Architects of Diversity

SEKOLAH SEMUA

Discrimination in Education

Policy Review

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Introduction

Diversity has been central to Malaysia's national narrative. As home to various distinct and intersecting identities, national campaigns have historically highlighted unity as a building block for Malaysian society and development. From Wawasan 2020 to Keluarga Malaysia, a united society has been consistently emphasised as a necessity for national peace, security and prosperity.

In this report, we explore the ontology, characteristics and policy issues of one of the largest challenges to fulfilling Malaysia's aspirations of a united country: discrimination in education. Schools, colleges and universities are crucial sites for the socialisation of children, where they come into contact with individuals from outside their immediate social circles and form crucial relationships quintessential in shaping their identity. Education has also long been identified and instrumentalised as a necessary tool for human capital development.

Discrimination in education has long gone understudied in Malaysia despite posing a serious threat to education's role in unity and national development. As a complex and sensitive topic, there is no single face of discrimination. Indeed, even coming to a commonly agreed upon definition of discrimination is challenging. The term "discrimination" itself references interpersonal, social, institutional and structural phenomena. However, the complexity, severity and impact of discrimination begs for necessary investigation.

In September 2021, we published the first series of our *Discrimination in Education Report* that released the results of a national survey among 2,441 Malaysians 18 years old and above. The survey found that 50% of Malaysians experienced perceived discrimination during their time in education. Further, younger Malaysians reported perceived discrimination at a higher rate than older Malaysians.

In this report's first section, we discuss the role of education in national development and government policies that emphasise education's role in achieving national unity. The various definitions of discrimination are explored, referencing de jure and de facto definitions both in Malaysian law and in foreign jurisdictions. A brief literature review of the impact of discrimination in education is provided.

In the report's second section, we highlight testimonies from our previous survey that illustrate the complexity of discrimination in education. Policies surrounding discrimination are discussed, including anti-discrimination frameworks, existing complaint mechanisms, victim protection guidelines and accountability measures.

In the report's third section, we compare policies implemented in other education systems to prevent and punish discrimination in their institutions. We conclude by providing recommendations to the Ministry of Education, the Malaysian government and education institutions to better address discrimination in Malaysia's education system.

National Development

Education plays an important role in strengthening the relationship among multi-ethnic societies and is believed to be the catalyst for change in the long term for closing every other gap such as healthcare and wages. The Malaysian government aspires to create policies that can fulfil the needs of all ethnic groups, and as such gives particular attention to education policies. This is evident when we look back at past policies such as the Barnes Report (1950), the Fenn-Wu Report (1951), and the Education Ordinance 1952, first attempts to unite people through the education system. The Razak Report (1956) was the foundation on which ethnic unity through education was formed in Malaysia. Additionally, the establishment of the Education Act 1996 further guided the direction of the Malaysian education system in promoting the strengthening of inter-ethnic integration. This Act was formulated based on the Razak Report 1956, the Education Ordinance 1957, the Rahman Talib Report 1960, the Education Act 1961, and the Cabinet Committee 1974, with the aim of forming unity through uniformity of the education system (Ministry of Education Malaysia, 2013).

Today, we see a similar inclination in the Malaysian Education Blueprint (MEB) 2013-2025 to transform the education system. It lists these five outcomes, in which no initiative in one area should undermine progress in another:

1. Access: Every Malaysian child deserves equal access to an education that will enable a child to achieve his or her potential. The Ministry thus aspires to ensure universal access and full enrolment of all children from preschool through to upper secondary school level by 2020.

2. Quality: All children will have the opportunity to attain an excellent education that is uniquely Malaysian and comparable to the best international systems. The aspiration is for Malaysia to be in the top third of countries in terms of performance in international assessments, as measured by outcomes in TIMSS and PISA, within 15 years.

3. Equity: Top-performing school systems deliver the best possible education for every child, regardless of geography, gender, or socioeconomic background. The Ministry aspires to halve the current urban-rural, socio-economic, and gender achievement gaps by 2020.

4. Unity: As students spend over a quarter of their time in school from the ages of 7 to 17, schools are in a key position to foster unity. Through interacting with individuals from a range of socioeconomic, religious, and ethnic backgrounds, students learn to understand, accept, and embrace differences. This creates a shared set of experiences and aspirations to build Malaysia's future on. The Ministry aspires to create a system where students have opportunities to build these shared experiences and aspirations that form the foundation for unity.

5. Efficiency: The Malaysian education system has always been well-funded, yet improvements in student outcomes have not always matched the resources channelled into the system. While the Government will maintain current levels of investment, the aspiration is to further

maximise student outcomes within the current budget levels.

A number of recent policies such as the Shared Prosperity Vision (SPV) 2030 and National Unity Policy are aligned with the fourth system aspiration in MEB 2013-2025: unity as a way to national development. Based on SPV 2030, the government is committed towards enhancing the nation's prosperity through people's unity whilst celebrating ethnic and cultural diversity as the sole foundation of the nation (Ministry of Economic Affairs Malaysia, 2019). The National Unity Policy also emphasises that educational institutions play a strategic role to provide a conducive environment that encourages inclusion, with representatives from a range of various backgrounds that come together in promoting and mainstreaming cultural diversity (Kementerian Perpaduan Negara, n.d.).

In addition, Malaysia's commitment to promoting national development whilst celebrating cultural diversity in the education sector is evident from the integration of Sustainable Development Goals (SDGs) in the national policy frameworks. Goal 4.7 which is to 'ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development' is mapped with MEB 2013-2025, Malaysia Education Blueprint (Higher Education 2015-2025), National Higher Education Strategic Plan and Blueprint on Enculturation of Lifelong Learning 2011-2020.

Definition of Discrimination

The concept of discrimination is in itself deeply nuanced, both from a legal and ethical perspective. Discrimination transcends beyond purely race and religion but also towards gender, sexuality or even ableism. International jurisprudence provides a guideline in characterising discrimination. For instance, the first account for human rights protection in international law being Universal Declaration of Human Rights (UDHR), provides that everyone is entitled to equal protection against any form of discrimination.

As discrimination is usually targeted on a particular ground such as race or religion, international conventions have attempted to address these nuances. For example, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), characterises "racial discrimination" to mean "any distinction, exclusion, restriction or preference on race, colour, descent, ethnic origin, which has the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." A similar standard is seen in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The takeaway from international jurisprudence on discrimination is that the contextualisation offered is purely a generic and ethical depiction of the grounds to which discrimination should not be perpetuated upon disadvantaged groups.

