



**Australian Government**  
**Refugee Review Tribunal**

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# Country Advice

## Malaysia

Malaysia – MYS40392 – Chinese  
Malaysians – Discrimination –  
Government attitude to homosexuality

7 June 2012

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**1. Please provide country information on whether Chinese Malaysians are discriminated in Malaysia in the work place, in mainstream society, in education or in law.**

The constitution of Malaysia states that all persons are equal before the law and entitled to equal protection under the law.<sup>1</sup> Nonetheless, racial discrimination is institutionalized in Malaysia, particularly in government-backed affirmative action policies for *bumiputras* (“sons of the soil” – Malays and indigenous peoples from Sabah and Sarawak) in land ownership, employment and education.<sup>2</sup>

Chinese Malaysians form 24 percent of the population of Malaysia, which is predominantly Malay (50 percent), and includes non-Malay tribals (11 percent), and Indians and Pakistanis (7 percent). Malay-based Bahasa Malaysia is the official language, with several Chinese dialects, English and Tamil also widely spoken.<sup>3</sup>

Malaysia’s governing coalition, known as the Barisan Nasional (BN), is overwhelmingly dominated by the United Malays National Organisation (UMNO), formed to serve the political and economic interests of ethnic Malays.<sup>4</sup> This coalition was first known as the Alliance, and has ruled Malaysia since 1973. The major Chinese political party, the Malaysian Chinese Association (MCA), has been part of the ruling coalition government in Malaysia continuously since 1982.<sup>5</sup> The United States Department of State (USDOS) reports that, within the governing coalition, “the political dominance of the Malay majority meant that ethnic Malays held the most powerful senior leadership positions”.<sup>6</sup> Furthermore, the *Political Handbook of the World 2011* states that “voting is weighted in favor of the predominantly Malay rural areas, with some urban (mainly Chinese) constituencies having three to four times as many voters as their rural counterparts”.<sup>7</sup>

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<sup>1</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 1d <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>2</sup> Amnesty International 2009, *Amnesty International Report 2009 – Malaysia*, 28 May <<http://www.amnesty.org/en/region/malaysia/report-2009>> Accessed 24 May 2010

<sup>3</sup> Muller, TC et al (eds) 2011, ‘Malaysia’, *Political Handbook of the World*, CQ Press, Washington DC, p.885 <[http://library.cqpress.com/phw/document.php?id=phw2011\\_Malaysia&type=toc&num=111](http://library.cqpress.com/phw/document.php?id=phw2011_Malaysia&type=toc&num=111)> Accessed 5 June 2012 (MRT-RRT Library)

<sup>4</sup> Freedom House 2010, *Countries at the Crossroads 2010 – Malaysia*, UNHCR Refworld website, 7 April, p.2 <<http://www.unhcr.org/refworld/docid/4be3c8c80.html>> Accessed 24 May 2010

<sup>5</sup> Malaysian Chinese Association n.d., *Introduction: History of Party Formation*, Malaysian Chinese Association <<http://www.mca.org.my/English/History/Pages/default.aspx>> Accessed 10 August 2010

<sup>6</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 3 <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>7</sup> Muller, TC et al (eds) 2011, ‘Malaysia’, *Political Handbook of the World*, CQ Press, Washington DC, p.889 <[http://library.cqpress.com/phw/document.php?id=phw2011\\_Malaysia&type=toc&num=111](http://library.cqpress.com/phw/document.php?id=phw2011_Malaysia&type=toc&num=111)> Accessed 5 June 2012 (MRT-RRT Library)

The introduction of the New Economic Policy (NEP) in 1971 by UMNO and the subsequent bumiputra “affirmative action” policies and laws do not necessarily indicate a hostile or negative attitude towards ethnic Chinese and other, non-Malay, ethnic groups in Malaysia by the government. UMNO has argued that affirmative action and other rules introduced were designed to improve the standard of living of Malays and therefore reduce the economic tensions that led to the events of 13 May 1969, when hundreds of ethnic Chinese were killed and thousands of businesses damaged or destroyed, purportedly as a result of Malay anger about the disparities in wealth between the two ethnic groups. However, there are also historians who believe that the 13 May violence was orchestrated by UMNO politician Abdul Razak Hussein, as part of a bid to oust Prime Minister Tunku Abdul Rahman.<sup>8</sup>

Whether or not the violence was orchestrated by UMNO politicians, the May 1969 violence still causes great distrust of UMNO by many ethnic Chinese. This suspicion and distrust was renewed during the 2006 UMNO conference, when reportedly several high-profile speakers “referred to the need to defend their race and religion with their own blood and warned non-Malays (especially the Chinese) against any threats to the special rights for bumiputeras.”<sup>9</sup> Kua Kia Soong, director of Malaysia’s human rights organisation Suara Rakyat Malaysia (Suaram) states that “[i]n the course of the proceedings, Malaysians were warned not to question the status quo ‘or else... May 13 might happen again!’ One delegate after another proceeded to issue racist and patently seditious threats to non-Malays in the country.”<sup>10</sup>

At the 2009 UMNO conference, however, newly elected Prime Minister Mohamad Najib Abdul Razak reportedly ensured that there was “no verbal bashing of Chinese and Indian minorities” and told the four thousand UMNO delegates that they “could no longer be arrogant and look down on other races and still lead the country.”<sup>11</sup>

In January 2011, the foreign editor of *The Australian* reported that Prime Minister Najib had, in numerous speeches, “set as a goal the eventual elimination of the affirmative action programs for Malays that constitute effective discrimination against the non-Malay minorities”.<sup>12</sup> A February 2011 article in *Foreign Policy Analysis* stated that Najib was the first Malaysian leader to propose the substantial revision and winding back of these long-standing affirmative-action policies.<sup>13</sup>

