

## CONSULTATION PAPER ON DRAFT WOMEN'S CHARTER (AMENDMENT) BILL 2016

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### Ministry of Social and Family Development (MSF):

#### **(I) Putting the child's interest first in divorce through a mandatory parenting programme for divorcing parents**

Currently, the law requires divorcing parents with a child below 21 years old to attend mandatory mediation and counselling at the Family Justice Courts after a divorce writ has been filed. This has helped many parties reach agreement on child matters in a less acrimonious way. However, more can be done to protect the interests of the child.

The proposed amendment will require divorcing parents with children below 21 years old to attend a mandatory parenting programme before they file for a divorce, unless they agree on the divorce and all ancillary matters. The programme aims to help the couples understand the importance of co-parenting and the practical issues (e.g. housing, finances, childcare arrangements and schooling considerations) arising from a divorce that impact their children.

The programme will be conducted by Divorce Support Specialist Agencies and implemented in phases, starting with those with children aged below 14 years. Parties may be ordered to attend any "family support programme or activity" at any stage of the divorce process in addition to the current mediation and counselling conducted by the courts if the court considers that it is in the interest of the parties or their children to do so.

#### **SCWO's comments:**

Mandatory counselling prior to divorce is important as it further strengthens the mechanisms put in place to protect children when their parents intend to undergo divorce by ensuring their interests are prioritised above the parties' acrimony and material concerns.

While we welcome the proposed Mandatory Parenting Programme for Divorcing Couples, it should be noted that this kind of programme may not be appropriate when there has been family violence and when one parent feels unsafe around the other. As many studies on violence have indicated, the period between the separation and divorce can be the most dangerous time for the victim, even in instances where domestic violence has not previously been present.

We recommend that measures are put in place to support the attendance of parents without putting them in danger. This could be done i.e. by allowing spouses to attend the programme separately if there has been family violence or threat of violence in the past.

We also recommend post-divorce counselling where the terms of orders with respect to care and control and access are explained to parties as well as children who are old enough to understand these orders.

## Ministry of Social and Family Development (MSF):

### **(II) Maintenance of incapacitated men who cannot work**

Currently, the Women's Charter provides for a man to maintain his wife/ex-wife during marriage/after divorce. There have been calls over the years, including during last year's Family Justice Committee's public consultation exercise in 2014, to extend spousal maintenance to men in the same manner as for women.

Feedback from stakeholders however indicates that our society is not ready to accept that women have the same responsibility as men to support their spouse/ex-spouse. Nevertheless, it is acknowledged that there is a small group of incapacitated men who need support from their wives or ex-wives.

The proposed amendment will enable the Court to order maintenance for this small group of men who must be incapacitated by physical or mental disability or by illness. It must be severe enough such that they are unable to work. The incapacitation must have occurred during the marriage and not after the divorce. The men must also have no other means to support themselves. Support given to these men is in line with our philosophy of family as the first line of support, and the mutual help expected of spouses.

There have been concerns raised by women on whether they can afford to maintain their husbands or ex-husbands while struggling to provide for their children on a single income. As with maintenance for a wife, the Court will consider all the circumstances of the case, including a wife's financial circumstances and needs of the children, before ordering maintenance for an incapacitated husband or ex-husband.

### **SCWO's comments:**

Although SCWO represents women's organisations, we support fair policies which provide for equal Space, equal Voice and equal Worth for women. With this, must come the equal responsibility to the family, whether it is in financial terms or in terms of care-giving. The circumstances or factors of each case will still be carefully looked at by the Court and we do not expect to see a sudden surge in applications, save in the most deserving of cases.

It shows that there is recognition that in some circumstances, women may be financial able to and should provide for their less fortunate spouse or ex-spouse. Obviously, it would help if there is more gender wage parity and men take on more responsibilities in parenting and care-giving, which still seems to be seen as a mother's responsibility. Equality must not be seen as an abstract concept, but needs to be grounded in the reality of fair application.

### **Criteria**

Having said that, we note the difference in criteria for maintenance where the spouse or ex-spouse is a woman as it takes into account her behaviour under section 69. We would propose that this also be taken into account in the case of spousal maintenance for husbands and ex-husbands. In other words, whilst incapacity coupled with inability to work is a condition which may entitle the husband or ex-husband to claim maintenance, other

factors such as his financial resources, the age of the parties as well as the duration of the marriage, contributions to the marriage, standard of living of the parties and conduct of the parties also be relevant considerations.