On the other hand, domestic statutes particularly in the United Kingdom offers a

more comprehensive and technical account in defining the legal scope of discrimination. For instance, the Equality Act 2010 classifies a specific list of protected characteristics that encapsulates a prohibition of discrimination against. This list includes but is not limited to factors such as race, religion, sexual orientation and age. Furthermore, the Equality Act 2010 establishes a wide approach to discrimination to mean both direct and indirect discrimination. From a legal standpoint, this would mean that an individual cannot be directly discriminated against based on a protected characteristic, nor can a group of people be indirectly discriminated against by a policy or practice that is generally practised but one that disadvantages a particular community.

A modern example of indirect discrimination would be an employer banning hijabs for all employees in the workplace, where such a corporate practice is specifically detrimental to Muslim women. The distinction between international and domestic jurisprudence on discrimination is that international conventions provide a generic framework that state parties may adopt whilst domestic laws embrace a more detailed and technical approach in addressing the local needs of its citizens to be protected from discrimination.

The Malaysian legal conception of discrimination falls under the ambit of Article 8 of the Federal Constitution. Article 8 forms the cornerstone of Constitutional protection of non-discrimination in Malaysia. It is expressly stated under Article 8(1) that all persons are equal before the law. This position is further elaborated in 8(2) whereby there shall be no discrimination against citizens on the grounds of religion, race, descent, place of birth or gender. Scholars tend to view Article 8 with pessimism since its scope of protection is limited and the types of people protected are restrictive. Firstly, the biggest obstacle to meaningful anti-discrimination laws in Malaysia is that Article 8 does not specify any definition of "discrimination." CEDAW has called upon

Federal Constitution Article 8: Equality.

(1) All persons are equal before the law and entitled to the equal protection of the law.
(2) Except as expressly authorised by this Constitution there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
(3) There shall be no discrimination in favour of an, person on the ground that he is a subject of the Rule, of any State.
(4) No public authority shall discriminate against any person on the ground that he is resident or carrying or business in any part of the Federation outside the jurisdiction of the authority.

Malaysia to facilitate constitutional amendments to this end.

Secondly, Article 8 limits itself to purely protecting "citizens" which is contrary to international human rights standards under the UDHR whereby equal protection from discrimination must be afforded irrespective of citizenship status to all persons subject to a state's jurisdiction. Thirdly, there is room to improve the list of protected grounds under Article 8, such as including factors like language, political belief, economic status, sexual orientation, association with a national minority, etc.

Protected Characteristics

The beneficiaries of discrimination law usually possess the "protected characteristics". This means that they possess a ground for a claim in discrimination law. A ground is merely a reason for an act - "poor performance at work may be a ground for dismissal". Discrimination law usually protects people from discrimination against the following grounds: race, religion/belief, disability, gender, sexual orientation and gender identity. Each ground can be divided into two or more groups, with at least one group (the protectorate) suffering more disadvantage than the other.

Why some grounds and not others?

Tarunabh Khaitan believes that these grounds contain at least one protected group that suffer abiding, pervasive and substantial disadvantages as compared to another group. For example, the ground "gender", is usually defined as consisting of two groups - men and women. As women typically suffer abiding, pervasive and substantial disadvantages as compared to men, this makes the former the "protectorate". As such, there has to be a correlation between one's ground as a woman and the disadvantage suffered (e.g. not being allowed to participate in a school activity because of one's gender).

This would also explain why a ground like eye-colour is not a protected ground in discrimination law: it would be difficult to prove that historically black eyed people suffer abiding, pervasive and substantial disadvantages as compared to brown-eyed people. However, decisions made by the state based on eye-colour can be challenged by way of constitutional norms, which forbid the state from acting irrationally.

Impact of Discrimination

The UN's Sustainable Development Goal 4 aims to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. In other words, all children, regardless of background and identity, should have inclusive access to quality education.The reality is, however, that discrimination continues to become an obstacle to this access.

Discrimination is the unequal treatment of people with different identities, such as race, religion, age, ethnicity, gender, sexual orientation and so on (Assari and Lankarani, 2017). This said unfair treatment becomes a risk to the emotional growth of youths (Gonzalez et al, 2014). Studies show that discrimination, especially racial discrimination, not only leads to the mental health decline of the affected in their youth but also predicts the long-term adverse impacts on their mental health in adulthood (Assari et al, 2017, Gonzalez et al, 2014). In the same study, Assari found that racial discrimination during the adolescence stage resulted in an increased symptoms of anxiety and depression among Black males in their adulthood. The studies suggest that the negative experience of being discriminated against based on one's identity like race or ethnicity exhausts the coping mechanisms of the adolescents affected, hampering their emotional growth as suggested by Gonzalez et al (2014). This basically means that discrimination in schools will affect youths not only when they are in school, but the impacts will be felt well into adulthood.

Racial discrimination in particular has been found to have lead to multiple negative symptoms such as an increased 'negative psychological and physiological stress response', and hypervigilance. It also has a causal link to a heightened sense of anxiety, distress and anger, all of which have adverse

Case Law: Meor Atiqulrahman bin Ishak and others v Fatimah binti and Others (2005)

In this case, the court adjudicated whether the regulations prohibiting the wearing of "serban" by school pupils violate Article 11(1) of the Federal Constitution. The plaintiff had worn a turban (serban) to school instead of a songkok, and was eventually expelled. The plaintiff claimed this was against Art 11(1) of the Federal Constitution that stated "every person has the right to profess and practice his religion...". The court considered how necessary the practice of wearing a serban is to the practice of Islam. They considered the wearing of a serban not necessary (wajib), noting that there was no fatwa in Malaysia on the wearing of a serban. The appeal was dismissed and it was held that the School Regulations 1997 in so far as it prohibits the students from wearing turban as part of the school uniform during school hours does not contravene the provision of Article 11(1) of the Federal Constitution and therefore is not unconstitutional.

effects on one's mental health. Discrimination in schools has been reported by numerous studies to have lead to depression, anxiety, and distress with a high risk of suicide, substance abuse, and social isolation. Malacova et al (2008) in a study in Australia confirms that children who experience racial and class discrimination have decreased self-esteem which in turn, have a negative impact on their behaviour and aspirations.

On top of impacting the emotional growth of adolescents, discrimination in education also affects their social and cognitive growth (Gonzalez et al, 2014). This can be seen specifically in terms of their 'sense of belonging' or lack thereof in school which can be measured in their experience of connection, trust, inclusion and support in the academic space which contributes to said social and cognitive development (Goodenow, 1993, as cited in Gonzalez et al 2014). In other words, if students believe that they, and their identities, are valued, acknowledged and included, they will feel a sense of belonging in the classroom. Once they feel a sense of belonging, they are then able to build a connection with their teachers and peers, build trust and a network of support which then give rise to their social and cognitive development.