*The Economist* has more recently reported that Najib “seems sincerely to believe that Malaysia’s political settlement after independence in 1957 is anachronistic, because it uses wide-ranging affirmative actions to privilege the rights of the majority ethnic Malays over those of ethnic Chinese and Indians”. According to *The Economist*, Najib’s positioning himself as a moderniser makes political sense when a “younger generation of Malaysians resents the ethnic divisiveness practised by the ruling establishment”. While the “centre ground of politics, on which the next general election will be fought, has shifted away from the politics of Malay supremacy”, there however remains opposition to change within

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<sup>8</sup> Soong, KK 2008, ‘Racial conflict in Malaysia: against the official history’, *Race & Class*, vol. 49: no. 3, pp.34-35

<sup>9</sup> ‘World Directory of Minorities: Malaysia – Chinese’ 2009, Minority Rights Group International website <<http://www.minorityrights.org/4528/malaysia/chinese.html>> Accessed 17 October 2008

<sup>10</sup> Soong, KK 2008, ‘Racial conflict in Malaysia: against the official history’, *Race & Class*, vol. 49: no. 3, p.34

<sup>11</sup> Kuppasamy, B 2009, ‘Umno searches its soul amid waning support’, *South China Morning Post*, 2 November, FACTIVA

<sup>12</sup> Sheridan, G 2011, ‘Malaysia steers moderate course with Najib at helm’, *The Australian*, 29 January <<http://www.theaustralian.com.au/news/opinion/malaysia-steers-moderate-course-with-najib-at-helm/story-e6frg6zo-1225996345163>> Accessed 7 June 2012

<sup>13</sup> Lee, J 2011, ‘Malaysian dilemma: The enduring cancer of affirmative action’, *Foreign Policy Analysis*, 23 February <<http://www.cis.org.au/images/stories/foreign-policy-analysis/fpa-6.pdf>> Accessed 7 June 2012

UMNO, which was founded specifically to protect Malay privileges. *The Economist* reports that “[m]ost of the internal opposition to Mr Najib comes at the divisional level, where a belief in Malay privilege remains entrenched.”<sup>14</sup>

The *Political Handbook of the World 2011* states that “uneasiness over racial restrictions on minorities” is a current issue in Malaysia.<sup>15</sup> Public discussion on issues of racial discrimination in Malaysia is limited, however, as any public statements critical of the status quo render the speaker liable to prosecution under the *Sedition Act 1948*. This Act prohibits any questioning of the positive discrimination system in place for bumiputras and any promotion of “feelings of ill-will and hostility between different races or classes of the population of Malaysia”.<sup>16</sup> Amnesty International reported an incident in 2011 when the authorities pressured a Chinese-language radio station to dismiss the host of a programme which had criticized the government’s positive discrimination policy. Reportedly, the Malaysian Communications and Multimedia Commission sent a letter to the station, “alleging that the programme threatened national security and compromised race relations”.<sup>17</sup>

### **Societal discrimination**

No reports were located indicating that Malaysia’s ethnic Chinese community have been adversely affected by any significant outbreaks of public violence or intimidation in recent years, however a number of studies have reported that many in Malaysia’s ethnic Chinese community continue to feel threatened by the memory of the 1969 anti-Chinese riots and/or marginalised by pro-ethnic Malay affirmative action policies. Another concern of Malaysia’s ethnic Chinese community is the authoritarian manner in which Malaysia is governed by UMNO through the larger BN coalition.<sup>18</sup>

In 2008, Malaysia’s Centre for Public Policy Studies (CPPS), a non-government research group, published a fact sheet providing survey data on the subjects of governance, demography and ethnic attitudes in Malaysia. The data indicated that ethnic inequality was seen as a pressing issue in Malaysia:

- 75% of young Malays can say they have never been treated unfairly on account of their race; however, only 45% of their Chinese peers and 49% of the Indians say the same. For religious discrimination, the same figures stand at 82% for the Malays and 53% for others. (CPPS Minda Muda study)
- Recent polls suggest that ethnic inequality is the 2nd-most pressing issues faced by Malaysians, at 17%, with only price hikes and inflation considered more pressing, coming in at 20%. 63% are somewhat or very dissatisfied with government efforts

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<sup>14</sup> ‘Najib at bay’ 2012, *The Economist*, 4 February <<http://www.economist.com/node/21546026>> Accessed 28 May 2012

<sup>15</sup> Muller, TC et al (eds) 2011, ‘Malaysia’, *Political Handbook of the World*, CQ Press, Washington DC, p.884 <[http://library.cqpress.com/phw/document.php?id=phw2011\\_Malaysia&type=toc&num=111](http://library.cqpress.com/phw/document.php?id=phw2011_Malaysia&type=toc&num=111)> Accessed 5 June 2012 (MRT-RRT Library)

<sup>16</sup> Freedom House 2010, *Countries at the Crossroads 2010 – Malaysia*, UNHCR Refworld website, 7 April, p.2 <<http://www.unhcr.org/refworld/docid/4be3c8c80.html>> Accessed 24 May 2010; ‘Laws of Malaysia: Act 15 Sedition Act 1948 Incorporating all amendments up to 1 January 2006’ 2006, Malaysian Attorney-General’s Chambers website <<http://www.agc.gov.my/agc/Akta/Vol.%201/Act%2015.pdf>> Accessed 28 May 2010

<sup>17</sup> Amnesty International 2011, *Annual Report 2011 – Malaysia*, May

<sup>18</sup> Yoong, S 2009, ‘Malaysia racial ties fragile 40 years after riots’, *Associated Press*, 11 May, FACTIVA; Pepinsky, TB 2009, ‘The 2008 Malaysian Elections: An End to Ethnic Politics?’, *Journal of East Asian Studies*, vol.9: no.1, pp.87-120; Soong, KK 2008, ‘Racial conflict in Malaysia: against the official history’, *Race & Class*, vol. 49: no. 3, pp.33-53

to address ethnic inequality. (Merdeka Centre Voter Opinion Poll 4th Quarter 2007)

