

ARTICLE 16

MARRIAGE AND FAMILY LIFE

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*
 - (a) *The same right to enter into marriage;*
 - (b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
 - (c) *The same rights and responsibilities during marriage and at its dissolution;*
 - (d) *The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*
 - (e) *The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*
 - (f) *The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*
 - (g) *The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*
 - (h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*
2. *The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory*
- 16.1 AWARE commends the government and welcomes its efforts since the 3rd Periodic Report in 2004 and its oral presentation in New York in July/August 2007, to decrease discrimination against women in marriage or family relations. In particular AWARE welcomes the amendments made¹ in the Central Provident Fund (CPF) Act, which came into effect in October 2007, which have made it easier for divorced couples to divide their

¹ Division of CPF-Related Assets in Matrimonial Proceedings Part IIIA of the Central Provident Fund Act (Cap 36).

matrimonial assets equitably. From October 2007, a former spouse no longer has to wait for her husband to turn 55 years of age, when he is eligible to withdraw his CPF monies, before receiving a share of the former spouse's CPF monies. The immediate transfer of CPF monies to the former spouse's CPF account can now be done.

- 16.2 AWARE is heartened by the amendments to the Penal Code 2008² which have removed blanket immunity for married partners who rape their spouses. It is now an offence between married partners if there is a non-consensual sexual relationship or act. This amendment applies to cases of estranged married partners; when there are ongoing divorce proceedings; where parties are living separately; or where there is an injunction or Personal Protection Order against the husband.
- 16.3 The Government has shown support to mothers by increasing maternity leave to 16 weeks, from 12 weeks. AWARE endorses this decision and discusses its detailed concerns about potential discrimination against women in the workforce in Article 11.
- 16.4 The 2008 Marriage & Parenthood Package provides enhanced leave options to parents to attend to infants and children less than 12 years of age. There have been tax incentives including a Parenthood Tax Rebate of SGD 5,000 for 1st child, SGD 10,000 for 2nd child, SGD 20,000 for 3rd and 4th children³. In addition there are increases in relief for children to SGD 4,000 (from SGD 2,000) per child or SGD 5,500 per child under for a disabled child⁴; for working mothers' child relief up to 15 percent (for 1st child) of their earned income, 20 percent (for 2nd child), and 25 percent (for 3rd and subsequent child)⁵.
- (a) In the January 2010 Budget the Government announced that wives who are taxpayers and breadwinners can now claim spouse relief of SGD \$2,000, similar to the current tax relief for husbands, thus helping families where the wife is the main source of income.
- (b) The Government announced that it will increase income dependent-related reliefs by SGD 2,000 to SGD 4,000. This means the relief becomes SGD 7,000 (from SGD 5,000) if staying with parents, grandparents and great-grandparents; SGD 4,500 (from SGD 3,500) if not; SGD 11,000 (from SGD 8,000) if staying with handicapped dependents, SGD 8,000.00 (from SGD 6,500) if not. AWARE applauds these moves to grant tax relief to working wives with dependent family⁶.

² 'Second Reading Speech of The Penal Code (Amendment) Bill, by Senior Minister of State A/P Ho Peng Kee, on 22 October 2007.' Ministry of Home Affairs, 22 October 2007.

³ 'IRAS: Parenthood Tax Rebate', http://www.iras.gov.sg/irasHome/page04_ektid1528.aspx ...accessed 13 February 2011.

⁴ 'IRAS: Qualifying/handicapped Child Relief', <http://www.iras.gov.sg/irasHome/page04.aspx?id=214> ...accessed 13 February 2011.

⁵ 'IRAS: Working Mother's Child Relief', <http://www.iras.gov.sg/irasHome/page04.aspx?id=220> ...accessed 13 February 2011.

⁶ 'IRAS: Parent/handicapped Parent Relief', http://www.iras.gov.sg/irasHome/page04_ektid212.aspx ...accessed 13 February 2011.

