

Why we need a Gender Equality Tribunal

A Policy Brief by Women's Aid Organisation (WAO), August 2017

Summary

- A Gender Equality Tribunal will **improve access to remedies and justice** for persons being discriminated, through a less costly and quicker process, and resolutions based on balance of probabilities.
- A Gender Equality Tribunal ensures a **more gender sensitive approach** in handling gender inequality cases, thereby enabling effective administration of justice.
- The Tribunal would **improve compliance with and enforcement of the Gender Equality Act**.

1. A Gender Equality Tribunal will **improve access to remedies and justice** for persons being discriminated, through a less costly and quicker process, and resolutions based on balance of probabilities.
 - The **regular court process can be slow and costly** in handling gender equality cases. This dissuades victims of gender discrimination from pursuing cases. A European Union report shows that while people can access courts, the overall level of gender equality litigation is still low in many states. The study also found a general lack of faith in regular courts and the legal system.¹
 - A **Tribunal process would be simpler and cheaper, and would resolve cases on the balance of probabilities, improving access**. A comparative analysis of equality bodies in the European Union shows that victims of gender discrimination feel more confident to complain to gender equality ombudspersons and tribunals in less formalistic proceedings at no cost rather than going to court.²
2. A Gender Equality Tribunal ensures a **more gender sensitive approach** in handling gender equality cases, enabling effective administration of justice.
 - Courts may lack the expertise on gender equality concerns, which leads to weak enforcement of gender equality laws and principles.^{3, 4}
 - A specialised tribunal would **ensure a more gender sensitive approach in the handling of gender inequality cases**.
 - This would **encourage more victims of gender discrimination to seek redress** and ensures effective administration of justice for these victims. This would also help **develop the jurisprudence on gender discrimination**.⁵

¹ European network of legal experts in gender equality and non-discrimination (2016). A comparative analysis of gender equality law in Europe 2015'. European Commission.

² Ibid

³ Ibid

⁴ LEAF, a non-profit Canadian organisation, noted the discrepancies in courts handling of gender equality cases due to a lack of understanding of gender concerns and principles of substantive equality. LEAF was founded in 1985 by feminist lawyers to ensure Canadian courts protect the gender equality provisions in the Canadian *Charter of Rights and Freedoms*. Since 1985, LEAF has intervened in over 90 cases which helped advance substantive equality for women and girls in Canada.

- Additionally, a **specific Tribunal for gender discrimination is needed**. The Equality and Anti-Discrimination Tribunal in Norway decides the overwhelming majority of discrimination cases in the country and between 1985 and 2008, only 28 cases on gender-based discrimination were judged in court.⁶

"As a matter of principle, where there is a right there must exist a right of access to court or tribunal, so that any person who feels that his rights or liberty has been infringed or violated ... may bring the matter to court or tribunal for adjudication. If there is no such recourse open to the aggrieved person, then the right is devoid of any meaning or effect. It is merely illusory."

- Tan Sri Arifin Zakaria, former Chief Judge of Malaya, 9 February 2011 at the 17th Commonwealth Law Conference, Hyderabad, India.

3. The Tribunal would **improve compliance with and enforcement of the Gender Equality Act**

- The written law may not be enough to guarantee rights – **there must be mechanisms that ensure these rights are enforced**. The European Union report noted that despite the provision of rights through gender equality laws, effective enforcement of these rights is hampered by the length and cost of legal proceedings that they risk becoming mere paper entitlements.⁷
- A specialised tribunal that deals with cases related to gender inequality would **enforce the rights and protections provided by the Gender Equality Act**.
- The proposed Gender Equality Commission would also be able to refer cases to the tribunal, thereby providing an avenue for the commission to ensure that its decisions are complied with.

Legal aid is not sufficient to ensure access

- Legal aid for low-income persons is important to ensure access to justice.
- However, there are very specific conditions that need to be met for a victim to even qualify for legal aid.
- Additionally, even if a victim manages to qualify, the length of court proceedings and the psychological strain are still barriers.

Examples of existing tribunals in Malaysia (non-exhaustive list)

1. Tribunal For Consumer Claims Malaysia
2. The Tribunal for Homebuyer Claims
3. Valuation Tribunal
4. Commissioner of Income Tax and Disciplinary Committees and Tribunals

⁵ Abdul Aziz, Z. (2008). Mechanisms to Promote Gender Equality in Malaysia: The Need for Legislation. Women Living Under Muslim Laws Dossier 29, [online] p.92. Available at <http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/dossier29/dossier29-en.pdf> [Accessed 17 Aug. 2017].

⁶ The Equality and Anti-Discrimination Ombud's Report to the Pre-session of the CEDAW by Norway's Ombudsperson for Gender Equality http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/rapporter_diverse/cedaw_report.pdf

⁷ European network of legal experts in gender equality and non-discrimination (2016). A comparative analysis of gender equality law in Europe 2015'. European Commission.