1. INTRODUCTION

1.1 Purpose and Structure of This Report

In a speech given on the eve of Malaysia Day 2011, Prime Minister Najib Razak asked whether Malaysians:

\[\textit{\textit{with their diverse backgrounds, varying socioeconomic statuses and political understandings (\ldots) can arrive at a consensus to not bow or surrender to the trappings of hate and distrust which would certainly drag us down into a valley of disgrace. Instead, let us all brave a future filled with hope and nobility together.}}\]^1

Malaysia is indeed a country characterised by the rich diversity of its peoples. Along with the great opportunities that this brings, comes the challenge of ensuring that no group or individual in society suffers discrimination or disadvantage linked to their personal characteristics.

But the country’s rich diversity has not found expression in equality of rights. 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 Sekualiti Merdeka Festival, the treatment

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of refugees and the situation of domestic workers. A fundamental aspect of all of these issues is the discrimination experienced by the affected groups.

The purpose of this report is to highlight and analyse discrimination and inequality in Malaysia and recommend steps aimed at combating discrimination and promoting equality. It explores long-recognised human rights problems, and also seeks to shed light upon less well-known patterns of discrimination. The report bring together – for the first time – evidence of the lived experience of discrimination and inequality in Malaysia on a wide range of grounds with an analysis of the laws, policies, practices and institutions established to address these problems.

ERT and Tenaganita have been working in partnership since 2010 on a project designed to empower civil society to combat discrimination and inequality in Malaysia. 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 governing discrimination and inequality in Malaysia. This report presents some of their findings.

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, economic, 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.

### 1.2 Conceptual Framework and Research Methodology

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

**The Unified Human Rights Perspective on Equality**

The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust (ERT) in 2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. Principle 1 of the Declaration defines the right to equality:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*

Thus defined, the right to equality has a broader scope, when compared with the traditional approach in most national legal systems, and its content is richer than that of a right to non-discrimination. Most importantly, it encompasses a right to equal participation in all areas of life in which human rights apply, and it is a right which is autonomous. As Dimitrina Petrova states in a commentary on the Declaration:

*Defining the right to equality as requiring participation on an equal basis with others in any area of economic, social, political, cultural or civil life is consistent with international human rights law in delineating the areas in which human rights apply. But the Declaration defines the areas of application of the*

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right to equality without drawing the distinctions between civil and political rights, on the one hand, and economic, social and cultural rights, on the other hand, which have for so long bedevilled international human rights law. At the same time, the Declaration goes beyond the understanding of discrimination and equality as necessarily related to an existing legal right (...) In the drafters’ view, the right to equality (and non-discrimination) can be claimed in any of the listed five areas of social life, even in the absence of certain legal rights within them. (...) The definition in Principle 1 does not require the right to equality to be based on or related to the enjoyment of any other human right.3

Thus the right to equality implies not only the equal enjoyment of other human rights. Nor is it limited to the equal benefit of rights set out in law. The Declaration proclaims that this right extends to guarantee equality in all areas of human life normally regulated by law, and should be addressed holistically. This approach recognises the interconnectedness of inequalities arising in different contexts, which makes it necessary to take a comprehensive approach to combating manifestations of discrimination arising in all areas of life. Therefore, this report examines the extent to which equality is enjoyed across all areas of economic, social, political, cultural or civil life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degree of inequality. It goes beyond poorer notions of equality found in many legal systems, by comprising not only a right to be free from all forms of discrimination, but also a right to substantive equality in practice. As discussed below, this motivates an analysis of disadvantages affecting different groups beyond that which arises as a result of discernible acts of discrimination. From this perspective, many societal inequalities are seen as a consequence of historic disadvantage, but with a realisation that the broad right to equality defined in the Declaration requires states to address such inequalities, however “innocuous” their cause. Thus the unified framework makes de facto inequalities, whether or not they result from discrimination, a relevant subject for this report.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to be free from discrimination as subsumed in the right to equality. Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights perspective on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

*Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.*

*Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.*

*Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.*

*Discrimination may be direct or indirect.*

**Direct discrimination** occurs when for a reason related to one or more prohibited grounds a person or group of persons is...
treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

**Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An act of discrimination may be committed intentionally or unintentionally.  

This definition of discrimination takes a broad view regarding the list of protected characteristics. It contains both an extensive list of explicitly prohibited grounds of discrimination and a “test” for the inclusion of further grounds, according to which “candidate grounds” have to meet at least one of three conditions. Thus, the definition provides a foundation for tackling the

5  See above, note 2, Principle 5, p. 6-7.

6  See above, note 3, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’. This approach is inspired by the solution to the open versus closed list of ‘prohibited grounds’ dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).”
full complexity of the problem to be addressed – a person’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified perspective on equality acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

Principle 5 provides the basis for consideration of the range of identity-based groups included in the report. Thus, at various points, the report examines discrimination on grounds of race and ethnicity; gender; nationality; sexual orientation and gender identity; disability; and health status. Furthermore, the report examines some patterns of discrimination and inequality – such as the discrimination suffered by indigenous rural women – which do not fall within any of the specified grounds, but which it is felt need to be covered, in compliance with the second paragraph of the definition, and also because they are important patterns of multiple discrimination.