- ...40% of Chinese and Indians believe they are second-class citizens. A vast majority of Malaysians – 94% – however say that no matter how difficult ethnic relationships sometimes get, Malaysians should consider themselves lucky to live here (Merdeka Centre Ethnic Relations Perceptions Poll).<sup>19</sup>

An article in *The Economist* in 2007 stated that resentment among ethnic Chinese and Indians towards their treatment and official status, as well as concern at “creeping ‘Islamisation’ among the Malay Muslim majority of what has been a largely secular country”, had given rise to these ethnic minorities feeling increasingly marginalised.<sup>20</sup>

## Business and employment

In 1971 the Malaysian government introduced its New Economic Policy (NEP), which included the bumiputra regulations which provide affirmative action rules that some observers interpret as ethnic discrimination of Chinese and Indians. Of significance are rules that favour ethnic Malays for employment in the public service. Ethnic Chinese are, therefore, less likely to find employment in the Malaysian public service or in state-owned enterprises. With fewer public service options than ethnic Malays, ethnic Chinese in Malaysia have relied on entrepreneurship to generate employment and household income. Consequently, ethnic Chinese entrepreneurs “dominate” Malaysia’s business sector.<sup>21</sup> In 2007 Malaysian enterprises owned by ethnic Chinese generated 40 percent of Gross Domestic Product (GDP), despite constituting approximately 25 percent of the population.<sup>22</sup>

Historically, ethnic Chinese have enjoyed a significantly lower rate of unemployment than both ethnic Malays and ethnic Indians. In 2005 the unemployment rate amongst ethnic Chinese (2.4 percent) was less than half that of ethnic Malays (5.3 percent). Furthermore, in 2004, the average monthly household income for ethnic Chinese (4437 Ringgit) was significantly higher than that of so-called bumiputras (2711 Ringgit).<sup>23</sup>

In 2009, Prime Minister Najib jettisoned one bumiputra rule requiring that foreign investors in the service sector enterprises include at least 30 percent ownership by ethnic-Malay partners.<sup>24</sup> The *Political Handbook of the World 2011* states that:

In his first months in office, Prime Minister Najib took steps to modify Malaysia’s racially based development policy by weakening Malay employment set-asides for most public companies and by eliminating the requirement for some foreign investors to form partnerships with ethnic Malays. The policy shift reflected the need to attract greater investment at a time of financial crisis, but also highlighted the governing

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<sup>19</sup> Centre for Public Policy Studies n.d., *CPPS Policy Factsheet: National Unity*

<<http://www.cpps.org.my/downloads/factsheets/National%20unity%20factsheet.pdf>> Accessed 21 September 2009

<sup>20</sup> ‘Tall buildings, narrow minds – Malaysia at 50’ 2007, *The Economist*, 1 September, FACTIVA

<sup>21</sup> Immigration and Refugee Board of Canada 2008, *Malaysia: Reports of discrimination against Malaysians of Chinese descent (June 2004 – October 2007)*, MYS102643.E, 5 November <[http://www2.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=451553](http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451553)> Accessed 13 October 2008

<sup>22</sup> Hodgson, A 2007, ‘Malaysia – wealth gap along ethnic lines’, *Euromonitor International*, 16 April <[http://www.euromonitor.com/Malaysia\\_wealth\\_gap\\_along\\_ethnic\\_lines](http://www.euromonitor.com/Malaysia_wealth_gap_along_ethnic_lines)> Accessed 21 September 2009

<sup>23</sup> Jomo, KS & Wee, CH 2009, *Policy Coherence Initiative on Growth, Investment and Employment: The Case of Malaysia*, 2 December, pp.50 and 62 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms\\_101733.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_101733.pdf)> Accessed 30 August 2010

<sup>24</sup> ‘Malaysia relaxes racial policies’ 2009, *Wall Street Journal*, 23 April

<[http://online.wsj.com/article/SB124040220273\\_943253.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB124040220273_943253.html?mod=googlenews_wsj)> Accessed 23 April 2009

party's hopes to shore up the support of ethnic minorities, especially the Chinese and Indian communities, which had begun to favor the PR and which viewed the original requirement for investors as economic discrimination.<sup>25</sup>

The USDOS reports that in 2010, Prime Minister Najib “unveiled a New Economic Model that called for restructuring the country’s system of bumiputra ethnic preferences to reduce unequal treatment of different ethnicities by the government and to better target subsidies and preferences to the poorest citizens, regardless of ethnicity”. Bumiputra rights groups raised objections to changes that could threaten ethnic preference programs, however, and in February 2011 Najib launched “Unit Peneraju Agenda Bumiputra (Teraju) to strengthen further the bumiputra development agenda and boost its economic participation”.<sup>26</sup>

## Education

Schooling in Malaysia is divided into three tiers: primary, lower secondary, and upper secondary. Primary schools in Malaysia are divided into three types: Malay language national schools; type C schools, with Mandarin as the language of instruction; and type T schools, where Tamil is the language of instruction. Malay and English are compulsory subjects in all three types, and English is the language of instruction for maths and science in all school types. National schools are government-operated and funded, while national-type schools are “mostly government-assisted, though some are government-operated.” Parents can choose which type of school they wish to enrol their children in. The number of each school type is largely commensurate with the national demographic makeup: in 2006 there were 5,774 national (Malay) schools, 1,288 type C (Chinese) schools, and 523 type T (Tamil) schools in Malaysia.<sup>27</sup>