On the flipside, if a student feels a lack of sense of belonging, or if they feel excluded and a sense of distrust and lack of support from their teachers and peers as a result of discrimination they are more likely to have a lack of engagement and motivation in class resulting in poor academic performance (DeGarmo & Martinez, 2006; Martinez, DeGarmo, & Eddy, 2004; Roche & Kuperminc, 2012; Stone & Han, 2005, as cited in Gonzalez et al, 2014). Borsato (2008, as cited in Banerjee 2016) perceived how discrimination affects academic outcomes; with peer discrimination leading to depression, delinquency and demotivation. Youths suffering from discrimination have been seen to have low academic performance. Teacher discrimination, similarly, plays a role in the declining academic performance of their students (Assari & Caldwell, 2018). If a student feels excluded by their teacher due to a perceived discrimination, their motivation to be in school and to study is reduced as they no longer feel a sense of belonging and purpose in the classroom. However, teachers who provide positive motivation and support regardless of their students' social class or identities are able to bring positive impacts on their students in school (Borsato 2008). Similarly, Borsato (2008) also noted the correlation between a positive high regard of one's ethnic or racial identity to one's motivation in school. This sense of belonging helps heighten students' motivation to be in class and strengthen their belief in the importance of school.

Discrimination may also affect group relations. Discrimination can increase intergroup tension and cause conflicts resulting from pent-up discontent not being resolved by both parties, the victim and the perpetrator. Discrimination among students can further motivate prejudicial sentiments and shape negative stereotypes towards identities. For example, some school policies such as 'non-Muslims not being allowed to eat in the canteen during Ramadan' may condone narratives of superiority of certain identity groups. These situations place non-Muslim students in an environment that may result in them developing negative opinions on Muslim students because of such action. Acts of isolation and segregation may lead to more conflicts between the parties involved, which could eventually result in verbal or physical derogatory remarks being exchanged.

Case Law: Jakob Renner (An Infant suing through his father and next friend, Gilbert Renner) & Ors v Scott King, Chairman of Board of Directions of The International School of Kuala Lumpur & Ors (2000)

The plaintiff suffered from physical disability and studied in ISKL's Melawati campus for elementary schooling for 6 years. The plaintiff was not allowed to transfer to the Ampang campus to continue middle school on the grounds of his physical handicap - "apparent financial expenditure that was to be incurred in making the school disabled friendly". Eventually, the plaintiff sought an injunction to restrain defendants from preventing the plaintiff from continuing education. The court ruled that the plaintiff had legitimate expectation to continue with education and the balance of convenience leaned in favour of the plaintiff.

Survey Highlights

On 16 September 2021, Sekolah Semua and Architects of Diversity released the results from a national survey involving 2,441 adult respondents on past experiences of discrimination in the education system. Below are the main findings:

- Around half (50%) of Malaysians reported having experienced perceived discrimination in education. Of those, 36% experienced verbal discrimination, 21% experienced harassment or bullying, and 18% were denied access to opportunities because of their identities.
- Younger Malaysians (18-30) reported more experiences of perceived discrimination (59%) in education than older Malaysians (46+ 43%; 31-45 45%).
- Indian respondents reported the highest rate of experiencing verbal discrimination (54%) and being denied access to opportunities because of their identity (40%) compared to other racial groups.
- Non-Bumiputera respondents (Chinese 82%; Indian 85%) were more likely than Bumiputera respondents (66%) to consider race-based exclusion for school admission a form of discrimination.
- Among those reporting being discriminated, Indian respondents reported significantly more experiences of perceived race-based discrimination in schools (87%) than other racial groups.
- Perceived socioeconomic-based discrimination in education was reportedly experienced by all race, gender and age groups at around the same level (43-51%).
- Among those reporting having experienced discrimination in education, younger respondents were more likely to report having experienced discrimination from another student of the same age (71%).
- In the same subset, Indian respondents were more likely attribute their experience of perceived discrimination to teachers than other racial groups (74%). Non-Bumiputera respondents (Chinese 36%; Indian 40%) reported greater perceived discrimination from government policies in education than Bumiputera respondents (Malay 15%; Other Bumi 23%).
- The majority of those who reported having experienced perceived discrimination in schools did not report it to either teachers, school administration, parents or the police (54%).
- Among those who did not choose to report their experience of perceived discrimination, 61% cited that they did not think it would make a difference as a reason for not doing so.
- Among respondents who reported their experiences of perceived discrimination to authorities, 48% stated that no investigation or action happened.
- Malaysians may misunderstand what counts as discrimination, as some did not consider failure to accommodate learning disabilities as discrimination (23%) while others considered non-identity based teasing as discrimination (45%).

Selected Testimonials

The following are selected responses to the question "Please tell us about your experience(s) of discrimination in school, where it took place and how were you affected".

Race

During my times in government matriculation, my co-curricular activity teacher was very famous for racism towards Chinese. I was discriminated by him as he told me Chinese are too snobbish and selfish, he also commented that all Chinese are rich when I mentioned otherwise he said I shouldn't blame my parents for being poor, I'm not even blaming them I am telling him not all Chinese are rich.

Race

The discrimination was never direct, it was always done subtly like they made sure i heard it and they pretended as if they never spoke of it directed towards me. Especially during my A level times, one specific lecturer who was of a different race would always make sexist remarks and look down on people of my race (Indian) especially the girls and it would discourage us from ever pursuing that subject in the future. Naturally, due to his remarks i could never score well in that subject which led to more indirect verbal abuse which was honestly quite hurtful when I look back. However, i had never let it affect me or my friends as we always brushed it of even though we knew it was not the right thing to do.

Race & Religion

I am selangor born sarawakian. Thus, I have this bold accent as my mother tongue is bidayuh language and everything pronounced is in deep accent. I went to Sekolah Menengah Kebangsaan (SMK) not far from Kapar. One day in my classroom when I was 13y/o, I was answering teachers question and with the accent I have, the classroom is laughing at me. It gets worst when some of classmates bullied me by mimicking my accent over and over again for years. Secondly it's due based on my religion/beliefs. I am a Christian.

When I was 16y/o, me and my friends are casually enjoying the class teaching and learning in good mood that day when suddenly one indian male classmate (apparently a member of bully group member/ class clown group) suddenly point at me and telling the whole class in front of our teacher that I am related to Israel terrorism due to my belief/practice in Christianity. I believe he's just trying to get attention of the whole class and get a point to bully me at that time. I immediately show my denial of me myself related to what he stated.