The Declaration defines three forms of prohibited conduct which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international\(^7\) and regional\(^8\) human rights and equality law. They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state’s obligation to respect the right to non-discrimination, and in Part 3 as a basis against which to assess the adequacy of legal provisions intended to protect people from discrimination.

This report relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report em-

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\(^8\) See, for example, European Union Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Articles 2(a), 2(b) and 3; and European Union Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Articles 2(a), 2(b) and 3.
ploys the definition of **reasonable accommodation** provided in Principle 13 of the Declaration:

*To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.*

*Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.*

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination. Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”. Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of any ground.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon emerging approaches in international and regional human rights law, in this case with regards to the concepts of special meas-

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9 See above, note 2, Principle 13, p. 10-11.

10 See, for example, Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 2; Committee on Economic, Social and Cultural Rights, General Comment No. 5: Persons with Disabilities, UN Doc. E/1995/22, 1995, Para 15: "disability-based discrimination" includes the denial of "reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights".

11 See above, note 3, p. 39.
ures in the various instruments,\textsuperscript{12} whereby “it should be noted that the Declaration captures the growing tendency of interpreting “special measures” as part of, rather than an exception to, equal treatment”.\textsuperscript{13} Principle 3 states:

\textit{To be effective, the right to equality requires positive action.}

\textit{Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.}\textsuperscript{14}

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Having identified patterns of substantive inequality in Part 2, Part 3 of this report analyses the adequacy of positive action measures to address these.

The review of laws and policies in Part 3 of this report is based on an assessment against those parts of the Declaration which set out the \textbf{obligations of the state} with regards to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as explained, \textit{inter alia}, in General Comment 3 of the Committee on Economic, Social and Cultural Rights (CESCR) and Gen-

\begin{itemize}
\item \textsuperscript{13} See above, note 3, p. 32.
\item \textsuperscript{14} See above, note 2, Principle 3, p. 5.
\end{itemize}
eral Comment 31 of the Human Rights Committee (HRC). As stated in the commentary on the Declaration:

By analogy with the interpretation of States’ obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.\(^\text{15}\)

**Research Methodology**

Applying the unified human rights perspective on equality has a number of consequences for the content, structure and methodology of this report. The first consequence is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of different grounds in the same study, covering the grounds of race or ethnicity, gender, sexual orientation, etc., side by side. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Malaysian context. In respect of certain grounds, it has not been possible to include every group which is vulnerable to discrimination and inequality on that ground: the examination of issues affecting indigenous communities, for example, looks at just a few of these communities to illustrate the issues which affect indigenous communities in general.

Presenting patterns of discrimination and inequality alongside each other also requires a specific weighing of the sources of evidence. To some extent,
Part 2 of the report relies on pre-existing research into inequalities affecting particular groups, which was substantial and readily available in some areas, but limited in others. In those areas where pre-existing research was unavailable, ERT has relied more heavily on direct testimony from individual victims, or interviews with professionals working on behalf of particular groups. The evidence obtained through field research and desk research has been weighed and contextualised, with a view to mapping out discrimination and disadvantage in Malaysia as true to reality as possible. In so doing, it is hoped that the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The second consequence of applying the unified human rights perspective relates to the scope of application of the right to equality, which encompasses all areas of activity regulated by law. In respect of each ground of discrimination and inequality, the report seeks to assess people’s experience of discrimination across the full range of areas of activity, such as public functions, employment, education, or healthcare. But in this respect, too, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area, or because evidence of such disadvantage was not forthcoming in the course of the research. Thus, the approach taken was to seek evidence of discrimination and inequality in all areas of life regulated by law, but to focus on those areas where problems appeared to be more significant, and to pass over areas where evidence was not forthcoming.

The third consequence of applying the unified perspective is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the baseline against which it assesses the degree of inequality. Thus, the report investigates patterns of substantive inequality, by looking at the element of “participation on an equal basis with others in economic, social, political, cultural or civil life”, thereby extending beyond experiences of discrimination. In discussing the patterns of gender inequality, for example, the report finds extensive evidence of substantive inequality in access to basic amenities, employment, education and healthcare. While in some cases these can be easily put down to current or past discrimination, whether direct or indirect, in other cases this would not be relevant. In any
case, the state should take steps to addressing these substantive inequalities, thus going beyond its obligations understood as ensuring formal equality.

