

# **Administration of Muslim Law Act (AMLA): AWARE's submissions to the government consultation**

## ***1. Overview: AMLA and CEDAW***

Since acceding to the Convention on the Elimination of All Forms of Discrimination (CEDAW) in 1995, Singapore has placed reservations on key articles (notably, Art 2 and Art 16), citing the need to “protect the rights of minorities in the practice of their personal and religious law”, specifically AMLA.<sup>1</sup>

Some proposed changes described in the MCCY consultation paper<sup>2</sup> (specifically, paragraphs 7 and 17) appear to seek to move away from differential treatment based on gender, though they are very limited in scope and many substantive outcomes under AMLA remain unequal as to gender. More significantly, on 9 March, the Minister-in-charge of Muslim Affairs also announced the appointment of Ustazah Raihanah Halid as a President of the Syariah Court – the first woman to hold such a role.

We urge the government to further recognise that gender equality is compatible with respect for the rights of minorities, and to take further steps to reconcile AMLA with the standards set by CEDAW.

To do so, the government and MUIS can look to jurisdictions offering gender-equitable interpretations of Islam. Muslim-majority countries such as Turkey and Malaysia have no reservations on Art 2 and Art 16 of CEDAW. Tunisia lifted its reservations to Art 16 in 2011. Morocco amended its Family Code in 2004 to legally acknowledge the roles of husband and wives as equal partners in marriage, and place the family under the joint responsibility of both. In 2011, it enshrined gender equality in its constitution.

Below we discuss more specific aspects of AMLA.

## ***2. Inheritance***

We welcome the change proposed to eliminate differential treatment in the administration of husbands' and wives' estates,<sup>3</sup> which we understand brings the legal position into alignment with common practice. We urge further substantive reform to achieve fairness and gender equality in inheritance law.

Currently, the law generally favours male over female beneficiaries. If Muslims make wills outside the dictates of faraidh, such wills only have effect over one-third of the assets and only towards non-faraidh beneficiaries. Though there is an option to write a hiba document disposing of property to female family members, it must be disbursed before the giver passes away, or the hiba will be subject to consent of the giver's heirs.<sup>4</sup> In general, the need for special arrangements to avoid disadvantaging women will tend to disadvantage those with less information and fewer financial resources.

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<sup>1</sup> 'Singapore's Fifth Periodic Report to the UN Committee for the Convention on the Elimination of All Forms of Discrimination Against Women', October 2015, <https://www.msf.gov.sg/policies/Women-Celebrating-Women/International-Obligations/Documents/Singapore%27s%20Fifth%20CEDAW%20Periodic%20Report.pdf>.

<sup>2</sup> Consultation paper on draft Administration of Muslim Law Act (Amendment) Bill 2017, [https://www.mccy.gov.sg/~media/MCCY-corp/Topics/Community/Files/AMLA17\\_Consultation\\_Paper\\_14\\_Mar\\_2017.aspx](https://www.mccy.gov.sg/~media/MCCY-corp/Topics/Community/Files/AMLA17_Consultation_Paper_14_Mar_2017.aspx)

<sup>3</sup> Paragraph 17(b) of the MCCY consultation paper.

<sup>4</sup> Fatwa on CPF nomination, issued by MUIS, <http://www.officeofthemufti.sg/Fatwa/cpf-nomination.html>

Current rules can result in inequality and hardship:

- Often, daughters who are caregivers for deceased parents receive only half the share of their brothers.
- Adoptive children/parents, non-Muslim spouses (in mixed marriages under the Women's Charter) and non-Muslim dependents of the deceased are excluded from receiving any share of the estate under faraidh. By contrast, a natural parent with no relationship to their deceased child (who was adopted by another) and who is not financially responsible for the deceased child's dependents has been able to receive a share from the deceased child's estate.
- If the son or daughter of a Muslim predeceases their parent, the children of that son or daughter (i.e. grandchildren of the Muslim) cannot share in the estate of the Muslim grandparent who later passes.
- It is unclear how a woman is categorised for the purpose of inheritance if her Muslim husband dies during a divorce settlement. This can have a significant impact on her entitlements.