But he keeps on accusing loudly. What surprise me more is the Malay female teacher at time ask me "Do you related with Israel?" and I simply shaking my head in shame. I cannot believe she just ask me the question as the teacher should be more professional and be more neutral in this kind of situation. Years goes by and majority of the classroom avoided me, perhaps due to my beliefs in Christianity which led them to think that I indirectly support Israel.

Gender

it so hard to participated in any sport or curriculum activities as the school more prefer BOYS than girl participated in the activities. not once but many times and various activities which basically all the gender can participated as other school done. Very sad and shame as I studied in religious school where only boys have better future, participates in all fun and various activities or club. Why do they focus on boys which girls also have same potential to be included in? Used 'religion' as a shield to 'protect' girls while boys can develop variety of skills and knowledges by participated in the activities.

Girls remain 'ghost' like they are weak creature. Not to mention favorite students gender by most of the teachers. It sick and I ashamed with them. After entered college or university, I see a lot of my girls friends actively participating in various club and programs. They even do better than any male friends of mine. School supposedly be a place where students can focus on developing their skills whether boys or girls.

Although religious school must treat students fairly and don't be biased. I really sad to see this happening in most religious school as they keep the gap and barriers of 'religion' limit girls participation. Its not true! Hope this will change.

Socioeconomic Status

Saya di hina oleh rakan sekelas kerana setiap rehat saya tiada duit untuk pergi ke kantin sekolah.Kadang kadang saya tidak dapat membayar yuran keceriaan kelas kerana tiada duit dan kawan kawan selalu mengejek saya.

Language

It happened about 8 years ago when i was been transferred to kedah from terengganu. The language (dialect) barrier make it difficult for me to comfort my self during in the class. This always happen during class. My classmate mostly cannot accept my dialect and making joke about it. Some of them tease me sometime in a class. But i not really stress over it just dont like it. The should understand different state have different dialect and it hard to change it a split second.

Religion

i am a christian (seventh-day adventist) who go to church every saturday, and most of the exams will be conducted on saturday, and i've requested to sit for the exam 1 day earlier or on next week on monday but instead, i got teased from the teachers that what kind of christianity that go to church on saturday, and usually the teachers will blackmailed to fail me if i did not showed up on saturday for the exams

Skin Colour

It took place in the extra curriculum activity for Scouts. There was an event in school and I was assigned to be helping out front. Just because a girl of a different race than me and same race as the lead asked to be put in front, I was immediately removed and reassigned to a different place. When i asked why, I was told not my place to ask, no one can see you at night also.

I was disappointed and gave up on Scout after that..

Legal Distinctions of Discrimination

Note that the following duties are a product of existing norms in discrimination law that have been developed in various jurisdictions, primarily drawing from the US, UK, South Africa, Canada and India. Hence, every case of discrimination or grounds for discrimination would likely not fit perfectly within these definitions and structures.

Direct discrimination

The law protects the protectorate from direct discrimination. Direct discrimination is a rule that explicitly treats someone unfavourably because they possess a certain trait. For example, a rule stating that women are not allowed to apply for a job.

Indirect discrimination

Indirect discrimination occurs when a neutral practice or policy disproportionately disadvantages a person belonging to a protected group. For example, a neutral classroom policy that all students must sit for the final exam on a Friday from 12-2PM would disproportionately disadvantage Muslim male students as it clashes with their Friday prayer and is thus an example of indirect discrimination.

Reasonable accommodation

Anti-discrimination law also promotes reasonable accommodation as a duty. Reasonable accommodation refers to the steps taken to avoid a disadvantage experienced by a person due to certain traits they possess. For instance, the provision of extra time during exams for students with ADHD or the provision of adequate facilities to assist physically disabeld students in schools. Reasonable accommodation refers to the steps taken to avoid the disadvantage.

Discriminatory harassment

Discrimination legislation also prohibits harassment based on a protected ground. This includes, but is not limited to, racial and religious slurs. However, harassment can be prohibited per se - this would be harassment that is not based on a protected ground and is a criminal offence under certain circumstances.

Affirmative action

Affirmative action policies aim to benefit groups that were previously disadvantaged and may be exempted from discrimination definitions. It can be either voluntary or mandatory and facilitative (e.g. having programmes that equip B40 students with the necessary skills to apply and interview for scholarships) or distributive (quotas that aim to supply goods directly).

Anti-Discrimination Frameworks

Malaysia's legal system is scarce where anti-discrimination laws and frameworks are concerned. To date, only the Federal Constitution and Employment Act 1955 provide for anti-discriminatory structures. Primarily, under the Federal Constitution, Article 8 and Article 12 are concerned with protecting citizens from discrimination. However, the Federal Constitution lacks grievance procedures to which victims of discrimination can seek recourse upon. A similar issue is seen in our domestic statute, the Employment Act 1955 despite amendments made to this piece of legislation. The only mention of procedural undertakings to combat workplace discrimination is seen under section 60L. Here, a Director-General may launch an inquiry into a complaint posed by a local employee if the local employee alleges he was discriminated against, in relation to or from a foreign employee. It is discouraging that such a procedure openly targets foreign employees and signifies how the Employment Act 1955 needs to adopt wider-reaching anti-discrimination policies.

Beyond the employment sphere, anti-discrimination policies in Malaysia are half-baked. This is especially true for the education sector. Anti-discrimination policies in the realm of education can be tracked to Article 12 of the Federal Constitution which concerns the rights in respect of education. It explicitly states that there shall be no discrimination of any citizen on the grounds of religion, race, descent or place of birth, (a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution.

Such wording promotes two issues. Firstly, the list of protected grounds under Article 12(1) is more limited than Article 8(2) as "gender" and "disability" are excluded as a ground of discrimination in education. This falls contrary to Malaysia's obligations under CEDAW and the Convention on the Rights of Persons with Disabilities (CRPD). However, Malaysian courts have stepped in to propel the right of disabled children to access education. Court judgements recognising this right subsequently lead to the enactment of the Persons with Disabilities Act 2008. Despite promising efforts to widen anti-discrimination frameworks in this light, the Persons with Disabilities Act 2008 still falls short of providing grievance procedures to discriminated disabled students, resulting in many remaining silent as highlighted by this report.