### **Exclusion of Muslim men**

We note that the applicability of this provision is excluded in the case for the spouse or ex-spouse is a Muslim man. Our member organisation, Singapore Muslim Women's Association, PPIS (Persatuan Pemudi Islam Singapura) has made the following observations on this, which we wish to place for consideration with its consent:

#### *Muslim Tradition – Maintenance after dissolution of marriage*

1. After divorce, ex-husband will be responsible to provide wife maintenance during her *`iddah* (waiting period - 90 days) and if there are any children in the family then he will be responsible for their expenses.
2. Women in Islam are supposed to be maintained by their legal guardian. After divorce, the ex-husband is no longer the woman's legal guardian, hence he is not obliged to give her maintenance / alimony after three months, as the divorced woman is supposed to return to her family and be maintained by her father / brother or whoever is her legal guardian.
3. However, Islam can provide for maintenance / alimony beyond three months for a divorced woman by her ex-husband, depending on the circumstance and situation. For example, the situation may be different today where many women live by themselves and don't have a legal guardian. The opinion on this issue is that the Qur'an often does not give legislation that is considered to be permanent and instead deals with material emending the conditions of that time (*ijtihad*- legal reasoning).
4. The above tradition can also be reversed to apply to the women in extending its maintenance to the ex-husband on the circumstance and situation.
5. Compassion is central to Islam and represents the religion's spirit.
6. Hence compassion is far more vital to Islamic teachings than anything else. Islam also embraces *rahmatan lil `alamin* (mercy of the worlds). Thus a true Muslim follower has to be merciful and as compassionate as humanly possible.
7. The Muslim's attitude is so compassionate towards all human beings that even in the matter of *wasiyyah* (i.e. making a will) it advises that if apart from your relatives, someone needy is present at that time make some provision for them also. Also, the word *sadaqah* for charity, is derived from the root *sidq*, which means truthfulness. Real charity (*sadaqah*) is one, which is done with sincerity and truthfulness. It is the condition of a human person, rather than his/her religion that should move us to help. Compassion is the best quality one can have towards other creatures, particularly towards other human beings. It is suffering which is most fundamental not one's religion, language or race.

#### *Proposed maintenance for incapacitated men who cannot work*

8. Based on the above explanation, the two uppermost objectives of compassion (*rahmah*) and guidance (*huda*) seek to establish justice, eliminate prejudice, and alleviate hardship. The laws of Islam also seek to promote cooperation and mutual support within the family and the society at large. Justice itself is a manifestation of mercy as well as an objective of the *Shari'ah* in its own right. Compassion (*rahmah*) is manifested in the realisation of benefit (*maslahah*), which the scholars have generally considered to be the all-pervasive value and objective of the *Shari'ah*, and is to all intents and purposes synonymous with *rahmah*.

9. The proposed amendment allowing the Court to order maintenance for men who are incapacitated by physical or mental disability or by illness, which must be severe enough such that they are unable to work, is consistent with the above spirit. Provided that all steps and processes are put in place to ensure that the women or the ex-wives are not subjected to any form of injustice and prejudices.

10. The conditions under which a woman is expected to maintain her incapacitated husband or ex-husband have to be carefully administered before imposing the order of maintenance for an incapacitated husband or ex-husband. Equally important, is to emphasise the duties or shared responsibility of the family.

*For the drafting committee's consideration:*

- a. Duration for the maintenance.
- b. Option for wife to stop the order.
- c. Right to request court to review the order or transferred the order to the children, immediate family or the state.
- d. In cases where wife remarries, approval of the new spouse to be solicited.

*Other remarks*

12. No religion can ignore the role of custom and time. As humankind has evolved from tribal to modern societies, the duties of the parents, or the expectation that maintenance must only be a duty to the men, has dwindled.

13. Each country has a set of legal norms, dictated by the interpretation of its scholars in law, ethics, human rights, etc., and that these laws are made for the betterment of society as a whole. If Muslims choose to live in a society where there are laws that govern, then the Muslim automatically becomes subject to such law.

### **Ministry of Social and Family Development (MSF):**

#### **(III) Enhancing protection for women, girls, residents at places of safety and professionals engaged in protection work**

Based on inputs from VWOs and professionals, protection for victims in family violence or crisis situations, as well as the professionals who assist them, can be strengthened. The proposed amendments will:

- (a) Prohibit the publication of information (i) relating to places of safety to enhance the safety of victims, staff and professionals working with victims; and (ii) on proceedings in camera in certain cases;*

Places of safety provide temporary emergency shelter to victims of family violence and their family members, and other individuals in crisis. Victims, staff and professionals working at the places of safety may face threats to their safety, as some perpetrators of violence may try to seek out their victims to harass, intimidate, or harm them.

The proposed amendment will prohibit any person from publishing or broadcasting any information that would reveal, or is likely to identify a place of safety and its residents (e.g. newspaper, and social media). Those who breach this provision will be liable to a fine.

The proposed amendment will also prohibit the publishing or broadcasting of information on social media, pertaining to Court proceedings in camera in certain cases under the Women's Charter, which may lead to the identification of the woman or girl in the proceedings. This is in addition to the current prohibition to broadcast or publish such information in newspaper reports.

- (b) Provide other care options for women and girls in need of protection apart from placing them in places of safety or children's homes; and*

Currently, the Director of Social Welfare (DSW) may make orders to place women and girls in need of protection in shelters and children's homes, while the circumstances of the case are being investigated. To provide more community-based care options, the option to commit a woman or girl requiring protection to the care of a suitable "fit individual" will be introduced. A "fit individual" may include a relative or close friend. This will apply for situations where it may not be safe for the women or girl to stay with her immediate family.

