



musawah

For Equality in the Family

**THEMATIC REPORT ON ARTICLE 16, MUSLIM FAMILY LAW
AND MUSLIM WOMEN'S RIGHTS IN
SINGAPORE**

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of Singapore, reporting before the 68th CEDAW Session, October 2017.

This is the CEDAW Committee's sixth engagement with the State party, which signed the CEDAW Convention on April 23rd, 1984, and ratified it on July 13th, 1985.

In particular, this report examines Singaporean laws and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: reform of Muslim family law to guarantee equality for Muslim women, male-only positions under AMLA, women's equal capacity to enter into marriage, child and early marriage, polygamy and divorce rights.

The report also contains sections on **Positive Developments in Muslim Family Laws** with examples of good and better practices from other Muslim contexts based on Musawah's research and comparative analysis of Muslim family laws and practices in 31 countries.

Musawah hopes that the research, analysis, and recommendations in this report will provide critical information in:

- (1) Highlighting key concerns and identifying gaps in the State party report and the State party's reply to the list of issues;
- (2) Providing alternative arguments within Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation of its international human rights treaty obligations; and
- (3) Suggesting recommendations for reform based on good practices in Muslim contexts.

We hope that the CEDAW Committee will utilize this report as a key resource during its Constructive engagement with the State party, and in follow-up activities on the Concluding Observations.

Musawah would like to acknowledge the important input and feedback from national advocates and activists into this report, especially the Association of Women for Action and Research (AWARE).

B. LEGAL BACKGROUND

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 or 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.*"

Singapore has withdrawn its reservation to Article 11 and partially withdrew its reservations to Articles 2 and 16. 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)

The Administration of Muslim Law Act (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?Compld:f112e119-f024-4c49-9ac3-d4e0e94ebc85>

³ Article 12(3) of Singapore's Constitution (1963), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:f112e119-f024-4c49-9ac3-d4e0e94ebc85>; 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?Compld:f970e7b1-2a7b-49ec-b760-061d1a85888c>

⁵ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_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?Compld:f970e7b1-2a7b-49ec-b760-061d1a85888c>

⁷ Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

ROMM has 5 Kadis and 28 Naib Kadis under its purview⁸ who are appointed by the President of Singapore. 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 opt for the application of civil law and commence civil proceedings in the FJC with regard to: (i) children (custody, care & control and access); and (ii) disposition or division of property on divorce. In addition, maintenance of the wife and children 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).¹⁰

C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE, AND REFORM

1. COMPREHENSIVE REFORM OF MUSLIM FAMILY LAW

Singapore has made significant progress as per global development indices. UNDP Human Development Index (HDI)¹¹ value for 2015 positions the country at number 5 out of 188 countries and territories, which put the country in the very high human development category. Similarly the Global Gender Gap report 2016¹² positions the country at 55 out of 144 with advances by women and girls seen especially in the areas of education, health and economy.

Minority rights has been on the agenda of the government, through initiatives like the Presidential Council for Minority Rights and Presidential Council on Religious Harmony, as well as the Elected Presidency (EP) scheme introduced this year which reserves presidential elections for candidates from a particular minority ethnic group.

The scheme has allowed for the appointment of Halimah Yacob, the first female Parliamentary Speaker, to be the first woman President of Singapore.

Regardless of opportunities and space for Muslim women in Singapore to hold key positions in government, the provisions in the AMLA still renders 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.

⁸ Registry of Muslim Marriages - Kadis https://www.romm.gov.sg/about_marriage/romm_Kadi.asp

⁹ Sections 16-17A of the Supreme Court of Judicature Act, <https://goo.gl/0iIPrH>; Sections 34-35A of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:da899b47-f141-4218-a27a-99ed1aee6ce1>

¹⁰ Sections 33, 114 of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:da899b47-f141-4218-a27a-99ed1aee6ce1>; 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>

¹¹ UNDP Human Development Index – Singapore 2016 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/SGP.pdf

¹² Gender Gap Index – Singapore 2016 <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=SGP>

Not only does the AMLA contain discriminatory legal provisions, it also restricts key positions in the ROMM to men only, despite changing ground realities.