Secondly, while Article 12(1) explicitly mentions religion as a ground that cannot be discriminated against, Article 12(2) may be contradictory in providing that "every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining

Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose." Pursuant to Malaysia's obligations under the UNESCO Convention against Discrimination in Education 1960, Article 2(b) states that "the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level." Drawing a comparative analysis between the Federal Constitution and the UNESCO Convention, Malaysia's anti-discrimination framework may contravene international frameworks, given the state's preferential treatment in establishing and maintaining Islamic educational institutions.

One can observe direct discrimination upon Malaysia's ethnic minorities since individuals or organisations seeking to establish non-Muslim institutions may not be able to receive equivalent support from state authorities that limit support to only Islamic institutions and teachings. Additionally, it is highly likely children would face discrimination on the grounds of religion, given the comparatively reduced availability of non-Muslim schools and teaching. Furthermore, the fact that ethnic Malays are Muslims by definition under the Federal Constitution, translates to children of Chinese, Indian and other ethnic groups being indirectly discriminated against since such ethnicities are less likely to be of Muslim backgrounds in Malaysia.

Malaysia's lack of anti-discrimination laws surrounding education is best attributed to the Education Act 1996 which makes no mention of discrimination in schools or other educational institutions. The absence of legislation requiring schools to abide by certain procedural codes of conduct and the lack of a mechanism to address grievances, would explain why this report exposes a concerning trend of students remaining silent in the face of discrimination or not having their grievances acted upon.

Segregation as Discrimination?

A more subtle form of discrimination is segregation. Segregated institutions exist in many parts of society, such as special schools for disabled students or Bumiputera-only boarding schools. Based on the above definitions, both can be seen as a part of reasonable accommodation or affirmative action policies and a part of the State's anti-discrimination duty. However, such policies must be carefully designed to avoid a complete segregation of able-bodied and disabled students, and Bumiputera and non-Bumiputera students, in certain points of our education system. For this reason alone, anti-discrimination measures are sometimes considered "inimical to social cohesion and solidarity".

In US legal history, these "separate but equal" institutions were once held to be

not discriminatory as the separate choices were "equal" in nature.

However, in Brown v Board of Education of Topeka, the US Supreme Court held that racial segregation in public schools is unconstitutional, even if the segregated schools are otherwise equal in quality.

To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.

— Brown, 347 U.S. at 494

What differs the Plessy and Brown case is the fact that in the latter, the court looked not solely at the equal nature of the separate facilities, but instead considered the effects of segregation as a whole. But what about the white children in these separate but equal institutions? Why did they not feel the need to bring forth a claim? Sheinman argues that we need consider these institutions in the larger societal context and distribution of goods:

"When resources, powers and information are in white hands, preventing interaction, exchange and sharing will block black access without blocking white access to these goods. This begins to explain segregation's detrimental impact on black hearts and minds."

Hence, we need to look at the individualistic impact of segregation within the wider economic and social context in a country.

Segregated institutions of equal stature are not ideal as they are 1) detrimental to social cohesion and diversity and 2) have a negative psychological impact on certain groups of people. What is needed then are carefully designed affirmative action and reasonable accommodation policies to prevent the establishment of segregated institutions. Facilitative measures should be favoured as compared to strong distributive measures to prevent the singling out and consequent segregation of protected groups. This would ensure the continued promotion of the interests of protected groups alongside the long term aim of diverse educational institutions.

Whistleblowing & Victim Protection

Whistleblowing is the act where a person/employee exposes information or activity within a public, private or government organisation which is deemed illegal or inappropriate. In the school context, it can be when an individual (primarily for students) exposes information or activity within an educational institution by another individual (student, teacher, faculty member) which is deemed discriminatory. In Malaysia, the Ministry of Education (MOE) has established a few channels to record reports of disciplinary and administrative complaints that cover students, including cases of bullying, violence and threats. There are two channels that have a feature that protects the victims/reporters: SISPA (Sistem Pengurusan Aduan Awam) KPM and complaint boxes (peti aduan), by allowing anonymous reporting and ensuring all complaints received will be submitted to the MoE and/or the disciplinary teacher respectively for further investigation/action.

However, the established mechanisms may only cater more to how teachers can submit complaints compared to students. The latter group may face additional barriers in reporting such complex procedures and mistrust in public institutions, thus discouraging them to come forward with information on any alleged improper conduct. Private and international schools in Malaysia may specifically address policies of anti-discrimination and whistleblowing. However, there is no thorough framework or specific guideline in addressing discrimination as a whole issue that encompasses all Malaysian schools, public or private.

Despite the existing Whistleblowing Protection Act (WPA) 2010 which aims to protect whistleblowers from detrimental action, it does not specifically address cases for school children/students. For example, Bank Negara Malaysia's (BNM) Whistleblowing Policy is premised on the WPA 2010 and the policy defines a range of disclosures of improper conduct for potential whistleblowers to consider whether the alleged improper conduct to be disclosed to the Bank falls within any of the above, prior to making the disclosure. The Bank is committed to providing the whistleblower protections for them to make disclosures of such alleged improper conduct (whistleblowing) to the relevant authorities in good faith, by protecting their identities, providing them with immunity from civil and criminal proceedings and protecting them from detrimental action. There are instances where these protections may be revoked, if the disclosure of improper conduct is found frivolous, untrue or the whistleblower has participated in the improper conduct so disclosed. The policy also maps out the guidelines into lodging a report and on a more important note, the policy outlines specific a Designated Person to contact and specific communication channels based on the alleged wrongdoer.

We need to push for a similar and more robust policy on whistleblowing to protect students when coming forward with information. Victim protection is needed for the whistleblower/victim in order to provide them with the necessary security measures in fear of threats, retaliation, breach of privacy,

biases, shaming, and unwanted public exposure. In the case where victims who do not receive protection, they might be subjected to:

- Threats and retaliation from the accused
- Dismissals (victim-blaming, invalidation, gaslighting, guilt-tripping, undermining) by figures of authority (counsellors, faculty members) and other individuals
- Biassed subjectivity from figures of authority and other individuals
- Unwanted public exposure from issue going viral
- Public shaming
- Additional trauma from all of the above, apart from the initial act of discrimination, which might affect their social abilities, confidence and mental health.

The case of Ain Husniza has shown the possible repercussions a whistleblower may face. After bringing the issue of a male teacher making rape jokes to light through her personal TikTok/social media account(s), Ain has faced threats from her peers (a male schoolmate threatening to rape her), various accounts of cyberbullying, public shaming, and victim-blaming. She has also faced retaliation from the accused and her school, where they have filed a lawsuit against her for RM1 million, despite the fact that Ain did not reveal the names of the accused and the school explicitly. The repercussions experienced by Ain Husniza necessitate an urgent response to protecting whistleblowers in schools, in a manner similar to how acts of fraud and corruption can be reported under the Whistleblowing Protection Act 2010.