- 16.5 The amendments to Administration of Muslim Law Act (AMLA) which came into effect in March 2009 make it more convenient for effective enforcement of Syariah court orders at the civil courts. The amendment makes it easier for Muslims to effect Syariah court orders in the civil court system [(a) as Syariah Court Orders are deemed to be orders issued by civil court for enforcement purposes, thus eliminating the need to register Syariah court orders in civil court first, (b) orders on alimony and 3 months maintenance post divorce for Muslim wives can be enforced in Family Court as such orders are deemed to be maintenance orders issued by Family Court and (c) breaches of Syariah Court orders can be mediated in family Court]. In addition, the minimum age of marriages for Muslim had been increased to 18 years from 16 years⁷.
- 16.6 AWARE applauds the appointment of the first female Registrar in Syariah court since 2007, Madam Animah Gani. It also commends the appointment of three female members to the Appeal Board of the Syariah court with effect from Jan 2008.⁸
- 16.7 To counter concerns over decreasing financial support⁹ by adult children for their parents, Courts will be allowed to issue Attachment of Earnings Orders to employers so that maintenance payments for parents can be deducted directly from the salaries of adult children. AWARE supports the use of video links between Family Service Centres¹⁰ and the courts to assess cases when there is a failure to pay maintenance.
- 16.8 In 2011, the Women's Charter (WC) was amended to strengthen the enforcement of maintenance orders to help women receive financial support from their husbands or ex-husbands more effectively¹¹. The amendments include requiring defaulters to undergo financial counselling, the placing of funds in a bank guarantee against future defaults and imposing of community-based sentences. Defaulters are required to declare their maintenance debts when registering a second or subsequent marriage. Claimants can report maintenance debts to the credit bureau which are reflected in the credit standing of a defaulter. The amendments also introduced a requirement for parents who are divorcing to undergo counselling. AWARE also applauds the collaboration between the Government and the Singapore Council of Women's Organisations for the research and recommendations on improving the enforcement of maintenance orders. The proposals to set up central body to administer maintenance payments and to convert maintenance debt into debt owed to the State are especially appreciated¹². In our representations to the WC

⁷ Government Gazette Bills Supplement No: 24 of 2008.

⁸ Statement by Mrs Yu-Foo Yee Shoon Minister-of-State of the Ministry of Community Development, Youth and Sports and Leader of the Singapore Delegation to the 39th Session of UN CEDAW New York, 1 August 2007 app1.mcys.gov.sg/Portals/0/Files/MOS%20Opening%20speech.doc... accessed 13 February 2011.

⁹ Maintenance of Parents' (Amendment) Bill 2010.

¹⁰ Family Service Centres deal with social issues of the family and is manned by social workers.

¹¹ See Appendix 16.1. Women's Charter Part VI.

¹² 'Managing the Family: One Problem, Many Problems', *Law Gazette*, 27 February 2009.

Amendment Bill, AWARE had submitted that the laws on maintenance be amended to be more gender neutral by allowing husbands to be entitled to claim maintenance from wives in specific instances. By not amending the laws, it may indirectly result in men being seen as the main breadwinner and may re-enforce the gender stereotype roles. AWARE's proposal was, however, not accepted by the government.

AREAS OF CONCERN

Issues in Article 16(2)

- 16.9 AWARE remains concerned that the Government has not declared its intention or initiated discussion on the lifting or partial lifting of reservations to Article 16. AWARE urges the Government to share with the Muslim community and women's groups its research on other systems that have been introduced by majority Muslim countries that have removed these reservations.
- 16.10 In its Concluding Comments in August 2007, the CEDAW Committee urged the Government to provide a concrete time frame for the withdrawal of its reservations to Article 16 (and Articles 2 and 11)¹³. It requested the Government to include in its next report, an analysis of the precise scope of the reservations and their impact on different groups of women. AWARE is disappointed that the State's Fourth Periodic Report did not address this issue. This is disappointing given Singapore's reputation for taking international obligations seriously. In this case there is a State obligation to the matter (see also Article 2 para 2.1).

