forbidden polygamy on the ground that it is impossible for a man to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the situation discussed in the Qur'an.

Polygamy

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

POLYGAMY IS PROHIBITED FOR MUSLIMS:

Tunisia, Turkey

Requirement of court authorisation and consent of existing wives



ALGERIA

- Polygamous marriages must be authorised by the court and may only be concluded with the agreement of existing wives.
- Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.



IRAQ
(KURDISTAN)

Polygamous marriages must be authorised by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met:

- (i) the first wife has to agree before the court to her husband marrying a second wife;
- (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile;
- (iii) the man has the financial capacity to support more than one wife;
- (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations;
- (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife.
- A man who concludes a polygamous marriage without the authorisation of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.

5. DIVORCE RIGHTS

AMLA provides for four different mechanisms for divorce, which differ on the basis of gender. While husbands are entitled to unilateral repudiation (*talak*) without conditions, a wife can only divorce based on certain conditions. The four main types of divorce are as follows:

I. Unilateral repudiation (*talak* or *talaq*)

Under Section 102(5) of AMLA, a husband may unilaterally repudiate the marriage without conditions or reasons.²¹

II. Conditional divorce (*cerai taklik*)

According to Section 48 of AMLA, a Muslim woman may apply for a *cerai taklik* divorce only when any of the conditions stipulated in the *taklik* (marriage contract) at time of or after her marriage is violated.

III. Judicial divorce (*fasakh*)

The AMLA gives valid grounds for seeking a judicial divorce by a wife. These include: (a) failure to provide maintenance for more than three months; (b) insanity or incurable or severe illness; (c) continuing impotence; (d) imprisonment of more than three years; (e) failure to perform his marital obligations with his wife for more than one year without reasonable cause. In addition, a wife may seek divorce on the basis that her husband treats her with cruelty, which includes assault, adultery and failure to maintain (among other conditions).

In all judicial divorce cases initiated by women, including those based on a husband's purported cruel treatment, a wife's testimony alone is insufficient to prove grounds for divorce.²² Both conditional and judicial divorces require some form of admissible evidence to be produced by women. In paragraph 135 of the state's Replies to List of Issues that "the standard of proof is the same regardless of whether the divorce applicant is the husband or the wife" is untrue. Men who are seeking divorce based on the pronouncement of *talak* only has to provide evidence of such pronouncement, while in cases where *talak* has not been pronounced, women have to furnish further evidence to satisfy the grounds listed under *fasakh* or *taklik*, and procure two witnesses.

²¹ Section 102(5), 130(2), AMLA (1966)

²² Section 49(4), AMLA (1966)

IV. Redemptive divorce (*khul'*)

A wife may seek redemptive divorce (*khul'*), whereby she is granted a divorce in exchange for a mutually-agreed compensation to be paid to the husband. If the husband refuses the divorce, the court will appoint a panel of two arbitrators (*hakam*) to reconcile the couple. If the reconciliation process fails, the wife will be granted a divorce.²³

V. Overall procedural issues

According to local legal practitioners, the process is set out such that in cases where parties are seeking an amicable divorce, the *Syariah* divorce process is one that provides a speedy and fair outcome. However, if parties are going through an acrimonious divorce, there are many stages in which parties have made attempts to delay proceedings.

Local advocates have shared anecdotal cases of men who delay proceedings by making excuses about being unable to file their documents on the *Syariah* Court portal, being unable to find legal representation, needing more time to prepare their financial documents, etc., leading to the postponement of mediation sessions and Pre-Trial Conferences for over 6 months. The State, in paragraph 136 of its Replies to List of Issues, stated that "Muslim men are also required to maintain their ex-wives during the *iddah* (waiting period before a divorced woman may marry another man) and obliged to provide *mutaah* (a consolatory gift), and repay any outstanding marriage expenses and *emas kahwin* (compulsory marriage gift)." However, these men, who know that their wives are seeking a quick divorce to avoid stress and financial burden, use the time factor as a bargaining chip to get their wives to agree to waive *nafkah iddah*, *mutaah*, and other claims relating to the matrimonial assets.

Additionally, while the State, in paragraph 137 of its Replies to List of Issues, stated that both men and women are entitled to make ancillary claims, it is untrue that both are at an equal position. Based on anecdotal evidence, a disproportionately higher number of men compared to women, have taken advantage of the court's lax enforcement mechanisms, to ignore deadlines, delay proceedings for as long as possible, and pressure their wives to agree to certain terms.

These issues are exacerbated by the understaffed status of the *Syariah* Court. There are only three mediators, two registrars, three Presidents, and one Senior President currently serving at the *Syariah* Court. Local legal practitioners have cited concerns over long postponements of 3 months each time an adjournment is granted at mediation or at a hearing due to the availability of the mediators, registrars and presidents. Such delays affect access to justice and have disproportionate impacts on women who are often the primary caretakers of children, and who may have difficulty in finding and maintaining employment while going through protracted divorce proceedings.

VI. Recent amendments to the AMLA

There have been several amendments to the AMLA, however two areas that have continued to lead to duplicity in proceedings and have had a disproportionate impact on Muslim women: (1) claim for child maintenance; and (2) claim for financial relief pursuant to foreign divorces.

1. Child maintenance

Minister for Muslim Affairs, Masagos Zulkifli, stated that, "We are amending section 35 of the AMLA to clarify that the *Syariah* Court's jurisdiction includes maintenance of children on divorce or nullification of marriage, which has always been part of section 52(3) of AMLA."