The Government of Singapore in its 2015 State Party Report to the CEDAW Committee stated that AMLA has been amended for closer alignment with civil law. According to the report:

- *‘Muslim women and men can opt to pursue some matters in the Family Court instead of the Shari’ah Court. These include divorce-related matters such as custody of children and disposition or division of property;*
- *The enforcement of Shari’ah Court orders has been made easier with the elimination of the need to register the order with the District Court before it becomes enforceable. Thus, like non-Muslim women, Muslim women may commence enforcement proceedings at the Family Justice Court without any prior registration; and*
- *Aggrieved parties may lodge a Magistrate’s complaint at the Family Justice Court for breach of Shari’ah Court orders, which is punishable upon conviction with a maximum sentence of six months’ imprisonment.*

The report also stated that MUIS is tasked with monitoring developments of Muslim laws; and the Fatwa Committee of MUIS meets regularly to discuss points of Muslim law, review current practices and recommends new measures to ensure that Muslim laws and practices in Singapore remain progressive’.

Singapore State party report, U.N. Doc. CEDAW/C/SGP/5 (2015),
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

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.¹³ The AMLA however does not contain an equivalent provision.

As per Musawah’s documentation and research into Muslim family laws in 31 countries, while the AMLA of Singapore has comparatively better provisions and procedures with regard to Muslim women’s rights than some other countries, several key provisions in the AMLA also do not measure up to the more progressive practices in other Muslim countries like Algeria, Morocco and Turkey.

Given Singapore’s national progress towards gender equality, the government is in the best position to **introduce comprehensive reforms to the AMLA** in order to guarantee that Muslim women and men have equal rights with regard to marriage and family. It is time for the State party to summon its political will and refer to new progressive scholarship and activism towards equality and justice in the Muslim world and end the use of Islam to justify discrimination against Muslim women.

¹³ Sections 46 of the Women’s Charter (1961),
<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:f970e7b1-2a7b-49ec-b760-061d1a85888c>

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Reform the AMLA with a new family law that grants husband and wife equal rights and responsibilities in marriage, within a legal framework that recognizes marriage as a partnership of equals;
- ❖ Remove remaining reservations on Article 2 and Article 16;
- ❖ Ensure consultations especially with Muslim women in the reform process, taking into consideration experiences and challenges with regard to provisions in AMLA and practices in Kadi courts;
- ❖ Ensure mandatory gender sensitivity training for officers in MUIS, ROMM and *Shari'ah* courts.

AMLA REFORM TOWARDS A FRAMEWORK OF EQUALITY & JUSTICE

Musawah advocates for its four-pronged **Framework for Action** to reform Muslim family laws. We believe equality and justice is possible by grounding the arguments for equality and justice in (1) Islamic jurisprudence and legal concepts (2) national laws and constitutional guarantees of equality, (3) contemporary lived realities, and (3) international human rights standards.

Musawah asserts that discriminatory laws and practices, even those justified in the name of religion, can and should be changed to ensure equality and justice for women.

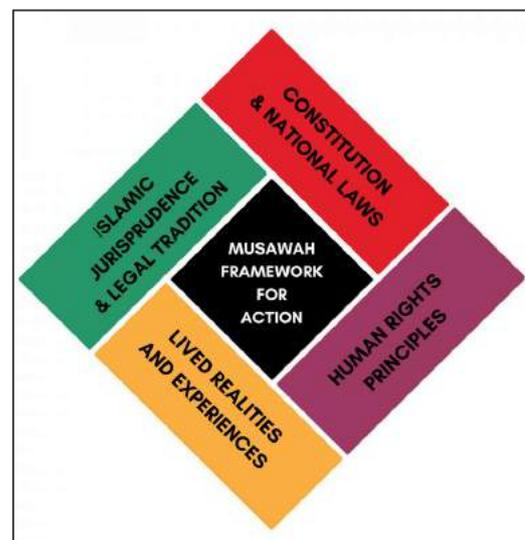
Juristic tools and concepts exist within Islamic legal theory that can be used to reform discriminatory Muslim laws:

First, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh*, jurisprudence and human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practiced in its Kadi's Courts today are in fact, *fiqh* – jurisprudence. It is not divine law. It is human-made, fallible and changeable.

Second, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, given changing times and circumstances.

Third, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law, with Singapore following the Shafi'i school. Principles such as *maslahah* (public interest), and *istihsan* (choosing the best opinion among many) must be used to meet the demands of equality and justice today.

Fourth, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These values exist in the Qur'an and the Muslim legal tradition, and they correspond with contemporary human rights principles.