The **final consequence** of this approach is to present evidence of patterns of discrimination and inequality alongside an analysis of the legal and policy framework on promoting equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus, this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of Malaysia’s legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist, and where laws are inadequately enforced. The analysis of patterns of discrimination in Part 2 of the report gives rise to a number of concerns about the adequacy and enforcement of the laws and policies designed to address discrimination and inequality in Malaysia. Part 3 of this report assesses the adequacy of the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of enforcement of equality rights.\(^{16}\) While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report, these issues are discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, implementation and enforcement. Thus, it is hoped that the information contained in Part 2 provides a strong evidence base for analysing the effectiveness of the laws and policies discussed in Part 3, and therefore to ensure that the conclusions and recommendations in Part 4 are relevant and robust.

ERT and Tenaganita have been working in partnership since 2010, on a project designed to empower civil society to combat discrimination and inequality in Malaysia. Throughout the project, the partners have undertaken research on discrimination and inequality by gathering direct testimony during field missions, including through structured interviews, focus groups discussions, and soliciting submissions from organisations working with those who are

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\(^{16}\) See above, note 2, Principles 18-25, pp. 12-14.
vulnerable to discrimination in Malaysia. The partners have also reviewed research conducted by others, including human rights reports produced by non-governmental organisations (NGOs), academic articles, government statistics, and data compiled by international organisations. In analysing the legal and policy framework governing discrimination and inequality in Malaysia the partners were advised by a Malaysian legal expert, and have otherwise relied upon government websites containing details of government policy and legislation which is available online.

The 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 expertise.

**Scope and Limitations of the Report**

The reality of discrimination and inequality is such that experiences are as many and varied as the population of Malaysia itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. Given this, the aim of Part 2 is to provide a broad overview of the principal patterns of discrimination and inequality which arise in relation to those grounds felt to be most significant in the Malaysian context. It does not address the experiences of all categories or groups of people in all areas of life.

The research for this report was severely constrained by a lack of disaggregated statistical data pertaining to the situation of certain groups, and certain areas of life. Consequently, certain issues, which would usually fall within the scope of a report addressing equality and discrimination, do not feature in the report at all. For example, the situation of older persons is not addressed, because of a lack of data and testimony from which it could be seen whether older persons in Malaysia are significantly disadvantaged through age discrimination. Further, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, physical security, etc., has limited the extent to which the authors have been able to discuss all aspects of life for every equality group in Malaysia. Consequently, while the report may discuss the experiences of one or more groups in the
education system, or employment, or their health outcomes, it has not been possible to examine all groups’ experiences in all areas of life. These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by a lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a lack of commitment to understanding and addressing their needs.

1.3 Country Context

Malaysia, located in Southeast Asia, consists of 13 states and 3 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 km² and providing home to approximately 28,250,000 people. The capital city is Kuala Lumpur, and Putrajaya is the seat of the federal government.

Malaysia is ethnically diverse. According to the 2010 Population and Housing Census, Malaysian citizens consist of the following ethnic groups: Bumiputera (67.4%), Chinese (24.6%), Indians (7.3%) and others (0.7%). Bumiputera (“sons of the earth”) is a non-legal term used to refer to ethnic Malays and the natives of Sabah and Sarawak. Among Malaysian citizens, in 2010 the Malays made up the predominant ethnic group in Peninsular Malaysia, constituting 63.1%. In the same year, the indigenous Iban were 30.3% of the total citizens in Sarawak, while Kadazan-Dusun made up 24.5% in Sabah. In January 2012, the Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that there were over 130,000 refugees, asylum seekers and stateless persons in Malaysia. In 2010, 8.2% of the population were

18 Department of Statistics, Malaysia, Population and Housing Census, Malaysia 2010.
19 Ibid.
non-citizens. The country’s official language is 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 of the Shafi’i school of thought, while many of 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 was less affected than expected by the global economic crisis of 2008-2010. Its fiscal position is among the strongest in Asia. Malaysia’s Gross Domestic Product (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 Income 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.

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21 See above, note 18.

22 Ibid.


1.4 Government and Politics

Malaysia is a constitutional monarchy which became independent from the British Empire in 1957. The parliamentary system of government is based on the Westminster model but with significant differences. The bicameral federal parliament consists of the lower house, the House of Representatives and the upper house, the Senate. However, unlike the British Parliament, the Malaysian Parliament is not supreme; it is governed by a written constitution.