At lower secondary schools, however, Malay is the language of instruction for all publicly funded schools, and students can only continue to study in Mandarin or Tamil in private schools. *The Straits Times* reported in 2008 that while approximately 90 percent of ethnic Chinese children in Malaysia attend Mandarin primary schools, “less than 5 percent continue on to Mandarin-medium secondary schools, which are privately-run and fee-paying. Parents prefer to send their children to government schools, where education is free.” Given that the main language of instruction in such secondary schools is Malay, many Chinese students struggle. Only 75 percent of ethnic Chinese students complete secondary school in Malaysia.<sup>28</sup>

A discussion of education issues for Malaysia’s Chinese minority is provided in a 2006 study authored by Allan Collins of the University of Wales, Swansea. Collins’s study is specifically concerned with the issue of language in Malaysian education and the relationship between the governing UMNO-led Barisan Nasional coalition and the Dong Jiao Zong (DJZ), a Malaysian ethnic Chinese educational organisation “responsible for the administration and running of some 1,281 Chinese primary schools in Malaysia”. The study notes that while the educational system at the primary level reflects the ethnic composition and diversity of Malaysia, at the

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<sup>25</sup> Muller, TC et al (eds) 2011, ‘Malaysia’, *Political Handbook of the World*, CQ Press, Washington DC, p.885 <[http://library.cqpress.com/phw/document.php?id=phw2011\\_Malaysia&type=toc&num=111](http://library.cqpress.com/phw/document.php?id=phw2011_Malaysia&type=toc&num=111)> Accessed 5 June 2012 (MRT-RRT Library)

<sup>26</sup> US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Malaysia*, 24 May, Section 1d <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>27</sup> UN Human Rights Council 2009, *Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia*, 20 March 2009, p.8 <<http://www.unhcr.org/refworld/docid/49f06efd2.html>> Accessed 24 May 2010

<sup>28</sup> Chow, KH 2008, ‘Battle to save Malaysia’s Chinese dropouts’, *AsiaOneNews*, source: *The Straits Times*, 31 January <<http://www.asiaone.com/News/Education/Story/A1Story20080130-47357.html>> Accessed 27 August 2010

secondary and tertiary levels, “the dominant position of the Malays is acknowledged, with their language used as the medium of instruction”: public universities teach via Bahasa Malaysia, private universities use English and private Chinese colleges use Mandarin. Bahasa Malaysia did not always hold such a dominant position, however, and the study reports that:

... its strengthening at the expense of Tamil and especially Mandarin has generated fear in the Indian and Chinese communities that their identity has no long-term future in Malaysia. The current linguistic structure of education was brought to fruition through three Malaysian Education Acts (1957, 1961, 1995–96). In each case, Chinese educationalists perceived the acts as threatening to their ability to replicate a Chinese identity for future generations.<sup>29</sup>

A June 2007 study by Wan Chang Da of Penang’s Universiti Sains Malaysia refers to the “racial segregation between institutions” in Malaysia’s higher education sector and comments on changes to the ethnic make-up of the tertiary student population since 1970:

... the ethnic composition in the Malaysian higher education landscape has experienced tremendous changes. Before 1970, the Chinese were the predominant ethnic group in public universities. In 1971, subsequent to the racial riots of 1969, the government introduced the New Economic Policy (NEP) with its two thrusts of ‘eradication of poverty’ and ‘restructuring society and economic balance’ (Sato, 2007: 8). Resulting from the implementation of the affirmative action policy of NEP, the racial composition in universities was required to reflect the racial structure of the larger society (Tham, 1979: 334). Since then, the racial composition in public universities has changed and the Bumiputeras became and continues until today to be the predominant ethnic group in public institutions.

Tham (1979: 348) and Sato (2007: 13) further remarked that due to restricted educational opportunities for the non-Bumiputeras in public institutions, particularly the Chinese community, these students left the country to pursue tertiary education in overseas universities. In 1980, almost 61% of Malaysian students overseas were ethnic Chinese. With the massive growth of private institutions from the 1990s onwards, the non-Bumiputeras began to switch from pursuing their tertiary education in overseas universities to private institutions in the country. Therefore, as Ahmad Mahzan and Noran Fauziah (1999) noted, the growth of private higher education institutions were partly contributed by the limited avenue for deserving students (of other ethnic groups) whom were denied entry to public institutions to pursue post-secondary education, as about 95% of the clientele in private institutions is made up of non-Bumiputera students.<sup>30</sup>

A 2009 study of higher education in Malaysia has appeared in *The International Journal of Asia Pacific Studies* authored by Akihito Aihara, a doctoral candidate at the University of London. The study provides extensive statistical data on the manner in which ethnic Chinese students have been disadvantaged, while not being excluded entirely, from a matriculation program which favours bumiputera students applying for entrance to government universities in Malaysia. The study also provides figures on the large proportion of Malaysian ethnic Chinese students who have sought higher education overseas and who have, since the

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<sup>29</sup> Collins, A 2006, ‘Chinese Educationalists in Malaysia: Defenders of Chinese Identity’, *Asian Survey*, April, vol.46: no.2, pp.298-318

<sup>30</sup> Da, WC 2007, ‘Public and Private Higher Education Institutions in Malaysia: Competing, Complementary or Crossbreeds as Education Providers’, *Kajian Malaysia, Jld*, vol.25: no.1, June

formation of private universities in Malaysia, formed the bulk of the students studying within Malaysia's non-government universities.<sup>31</sup>

## 2. Please provide country information on what laws and programmes the government has in place to prevent discrimination of Chinese Malays in Malaysia.