These rights-based principles and scholarship that exist within Islam, the State party constitutional provision that recognizes equality and non-discrimination, and most importantly, the changing realities of women’s lives today in Singapore, necessitate the urgent need for reform. The “personal and religious laws” that the State party refers to in order to justify its reservations and non-compliance with its treaty obligations are in fact human-made laws that can, and must be changed to reflect changing times and circumstances. The disconnect between law and reality must end.

EQUALITY OF SPOUSES IN MARRIAGE		POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY	
<p>ALGERIA</p> <p>Under the Constitution and the Civil Code, the family is based on equality between spouses</p>	<p>TURKEY</p> <p>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.</p>	<p>MOROCCO</p> <p>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.</p>	

2. MALE-ONLY POSITIONS

CRITICAL INFORMATION

Despite national level progress of Muslim women in leadership positions, the AMLA restricts key positions and professions within the Registry of Muslim Marriages – those of marriage registrars, Kadis and Nabi Kadis - to men only, thus excluding qualified women solely on the basis of gender.

Section 90 of the AMLA ‘Appointment of Registrar of Muslim Marriages’ states that - ‘*The President of Singapore may appoint either by name or office any male Muslim of good character and position and of suitable attainments to be the Registrar of Muslim Marriages*’.

Similarly, under section 91 ‘Appointment of Kadis and Naib Kadis’ the Act states that - ‘*...President of Singapore may appoint suitable male Muslims of good character and position and of suitable attainments to be Kadis or Naib Kadis*’.

As per the AMLA, the President of Singapore also appoints the President, Chief Executive and other members of MUIS (Islamic Religious Council of Singapore), as well as the Mufti of Singapore who also heads the Legal Commission of MUIS.

It is noteworthy to mention that the first woman President of Singapore, who is also a Muslim, will be appointing men to positions that she herself is legally barred from holding, on the basis of her gender.

However according to local advocates in practice, despite gender exclusions, there are women in positions of Registrar, Deputy Registrar and more recently a female judge was appointed to the *Shari’ah* Court.

There are already Muslim women judges in the civil courts, including the Family Justice Court system. Therefore the prohibition in the AMLA does not reflect the practical realities on the ground. Given the risk that at any point in time, there is a legal basis to exclude women from these positions, this anomaly in the AMLA must be amended.

RECOMMENDATIONS

- ❖ Reform the AMLA to remove the prohibition of qualified women from all positions within the *Shari'ah* system;
- ❖ Introduce gender sensitivity training for Kadis and Naib Kadis.

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY	
WOMEN AS JUDGES	<p>MALAYSIA, PAKISTAN, TUNISIA, MOROCCO, EGYPT, INDONESIA, PALESTINE, LIBYA, SUDAN, ISRAEL</p> <p>have no prohibition for Muslim women becoming judges in Islamic / <i>Shari'ah</i> courts</p>
	<p>ARGUMENTS USED:</p> <ul style="list-style-type: none"> • Upholding constitutional guarantees of equality and non-discrimination • The Quran does not prohibit women from becoming judges • Reasons to disqualify women based on biology, inability to make decisions/give judgements or to be witnesses have been debunked through science, lived realities and progressive interpretation of historical events and texts • There are examples of Muslim women holding positions of leadership in Islamic history • Women holding positions in family courts in turn improves women access to justice

3. WOMEN'S CONSENT AND CAPACITY TO ENTER MARRIAGE

CRITICAL INFORMATION

Regardless of their age, both prospective brides and grooms must consent to the marriage. However a prospective bride still requires the consent of a male guardian (*wali*) to enter into marriage.¹⁴

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.¹⁵

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.

¹⁴ Section 95 of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

¹⁵ Section 95(3) of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

It puts the onus of decision-making regarding the marriage, into male members of her family or an unrelated male Kadi, thereby perpetuating the discriminatory system of 'qiwamah' or male guardianship over even adult women.

Women's lives and stories reveal that laws based on male authority and guardianship over women is untenable, unjust and discriminatory¹⁶. 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.

MUSAWAH JUSTIFICATION FOR REFORM	
<p>The twin concept of male authority (<i>qiwamah</i>) and male guardianship (<i>wilayah</i>) over women plays a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts.</p>	
<p>QUR'AN PROMOTES EQUALITY BETWEEN SEXES</p>	<p>Musawah contends that the very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understanding of <i>qiwamah</i> and <i>wilayah</i> are juristic (<i>fiqh</i>) constructs shaped by gender ideology of classical Muslim scholars in the in the context of norms and practices prevalent in their times, where men's superiority and authority over women was the norm.</p>

RECOMMENDATION

We recommend the CEDAW committee to 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.