- (c) Protect professionals against lawsuits or other legal proceedings in personal capacity for actions taken in good faith when carrying out court orders or statutory responsibilities under Part VII and XI of the Act.*

There is currently no statutory protection in the Women's Charter for professionals (e.g. social workers) against lawsuits or other legal proceedings in their personal capacity when they undertake actions in good faith when carrying out a court order or under the direction of the DSW. A new provision will be introduced to protect professionals against lawsuits or other legal proceedings when carrying out court orders or statutory responsibilities, which were done with reasonable care and in good faith.

- (d) Empower married or previously married persons below the age of 21 years to apply for a protection order and expedited order for themselves and specific dependants.*

Presently, family violence victims who are below 21 cannot apply for a protection order for themselves. The application can only be made by their guardian, a relative

or a person responsible for their care, or by any person appointed by the Minister. The proposed amendment will enable a married or previously married person (i.e. widowed or divorced or whose marriage was declared null and void) below 21 years of age to seek protection against family violence for themselves, their children (biological and stepchildren) and relative's children who are in their care.

### **SCWO's comments:**

As SCWO runs a shelter, we welcome the proposed amendments enhancing protection for women, girls, residents at places of safety and professionals engaged in protection work. This is to ensure that the very provision of such services does not compromise the safety of our residents and staff and that proper safeguards are in place.

We also welcome the proposed lowered age limit for personal protection orders.  
(See also comments under section VIII regarding allowing third parties to apply for PPO/EO for a victim of violence.)

### **Ministry of Social and Family Development (MSF):**

#### **(IV) Voiding a marriage that is a marriage of convenience under section 57C of the Immigration Act**

Section 57C in the Immigration Act makes it an offence to enter into a marriage of convenience for immigration advantage (MOC). The proposed amendments will void a marriage that is an MOC under section 57C. The marriage will be deemed void if either party to a marriage is convicted of the immigration offence in respect of the marriage. MSF also proposes to require a person who has a prior MOC conviction to make a statutory declaration on the MOC conviction when he/she applies for a marriage licence to marry thereafter. This allows the future spouse to make an informed choice about the person he/she intends to marry.

### **SCWO's comments:**

This provision is in line with need to protect marriage as an institution from being exploited for a collateral purpose.

### **Ministry of Social and Family Development (MSF):**

#### **Other administrative amendments**

#### **(V) Electronic Register**

16. The Registrar of Marriages maintains a register of duly signed marriage certificates in book form. To overcome the challenge of storage of the physical marriage certificates that have accumulated over the decades, an amendment is proposed to allow ROM to maintain an electronic register.

### **SCWO's comments:**

No comments.

**Ministry of Social and Family Development (MSF):**

**(VI) Taking a child under a custody order out of Singapore**

Currently, a person shall not take a child who is the subject of a custody order out of Singapore without the consent of both parents or the permission of the court. This prevents an access parent from taking the child out of Singapore without the consent of the custodial parent. As the Court may make a care and control order without a custody order, an amendment is proposed such that a child who is the subject of a care and control order cannot be taken out of Singapore without the consent of both parents or the permission of the court.

**SCWO's comments:**

We support this proposal as being in line with the position with respect to custody.

**Ministry of Social and Family Development (MSF):**

**(VII) Family Justice Rules**

Currently, proceedings under Part VII for protection orders and under Part VIII for maintenance orders are governed by the Criminal Procedure Code (CPC). The proposed amendment will provide that the Family Justice Rules would prescribe which provisions of the CPC and other written laws would apply for proceedings under Parts VII and VIII.

**SCWO's comments:**

**On Personal Protection Order (PPO) and Expedited Order (EO)**

We request that the definition of "family" will be broadened to include long term partners in de facto relationships. This is to allow partners who are not married and e.g. co-habiting to apply for PPO / EO in situations of violence too.

We also recommend that the Women's Charter be amended to allow Police, or an approved NGO or social worker to apply for a Personal Protection Order / Expedited Order on a victim's behalf. This could be with the victim's consent, or where the victim does not object to the application. Applications made by third parties could help to shift the responsibility away from the victim. Furthermore, this could help to e.g. improve the safety of those women and girls staying at shelters or other places of safety.

**Ministry of Social and Family Development (MSF):**

**(VIII) Amendments to the Women's Charter (Registration of Marriages) Rules**

**Extending the mandatory Marriage Preparation Programme to marriages where at least one party is a minor**

In 2011, the Women's Charter and the Women's Charter (Registration of Marriages) Rules were amended to require couples intending to marry to attend a Marriage Preparation Programme before a marriage license can be issued if (i) at least one party is below the age of 18 years old; or (ii) both parties are minors aged 18- 21 years old.

MSF recently released its findings on "Dissolution of Marriages among Marriage Cohorts, 1987-2012". One key finding was that marriages involving younger grooms, regardless of the age of the bride, were particularly vulnerable to divorce. MSF hence proposes to extend the mandatory Marriage Preparation Programme to all marriages where one party is aged 21 years and below. The Marriage Preparation Programme will help minors to be better prepared to cope with the responsibilities that come with marriage, hence helping their marriage to start on a stronger foundation. This will involve an amendment of the Women's Charter (Registration of Marriages) Rules.

**SCWO's comments:**

We support this proposal.