Racial discrimination remains institutionalized in Malaysia. The USDOS reports that while the constitution of Malaysia provides for equal protection under the law and prohibits discrimination against citizens including on the bases of race, religion, descent, and place of birth, it "also provides for the 'special position' of ethnic Malays and the indigenous groups of the eastern states of Sabah and Sarawak (collectively, bumiputra), and discrimination based on this provision persisted".<sup>32</sup>

In an article published by *The Malay Mail* on 19 March 2012, Dr Denison Jayasooria, a Principal Research Fellow at the Institute of Ethnic Studies, Universiti Kebangsaan Malaysia, stated that while Prime Minister Najib has popularised the "1Malaysia" slogan and called for acceptance of diversity, Malaysia still is not a signatory to the Convention on the Elimination of all Forms of Racial Discrimination. Jayasooria commented that one of a number of possible reasons for this is "the difficulty to reconcile the affirmative action policies of Malaysia of Article 153 of the Federal Constitution and that of non-discrimination of the convention".<sup>33</sup>

The Human Rights Commission of Malaysia (SUHAKAM) is empowered to receive individual complaints relating to violations of human rights, however the Asian NGOs Network on National Institutions (ANNI) reported in 2008 that SUHAKAM is often slow in responding to reports of human rights violations, and has no enforcement powers. Moreover, SUHAKAM's position on race reportedly was "sometimes evasive and ambiguous, if not problematic".<sup>34</sup> Section 4(4) of *The Human Rights Commission of Malaysia Act 1999* provides that regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that is not inconsistent with the Federal Constitution of Malaysia.<sup>35</sup> This appears to limit its mandate as Article 153 of the Constitution protects the special position of Malays and therefore a complaint that challenges this special position could not be considered.<sup>36</sup> SUHAKAM also is not empowered to inquire into allegations regarding ongoing court cases and must cease its inquiry if an allegation under investigation becomes the subject of a court case.<sup>37</sup>

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<sup>31</sup> Aihara, A 2009, 'Paradoxes of Higher Education Reforms: Implications on the Malaysian Middle Class', *International Journal of Asia Pacific Studies*, vol. 5: no.1, pp.81-113

<sup>32</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 6 <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>33</sup> Jayasooria, D 2012, 'Is Malaysia racist? Prove us wrong', SUHAKAM, source: *The Malay Mail*, 19 March <[http://www.suhakam.org.my/c/document\\_library/get\\_file?uuid=4ce7dc8c-b8cb-496a-b23c-58a21910bce6&groupId=794910](http://www.suhakam.org.my/c/document_library/get_file?uuid=4ce7dc8c-b8cb-496a-b23c-58a21910bce6&groupId=794910)> Accessed 4 June 2012

<sup>34</sup> Asian NGOs Network on National Institutions 2008, *2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Asia Pacific Forum website, pp.93-108 <[http://www.asiapacificforum.net/about/annual-meetings/13th-malaysia-2008/downloads/ngo-report-statements/ANNI\\_2008.pdf](http://www.asiapacificforum.net/about/annual-meetings/13th-malaysia-2008/downloads/ngo-report-statements/ANNI_2008.pdf)> Accessed 28 May 2010

<sup>35</sup> 'Laws of Malaysia Act 597 Human Rights Commission of Malaysia Act 1999' 1999, HURIGHTS Osaka website, 27 August <[http://www.hurights.or.jp/database/E/nhri\\_law/malaysia.html#4](http://www.hurights.or.jp/database/E/nhri_law/malaysia.html#4)> Accessed 28 May 2010

<sup>36</sup> Soong, KK 2009, '1 Malaysia – Beyond the Hype' SUARAM website, 20 October <<http://www.suaram.net/node/238>> Accessed 28 May 2010.

<sup>37</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 5 <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

In an article published on 11 April 2012 by *Malaysiakini* it was reported that legislation to eliminate hate crimes had been mooted in the wake of public outrage over the government's failure to take action against racial insults allegedly perpetrated by school teachers. Tabling of the legislation had, however, been deferred by the government. A Minister in the Prime Minister's Department, Mohd Nazri Abdul Aziz, reportedly commented as follows:

"It's because we can manage our race relations well," he told reporters when approached on the matter at Parliament yesterday.

The law which was proposed to help root out racial discrimination was to be tabled in the current Dewan Rakyat session, which will end next week.

The de facto law minister, in explaining his reversal on the issue, argued that existing provisions under the Sedition Act 1948, the Criminal Procedure Code (CPC) and other corresponding laws, are enough to put a lid on racial incitement.

"Whatever offences you may think that may affect race relations have been covered" he said.<sup>38</sup>

In response, MP Charles Santiago of the Democratic Action Party (DAP) (a member of the opposition People's Alliance), commented that in 2011 Malaysia "saw school teachers and a principal using racial slur to ridicule Chinese and Indian students", and that the "Malay rights group, Perkasa, was openly inciting racial tension by spewing venom". Santiago questioned the government's decision to pull back plans to table a legislation to "do away with hate crimes and weed out racial discrimination" on the basis claimed of improved management of race relations.<sup>39</sup>

On 28 April 2012, *The Economist* reported that Prime Minister Najib's approval rating has increased, and argued that his popularity is "part-reward for his bold grab for a new centre ground in Malaysian politics". It also reported, however, that UMNO has won every election since independence "by exploiting the ingrained ethnic politics of Malay nationalism, posing as a defender of ethnic Malay privileges and quotas against the economic clout of large Chinese and Indian minorities", and that the opposition argues that "since UMNO itself is unreconstructed, the prime minister's reforms are largely cosmetic, offering a bit of change but still pandering mainly to the conservative UMNO base".<sup>40</sup>

### **3. Please provide country information on whether the government has shown an ability to enforce discrimination laws and prevent discrimination to ethnic Chinese in Malaysia.**

Issues of racial discrimination cannot be discussed publicly in Malaysia without running the risk of prosecution under the *Sedition Act 1948*, and journalists risk violating this Act if they report anything deemed to "promote feelings of ill will and hostility between different races or classes of the population of Malaysia". The Act prohibits any questioning of the positive discrimination system in place for bumiputeras.<sup>41</sup> Given these constraints on reporting, it is

