

EXECUTIVE SUMMARY

On 28 April 2012, thousands of people took to the streets in Bersih 3.0, the biggest mass opposition rally in Malaysia's history. The protests, organised by the Coalition for Clean and Fair Elections (BERSIH – meaning “clean” in Malay), demanded changes to Malaysia's electoral system, which in their view favours the Barisan Nasional (BN) ruling coalition which has been in power since 1957 when Malaysia gained independence. A previous rally, Bersih 2.0 Walk for Democracy, took place on 9 July 2011. Both rallies were violently suppressed by the government. The Bersih movement started in 2007 and since then has insisted that Malaysia needs a cleaning operation to ensure equal political rights in deciding the country's future.

In recent years, a number of high-profile human rights issues in Malaysia have caught international attention, including the treatment of political opponents and protesters, the banning of the Seksualiti Merdeka Festival, the treatment of refugees and the situation of domestic workers. A fundamental aspect of all of these issues is the discrimination experienced by the affected groups.

Part 1: Introduction

Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in Malaysia and make recommendations on combating discrimination and promoting equality as a fundamental human right and basic principle of social justice. It explores long-recognised human rights problems within Malaysia, and also seeks to shed light upon less well-known patterns of discrimination. This is the first report that brings together evidence of the lived experience of discrimination and inequality in Malaysia on a wide range of grounds, including race and ethnicity, sex, religion, sexual orientation, gender identity, disability, citizenship and political opinion, and an analysis of the laws, policies and institutions established to address discrimination and inequality.

The report comprises four parts. Part 1 sets out the conceptual framework which has guided the authors' work as well as the methodology used during the research process. It then provides an overview of the demographic, eco-

conomic, social, political and historical context of discrimination and inequality in Malaysia. Part 2 discusses the principal patterns of discrimination and inequality affecting different groups in Malaysia. Part 3 analyses the legal and policy framework as it relates to discrimination and inequality. Part 4 contains conclusions and recommendations, drawn from an analysis of both the patterns of discrimination and inequality examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

Conceptual Framework and Research Methodology

The conceptual framework of this report is the **unified human rights framework on equality** which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation, inconsistencies and gaps in the field of equality law, policies and practices. The unified human rights framework on equality is a holistic approach which, while keeping in view the specificities of the different strands of equality and the different types of disadvantage, seeks more effective implementation of the right to equality through highlighting also the overarching aspects of these different strands and types. The unified framework brings together inequalities based on different grounds, such as age, race, gender, religion, nationality, disability, sexual orientation and gender identity, and inequalities in different areas of life, such as the administration of justice, employment, education, and provision of goods and services.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world.

ERT and Tenaganita have been working in partnership, since 2009, on a project designed to empower civil society to combat discrimination and inequality in Malaysia. This report presents some of the results of their work. Throughout the project, the partners have undertaken research on discrimination and inequality by gathering direct testimony during field missions, as well as reviewing research conducted by others. They have also analysed the legal and policy framework related to discrimination and inequality in Malaysia. This partnership between an international and national organisation

has had a number of benefits, including enabling the use of both local and international sources and ensuring that research is both properly responsive to the local context and based on comparative international experience.

Country Context, Government and Politics

Part 1 further provides an overview of the demographic, economic, social, political and historical context of discrimination and inequality in Malaysia. Some of the key background points include:

- Malaysia, located in Southeast Asia, consists of 13 states and three federal territories divided between Peninsular Malaysia and East Malaysia, which are separated by the South China Sea.
- According to 2010 data, it is the 67th largest country in the world, comprising a total land area of 330,803 sq km and providing home to approximately 28,250,000 people.
- The capital city is Kuala Lumpur, and Putrajaya is the seat of the federal government.
- Malaysian citizens consist of the ethnic groups Bumiputera (67.4%) which includes Malays and others native to Malaysia, Chinese (24.6%), Indians (7.3%) and others (0.7%). Among Malaysian citizens, Malays make up the predominant ethnic group in Peninsular Malaysia (63.1%). The indigenous Iban constituted 30.3% of the total population in Sarawak, while the indigenous Kadazan-Dusun made up 24.5% in Sabah.
- The country's official language is Bahasa Malay, but English, various dialects of Chinese, Tamil and other languages are also spoken.
- Islam is the most widely professed religion in Malaysia, accounting for 61.3% of the population. Other major religions practised are Buddhism (19.8%), Christianity (9.2%) and Hinduism (6.3%).
- There is a strong relationship between race and religion in Malaysia. The majority of Malays are Sunni Muslims. The indigenous groups from Peninsula Malaysia, Sabah and Sarawak are Christians or Muslims. Most Indians are Hindus, while the Chinese are generally Buddhists or Christians.
- Widely referred to as a new economic Asian Tiger, Malaysia has a strong economy and has recovered well from the world economic crisis of 2008-

2010. Malaysia's GDP for 2010 was US \$237,804 million, placing it in 35th place on the GDP list produced by the World Bank.

- The United Nations Development Programme ranked Malaysia in 61st place in its Human Development Index for 2011.
- Malaysia's Gini coefficient for 2011, measuring inequality in the distribution of wealth, was 46.2. The ratio of the average earnings of the richest 20% to those of the poorest 20% was 11.4.
- Malaysia is a constitutional monarchy which achieved its independence from the British Empire in 1957. The parliamentary system of government is based on the Westminster model but with significant modifications. One such modification is that, unlike the British Parliament, the Malaysian Parliament is not supreme; it is governed by a written constitution.
- At the federal level, the government is headed by a King, the Yang Di Pertuan Agong, who is elected by, and from among, the hereditary rulers of the nine states of Peninsular Malaysia – “the Conference of Rulers” – for a five year term and with limited executive powers, acting on the advice of the Prime Minister in most matters.
- The federal legislative branch consists of a bicameral Parliament with an upper house (the Senate) made up of appointed Senators and a lower house (the House of Representatives) made up of elected representatives.
- Since independence from the British Empire in 1957, Malaysia has been governed without interruption by the Alliance Party, later renamed the National Front or Barisan Nasional (BN), currently a coalition of 13 parties dominated by the United Malays National Organisation. Currently, there are two major political formations: BN and the People's Alliance, or Pakatan Rakyat (PR), which is the opposition coalition.
- The Prime Minister is the leader of the majority party represented in the House of Representatives and is considered to be the most powerful political authority. Since April 2009, Najib Tun Razak has been the Prime Minister of Malaysia – the sixth since independence.
- The judicial system in Malaysia is characterised by a dual legal system which comprises a system of civil and criminal courts and a separate system of Syariah courts for matters related to Islamic law. The Federal Constitution of Malaysia contains certain provisions to ensure an independent judiciary.
- In addition to the civil law and Syariah law systems, the states of Sabah and Sarawak also have systems of native customary law.

