



FACULTY OF LAW  
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The Conformity of Singaporean Marital  
Law with International Human Rights  
Standards

Master Thesis

20 points

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International Human Rights Law

Fall 2004

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# Summary

Two different family laws apply in Singapore. Marriages between members of the majority population, regardless of personal religious belief, are regulated by civil law in the Women's Charter. Marriages between persons officially categorized by birth as Muslims are explicitly excluded from the application of civil law. Instead, and regardless of whether or not the intending spouses practice Islam, marriages between Muslims have to be registered under Syariah law. The Syariah, as it is interpreted in Singapore, deprives women of several rights guaranteed to women under civil law. Under Syariah law, a woman cannot contract a marriage herself but is dependent on the consent of a male relative. The law does not recognize equal rights of the spouses and a woman has limited possibilities to obtain a divorce. Furthermore, the Singaporean Syariah law does not provide an established absolute minimum marriageable age for girls and polygamy is allowed.

Since 1995, Singapore is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Upon ratification the government made several extensive reservations regarding the application of the treaties, with reference to the supremacy of constitutional and religious laws in Singapore. The reluctance of the Singaporean government to recognize human rights as universal has its foundation in a firm belief in cultural relativism and so-called 'Asian values'. However, the Singaporean approach has been met with criticism from the monitoring committees of CEDAW and CRC. When analyzing the reservations closer against the background of international standards and regulations, they are undoubtedly 'against the object and purpose' of the treaties and thus invalid under article 28(2) and 51(2) respectively. As a consequence, the Singaporean government has to review the national legislation in order to comply with its international undertakings.

In this thesis I propose two options, not mutually exclusive, that are available to increase Singapore's compliance with CEDAW and CRC:

1. Reforms of the Muslim law applicable in Singapore in order to improve the status of women, in accordance with the Concluding Observations of the CEDAW Committee, and/or;
2. To make the application of Muslim law and the jurisdiction of the Syariah Court the personal and conscious choices of the intending spouses, i.e. Muslims should not automatically be excluded from civil family law.

Although the preferred outcome would be a combination of the two, based on an analysis of the current political climate in Singapore, I consider the second option to be more feasible than the first, at least in the short term.

# Preface

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>1</sup>

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<sup>1</sup> ‘Vienna Declaration and Programme of Action’, World Conference on Human Rights, 1993, A/CONF.157/23, Section I, para. 5.

# Abbreviations

AMLA	Administration of Muslim Law Act
AWARE	Association of Women for Research and Education
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-governmental Organization
PAP	People's Action Party
UDHR	Universal Declaration of Human Rights
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties

# 1 Introduction

## 1.1 General Background

Singapore was founded as a British trading colony in 1819 and gained its full independence in 1965, after initially being a part of the Malaysian Federation for two years.<sup>2</sup> The population of 4,3 millions is officially categorized into four races: Chinese, Malay, Indian or Other.<sup>3</sup> Which race a person belongs to is established according to the categorization of the father and will be registered together with the child's name shortly after birth.<sup>4</sup> In the latest state census on population in Singapore, the Chinese constituted 76,8%, the Malay 13,9%, the Indians 7,9% and the Others 1,4%.<sup>5</sup>

Singapore is usually not recognized as a democratic state.<sup>6</sup> Since independence, Singapore has been governed by the People's Action Party (PAP). Lee Kuan Yew was the first prime minister of Singapore. He was succeeded by Goh Chok Tong in 1990 when he stepped down to the position as Senior Minister. In August 2004, Lee Hsien Loong, Lee Kuan Yew's son, became Prime Minister. Goh Chok Tong then took the chair as Senior Minister and Lee Kuan Yew became Minister Mentor, a title established in connection with the generation shift in government.<sup>7</sup> Apart from the PAP, a few other political parties exist,<sup>8</sup> but political opposition is limited due to lack of freedom of assembly, the limitations on freedom of speech and the ever present threat of defamation suits for criticism against

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<sup>2</sup> See 'Country Report Singapore', CIA World Fact Book, updated as of 1 October 2004, available on <[www.cia.gov/cia/publications/factbook/geos/sn.html#Intro](http://www.cia.gov/cia/publications/factbook/geos/sn.html#Intro)>, last visited 10 November 2004.

<sup>3</sup> *Ibid.*, See also Michael Hill and Lian Kwen Fee, *The Politics of Nation Building and Citizenship in Singapore*, 1995, Routledge, London/New York, p. 103. The expatriate community of over 700 000 people are not included in this official categorization, See 'Singapore Population 2001', Singapore Department of Statistics, p. 4. Available on <[www.singstat.gov.sg/keystats/c2000/handbook.pdf](http://www.singstat.gov.sg/keystats/c2000/handbook.pdf)>, last visited 10 November 2004.

<sup>4</sup> See Registration of Births and Deaths Act, Ordinance 34 of 1937, Section 10.

<sup>5</sup> See 'Singapore Population 2001', Singapore Department of Statistics, p. 4. Available on <[www.singstat.gov.sg/keystats/c2000/handbook.pdf](http://www.singstat.gov.sg/keystats/c2000/handbook.pdf)>, last visited 10 November 2004.

<sup>6</sup> See 'Mänskliga rättigheter i Singapore 2003', Regeringskansliet, Utrikesdepartementet, pp. 1, 6, available via <[www.manskligarattigheter.gov.se](http://www.manskligarattigheter.gov.se)>, last visited 10 November 2004. See also Raj Vasil *Governing Singapore – A History of National Development and Democracy*, 2000, Allen & Unwin, St Leonards, p. 13.

<sup>7</sup> See 'Singapore's Cabinet', on the webpage of the Singaporean Government, <<http://www.cabinet.gov.sg/>>, last visited 10 November 2004. See also 'The Son Rises – Strange how the new Mr Lee looks remarkably like the old one', *The Economist*, published on 22 July 2004, available via <[www.singapore-window.org](http://www.singapore-window.org)>, last visited 4 November 2004.

<sup>8</sup> For a complete list see 'Country Report Singapore', CIA World Fact Book, updated as of 1 October 2004., available on <[www.cia.gov/cia/publications/factbook/geos/sn.html#Intro](http://www.cia.gov/cia/publications/factbook/geos/sn.html#Intro)>, last visited 4 November 2004.

the government.<sup>9</sup> The press and other mass media are highly regulated and dominated by two holding companies owned by the government.<sup>10</sup> Censorship is common and the ownership of private satellite discs are prohibited.<sup>11</sup>

As a memory of its colonial past, common law applies in Singapore. What few people may be aware of is the parallel legal system in force based on Syariah law. Most Singaporeans never come into contact with this part of national legislation, as it only applies to the Muslim minority population. As with race, Singaporeans are also officially categorized into religious groups. According to the latest official statistics, 14,9% of the population is Muslim, of which an absolute majority is Malay.<sup>12</sup> Under Section 152 of the Constitution of the Republic of Singapore, the responsibility to care for the rights of all racial minorities in Singapore rests upon government.<sup>13</sup> The Constitution further recognizes a special position of the Malay minority in Singapore as the 'bumiputera' meaning 'sons of the soil', i.e. indigenous people:

The Government shall exercise its functions in such manner as to recognize the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.<sup>14</sup>

In order to protect the special position of the Malay and their religious rights, the foundation for the establishment of the Muslim Council, *Majlis Ugama Islam*,<sup>15</sup> is enshrined in the Constitution. The role of the Council, is to advice the legislator on religious issues concerning the Muslim

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<sup>9</sup> Cf Constitution of the Republic of Singapore, S.I. 1963, No 1491, Section 14. See also Societies Act, Act 56 of 1956, Sections 4 and 15. See also Garry Rodan, *Transparency and Authoritarian Rule in Southeast Asia – Singapore and Malaysia*, 2004, Routledge, London/New York, p. 84. See also James Gomez, *Self-censorship – Singapore's Shame*, 2000, Think Centre, Singapore, pp. 17, 34. See also 'Amnesty International Report on Singapore 2003', available on <[web.amnesty.org/report2003/sgp-summary-eng](http://web.amnesty.org/report2003/sgp-summary-eng)>, last visited 12 November 2004.

<sup>10</sup> 'Singapore Press Holdings' and 'MediaCorp', see 'Country Profile: Singapore', BBC, <[news.bbc.co.uk/1/hi/world/asia-pacific/country\\_profiles/1143240.stm](http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1143240.stm)>, last visited 4 November 2004. See also 'Singapores skam', 1, *Amnesty Press*, (2004), p. 23.

<sup>11</sup> *Ibid.*, See also 'Singapore's Economy: Has it passed its peak? Country struggles to sustain its growth', *International Herald Tribune*, 12 August 2004. See also 'Mänskliga rättigheter i Singapore 2003', Regeringskansliet, Utrikesdepartementet, p. 4. Available via <[www.manskligarattigheter.gov.se](http://www.manskligarattigheter.gov.se)>, last visited 10 November 2004.

<sup>12</sup> 99,6% of all Malay and 25,6% of all Indians are Muslims, See 'Singapore Population 2001', Singapore Department of Statistics, p. 6. Available on <[www.singstat.gov.sg/keystats/c2000/handbook.pdf](http://www.singstat.gov.sg/keystats/c2000/handbook.pdf)>, last visited 13 November 2004.

<sup>13</sup> See Constitution of the Republic of Singapore, Section 152.

<sup>14</sup> *Ibid.*, Section 152(2).

<sup>15</sup> For further information on the role of the Muslim Council see <[www.muis.gov.sg/english/home.aspx](http://www.muis.gov.sg/english/home.aspx)>, last visited 12 November 2004.

population and to administer all Muslim schools and Mosques in the country.<sup>16</sup>

The application of Syariah law in Singapore is restricted to family law and to a very limited extent, criminal law.<sup>17</sup> Thus, in Singapore, two sets of family law exist side by side. One based on common law applicable to the majority population regardless of religious belief, and one based on religious law for the Muslim minority.

## 1.2 Subject and Aim

The subject and aim of this thesis is to evaluate the status of women under the family law provisions on marriage and divorce in Singapore. I seek to identify the major differences between the Women's Charter, based on common law, and the Administration of Muslim Law Act, which regulates the application of Syariah law. My proposal is that the current legislation is discriminatory against women of the Muslim minority population and I will elaborate on the consequences of the parallel and differentiating family laws against the background of international human rights law applicable to Singapore. In trying to understand the Singaporean approach to human rights of women, I will study the communications between the government and the UN treaty monitoring bodies. On this basis, I will assess the need for reforms of the current legislation and attempt to suggest actions for the Singaporean government to undertake in order to comply with its international obligations under international human rights law.

## 1.3 Disposition

In the second chapter I will give an overview of provisions regarding marriage and divorce in relevant international instruments, mainly UN human rights treaties. In the third chapter I present the domestic legislation governing marriage and divorce in Singapore, and the status of women under the different provisions. The fourth chapter deals with the status of international human rights treaties in Singapore, i.e. CEDAW and CRC. In the fifth chapter I will elaborate on the official approach taken to international human rights by the Singaporean government, mainly from a historical perspective. In chapter six I deal briefly and generally with reservations to international human rights treaties, with the main focus on CEDAW and the CRC and present an analysis of Singapore's reservations. Chapter seven is the concluding chapter where I state the conclusions drawn from my research and address the need for reform.

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<sup>16</sup> See Constitution of the Republic of Singapore, Section 153. See also Halsbury's Laws of Singapore, vol. 1, *Administrative and Constitutional Law*, 1999, Butterworth Asia, Singapore/Malaysia/Hongkong, pp. 358-359.

<sup>17</sup> See AMLA, Part 9.

## 1.4 Delimitations

In the section on domestic legislation, focus lie on the personal status of women at the stage of entering and dissolving a marriage. The status of women during marriage will not be dealt with. Economical aspects of marriage and divorce are in this context also disregarded.

As to matters of international law, I will study the conformity of the Singaporean legislation with international human rights treaties binding upon the state. Although discriminatory laws and practices exist in other areas of the Singaporean society, I have chosen to limit my research to the status of women in legislation governing marriage and divorce. To keep within this limitation, I had to disregard several interesting aspects of both national and international legislation concerning discrimination of women, resulting in that several parts of the communication with the UN treaty monitoring bodies had to be left out.

## 1.5 Method and Material

I have approached the issues of this thesis with a traditional method for legal research. Through studies of national legislation and practices, I seek to evaluate the status of women in Singapore at the entering and dissolution of marriage, *de lege lata*. Through the elaboration on international standards, mainly focusing on the provisions binding upon Singapore under CEDAW and CRC, I seek to identify and explain the need for reforms *de lege ferenda*.

The material I have relied upon for the part on national legislation is mainly Singaporean statutes, case law, doctrinal texts and information available through official websites, such as that of the Family Court and the Syariah Court of Singapore. For the international aspects of the thesis, studies of the UN human rights instruments and the documentation of interpretations by the monitoring committees have constituted the main source, together with doctrinal text. The sources used for the part on Singapore and human rights in general are official government documents, newspaper articles, the works of different scholars and reports from human rights NGOs.

# 2 Marriage and International Human Rights Standards

## 2.1 Introduction

The right to marry and connected rights of the spouses are found in several international human rights instruments. These provisions are often, but not always, found in connection to the right to found a family and the recognition of the family as a basic unit of society.

## 2.2 Universal Declaration of Human Rights

Article 16(1) of the Universal Declaration of Human Rights (UDHR) states that men and women of full age have the right to marry without limitations due to race, nationality or religion, and that the spouses are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall, according to article 16(2), only be entered into with the free and full consent of the intending spouses.

During the drafting process of UDHR, the right to marry was not a prioritized issue.<sup>18</sup> The content of the article was disputed in the Third Committee of the General Assembly, especially the issue of divorce, due to the different cultural backgrounds of the committee members. As a result, divorce was only mentioned indirectly, giving the spouses equal rights at the dissolution of marriage. This wording was less controversial, since marriage could also dissolve through death.<sup>19</sup>

The prohibition of discrimination on the basis of religion is still considered controversial since the interpretation of Islamic law in some countries may disallow a Muslim woman to marry a non-Muslim man, while Muslim men may marry women of ‘revealed religions’ i.e. Christians or Jews.<sup>20</sup>

There is no provision on minimum age of marriage in UDHR, this was left to the states to decide upon. The notions of ‘full age’ and ‘full and free consent’ are however understood to prohibit child marriages as well as arranged marriages.<sup>21</sup>

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<sup>18</sup> See Stéphanie Lagoutte and Ágúst Thór Árnason, *Article 16*, in Gudmundur Alfredsson and Asbjörn Eide (Ed.), *The Universal Declaration of Human Rights - A Common Standard of Achievement*, 1999, Kluwer Law International, the Hague, p. 326.