With a whistleblowing policy in place, it will protect the students and staff by allowing for the early detection of misconduct, in turn facilitating a quick rectification. In order to promote a whistleblowing culture, students must know what protections are available for them when blowing the whistle, what concerns are classified as whistleblowing, and their different options for reporting a concern. While whistleblowing policies are important, it is important to also remember they are not enough - schools should conduct regular whistleblowing training which is fundamental in raising awareness and increasing knowledge of whistleblowing and its importance. It is necessary to now address these deep-seated cultural issues in schools.

Accountability

Educational Staff

Current Practices, Guidelines and Frameworks

Within the Malaysian Ministry of Education (Kementerian Pendidikan Malaysia), the Education Services Commission (Suruhanjaya Perkhidmatan Pendidikan) acts similar to that of a Human Resources department in private companies. The recruitment of staff in the national public education system is handled by the Education Services Commission, often through interviews (Suruhanjaya Perkhidmatan Pendidikan, n.d.).

The objective of the Ministry's Education Services Commission is to ensure that the powers prescribed under Article 144 (1) of the Federal Constitution in matters of appointment, service, discipline and promotion are undertaken efficiently and effectively, namely performing the duties listed in the box below. The duties relevant to this report have been bolded (Suruhanjaya Perkhidmatan Pendidikan Malaysia, 2021).

To the best of our knowledge at the time of writing this report, the process for disciplinary action and control of public education staff is as follows:

- An investigation is opened by either the Ministry of Education or the Royal Malaysian Police (Polis DiRaja Malaysia).
- The Ministry of Education sends a report to the Education Services Commission after the investigation is concluded.
- The Education Services Commission verifies the report and the alleged misconduct.
- The Education Services Commission then decides on what disciplinary action should be undertaken.
- The Education Services Commission then processes any appeals made by any parties.

All public educational staff fall under the jurisdiction of the Public Service Department (Jabatan Perkhidmatan Awam), and as such are governed by the Public Officers (Conduct and Discipline) Regulations 1993 (Peraturan-Peraturan Pegawai Awam

1. To appoint
    - To appoint candidates to permanent, contractual or temporary posts in the education service.
2. To confirm
    - To confirm in service of members to permanent posts.
    - To emplace on the permanent or pensionable establishment
    - To approve the emplacement of pensionable status of members who have been permanently appointed and confirmed in service.
3. To promote
    - To control the promotion of members of the education service through the Promotion Appeal Board.
4. To transfer
    - To approve the transfer of appointment or transfer of service of members of the service.
5. **To exercise disciplinary control**
    - **To serve as the disciplinary authority and Disciplinary Appeal Board in the education service.**

(Kelakuan dan Tatatertib) 1993), which provides the following possible disciplinary actions against civil servants who violate the regulations (His Majesty's Government Gazette, n.d.):

- Warnings;
- Fines;
- Forfeiture of emoluments;
- Deferment of salary movement;
- Reduction of salary;
- Reduction in rank

Examples of misconduct that have resulted in punishment were found in reports produced by the Education Services Commission - such as not attending duty, corruption and other forms of "misconduct". However, details of many of the misconducts were found to be undefined. Sexual harassment is under the Regulations but the Education Services Commission has yet to publish any data regarding this specific kind of misconduct in their reports.

Discrimination is not explicitly mentioned anywhere in the Regulations.

Gaps and Potential Improvements

To a certain extent, the Ministry of Education does mention discrimination in some of their core policy and plans, albeit quite vaguely and broadly. There is also a conflation between discrimination and bullying. An example of such an acknowledgement can be found in the following excerpt from the Secondary Education Co-curriculum page on the Ministry's website (Kementerian Pendidikan Malaysia, n.d.-b) (see box on right).

As of the time of writing of this report, there has yet to be a clear definition and policy on discrimination by the Ministry of Education. It must also be noted that there remains significant gaps between proposal and implementation. Misconducts such as absenteeism from duties and corruption are often regarded as being easier to identify due to pre-existing mechanisms like attendance-taking, staff time clocks, etc. Discrimination might be underreported, and is oftentimes regarded as being harder to collect evidence for. These might prove to be stumbling blocks in an institutional attempt to include discrimination in existing policies, either by the Education Service Commission or the Ministry of Education.

Alternatively, further research should be conducted by either the Commission or Ministry if it existing rules and regulations can be expanded in scope to also include acts of discrimination. As educational staff are bound by regulations for civil servants, one possible improvement is for the Federal Government to formally include discrimination as an offence within the Public Officers (Conduct and Discipline) Regulations 1993.

The following is an unofficial English translation. The original text is in Malay, and no official English translation could be found at the time of the drafting of this report.

CORE POLICY (5) "MASS" PARTICIPATION

The implementation of co-curricular activities in schools should be based on the principle of mass participation without any elements of discrimination or coercion, but instead should be focused on enhancing unity and integration among students. (Special Circular No. 17/2000, dated 16 November 2000).

Co-curricular activities implemented in schools should be cross-disciplinary, integrated and not exclusive. Participation should be open to all students.

Students

Current Practices, Guidelines and Frameworks

The Ministry of Education has previously issued various guidelines and circulars, that while not directly addressing discrimination, do attempt to target negative student behaviour that could be taken to include discrimination by fellow students under certain interpretations.

In November 2014, a letter titled "*Compliance With Guidelines To Prevent And Deal With Bullying Among Students In Schools*", was circulated to the Education Directors (Pengarah Pendidikan) of all the State Education Departments (Jabatan Pendidikan Negeri). In it, the Ministry expressed their serious concern regarding bullying in schools, and advised the Education Directors to refer to four specific circulars and documents when handling bullying, which are listed as below:

- **Letter No. (16) Year 2009**: Firmness in Dealing with Gangster-Like Behaviour Among Students.
- **Circular Letter No. (8) Year 2010**: Guidelines for Preventing and Dealing with Bullying Among Students in Schools.
- **Guidelines:** Tackling Bullying Through Cultivating Caring Practices Among Students in Schools and Dormitories.
- **Circular Letter No. 7/2011**: Implementation of Standard Operating Procedure (SOP) 1:3:7 Reporting and Actions to Address Student Discipline 2011.