Part 2: Patterns of Discrimination and Inequality

Part 2 discusses patterns of discrimination and inequality in Malaysia. Based on analysis of existing research from a range of sources, including research undertaken by international organisations, governments, non-governmental organisations (NGOs) and academics, news reports and statistical data, as well as original direct testimony collected from a wide range of individuals, it seeks to identify the principal patterns of discrimination and inequality which affect people in Malaysia. It does not seek to create an exhaustive picture, but rather to provide an insight into what appear to be the most significant issues. In respect of each ground of discrimination, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, actions of state actors carrying out public functions, exposure to discriminatory violence and discrimination in areas such as employment, education and access to goods and services.

The study of the prevailing patterns of inequality has identified several **cross-cutting issues** specific to the Malaysian context: the first is the pervasive **importance of ethno-religious identity** which impacts upon all areas of life, not least as a result of the close alignment between race, religion and politics. The second is the role played by the **dual legal system**, according to which civil law and Syariah law operate in parallel and Muslims and non-Muslims are subject to different laws, particularly in the areas of family and criminal law. Furthermore, **Syariah law**, although enacted at state rather than federal level, creating different treatment of Muslims living in different Malaysian states, on the whole exerts a conservative influence on social attitudes and practices, particularly on the role of women in society and in the family, the freedom to choose one's sexual partners, or the upbringing of children. Conservative attitudes provide a context in which discrimination against non-conforming individuals occurs in all areas of life. The third cross-cutting issue is the determinative **role of poverty** as a factor reinforcing or underlying the experience of most of the patterns of discrimination identified. The severity of discrimination experienced by individuals and groups is usually directly related to their socio-economic standing or power position. For example, poverty among migrant workers is both a cause and a consequence of their disadvantaged, powerless status. Finally, the patterns of **political discrimination** typical of Malaysia reveal a strong democratic deficit that sets this country apart from societies in which equality is integral to a democratic political framework.

Racial and Ethnic Inequalities

Race and ethnic relations are central to any discussion of discrimination and inequality in Malaysia. Race and ethnic relations have long played a key role in the politics, economy, society and culture of Malaysia, with the preferential treatment of the Bumiputera dating back to the British colonial era. The more favourable treatment of Malays and natives of Sabah and Sarawak (collectively referred to as the Bumiputera – “sons of the earth”) “and the legitimate interests of other communities” became constitutionally permitted by Article 153 of the Federal Constitution, and implemented through the New Economic Policy and subsequent economic policies intended to “reduce and eventually eliminate the identification of race with economic function”. While the impact of such policies is contested, some argue that in practice the principal beneficiaries have been a growing ethnic Malay middle class. As a result, other ethnic groups, including the Chinese, Indian and some indigenous communities, experience discrimination in the fields of education, employment, housing and political participation. Schools and universities in Malaysia are on the whole segregated along racial lines, primarily as a result of the use of Malay as the language of instruction in public schools. Vernacular national type schools and students are disadvantaged by the unequal financial support provided by the government which favours Malay schools and students. Within the employment field, Malay employees dominate the public sector as a result of affirmative action policies, and such policies have also led to preferential treatment of Malays in the housing sector. The Malaysian political process is also dominated by ethnic Malays who hold the most powerful senior leadership positions. Non-Malay political parties have been discriminated against through, for example, restrictions on their freedom of expression. Despite recent measures taken by the government, the continued lack of equal representation of ethnic groups within Malaysian politics serves to sustain the inequalities experienced in the other areas of life identified within this section.

Discrimination against Indigenous Groups

Further, this section identifies the discrimination and inequality faced by indigenous groups in Malaysia. It covers the main indigenous groups in Malaysia as (i) the Negrito, Senoi and Proto-Malay of Peninsular Malaysia, (ii) the indigenous peoples and ethnic minorities in Sarawak (including the Dayak, Bukitan, Bisayah, Dusun, Kadayan, Kalabit, Kayan, Kenyah (including Sabup

and Sipeng), Kajang (including Sekapan, Kejaman, Lahanan, Punan, Tanjong and Kanowit), Lugat, Lisum, Malay, Melano, Murut, Penan, Sian, Tagal, Tabun, and Ukit), and (iii) the indigenous peoples and ethnic minorities in Sabah (including the Kadazan-Dusun, Bajau and Murut). Indigenous groups in Malaysia face discrimination and inequality in relation to land rights, personal security, education, employment, birth registration, religious freedom and political participation. Despite the constitutional recognition of the customary laws which govern the native land rights of indigenous groups in Malaysia, other domestic legislation, including the Aboriginal Peoples Act 1954 and the Sarawak Land Code 1958 have encroached upon such rights. The result has been the termination of customary land rights, often in favour of oil palm plantations and logging companies. Indigenous groups have faced significant obstacles in challenging the loss of their lands. This section also highlights how the encroachment of such companies onto customary land has been accompanied by discriminatory violence and exploitation perpetrated by employees of these companies against primarily indigenous women, whose dependence upon such companies renders them vulnerable to such abuse. Indigenous communities are disadvantaged by a lack of physical access to places of education. Indigenous groups are also impeded in enjoying the social and economic benefits which accompany citizenship due to the obstacles they face in obtaining registration documentation. The marginalisation of indigenous groups in relation to the education system ultimately has implications for their ability to participate equally within the employment sector, and particularly the public employment sector.