<sup>19</sup> *Ibid.*, pp. 326-328, 337

<sup>20</sup> *Ibid.*, pp. 329-330

<sup>21</sup> *Ibid.*, pp. 331-334

Article 16 of UDHR does not mention polygamy. The conclusion drawn from this fact is usually that polygamy is permitted as long as it does not violate that provision of equality between the spouses.<sup>22</sup>

## 2.3 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights

Provisions modeled on article 16 of UDHR are found in the two binding UN Covenants from 1966: International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 23 of ICCPR is worded almost exactly as article 16 of UDHR, although it is structured differently. However, as a result of compromises in the drafting process, article 23 is less strict on the state parties only requiring them to 'take appropriate steps' to ensure equality of spouses during marriage and at its dissolution.<sup>23</sup> This notion contains an obligation to progressively abolish gender-specific discrimination, such as different marriageable ages for men and women, differentiating rights and duties during marriage, polygamy when recognized as a right of only one sex, etc.<sup>24</sup> Interestingly, article 23 is the only provision in ICCPR that merely calls for a progressive implementation by the state parties.<sup>25</sup>

The Human Rights Committee dealt with these issues in its General Comment No. 19, where it was stated that men and women should have equal rights during marriage and that equality should apply to the arrangements if the marriage dissolved.<sup>26</sup> In General Comment No. 28 the Committee was even more specific and concluded that the grounds for divorce should be the same for men and women and that polygamy where it exists today is *per se* discriminatory against women and has to be definitely abolished.<sup>27</sup>

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<sup>22</sup> *Ibid.*, p. 335

<sup>23</sup> *Ibid.*, p. 344. See also Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCRP Commentary*, 1993, N.P. Engel Publisher, Kehl am Rhein, Strasbourg, pp. 403, 416-417. See also Sarah Joseph, Jenny Schultz, Melissa Castan, *The International Covenant on Civil and Political Rights - Cases, Materials and Commentary*, 2d edition, 2004, Oxford University Press, Oxford, p. 612.

<sup>24</sup> See Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCRP Commentary*, pp. 417-418.

<sup>25</sup> See Manfred Nowak, *The Prohibition of Gender-specific Discrimination under the International Covenant on Civil and Political Rights*, in Wolfgang Benedek, Esther M. Kisaakye, Gerd Oberleitner *Human Rights of Women, International Instruments and African Experiences*, (Ed.), 2002, Zed Books, London, p. 108.

<sup>26</sup> See HRC General Comment No. 19, 'Article 23: Protection of the Family, The Right to Marriage and Equality of the Spouses', (Thirty-ninth session), 27 July 1990, UN DOC HRI/GEN/I/REV.1 AT 28 (1994).

<sup>27</sup> See HRC General Comment No. 28, 'Article 3: Equality Between Men and Women', (Sixty-eight session), 29 March 2000, CCPR/C/21/Rev.1/Add.10, paras. 24-26.

ICESCR article 10 primarily covers protection of, and assistance to, the family. However, paragraph 1 states that marriage must be entered with the free consent of the intending parties, mirroring article 16 of UDHR.

## **2.4 Convention on the Elimination of All Forms of Discrimination Against Women**

Article 16 of CEDAW contains several provisions on marriage and equality of spouses. Paragraph 1 states that state parties shall take all appropriate measures to eliminate discrimination of women in all matters regarding marriage. States shall in particular ensure the equal right for men and women to enter into marriage only with free and full consent, to freely choose a spouse, and the same rights and responsibilities during marriage and at its dissolution.

The Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) dealt with equality in marriage in its General Recommendation No. 21. The Committee was critical of how the provisions in article 16 were implemented by the state parties, and especially of the widespread discriminatory customs based on cultural or religious arguments:<sup>28</sup>

A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages.<sup>29</sup>

Although polygamy is not explicitly mentioned in the Convention, the Committee's view on the conformity of polygamy with CEDAW is unambiguous in General Recommendation No. 21:

Polygamous marriages contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriages in accordance with personal or customary law. This violates the

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<sup>28</sup> See CEDAW General Recommendation 21, 'Equality in Marriage and Family Relations', (Thirteenth Session), 4 February 1994, UN Doc. HRI/GEN/I/REV.1 AT 90 , paras. 11-39.

<sup>29</sup> *Ibid.*, para. 16.

constitutional rights of women, and breaches the provisions of article 5(a) of the convention.<sup>30</sup>

Article 16(2) prohibits betrothal and marriage of children. Although no specific age is recognized as a minimum in the provision, the Committee has concluded that the minimum marriageable age for both sexes should be 18 years old. According to the Committee, this follows from article 16 read together with article 1 of the CRC. The Committee requested states to abandon laws providing maturity for marriage before the age of 18, with a reference to the Vienna Declaration and Programme of Action, which urges states to abolish traditions and customs that might harm the girl child.<sup>31</sup>

## 2.5 International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) deals with the right to marry in article 5(d)(iv). The state parties are obliged to prohibit and eliminate racial discrimination in all its forms and to guarantee the rights of the Convention to everyone, without distinction as to race, color or national or ethnic origin the right to marriage and choice of spouse.

The Committee on the Elimination of Racial Discrimination (The CERD Committee) issued a General Recommendation on article 5 in 1996. The Committee emphasized that all States parties were:

obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States parties may differ.<sup>32</sup>

The CERD Committee further stated that any restrictions to article 5 must not be incompatible neither in purpose nor effect with article 1 of the Convention.<sup>33</sup>

In General Recommendation No. 25 on the gender related dimension of racial discrimination, the CERD Committee acknowledged the fact that certain forms of racial discrimination only, or primarily, concern women. Such discrimination is often hidden and remedies more difficult to access, especially regarding discrimination in the private sphere of life.<sup>34</sup>

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<sup>30</sup> *Ibid.*, para. 14.

<sup>31</sup> *Ibid.*, para. 36.

<sup>32</sup> See CERD General Recommendation No. 20, 'Article 5: Non-Discriminatory Implementation of Rights and Freedoms', (Forty-eighth session), 15 March 1996, UN Doc. A/51/18, annex VIII at 124 (1996), para. 1.

<sup>33</sup> *Ibid.*, para. 2

<sup>34</sup> See CERD General Recommendation No. 25, 'Gender Related Dimensions of Racial Discrimination', (fifty-sixth session), 20 March 2000, UN Doc. A/55/18, Annex V., paras. 1-2.

## 2.6 Convention on the Rights of the Child

Article 1 of CRC states that every human being under the age of 18 is a child unless, under the law applicable to the child, majority is attained earlier. There is no specific provision in CRC concerning marriage. This fact have been criticized by feminist scholars, as child marriage often affect girls in particular, and the Convention contains a provision on child military service, which mostly affects boys.<sup>35</sup>

In spite of the lack of provisions in the CRC on child marriage, the Committee on the Rights of the Child (the CRC Committee) dealt with the issue in General Comment No. 4 of 2003. The Committee stated that the state parties must set a minimum age for marriage and that this age should be the same for both boys and girls and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity.<sup>36</sup> The CRC Committee noted that the marriageable age was very low in several countries and strongly recommended state parties to review their legislation, and set the minimum age to 18. In doing so, the Committee referred to the recommendation made by the CEDAW Committee in its General Recommendation No. 21.<sup>37</sup>

## 2.7 Other International Instruments

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages from 1962 is based on article 16 of UDHR, but develops the provision further.<sup>38</sup> Article 1 of the Convention states that a person can only enter into marriage after his or her free and full consent has been expressed personally after due publicity and in the presence of the authority competent to solemnize the marriage and witnesses, as prescribed by law.

Although no specific age is set, article 2 states that the minimum age for marriage should be established by legislative action. The minimum age recommended in the General Assembly implementation recommendations is

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<sup>35</sup> See Frances Olsen, *Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child*, in Philip Alson, Stephen Parker and John Seymour, (Ed.), *Children, Rights and the Law*, 1992, Oxford University Press, Oxford, p. 194.

<sup>36</sup> See CRC General Comment 4, 'Adolescent Health and Development in the Context of the Convention of the Rights of the Child', (Thirty-third session), 1 July 2003, CRC/GC/2003/4, para. 9.

<sup>37</sup> *Ibid.*, para. 20.

<sup>38</sup> See the preamble of the Convention. See also Stéphanie Lagoutte and Ágúst Thór Árnason, *Article 16*, in Gudmundur Alfredsson and Asbjörn Eide (Ed.), *The Universal Declaration of Human Rights - A Common Standard of Achievement*, p. 349.

15 years old.<sup>39</sup> This has however been criticized as being too low.<sup>40</sup> According to article 2, marriage cannot be legally entered into by any person under the minimum age established by the state, without a dispensation granted by a competent authority based on serious reasons and the best interest of the intending spouses.

The Convention on the Nationality of Married Women from 1957 refers to article 15 of UDHR and the right to a nationality, the right to change nationality and to not to be arbitrarily deprived of ones nationality.<sup>41</sup> The Convention seeks to guarantee the independence of a woman's nationality from that of the man. Article 1 states that marriage or dissolution of marriage should not affect the nationality of a woman automatically, nor should a change of nationality by the husband during marriage. Article 3 states that an alien wife shall have the right to a specialized privileged neutralization procedure in the country of her husband if she so wishes.

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<sup>39</sup> See 'Recommendation On Consent To Marriage, Minimum Age For Marriage and Registration of Marriages', General Assembly Resolution 2018 (XX) of 1 November 1965, Principle II.

<sup>40</sup> See Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, p. 409.

<sup>41</sup> See Preamble of the Convention on the Nationality of Married Women.

# 3 Status of Women in Singaporean Marital Law

## 3.1 Constitutional Guarantees

Article 12 of the Constitution of the Republic of Singapore states:

- (1) All persons are equal before the law and entitled to the equal protection of the law.
- (2) Except when as expressly authorized by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in any appointment to any office or employment under public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
- (3) This article does not invalidate or prohibit
  - (a) any provision regulating personal law; or
  - (b) any provision or practise restricting office or employment connected with the affaires of any religion, or of any institution managed by a group professing any religion, to persons professing that religion.

There is no prohibition of discrimination on the basis of gender in the provision on equality in the Singaporean Constitution. This, together with the exception under article 12 (3) (a), provides the constitutional basis for the differentiating legislation on equality of spouses in Singaporean marital law.

## 3.2 Women's Charter

### 3.2.1 Introduction

Until 1961, different ethnic groups in Singapore were practicing their own traditional customs of marriage and divorce.<sup>42</sup> When the Women's Charter was adopted, these diverse standards were unified, and now include all non-Muslim Singaporeans.<sup>43</sup>

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<sup>42</sup> See W.K. Leong, 'Formation of Marriage in England and Singapore by Contract: Void Marriage and Non-Marriage', 14, *International Journal of Law, Policy and the Family*, (2000), pp. 257-258.

<sup>43</sup> See Halsbury's Laws of Singapore, vol. 11, *Family Law*, 2001, Butterworth Asia, Singapore, Malaysia, Hong Kong, pp. 11-16.

The Women's Charter contains family law, but also provisions on criminal offences against women and girls.<sup>44</sup>

### 3.2.2 Marriage

Section 3(4) states that no marriage between Muslims may be solemnized or registered under the Women's Charter. If only one of the intending parties is a Muslim, the couple can choose to get married under civil law in accordance with the Women's Charter, or under religious law and AMLA.<sup>45</sup>

For the intending parties to get married, they first need to obtain a marriage license. Such licenses are issued by the Registrar of Marriage and can only be obtained after the registration official has been assured that both parties are over 21 years old, or over 18 and have the consent of their parents.<sup>46</sup> The Minister of Community Development, Youth and Sports, may issue a special marriage license if one of the intending parties is younger than 18 years old.<sup>47</sup>

Polygamy is illegal under the Women's Charter, but polygamous marriages entered into before 1961 are still valid.<sup>48</sup> Polygamy has traditionally been allowed under customary law in the Chinese community in Singapore.<sup>49</sup>

The next step is the solemnization, or contracting, of the marriage. The solemnization can only be conducted by a licensed marriage official, who must be assured of the free consent of both parties.<sup>50</sup> A unique feature in the Women's Charter is that the solemnization may take many different forms. The most common form of ceremony is performed by the registrar official, but selected religious community leaders are also available at the Registry of Marriages.<sup>51</sup> In connection to the solemnization, the marriage should also be registered.<sup>52</sup>

It is not uncommon in Singapore that a couple gets 'registered', (i.e. have their marriage solemnized) and then wait a couple of months, during which they normally do not cohabit, before they have the religious and customary

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<sup>44</sup> See Women's Charter, Part 11.

<sup>45</sup> See Debbie S.L. Ong, 'The Singapore Family Court: Family Law Practice', 13 *International Journal of Law, Policy and the Family*, (1999), p. 328. See also Section 3.3.2. below.

<sup>46</sup> See Women's Charter, Section 17.

<sup>47</sup> *Ibid.*, Section 21(2).

<sup>48</sup> *Ibid.*, Section 4.

<sup>49</sup> See Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, 2<sup>nd</sup> ed, 1984, Malayan Law Journal, Singapore, p. 38. See also Carole G.S. Tan, 'We are Registered': Actual Process and the Law of Marriage in Singapore', 13, *International Journal of Law, Policy and the Family*, (1999), p.4.

<sup>50</sup> See Women's Charter, Section 22(1)(b) and Section 22(3).

<sup>51</sup> *Ibid.*, Section 24. See also Halsbury's Laws of Singapore, vol. 11, *Family Law*, 2001, p. 53.

<sup>52</sup> *Ibid.*, Section 28.

ceremony.<sup>53</sup> This is partly due to the national regulations of public housing. Only a couple that is registered as married can apply for and obtain a state-owned flat in Singapore.<sup>54</sup>

### 3.2.3 Divorce

A petition for divorce cannot be presented to the Family Court until a marriage has lasted at least three years, except in case where one of the parties suffers 'extreme hardship'.<sup>55</sup>

The sole ground for divorce in Singapore is 'irretrievable breakdown' of the marriage.<sup>56</sup> To be granted a divorce, one or both parties must prove to the Family Court that at least one of the prerequisites in Section 95 has been satisfied. The first prerequisite is that the respondent has committed adultery and the other petitioner finds that intolerable.<sup>57</sup> This ground cannot be invoked if the petitioner kept on living with the respondent for more than six months after the adultery was discovered.<sup>58</sup> The second prerequisite refers to cases where the respondent has been acting so unreasonable that the petitioner cannot be expected to live with him or her.<sup>59</sup> Situations when the respondent has deserted the petitioner, or refused him or her access to their home, for a period of two years constitute the third prerequisite.<sup>60</sup> Separate living constitutes the fourth and fifth prerequisites, three years if the parties agree to divorce, and four if the wish is unilateral.<sup>61</sup>

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<sup>53</sup> See Carole G.S. Tang, 'We are Registered': Actual Process and the Law of Marriage in Singapore', pp. 1-4.