Malaysia is a federation with a Federal Government and 13 state governments. At the federal level, the government is headed by a King, the Yang Di Pertuan Agong, who is elected for a five-year term by, and from among, the hereditary rulers of the nine states of Peninsular Malaysia – “the Conference of Rulers”. He has limited executive powers, acting on the advice of the Prime Minister in most matters. The state governments are headed by a hereditary Malay Ruler (in nine of the states) or an appointed Governor (in four states). The state legislatures are unicameral made up of elected state “assemblymen”. There is also a third tier of local government made up of city councils, municipal councils and district councils. This tier is made up of appointed local councillors after local government elections were abolished in 1965.

Elections are based on the “first-past-the-post” system and are carried out every five years. Since independence, Malaysia has been governed without interruption by the Alliance Party, later renamed the National Front or Barisan Nasional (BN), a coalition of 13 parties dominated by the United Malays National Organisation (UMNO). The other parties are the Malaysian Chinese Association (MCA), the Malaysian Indian Congress (MIC), the Malaysian People’s Movement Party (GERAKAN), the People’s Progressive Party (PPP), Parti Pesaka Bumiputera Bersatu (PBB), the Sarawak United People’s Party (SUPP), Parti Bersatu Sabah (PBS), the Liberal Democratic Party (LDP), Parti Bersatu Rakyat Sabah (PBRS), the United Pasokmomogun Kadazandusun Murut Organisation (UPKO), the Sarawak Progressive Democratic Party (SPDP) and the Sarawak People’s Party (PRS). The Prime Minister is the leader of the majority party in the House of Representatives and is considered to be the most power-
ful political authority. Since April 2009, Najib Tun Razak has been the Prime Minister of Malaysia – the sixth since independence. The People’s Alliance, or Pakatan Rakyat (PR), is the main opposition coalition.

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 Sharia (or Syariah – the preferred spelling in Malaysia) courts for matters related to Islamic law. The highest court in the judicial system is the Federal Court, followed by the Court of Appeal and two high courts, one for Peninsular Malaysia and one for East Malaysia. The Islamic judges sitting in Syariah courts are expected to follow the Shafi’i legal school of Islam. Malaysia also has a special court to hear cases brought by or against Royalty.

The Federal Constitution of Malaysia contains certain provisions to ensure an independent judiciary. However, since the judicial crisis of 1988, the image of the judiciary has deteriorated significantly, resulting in loss of public confidence, made worse after its handling of the sodomy trial of the dismissed Deputy Prime Minister, Anwar Ibrahim, in the late 1990s. The government has referred to Anwar Ibrahim’s January 2012 acquittal as evidence of the judiciary’s independence.

In addition to the civil law and Syariah law systems, the states of Sabah and Sarawak also have systems of native customary law. The many different native communities within these states recognise their own sets of


30 For information on the trial, see Joint Mission on Behalf of the International Bar Association, the ICJ Center for the Independence of Judges and Lawyers, the Commonwealth Lawyers’ Association, and Union Internationale des Avocats, Justice in Jeopardy: Malaysia 2000, 10 June 2008, pp. 40-49.

customs, although often these are not codified, which leads to uncertainty both in terms of the applicability and content of the laws. Native Courts in each district are headed by native chiefs assisted by the village head, and an appeal can be addressed to District Officers and ultimately to the native Court of Appeal. The process is largely informal. Records are not kept and evidence is given only orally. Cases do not form a binding precedent on the courts and decisions are confined to the relevant district or village. Under this system, a native may elect to seek settlement in a Native Court rather than in the Civil Court.  

Malaysia’s human rights record is mixed. International and domestic human rights organisations express grave concern in some areas. The Internal Security Act 1960, the Official Secrets Act 1972 and the Printing Presses and Publications Act 1984 have been used to suppress the development of civil society. While Prime Minister Najib Razak pledged to repeal the Internal Security Act in September 2011, November 2011 reports suggested that a number of people had been arbitrarily arrested under the Act, which permits indefinite detention without charge or trial.

Further, newspapers, broadcasters, cartoonists and bloggers have been subject to restrictions under the Sedition Act 1948, the Printing Press and Publications Act 1984 and the Communications and Multimedia Act 1998. In November 2011, in a move which has been described as “an alarming indication of backsliding in freedom of assembly and expres-

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On 28 April 2012 thousands of people took to the streets in the biggest mass opposition rally in Malaysia’s history. The protests, organised by a coalition of non-government organisations called Bersih, demanded changes to Malaysia’s electoral system, which in their view favours the BN coalition which has been in power since independence. The protests turned violent as the police...
used water cannons, fired tear gas at protesters and put up barricades, and a number of arrests were made. In the aftermath of the protest opposition leader Anwar Ibrahim was charged with violating the laws on street protests. He has denied the charges and claimed that they were part of a politically motivated campaign against him, which also included the charges of sodomy of which he was acquitted in January 2012.