<p>CAPACITY TO ENTER MARRIAGE</p>	<p>POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY</p>
<p>WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES</p>	<p>AFGHANISTAN, BAHRAIN (Shia), EGYPT, IRAQ, MOROCCO, TUNISIA, TURKEY: The consent of a marital guardian (<i>wali</i>) is not required for adult brides and grooms.</p> <p>BANGLADESH, PAKISTAN, SRI LANKA: The consent of a <i>wali</i> is not required for Hanafi women who have reached puberty.</p>

¹⁶ Musawah Women's Stories, Women's Lives: Male Authority in Muslim Contexts <http://www.musawahlifestories.org/>

4. EARLY AND CHILD MARRIAGE

CRITICAL INFORMATION

The minimum legal age for marriage is 18 years for Muslim females and males as per Section 96(4) of AMLA. However, Section 96(5) provides that a Kadi may authorize the marriage of a girl below 18 years but has attained the age of puberty.¹⁷ The law does not stipulate an absolute minimum age below which a marriage may not be authorized.

With regard to early and child marriage, the Government of Singapore in its 2015 State Party Report to the CEDAW Committee stated the following:

- (16.23) *The AMLA was amended in 2008 to raise the minimum age of marriage for Muslims from 16 to 18 years for both genders, in line with civil law. The AMLA allows a girl below 18 years old to get married only under special circumstances and with the Kadi's permission. Such marriages are rare and the number has dropped by 38% from 29 in 2009 to 18 in 2014.*
- (16.24) *The Government, in partnership with Malay Muslim organizations, continues to actively highlight the adverse implications of marrying at such a young age, through public education initiatives.*

Singapore State party report, U.N. Doc. CEDAW/C/SGP/5 (2015),
<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

- If as claimed by the government, the numbers with regard to child marriage are low, then 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;
- In 2013, Singapore co-sponsored a Resolution¹⁸ on Child, Early and Forced Marriage at the Human Rights Council (HRC) which recognizes child, early and forced marriage as a human rights violation that “*prevents individuals from living their lives free from all forms of violence*” and *negatively impacts the “right to education, and the highest attainable standard of health, including sexual and reproductive health”*¹⁹
- This official position at the international level must be reflected at the national level and apply to all citizens, including the Muslim girl child. All children must equally enjoy the right to childhood and adolescence, education, health, and to lead a life free from all forms of violence.

¹⁷ Sections 96(4)-96(5) of the Administration of Muslim Law Act (1966),
<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

¹⁸ Girls Not Brides – States adopt first ever resolution on child marriages at HRC <http://www.girlsnotbrides.org/states-adopt-first-ever-resolution-on-child-marriage-at-human-rights-council/>

¹⁹ Girls Not Brides – States adopt first ever resolution on child marriages at HRC <http://www.girlsnotbrides.org/states-adopt-first-ever-resolution-on-child-marriage-at-human-rights-council/>

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.

RECOMMENDATIONS

We recommend the CEDAW committee to 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;
- ❖ Introduce and implement policies and programs that encourage and advance tertiary and higher educational opportunities for girls in communities vulnerable to early marriage;
- ❖ Mandate Kadis and Naib Kadis to report cases of early marriage to the relevant authorities to take immediate action.

MINIMUM AGE OF MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

MINIMUM AGE OF MARRIAGE
18 (OR ABOVE)
WITH NO EXCEPTIONS FOR
MUSLIMS

EGYPT, UAE, MALDIVES, OMAN, KENYA,
INDIA, PHILIPPINES, JORDAN, TUNISIA

5. POLYGAMY

CRITICAL INFORMATION

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.²⁰ 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 relevant person to attend the inquiry and give any evidence.²¹ The Kadi considers certain conditions, such as financial capacity and reasons of husband, prior to authorizing the marriage.²²

The Government of Singapore in its 2015 report to the CEDAW Committee explained that all applications for polygamous marriages are rigorously reviewed by ROMM. Only applicants deemed able to meet the stringent requirements are allowed to take a second wife. The first wife may voice her objection to ROMM. If the application is approved and the first wife is dissatisfied with ROMM's decision, she may go to the Appeal Board. Subsequent to the second marriage, the first wife may also file for divorce on the ground of her husband's inequitable treatment.