Gender Inequalities

Malaysia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 5 July 1995. The impact of this is, however, limited by Malaysia's declaration that accession is subject to compatibility with the Malaysian Constitution and the Syariah law. Malaysia had also made a series of reservations undermining the application of CEDAW, some of which have been withdrawn in recent years. However, the remaining reservations (on Articles 9 (2), 16 (1) (a), 16 (1) (f) and 16 (1) (g)) leave women without equal rights in respect to passing nationality to their children, entering into marriage, and parental and family rights. Whereas the Constitution prohibits discrimination on the basis of gender, the Committee on the Elimination of Discrimination against Women in its 2006 comments expressed concern that neither the Constitution nor other legislation contains a defini-

tion of discrimination against women. This section first sets out those patterns of discrimination which appear to affect women in Malaysia in general, including in relation to gender violence, education, employment, health and political participation. It then addresses those patterns of discrimination in which an individual's gender combines with another characteristic – religion, ethnicity or place of birth – to form a pattern of multiple discrimination based on two or more grounds.

The Committee on the Elimination of Discrimination against Women and the Gender Gap Index have highlighted that there is still a lot of progress to be made before Malaysia can confidently state compliance with its obligations under CEDAW. Traditional customs and attitudes are arguably responsible for maintaining a disadvantaged position in society for women in general. Gender-based violence, including domestic violence, rape, sexual harassment, trafficking and female genital mutilation, is detailed in this section. Regarding education, despite overall progress on gender equality in education, not all categories of women have enjoyed such progress. Indigenous women continue to face disadvantage in relation to access to education. Further, the progress made with regard to access to education has not translated into improved equality for women in employment. There continue to be low levels of female participation in the labour force, particularly in high income and decision-making roles. Women face discrimination with regard to promotions and salary, and also in relation to health and safety in the workplace. Women also face unequal access to healthcare. In relation to citizenship rights, women are disadvantaged under Articles 14 and 15 of the Federal Constitution which restrict the right to become a citizen by “operation of law” to children who have a citizen father, which leaves children born with only a citizen mother to depend on the discretionary “registration” process. Further, whilst the Constitution makes provision for the wives and children of male citizens to be registered as citizens, no equivalent provision allows citizenship by registration for husbands and children of female citizens. As with the patterns of discrimination discussed previously, the lack of equal participation of women in the political process serves to sustain their unequal position in other areas of life.

Particular challenges are faced by Muslim women and women who live and work in the rural areas of the country. As a result of Syariah law in Malaysia, Muslim women face dual discrimination in some areas of life on the combined grounds of gender and religion. Such discrimination is most evident in the

context of marriage and family life which for Muslim women are governed by the provisions of Islamic family law. Such provisions serve to sustain the subordinate position of women within the Muslim family. Further, many provisions of Syariah criminal law are discriminatory against Muslim women, in relation to the particular crimes for which a Muslim woman may be punished and the form of punishment to which she may be subjected. Finally, the freedom of Muslim women to move around and dress as they choose is also restricted by locally imposed Syariah law. Indigenous and rural women also are disadvantaged, particularly in relation to employment.

Discriminatory Patterns Related to Religion

The right to equality requires that members of all religious and belief groups and those who do not subscribe to any religion should be able to participate in any area of economic, social, political, cultural and civil life on an equal basis. The main religions in Malaysia are Islam, Buddhism, Christianity and Hinduism, and there is a close relationship between race and religion. In carrying out research for this report, no statistics was found which disaggregate on the basis of religion data relating to education, employment, health care, etc. It is therefore not possible to draw precise conclusions relating to the impact which an individual's religion has on their ability to participate equally in these areas. Research has, however, identified patterns of discrimination in which an individual's religion impacts on their ability to practice that religion freely, change religion, and enjoy certain human rights.

Discrimination on the grounds of religion and belief in Malaysia affects members of all religious groups, including members of the majority Muslim community and the minority religious communities such as Hindus and Christians. However, Article 3(1) of the Constitution of Malaysia places Islam in a privileged position, which is reflected in other provisions of the Constitution. Restrictions have been placed on the religious freedoms of adherents to minority religions, which are considered to be "threatening" to the position of Islam, in order to protect the integrity of the official religion. Discrimination against non-Muslim religious groups has been practiced, including the destruction of Hindu temples; the arrest of Christians for allegedly trying to convert Muslims to Christianity; the restriction of Malay-language translations of the Bible and other printed materials; and violent attacks on non-Muslims. Non-Muslims are disadvantaged with respect to the financing of religious schools and religious education. Given the strong relationship be-

tween race and religion in Malaysia, such actions further compound the challenges identified above in relation to race discrimination. On the other hand, Muslims face restrictions which do not apply to other groups, including, most notably, their right to change religion and their freedom to engage in sexual relationships. Finally, there is belief-based discrimination against all Muslims who express beliefs not approved by official interpreters of Islam in respect of their right to participate in cultural life on an equal basis. Malaysia has therefore been unable to reconcile the position of Islam as the official religion with its obligation to protect the right to equality for members of all religions.

Discrimination Based on Sexual Orientation and Gender Identity

While the right to be free from discrimination on the grounds of sexual orientation or gender identity is not explicitly set out in any of the United Nations human rights treaties to date, the UN Human Rights Committee has confirmed that the prohibition of discrimination in Article 26 should be treated as including sexual orientation within the ground of “sex”. In addition, the Committee on the Elimination of Discrimination against Women to which Malaysia is a party has referred to “sexual orientation and gender identity” as prohibited grounds of discrimination. Further, the Committee on the Rights of the Child, which has responsibility for monitoring the effectiveness of the Convention on the Rights of the Child to which Malaysia also is a party, has confirmed that the rights of children under the Convention should be guaranteed without discrimination on the ground of, *inter alia*, sexual orientation. The rights of individuals to be free from discrimination on the grounds of both sexual orientation and gender identity have been clarified by the Yogyakarta Principles, which elaborate the application of international human rights law in relation to sexual orientation and gender identity.

The rights of LGBTI persons in Malaysia are seriously undermined by the formulation of sexual offences found in both Syariah and secular criminal law, which create a perception that same-sex relationships are criminalised, and an environment in which rights violations regularly occur. The Penal Code contains, as a legacy of British colonial rule, the offences of “carnal intercourse against the order of nature” and “gross indecency” (section 377). These provisions are enforced through practices that amount to criminalisation and discriminatory ill-treatment of LGBTI persons. While the secular courts of Malaysia appear disinclined to recognise the gender identity of transgender and transsexual persons, the Syariah crim-

inal legislation is plainly discriminatory on the ground of gender identity. For example, section 28 of the Syariah Criminal Offences (Federal Territories) Act 1997 prohibits any cross-dressing and is used to target transgender persons within Muslim Malay society.