Difficulties have persisted notwithstanding the issuance of fatwas by MUIS:

- The 2008 fatwa on immovable properties held by Muslims under joint tenancy states that on the death of one joint owner, absent other arrangements, a surviving owner receives only 50% of the property.<sup>5</sup> It urges Muslims to prepare a nuzriah or hibah ruqbah to preserve the surviving owner's rights to the entire property. This is intended to align Islamic law with the civil law as set out by the Court of Appeal,<sup>6</sup> whereby a surviving owner has automatic and full ownership if satisfy HDB's eligibility conditions to own a flat. Even though civil law prevails over the fatwa, where there is no nuzriah and/or hibah ruqbah, surviving owners have faced coercive pressure from faraidh beneficiaries (who cite the fatwa as moral authority) to distribute the deceased's 50% share to faraidh beneficiaries. Some wives have pre-emptively sold their share of the flat, leaving them homeless.
- The 2016 fatwa on joint bank accounts states that if the contribution of each account holder can be ascertained, the deceased's share is distributed to their faraidh beneficiaries. Otherwise, the monies are considered equally contributed by both parties and the deceased's 50% share is distributed to their faraidh beneficiaries. This position, if adopted by civil courts, may disadvantage "non-contributing" account holders, who are often dependents (spouse, parents or children). They may need funds more than the faraidh beneficiaries, yet face deprivation if the deceased was the only or major contributor.

#### Recommendations:

- Amend the laws so that Muslims have a choice whether to administer and distribute their estate in accordance with Muslim law or civil law – a reversion to the pre-AMLA position.

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<sup>5</sup> Guidelines for Muslims on Purchasing and Owning an HDB Property Under Joint Tenancy, issued by MUIS, <http://haniff.sg/wp-content/uploads/2013/07/muis-guidebook-on-joint-tenancy-fatwa.pdf>

<sup>6</sup> Shafeeq Bin Salim Talib & Abor v Fatimah Bt Abud Talib & O/rs [2009] SGHC 100

- Allow non-Muslim next-of-kin to inherit from the estate of a deceased Muslim (also a pre-AMLA position).
- Amend AMLA to explicitly align the position with civil law where a spouse dies during the divorce settlement – i.e. the proceedings should automatically abate.
- Amend the Inheritance (Family Provisions) Act Section 1(2) to include Muslims, so that dependents of a deceased can apply for a court order for reasonable provision for their maintenance, to be paid out of the deceased’s estate.
- MUIS should state explicitly that parties need not prepare the nuzriah, hibah ruqbah or any other instrument for property held under joint tenancy to pass to the surviving co-owner as a virtually automatic operation of the law.
- Amend the law to provide for the concept of obligatory bequests (wassiyah wajibbah) to provide for orphaned grandchildren, adoptive children and non-Muslim relatives and dependents, who are not otherwise entitled to any share. This practice is used in Muslim-majority countries such as Egypt, Malaysia and Indonesia.
- If the government is not minded to amend the existing rules (which disadvantage women), it should correspondingly legislate and enforce the moral responsibility of male beneficiaries to discharge their financial obligations towards female beneficiaries and dependents of the deceased who receive a lesser share.

### 3. *Marriage and divorce*

#### Divorce

The MCCY consultation paper lays out several proposals relating to divorce.

- *Domicile requirements (paragraph 6)*: We agree with the introduction of domicile requirements for parties applying for divorce in the Syariah Court (SYC).
- *Men as plaintiffs (paragraph 7)*: This change appears to bring the formal position in alignment with existing practice, whereby pronouncements of talak cannot take legal effect unless and until examined and affirmed through SYC proceedings. We agree that individuals who seek a divorce, regardless of gender, should only be able to do so as plaintiffs in a court of law. We question, however, how the move to allow men as plaintiffs would achieve the aim stated by MCCY, since it does not prevent or penalise the frivolous pronouncement of the talak outside of the SYC.
- *Divorce counselling (paragraphs 7 and 16)*: We support the availability of counselling and other resources to individuals undergoing divorce. However, they should receive non-judgmental and non-directive support, to assist them in making their own decisions, not to “save marriages”. The decision to divorce is a highly personal one made for complex reasons. Spousal violence, abuse and persistent disrespect, for example, can erode self-esteem and confidence. If vulnerable individuals in such cases undergo a programme aimed at “saving” marriages, it may place undue pressure on them to preserve

a marital relationship at the potential expense of their safety and well-being.