Singapore State party report, U.N. Doc. CEDAW/C/SGP/5 (2015), <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

RESPONSE TO STATE REPORT

- Based on official data, polygamous marriages are rare and constitute 0.3% of Muslim marriages registered from 2009 to 2014 (27 out of 27,992 marriages).²³
- However, anecdotally, there appears to be more cases of illegal and unregistered polygamous marriages.
- 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.²⁴
- 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;

According to local women's groups, 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

²⁰ Section 96(3) of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>; 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>; Registry of Muslim Marriages, "Polygyny marriages", https://www.romm.gov.sg/about_marriage/romm_polygyny.asp

²¹ Section 95(3) of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>; Rule 5 of the Marriage and Divorce Rules, <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:3b0d2473-a95f-4655-8521-f90e3d76a1d5>; Registry of Muslim Marriages, "Polygyny marriages", https://www.romm.gov.sg/about_marriage/romm_polygyny.asp

²² Singapore State party report, U.N. Doc. CEDAW/C/SGP/5 (2015), para 16.12, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²⁴ 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 Leftwritre 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/>

from other countries such as Indonesia or Thailand, where approval is not needed. Husbands are often unable to maintain multiple wives and families and women are often cut off from maintenance and support. These non-registered marriages leave Muslim women and their children in highly vulnerable situations socially, financially and psychologically and there is little or no consequences on men.²⁵

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.

MUSAWAH JUSTIFICATION FOR REFORM	
<p>Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. <i>Surah an-Nisa' 4:3</i> in the Qur'an states: <i>'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.'</i></p>	
QUR'AN PROMOTES MONOGAMY	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.

RECOMMENDATIONS

We recommend the CEDAW committee to 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.**

POLYGAMY	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
PROHIBITION OF POLYGAMY BY LAW	KYRGYZSTAN, TAJIKISTAN, TUNISIA, TURKEY, UZBEKISTAN

²⁵ 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'*

6. DIVORCE RIGHTS

CRITICAL INFORMATION

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*)

A husband may unilaterally repudiate the marriage without conditions or reasons. Procedurally, section 102(5) of AMLA requires both the husband and wife to appear personally before the *Shari'ah* Court within seven days of the pronouncement of the *talaq* to apply for divorce.²⁶

Unilateral *talaq* divorce heightens the vulnerable position of women and children in the family. The husband's right to terminate a marriage without any legitimate reason coupled with the legal practice of polygamy means Muslim women live in a perpetual state of uncertainty and insecurity in their married life. This threatens family stability and well-being.

(ii) Conditional divorce (*cerai taklik*)

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. She may apply to the Court to declare that such divorce has taken place.

(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 few other conditions).

It is a concern that 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.²⁷ Both conditional and judicial divorces require some form of admissible evidence to be produced by women.

According to local advocates admissible evidence includes police reports, protection order, medical report, Private Investigator's report and default of maintenance payments ordered by Family Courts. Usually in cases of husband's failure to provide maintenance or desertion of wife for more than four months, evidence of two male witnesses (usually family members) has also been accepted by the court.

It is a concern for Musawah that women who do are unable to provide documented evidence, such as in instances of verbal, psychological or spiritual abuse, may face additional challenges in proving wrongdoing of husbands.

²⁶ Section 102(5), 130(2) of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

²⁷ Section 49(4) of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

(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.²⁸

MUSAWAH JUSTIFICATION FOR REFORM	
It is cruel and unjust to continue to allow men the right to divorce their wives at will. Given today's realities and contemporary conceptions of justice, the urgent necessity to provide equal and just grounds for divorce to both men and women must be undertaken.	
QU'RAN PROMOTES JUST & FAIR DIVORCE	<ul style="list-style-type: none">• The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness, justice, fairness and to do what is right and good.• The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (<i>ma'ruf</i>), or separate with kindness (<i>ihsan</i>)' (<i>Surah al-Baqarah</i> 2:229).• The proceedings for arbitration and mediation in <i>Surah an-Nisa'</i> 4:35 place both spouses on an equal footing: 'If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.'

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- ❖ Abolish the husband's right to unilateral divorce (*talaq*);
- ❖ Reform AMLA to ensure that men and women have equal rights to divorce, including the grounds for divorce and standards of proof;
- ❖ In the event of the continuing practice of *khul'* divorce, grant wives the right to obtain a *khul'* divorce without agreement of the husband.

DIVORCE		POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
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 (<i>talaq</i>) by husband is not recognized.
KHUL' DIVORCE	ALGERIA	A wife can obtain a <i>khul'</i> divorce in court without the consent of the husband upon payment of compensation.