Restrictions on the right to discuss LGBTI rights and a lack of statistical data showing the discrimination faced by members of this group present significant challenges for those seeking to promote the right to equality irrespective of sexual orientation and gender identity. However, the available qualitative evidence suggests that LGBTI persons suffer discrimination in relation to their personal security, recognition before the law, employment, freedom of expression and other rights, perpetuating the unequal position of these persons in Malaysian society. The extent of the discrimination and inequality faced by LGBTI persons has been starkly highlighted by the recognition by the governments of Australia and the United Kingdom of Malaysian transgender asylum-seekers as refugees due to the persecution they face as a result of their gender identity in their country of origin.

Disadvantages Suffered by Persons Living with HIV/AIDS

While there is limited information available regarding the ability of persons with HIV/AIDS to enjoy their rights in Malaysia, this section highlights a number of problems faced by this category of persons as a result of their health status. The evidence suggests that discrimination against persons living with HIV/AIDS has persisted in Malaysia. Interviewees alleged that discriminatory attitudes against persons living with HIV/AIDS are at the root of the state's failure to take effective measures to prevent the spread of the disease. There appears to be a lack of awareness and understanding of the nature of the disease and limited opportunities for this to be resolved, despite steps taken by the government to educate the public. Awareness-raising will therefore be key to stalling the continued discrimination against this disadvantaged group within society.

Inequalities Affecting Children

The Convention on the Rights of the Child (CRC) is one of the few international human rights treaties ratified by Malaysia, but its application is subject to compatibility with the Malaysian Constitution and several reservations have been made. Children across Malaysia experience discrimina-

tory violence and sexual abuse. Social attitudes and barriers in access to justice prevent children from accessing those mechanisms which exist to protect them. Child labour, child marriages, sexual exploitation, trafficking and prostitution are also deeply concerning. Particular groups of children, such as indigenous children, stateless children, asylum seeking children, and the children of migrant workers, experience specific additional forms of discrimination. The provisions of the Evidence Act 1950 are discriminatory against children on the ground of their age by failing to attach due weight to the testimony of children.

Inequalities Based on Disability

As a state party to the Convention on the Rights of Persons with Disabilities (CRPD), Malaysia must ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability and modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. Despite the Persons with Disabilities Act being passed in 2008, persons with disabilities in Malaysia continue to face real difficulties in accessing employment, education, housing, and public spaces and facilities. While the government does provide financial aid to persons with disabilities who earn less than a certain threshold, the sum is inadequate. Persons with disabilities in Malaysia experience varying degrees of disadvantage, depending on a number of factors. For example, children with disabilities living in remote areas do not have access to the same level of services as children living in other parts of the country.

Despite the lack of statistical data available, patterns of discrimination against persons with disabilities have been identified in the fields of education and employment. Education law in Malaysia is directly discriminatory against persons with disabilities. This is particularly notable in the Education Act (Special Education) Regulations 1997 which make a distinction between children who are “educable” and “non-educable” on the ground of disability. Children with disabilities are often segregated and taught in separate special classes within mainstream schools. Further, in the absence of official statistics, field research has uncovered evidence of the discrimination faced by persons with disabilities in the field of employment. The failure of the government to collect data regarding the par-

icipation of persons with disabilities in various areas of life represents, in and of itself, a denial of equality and a perpetuation of disadvantage for disabled persons, as without such evidence, it is very difficult to advocate or plan for improvements.

Discrimination against Non-citizens

This section identifies the patterns of discrimination faced by non-citizens in Malaysia – focussing on the experiences of asylum-seekers, refugees and migrant workers. Non-citizens suffer discrimination in respect to their fundamental rights, the patterns of which include violence, discriminatory detention and deportation, lack of access to justice, deprivation of family life, limited or non-existent health care, education and housing. Discrimination against non-citizens affects several categories within the non-citizen population, including asylum-seekers and refugees, who experience discrimination and disadvantage in the process of refugee status determination and employment, as well as migrant workers, of whom domestic workers are a particularly vulnerable section. Non-citizens are not covered by those provisions in the Constitution which enshrine the rights to equality and non-discrimination. They are also disadvantaged in relation to criminal justice (under Article 5 of the Federal Constitution), freedom of movement (under Article 9) and freedom of speech, assembly and association (under Article 10). Further, as a specific category of non-citizens, migrant workers are subjected to disadvantage as a result of discriminatory domestic legislation, including the Employment Act 1955 which does not offer the same protection to domestic workers as to other categories of workers, and the Workmen’s Compensation Act 1952 which excludes domestic workers from the right to receive compensation for workplace injuries and occupational illness. Finally, the Immigration Act of 1959-1960 hinders domestic workers from escaping abusive situations by imposing restrictive rules regarding work permits. The unprotected status of non-citizens is reflected throughout Malaysia’s legal framework, which does not contain the legal recognition of refugees, does not accord migrant workers key rights under employment legislation, and, through its immigration rules, creates a situation of extreme vulnerability amongst migrant workers.

As a result of this discrimination in the legal system, migrant workers are exposed to discrimination in all areas of life. Asylum seekers and others found to have committed immigration offences are subject to detention in appalling conditions. The actions of the Malaysia People’s Volunteer Corps, or Ikatan

Relawan Rakyat Malaysia (RELA), a voluntary body of citizens who enforce local security alongside law enforcement authorities and assist the Immigration Department in the arrest of illegal immigrants and in the administration of Immigration depots, are particularly concerning in this regard, as well as the conditions and the treatment of migrants in immigration detention. Some migrant workers are vulnerable to inhuman and degrading treatment owing to their situation of bonded labour. All non-citizens face insurmountable hurdles to accessing economic and social rights, and significant restrictions on their ability to enjoy a family life. Finally, their lack of rights under the law means that non-citizens are deprived of any meaningful redress.