<sup>54</sup> *Ibid.*, p. 10. Approximately 88% of all Singaporeans live in 'HDB flats', i.e. apartments distributed by government through the Housing Development Board, see 'Singapore Population 2001', Singapore Department of Statistics, p. 18, available on <[www.singstat.gov.sg/keystats/c2000/handbook.pdf](http://www.singstat.gov.sg/keystats/c2000/handbook.pdf)>, last visited 13 November 2004.

<sup>55</sup> See Women's Charter, Section 94.

<sup>56</sup> *Ibid.*, Section 95.

<sup>57</sup> *Ibid.*, Section 95(1)(a).

<sup>58</sup> See information on divorce proceedings provided by the Family Court of Singapore on <[www.familycourtofsgapore.gov.sg/principles/FAQ\\_marriage.htm#2](http://www.familycourtofsgapore.gov.sg/principles/FAQ_marriage.htm#2)>, last visited 12 November 2004.

<sup>59</sup> See Women's Charter, Section 95(1)(b).

<sup>60</sup> *Ibid.*, Section 95(1)(c). See also information on divorce proceedings provided by the Family Court of Singapore on <[www.familycourtofsgapore.gov.sg/principles/FAQ\\_marriage.htm#2](http://www.familycourtofsgapore.gov.sg/principles/FAQ_marriage.htm#2)>, last visited 12 November 2004.

<sup>61</sup> *Ibid.*, Section 95(1)(d)-(e).

## 3.3 Islamic Law and the Administration of Muslim Law Act

### 3.3.1 Introduction

Islamic law cannot be found in a single piece of legislation. Traditionally it consists of four sources of law, together known as the *Syariah*. The highest source is the *Koran*, however less than 80 verses of the *Koran* refer to legal topics.<sup>62</sup> The next source in the Islamic law hierarchy is the *Sunna*. *Sunna* translates to ‘good conduct to be followed’ and refers to the conduct of Prophet Muhammed, which is known through *Hadith*, the fixed textual utterances written down by people around the Prophet during his lifetime.<sup>63</sup> The third source is *Ijma*, which literally mean ‘consensus’, and consists of legal opinions agreed upon by *Mujtahids*, master jurists.<sup>64</sup> The fourth source of law is *Qiyas*, a word difficult to translate, but often understood as meaning ‘analogy’.<sup>65</sup>

The Islamic legal doctrine is divided into two general groups; the *Sunni* and the *Shiah*, following the religious division of the Muslim community. The *Sunni* group is further divided into four schools, named after their founding fathers.<sup>66</sup> Muslims in Singapore, as in Malaysia and Indonesia, mainly follow the Shafii school, founded by Imam Shafii.<sup>67</sup>

In Singapore, as in the absolute majority of Muslim countries or countries with a significant Muslim minority, the application of *Syariah* law is today restricted to family law.<sup>68</sup> Commercial, criminal and other parts of civil law in most Muslim countries have undergone reforms, either by force under colonial rule, or more voluntarily to boost trade.<sup>69</sup> Thus, the jurisdiction of the *Syariah* court in Singapore is today limited to certain parts of the family sphere. The Muslim law applied in Singapore is not pure Islamic law, but a mix of provisions from the Shafii school and Malay customs.<sup>70</sup>

To link this parallel system of Muslim family law to the rest of the Singaporean legal system, the Administration of Muslim Law Act, AMLA, was adopted in 1966. AMLA does not contain specific provisions of Islamic

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<sup>62</sup> See David Pearl and Werner Menski, *Muslim Family Law*, 3d ed., 1998, Sweet & Maxwell, London, p. 3.

<sup>63</sup> *Ibid.*, pp. 5-6.

<sup>64</sup> *Ibid.*, p. 11.

<sup>65</sup> *Ibid.*, p. 12.

<sup>66</sup> *I.e.* the Hanafi school, the Maliki school, the Shafii school and the Hanbali school, See Bernard Weiss, *The Spirit of Islamic Law*, 1998, University of Georgia Press, Athens/London, pp. 10-12.

<sup>67</sup> See Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, pp. 9-11.

<sup>68</sup> See Norman Anderson, *Law Reform in the Muslim World*, 1976, Athlone Press, London, pp. 38-39.

<sup>69</sup> *Ibid.* pp. 34-36, 86-89.

<sup>70</sup> Halsbury's Laws of Singapore, vol. 11, *Family Law*, p. 5.

law, but is an administrative act. The understanding of who is a Muslim is not defined in AMLA, but has been left up to the authority of the Muslim community in Singapore. Every person born into a Muslim family is considered a Muslim, as long as he or she has not officially renounced from the religion, regardless of whether the person practices the faith or not.<sup>71</sup> As freedom of religion is guaranteed in the Constitution,<sup>72</sup> religious conversion is allowed, but is more or less discouraged by official state policies.<sup>73</sup> Any Muslim wanting to renounce from the religion, convert to another faith or marry a non-Muslim, first has to go through counseling in an effort to convince the person not to leave Islam.<sup>74</sup>

### 3.3.2 Marriage

AMLA applies to marriages of which one or both parties are Muslims and which are solemnized according to the provisions of Islamic law.<sup>75</sup> If one of the intending parties is a Muslim, the marriage may instead be registered under the Women's Charter.<sup>76</sup>

A marriage under Islam is a contract, not a religious sacrament.<sup>77</sup> For a marriage contract to be solemnized, the consent of three parties is usually required: the man, the woman and the *wali* of the woman.<sup>78</sup> A *wali* is the lawful guardian of a woman for purposes of marriage, and is usually her father, paternal grandfather, brother or paternal uncle.<sup>79</sup>

There is a possibility for a couple to get married without the consent of the women's *wali*, after the approval of a Syariah court judge, a *kadi*. A *kadi* is a male Muslim of good character and suitable position appointed to the post by the president of Singapore.<sup>80</sup> If the *kadi* finds the *wali*'s refusal unreasonable, he can himself act as the guardian of the woman, and solemnize the marriage. The same applies where the woman has no natural *wali*.<sup>81</sup> All *Sunni* schools emphasize that the will of the woman should be respected, and that she should not be forced into marriage. Under the Shafii

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<sup>71</sup> *Ibid.*, pp. 8, 20.

<sup>72</sup> See Constitution of the Republic of Singapore, Section 15.

<sup>73</sup> See e.g. 'White Paper on Maintenance of Religious Harmony' Cmd. 21 of 1989, para. 15. Undertaking of certain missionary activities can be illegal under Maintenance of Religious Harmony, see e.g. Sections 8-9 of the Maintenance of Religious Harmony Act, Act 26 of 1990.

<sup>74</sup> I received this information after an enquiry sent by e-mail on 5 November 2004 to Mr. Imran Andrew Price, Vice President of the Convert Development Division of the Muslim Coverts' Association of Singapore.

<sup>75</sup> AMLA, Section 89.

<sup>76</sup> See Women's Charter Section 3(4). See also Halsbury's Laws of Singapore, vol. 11, *Family Law*, p. 9.

<sup>77</sup> See Nik Noriani Nik Badli Shah, *Marriage and Divorce under Islamic Law*, 1998, International Book Service, Kuala Lumpur, pp. 1-2.

<sup>78</sup> See AMLA, Section 95.

<sup>79</sup> *Ibid.*, Section 2. See also Ahad Ibrahim, *Family law in Malaysia and Singapore*, p. 200.

<sup>80</sup> *Ibid.*, Section 91.

<sup>81</sup> *Ibid.*, Sections 95-96.

school however, such consent is although desirable not necessarily required. When a virgin is given away by her father or parental grandfather, if the marriage is for her own benefit and provided it is not carelessly or wickedly arranged, the consent of the women is not required.<sup>82</sup> This opinion was upheld in the findings of the Singaporean Syariah Court in *Syed Abdullah Al-Shatiri v. Shariffa Salma*, although the parties were granted a divorce since they had never lived together and it would not be reasonable to force the woman to stay married to a man she did not want to live with.<sup>83</sup>

Under AMLA, the intending parties (i.e. the man and the *wali*, on the behalf of the woman) are required to complete an application and make a statutory declaration that the particulars given are true. After the wedding, both spouses must sign a registration form. For a marriage to be registered, the consent of the bride is therefore required. The marriage is however legally valid even without such registration.<sup>84</sup>

A marriage may not be solemnized if either of the intending spouses is below the age of 16 on the day of the marriage.<sup>85</sup> This age limit is however not absolute regarding girls. A *kadi* may, under special circumstances, solemnize a marriage even if the bride is younger than 16 years old, if she has reached puberty.<sup>86</sup>

Polygamy is allowed under Islamic law and AMLA. A man may marry up to four women, provided he can support them financially and treat them equally.<sup>87</sup> The marriage of an already married man may only be solemnized with the consent of a *kadi*, or if the *kadi* so requires, the *wali* of the intending woman.<sup>88</sup> The consent of the first wife or wives is not required.<sup>89</sup> A woman may not marry more than one man, as that is considered to constitute bigamy.<sup>90</sup>

### 3.3.3 Divorce

Although strongly discouraged, divorce is allowed under Islamic law.<sup>91</sup> The divorce regulations applying to Muslims in Singapore are complicated as

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<sup>82</sup> See *Syed Abdullah Al-Shatiri v. Shariffa Salmah*, (1959) 25 M.L.J., 137. See also Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, p. 197. See also Nik Noriani Nik Badli Shah, *Marriage and Divorce under Islamic Law*, p. 13.

<sup>83</sup> See *Syed Abdullah Al-Shatiri v. Shariffa Salmah*, (1959) 25 M.L.J., 137.

<sup>84</sup> See AMLA, Section 109. See also Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, pp. 198, 214.

<sup>85</sup> *Ibid.*, Section 96(4).

<sup>86</sup> *Ibid.*, Section 96(5).

<sup>87</sup> See *Ayisha Begum v. Hajiah Maideen*, (1988) 3 M.L.J. xlv. See also Nik Badli Shah, *Marriage and Divorce under Islamic law*, p. 38.

<sup>88</sup> See AMLA, Section 96(2).

<sup>89</sup> Cf AMLA, Section 96.

<sup>90</sup> See Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, p. 206.

<sup>91</sup> *Ibid.*, p. 220. See also 'Islamic View on Divorce', information provided by the Syariah Court on <[www.syariahcourt.gov.sg/english/isu.htm](http://www.syariahcourt.gov.sg/english/isu.htm)>, last visited 12 November 2004.

the options provided are different for men and women. As with marriages, all divorces must be registered either by a *kadi* or by the Syariah Court.<sup>92</sup>

A man may unilaterally divorce his wife through the pronouncement of *talaq*, which means that he expresses his wish to divorce her three times. The regulations concerning the uttering of *talaq* are complex, as there are several different ways to conduct it. However, it is apparent that the intention of the husband at the moment of the pronouncement of *talaq* is decisive. If the man intends to divorce when he utters the words, the divorce is immediate.<sup>93</sup> The declaration of *talaq* does not require any particular form, and recently the Syariah Court concluded that, although strongly discouraged, divorce through the sending of a text message to a cellular phone (sms) might be valid.<sup>94</sup> The Shafii school allows for all three *talaqs* to be uttered on the same occasion, but it is equally possible to divorce after one sole but clear *talaq*. It is doubtful that the *talaq* even needs to be directly communicated to the wife.<sup>95</sup> Furthermore, a divorce through *talaq* can sometimes be revocable. If the man wishes to take his wife back during a three-month<sup>96</sup> period following the divorce, *iddah*, he can do so through a process known as *rujuk*.<sup>97</sup> During *iddah*, the woman is not allowed to marry anyone, except for her former husband.<sup>98</sup> This ‘quarantine’ is traditionally a measure to facilitate the establishment of paternity if the woman is pregnant.<sup>99</sup> A divorce through *talaq* may not be registered by a *kadi* but must be referred to the Syariah Court.<sup>100</sup>

The second form of divorce under Muslim law in Singapore is divorce through *ta’liq*. *Ta’liq* has its ground in a breach of a condition stipulated in the marriage contract. If the wife wishes to divorce her husband, and her husband is unwilling to do so, she is entitled to a divorce if she can prove to the Syariah Court that a condition set in the marriage contract has been breached.<sup>101</sup> Such conditions are usually related to financial support, whereabouts or cohabitation.<sup>102</sup>

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<sup>92</sup> See AMLA, Section 100.

<sup>93</sup> For a complete guide of all forms of *talaq* in Singapore, see the official website of the Syariah Court, <[www.syariahcourt.gov.sg/english/talak01.htm](http://www.syariahcourt.gov.sg/english/talak01.htm)> last visited 12 November 2004.

<sup>94</sup> See ‘Sms Divorce’, on <[www.syariahcourt.gov.sg/english/cerai\\_sms.htm](http://www.syariahcourt.gov.sg/english/cerai_sms.htm)>, last visited 13 November 2004.

<sup>95</sup> See *Syed Mohamed Yassin v. Syed Abdulrahman*, 15 S.S.L.R. 199. See also Ahmad Ibrahim, *Family Law in Malaysia and Singapore*, p. 221.

<sup>96</sup> I.e. three menstrual periods, and if the woman is not menstruating, three months, see Nik Badli Shah, *Marriage and Divorce under Islamic Law*, p. 105.

<sup>97</sup> See Ahmad Ibrahim, *Family Law in Singapore and Malaysia*, p. 221.

<sup>98</sup> See AMLA, Section 97(1).

<sup>99</sup> See Abu Zahra, *Family Law*, in Majid Khadduri and Herbert J. Liebesny, *The Law in the Middle East*, 1955, The Middle East Institute, Washington, p. 150.

<sup>100</sup> See AMLA, Section 102(4-5).

<sup>101</sup> See AMLA, Section 48. See also ‘Ta’liq’, on <[www.syariahcourt.gov.sg/english/talak02.htm](http://www.syariahcourt.gov.sg/english/talak02.htm)>, last visited 12 November 2004.

<sup>102</sup> See Nik Badli Shah, *Marriage and Divorce under Islamic Law*, pp. 28, 77-79.

