

## ARTICLE 2

### NATIONAL AND INTERNATIONAL DIMENSIONS OF STATE OBLIGATION

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realisation of this principle;*
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;*
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) To repeal all national penal provisions which constitute discrimination against women.*

2.1 Singapore's Fourth Periodic Report does not articulate the rationale for the reservations. Instead it expounds on the outreach mechanisms for complaints<sup>1</sup>. The CEDAW Committee's Concluding Comments is an expression of "deep concern" over the reservations to Articles 2, 11(1) and 16, paying special attention to the reservations on Articles 2 and 16 as being "contrary to the object and purpose of the Convention"<sup>2</sup>. In fact there was an urging in the Comments document to set a concrete "time-frame" for removal of reservations as well as to hold consultations at the national level.

2.2 AWARE appreciates that two consultations with non-governmental organisations (NGOs) were conducted by the government to discuss the Fourth Periodic Report. But it must also be acknowledged that there was no process to the best of AWARE's knowledge, to discuss the reservations with women's groups and the Muslim women. Concerned, AWARE organized a closed door roundtable discussion with Muslim women on 1 November, 2008 at the premises of Singapore Council of Women's Organisations

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<sup>1</sup> Singapore Government's Fourth Periodic Report to UN CEDAW Committee 2008, pp. 20.

<sup>2</sup> CEDAW Committee 39<sup>th</sup> Session Concluding Comments: Singapore 2007, pp. 2 para 11.

(SCWO). The objectives of the roundtable were to facilitate discussions on issues pertaining to Muslim women in Singapore and to initiate the process of building bridges between the different women's and Muslim organisations. Eighteen participants from 11 organisations<sup>3</sup> attended the workshops. Respectful of the sensitive nature of the issues to be discussed, participants were given the option of participating as individuals. AWARE has also conducted three open training sessions on CEDAW and held a special full-day workshop for Muslim women. Late last year, two CEDAW volunteers also conducted a half-day training for some religious teachers and that was a good initiative.

- 2.3 The progress to remove reservations is rather slow and consultations do not seem to exercises in reporting on progress made by sharing the studies conducted of other countries etc. This is a core reservation and AWARE has to say that overall there is either little movement in addressing the reservations at the national level or the steps taken are so small that there has been no sharing of information to involve the various communities.

## AREAS OF CONCERN

### Reservations

- 2.4 AWARE expresses its deep disappointment again over the blanket reservations on Articles 2 and 16. The blanket reservations should be removed and replaced by partial reservations. In the case of Article 2, the reservation need only apply to Article 2(f). This is offered by AWARE as a two-step possibility to eventually remove even this reservation within a time-frame.

### Article 2(f)<sup>4</sup>

- 2.5 The Government says that reservations are necessary because of the impositions from Singapore's Constitution<sup>5</sup> – Article 12(2) [on equal protection before the law] and Article 152 [on minorities and special position of Malays]. This means upholding the respect of freedom of minorities with regard to how Syariah Law is administered in areas of family law. These provisions under the Constitution are necessary to maintain the delicate multi-racial and cultural balance in Singapore society, and in the light of recent discussions on terrorism, a multi-faith approach is necessary and important for harmony to be entrenched as a way of life here. AWARE does not dispute the importance of such a provision for freedom to practise and observe one's religion and says that it is important to preserve protections and recognition of minority rights. However this protection should not mean that the State can keep stepping back from making legal provisions to stop discrimination by not removing this reservation because of customary law issues.

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<sup>3</sup> The organisations that were invited to workshop include Association of Muslim Professionals (AMP), Casa Raudha Women's Home, Darul Arqam, MUIS, Muslim Converts Association, Singapore Council of Women's Organization (SCWO), and Young Women Muslim Organization (PPIS).

<sup>4</sup> Article 16 is discussed in greater depth in this report.

<sup>5</sup> See Appendix 2.1. Constitution of the Republic of Singapore Article 12(2) and 152.