Discrimination on the Basis of Political Opinion

The picture of inequalities in Malaysia would be strongly distorted without an understanding of discrimination based on political opinion. The main patterns of politically-based discrimination are related to voting rights and other political participation rights, arbitrary detention on political grounds, freedom of association and assembly, and freedom of expression. Given the strong alignment of political parties with race and religion, this form of discrimination intersects and overlaps with ethnic and/or religious discrimination and this makes it difficult to disentangle the causal factors. This report has revealed the extreme lengths to which the government will go in order to suppress opinions which are seen as “opposing” it, or which are viewed as “seditious”, through raising obstacles to equal political participation, using arbitrary detention, and curtailing freedom of association and assembly. Article 10(4) of the Federal Constitution is discriminatory on the ground of political opinion. It sets out exceptions to the freedom of speech and expression conferred under Article 10(1)(a) which are highly political in nature and are used to restrict the activities of political opponents of the government. Domestic legislation, such as the Police Act 1967, has been enforced in a discriminatory manner so as to prevent public assemblies by political opponents of the government. In addition to the repression of freedom of association and assembly, the Malaysian government has also used the Internal Security Act to detain political opponents in a discriminatory manner. The Sedition Act, the Official Secrets Act and the Printing Press and Publication Acts have been used to silence, intimidate and punish critics of the government. The most obvious victims of this form of discrimination are leaders of opposition parties such as the Democratic Action Party (DAP), the People’s Justice Party (PKR), the Islamic Party of Malaysia (PAS) and the Socialist Party of Malaysia

(PSM). However, outspoken critics of the government, including NGO leaders, lawyers, journalists, bloggers, academics and cartoonists, have also suffered the consequences of political discrimination in Malaysia. Others have been discriminated against because, rightly or wrongly, they are perceived as “anti-government” or opposition sympathisers. Finally, opposition parties have been unable to participate in the political process on an equal basis with the ruling party due to a series of in-built and administrative biases in the Malaysian electoral system, and due to the discriminatory allocation of funds to elected representatives which favours members of the BN coalition. Such discriminatory practices on the grounds of political opinion present a fundamental challenge to principles of both equality and democracy, and also create an environment in which it is difficult to challenge the status quo and undo the disadvantage faced not only by political opponents but other groups discussed in this report.

Part 3: The Legal and Policy Framework Related to Equality

This part reviews the Malaysian legal and policy framework related to equality. It aims to establish whether Malaysian law provides sufficient protection from discrimination, and finds that while some level of protection does exist, in many cases the law itself is used as a tool to further entrench the disadvantage faced by the different groups described above. This part addresses both the international legal obligations of the state and the domestic legal and policy frameworks which protect the rights to equality and non-discrimination. In respect of domestic law, it examines the Federal Constitution of Malaysia, specific anti-discrimination laws and non-discrimination provisions in other areas of law. It also refers to government policies which have an impact on inequality or discrimination. Finally, the section examines the implementation and enforcement mechanisms of the law, both through the courts and through specialised institutions.

International and Regional Law

Malaysia has a relatively **weak legal and policy framework related to equality**, characterised by a number of significant gaps and limitations. One aspect of the weakness of the legal framework is Malaysia’s **poor participation in the major United Nations treaties** relevant to equality rights; it is a party to only three of the major human rights treaties: CEDAW, CRC, and CRPD. Malaysia has not yet joined crucial international human rights trea-

ties and, most significantly, is not yet a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture, the Convention relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons, and the ILO Convention No. 169 on Indigenous and Tribal Peoples, among others. Further, Malaysia's commitment to CEDAW, CRC and CRPD is subject to significant declarations and reservations. It is also unfortunate that Malaysia has not signed up to the Optional Protocols to CEDAW and CRPD to which it is a party, making it impossible for persons under its jurisdiction to file individual complaints and seek remedy via the relevant complaint mechanisms. A further limitation is that the treaties to which Malaysia is a party have not been broadly understood to have direct application but rather must be implemented through domestic legislation. That said, the courts have recently created a precedent of direct application of international treaties to which Malaysia is a party in reaching decisions in fundamental rights cases, as demonstrated in the pregnancy discrimination case of *Noorfadilla Ahmad Saikin v Chayed Basirun & Ors* in which CEDAW has been applied.

The forthcoming ASEAN Declaration on Human Rights could prove to be a pivotal step forward in the promotion and protection of human rights in the region. Malaysia should ratify any future regional treaties and protocols which serve to enhance the protection of the right to equality, and take an active part in strengthening the regional human rights system at the ASEAN level.

National Law

The national legal framework related to equality includes protection provisions in the **Federal Constitution**, particularly Articles 8, 12 and 136, as well as affirmative action provisions. Article 8 forms the cornerstone of the constitutional protection of the rights to equality and non-discrimination, with Article 8(1) guaranteeing equality before the law and equal protection of the law, and Article 8(2) prohibiting discrimination against citizens on the grounds of religion, race, descent, place of birth or gender. Article 12 expands the protection from discrimination in relation to certain protected grounds to the area of education. Article 136 provides protection from differential treatment within state employment on the ground of race. While the Federal Constitution contains some protection of the right to equality, its provisions are inadequate in a number of ways, most notably in relation to the restricted list

of protected grounds, the failure to protect both citizens and non-citizens, and the breadth of exceptions which means that matters of personal law (which has been interpreted to include the majority of Syariah law) are not subject to the prohibition on discrimination contained in the Constitution.

Among the strongest causes for concern is the continued existence of Articles 89 and 153 creating **ethnic preferences**, which, failing to meet the criteria for positive action, amount to racial discrimination. These provisions, establishing a privileged position for the Malay and the natives of Sabah and Sarawak, violate international law standards established under, *inter alia*, CEDAW and ICERD in relation to positive action. The positive action measures under these provisions are not time-limited or function-limited. The permanent privilege enjoyed by the Malay and the natives of Sabah and Sarawak therefore appears to maintain unequal and separate standards, on the ground of race, in conflict with the constitutional prohibition of discrimination.

Malaysia **lacks comprehensive equality legislation** and equality enforcement bodies across all grounds. Given the limitations of the constitutional equality protections, the lack of legislation prohibiting all forms of discrimination by both the state and private individuals represents a failure to meet obligations under CEDAW, CRPD, CRC and international customary law. It is submitted that the lack of comprehensive equality legislation in Malaysia is a significant factor contributing to the persistence of the patterns of discrimination and inequality identified in Part 2.