Child Marriages

- 16.11 In Singapore, legislation is designed to prevent child marriages and a betrothal and marriage of a child (or minor) has no legal effect. For non-Muslims, WC¹⁴ makes marriages of persons below the age of 18 void unless a special marriage license is granted by the Minister). Section 96(4) AMLA states that no marriage shall be solemnised if either party is below the age of 18 years but a Kadi ("a person authorised to solemnise Muslim marriages") may in special circumstances solemnise the marriage of a girl who is below the age of 18 yrs but has attained the age of puberty¹⁵. Since March 2009, the minimum age of marriage for Muslims too has been increased to 18 years from 16 years, aligning with the Convention on the Rights of the Child¹⁶, a Convention which Singapore

<http://www.lawgazette.com.sg/2009-12/news5.htm> ...accessed 13 February 2011.

¹³ CEDAW Committee 39th Session Concluding Comments: Singapore 2007, pp. 1-2 para 5 and 11.

¹⁴ See Appendix 16.2. Women's Charter Section 9.

¹⁵ See Appendix 16.3. AMLA Sections 96(4) and 96(5).

¹⁶ 'UN Convention on the Rights of the Child | United Nations | International Treaties', *The United Nations* http://www.canadiancrc.com/UN_CRC/UN_Convention_on_the_Rights_of_the_Child.aspx ...accessed 13 February 2011.

has ratified.

- 16.12 There are Muslim marriages where the brides are below the age of 17 but the numbers are relatively small. For non-Muslim marriages in 2008, the number of girls marrying below the age of 17 was 17, and for boys, it was 5. For Muslim marriages in 2008, the number of Muslim brides under 17 years was 47. Brides between the ages of 18-20 were 293, about 8.1 percent of total marriages (4,207). The number of Muslim grooms in 2008 under the age of 17 was 10 and between the ages of 18-20 was 102, constituting about 2.1 percent of total marriages.¹⁷
- 16.13 Based on the improvements made, AWARE questions the Government's refusal to remove its reservation to Article 16(2) with regards to child betrothal and the compulsory registration of marriages. AWARE does not regard the relatively small number of child marriages and the provision for exceptions in WC and AMLA (and) sufficient to justify continuing the Government's reservation to Article 16(2). To continue to have reservations gives a misleading impression that Singapore does not have legislation specifying minimum age of marriages when clearly, there are laws in place mandating minimum age of marriage, for both non-Muslim and Muslim marriages.

Registration of Marriages

- 16.14 Singapore has legislation, which makes compulsory the registration of marriages in an official registry. Non-Muslim marriages have been required to be registered since 15 September, 1961 in accordance with provisions in WC¹⁸. Muslim marriages, registration of marriages has been compulsory since 1966 in accordance with AMLA¹⁹ and it is an offence for any married person to omit to do so²⁰.
- 16.15 Marriages are also required by law to be solemnised by "proper" persons. For non Muslim marriages, there are provisions in the WC mandating that only authorised persons can conduct the solemnisation of marriages²¹. For Muslim marriages, it is an offence for any person to unlawfully solemnise a marriage or to register a marriage in contravention of AMLA. On conviction, there is fine of not more than SGD 500 or imprisonment of not more than 6 months²².

¹⁷ Key Indicators of Marriage and Divorce, 2004-2009
<http://www.singstat.gov.sg/stats/themes/people/marriages.pdf> ... accessed 13 February 2011.

¹⁸ See Appendix 16.4. Women's Charter Section 25.

¹⁹ See Appendix 16.5. AMLA Sections 99, 100, 102 and 103.

²⁰ See Appendix 16.6. AMLA Section 130.

²¹ See Appendix 16.7. Women's Charter Section 8.

²² See Appendix 16.8. AMLA Section 133.