²⁸ Sections 47(4)-47(5), 50 of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

7. INHERITANCE RIGHTS

In Singapore, the inheritance rights governing distribution of estates of Muslims are based on Muslim inheritance law (*faraid*) only.²⁹ 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 Government of Singapore in its 2015 report to the CEDAW Committee also acknowledged that that under Muslim inheritance law (*faraidh*), men are apportioned a greater share of the inheritance than women. The report explained that to address this, the MUIS Fatwa Committee has issued three religious rulings (*fatwas*) in 2008, 2010 and 2012 to protect the financial welfare of Muslim women and their dependents under *faraidh* and to align Muslim law with civil law:

The 2008 fatwa on joint tenancy recognizes the surviving spouse (or co-owner) as the legal owner of a jointly held property upon the death of the other spouse (or co-owner). The 2010 fatwa on CPF nominations recognizes that when Muslim CPF account holders make a nomination of their CPF savings in favor of their spouse or children upon their death, it is considered a valid gift. The 2012 fatwa on revocable insurance nominations allows Muslim policy holders to nominate their spouse or dependents to receive the full payout from the insurance company as a valid gift.

Singapore State party report, U.N. Doc. CEDAW/C/SGP/5 (2015), <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

The issuance of the MUIS fatwas do not address the discrimination that female family members face with regard to inheritance. For instance as per one of the fatwas issued by MUIS, Muslims can make a gift (*hibah*) of property or assets in favor 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 nomination³⁰, and is likely to benefit male heirs more than female heirs.

MUSAWAH JUSTIFICATION FOR REFORMS

Reform of inheritance laws remains a most difficult issue as most Muslims believe that these inequitable shares are specified in the Qur'an and therefore unchangeable. However, the text was revealed within a context when men were sole providers and protectors of the family.

The reality today is that women are co-providers, and even the sole provider and protector of the family. And yet the law has not changed to recognize this changing reality and ensure that justice remains the objective of Islamic law and practice. It is important to note that the Qur'an accords the right of the father and mother of the deceased to inherit equally. So, the possibility for equality in inheritance cannot be considered unIslamic.

²⁹ Sections 111, 112 of the Administration of Muslim Law Act (1966), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:da899b47-f141-4218-a27a-99ed1aee6ce1>

³⁰ Islamic Religious Council of Singapore, "Fatwa on CPF Nomination (2010)", <http://www.muis.gov.sg/officeofthemufti/Fatwa/cpf-nomination.html>

DIVERSITY OF ISLAMIC LEGAL TRADITION	<ul style="list-style-type: none"> • Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shi'ite schools of law, have combined rules from two or more different schools, or have created modern inheritance laws based loosely on traditional jurisprudence but suited for modern realities. • Because human interpretations have played such a key role in shaping both the traditional inheritance rules and the modern codifications of inheritance laws, the standard articulation of these rules cannot be considered divinely revealed Shari'ah, but rather man-made <i>fiqh</i>/jurisprudence.
QUR'AN RECOGNIZED WOMEN'S FINANCIAL INDEPENDENCE	<ul style="list-style-type: none"> • The Qur'an introduced numerous reforms to existing cultural practices relating to financial provisions for women, including allowing women to keep their own property and giving women shares of inheritance. • This was the beginning of a trajectory of reform that, carried forward 1400 years later to reflect the changing times and context, should lead to law reforms that upholds equality between men and women in all areas, including financial matters.

RECOMMENDATION

We recommend the CEDAW committee to 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	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
EQUAL RIGHT TO INHERITANCE	TURKEY Muslim inheritance law does not discriminate based on gender. SOUTH AFRICA If a Muslim dies intestate, the spouse is entitled to inherit from their deceased partner's estate in accordance with civil law.
EXPANDED RIGHT TO INHERIT	AFGHANISTAN, KUWAIT Sunni daughters and sons from the same mother inherit equally from their mother's estate.
CHOICE OF LAW	SRI LANKA, SOUTH AFRICA, MALI, INDIA (West Bengal) Allow for the freedom of testate with the option for Muslims to create a will in accordance with civil law.
ONGOING REFORMS EFFORTS	TUNISIA President Beji Caid Essebsi's has decided to form a committee that will reassess and reform the inheritance law to ensure equality and justice for Muslim women.

ANNEXE 1:

MUSAWAH VISION

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do these family laws fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances. Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

It is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam and Muslim communities, to:

- ❖ Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family laws today.
- ❖ Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- ❖ Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.