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<sup>38</sup> Pathmawathy, S 2012, 'Law to eliminate hate crimes put on hold', *Malaysiakini*, 11 April <<http://www.malaysiakini.com/news/194709>> Accessed 4 June 2012

<sup>39</sup> Santiago, C 2012, 'Old poison in fancy bottle still equals status quo', *Malaysiakini*, 13 April <<http://www.malaysiakini.com/news/194927>> Accessed 31 May 2012

<sup>40</sup> 'Middle class, centre ground' 2012, *The Economist*, 28 April <<http://www.economist.com/node/21553513>> Accessed 1 June 2012

<sup>41</sup> Freedom House 2010, *Countries at the Crossroads 2010 – Malaysia*, UNHCR Refworld website, 7 April, p.2 <<http://www.unhcr.org/refworld/docid/4be3c8c80.html>> Accessed 24 May 2010; 'Laws of Malaysia: Act 15



difficult to gain a clear indication of the extent to which unlawful racial discrimination may occur or the extent to which protection may be provided against such discrimination.

Malaysia does not have an official body designed specifically for handling complaints of racial or ethnic discrimination. While complaints can be lodged with the Malaysian Human Rights Commission, SUHAKAM, the organization has a limited mandate and can only make recommendations to the Malaysian Government.<sup>42</sup>

In a news report of October 2010, the Home Minister Datuk Seri Hishammuddin Hussein stated in his response to a question as to whether a *Race Relations Act* would soon replace the *Sedition Act 1948*, that there had only been ten reports made to police relating to racial issues.<sup>43</sup> Sources indicate, however, that incidents of racially motivated adverse treatment may be underreported in Malaysia, and that there are barriers preventing ethnic Chinese from obtaining the same level of police protection as ethnic Malays. Language barriers exist, with the police force being largely Bahasa Melayu speaking Malays: *New Sunday Times* reported that Chinese victims of crime do not lodge police reports because they are not fluent in Bahasa.<sup>44</sup>

Reports indicate that the authorities are attempting to rectify the problem. A Crime Victim Assistance Team was set up in 2006 to resolve the problems of some Chinese in Skudai who faced problems lodging police reports because they could not speak Bahasa Melayu. The Royal Malaysia Police (RMP) responded in the states of Johor and Sabah by sending officers to Mandarin language classes and introducing a Crime Victim Assistance Team to help ethnic Chinese with poor Bahasa to report crimes.<sup>45</sup> The ethnic composition of the police force is reported to be 78% Malay, 4% Indian, 2.5% Chinese, and 15% others.<sup>46</sup>

High levels of corruption in the RMP are widely reported. A Home Ministry survey across Malaysia in 2009 found that 70 per cent of respondents had bribed police officers under duress. Reported police offences included accepting bribes and theft.<sup>47</sup> According to a 2009 *Malaysiakini* editorial, corruption is part of daily life in Malaysia.<sup>48</sup> The Performance Management and Delivery Unit of the Malaysian Government acknowledges police corruption and is implementing reforms as part of the 'Government Transformation Programme' to rectify the problem, including more effective compliance units within the RMP.<sup>49</sup>

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Sedition Act 1948 Incorporating all amendments up to 1 January 2006' 2006, Malaysian Attorney-General's Chambers website <<http://www.agc.gov.my/agc/Akta/Vol.%201/Act%2015.pdf>> Accessed 28 May 2010

<sup>42</sup> SUHAKAM Human Rights Commission of Malaysia 2010, *Functions & Power*, 27 October

<<http://www.suhakam.org.my/info/jawatan#>> Accessed 27 October 2010.

<sup>43</sup> 'No plans to repeal the Sedition Act' 2010, *Bernama Daily Malaysian News*, 19 October

<<http://www.theedgemaalaysia.com/political-news/175618-no-plans-to-repeal-the-sedition-act.html#>> Accessed 27 October 2010

<sup>44</sup> 'Help in making police reports' 2006, *New Sunday Times*, 30 July, FACTIVA

<sup>45</sup> 'Team to Assist Crime Victims Lodge Police Reports' 2006, *Bernama Daily Malaysia News*, 29 July, FACTIVA;

'Malaysian Police to Learn Mandarin and Arabic Languages' 2006, *Antara News*, 28 July

<<http://www.antara.co.id/en/seenws/?id=17304>> Accessed 11 September 2006

<sup>46</sup> Centre for Public Policy Studies n.d., *Policy Fact Sheet – Police*

<<http://www.cpps.org.my/downloads/factsheets/Police%20factsheet.pdf>> Accessed 1 November 2010

<sup>47</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Malaysia*, 8 April

<sup>48</sup> Yang, S 2009, 'Corruption, our national scourge', *Malaysiakini*, 19 November

<<http://www.malaysiakini.com/news/117852>> Accessed 17 November 2010

<sup>49</sup> Performance Management and Delivery Unit n.d., *Government Transformation Programme (GTP): Corruption*

<[http://www.pemandu.gov.my/gtp/?page\\_id=26](http://www.pemandu.gov.my/gtp/?page_id=26)> Accessed 1 July 2011

#### 4. Please provide country information about the government's attitude on homosexuality in Malaysia.

Malaysia's *Penal Code* makes no specific reference to homosexuality, however sections 377A and 377B are commonly referred to in relation to the criminalization of same-sex sexual conduct. Those sections read as follows:

##### **Carnal intercourse against the order of nature**

**377A.** Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

*Explanation*—Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section.