Divorce through *fasakh*, or annulment by the court, is the third form of divorce. A *fasakh* divorce can be obtained after the Syariah Court has heard the complaint of the woman, and one of the required grounds for divorce is fulfilled.<sup>103</sup> The grounds for a woman to divorce are all related to her husband. The provisions include failure to provide the wife with maintenance for a period of three months, the sentencing of the husband to prison for period exceeding three years, impotency, insanity or serious illness, or cruelty.<sup>104</sup> The attaining of a divorce through *fasakh* is dependent on the sworn statement by the woman and at least two witnesses.<sup>105</sup>

The fourth form of divorce in Singaporean Muslim law is divorce through redemption, *khulu'*. Divorce through *khulu'* is obtained after the woman requests her husband to pronounce *talaq* on her in combination with the woman paying him a sum of money. A *khulu'* may only be conducted in front of the Syariah Court after an application by the wife.<sup>106</sup>

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<sup>103</sup> See AMLA, Section 49.

<sup>104</sup> *Ibid.*, Section 49(1).

<sup>105</sup> *Ibid.*, Section 49(4).

<sup>106</sup> *Ibid.*, Section 47. See also 'Khulu'', on [www.syariahcourt.gov.sg/english/talak04.htm](http://www.syariahcourt.gov.sg/english/talak04.htm), last visited 12 November 2004.

# 4 Singapore and International Human Rights Standards

## 4.1 Status of International Human Rights Treaties in Singapore

### 4.1.1 Introduction

As several other Southeast Asian states, Singapore has a poor ratification record of international human rights treaties.<sup>107</sup> Until the fall of 1995, Singapore had not ratified any of the six major treaties on human rights adopted by the United Nations.<sup>108</sup> In October 1995, Singapore ratified CEDAW and CRC, following the example of neighboring Malaysia. Both treaties came into force the following month. The country is at the time of writing not yet a party to neither ICCPR, ICESCR, CERD nor CAT.<sup>109</sup>

### 4.1.2 Convention on the Elimination of All Forms of Discrimination Against Women

CEDAW entered into force on 3 September 1981, after the required twentieth ratification.<sup>110</sup> Singapore ratified the treaty on 5 October 1995 and it entered into force in November of the same year.<sup>111</sup>

Upon ratification of CEDAW, Singapore made four reservations.<sup>112</sup> The most extensive limitation of the application of the Convention is found in the first reservation, which states:

In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of

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<sup>107</sup> Cf 'Status of Ratifications of the Principle International Human Rights Treaties' <[www.unhcr.ch/pdf/report.pdf](http://www.unhcr.ch/pdf/report.pdf)>, last visited 13 November 2004.

<sup>108</sup> After the International Convention on the Protection of All Migrant Workers and Members of their Families (MWC) entered into force in 2003, there are seven principal human rights treaties. Singapore is however not a party to MWC, see 'Status of Ratifications of the Principle International Human Rights Treaties' <[www.unhcr.ch/pdf/report.pdf](http://www.unhcr.ch/pdf/report.pdf)>, last visited 14 November 2004.

<sup>109</sup> *Ibid.*

<sup>110</sup> See CEDAW article 27(1).

<sup>111</sup> See 'Singapore's Ratifications', available on <[www.bayefsky.com/html/singapore\\_t1\\_ratifications.php](http://www.bayefsky.com/html/singapore_t1_ratifications.php)>, last visited 13 November 2004.

<sup>112</sup> See Supplement A, 'United Nations Treaty Collections, Declarations and Reservations', available on <[www.unhcr.ch/html/menu3/b/treaty9\\_asp.htm](http://www.unhcr.ch/html/menu3/b/treaty9_asp.htm)>, last visited 13 November 2004.

Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious and personal law.<sup>113</sup>

Norway, Sweden, Denmark, Finland and the Netherlands all objected to the reservations, on the basis that the wording was too general. Norway, Denmark and Finland especially referred to the provision of international law that prohibit ratifying states to invoke domestic law as a justification for failure to perform treaty obligations. All objecting countries questioned whether the reservations were compatible with the object and purpose of the treaty, the Netherlands in the most explicit language.<sup>114</sup>

### 4.1.3 Convention on the Rights of the Child

CRC was adopted through General Assembly resolution 94/25 on the 20 November 1989 and entered into force on the 2 September 1990. Currently, all member states of the United Nations, except Somalia and the United States are parties to the Convention.<sup>115</sup> This makes CRC the most ratified human rights treaty.

The Government of Singapore ratified CRC on 5 October 1995, the same date as CEDAW was ratified, and the Convention entered into force in November of the same year.<sup>116</sup>

Singapore made two declarations and four reservations upon ratification.<sup>117</sup> The most extensive limitations to the application of the treaty are found in section (1) and (3) of the listing on declarations and reservations:<sup>118</sup>

Declaration (1) states:

The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and

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<sup>113</sup> *Ibid.*

<sup>114</sup> See 'Objections to Singapore's reservations to CEDAW', on [www.bayefsky.com/html/singapore\\_t2\\_crc.php](http://www.bayefsky.com/html/singapore_t2_crc.php), last visited 12 November 2004.

<sup>115</sup> See 'Status of Ratifications of the Principle International Human Rights Treaties' [www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf), last visited 13 November 2004.

<sup>116</sup> See 'Singapore's Ratifications', on [www.bayefsky.com/html/singapore\\_t1\\_ratifications.php](http://www.bayefsky.com/html/singapore_t1_ratifications.php), last visited 12 November 2004.

<sup>117</sup> See Supplement B, 'Reservations and Declaration to the Convention on the Rights of the Child', available via [www.unhchr.ch/html/menu2/6/crc/treaties/declare-crc.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/declare-crc.htm), last visited 13 November 2004.

<sup>118</sup> *Ibid.*

multi-religious society regarding the place of the child within and outside the family.<sup>119</sup>

The first reservation, section (3), states:

The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interest of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligations to introduce any rights beyond those prescribed under the Constitution.<sup>120</sup>

The governments of Belgium, Finland, Germany, Italy, the Netherlands, Norway, Portugal and Sweden raised objections to the declarations and reservations. The objections were of similar character as those made to the Singaporean reservations to CEDAW. All countries questioned the conformity of such general statements and references to domestic law, with the object and purpose of the treaty.<sup>121</sup>

## **4.2 Singapore Before the Committee on the Elimination of Discrimination Against Women**

### **4.2.1 Introduction**

Under article 18 of CEDAW, ratifying states are obligated to submit an initial report within one year after the Convention has entered into force. The report should present an overview of the legislative, judicial and administrative measures adopted in order to comply with the provisions given in the Convention. In addition, a periodic report on the progress made must be submitted at least every fourth year.

Both the initial and the second report of Singapore were under consideration by the Committee during its 25<sup>th</sup> session in July of 2001. In the account for the two reports below, focus is on the parts relating to articles 2 and 16.

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<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> See 'Objections to Reservations to the CRC' via [www.unhcr.ch/html/menu2/6/crc/treaties/declare-crc.htm](http://www.unhcr.ch/html/menu2/6/crc/treaties/declare-crc.htm), last visited 12 November 2004.

## 4.2.2 Singapore's Initial Report

Singapore's initial report to the CEDAW Committee was submitted in October 1999, almost four years after the state became a party to the Convention. The 92 pages long report covered the period from the ratification in 1995 until 1997 (to some extent 1998).<sup>122</sup>

The first part of the report concerned the situation of women in Singapore in general. In the section on social framework it was stated that Singapore was a pro-family society and that the government policies also benefited women. The promotion of gender equality existed in the country prior to the accession to CEDAW and could be found in the Constitution and other relevant legislation.<sup>123</sup>

The Women's Charter of 1961 was referred to as a "landmark piece of legislation" that provided the legal basis for equality between men and women. That the law did not apply to the marriages of the Muslim population was not mentioned in this context.<sup>124</sup>

The report referred to a survey done in 1996 on 300 Singaporean men and women between the age of 20 and 50. 60% of the men thought that women should strive for equality, which according to the report was an argument to increase the participation of women in the political, economic and social sphere of society. The opinion of the female participants of the survey was not mentioned.<sup>125</sup>

In second part of the report the government reported on the efforts and accomplishments in accordance with each article of the Convention. Regarding article 1, it was stated that the right to equality was guaranteed all Singaporean women in the Constitution.<sup>126</sup> However, the following could be read in the subsection on article 2:

Some aspects of Muslim law may contravene the provisions of the convention, e.g. the right of marriage.<sup>127</sup>

Under the subsection on article 16, a comprehensive account for the provisions on marriage and divorce in the Women's Charter and AMLA was made.<sup>128</sup> The differences in legal status of women under the two laws were noticeable. The divergent position of Muslim women was however

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<sup>122</sup> See 'Initial Report of State Party, Singapore', 18 January 2000, CEDAW/C/SPG/1, p.

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<sup>123</sup> *Ibid.*, pp. 19-20.

<sup>124</sup> *Ibid.*, pp. 21-22.

<sup>125</sup> *Ibid.*, pp. 23-24.

<sup>126</sup> *Ibid.*, p. 25.

<sup>127</sup> *Ibid.*, p. 27.

<sup>128</sup> For details on these provisions *see* 4.2 above.

explained to be given in Syariah law, and as accepted in other countries as well.<sup>129</sup>

### 4.2.3 Singapore's Second Periodic Report

Singapore's second periodic report was a 38 pages presentation of what the state had accomplished between 1997 and 1999 and to some extent, 2000. The report was structured in the same way as the first report, with a general part and a specified part on the articles. A new feature in the second report was that the Singaporean Council of Women's Organisations had been consulted in the preparatory phase.<sup>130</sup>

In its summary introduction it was stated that women in Singapore enjoyed the same rights as men did and that a strong focus on meritocracy (i.e. recruitment based on merits) naturally resulted in equal opportunities.<sup>131</sup> The first part of the report contained an overview of general promotion of women, mostly through family-oriented measures such as the Baby-Bonus Scheme that provided financial support for married couples with three or more children. It also presented some non-governmental initiatives to promote women, such as the 'Woman of the Year Award' in a women's magazine entitled 'Her World', and the publication of books about gender issues by women NGOs. The Singaporean government assured its commitment to the goals established at the 1995 Beijing Declaration and Platform for Action but emphasized that since meritocracy was so deeply rooted in the Singaporean society, gender mainstreaming was not a major issue.<sup>132</sup>

There was no specific comment made to article 2 in the second part of the report. In the section on article 16 it was stated that Singapore had two laws regulating marriage and divorce: the Women's Charter and Syariah law. Some amendments had been made in the Administration of Muslim Law Act since the government submitted the first report. These amendments gave a Muslim woman the possibility to apply for divorce to the Syariah court even though her husband had already pronounced the divorce on her through *talaq*. Through an additional subsection to Sections 51 and 52, the non-compliance with a Syariah Court order was made an offence under criminal law. This could, for example, result in up to six months imprisonment for a man refusing to pay maintenance to the woman he divorced. Finally, an amendment to AMLA had made it possible for the Syariah Court to sign the documents necessary for transferring the ownership of flats in the case one party refused to do so after a divorce. This possibility was thought to save especially women time and money in these kinds of controversies.<sup>133</sup>

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<sup>129</sup> *Ibid.*, pp. 27, 75-81.

<sup>130</sup> See 'Second Periodic Report of State Party, Singapore', 2001, CEDAW/C/SPG/2, p. 4.

<sup>131</sup> *Ibid.*, p. 2.

<sup>132</sup> *Ibid.*, pp. 5-9.

<sup>133</sup> *Ibid.*, pp. 30-31.

#### 4.2.4 Comparison of the Two Reports

It is interesting to note the significant differences in the use of language in the two reports. The first report had a straightforward wording, several times referring to Muslim law as not fully in conformity with the convention.<sup>134</sup> The awareness of the Government was evident and focus lied on explaining the background of the provisions to make them appear less discriminatory.<sup>135</sup> The report also referred to what is called an 'Asian tradition' with the man as the head of the household.<sup>136</sup>

In the second report, these matters were dealt with more delicately. There may not have been a need for a repetition of the content of the legislation governing marriage and divorce as such, but when the different laws were mentioned the focus was instead on the importance of harmony in a multi-cultural society.<sup>137</sup> Overall, the first report took more of a society welfare approach to gender equality, while the second report focused somewhat more on the promotion of non-discrimination for the sake of women themselves.

#### 4.2.5 Consideration of the Reports

Singapore's initial and second periodic reports were under consideration during the 514<sup>th</sup>, 515<sup>th</sup> and the 522<sup>d</sup> meetings of the Committee.

On 9 July 2001, the government delegation presented the reports. The presentation was followed by questions and comments by the members of the Committee. On the 13 July, the parties met again and the government delegation commented on the questions raised during the previous meetings.

The major point made by the government delegation was the fact that Singapore was very small country with a multicultural society and no other resources than its people. The rule of law governed the county at the same time as the desire of the people to preserve its cultural values, support the family and promote social cohesion was respected in the laws protecting individual rights and dignity. Although there was no specific legislation prohibiting discrimination on the grounds of gender, the government delegation emphasized that the equality of all persons was guaranteed in the Constitution.<sup>138</sup>

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<sup>134</sup> See 'Initial Report of State Party, Singapore', 18 January 2000, CEDAW/C/SPG/2, pp. 7, 27, 77.

<sup>135</sup> *Ibid.*, pp. 77-81, 83.

<sup>136</sup> *Ibid.*, pp. 8, 47 .

<sup>137</sup> See 'Second Periodic Report of State Party, Singapore', 2001, CEDAW/C/SPG/2, pp. 3, 30-31.

<sup>138</sup> See 'Summary Record of the 514th meeting', (Twenty-fifth session), 9 July 2001, CEDAW/C/SR.514, p. 2.