- 16.16 To date AWARE is unaware of any incident where the marriage of a Muslim couple was solemnized by an “unauthorised” person. As such AWARE sees no cause for maintaining the reservations to Article 16(2). By not withdrawing its reservations, the Government gives the misleading impression that Singapore does not have legislation mandating compulsory registration of both non-Muslim and Muslim marriages.
- 16.17 AWARE concludes there is no valid reason to maintain our reservation to Article 16(2) and urges the government to withdraw completely its reservations.

Muslim Marriages Contracted Outside Singapore

- 16.18 Although Singapore Muslim men who wish to contract polygamous marriages in Singapore are required to make an application with the Registry of Muslim Marriages (ROMM) and obtain approval for such marriages, there are cases where this requirement is circumvented by marrying outside Singapore. There is no legislation prohibiting polygamous marriages in Indonesia or Thailand and it is not a criminal offence to contract a marriage outside Singapore. AWARE believes this situation leaves wives vulnerable to husbands deciding to contract multiple marriages (in some cases, without their knowledge). (See also discussion in Articles 5, 6 and 11). Brides in foreign marriages may find themselves outside the protection of the law with no access to rights and benefits available to women in registered marriages.
- 16.19 AWARE calls for the government to ensure that there is legal provision to prevent such marriages and protect the rights of brides. AWARE recommends adequate screening and pre-marital counselling be given to ascertain if brides have been duped or forced into marriages under false pretences.

Issues in Article 16(1)(a) and (c)

- 16.20 AWARE notes 4 areas where Muslim men and women do not have the same or similar rights – (a) to enter into marriage, (b) polygamous marriages, (c) grounds for divorce and (d) inheritance.
- 16.21 Only Muslim women (not men) require the consent of wali for their marriages. Only Muslim men (not women) have the right to contract polygamous marriages. Muslim men have the right to divorce their wives by pronouncing the talak whereas Muslim women may only obtain a divorce through a breach of marriage promises or the various grounds listed in AMLA²³. Male and female heirs of a deceased Muslim’s estate inherit differently.
- 16.22 Save for the four areas outlined in 16.20, AWARE regards Muslim women as having the same or similar rights before the law as Muslim men. These include the same rights:
- (a) To choose a spouse and to enter into marriage only with their free and full consent. The written consent of both bride and grooms is required at the time of marriage solemnisation.
 - (b) The same rights and responsibilities as parents.

²³ See Appendix 16.9. AMLA Sections 47, 48 and 49.

- (c) The same rights to decide freely and responsibly on the number and spacing of children and have access to information, education and means to enable them to exercise these rights.
- (d) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children.
- (e) The same personal rights including the right to choose a family name, a profession and an occupation.
- (f) The same rights in respect of ownership, acquisition, management, administration, and enjoyment of property.

16.23 AWARE understands that a total removal of reservations to Article 16(1) may interfere with the four areas of exception and provisions under AMLA. However AWARE sees no reason for the Government's broad reservations to Art 16(1) which calls to eliminate discrimination against women in matters relating to marriage and family relations. AWARE reiterates its request that the Government modifies its reservations so as to result in partial withdrawal of reservations to Article 16 (1) (b), (d) to (h), confining them to only Articles 16(1)(a) and 1(c).

16.24 Feedback from AWARE's discussions with Muslim women suggest that they reject a blanket reservation because Syariah law applies only in restricted areas to marriage, divorce (and ancillary claims of *mutaah* (temporary marriage), *nafkah* (money given to one's wife for household expenses) *eddah* (waiting period after divorce), children and division of assets) and inheritance.

16.25 In addition, although there is a dual system – civil and syariah legal systems - for Muslims. There are many areas where the same civil laws apply to both Muslims and non-Muslims. Such laws cover the maintenance of children and wives, domestic violence, adoption of children, custody, care and control of children where there is no divorce application in Syariah court and the division of matrimonial assets upon divorce. As such there are two clear areas where Muslims can choose to go to either the civil court or the Syariah court. These are over custody, control and access of children upon divorce and over division of matrimonial assets upon divorce. Issues relating to child custody and the division of matrimonial assets upon divorce can be heard by the civil court if both parties agree to do so or if leave is granted by the Syariah court for the civil court to hear the matter²⁴.