##### **Punishment for committing carnal intercourse against the order of nature**

**377B.** Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.<sup>50</sup>

In an April 2012 article published by *Malaysiakini*, sexuality rights activist Pang Khee Teik stated that these provisions are applied discriminatorily. He argues:

... there is no law against homosexuality in Malaysia yet many believe it is a crime to be gay and lesbian. People may cite Penal Code “377a” and “377b”. But according to the wording of the statute, the crime is committed when anyone introduces his penis into a mouth or anus.

...

Clearly, both heterosexual and homosexual oral and anal sex are illegal but where the public and the state are concerned, it is a law against homosexuality. This is because “377” only targets men who have sex with men. If that is not discriminatory, then I don't know what is.<sup>51</sup>

According to Human Rights Watch, the Malaysian government “refuses to consider repeal of article 377B of the penal code”.<sup>52</sup>

The USDOS recently reported that, in Malaysia, “laws against sodomy and ‘carnal intercourse against the order of nature’ exist but were rarely enforced” – whilst also noting, however, that the government continued to pursue the prosecution of the leader of the parliamentary opposition, Anwar Ibrahim, on sodomy charges.<sup>8</sup>

Intolerance by the authorities is also indicated in recurring reports of police raids on venues. An article from November 2007 on the Fridae website reported that a police raid on a fitness centre in Penang had led to the arrest of 37 men, but according to observers was unlikely to

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<sup>50</sup> *Laws of Malaysia – Penal Code (Revised 1997)*, CommonLII  
<[http://www.commonlii.org/my/legis/consol\\_act/pc1997141.txt/cgi-bin/download.cgi/download/my/legis/consol\\_act/pc1997141.pdf](http://www.commonlii.org/my/legis/consol_act/pc1997141.txt/cgi-bin/download.cgi/download/my/legis/consol_act/pc1997141.pdf)> Accessed 25 June 2010

<sup>51</sup> Pang, KT 2012, ‘Justice for LGBTs is justice for Malaysians’, *Malaysiakini*, 28 April  
<<http://www.malaysiakini.com/news/196326>> Accessed 28 May 2012

<sup>52</sup> Human Rights Watch 2012, *World Report 2012: Malaysia*, January  
<[http://www.hrw.org/sites/default/files/related\\_material/malaysia\\_2012.pdf](http://www.hrw.org/sites/default/files/related_material/malaysia_2012.pdf)> Accessed 4 June 2012

result in charges. The article reported “no known cases of the laws being used against consenting adults, gay or straight”, with the exception of the controversial case against Anwar Ibrahim. According to the article, the vulnerability of homosexual men to extortion and exploitation arises from the provisions of Malaysia’s *Penal Code* being “available as a tool to intimidate, harass, extort and exploit”:

Section 377 of Malaysia’s Penal Code, which prohibits “carnal intercourse against the order of nature” and acts of “gross indecency,” hangs like the proverbial sword of Damocles over the heads of gay men. Although the laws do not explicitly mention homosexuality or homosexual acts (after being amended in 1989 to be gender neutral), the laws are available as a tool to intimidate, harass, extort and exploit gay men and gay-friendly businesses. The attendant publicity – the potential outing – is that very thing which makes gay men vulnerable.<sup>53</sup>

The USDOS reports that religious and cultural taboos against homosexual conduct remained widespread in Malaysia in 2011.<sup>54</sup> The Utopia-Asia website refers to “conservative religion-based discrimination” and has reported that “during raids on local gay businesses, [police have focussed] on ethnic Malay customers, almost 100% of whom are considered Muslim at birth by law”<sup>54</sup>. A 2008 article on the Fridae website states that the marginalisation of gay men in Malaysia is the result of a highly moralistic and conservative society and the rise of political Islam. It blames the “bigotry among the masses” on entrenched prejudice and homophobia spread by religious bodies, local media and other groups.<sup>55</sup>

An August 2009 article reported observations by Simranjit Kaur Gill of the Bar Council Human Rights Committee in Malaysia’s that there are “ever increasing attempts to restrict and limit sexuality rights in Malaysia, be it the straight or gay communities”. The article added that in Malaysia the homosexual community is “frequently perceived as breaching social codes, fomenting dissent and advocating ‘deviancy’”; individuals “face marginalisation, prejudice, violence and threats to their safety and wellbeing on multiple levels”.<sup>56</sup>

Other recent reports similarly indicate an adverse attitude toward homosexuality by the Malaysian government:

- In 2009, according to a delegate from Action Canada in a UN Human Rights Council report, a Malaysian delegation acknowledged that the *Penal Code* “criminalized oral and anal sex and stated that it was against the tenets of the State’s official religion, Islam, and also Christian and Buddhist religions”.<sup>57</sup>

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<sup>53</sup> Lim, SH 2007, ‘No sex party going on at Penang fitness centre, say those arrested’, Fridae, 22 November <<http://www.fridae.com/newsfeatures/2007/11/22/1946.no-sex-party-going-on-at-penang-fitness-centre-say-those-arrested>> Accessed 1 April 2010

<sup>54</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 1d <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>55</sup> Tan, S 2008, ‘Malaysia’s PT Foundation turns 21’, Fridae, 27 November <<http://www.fridae.com/newsfeatures/2008/11/27/2162.malaysias-pt-foundation-turns-21>> Accessed 25 June 2010

<sup>56</sup> Tan, S 2009, ‘Gay sex acts should not be criminalised: Malaysian Bar Council Human Rights Committee’, Fridae, 13 August <<http://www.fridae.com/newsfeatures/2009/08/13/8773.gay-sex-acts-should-not-be-criminalised-malaysian-bar-council-human-rights-committee>> Accessed 1 April 2010

<sup>57</sup> ‘Press Release – Human Rights Council Adopts Outcomes of Universal Periodic Review on Malaysia and Jordan’ 2009, UN High Commissioner for Human Rights, 12 June <<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/E6699BD6D1ABE0E1C12575D300469591?opendocument>> Accessed 25 June 2010