As to the reservations to article 2 and 16, the government delegation stated that the reservations had been a necessity for the multicultural country to accede to CEDAW, and that this argument was still valid. The Singaporean Constitution guaranteed the freedom of minorities to practice their religion and to live according to the personal laws required under the faith. Thus, in order to respect the rights of the Muslim population, the reservations were necessary. However, the government delegation acknowledged that some of the provisions of AMLA were not entirely consistent with the Convention.<sup>139</sup>

Several members of the Committee expressed deep concern over the reservations made to article 2 and 16. Ms Abka, the Chairperson, said she was given the impression that the promotion of women was not conducted in a human rights framework but rather in a welfare framework.<sup>140</sup>

Several members specifically questioned the system with two parallel family laws.<sup>141</sup> The criticism was presented from different perspectives. Some members noted that a number of Muslim countries did not have any reservations, as it was not considered as necessary under Islam.<sup>142</sup> Others pointed out specific differences between the two laws, for instance the legality of polygamy under AMLA, as being discriminatory to women.<sup>143</sup> Ms. Acar noted the differences concerning legal age for marriage and questioned the contradictory figures in the legislation, and the fact that the lowest marriageable age was 18 for non-Muslims and 16 for Muslims, whereas the Penal Code stated sexual intercourse with a wife under 13 years of age as statutory rape.<sup>144</sup>

Ms. Shin identified the so-called 'Asian values' as the major stumbling block towards gender equality and challenged Singapore to abandon policies regarding the man as the head of the household.<sup>145</sup>

Ms. Manalo stated that ratification of a treaty implied acceptance of the provisions therein, in the present case the elimination of discrimination of women. In her opinion, the reservations made seemed inconsistent with the objectives of the Convention. A ratification should also function as a statement of willingness to remove traditional and cultural obstacles to gender equality. Singapore did not show such willingness when omitting

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<sup>139</sup> *Ibid.*, p. 4.

<sup>140</sup> *Ibid.*, p. 5.

<sup>141</sup> See e.g. comments made by Ms. Gabir and Ms. Gaspard, *Ibid.*, pp. 5, 7 and Ms. Aouji, Mr. Melander and Ms. Kwaku, 'Summary Record of the 515th meeting', (Twenty-fifth session), 9 July 2001, CEDAW/C/SR.515, pp. 2, 5-6.

<sup>142</sup> See Summary Record of the 514th meeting, (Twenty-fifth session), 9 July 2001, CEDAW/C/SR.514, pp. 4, 7.

<sup>143</sup> See Summary Record of the 515th meeting, (Twenty-fifth session), 9 July 2001, CEDAW/C/SR.515, p. 6.

<sup>144</sup> *Ibid.*, p. 5.

<sup>145</sup> See Summary Record of the 514th meeting, (Twenty-fifth session), 9 July 2001, CEDAW/C/SR.514, p. 6. See also Chapter 5 below.

gender as a ground for discrimination in the Constitution.<sup>146</sup> Similar comments was made by Ms. Acar who emphasized that claims of political stability could not be argued as reasons to delay the realization of women's human rights. The rights stated in the Convention should be assured to all women both in their public and private life.<sup>147</sup>

On the 13 July the government delegation met with the Committee to answer the questions and comments made by the Committee members. With regard to its reservations, the government delegation once again emphasized the necessity and importance of such reservations in a multicultural society. Even though the delegation acknowledged the fact that Singapore did not fully comply with certain provisions, such as article 2(f) of the Convention, a consultation with the national Muslim Religious Council had concluded such compliance impossible, as parts of the Convention could not be combined with religious law.<sup>148</sup> The delegation concluded that with the exception of certain matters that fell under the AMLA, Muslims had the same rights and obligations as non-Muslims in Singapore. The circumstances in each case decided which family law was applicable. Polygamy was indeed legal under AMLA, as opposed to the Women's Charter. It was however not widely practiced since only 1 % of all registered marriages each year were polygamous. With regard to the different legal ages of marriage in Singapore, the government delegation explained the contradictory figures as a result of the special circumstances when a *kadi* could solemnize a marriage even though the bride was younger than 16 years old, provided she had reach puberty and had the consent of her parents. The marriageable age for the rest of the population was 21, or 18 with parental consent.<sup>149</sup>

Responding to the comment made by Ms. Shin on 'Asian values', the government delegation stated that Singapore was not a Chinese city, but a multi-cultural, multi-racial, and multi-religious state, with shared national values.<sup>150</sup> These shared values were: nation before community and society before self; the family as the basic unit of society; community support and respect for the individual; consensus, not conflict; and racial and religious harmony.<sup>151</sup>

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<sup>146</sup> *Ibid.*, p. 6.

<sup>147</sup> See Summary Record of the 515th meeting, (Twenty-fifth session), 9 July 2001, CEDAW/C/SR.515, p. 5.

<sup>148</sup> See 'Summary Record of the 522d meeting', (Twenty-fifth session), 13 July 2001, CEDAW/C/SR.522, p. 4.

<sup>149</sup> *Ibid.*, pp. 4, 11-12.

<sup>150</sup> See 5.2 below.

<sup>151</sup> See 'Summary Record of the 522d meeting', (Twenty-fifth session), 13 July 2001, CEDAW/C/SR.522, p. 5.

## 4.2.6 Concluding Observations of the Committee

In its concluding observations the CEDAW Committee congratulated the government on the successful economic growth in combination with high social, educational and health standards for women. At the same time the Committee expressed serious concern over the reservations made to article 2 and 16, since these articles contained the very essence of the Convention. The Committee recommended the government to reform Muslim private law and withdraw the reservations after consultation of interest groups, including women. Studies of reforms made in other countries with similar legal tradition were also encouraged.<sup>152</sup>

The CEDAW Committee expressed concern over what was defined as 'Asian values' regarding the family. The official family policies might be interpreted to further discriminate women through stereotyping of gender roles.<sup>153</sup>

## 4.3 Singapore Before the Committee on the Rights of the Child

### 4.3.1 Introduction

Singapore's initial report to the CRC Committee was submitted in 2003, although it was due in 1997.<sup>154</sup> The 137 pages long report contained an impressive amount of statistics and data on how children were cared for in legislation and within the Singaporean society. The summary below is limited to the sections that concerned marriageable age.

### 4.3.2 Singapore's Initial Report

In its comment on article 1, the definition of who is a child, the government stated that the general age of majority was 21 years of age.<sup>155</sup> This age also corresponded to the marriageable age without parental consent under civil law. With parental consent, the intending parties could get married if they were 18 years old. If someone younger than 18 years of age wished to get married, he or she had to obtain a Special Marriage License from the Minister of Community Development and Sports.<sup>156</sup>

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<sup>152</sup> See 'Concluding Observations, Singapore, 2001', CEDAW/A/56/38, p. 2.

<sup>153</sup> *Ibid.*, p. 3.

<sup>154</sup> See 'Initial State Report, Singapore', 17 March 2003, CRC/C/51/Add.8.

<sup>155</sup> *Ibid.*, p. 20.

<sup>156</sup> *Ibid.*, p. 22. Since 2004 renamed Ministry of Community Development, Youth and Sports, see the website of the Ministry <[app.mcys.gov.sg/web/home\\_main.asp](http://app.mcys.gov.sg/web/home_main.asp)>, last visited 12 November 2004.

Interestingly, the government failed in this section to report on the fact that civil law did not apply to marriages within the Muslim minority population. Although one sentence under the section on legal framework stated that Singapore has a small degree of legal pluralism, there was no mention of the fact that the marriageable age under AMLA was 16 years of age, and not absolute for girls.<sup>157</sup> However, there was a hint of the existence of differentiating marriageable ages in the section on sexual consent, where it was stated that carnal connection with a girl under the age of 16 was an offence, except by way of marriage.<sup>158</sup>

With regard to non-discrimination on the basis of gender, the government concluded that women and girls in Singapore were not considered as a disadvantaged group, and that they enjoyed the same rights and opportunities as men in all sectors.<sup>159</sup>

### 4.3.3 Consideration of the Report

The consideration sessions of the report was held on 26 September 2003.<sup>160</sup> In the presentation of the report, the government delegation focused on describing the high standards of education, healthcare and living conditions available for children in Singapore.<sup>161</sup>

The only comment on minimum age of marriage was made in reference to the provisions in the Women's Charter, safeguarding girls from being contacted into marriage against their will, and prohibiting persons under the age of 18 to enter into marriage. The fact that this law did not apply to marriages between Muslims was not mentioned.<sup>162</sup>

In the question session following the presentation, most of the questions from the Committee members concerned issues related to education, practice of corporal punishment and female genital mutilation.<sup>163</sup> From what the summary record concludes, the question of marriageable age or child marriages was not raised during the session.<sup>164</sup>

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<sup>157</sup> *Ibid.*, p. 13.

<sup>158</sup> *Ibid.*, p. 22.

<sup>159</sup> *Ibid.*, p. 27.

<sup>160</sup> See 'Summary Record of the 909th meeting', (Thirty-fourth session), 3 October 2003, CRC/C/SR.909.

<sup>161</sup> See 'Delegate statement at the 34th session of the CRC Committee, Singapore', <[www.unhcr.ch/html/menu2/6/crc/doc/statement/ds-singapore-1.pdf](http://www.unhcr.ch/html/menu2/6/crc/doc/statement/ds-singapore-1.pdf)>, last visited 2 November 2004.

<sup>162</sup> *Ibid.*, p. 14.

<sup>163</sup> See 'Summary Record of the 909th meeting', (Thirty-fourth session), 3 October 2003, CRC/C/SR.909

<sup>164</sup> *Ibid.*

#### 4.3.4 Concluding Observations of the Committee

The CRC Committee adopted its Concluding Observations on 3 October 2003.<sup>165</sup>

After congratulating Singapore on its high standards of living and efforts to improve the economic, social and cultural rights of children, the Committee expressed concern over the broad declarations and reservations made by the government upon ratification of the treaty.<sup>166</sup>

Regarding non-discrimination, the Committee urged the government to amend the Constitution to include a prohibition of gender discrimination and take all necessary measures to combat societal discrimination against girls.<sup>167</sup>

Under the section on age of majority, the Committee criticized the government for the low minimum ages for employment and criminal responsibility.<sup>168</sup> Unexpectedly, the Committee did not comment on Singapore's differentiating provisions on marriageable age. Although not mentioned by the government in the report, it is surprising that the Committee failed to observe or comment upon the fact that such differentiating provisions existed.

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<sup>165</sup> See 'Concluding Observations on Singapore', CRC/C/15/Add.220, p. 1.

<sup>166</sup> *Ibid.*, pp. 1-2.

<sup>167</sup> *Ibid.*, pp. 4-5.

<sup>168</sup> *Ibid.*, p. 4.

# 5 Universality and Diversity – the Rhetorics of Singapore

## 5.1 Introduction

When studying the Singaporean ratification history and the government's position concerning the obligations that follow thereof, it is apparent that the government takes a different view than that of the Committees of CEDAW and CRC. The Singaporean government argues that the reservations made are necessary as full compliance with the treaties is impossible without interfering with the rights of the Muslim minority to practice their religion and personal laws.

In this chapter I will attempt to explain the arguments behind the reluctance of the Singaporean government to acknowledge the equal rights of women of both the majority and minority population.

## 5.2 The Singaporean School of Asian Values

The Singaporean government claims that the reservations made to CEDAW and CRC are necessary to preserve the stability of the multi-racial and multi-religious society.

Singapore, together with Malaysia, has been one of the strongest advocates of so-called 'Asian Values'.<sup>169</sup> The concept of Asian values represent a post-cold war criticism of what has been categorized as a globalization of western values. Asian values have served as a basis to challenge the universality of human rights in favor of a diversity approach.<sup>170</sup>

Singaporean government officials do not favor the use of the term 'Singapore School' for their policies on 'Asian values', since they claim no ambition of offering a model to other countries. However the term is frequently used, and other countries in the region have *de facto* adopted a similar rhetoric, despite the non-missionary philosophy of the Singaporean government.<sup>171</sup>

The introduction of the Singaporean version of 'Asian values' by the government in the late 1980s and early 1990s has been explained in different ways. One opinion is that it was a reaction to international pressure

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<sup>169</sup> See Michael Bruun and Ole Jacobsen, *Human Rights and Asian Values*, 2000, Curzon, London, p. 3.

<sup>170</sup> See Eva Brems, *Human Rights: Universality and Diversity*, 2001, Kluwer Law International, the Hague, p. 36.

<sup>171</sup> *Ibid.*, p. 36.

on the Singaporean government to liberalize its politics and to increase the respect for human rights.<sup>172</sup> ‘Asian values’, founded on a common cultural base originating from Chinese Confucian ethics, were presented as the key to the economic success of Southeast Asia, by former Prime Minister Lee Kuan Yew and several other politicians and scholars in the region.<sup>173</sup>

The Singapore government presented a ‘White paper on Shared Values’ to the parliament in January 1991. The purpose of the White Paper was to establish a national ideology, or a set of values as a guiding star for future generations in Singapore.<sup>174</sup> The need for such ideology was primarily motivated by a fear that the new generation of Singaporeans were too heavily influenced by the ‘individualistic Western culture’,<sup>175</sup> and that this would harm the ‘traditional ideas of morality, duty and society’<sup>176</sup>. The shared national values adopted by parliament in 1993 were:

- Nation before community and society before self
- Family as the basic unit of society
- Regard and community support for the individual
- Consensus, not conflict
- Racial and religious harmony<sup>177</sup>

The Confucian basis of the values was toned down and replaced by an argument that all ethnic groups in Singapore shared the values, since they were founded on notions common for all Asian cultures. Arguably, every Singaporean could find their own basis for the values in their own religious and ethnic community.<sup>178</sup> However, many Confucian ideas were still argued as relevant to Singapore and were therefore kept, including the notion of ‘*juzi*’, i.e. government by honorable men.<sup>179</sup> The White Paper stated that this suited Singapore better than:

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<sup>172</sup> See Philip J. Eldridge, *The Politics of Human Rights in Southeast Asia*, 2002, Routledge, London, pp. 32-33.

<sup>173</sup> *Ibid.*, pp. 32-33. See also Raj Valis, *A Citizen’s Guide to Government and Politics in Singapore*, 2004, Talisman Publishing Pte Ltd, Singapore, pp. 169-170. See also Diane K. Mauzy and R.S. Milne, *Singapore Politics Under the People’s Action Party*, 2002, Routledge, London/ New York, pp. 57-58.

<sup>174</sup> See ‘White Paper on Shared Values’, para. 1 in Jon S.T. Quah (Ed.), *In Search of Singapore’s National Values*, Appendix 1, 1999, Times Academic Press, Singapore, p. 106.

<sup>175</sup> See Raj Valis, *A Citizen’s Guide to Government and Politics in Singapore*, pp. 169-170, 183-184.

<sup>176</sup> See ‘White Paper on Shared Values’, para. 2 in Jon S.T. Quah (Ed.), *In Search of Singapore’s National Values*, p. 106.

<sup>177</sup> See ‘Our Shared Values’, in Jon S.T. Quah (Ed.), *In Search of Singapore’s National Values*, Appendix 2, 1999, Times Academic Press, Singapore, p. 121.

<sup>178</sup> See ‘White Paper on Shared Values’, paras. 9, 39 in Jon S.T. Quah (Ed.), *In Search of Singapore’s National Values*, pp. 108, 113.

