

SUHAKAM's Input for XI Session of the Open-ended Working Group on Ageing

Focus Area: Access to Justice

National legal framework

1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

Article 8 (1) Malaysian Federal Constitution guarantees equality for all before the law and equal protection of the law for all. In addition to seeking redress or the courts and administrative tribunals, older persons may file complaints through the Social Welfare Department, the Public Complaints Bureau or the Kasih Helpline.

Availability

2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?

In addition to courts now operating in most major cities and towns in Malaysia, the Malaysian Judiciary has set up mobile courts to provide better access to justice for people in more remote areas of the country. Administrative tribunals e.g. the Consumer Protection Tribunal and the Industrial Court, which are less formal and less adversarial but aim to provide redress in more specific areas of law, have also been widely set up around the country to enable better access to justice and dispute resolution for people of all ages.

Accessibility

3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?

Most courts and tribunals are equipped with special ramps, rails, parking and lifts for older and disabled persons. However, communication aids such as interpreters and devices to assist older and disabled persons, though available, are still insufficient.

4. What are the existing provisions to guarantee legal assistance for older persons?

There is no existing law that specifically guarantees legal assistance for older persons. However, older persons may seek legal assistance through laws such as the Legal Aid Act 1971 by applying for legal aid through the Social Welfare Department and the Legal Aid Department. The Legal Aid Department has branch offices in all states in Malaysia and provides mediation services. Alternatively, the Malaysian Bar also has a Legal Aid Centre

with desk at the state bar committees and the Syariah judicial authorities in some states also offer legal aid services in relation to Syariah cases. These legal aid mechanisms do not specifically give privileges for older persons in terms of legal assistance, but they are age neutral. Similarly, abuse and domestic violence against older persons may also amount to criminal offences under laws e.g. Penal Code and Domestic Violence Act 1994.

5. What are the specific challenges encountered by older persons in accessing justice and remedy in your country?

There is no law that specifically protects older persons in Malaysia including against discrimination. However, unless expressly provided otherwise (e.g. under the Employees' Social Security Act 1969), most written laws in Malaysia aimed at protecting human rights are age neutral. Therefore, there is nothing to restrict older persons from accessing justice and seeking redress through and within the parameters of these laws. For example, if the older person is an employee within the meaning and scope of the Employment Act 1955, he/she may lodge employment-related complaints to the Labour Department. In addition, older persons may seek redress and access justice through common law e.g. tort action. Nevertheless, legal awareness is low in Malaysia and the said legal aid mechanisms have been plagued with systemic issues.

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

The Government initiated the Kasih 15999 hotline which is operational 24 hours all year round. Older persons may call the hotline to make request for assistance in various matters including legal assistance.

Equality and non-discrimination

7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?

The Government is developing an Older Persons Bill, which should address these issues.

8. Please specify existing public policies and awareness-raising and capacity building programmes established for justice system personnel to address the negative impacts of ageism and age discrimination in justice system.

The National Policy and Action Plan for Older Persons 2011 chaired by the Ministry of Women, Family and Community Development aims to empower individuals, families and the community to provide effective and efficient elderly-friendly services, and to ensure a supportive and enabling environment for the well-being of older persons.

Accountability

9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place

to address any discrimination against older persons committed by justice system professionals.

There is no specific oversight mechanism to address discrimination against older persons by justice system professionals. However, the Judicial and Legal Service Commission serves as the disciplinary authority for judicial and legal officers in the country, in accordance with the Public Officers (Conduct and Discipline) Regulations 1993. Similarly, officers and staff of administrative tribunals would be subject to disciplinary regulations and authorities governing public officials in their respective sectors.