- *Counselling, family support programmes, specified activities before divorce proceedings (paragraphs 15 and 16):* We welcome the move to a better-resourced, child-centric approach. We urge MCCY to ensure that the resources provided to parties in the SYC are equivalent to those available to parties in the Family Justice Court (FJC), as the provision is currently unequal. In particular:
  - *Access to resources:* Several helpful resources are already available to those in the FJC. With the Counselling & Psychological Services, court mental health professionals and community partners provide judges with information, including background checks into family violence, financial problems, social assistance records, offender records, mental health and drug abuse. Parties before the SYC do not benefit from the Child Focused Resolution Centre, where judges, counsellors, psychologist and social workers work with parents in an early conciliatory forum to reach agreement on care of their children.
  - *Disadvantages of restarting proceedings:* At present, Muslim parties can bring a legal suit on children to FJC under the Guardianship of Infants Act, only if there are no divorce proceedings in the SYC. If divorce summons are issued in the SYC, the FJC proceeding must be stayed, unless both parties agree to continue in the FJC or leave is obtained from the SYC.<sup>7</sup> This switch restarts proceedings – a protracted and expensive process which is not in the children’s best interest. We recommend that the position should be changed so that instead of being automatically stayed, FJC proceedings should continue. Instead, if one party feels strongly that the children’s issues should be heard in the SYC, they can apply for leave in the FJC to have the civil proceeding halted so that fresh proceedings can commence in the SYC.

## Marriage

The MCCY consultation paper lays out several proposals relating to marriage.

- *Wali procedure (paragraph 8):* We recommend instead that the state abolish the requirement of wali altogether for women who reach the legal age of consent for marriage (a position also taken in Morocco and Tunisia and in the Hanafi school of law).
  - *Discrimination:* The requirement of consent by male relatives to a woman’s marriage is inherently discriminatory, and a violation of her right to make decisions about her own life. There are no verses in the Quran mandating this practice.
  - *Inadequacy of alternatives:* The kadi or wali hakim can give approval where a woman has no wali or the wali unreasonably withholds consent,<sup>8</sup> and the Appeal Board can dismiss a wali’s appeal against this process.<sup>9</sup> However, this process adds undue difficulty to a matter which should be governed by the choice of the individual woman in question. Moreover, the need for three months of press announcements (to find an absent wali) before a woman can be represented by the wali from ROMM is unduly burdensome.
- *Marriage preparation programmes for minors under 21 (paragraph 13):* We urge the government to include in these programmes an understanding that in Islam, marriage is a partnership of equal

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<sup>7</sup> Section 35 of AMLA.

<sup>8</sup> Section 95(3) of AMLA read with Rule 4 Muslim Marriage & Divorce Rule (1999) .

<sup>9</sup> Abu Samah b Md Dros [1990] 5 SSAR 31; Re Rizal b Ahmad [1992] 5 SSAR 87, Re Taha b Busu [1991] 5SSAR 44

responsibilities and rights (as enshrined in Morocco's Family Code). Husbands and men should not be automatically presented as heads of families. The content should include the rights and responsibilities of spouses, including particularly the law on domestic violence and maintenance.

- *Parental consent to a minor marriage (paragraph 14)*: These changes helpfully clarify the position on marriages where any party is under 21. We propose that AMLA, the Women's Charter and any other relevant laws should also be amended to set out a single consistent minimum age of marriage for all individuals, at 18 years. Marriage is too significant a commitment, with far-reaching and lifelong consequences, for those under the age of 18 – who are inherently vulnerable – to enter into it. The law recognises this principle in respect of boys and should do the same for girls.