16.26 The following discussion from paragraphs 16.27 to 16.38 shows how Muslims and non-Muslims can use civil laws to address their needs.

Maintenance of Wife

16.27 Muslim wives can apply for maintenance from their husbands in the civil courts. In awarding maintenance, the court takes into account many factors including incomes, earning capacity and the needs of both parties given their station in lives.

²⁴ See Appendix 16.10. AMLA Sections 35A and 36.

16.28 Maintenance Orders can be enforced if there is a default including imprisoning the defaulting spouse or directly deducting maintenance directly from his monthly salary so that the maintenance can be paid into the ex-spouse's bank account²⁵.

Maintenance of Children

16.29 For both Muslims and non-Muslims applications for the maintenance of children are made in civil courts. If both mother and father are working, responsibility to maintain the children is a dual responsibility.

16.30 Fathers of illegitimate children (both Muslim and non Muslim) are obliged by law to maintain the children in the civil courts²⁶.

Domestic Violence

16.31 Both Muslims and non-Muslims apply for Personal Protection Orders (PPO) against those who commit family violence in the civil courts. Prosecutions for breaches of PPO are heard in criminal courts. The Syariah court is not empowered to hear applications for PPO and applications related to domestic violence²⁷.

Adoption of Children

16.32 The Adoption of Children Act applies to both Muslims and non-Muslims. Muslims are therefore allowed by law to adopt children. The birth certificate of the adopted child can be changed to reflect the name of the adopted father²⁸.

Custody and Guardianship of Children

16.33 The guiding principle of both the Syariah court and civil courts in deciding issues relating to custody, care, control and access to the children in a divorce, is the paramount and/or best interest of the children and the welfare of the children.

16.34 The Syariah court generally grants care and control of children under 7 years of age to mothers. Children above 7 are interviewed by the court. The Syariah court is increasingly issuing joint custody orders to both parents, that is, making both parents responsible for major decisions having a long term effect on children²⁹. For civil courts, joint custody is

²⁵ See Appendix 16.11. Women's Charter Section 71.

²⁶ See Appendix 16.12. Women's Charter Section 68.

²⁷ See Appendix 16.13. Women's Charter Sections 64 and 65.

²⁸ See Appendix 16.14. Section 3 to 5 of Adoption of Children Act.

²⁹ SHAIKH MD DANIAL B ABDUL MANNAN v N.A.A [Appeal Case No: 25/2007] and ZAINI BIN IBRAHIM v RAFIDAH BT RAHMAN [Appeal Case No: 26/2006].

the norm and sole custody the exception³⁰.

Division of Matrimonial Assets upon Divorce

- 16.35 The factors taken into account in the division of matrimonial assets upon divorce are generally the same for the Syariah court³¹ and civil courts³². Both take into account many factors including a spouse's non-monetary contribution in the form of looking after family, domestic work, and taking care of children. Wives in long marriages who have not made monetary contributions will be awarded a share of matrimonial assets. If she has made monetary contribution, she will receive a higher share.
- 16.36 The definition of matrimonial assets in both the Syariah court³³ and civil court³⁴ is quite wide and covers all assets acquired during marriage, regardless of whether legally owned by one or both parties (or even a 3rd party). Assets acquired as gifts before marriage are excluded unless there has been substantial improvement on such assets during the marriage. Assets include pensions, gratuities, CPF monies, stock options, bank accounts, share portfolios, and assets outside the jurisdiction of Singapore.
- 16.37 Apart from marriage, divorce, inheritance and ancillary issues (in limited circumstances and where the guiding principles are similar between Syariah Court and civil courts), Muslims and non Muslims are governed by the same personal laws. AWARE strongly urges the government to reconsider their position on blanket reservations to Article 16(1) and at minimum narrow reservations to only Article 16(1)(a) and (c).
- 16.38 AWARE points out that other Muslim-majority country such as Malaysia and Turkey have made partial withdrawal to their respective reservations. Recently, Morocco withdrew its reservations to Article 16³⁵.