In practice, while the *Syariah* Court has powers to make orders on maintenance of minor children, the *Syariah* Court has not done so.²⁴ Instead, pursuant to the conclusion of the divorce at the *Syariah* Court, the parent who has custody of the child must then make an application for maintenance at the Family Justice Court.

While there is no presumption at law or common practice, oftentimes mothers are awarded care and control and would have to apply to the Family Justice Court for maintenance for the child

²³ Sections 47(4)-47(5), 50, AMLA (1966)

²⁴ Spouse and Child Maintenance, Emerald Law, <https://emeraldlaw.com.sg/syariah-maintenance/>

pursuant to the grant of the divorce at the *Syariah* Court. This involves additional time, effort and financial resources, and affects access to justice.

2. Financial relief pursuant to foreign divorce

In the case of *TMO v TMP* [2017] SGCA,²⁵ the Singapore Court of Appeal held that in a case where a foreign court issued the decree of Muslim divorce, the *Syariah* Court had no jurisdiction to exercise its powers under Section 52(3) of the AMLA, including its powers to make orders relating to the division of matrimonial assets. However, the Singapore High Court had residual jurisdiction to make such orders.

The effect of *TMO v TMP* was that Muslim claimants must go to the *Syariah* Court to make a claim for maintenance for the wife (*nafkah iddah* or *nafkah mutaah*), and must make another claim to the High Court to claim for other forms of financial relief related to matrimonial property, maintenance of the children, and other related matters.

When this issue was raised during the debate on the AMLA bill,²⁶ Minister Masagos merely reiterated that there is no legal vacuum as claimants can go to the civil court for financial relief if *Syariah* Court cannot make certain orders. However, requiring claimants to go to two different courts for a matter arising from the same divorce disregards the time and costs involved. Furthermore, anecdotal evidence suggests that Muslim women are often the ones who bear the burden of making a claim for financial relief in Singapore as they are often the ones who will stand to gain if they are able to claim for a just and equitable share of the matrimonial assets that are located in Singapore.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Reform AMLA to ensure that men and women have equal rights to divorce, including the grounds for divorce and standards of proof;
- Improve enforcement processes in the *Syariah* Court in terms of late submissions of court documents, delays in processes, and unnecessary adjournments, in order to ensure a fair and speedy resolution of divorces;
- Provide more financial and operational support to the *Syariah* Court to ensure sufficiently quick and effective services;
- Expand the jurisdiction and powers of the *Syariah* Court to prevent duplicity in proceedings that will have a disproportionate impact on Muslim women's access to justice.

²⁵ *TMO v TMP* [2017] SGCA, https://www.elitigation.sg/gd/s/2017_SGCA_14

²⁶ Supporting the long-term socio-religious development of our Muslim community, *Ministry of Culture, Community and Youth Singapore*, (2024), <https://www.mccy.gov.sg/about-us/news-and-resources/parliamentary-matters/2024/Feb/Supporting-the-long-term-socio-religious-development-of-our-Muslim-community>

EQUAL RIGHT TO DIVORCE **POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS**

EQUAL RIGHT TO DIVORCE

TUNISIA



TURKEY



All divorces must go through the court. The grounds for divorce are equally available to both spouses.

Divorce through unilateral repudiation (*talaq*) by the husband is not recognised.

Talaq, with court authorisation and conditions:

MOROCCO



Divorce by way of repudiation which can only be effectuated under judicial supervision. The wife and children must have received all their vested rights before it is authorised.

INDONESIA



A divorce by way of repudiation by the husband (*cerai talak*) must be effectuated through the court. The husband must make a request to the court where his wife resides to hold a court proceeding to witness his pronouncement. His application must contain the reasons for his request.

6. INHERITANCE RIGHTS

In Singapore, the inheritance rights governing distribution of estates of Muslims are based on Muslim inheritance law (*faraid*) only.²⁷ The provisions with regard to division of assets are unequal to men and women. In many instances, for example in the cases involving widows and widowers as well as siblings, a woman is entitled to half the share of a man.

The Singapore government responded to the Committee's List of Issues that they have issued several "*fatwas* (religious rulings) over the years".

However, the issuance of the MUIS *fatwas* do not address the discrimination that female family members face with regard to inheritance. According to one of the *fatwas* issued by MUIS, Muslims can make a gift (*hibah*) of property or assets in favour of their spouse or children, including daughters while still alive. However, after death it can be distributed only with the consent of the heirs regardless of the nomination,²⁸ and is likely to benefit male heirs more than female heirs.

²⁷ Sections 111, 112, AMLA (1966)

²⁸ Islamic Religious Council of Singapore, "Fatwa on CPF Nomination (2010)", <https://www.muis.gov.sg/officeofthemufti/Fatwa/CPF-Nomination>

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State party to:

- Revert to the legal position before the operationalization of AMLA (in 1968) to provide Muslims the option to choose whether to distribute their estate and assets, upon death, under Muslim law or civil law.

Inheritance Rights

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS

Equal right to inheritance



Turkey

Inheritance law does not discriminate on the basis of gender.
Equal division of property and assets acquired during the marriage is the default property regime.

Divisions of property through bequests, agreement etc.

Jordan, Tunisia:

Bequests can be made in favour of an heir and beyond the one-third limit if other heirs agree to it.

Malaysia:

Division of the deceased's property can be changed in whatever manner if all heirs agree to such division.