<sup>179</sup> *Ibid.*, paras. 39-44, pp. 113-114.

Western ideas that a government should be given as limited power as possible, and should always be treated with suspicion unless proven otherwise.<sup>180</sup>

However, parts of Confucianism were regarded as being unsuitable for a modern society, such as too much emphasis on family ties and hierarchy, and were therefore excluded.<sup>181</sup>

In the section on society and individual rights, a major difference between 'Western' and 'Asian values' was identified in relation to the balance struck between the state and the individual:

On the whole, Asian societies emphasise the interest of the community, while Western societies stress the rights of the individual.<sup>182</sup>

It was claimed that no Asian society had ever modeled itself successfully upon a Western prototype and that Singapore, as an Asian society, had always valued community interests before individual, and that this should be persevered and strengthened.<sup>183</sup>

The critics challenge the 'Shared values' on several grounds. The most common argument is that the 'Shared values' are everything but shared, in a state where the government does everything to justify its authoritarian regime, in an otherwise modern society with an educated population.<sup>184</sup> Others dismiss the Asian roots of the values, saying the continent is too large and too diverse to have any specific common grounds of that form.<sup>185</sup> Some argue that not even the definition of Asia is really Asian, but historically European.<sup>186</sup> Arguably, these kinds of family-oriented, authority-obeying policies carry traces of conservative Victorian ideals and can be found also in non-Asian societies around the world.<sup>187</sup> Furthermore, the focus on culture in the Singaporean way seems to be ignoring the fact

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<sup>180</sup> *Ibid.*, para. 41, p. 113.

<sup>181</sup> *Ibid.*, paras. 42-44, p. 14.

<sup>182</sup> *Ibid.*, para. 24, p. 11.

<sup>183</sup> *Ibid.*, paras. 24-26, p. 11.

<sup>184</sup> See Vitit Muntarbhorn, *Asia and Human Rights and the Crossroads of the New Millennium: Between the Universalist and the Particularist?*, in Robert G. Patman (Ed.), *Universal Human Rights?*, 2000, Palgrave, New York, pp. 84-85. See also Li-ann Thio, 'Implementing Human Rights in ASEAN Countries – "Promises to keep and miles to go before I sleep"', 2, *Yale Human Rights & Development Journal*, (1999), p. 16.

<sup>185</sup> See Michael Bruun and Ole Jacobsen, *Human Rights and Asian Values*, pp. 5-6.

<sup>186</sup> See Vitit Muntarbhorn, *Asia and Human Rights and the Crossroads of the New Millennium: Between the Universalist and the Particularist?*, in Robert G. Patman (Ed.), *Universal Human Rights?*, p. 84. See also Onuma Yasuaki, 'In Quest of International Human Rights: "Universal" vs. "Relative", Human Rights viewed from an Asian Perspective', 1 *Asian-Pacific Journal on Human Rights and the Law*, (2000), p. 55.

<sup>187</sup> See Diane K. Mauzy and R.S. Milne, *Singapore Politics Under the People's Action Party*, p. 57.

that ‘cultures’ do not exist in a vacuum, but are subject to influences and develop over time.<sup>188</sup>

Others question the Confucian roots of the ‘Shared Values’ and claim that they are highly selective and tailored to suit the purposes of the government. The mere existence of a Confucian oriented Mandarin inheritance in Singapore is also debated by certain scholars. Particularly since the majority of the Chinese population descends from the Hokkien, Hakka and Cantonese labor force hired by the British, of which less than 1% spoke Mandarin.<sup>189</sup> Arguably, the Confucian values and traditions in Singapore are political inventions of a recent date and not notions deeply embedded in its ‘Asian culture’.<sup>190</sup>

### **5.3 The Singaporean View on the Universality of Human Rights**

The Singaporean School does not deny the existence of human rights. It even acknowledges the fact that human rights are universal. However, it strongly emphasizes that the implementation of such rights must be subordinated the respect of the specific situation of each society. The meaning of human rights in Singapore must therefore be interpreted against the unique background of the Singaporean culture, politics and economy. The implementation of these rights will, as a consequence, also be different compared to other countries. Universality is overrun by an argument of diversity.<sup>191</sup>

The Singaporean government argues that one cannot ‘copy and paste’ the ‘Western values’ of individual human rights and democracy to an Asian society and expect it to be successful. Summarized, the ‘Western’ values are argued to be alien to the Asians, who prefer a strong paternalistic government that provides them with social, cultural and economical security. It is said that in Asia, rice is favored over rights.<sup>192</sup>

This diversity approach to human rights has been voiced on several important occasions outside of Singapore. Prior to the Vienna Conference on Human Rights in 1993, a regional meeting for Asian states was held in Bangkok the same year. This conference resulted in a declaration on human rights, to which Singapore, among with the other ASEAN countries, China

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<sup>188</sup> See Li-ann Thio, ‘Implementing Human Rights in ASEAN Countries – “Promises to keep and miles to go before I sleep”’, p. 16.

<sup>189</sup> Neil A. Engelhart, ‘Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore’, 22, *Human Rights Quarterly*, (2000), p. 555.

<sup>190</sup> *Ibid.*, p. 549.

<sup>191</sup> See Eva Brems, *Human Rights: Universality and Diversity*, pp. 36-60.

<sup>192</sup> *Ibid.*, pp. 37,46. See also Vitit Muntarbhorn, *Asia and Human Rights at the Crossroads of the New Millennium: Between the Universalist and Particularist?*, in Robert G. Patman (Ed.), *Universal Human Rights?*, 2000, Palgrave, p. 84.

and Myanmar, was the most influential contributor.<sup>193</sup> In the Bangkok Declaration on Human Rights it was stated:

that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural, and religious background.<sup>194</sup>

In other words, diversity should prevail over universality. It is noteworthy that almost the exact wording was later used in the Vienna Declaration and Programme of Action, with the reversed meaning.<sup>195</sup>

Although the Asian states in the preamble welcomed the increased attention to human rights by the international community, the Declaration also presented some notable criticism. Among other issues, there was a call for democratization of the UN system, and a discouragement of any attempt to use human rights a condition for development assistance or as an instrument of political pressure.<sup>196</sup>

The Vienna Declaration and Programme of Action was adopted in consensus of all the 176 states present at the World Conference on Human Rights in 1993.<sup>197</sup> At the conference, the Singaporean foreign minister Wong Kan Seng made a public statement advocating the respect for diversity. In his view, universal recognition of human rights could be harmful if used to mask the reality of diversity. He pointed out that different interpretations of human rights were accepted in the West and that concerns for human rights always had been, and should continue to be, balanced against other national interests.<sup>198</sup> As an illustration he used the following example:

Sweden (...) has more comprehensive and communal social arrangements than some other Western countries may find comfortable. Is Sweden therefore a tyranny? Of course not. Order and justice are obtained in diverse ways in different countries at different times.<sup>199</sup>

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<sup>193</sup> See Eva Brems, *Human Rights: Universality and Diversity*, p. 55.

<sup>194</sup> See 'The Bangkok Declaration', para. 8, in Fernand de Varennes (Ed.), *Asia-Pacific Human Rights Documents and Resources*, Vol. 1, 1998, Martinus Nijhoff Publishers, The Hague/Boston/London, p. 90.

<sup>195</sup> See 'Vienna Declaration and Programme of Action', A/CONF.157/23, Section I, para. 5.

<sup>196</sup> See 'The Bangkok Declaration', preamble, in Fernand de Varennes (Ed.), pp. 88-89.

<sup>197</sup> See the Preamble of 'Vienna Declaration and Programme of Action', A/CONF.157/23.

<sup>198</sup> See 'Statement by Wong Kan Seng, Minister of Foreign Affairs of the Republic of Singapore, Vienna, 16 June 1993', in James H. Tang (Ed.), *Human Rights and International Relations in the Asian Pacific*, 1995, Pinter, London and New York, pp. 242-247.

<sup>199</sup> *Ibid.*, p. 243.

Wong Kan Seng's statement in Vienna had a defensive tone and was in some parts seemingly contradictory, as he argued that diversity could not be used as an argument against the implementation of "core rights, which are truly universal"<sup>200</sup>. In his view there were a limited number of rights that should be enjoyed by all human beings around the world, arguably the non-derogable rights of ICCPR and the right to development. Nevertheless, issues concerning pornography and homosexuality should, according to Wong Kan Seng, fall outside the framework of human rights.<sup>201</sup>

In the last part of the statement Wong Kan Seng warned about the negative consequences of a strong focus on individual rights in an early stage of a country's development, as it could slow down the progress of the society.<sup>202</sup>

Our experience is that economic growth is the necessary foundation of any system that claims to advance human dignity, and that order and stability are essential for development.<sup>203</sup>

He conclusively stated:

We justify ourselves to our people, not by abstract theories or the approbation of foreigners, but by the more rigorous test of practical success.<sup>204</sup>

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<sup>200</sup> *Ibid.*, p. 244.

<sup>201</sup> *Ibid.*, pp. 244-245.

<sup>202</sup> *Ibid.*, pp. 245-247.

<sup>203</sup> *Ibid.*, p. 245.

<sup>204</sup> *Ibid.*, p. 246.

# 6 Singapore's Reservations to CEDAW and CRC

## 6.1 Generally on Reservations to Human Rights Treaties

This chapter will address the reservations and declarations made by Singapore to CEDAW and CRC. Reservations to multilateral human rights treaties are probably one of the most complicated issues in international human rights law. Considering the complexity of the matter, this section will be limited to a brief introduction to the issue, with focus on the declarations and reservations relevant for this thesis.

A natural starting point for any discussion on reservations to multilateral treaties is the 1969 Vienna Convention on the Law of Treaties (VCLT). The VCLT entered into force in 1980, and though not retroactively applicable, it is viewed as a codification of customary international law.<sup>205</sup> There is a currently ongoing debate on whether or not the VCLT is suitable for dealing with reservations to international human treaties, mainly because of the non-reciprocal character of such instruments.<sup>206</sup> As human rights treaties establish state obligations, with individuals and not the other contracting parties as beneficiaries, the role of objections seems to serve less of a purpose.<sup>207</sup> Additionally, other state parties seldom monitor and react to the reservations and declarations made by ratifying states, as they are not immediately effected by an invalid reservation.<sup>208</sup> However, some states, for example the Nordic countries and the Netherlands, often object to reservations considered to be 'against the object and purpose of the treaty'. The objections provided are in most cases standardized and 'recycled'.<sup>209</sup>

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<sup>205</sup> See William A. Schabas, 'Reservations to the Convention on the Rights of the Child', 18:2, *Human Rights Quarterly*, (1996), p. 480. See also Robert Baratta, 'Should Invalid Reservations to Human Rights Treaties Be Disregarded?', 11:2, *European Journal of International Law*, (2000), p. 413.

<sup>206</sup> See e.g. Ryan Goodman, 'Human Rights Treaties, Invalid Reservations and State Consent', 96:3, *American Journal of International Law*, (2002), p. 537. For further studies on this matter See Ineta Ziemele (Ed.), *Reservations to Human Rights Treaties and the Vienna Convention Regime – Conflict, Harmony or Reconciliation*, 2004, Martinus Nijoff Publishers, Leiden/Boston.

<sup>207</sup> See Liesbeth Lijnzaad, *Reservations to UN-Human Rights Treaties – Ratify and Ruin?*, 1995, Martinus Nijoff Publishers, Dordrecht/Boston/London, pp. 110-112. Cf *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, *ICJ Reports 195*: xiii, 153, at. 22.

<sup>208</sup> See e.g. Ryan Goodman, 'Human Rights Treaties, Invalid Reservations and State Consent', p. 537.

<sup>209</sup> See Jan Klabbers, 'Accepting the Unacceptable? A Nordic Approach to Reservations to Multilateral Treaties', 69:2, *Nordic Journal of International Law*, (2000), pp. 184-185, 193. See also 'Expanded Working Paper by Ms. Franciose Hampson on the Question of

The only tool available for an objecting state is to deny the relevant provision to enter into force between the two countries. However, states have shown reluctance to do so since such action would in fact be counter-productive and weaken the human rights treaty regime as such.<sup>210</sup> Consequently, a reservation met with silence from the other contracting parties should not automatically be interpreted as a reservation viewed as compatible with the treaty.<sup>211</sup>

The role of the human rights treaty monitoring bodies is interesting in this context. It has been debated what mandate the committees actually have in interpreting reservations and determining their validity. Arguably, the mandate of the monitoring bodies is limited, as decisions taken by the committees are not legally binding. On the other hand, a judicial or a quasi-judicial body can be said to have an inherent right to determine the scope of its own jurisdiction, so-called *Kompetenz-Kompetenz*.<sup>212</sup> As a consequence, the monitoring body would have the authority to determine whether reservations are valid, since invalid reservations would in fact limit its jurisdiction.<sup>213</sup> The Human Rights Committee General Comment No. 24 shed some light on this issue, although the conclusions of the Committee are not uncontested.<sup>214</sup> Regarding the competence of the Committee, it was stated that:

It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because, (...), it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions.<sup>215</sup>

Apart from granting itself the authority to determine whether reservations are valid or against the object and purpose of the treaty, the Human Rights Committee presented its views on reservations to peremptory norms:

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Reservations to Human Rights Treaties, prepared in accordance with Sub-Commission Decision 2001/17', E/CN.4/Sub.2/2003/WP.2, 8 August 2003, p. 10, para. 30.

<sup>210</sup> *Ibid.*, p. 8, para. 26.

<sup>211</sup> *Ibid.*, p. 8, para. 26, p. 10, para. 30.

<sup>212</sup> See Robert Baratta, 'Should Invalid Reservations to Human Rights Treaties Be Disregarded?', p. 415.

<sup>213</sup> See 'Expanded Working Paper by Ms. Franciose Hampson on the Question of Reservations to Human Rights Treaties, prepared in accordance with Sub-Commission Decision 2001/17', E/CN.4/Sub.2/2003/WP.2, 8 August 2003, p. 13, paras. 37-38.

<sup>214</sup> See Ulf Lindefalk, *Reservations to Treaties and Norms of Jus Cogens – A Comment on Human Rights Committee General Comment No. 24*, in Ineta Ziemele (Ed.), *Reservations to Human Rights Treaties and the Vienna Convention Regime – Conflict, Harmony or Reconciliation*, p. 215.

<sup>215</sup> See HRC General Comment No. 24, 'On issues relating to reservations upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant', (Fifty-sixth session), 4 November 1994, CCPR/C/21/Rev.1/Add.6, para. 18.

Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve *inter se* application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and *a fortiori* when they have the character of peremptory norms) may not be the subject of reservations.<sup>216</sup>

Among the norms listed by the Committee as peremptory, one finds the rights of persons of marriageable age to marry.<sup>217</sup> In the following section it is stated that a reservation to the obligation to respect and ensure the rights of ICCPR and to do so on a non-discriminatory basis (article 2 (1)) is regarded as contrary to the object and purpose of the treaty.<sup>218</sup>

The most complicated issue is not dealt with in General Comment No. 24, and rest unsolved in the context of reservations to human rights treaties as a whole. Once a competent authority has identified an invalid reservation, what are the legal consequences for the reserving state and the other contracting parties? Options identified by legal scholars as potential results are:

- 1) The state remains bound to the treaty except for the provision(s) to which the reservation related.
- 2) The invalidity of a reservation nullifies the instrument of ratification as a whole and the state is thus no longer a party to the treaty.
- 3) An invalid reservation can be severed from the instrument of ratification to the effect that the state remains bound to the treaty including the provision(s) to which the reservation related.<sup>219</sup>

All options may have more or less unfortunate consequences, and the legal debate is interesting. The use of the first option seems to suggest that there is in fact no difference between valid and invalid reservations. The second option is undesirable since the foundation of human rights treaties is universal applicability. The third option, sometimes referred to as the 'Strasbourg approach',<sup>220</sup> raises questions of the basic notion of state

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<sup>216</sup> *Ibid.*, para. 8.

<sup>217</sup> *Ibid.*, para. 8.

<sup>218</sup> *Ibid.*, para. 9.

<sup>219</sup> See Ryan Goodman, 'Human Rights Treaties, Invalid Reservations and State Consent', p. 531. See also 'Expanded Working Paper by Ms. Franciose Hampson on the Question of Reservations to Human Rights Treaties, prepared in accordance with Sub-Commission Decision 2001/17', E/CN.4/Sub.2/2003/WP.2, 8 August 2003, p. 5, para. 16.

<sup>220</sup> Due to the ruling of the European Court of Human Rights in *e.g. Belios v. Switzerland*, judgement of 29 April 1988, Series A no. 132, See Robert Baratta, 'Should Invalid Reservations to Human Rights Treaties Be Disregarded?', p. 414.

consent as a precondition for treaty obligations.<sup>221</sup> However, when a monitoring body has identified a reservation as incompatible with the treaty and thus invalid, no immediate result will usually follow.<sup>222</sup> The Committee will ask the state during the discussion sessions when a state report is under consideration, or later on in the Concluding Observations, to modify or withdraw the reservation.<sup>223</sup> Arguably, objections from other state parties may influence a reserving state to withdraw incompatible reservations, although statistics show that objections have not been enough to convince most reserving states to undertake such action.<sup>224</sup>

## 6.2 Reservations to CEDAW

CEDAW is the second most ratified human rights treaty, after the CRC, but is also subject to many and broad reservations.<sup>225</sup> The admissibility and conditions for reservations to the Convention are stated in article 28.<sup>226</sup>

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

There is no provision concerning the acceptance of other state parties as a requirement for the validity of reservations.<sup>227</sup> Furthermore, there is no

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<sup>221</sup> See Ryan Goodman, 'Human Rights Treaties, Invalid Reservations and State Consent', p. 532.

<sup>222</sup> See 'Expanded Working Paper by Ms. Franciose Hampson on the Question of Reservations to Human Rights Treaties, prepared in accordance with Sub-Commission Decision 2001/17', E/CN.4/Sub.2/2003/WP.2, 8 August 2003, p. 18, para. 57.

<sup>223</sup> *Ibid.*, p. 18, para. 57. See also HRC General Comment No. 24, 'On issues relating to reservations upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant', (Fifty-sixth session), 4 November 1994, CCPR/C/21/Rev.1/Add.6, para. 20 *in fine*.

<sup>224</sup> See Liesbeth Lijnzaad, *Reservations to UN-Human Rights Treaties – Ratify and Ruin?*, pp. 364-365.

<sup>225</sup> See 'Status of Ratifications of the Principle International Human Rights Treaties' <[www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf)> last visited 12 November 2004. See also Hanna Beate Schöpp-Schilling, *Reservations to CEDAW*, in Ineta Ziemele (Ed.) *Reservations to Human Rights Treaties and the Vienna Convention Regime – Conflict, Harmony or Reconciliation*, 2004, Martinus Nijhoff Publishers, Leiden/Boston, pp. 6,8 and 10.

<sup>226</sup> Reservations to the Optional Protocol to Convention on the Elimination of All Forms of Discrimination Against Women are however not allowed, see article 17 of the Protocol.

<sup>227</sup> Cf The Vienna Convention on the Law of Treaties, article 20(1).

definition in the Convention of what is ‘incompatible with the object and purpose’, in contrast to CERD article 20(2), which states that a reservation is against the object and purpose of the treaty if at least two thirds of the state parties object to it.

The role of the CEDAW Committee in determining which reservations are against the object and purpose of the Convention has developed over time.<sup>228</sup> In the early days, it was quite clear that this was not viewed as a task of the Committee. This view was also stated in a legal opinion from the Treaty Section of the United Nations Secretariat Office of Legal Affairs in 1984.<sup>229</sup> The wording in General Recommendation No. 4 and 20 dealing with reservations was rather cautious, expressing concern over reservations that ‘appeared’ inconsistent with the object and purpose and that state parties should ‘reconsider’ reservations.<sup>230</sup>

In General Recommendation No. 21 on Equality in Marriage and Family Relations, the Committee was more straightforward, arguably strengthened by the success of the World Conference on Human Rights.<sup>231</sup> In paragraph 43 and 44, the Committee required the state parties to gradually withdraw their reservation, in particular to articles 9, 15 and 16 of the Convention, in consistence with articles 2, 3 and 24.<sup>232</sup> The Committee further stated that the state parties:

should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16 will be withdrawn.<sup>233</sup>

Although the Committee did not explicitly declare that reservations to any specific articles were against the object and purpose of the Convention, it highlighted the core nature of certain provisions of the treaty.<sup>234</sup> The final acknowledgement of reservations to article 2 and article 16 as contrary to the object and purpose of the treaty came in the Final Report from the 19<sup>th</sup> session of the Committee in 1998. There it was stated that article 2 and 16

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<sup>228</sup> See Hanne Beate Schöpp-Schilling, *Reservations to CEDAW*, in Ineta Ziemele, (Ed.) *Reservations to Human Rights Treaties and the Vienna Convention Regime – Conflict, Harmony and Reconciliation*, p 36.

<sup>229</sup> *Ibid.*, pp 12-13.

<sup>230</sup> See CEDAW General Recommendation No. 4, ‘Reservations to the Convention’, (Sixth session), 12 March 1987, A/42/38 CEDAW. Reservations. See also CEDAW General Recommendation No. 20, ‘Reservations to the Convention’, (Eleventh session), 30 January 1993, A/47/38.

<sup>231</sup> See Hanne Beate Schöpp-Schilling, *Reservations to CEDAW*, in Ineta Ziemele (Ed.) *Reservations to Human Rights Treaties and the Vienna Convention Regime – Conflict, Harmony and Reconciliation*, p 18.

<sup>232</sup> See CEDAW General Recommendation No. 21, ‘Equality and Marriage and Family Relations’, (Thirteenth session), 2 February 1994, A/47/38, para. 43.

<sup>233</sup> *Ibid.*, para. 44.

<sup>234</sup> See Hanne Beate Schöpp-Schilling, *Reservations to CEDAW*, in Ineta Ziemele (Ed.) *Reservations to Human Rights Treaties and the Vienna Convention Regime – Conflict, Harmony and Reconciliation*, p 19.

are core provisions,<sup>235</sup> and that reservations to these article whether due to national, traditional, cultural or religious reasons, are incompatible with the object and purpose of CEDAW.<sup>236</sup> The Committee concluded that:

Reservations to articles 2 and 16 perpetuate the myth of women's inferiority and enforce the inequalities in the lives of millions of women throughout the world. They continue to be treated in both public and private life as inferior to men, and to suffer greater violations of their rights in every sphere of their lives.<sup>237</sup>

### 6.3 Reservations to CRC

As CRC is the most widely ratified of all UN human rights treaties it is, not surprisingly, also subject to numerous and extensive reservations.<sup>238</sup> The Convention holds the UN record for fastest entry into force. It was opened to signature in January 1990 and it entered into force in September of the same year.<sup>239</sup>

Ratifying states are explicitly allowed to make declarations and reservations according to article 51, which was modeled after article 28 of CEDAW and thus contain the exact same wording.<sup>240</sup> Contrary to CERD, but similar to CEDAW, CRC does not contain any definition of what constitutes the 'object and purpose of the treaty'. The CRC Committee has been more reluctant than other monitoring bodies to elaborate on this issue in its General Comments.<sup>241</sup> In the 1994 annual report to the General Assembly it was stated that:

The Committee recognizes the need to keep as its primary consideration the spirit of understanding and consensus deriving from the Convention, and not to refer to the questions and declarations as a dividing factor which would undermine this spirit.<sup>242</sup>

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<sup>235</sup> See 'Report of the Committee on the Elimination of Discrimination Against Women, 18th and 19th session', A/53/38/Ref.1, p. 47, para 6.

<sup>236</sup> *Ibid.*, p. 49, paras. 16-17.

<sup>237</sup> *Ibid.*, p. 49, para. 15.

<sup>238</sup> See 'Status of Ratifications of the Principle International Human Rights Treaties', <[www.unhcr.ch/pdf/report.pdf](http://www.unhcr.ch/pdf/report.pdf)>, last visited 13 November 2004. See also Jaap E. Dock, *The Current Status of the United Nations Convention on the Rights of the Child*, in Sharon Detrick (Ed.), *The United Nations Convention on the Rights of the Child – A Guide to the "Travaux Préparatoires"*, 1992, Martinus Nijhoff Publishers, Dordrecht/Boston/London, p. 635.

<sup>239</sup> *Ibid.*, p. 633.

<sup>240</sup> See William A. Schabas, 'Reservations to the Convention on the Rights of the Child', p. 476.

<sup>241</sup> *Ibid.*, p. 488.

<sup>242</sup> See 'Report of the Committee on the Rights of the Child' (the second, third, fourth and fifth sessions), 19 May 1994, A/49/41, p. 93, para. 529.

However, with the issuing of General Comment No. 5 in 2003, this criticism against the Committee has lost most of its substance. The Committee addressed the issue of reservations in four paragraphs, emphasizing the withdrawal of reservations and stating that only then could full respect for human rights of children be achieved.<sup>243</sup> With reference to the VCLT, the Committee specifically highlighted certain kinds of reservations as contrary to the object and purpose of the treaty:

The Committee is deeply concerned that some States have made reservations which plainly breach article 51(2) by suggesting, for example, that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law.<sup>244</sup>

In the light of the rapid ratification of the CRC, certain scholars have elaborated on the theory that the Convention as such, or at least in parts, should be regarded as customary international law. It has also been argued that some norms may even constitute *jus cogens*, with the effect that reservations against such provisions should be invalid.<sup>245</sup> Since prohibition of racial discrimination is generally accepted as *jus cogens*, it has been suggested that the same applies to discrimination on the basis of gender.<sup>246</sup> However, a cautious approach is probably preferred, taken the extensive reservations that the Convention has been subject to, and the fact that the International Court of Justice has not dealt with matters of gender discrimination or discrimination against children.<sup>247</sup>

## 6.4 Analysis of Singapore's Reservations

What are the implications of Singapore's declarations and reservations against the background presented above?

Starting with reservation (1) to CEDAW,<sup>248</sup> there can be no doubt that the wording of the reservation is problematic, taken into consideration the conclusions of the CEDAW Committee in the Final Report from the 19<sup>th</sup> session of 1998 and General Recommendation No. 21. Article 2 and 16 are, according to the Committee, core provisions and any reservations with reference to culture, religion or traditions against these articles are against

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<sup>243</sup> See CRC General Comment 5, 'General measures of implementing of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)', (Thirty-Fourth Session), 27 November 2003, CRC/GC/2003/5, para. 13.

<sup>244</sup> *Ibid.*, para. 15.

<sup>245</sup> See e.g. Geraldine van Bueren, *The International Law on the Rights of the Child*, 1995, Martinus Nijhoff Publishers, Dordrecht/Boston/London, p. 53.

<sup>246</sup> *Ibid.*, p. 55. See also Ian Brownlie, *Principles of Public International Law*, 6th ed., 2003, Oxford University Press, Oxford, p. 489, note 28.

<sup>247</sup> *Ibid.*, pp. 55-57.

<sup>248</sup> See Supplement A.

the object and purpose of the treaty.<sup>249</sup> The conclusion, assuming the *Kompetenz-Kompetenz* of the CEDAW Committee,<sup>250</sup> is that the reservation is prohibited under article 28(2) of the Convention.<sup>251</sup>

Reservation (3) to the CRC is equally problematic.<sup>252</sup> With a blank reference to the Constitution and other national laws, the Singaporean government limits the application of the Convention. According to the conclusions of the CRC Committee in General Comment No. 5, and in a wording that cannot reasonably be interpreted in any other way,<sup>253</sup> such reservations are *per se* against the object and purpose of the treaty. The Singaporean reservation, based on the same rationale as in the case of CEDAW, is thus prohibited under article 51(2) of the Convention.

Arguably, the same conclusion can be drawn regarding Singapore's declaration (1) to CRC. The declaration provides the Singaporean interpretation of a number of articles, but the extensive scope of the content actually gives the declaration the character of a reservation.<sup>254</sup> It is difficult to distinguish any particular differences in content between the declarations and reservations made by Singapore to CRC. Furthermore, the numerical listing of declarations and reservations made by the government seems to suggest that there is no real difference made between declarations and reservation, apart from the heading.<sup>255</sup>

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<sup>249</sup> See 'Report of the Committee on the Elimination of Discrimination Against Women, 18th and 19th session', A/53/38/Ref.1, pp. 47, 49, paras. 6, 15-17.

<sup>250</sup> Cf HRC General Comment No. 24, 'On issues relating to reservations upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant', (Fifty-second session), 4 November 1994, CCPR/C/21/Rev.1/Add.6, para. 18. See also Robert Baratta, 'Should Invalid Reservations to Human Rights Treaties Be Disregarded?', p. 415.

<sup>251</sup> And additionally under article 19 of the Vienna Convention on the Law of Treaties.

<sup>252</sup> See Supplement B.