- 2.6 Currently under the Administration of Muslim Law Act (AMLA), there are some privileges given to Muslim men that are inconsistent with requirements under CEDAW. The following allowances under the AMLA make it impossible for the State to comply with Article 2(f) under CEDAW. (See also Article 16 para 16.20).
- Polygamy – the provision that Muslim men can have up to four wives is available only to men and not to women;
  - Inheritance rights favour male beneficiaries over female beneficiaries;
  - Muslim women require the consent of their guardians for marriage but males do not have such requirements;
  - Rights to divorce favour Muslim men over Muslim women.
- 2.7 So, the State has argued that in order to continue guaranteeing the freedom of minorities (i.e. in this particular case, Muslim women and men) to practise their personal and religious laws, Singapore would not be able to comply fully with the obligations in Article 2(f).
- 2.8 But AWARE continues to be bewildered by the State's need to issue a blanket reservation on the whole of Article 2 instead of confining it to just Article 2(f), which, under the circumstances, makes better sense.
- 2.9 Therefore AWARE reiterates that it cannot agree with the State's stand on this matter, and views this blanket reservation as being discriminatory – ironically even to Muslim women who in every other aspect of their lives, are subject to all other laws in Singapore and not just the Syariah Law, which is applied only to areas within Family Law where the religious code prevails. Reservations to Article 2 should be restricted to paragraph 2(f) to cover the terms of the law relating to marriage, divorce and other family law matters that come within the ambit of the AMLA. Though it is a delicate operational and implementation process to make a partial reservation only on Article 2(f), it needs to be done to avoid throwing the baby out with the bathwater in terms of all women's rights, including Muslim women's other rights, and still be sensitive to certain aspects of the law when it is applied to women and men for religious purposes.
- 2.10 In this matter AWARE notes that the Vienna Convention on the Law of Treaties (1969)<sup>6</sup> permits ratifications on Conventions with reservations but this is a temporary special measure, giving time for States to work implementing measures to remove them. AWARE sees no necessity at all in having reservations on Article 2(a), 2(b), 2(d), 2(e) and 2(g). Article 2 is the *raison d'être* for CEDAW. It is a core provision. If Singapore has a reservation to Article 2, its commitment to the object and purpose of the Convention is put into serious question. Hence the State is obliged to take this two-step approach and at least move into partial reservation on Article 2(f) and work towards removing that reservation too.

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<sup>6</sup> [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) ..accessed 23rd May 2011

### **Article 2(a)**

2.11 Article 2(a) requires the State to embody the principle of the equality of men and women. The State keeps repeating that there is equality under the Singapore Constitution under Article 12 and this embodies non-discrimination against women. Hence, as Singapore already believes and embodies the principle of the equality of men and women, there is no need to impose a reservation on Article 2(a).

### **Article 2(b)**

2.12 Article 2(b) requires the State to adopt appropriate legislative and/or measures prohibiting all discrimination against women. In the Fourth Periodic Report the State cites many avenues for women to seek redress for any act of injustice against them<sup>7</sup>. This means that there are administrative procedures and legal recourses (e.g. the appeal mechanism that is made available to any citizen, regardless of gender). As such, AWARE sees no reason for Singapore to have a reservation on Article 2(b).

### **Article 2(c)**

2.13 Article 2(c) requires the State to establish legal protection of rights on an equal basis with men. The Singapore report again outlines penal provisions that protect the rights of women. With regard to violence, there are provisions in the Penal Code, the Women's Charter, the Employment Act. That being the case, AWARE sees no necessity for Singapore to maintain a reservation to Article 2(c).

### **Article 2(d), (e), (g)**

2.14 There is still no proper mechanism to protect individuals against discrimination in Singapore. Laws against sexual harassment, for example, have yet to be tabled. Yet research and surveys reveal that there are such acts (see Article 11 para 11.46). Only sections of the Miscellaneous Offences (Public Order and Nuisance) Act<sup>8</sup> might criminalise certain dimensions of sexual harassment, but these are far from sufficient.

2.15 The Employment Act does not contain any provision protecting women (or men) from sexual harassment at work and as it is not inclusive of all women<sup>9</sup>.

2.16 There is discrimination by an absence of provisions for single unmarried mothers, foreign wives married to Singapore husbands and foreign domestic workers. (See discussions in Article 6 para 6.26 and Article 4 para 4.11).