The only specific equality and anti-discrimination Act in Malaysia is the Persons with Disabilities Act 2008. This Act represents a positive step towards the protection of the rights of persons with disabilities. Regrettably, however, the Persons with Disabilities Act does not include operative provisions setting out the rights to equality and non-discrimination of persons with disabilities, but it does incorporate some of Malaysia's obligations under CRPD in a manner which arguably serves to overcome some elements of the disadvantage faced by persons with disabilities. In order for this Act to comply fully with Malaysia's obligations under the Convention, it will require significant amendment.

Some non-discrimination provisions are found in legislation governing other legal fields: criminal law, family law, and law related to domestic violence.

However, this protection is rarely rights-based, and is very limited, patchy and inconsistent. There is no prohibition of discrimination on any ground in legislation constituting the fields of employment law, education law or health law in Malaysia. Protection from discrimination in these fields of law is thus possible only on the basis of the Constitution and international treaties. Overall, the normative framework is not sufficient to meet Malaysia's obligations under international human rights law.

Malaysian criminal law endeavours to provide protection for women from gender-based violence which has been defined by the Committee on the Elimination of Discrimination against Women as a form of discrimination. It does not, however, provide adequate protection for married women as they are not covered by the anti-rape provisions set out in the Malaysian Penal Code. In addition, the definition of rape in the Penal Code is not sufficiently broad to cover all forms of sexual assault and therefore leaves women unprotected from certain forms of gender-based violence. The protection from gender based violence is confounded by the provisions of the Evidence Act 1950 that limit protection offered to women under the Penal Code as a result of the restrictions which it imposes on evidence at trials for rape. Further, the evidential requirements relating to rape in Syariah law fail to give adequate protection to Muslim women who have been victims of rape. On the positive side, the Evidence Act 1950 goes some way towards reasonable accommodation for persons with disabilities. The Anti-Trafficking in Persons Act 2007 and its problematic amendment of 2010 contain a number of serious weaknesses, including an inadequate definition of human trafficking that does not comply with international criminal law, and the conflation of trafficking and smuggling in a way that deprives victims of smuggling from any protection rights, even if they are refugees. Malaysia ought to revise its anti-smuggling laws to protect undocumented migrants from discriminatory ill-treatment.

Various provisions within Malaysian family law legislation serve to protect the rights to equality and non-discrimination. While falling short of implementing the full suite of obligations assumed by Malaysia under the CRC, the Child Act 2001 does seek to protect children from various forms of violence, ill-treatment and abuse which they suffer as a result of their age. The Guardianship of Infants Act 1961, after amendment by the Guardianship of Infants (Amendments) Act 1999, addresses the issue of potential inequality of parental rights by granting equal guardianship rights to mothers and fa-

thers. Similar gender equality provisions are found in the Inheritance (Family Provision) Act 1971 and the Distribution Act 1958 which have both been made gender-neutral. Finally, the Law Reform (Marriage and Divorce) Act 1976 criminalises the act of compelling an individual to marry against their will. While each of these provisions is a small step towards greater equality for children and women within the realm of family law, the piecemeal and scattered approach to the protection of the rights to equality and non-discrimination is unfortunate.

Legislation addressing specific violations of the equal right to personal security without any discrimination includes the Domestic Violence Act 1994 and the Domestic Violence (Amendment) Act 2012. Whereas these statutes address significant issues of gender-based violence in Malaysia, they have been criticised both in relation to their content and their enforcement, which is viewed as inadequate.

Employment law also offers some protection. The Employment Act specifically states that nothing in the employment contract shall restrict the right of a worker to join, participate in or organise a trade union. Both the Employment Act 1955 and the Industrial Relations Act cover migrant workers. Section 60L of the Employment Act makes it an offence for an employer to practice any form of discrimination between migrant workers and local workers. Migrant workers should receive the same rights and protections as local workers. Notwithstanding the lack of a constitutional guarantee in this regard, the Trade Union Act permits migrant workers to become members of trade unions and take part in trade union activities, but they cannot hold executive positions. However, given the patterns of discrimination against migrants set out in Part 2 of this report, it is clear that these provisions are not being adequately implemented.

National Policies Impacting on Discrimination and Inequality

The Malaysian government has developed a number of national policies relevant to equality and non-discrimination, including both general policies which contain strong non-discrimination themes such as the National Social Policy, the National Social Welfare Policy, and policies designed at combating discrimination against and accelerating progress of particular disadvantaged groups, such as the National Women Policy, National Policy for the Elderly, the Code of Practice on Prevention and Management of

HIV/AIDS at the Workplace and the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. The National Cultural Policy and the New Economic Policy, however, continue to promote the privileged position of the Bumiputera community in Malaysia, with the result that racial and ethnic minorities face perpetual disadvantage in many areas of life.

Enforcement and Implementation

Malaysia has a rather poor record of implementation and enforcement of equality rights, including in respect to access to justice, administrative mechanisms, legal aid, and remedies and sanctions. Jurisprudence on equality and non-discrimination is weak, as is the implementation of existing law and policies. Despite the necessity of effective legal redress and remedies in order to ensure that the rights to equality and non-discrimination are effective, the enforcement mechanisms available to victims of discrimination in Malaysia are inadequate. In the absence of a single equality body with responsibility for overseeing the enforcement of the rights to equality and non-discrimination set out in the Federal Constitution, the Human Rights Commission of Malaysia arguably has a role to play in this regard. This body has, however, been criticised for its lack of independence and effectiveness. Further, victims of discrimination face additional obstacles in seeking legal redress and remedies as a result of legal aid provision being unavailable for claims of discrimination, a very narrow interpretation of the right to equality by the Federal Court and Court of Appeal, and a lack of sanctions which can be imposed upon discriminators. There has been only limited case law pertaining to equality and discrimination in Malaysia.

Part 4: Conclusions and Recommendations

The last part of the report sums up the findings of ERT and Tenaganita's research and provides a set of recommendations on the basis of these findings. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which sums up the most essential elements of international law related to equality. **Central among the recommenda-**

tions are those related to (i) the need to amend discriminatory provisions, particularly those related to “positive action” favouring the Bumiputera, and (ii) the need to develop comprehensive equality legislation reflecting the current international understanding of the principles of equality.