## Polygamy

Though this is not discussed in the MCCY consultation paper, the United Nations CEDAW Committee has expressed concern about this issue.<sup>10</sup>

Polygamy has been prohibited for non-Muslim marriages because of its substantial negative economic, social and emotional effects on women, particularly the increased chance of financial hardship. In our view, the same concerns must be addressed in relation to Muslim marriages. Polygamous marriages are few (0.3% of Muslim marriages registered from 2009 to 2014),<sup>11</sup> but we are nevertheless concerned about the impact of the law and offer the following recommendations:

- We urge the government to prohibit polygamy. Its continuing legality reinforces cultural acceptance of the practice, and may unintentionally legitimise unregistered marriages. Prohibition is compatible with Islamic values and has occurred in Tunisia, the Kyrgyz Republic, Tajikistan and Uzbekistan.<sup>12</sup> Tunisia cited the verse in the Quran, An-Nisa (4:3), that it is impossible to fulfil the requirement of justice in a polygamous marriage.<sup>13</sup> In 2015, India banned polygamy on the grounds that a Muslim's fundamental right to profess Islam did not include polygamy and it is not integral to the religion.<sup>14</sup>
- We recommend greater public education on the harms of polygamy and to discourage the contracting of unregistered polygamous marriages abroad.
  - Men may contract overseas marriages (sometimes without their wives' knowledge), as no prior approval from ROMM is needed and the requirement for an approval letter issued by a kadi is not strictly enforced.<sup>15</sup> In 2014, it was reported that over 100 Singaporean men had gone to Indonesia to contract a second, unregistered marriage.<sup>16</sup>
  - We are also concerned that wives in foreign marriages may lack access to rights and

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<sup>10</sup> Concluding observations of the Committee on the Elimination of Discrimination Against Women, CEDAW/C/SGP/CO/4, July 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-SGP-CO-4-Rev1.pdf>

<sup>11</sup> Singapore's Fifth Periodic Report to the UN Committee For the Elimination of All Forms of Discrimination Against Women, <https://app.msf.gov.sg/Portals/0/Summary/research/WD/CEDAW%20Reports/Singapore's%20Fifth%20CEDAW%20Periodic%20Report.pdf>

<sup>12</sup> Musawah Fact Sheet: Marriage & Family Relations, July 2012

<sup>13</sup> Malaysiakini, Polygamy not a God-given right, <https://www.malaysiakini.com/news/132369>

<sup>14</sup> Times of India, Supreme Court: Polygamy not integral part of Islam, <http://timesofindia.indiatimes.com/india/Polygamy-not-integral-part-of-Islam-SC/articleshow/46180105.cms>

<sup>15</sup> Registry of Muslim Marriages, Registering a Marriage outside Singapore, [https://www.romm.gov.sg/about\\_marriage/romm\\_register\\_marriage2.asp](https://www.romm.gov.sg/about_marriage/romm_register_marriage2.asp)

<sup>16</sup> Berita Harian 03-11-14: 'Penguam: Isteri teraniaya boleh tuntutan cerai taklik atau fasakh'.

benefits, including rights in the divorce process or in relation to children she has with her unregistered husband. There is a lack of clarity as to the status of such children when it comes to inheritance, which may cause hardship. We urge the government to clarify this.

- If polygamy remains legal, we urge stronger protections for the first wife. Currently, applications for polygamous marriage must be made to ROMM, who will conduct an inquiry. The first wife may voice objections, lodge an appeal with MUIS, and/or file for divorce on the ground of her husband's inequitable treatment resulting from the polygamous marriage. Yet these safeguards place an onus on her to proactively act to obstruct the second marriage or to seek divorce, which may be difficult for vulnerable or dependent individuals. The default position in the law should more fully protect the first wife:
  - Make the consent of the existing wife mandatory before Muslim men can contract a second marriage (the position in Indonesia).<sup>17</sup>
  - Adopt a rebuttable legal presumption that the applicant will not be able to be fair and/or provide equally for both his existing spouse and the potential wife.
  - Include an additional clause in the “automatic” standard and printed clauses in the Marriage Certificate, stipulating in the marriage contract that the husband cannot take another wife; if he breaches this term, the woman has the right to divorce (without needing to show inequitable treatment). Such stipulations can also be found in Syria, Jordan and Bahrain.<sup>18</sup>

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<sup>17</sup> Indonesia: Defence Ministry circulates Polygamy Rules (12-08-2015), retrieved from: <http://www.loc.gov/law/foreign-news/article/indonesia-defense-ministry-circulates-polygamy-rules/>.

<sup>18</sup> Musawah Fact Sheet: Marriage & Family Relations, July 2012.