Dialogue on Muslim Matters

- 16.39 Responding to the CEDAW Committee's Concluding Comments, AWARE organized a closed door roundtable discussion with Muslim women on 1 November 2008 at the premises of Singapore Council of Women's Organisations (SCWO). (See Article 2 para 2.2 and Introduction for further details). Although AWARE's CEDAW Committee has offered both direct and indirect support, encouraged regional and international

³⁰ CX v CY [2005] SGCA 37.

³¹ Section 52(8) of AMLA.

³² See Appendix 16.15. Women's Charter Section 112.

³³ See Appendix 16.16. Section 52(14) of AMLA.

³⁴ See Appendix 16.17. Section 112(10) of Women's Charter.

³⁵ 'CEDAW Sessions', *Welcome to the United Nations: It's Your World*
<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> ...accessed 13 February 2011.

affiliations, there has been no follow-up action to the meeting.

- 16.40 AWARE notes that the Muslim Religious Authority (MUIS) has taken steps to look into the CEDAW Committee's Concluding Comments and has conducted several lectures to introduce works of international Muslim scholars who are more "reformist" in approach and thoughts. MUIS is strengthening its effort to do more research and build capacity in understanding gender issues, specifically related to CEDAW and Islamic Family Law. To this end, it established a Gender Taskforce in 2008 to conduct workshops on CEDAW for internal staff of MUIS and develop a module on CEDAW for a gender-training curriculum for azatizahs (imams, clerics, and uztazahs), mosque leaders and officers, and madrasah teachers. AWARE applauds these efforts.
- 16.41 In November 2009, the Association of Muslim Professionals (AMP – through its Centre for Research on Islamic & Malay Affairs RIMA) in collaboration with the Malay Studies Department at the National University of Singapore organized a regional seminar entitled "Religious Activism & Women's Development in SE Asia". Twenty-four scholars and activists from Singapore, Indonesia, Philippines, and Thailand discussed impediments to women's development. This conference hoped to raise awareness and serve as impetus to discussion and research women's development in the region³⁶.

RECOMMENDATIONS

- 16.42 AWARE highlights four key areas of discrimination for Muslim women:
- (a) Capacity to marry (Muslim women need consent of "wali")
 - (b) Polygamy/Monogamy (Muslim men can have more than one wife)
 - (c) Dissolution of Marriage (Men can simply pronounce talak)
 - (d) Inheritance (distribution generally favours male heirs)
- 16.43 AWARE reiterates our position that there is an urgent need to look into reforms in these areas to reduce or eliminate discrimination against Muslim women.
- 16.44 In its Concluding Comments the CEDAW Committee has urged the government to do the following³⁷:
- (a) To study jurisprudence and legislation in other countries with similar legal systems regarding the interpretation of Islamic law and its codification.
 - (b) To ensure that Muslim women have full, easy and affordable access to civil law in all matters.
 - (c) To take all necessary steps to increase support for law reform, including partnerships and collaboration with Islamic jurisprudence research organisations,

³⁶ 'Conference on Religious Activism & Women's Development in Southeast Asia | AWARE Singapore', *Women's Rights - AWARE Singapore* <http://www.aware.org.sg/2009/11/conference-on-religious-activism-womens-development-in-southeast-asia-highlighting-impediments-exploring-opportunities...> accessed 15 February 2011.

³⁷ CEDAW Committee 39th Session Concluding Comments: Singapore 2007, pp. 3 para 16.

civil organisations, women's non-governmental organisations, religious and community leaders.