A detailed list of the report’s recommendations is presented below:

(1) Strengthening of International Commitments

(1)(a) Malaysia is urged to join the following international treaties and other instruments which are relevant to the rights to equality and non-discrimination:

United Nations Instruments:

- Convention relating to the Status of Refugees (1951);
- Convention relating to the Status of Stateless Persons (1954);
- International Convention on the Elimination of All Forms of Racial Discrimination (1965), additionally making a Declaration under its Article 14 allowing individual complaints;
- UNESCO Convention against Discrimination in Education (1960);
- International Covenant on Civil and Political Rights (1966) and Optional Protocol I to the International Covenant Civil and Political Rights (1976);
- International Covenant on Economic, Social and Cultural Rights (1966) and Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (1999);
- International Convention for the Protection of All Persons from Enforced Disappearances (2006);

- Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006);
- Optional Protocol III to the Convention on the Rights of the Child (2011).

International Labour Organisation Conventions:

- ILO Convention No. 111 on Discrimination in Employment and Occupation (1958);
- ILO Convention No. 169 on Indigenous and Tribal Peoples (1989);
- ILO Convention No. 189 on Domestic Workers (2011).

(1)(b) Malaysia is urged to review and remove its reservations to the Convention on the Elimination of all forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

(2) Repeal of Discriminatory Legislation and Policies

(2)(a) There are a significant number of directly discriminatory provisions in Malaysian legislation, and a number which – while they do not appear to discriminate directly – are either indirectly discriminatory or open to discriminatory application. The existence of this legislation is in breach of Malaysia’s international human rights obligation to respect the right to be free from discrimination. Moreover, the existence of such legislation can serve to legitimise stigma and stereotyping of vulnerable groups, which can have direct impact in perpetuating the patterns of discrimination identified in Part 2 above. Malaysia is urged to undertake a review of all federal and state legislation and policies in order to (i) assess compatibility with the right to equality; and (ii) amend, and where necessary, abolish existing laws, regulations, and policies that conflict or are incompatible with the right to equality. This process should include the repeal of all discriminatory laws, provisions and policies. In particular, the following discriminatory provisions should be repealed or amended to remove discriminatory elements:

Constitutional Provisions:

- All provisions in the Federal Constitution which offer protection of the rights of only citizens rather than of the rights of all persons within the territory or under the jurisdiction of Malaysia, including Articles 5(4), 8(2), 9, 10 and 12(1);

- Article 9, which is discriminatory on the grounds of place of residence;
- Article 10, which is discriminatory on the grounds of political opinion;
- Article 11, which is discriminatory on the ground of religion;
- Articles 14, 15, 24 and 26, which discriminate against women in relation to citizenship rights;
- Articles 89, 153 and 161 which discriminate on the basis of race or ethnicity.

(2)(b) Malaysia is urged to amend its Syariah law legislation, fatwas and policies in order to remove those aspects which are discriminatory, particularly on the grounds of gender, sexual orientation and gender identity. Malaysia is urged to adopt progressive interpretations of Syariah law which respect the right to equality. In particular, the following discriminatory provisions should be amended or repealed:

Syariah Law:

- Syariah criminal legislation, including sections 23, 25, 26, 27, 28, 41 and 56 of the Syariah Criminal Offences (Federal Territories) Act 1997 and the equivalent criminal legislation in all other states;
- Syariah family law, including sections 8, 10, 13, 14, 23, 47, 49, 50, 52, 59, 83, 84 and 88 of the Islamic Family Law (Federal Territories) Act 1984 and the equivalent family law legislation in all other states.

(2)(c) Malaysia is urged to amend its criminal law to remove discriminatory provisions, in particular:

Criminal Law:

- Sections 376 and 377 of the Penal Code regarding whipping;
- Sections 375 and 375A of the Penal Code regarding marital rape;
- Section 377A of the Penal Code regarding “carnal intercourse against the order of nature”;
- Section 21 of the Minor Offences Act 1955 which should not be used to prosecute transgender individuals or anyone else for simply expressing their gender identity;

- Section 133A of the Evidence Act 1950 regarding evidence provided to court by children;
- Section 146A of the Evidence Act 1950 regarding evidence during a rape trial.

(2)(d) Malaysia is urged to amend its education law to remove discriminatory provisions, in particular:

Education Law:

- Those provisions of the Education Act 1996 which privilege Malay Muslim students over students belonging to other ethnic groups and religions, for example sections 50 and 52;
- The Education (Special Education) Regulations) 1997 should be amended to remove the distinction between “educable” and “uneducable” children with disabilities;
- Any provisions and policies which prevent non-citizen children from attending primary and/or secondary school.

(2)(e) Malaysia is urged to amend its employment law to remove discriminatory provisions, in particular:

Employment Law:

- The protections under the Employment Act 1955 must be extended to all workers, including domestic workers, as a bare minimum level of protection which can be improved upon but not reduced in employment contracts;
- Sections 34 and 35 of the Employment 1955, which are discriminatory against women;
- The Workmen’s Compensation Act 1952 should be amended to remove provisions which are discriminatory against women, and to include protection for all migrant workers.

(2)(f) Malaysia is urged to amend its family law to remove discriminatory provisions, in particular:

Family Law:

Sections 10, 49 and 77 of the Law Reform (Marriage and Divorce) Act 1976, which are discriminatory on the ground of gender.

(2)(g) Malaysia is urged to amend its nationality and immigration law to remove discriminatory provisions, in particular:

Nationality and Immigration Law:

- Section 12 of Immigration Act 1959/1963 should be amended to allow women equal rights to endorse the name of their spouse and children on their passport;
- The Immigration Regulations 1963 should be amended to ensure that a foreign husband of a Malaysian woman is entitled to a dependant's pass on an equal basis as a foreign wife of a Malaysian man.

(2)(h) Malaysia is urged to amend its tax law to remove discriminatory provisions, in particular:

Tax Law:

- Section 47(1) of the Income Tax Act 1978 should be amended so as to remove discrimination on ground of gender;
- Those provisions which permit Muslims to benefit from tax deductions in relation to the religious taxes which they pay whilst members of other religions are entitled to no such deductions.

