

Applying CEDAW to Address Discrimination in the Workplace⁴⁴

The plaintiff applied for a position as a temporary teacher or *Guru Sandaran Tidak Terlatih* (GSTT) with the Education Office of the Hulu Langat District (PP DHL). After completing the interview, the plaintiff was given a Placement Memo on 12 January 2009, signifying that she was accepted for the position. However, when a PP DHL officer subsequently learned of her pregnancy, the Placement Memo was withdrawn. The main issue in this case was whether refusing the employment of a pregnant woman was gender discrimination, in violation of Article 8(2) of the federal constitution of Malaysia.

The court explained that the word 'gender' was incorporated into Article 8(2) of the federal constitution precisely to comply with Malaysia's obligation to CEDAW. Hence, in interpreting this constitutional provision, it is "the court's duty to take into account the government's commitment and obligation" under CEDAW. According to the court, Articles 1 and 11 of the Convention, which prohibit employment discrimination against women, were applicable in this case. Withdrawing employment on the ground that the plaintiff is pregnant is a form of gender discrimination. Hence, the act is unconstitutional, unlawful and void.

The court held that discrimination on the basis of pregnancy is a form of gender discrimination because of the basic biological fact that only women have the capacity to become pregnant. To uphold the principle of gender equality codified in both the national constitution and CEDAW, the court stated that the plaintiff should have been entitled to be employed as a GSTT even if she was pregnant. As discussed previously, the court also ruled that there is no impediment for the court to refer to CEDAW in interpreting the Constitution since it is a treaty in force, to which Malaysia is a State party.

CEDAW Optional Protocol: Addressing Gender Stereotyping in Rape Trials⁴⁵

In the case of *Karen T. Vertido v. Philippines*, the plaintiff, a 42-year-old woman who was the executive director of a local chamber of commerce filed a complaint for rape against a 60-year-old businessman who was a former president of the chamber. He offered to bring the complainant home after an official function of the chamber. En route to the complainant's house, the accused drove to a motel and raped her. The complainant tried to escape; she even hid in a bathroom, pleaded with the accused, physically struggled, dissociated, and lost consciousness.

The crime was committed in 29 May 1996 and reached the court in November 1997. After eight years of litigation, a female judge – the last of four judges that heard the case – rendered a decision of acquittal in 2005. The decision of acquittal is final and bars any appeal because of the doctrine of double jeopardy. A Communication regarding the case was filed before the CEDAW Committee under the Optional Protocol, to which the Philippines is also a State party. The CEDAW Committee released its views on 1 September 2010.

44. Presentation of Edmund Bon, Legal Counsel in the case of *Noorfadilla Ahmed Saikin v. Chayed Bin Basirun, et. al*, 5 September 2013

45. Presentation of Evalyn Ursua, Legal Counsel in the case of *Vertido v. Philippines*, 5 September 2013