- 16.45 AWARE commends the initiatives thus taken to discuss Muslim matters from a CEDAW perspective. However this is not enough. AWARE asks for more steps to be taken by the government (e.g. MCYS, IMC, Women's Desk) to implement the Concluding Comments of the CEDAW Report.
- 16.46 AWARE hopes that SCWO and Muslim organisations such as PPIS, PERGAS (Islamic Scholars & Teachers Association), YAYASAN MENDAKI (a self-help group dedicated to empowerment of Malay/Muslim community) and AMP will take further steps to initiate discussion and consultation for law reform that will eliminate apparent discrimination against Muslim women.
- 16.47 AWARE applauds the steps taken by MUIS in 2009 and 2010 in reviewing two of its previous fatwas. This is in line with the CEDAW Committee's Concluding Comments when it urged Singapore to undertake a process of law reform to remove inconsistencies between civil law and Syariah law, including ensuring that any conflict of law with regard to women's rights to equality and non-discrimination is resolved in compliance with the provisions of the Convention³⁸. Two recent fatwas, one on jointly-held immovable properties, and the other on CPF nomination, were aimed at making decisions in Syariah courts more in line with decisions in civil courts.
- 16.48 The 2009 fatwa on jointly-held immovable assets provides some harmonization with the recent Court of Appeal decision in SHAFEEQ BIN SALIM TALIB v FATIMAH BT ABUD BIN TALIB³⁹, a case involving a claim by the faraid beneficiaries (brother of the deceased) of a jointly owned condominium against the surviving joint owner (wife of the deceased). The civil court held that the right of survivorship applies to Muslims, that is, the surviving joint owner (the wife) becomes entitled to the entire condominium upon death of her husband, the deceased joint owner. The 2009 fatwa advised that through the creation of a nuzriah (a document expressing the intention of a joint owner that upon his death, the surviving joint owner shall be entitled to his share of the asset), and any potential claim by the deceased's faraid beneficiaries against the surviving joint owner, may be thwarted or prevented.
- 16.49 The previous fatwa on CPF nomination took the view that CPF funds must be distributed to the faraid beneficiaries of the deceased and that if the deceased had made a nomination naming the person/s entitled to his CPF monies upon his demise, such nominee/s hold/s the CPF monies in trust for the faraid beneficiaries. This was in conflict with the civil court decision in SANIAH BT ALI v ABDULLAH⁴⁰ where the High Court dismissed the claim mounted by the deceased's brother for a claim of the deceased's CPF monies which

³⁸ CEDAW Committee 39th Session Concluding Comments: Singapore 2007, pp. 3 para 15-16.

³⁹ [2010] SGCA 11.

⁴⁰ [1990] SLR 584.

had been distributed to his stepsister in line with the deceased's nomination. The High Court held that the deceased's CPF monies do not form part of his estate and his nominee (not the faraid beneficiaries) was entitled to the said CPF monies. The 2010 fatwa brings consistency with the civil court decision in SANIAH's case. The nominee will now hold the deceased's CPF monies for himself/herself and not as a trustee for the estate of the deceased, that is, in trust for the faraid beneficiaries).

- 16.50 AWARE applauds the recent efforts on the part of MUIS in issuing a Religious Advisory on revocable insurance nomination for Muslim policy holders advising that Muslims who have taken up insurance policies may validly, from a religious standpoint, make revocable nominations for their insurance policies⁴¹. This is in contrast with the position adopted by MUIS in 2005 that upon death of a Muslim policyholder, the policy benefits must be distributed according to the Muslim laws of inheritance. MUIS had then advised that Muslim policyholders be allowed only 2 options either to (i) not make a nomination or (ii) make an irrevocable nomination. An irrevocable nomination can only be made to benefit spouse and/or children, thus excluding any other categories of beneficiaries e.g. siblings, parents, grandparents, other relatives or others. The insurance benefits of an irrevocable nomination do not form part of the estate of a deceased Muslim policy holder and will thus not be distributed according to faraid laws. The recent advisory from MUIS is commended as it gives Muslims an option to nominate beneficiaries of their choice for their insurance policies.
- 16.51 AWARE hopes that the Fatwa Committee will continue to review and issue fatwas on Muslim rights to other assets such as jointly held bank accounts, share portfolios and other movable assets.

⁴¹ Advisory sent by MUIS to Life Insurance Association Singapore on 29 March 2011.