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<sup>7</sup> Singapore Government's Fourth Periodic Report to UN CEDAW Committee 2008, pp. 20 para 2.4 to 2.9.

<sup>8</sup> See Appendix 2.2. Miscellaneous Offences (Public Order and Nuisance) Act Section 13A(1).

<sup>9</sup> Employment Act Section 2.

- 2.17 This is discrimination but there is no national instrument by way of an anti-discrimination law. A national organisation that provides information, guidelines and mediation processes is that of the Tripartite Alliance for Fair Employment Practices (TAFEP). But the efficacy of this outfit is hard to determine as cases are not made public.
- 2.18 AWARE argues that it is crucial to remove the reservations on Article 2(d), (e) and (g) to complement the proposed Constitutional changes to Article 12(2) to prohibit and eliminate gender discrimination. With such provisions it will be possible to have a mechanism to monitor anti-discriminatory provisions within the legislation.

## RECOMMENDATIONS

### Constitutional Amendments

- 2.19 The Constitution should be amended to include no discrimination on the basis of Sex and Marital status. (See also Articles 1-4).
- 2.20 It is untenable and incongruous that gender remains a basis of discrimination. Singapore has evolved to a higher level of gender equality in some areas. The reservations are stopping us from passing legislation, for instance in the field of employment law, to protect women against discrimination. Courts would also be less ready to extend the common law to proscribe gender discrimination unless there is a basis in the Constitution that clearly spells it out<sup>10</sup>. Therefore such an amendment would first and foremost signal Singapore's commitment to gender equality. Next, it would dispense with the need to amend other legislation, as all other legislation infringing the above would be *ultra vires*<sup>11</sup> the Constitution. For example this hurdle to other amendments is clearly shown in Singapore's inability to ratify Convention No. 111 under the International Labour Organisation<sup>12</sup>.

### Legislation against Gender Discrimination

- 2.21 AWARE urges the government to pass legislation that accounts for discrimination on the grounds of sex and marital status. One good example remains the Australian Act which created a Commissioner of Equal Opportunity and a Sex Discrimination Board with a Registrar. The Act<sup>13</sup> also establishes criteria for sex discrimination in employment and in

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<sup>10</sup> Even if the common law did develop to such effect in limited fields of law where gender discrimination comes into issue, the evolving and variable rules of common law which is judge-made cannot be considered reasonable substitution for the entrenchment of the right of women to non-discrimination in the Constitution, the supreme law of the land.

<sup>11</sup> From Latin, meaning *beyond the legal power*.

<sup>12</sup> <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C111>. ...accessed 15 March 2011. Singapore – au contraire to 169 other ratifying states, has not ratified the 1958 Discrimination (Employment and Occupation) Convention (No. 111) of the International Labour Organisation.

<sup>13</sup> See Appendix 2.3. Australian Sex Discrimination Act 1984.

other fields such as education, goods, services and premises. The Act also provides for the enforcement of its orders and enforcement of personal remedies. The necessary amendments could be made to suit local culture and conditions. AWARE is of the opinion that Singapore too can have such legislation to protect its citizens from discrimination.

### **Mechanism for Monitoring Legislation for Discriminatory Provisions**

2.22 There still seems to be no institution in Singapore that protects citizens against discrimination. As stated earlier, an amendment to Article 12(1) of the Constitution would be a step in the right direction. Alternatively, a Sex Discrimination Act (see para 2.21) could be discussed and debated. These are also suggestions from the CEDAW Committee's Concluding Comments with regard to discriminatory laws on the basis of sex, and AWARE hopes to see this implemented soon in Singapore<sup>14</sup>.

### **Other Recommendations**

2.23 Singapore needs to become a signatory to the Optional Protocol on CEDAW.

2.24 Singapore should be involved in educating women on CEDAW as much as it has done for the Convention on the Rights of the Child, and support such educational programmes on constitutional rights, human rights and women's rights.

2.25 Sex-disaggregated data needs to be shared with others and there should be a higher level of transparency.

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<sup>14</sup> CEDAW Committee 39<sup>th</sup> Session Concluding Comments: Singapore 2007, pp.3.