The 2009 and 2010 letters (documents 1 and 2) instruct school administration authorities to create a student disciplinary complaints box in the school (and in dormitories if the school has dormitories). Students should also be made aware of and be given confidence in the functioning of the complaints box. Immediate action should be taken to address any and all complaints, and a thorough investigation should be conducted. The Ministry also urged school authorities to be vigilant in observing potential signs of gangsterism, bullying, or other wrongdoing. However, the 2010 circular goes further by elaborating on the possible punishments that can be meted out in response to any acts of bullying, as below:

- A strong warning being given (both the student perpetrator and their parents have to sign a letter promising that such an incident will not repeat);
- Barring student perpetrators from using school or dormitory facilities, or from taking part in any school activities and programmes;
- Caning the student perpetrator (not more than 3 times);
- Suspension from school (for a duration no longer than 14 days);
- Expulsion from school (in cases which involve injury or loss of life).

The guidelines on cultivating caring practices (document 3) encourages schools to create a healthy school culture where both students and teachers express their care and concern for one another. Suggestions on strategies to do so include teachers being friendly, respectful, and sympathetic when interacting with students; students are encouraged to communicate well with and to appreciate their friends, while instilling a culture of tolerance and respect in any relationships they may form.

The circular on the implementation of Standard Operating Procedures (document 4)

acknowledges that incidents of bullying may sometimes only be reported a few days after its occurrence or only when the Ministry of Education asks for a report from schools, and admits that it displays a weakness at all levels of the Ministry in tackling this issue. It also establishes the 1:3:7 Standard Operating Procedure (SOP) as follows:

Days since incident	**Action that should be taken**
Day 1	1. The State Education Department is to investigate and prepare a preliminary report on the disciplinary issue at schools to the Ministry of Education containing the following information: • What? • Who? • Where? • When? • Preliminary actions taken (in brief) 2. This preliminary information may be sent via SMS, email, telephone, mobile phone, or the hotline of the Daily School Management Division (Bahagian Pengurusan Sekolah Harian). 3. The State Education Department may send a report of their preliminary investigations, if and when the investigation and report have been concluded, through facsimile or email on Day 1 of the incident. Form PK04-3 (Pengurusan Aduan) may be used where possible.
Day 3	1. The State Education Department should have already begun their investigation and should have already sent their full report to the Ministry of Education, including description of actions that are being taken (or will be taken) by the involved parties. 2. Form PK04-3 should be used.
Day 7	1. The case/issue/incident which occurred should be resolved at all levels, including in terms of necessary actions, or punishments and other resolutions being enacted. 2. The resolution of the matter should maximise satisfaction for all involved parties

Gaps and Potential Improvements

As noted earlier in this report, most existing policies do not explicitly or directly refer to discrimination, but rather target antisocial or negative behaviour in general. Thus, the conclusion on gaps and potential improvements for improving student accountability in discrimination cases is similar to that of the section on educational staff - specifying directly punishments and actions that should be taken in discrimination cases. There is also a lack of clear definition and direct action on discrimination alone, which can make it hard for entities like the Education Services Commission to properly undertake disciplinary action on educational staff. Bullying, discrimination, and gangsterism are often collated together in the current accountability framework, and this lack of distinction might not necessarily deliver the best resolution in each situation.

The gap between theory and practice will also need to be addressed, potentially either through more regular checks and visits by district, state, and national educational authorities to schools, especially those with a history of discrimination cases occurring. Other solutions not mentioned in this report should also be considered in tackling this serious problem effectively.

Comparison: Other Nations

Malaysia's lack of statutory frameworks to tackle discrimination in schools is further magnified in contrast to existing policy implementations by its international counterparts. An efficient scheme to tackle discrimination in schools requires elements such as funding, reporting, data accumulation and training to cultivate a schooling environment of inclusivity and diversity. These elements offer support to school students in cultivating a safe, inclusive and equitable environment regardless of one's protected characteristic. Malaysian schools are currently underequipped to resolve grievances brought forward by students relating to discrimination. This observation was further reinforced by the case of Ain Husniza, in which her school responded poorly to the alleged sexual harassment she encountered by a teacher.

Despite Malaysia possessing distinct social dynamics in how factors like race, religion or disabilities are viewed and interacted with, there are certain mechanisms that the Malaysian education system could emulate when looking at policies abroad. For instance, the United States facilitates its equity and anti-discriminatory policies by upholding an institutional commitment to dismantling racism. This is executed through a five-pronged construct relating to the school environment, reporting, staffing, data analysis and funding:

- **School environment**

Curricula, texts, displays or digital media is used in schools to promote diversity and inclusivity. Issues of race and diversity are discussed, and positive role models are incorporated to build empathy and improve racial literacy. Events on diversity are convened to help advocate against racism and biases among major stakeholders (staff, teachers, administrative, students, parents).

- **Reporting**

The procedure includes a written report, timeline and documentation of resolution, and family notification. It aims to ensure schools help students feel empowered to report incidents and develop strategies to deal with racial conflict.

- **Staffing**

Employment of staff members who are dedicated to anti-racism and are culturally and linguistically diverse. Furthermore, professional development and staff training is offered to staff members to improve racial consciousness and inclusivity.

- **Data Analysis**

Modes of collecting and reviewing data are undertaken to challenge discrimination. For instance, calling out selective admission criteria among the enrollment system that affect marginalised communities.

- **Funding**

Access to economic opportunities particularly for marginalised groups are funded.

These elements do not exist in isolation and are supplemented by specific policy considerations:

- **Clearly and accurately defining racism**

Providing a definition creates an opportunity to educate readers on the school or district's understanding of racism. Stakeholders of anti-racist policies would be better equipped to follow subsequent guidelines if they have a foundational understanding of the problem and the purpose of the policy.

- **Policy dissemination**

Policies are to be made available online, on the school or district website. Other strategies for distribution include a physical copy in a designated location such as a school's main office and inclusion in student and staff handbooks. Other ideas for dissemination include public displays in prominent areas of the school, placement in newsletters, and discussions during assemblies. Importantly, several anti-racist/equity policies name all parties that should review the policy, including staff, parents, students, contractors, service provides, and any other school visitors.

- **Appointing a Committee or Point-Person**

An individual or group is put in charge of monitoring the school's progress towards goals. In some cases this is the superintendent or another school leader; in other contexts, an equity committee is charged with this responsibility. In general, the governing body or individual is required to report to the school board, make recommendations based on data, promote alignment between equity and other goals, present tools or resources, and ensure compliance with state and federal laws. Most policies describe the need for an annual report or review as part of their action plan.