<sup>253</sup> "[R]eservations which *plainly breach* article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State's existing *Constitution or legislation*." (Emphasize added), see CRC General Comment No. 5, 'General measures of implementing of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)', (Thirty-Fourth Session), 27 November 2003, CRC/GC/2003/5, para. 13.

<sup>254</sup> See Supplement B.

<sup>255</sup> *Ibid.* Interestingly, the first reservation is listed as (3).

# 7 2004 and Beyond - Concluding Remarks

## 7.1 Introduction

Singapore's third period report on state compliance to CEDAW is due on 4 November 2004.<sup>256</sup> Provided the report is submitted on time, it will be under consideration by the Committee sometime next year.<sup>257</sup>

In this final chapter, I will present my concluding remarks on the issues presented above. Finally, I will elaborate on the need for reforms and present some recommendations *de lege ferenda* in order for Singapore to comply with its international obligations.

## 7.2 Concluding Remarks *De Lege Lata*

The current system of parallel family laws is a problematic feature in relation to the Singaporean undertakings under international human rights law. The application of the provisions of marital law under AMLA and Muslim law has vastly different consequences for the personal status of women in comparison to the regulations under Women's Charter.

Under the Shafii school of Syariah, as it is interpreted in Singapore, a woman cannot contract a marriage herself, but is dependant on the consent of her *wali*, or in some cases the *kadi*. The law further allows for the marriage of a woman without her full and free consent, marriages of girls under the age of 18 years old and the acceptance of polygamy. Even if these practices are rare, or for the sake of the argument never used, the law nevertheless accepts such practices. In the case of dissolution of marriage under the Syariah law, the wife has limited possibilities to obtain a divorce on her own initiative, and has therefore in practice to rely on the husband granting her the divorce. The current practice of *talaq* and the unequal status of the spouses in obtaining a divorce represent examples of legislation discriminating against women. Female members of the Muslim minority population are accordingly not guaranteed the same rights and protection under the law as women of the majority population.

As shown above, the monitoring committees of CEDAW, ICCPR, CRC and CERD have declared these practices of religious law discriminatory against

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<sup>256</sup> See 'Reporting History: Singapore', available via <[www.bayefsky.com](http://www.bayefsky.com)>, last visited 12 November 2004.

<sup>257</sup> However, Singapore is not listed for neither the session in January (the 32d) nor the one in July (the 33d), which indicates that the report was not submitted on time, See <[www.un.org/womenwatch/daw/cedaw/32sess.htm](http://www.un.org/womenwatch/daw/cedaw/32sess.htm)>, last visited 13 November 2004.

women on several occasions. Consequently, there can be no doubt that the Singaporean government was aware of the non-conformity of its national legislation when CEDAW and CRC were ratified in 1995.

The reservations and declarations presented in connection to the accession of the treaties were meant to limit the applicability of the provisions in Singapore, in order to, among other reasons, enable the application of religious laws to the minority population. However, as shown above, these reservations are undoubtedly 'against the object and purpose' of both CEDAW and CRC. As a result, the reservations are invalid. The Singaporean government therefore needs to review the national legislation in order to come into compliance with the international obligations not to discriminate against women.

### **7.3 *De Lege Ferenda* – Some Suggestions of Reforms**

Conclusively, I suggest that there are two alternatives, not mutually exclusively, available for Singapore in order to increase the compliance with CEDAW and CRC. These options could be summarized as follows:

- 1) Reforms of the Muslim law applicable in Singapore in order to improve the status of women, in accordance with the Concluding Observations of the CEDAW Committee, and/or;
- 2) To make the application of Muslim law and the jurisdiction of the Syariah Court the personal and conscious choices of the intending spouses, i.e. Muslims should not automatically be excluded from civil family law.

Under the first alternative a review of AMLA and the religious provisions the law refers to, should be undertaken. This would most likely be a time consuming and difficult process, taken the religious and cultural issues at stake into account. In order to comply with the relevant human rights provisions, mainly article 2 and 16 of CEDAW and article 1 and 2 of CRC, several and profound reforms need to be undertaken, including the abolishment of polygamy, the unilateral divorce through *talaq* and other discriminatory norms regarding the personal status of women in entering and dissolving a marriage. In order to comply with CRC, a minimum age for marriage has to be established. Such minimum age must be neutral as to gender and religion, and based on the recommendations of the CEDAW and CRC Committees, set to 18.

In my opinion, the most striking feature of Singaporean marital law is not the fact that Syariah applies and that certain provisions discriminate against women. My major concern is the lack of choice involved. As to the second alternative, it assumes that the existence of two parallel family laws *per se* does not necessarily constitute a problem in relation to Singapore's

international undertakings. However, the lack of choice in the individual case does indeed. When one of two laws discriminates against women and there is no possibility for the individual to choose which law should govern the marriage, the issue becomes troublesome. As the law stands today, a person categorized by birth as a Muslim marrying another Muslim may only register the marriage under religious law, regardless of whether the parties practice the religion or not. The only recourse available is an official renouncement from the religious faith. This may however be difficult from a social perspective, since religious conversion is discouraged and the person first has to go through counseling and be convinced not to leave the faith.

In my view, a first and theoretically simple step for Singapore to comply with international human rights standards binding on the state, is for the legislator to amend the Women's Charter to apply to marriages between Muslims. A reform of the application provisions in Part 1 of the Women's Charter with the effect that Muslims will not be automatically excluded from civil law would be a valuable indicator that human rights of women are taken seriously in Singapore. The choice to marry under religious law would then be the conscious choice of the individual couple.

A recommended recourse *de lege ferenda* would in my view be to initially amend the Women's Charter as suggested above, after which religious law could be gradually reformed, involving all parties whose interest are at stake, including the Muslim Council and women's organizations.

## **7.4 Is the Conformity of Singaporean Marital Law with International Human Rights Standards Achievable?**

As a background to the last section of this thesis, it may be interesting to address some recent reforms that have been undertaken in Singapore since the submission of the latest reports to the CEDAW and CRC Committees.

In 2004, the Constitution was amended to grant children born abroad by Singaporean women married to non-Singaporean men Singaporean citizenship. Until recently, this was only the case if the child born abroad had a Singaporean father.<sup>258</sup> The old policy was allegedly based on to the 'Asian' notion that the man is the head of the family,<sup>259</sup> but became subjected to heavy criticism by the CEDAW and the CRC Committees,<sup>260</sup> as well as the Singaporean NGO Association of Women for Research and Education (AWARE)<sup>261</sup>.

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<sup>258</sup> See Constitution of the Republic of Singapore, Section 122(1).

<sup>259</sup> See 'Initial Report, Singapore', 17 March 2003, CRC/C/51/Add.8, para. 169.

<sup>260</sup> See 'Concluding Observations Singapore', CCRC/C/15/Add.220, paras. 30-31. See also 'Concluding Observations, Singapore', CEDAW A/56/38, para. 75.

<sup>261</sup> See 'Women's Perspectives on National Issues', 24 March 2004, available on <[www.aware.org.sg](http://www.aware.org.sg)>, last visited 10 November 2004.

Whether the reform was undertaken due to the government realizing the non-compliance with international obligations combined with a will to move away from discriminatory legislation, or just a recognition of the fact that nativity rates are on an all time low and more and more Singaporean women marry abroad, is unclear.<sup>262</sup> However, the amendment of the Constitution will hopefully result in the withdrawal of the reservations made to article 9 of CEDAW and article 7 of CRC.<sup>263</sup>

When the recently installed Prime Minister Lee Hsien Loong held his national day rally speech on the 22 of August 2004, he presented several new government initiatives to prevent the low birth rate from falling even further and more actions to encourage family life. Apart from introducing 12 weeks maternity leave and enhancing the Baby Bonus Scheme to cover the first and fourth child, female civil servants will from 2004 be granted the same medical benefits as their male colleagues.<sup>264</sup> Prior to August 2004, maternity leave was limited to 8 weeks.<sup>265</sup> Paternity leave does not exist, except for three days in connection to the birth of the child, provided the parents are married.<sup>266</sup> This matter has been criticized by AWARE stating that:

The fact that the new policies are still very much centered on mothers sends a signal that women are still the ones who bear the burden of having and raising children.<sup>267</sup>

The introduction of equal medical benefits for female and male civil servants will most likely be mentioned in the upcoming CEDAW report for 2005, and deserves recognition as a step in the right direction towards abolishing discriminatory legislation.

Which conclusions may be drawn from these reforms? The first and positive reflection should be that laws and policies concerning equal status of women are gradually changing. However, as was pointed out by the CEDAW Committee in 2001, the advancement of women seems to be

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<sup>262</sup> See 'Looking Further Afield for a Spouse', first published in the *Star Malaysia*, 24 November 2002, now available via The Singapore Window, <[www.singapore-window.org](http://www.singapore-window.org)>, last visited 12 November 2004. See also 'Baby-short Singapore Eases Citizenship Laws', first published by *Agence France Press*, 14 May 2004, now available via <[www.singapore-window.org](http://www.singapore-window.org)>, last visited 12 November 2004.

<sup>263</sup> See Reservation (2) by Singapore to CEDAW, Supplement A and Reservation (4) to CRC, Supplement B. See also 'Initial Report of State Party, Singapore, 18 January 2000, CEDAW/C/SPG/1, p. 47, para. 10.2. See also 'Initial Report, Singapore', CRC/C/51/Add.8, p. 40, paras. 168-170.

<sup>264</sup> See 'Major Changes Ahead with PM's Bold Vision', published in *The Straits Times*, 23 August 2004.

<sup>265</sup> *Ibid.*

<sup>266</sup> See 'Women's Perspectives on National Issues', 24 March 2004, available on <[www.aware.org.sg](http://www.aware.org.sg)>, last visited 12 November 2004.

<sup>267</sup> See 'Keep Paternity Leave 'on Radar' says AWARE', published in *The Straits Times*, 27 August 2004.

taking place in a welfare framework and not in a human rights context. The Constitution does not yet recognize gender as a ground for discrimination, a fact more significant than one may first realize. Frankly, and somewhat boldly stated, women in Singapore are most likely to get whichever rights the economic development requires.

Matters involving race and religion are far more sensitive to the Singaporean government. The official categorization of the population into four races seems to be one of the fundamental cornerstones of Singapore policymaking. From my point of view, the practice of categorizing persons into races based on the officially established race of the father, rests rather unquestioned in the Singaporean society. The policy is founded on good intentions, such as keeping Singapore a harmonious multi-cultural society, and although I see several negative implications with the categorizing practice, it is perhaps *per se* not necessarily problematic. However, the consequences following the practice are indeed troublesome.

Furthermore, the cultural relativist approach to human rights that the Singaporean political leaders emphasize is equally problematic, as this philosophy opens the door to a continuance of traditional practices discriminatory against women. I honestly believe that as long as the Singaporean government keeps this primordialist approach that identity is solely obtained by birth, and continue to divide the population into racial and religious groups, few changes should be expected.

Is compliance of Singaporean marital law to international human rights standards then achievable? Can all Singaporean women expect to receive the protection they are guaranteed under the international obligations that their government has in fact agreed to? I would like to answer the question in the affirmative, but in doing so I feel obliged to make several reservations. Taken the context of the Singaporean society as it has developed since independence, including the embracing of cultural relativism, I do not think the extensive and profound reforms of Syariah law I have suggested are likely to be undertaken within a foreseeable future. At least I remain to be convinced of the political will to do so. However, the suggested amendment of the Women's Charter to not automatically exclude marriages between Muslims, is in my view more feasible. Naturally, there are other implications than the law that may obstruct the realization of human rights and non-discrimination of women in this field. Social factors, such as pressure from the family on the individual couple choosing between marriage under civil and religious law, should not be underestimated. However, legal reforms can be an initial step to encourage the change of social norms. A crucial step in order to make marital law as such compatible with international human rights norms is thus not unachievable, provided that the political good will to conform to obligations under international human rights law is actually honest and true. Despite the significant impact an amendment of the Women's Charter would have on the status of women as a collective, would still merely be a first step. I am convinced that Muslim law as it is interpreted under the Shafii school and Malay customs

in Singapore today, gradually needs to be reformed in order for the state to achieve full compliance with its obligations under CEDAW and CRC.

# Supplement A

## Reservations made by Singapore Upon Ratification of CEDAW<sup>268</sup>

(1) In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.

(2) Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such laws and conditions governing the entry into, stay in, employment of and departure from its territory of those who do not have the right under the laws of Singapore to enter and remain indefinitely in Singapore and to the conferment, acquisitions and loss of citizenship of women who have acquired such citizenship by marriage and of children born outside Singapore.

(3) Singapore interprets article 11, paragraph 1 in the light of the provisions of article 4, paragraph 2 as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on work done by them where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of Singapore and considers that legislation in respect of article 11 is unnecessary for the minority of women who do not fall within the ambit of Singapore's employment legislation.

(4) The Republic of Singapore declares, in pursuance of article 29, paragraph 2 of the Convention that it will not be bound by the provisions of article 29, paragraph 1.

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<sup>268</sup> 'United Nations Treaty Collection – Declarations and Reservations' <[www.unhchr.ch/html/menu3/b/treaty9\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm)>, last visited 12 November 2004.

# Supplement B

## Reservations and Declarations made by Singapore upon ratification of CRC<sup>269</sup>

### Declarations:

(1) The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in article 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.

(2) The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit-

(a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore;

(b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or

(c) the judicious application of corporal punishment in the best interest of the child.

### Reservations:

(3) The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.

(4) Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such legislation and

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<sup>269</sup> See 'Declarations and Reservations to the Convention on the Rights of the Child' <[www.unhcr.ch/html/menu2/6/crc/treaties/declare-crc.htm](http://www.unhcr.ch/html/menu2/6/crc/treaties/declare-crc.htm)>, last visited 12 November 2004.

conditions concerning the entry into, stay in and departure from the Republic of Singapore of those who do not or who no longer have the right under the laws of the Republic of Singapore, to enter and remain in the Republic of Singapore, and to the acquisition and possession of citizenship, as it may deem necessary from time to time and in accordance with the laws of the Republic of Singapore.

(5) The employment legislation of the Republic of Singapore prohibits the employment of children below 12 years old and gives special protection to working children between the ages of 12 years and below the age of 16 years. The Republic of Singapore reserves the right to apply article 32 subject to such employment legislation.

(6) With respect to article 28.1(a), the Republic of Singapore-

(a) does not consider itself bound by the requirement to make primary education compulsory because such a measure is unnecessary in our social context where in practice virtually all children attend primary school; and

(b) reserves the right to provide primary education free only to children who are citizens of Singapore.

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