(2)(i) Malaysia is urged to review its **economic policies** to ensure that any privileges which are granted on the ground of race and ethnicity, or any other protected characteristic, with the intention of overcoming past disadvantage, are kept under regular review so as to ensure the continued legitimacy of purpose and proportionality.

(3) Laws Protecting the Rights to Equality and Non-discrimination

(3)(a) Malaysia is urged to adopt appropriate constitutional and legislative measures for the implementation of the right to equality. Such measures

should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law. The constitutional protections of the rights to equality and non-discrimination are currently severely limited. It is therefore recommended to **amend the Federal Constitution** in order for Malaysia to comply fully with its international human rights obligations. Such amendments should include:

- (i) ensuring that both citizens and non-citizens benefit from the protections of the rights to equality and non-discrimination, through amendment of Article 8(2) of the Federal Constitution, among others;
- (ii) broadening the list of grounds of discrimination found in Articles 8 and 12 so as to include all grounds referenced in Principle 5 of the Declaration of Principles on Equality – including political opinion, sexual orientation, gender identity, age, disability, health status and nationality; and allow for a test for the inclusion of additional grounds, so that such grounds could be incorporated as necessary over time without requiring constitutional amendments;
- (iii) providing a clearer definition of what behaviours are prohibited as discrimination;
- (iv) extending the protection of the rights to equality and non-discrimination to all areas of activity regulated by law;
- (v) ensuring that the rights to equality and non-discrimination are enjoyed in both the public and private sector;
- (vi) removing the exclusion of personal laws from the prohibition of discrimination;
- (vii) ensuring that any provisions permitting positive action in order to overcome past disadvantage and to accelerate the progress towards equality of particular groups meet criteria established in international law and best practice, such as time limits and proportionality;
- (viii) removing from Article 8(5) of the Federal Constitution the list of exceptions to the prohibition on discrimination or ensuring that any exceptions to the principle of equality are only permitted to the extent that they accord

with strictly defined criteria, and are justified as a proportionate means of achieving a legitimate objective;

(ix) removing the provision by the state of preferential treatment in the form of establishing and maintaining Islamic educational institutions.

(3)(b) It is further recommended that Malaysia should also consider strengthening the existing constitutional protections of the rights to equality and non-discrimination through the **enactment of comprehensive equality legislation**.

(3)(c) The enactment of comprehensive equality legislation should give effect to the principles of equality under international law and ensure the expanded constitutional protection against discrimination and the promotion of the right to equality. Equality legislation should aim at eliminating direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

(3)(d) Comprehensive equality legislation could either take the form of:

(i) A single Equality Act, which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or

(ii) A coherent system of Acts and provisions in other legislation which together address all grounds of discrimination in all areas of life regulated by law.

(3)(e) Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

(3)(f) It is recommended that a thorough review of the Persons with Disabilities Act 2008 is carried out in order to bring it into line with Malaysia's obligations under CRPD. Most importantly, the rights enshrined in the Act must be made enforceable, either through the civil courts, or through an enforcement mechanism designed for this specific purpose.

(3)(g) In order to ensure that the right to equality is effective in Malaysia, the government is urged to consider taking positive action, which includes a range of legislative, administrative and policy measures, in order to overcome past disadvantage and to accelerate progress towards equality of particular groups, including women and persons with disabilities.

(4) Ensuring Consistency between Syariah and Secular Law Provisions

Malaysia is urged to take all necessary steps to remove discriminatory effects of the legal dualism arising from the co-existence and unclear relationship between secular and Syariah legislation at the national as well as the state level. It must be ensured that, especially in family and religious matters, for which Muslims are subject to Syariah law and to the jurisdiction of Syariah courts and for which non-Muslims are subject to the provisions of secular law and to the jurisdiction of the secular courts, these two systems apply in a way that does not discriminate on any prohibited ground. Malaysia is urged to review in particular the relationship between the two systems so as to address legal disputes between non-Muslim mothers and fathers who have converted to Islam.

(5) Education on Equality

Malaysia is urged to take action to raise public awareness about equality, and to ensure that all educational establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices and customary practices which are based on the idea of the inferiority or superiority of one group within society over another.

(6) Enforcement

(6)(a) Malaysia is urged to ensure that persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and administrative procedures, and appropriate legal aid for this purpose.

(6)(b) Malaysia is urged to introduce legislation or other measures to protect individuals from victimisation, defined as any adverse treatment or con-

sequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions.

(6)(c) Malaysia is urged to ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.

(6)(d) Malaysia is urged to adapt legal rules related to evidence and proof in order to ensure that victims of discrimination are not unduly inhibited from obtaining redress. In particular, rules on evidence and proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the right of equality.

(6)(e) Malaysia must ensure that sanctions for breach of the right to equality are effective, proportionate and dissuasive. Appropriate remedies should include reparations for material and non-material damages. Sanctions should also include the elimination of discriminatory practices and the implementation of structural, institutional, organisational or policy changes that are necessary for the realisation of the right to equality.

(6)(f) Malaysia is urged to establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. Such bodies must have independent status and competences, in line with the UN Paris Principles, as well as adequate funding and transparent procedures for the appointment and removal of their members.

(6)(g) Malaysia is urged to establish a focal point within government to coordinate policy and action relating to the right to equality.

(7) Duty to Gather Information

During the research for this report, it has been established that there is a significant lack of information, including statistics available in relation to key

indicators of equality in Malaysia. Malaysia is therefore urged to collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Malaysian society. Malaysia should further ensure that such information is not used in a manner that violates human rights.

(8) Dissemination of Information

Laws and policies adopted to give effect to the right to equality must be accessible to all persons. Malaysia must take steps to ensure that all such laws and policies are brought to the attention of all persons who may be concerned by all appropriate means.

(9) Prohibition of Regressive Interpretation

In adopting and implementing laws and policies to promote equality, Malaysia should not allow any regression from the level of protection against discrimination that has already been achieved.

(10) Derogations and Reservations

No derogation from the right to equality should be permitted. Any reservation to a treaty or other international instrument, which would derogate from the right to equality, should be considered null and void.