- **Coupling Anti-Racist/Equity Policies with Other School Policies**

Another way to promote accountability and adherence to anti-racist/equity policy is by associating it with other school policies, especially those that are well established. For example policies on discipline, behavior, anti-bullying, school safety, the staff code of conduct, and the student code of conduct.

Several anti-racist/equity policies identify their relationship to standards and curriculum and federal laws regarding race and discrimination. Attaching these policies to existing initiatives helps to integrate them into the organisational fabric of these educational institutions.

- **Partnering with External Organisations**

Finally, to support the implementation of an anti-racist policy, schools and districts should seek guidance from organizations already committed to anti-racist work. This is an important component because it lessens the burden on educational systems to deal with complex issues of race and equity on their own and presents the opportunity to rely on the expertise of government agencies, universities, community organizations, research organizations, and anti-racist nonprofits. This can also facilitate and strengthen relationships between schools and communities.

The urgency to embrace diversity in education is also highlighted within European frameworks for diversity and inclusion in classrooms. For instance, the European Commission against Racism and Intolerance (ECRI) requires teaching staff to embrace diversity within the classroom environment and concurrently receive training to different aspects of discrimination such as direct, indirect or structural discrimination and how to respond to these varying scenarios. Sweden for example, goes a step further through legislative intervention by outlining specific procedural measures for teachers. The Swedish Education Act 2010 outlines how each institution must provide a system for teachers to track, progress and improve the environment of studying whilst enabling the reporting of any form of discrimination and harassment made, the appropriate course of action and how teachers can respond to mitigate such issues.

Some jurisdictions such as Canada implement a policy that takes a micro approach to a particular area of discrimination. This is conducted through the Individual Education Plan that focuses on students with disabilities. The Individuals with Disabilities Education Act involves several stakeholders (parents, general education teachers, special education teachers, school and service representative, child) to design measurable yearly goals, needed services and accommodations, and character development. A similar approach is seen in Australia where education institutions implement facilitator-led blended learning courses based on reducing disability shortcomings and have direct interference whenever discrimination takes place.

The anti-discrimination policies that other countries implement is not just aimed at performatively promoting diversity but is instead detailfully structured in every procedural aspect and is curated to meet specific needs of students from vulnerable groups. Such measures are constructive because it is not merely about a zero-tolerance policy towards discrimination but it simultaneously cultivates a safe space for character development in students within the education sphere. Malaysia could look to our counterparts and curate anti-discrimination policies in schools that fit the specific needs of Malaysian students. Only in very remote circumstances do we see Malaysian students seeking out recourse for their grievances in schools. Such matters are taken to courts with immense legal fees which means it is not an option for especially economically disenfranchised students.

Avenues to combat discrimination must begin at the school level. Most importantly, in order for students to be encouraged to come forth with their grievances, Malaysian schools must be a safe place for honest and open communication where students feel supported, unlike the current prevalent culture of victim-blaming.

Recommendations

In reference to previous sections in this report, we provide a broad list of recommendations to various stakeholders to better prevent and punish cases of discrimination in education. It is important to note that policies surrounding discrimination will consistently evolve to reflect current social dynamics and efforts must be culturally responsive to a particular period in time. Indeed, even anti-discrimination policies in developed nations are periodically challenged and corrected. Although efforts to eradicate discrimination can indeed be more extensive, the following recommendations have been identified as priorities with regards to current policies in place.

1. **Ministry of Education**

    a. ***Establish definition and punish interpersonal discrimination among students***

Crucial distinctions between bullying and discrimination are required to be made in order to ensure identity-specific cases are sufficiently covered. Similar to Circular Letter No. (8) Year 2010: Guidelines for Preventing and Dealing with Bullying Among Students in Schools, a necessary and immediate action the Ministry of Education can implement is to issue a circular that provides guidance for schools and teachers to prevent and punish instances of interpersonal discrimination between students relating to race, religion, skin colour, gender, language, socio-economic status and disability. Such a circular would provide the prerogative for disciplinary parties to investigate, manage and punish perpetrators of discrimination.

    b. ***Strengthen and streamline reporting mechanism for student and teacher perpetrators***

Current mechanisms - namely, SISPA and complaint boxes - provide limited capacity for reporters to track and escalate their grievances. Further, these platforms are made for general issues and discrimination-related complaints may be overlooked or categorised erroneously. A dedicated reporting platform for discrimination that provides optional anonymity for reporters, automated case filing to disciplinary parties and update tracking is recommended to encourage reports and to ensure appropriate stakeholders are immediately informed. The establishment of such a platform should go hand-in-hand with victim protection guidelines in line with the Whistleblower Act 2010 to ensure further harm is not done.

    c. ***Provide anti-discrimination training to teachers***

Similar to the Ministry's Guidebook to Handling Bullying in Schools first published in 2005 that outlines research surrounding bullying and stakeholder responsibilities for teachers, a clear anti-discrimination framework with guidelines for case management and preventive measures should be developed and disseminated among teachers. As successfully

implemented in various other education systems (see page 24), such guidelines should be accompanied by training for both new and current teachers that increases consciousness of discrimination and provides skills to increase inclusivity in school environments.

2. Malaysian Government

a. Expand list of misconducts in governance of teachers as public servants to include interpersonal discrimination

As teachers were reported to be one of the main perpetrators of discrimination, it is crucial to ensure regulations governing their misconducts include discrimination as an offense (see page 20). The Public Officers (Conduct and Discipline) Regulations 1993 should be amended to include misconducts concerning interpersonal discrimination. Further research is needed to ascertain the specific nature of such an amendment that would either implicate other civil servants or be applied only specifically to teachers and education staff under the Public Service Department.

b. Federal law to legislate equal access to education

A rights-based approach is needed to ensure that the government is held accountable as duty-bearers for non-discrimination in education. With further research, a federal law or amendment to the Education Act 1996 could be enacted in order to open up rights-based approaches to children and students to improve education equity and equality.

3. Education Institutions

a. Enact and strengthen discipline against discrimination

As schools, colleges and universities possess a degree of autonomy in the enforcement and implementation of disciplinary measures, institutions should ensure that identity-based discrimination is sufficiently addressed and treated as a form of harassment. Institution leaders and teachers play an important role in treating cases of discrimination seriously and taking the time and effort for investigation. Further, institution leaders should ensure staff protect the well-being and privacy of victims of discrimination should federal-level policies not cover such domains.

b. Conduct preventive measures among students

Education institutions have various opportunities to educate their communities on the seriousness, prevalence and impact of discrimination. As such, institution leaders have the opportunity to invest in awareness campaigns and partner with external organisations that provide education on discrimination services.

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