- In April 2011, the Terengganu State Education Department announced that it had sent 66 schoolboys identified as displaying “feminine qualities”, to a camp where they received counselling “to discourage them from being gay and to guide them back ‘to a proper path in life.’” A number of groups condemned the move, describing it as “highly discriminatory”.<sup>58</sup>
- In October 2011, the lesbian, gay, bisexual and transgender (LGBT) rights group Seksualiti Merdeka reportedly was prevented from holding its annual arts festival because of a protest by government officials and religious leaders. Human Rights Watch reported that “police banned Seksualiti Merdeka... as a threat to public order”.<sup>59</sup> According to USDOS, “Deputy Prime Minister Muhyiddin Yassin called the event inappropriate and ‘a waste of time.’ Media censorship rules forbid movies and songs that promote acceptance of LGBT persons”.<sup>60</sup>
- In February 2012, *The Economist* reported that the leader of the Malaysian opposition, Anwar Ibrahim, had in the previous month been acquitted by a high court judge on controversial charges of sodomy. Supporters in the government of Prime Minister Najib claimed this as “evidence of Mr Najib’s wider programme to bring the country into a modern, liberal age”. Two weeks later, however, the attorney-general decided to appeal against Mr Anwar’s acquittal. *The Economist* reported that “Mr Anwar has always maintained that the sodomy charge was a smear that had been orchestrated by people from within Mr Najib’s ruling party... The attorney-general’s decision renews suspicions that nothing much has changed within UMNO, which refuses to stop hounding Mr Anwar and, despite Mr Najib’s worthy intentions, wants few reforms to speak of”.<sup>61</sup>
- In March 2012, the Kuala Lumpur High Court refused to grant the Seksualiti Merdeka organisers’ application for a judicial review against the police order stopping the event. Reportedly, “the court upheld a preliminary objection raised by the Attorney-General’s Chambers, representing the police and government”.<sup>62</sup>
- Also in March 2012, *Malaysiakini* reported that Deputy Minister in the Prime Minister’s Department, Datuk Mashitah Ibrahim, in responding to a question on steps to curb homosexuality, referred to homosexuality as a “social problem”. Further comments attributed to Mashitah include the following:

“The (LBGT) issue has its own after-effects, which can lead to prostitution, drug abuse, psychological problems and also mental illness. We have been raising awareness on our fatwa against LBGT tendencies with heavy media publicity on the issue to raise awareness, and also about the bad effects homosexuality has on health.” She said it was only provided to punish Muslim offenders under Syariah laws. “But then again, no religion in this country endorses such lifestyles.” Mashitah said Malaysia did not support freedom for the LBGT community although it

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<sup>58</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 1d <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>59</sup> Human Rights Watch 2012, *World Report 2012: Malaysia*, January <[http://www.hrw.org/sites/default/files/related\\_material/malaysia\\_2012.pdf](http://www.hrw.org/sites/default/files/related_material/malaysia_2012.pdf)> Accessed 4 June 2012

<sup>60</sup> US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Malaysia*, 24 May, Section 1d <<http://www.state.gov/documents/organization/186496.pdf>> Accessed 25 May 2012

<sup>61</sup> ‘Najib at bay’ 2012, *The Economist*, 4 February <<http://www.economist.com/node/21546026>> Accessed 28 May 2012

<sup>62</sup> Yatim, H 2012, ‘Court upholds ban on Seksualiti Merdeka’, *Malaysiakini*, 1 March <<http://www.malaysiakini.com/news/190719>> Accessed 28 May 2012

was discussed at a United Nations convention last year. “Part of the LGBT problem is caused by natural reasons, such as being born with two private parts and mental illness.”<sup>63</sup>

- In April 2012, a *Malaysiakini* article reported that “the authorities looked the other way” when a speaker at an anti-LGBT rally talked about killing “the enemy of this land”, apparently implying those who advocate for LGBT rights.<sup>64</sup>

MP Charles Santiago of the opposition DAP expressed the opinion in April 2012 that the LGBT community in Malaysia has “come under severe attacks recently”. He questioning the government’s decision to delay the introduction of specific legislation to counter hate crimes, writing:

The organizers of Seksualiti Merdeka, an annual festival of talks, shows, forums and film screenings to promote sexuality rights have been targeted, ridiculed and threatened.

In 1994, the government banned anyone who is homosexual, bisexual or transsexual from appearing on the state-controlled media.

We have not progressed to curb such explicit hatred against the LGBT community since then.

In 2010, the Film Censorship Board stated it would only allow the depiction of homosexuality if the characters repented or died.

Now we have some segments of the society suggesting individuals from the marginalized LGBT community must be banned from appearing on air altogether.

And yet the legislation to root out hate crimes is on the back burner.<sup>65</sup>

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<sup>63</sup> Ram, A and Nazari, H 2012, ‘Senator: Homosexuality equals prostitution’, *The Malay Mail*, 23 March <[http://www.suhakam.org.my/c/document\\_library/get\\_file?uuid=1f086d19-5e18-4eb1-a6ab-67e4454110d2&groupId=794910](http://www.suhakam.org.my/c/document_library/get_file?uuid=1f086d19-5e18-4eb1-a6ab-67e4454110d2&groupId=794910)> Accessed 28 May 2012

<sup>64</sup> Pang, KT 2012, ‘Justice for LGBTs is justice for Malaysians’, *Malaysiakini*, 28 April <<http://www.malaysiakini.com/news/196326>> Accessed 28 May 2012

<sup>65</sup> Santiago, C 2012, ‘Old poison in fancy bottle still equals status quo’, *Malaysiakini*, 13 April <<http://www.malaysiakini.com/news/194927>> Accessed 31 May 2012

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