



Australian Government
Refugee Review Tribunal

Country Advice Malaysia

Malaysia – MYS36614 – Ethnic Chinese –
Criminal justice – Drug crimes – Detention
orders – Bail provisions – Legal assistance
1 June 2010

1. Please provide information on the Lawan Kuda, Gopeng, Perak area in Malaysia.

Perak

Perak is the second largest state in Peninsular Malaysia (see map below).¹ The last census taken in 2000 projected its population to be approximately 2,440,869 in 2010.² The state capital of Perak is Ipoh and the royal capital is Kuala Kangsar. In addition to these two districts, there are eight other main administrative divisions: Batang Padang, Hilir Perak, Hulu Perak, Kinta, Kerian, Manjung, Perak Tengah, and “Larut, Matang and Selama”.³ The ethnic population breakdown estimation for Perak in 2010 is: Bumiputera (Malays and Indigenous Peoples from Sabah and Sarawak) 55.74%, Chinese 28.77%, Indian 12.15% , Others 0.36% and Non-Citizen 2.98%.⁴

¹ ‘Perak Map’ (undated) TalkMalaysia.com website <http://www.talkmalaysia.com/perak-map.html> - Accessed 25 May 2010 – Attachment 1.

² ‘Perak’ 2010, Wikipedia website, 23 May (last updated) <http://en.wikipedia.org/wiki/Perak#Demographics> - Accessed 26 May 2010 – Attachment 2. **Note:** Wikipedia is a Web-based free-content encyclopaedia which is compiled collaboratively by volunteers. Wikipedia articles can be useful introductory reading for a new topic, and the list of references in Wikipedia articles can provide useful leads to reliable sources. Many Wikipedia articles can be highly reliable, especially in regards to non-controversial historical or factual matters, and Wikipedia uses preventative measures against vandalism, bias and inaccuracy. However, the collaborative nature of Wikipedia makes it vulnerable to contributors with overt or covert agendas, and Wikipedia articles are thus prone to unacknowledged bias.

³ ‘Perak Map’ (undated) TalkMalaysia.com website <http://www.talkmalaysia.com/perak-map.html> - Accessed 25 May 2010 – Attachment 1.

⁴ ‘Perak’ 2010, Wikipedia website, 23 May (last updated) <http://en.wikipedia.org/wiki/Perak#Demographics> - Accessed 26 May 2010 – Attachment 2.



5



6

⁵ 'Map Malaysia' 2010, Melaka International Trade Centre website, 22 February (last updated) <http://mitc.org.my/mitc/pages/location/map-malaysia.php> - Accessed 26 May 2010 – Attachment 3.

Gopeng

Gopeng is a town located in Mukim Teja, District of Kampar, Perak. It has been highlighted on the map above. It is situated approximately 20 km south of Ipoh. Gopeng is classified under the newly created District of Kampar, the 10th district of Perak. Previously Gopeng was inside the Kinta district. Gopeng is also well-known for limestone caves such as the Gua Tempurung. Gopeng is made up of a multi-cultural population but the majority of residents are Chinese.⁷

Lawan Kuda

There appear to be two settlements in Gopeng under this name: 'Kampung Lawan Kuda' and 'Desa Lawan Kuda'.⁸ 'Kampung Lawan Kuda' is a Malay village located along the trunk road, Jalan Gopeng, in Gopeng, Perak. No other information could be found on either of these settlements.⁹

2. Is there any provision for unlimited detention on drug related matters in Malaysia?

Yes. A number of laws exist which allow Malaysian authorities to detain suspected criminals involved in drug-related matters indefinitely without normal judicial review or filing formal charges. These are the *Dangerous Drugs (Special Preventive Measures) Act 1985*, the *Emergency (Public Order and Prevention of Crime) Ordinance 1969*, and the *Restricted Residence Act 1933*. General remand procedures also often result in prolonged detention of criminal suspects.

The Dangerous Drugs (Special Preventive Measures) Act 1985

Under this Act, any police officer has the power to arrest, without a warrant, any person suspected of any form of involvement in drug trafficking.¹⁰ The United States Department of State Report on Human Rights Practices in Malaysia in 2009 (USDOS report) states that police officers can detain suspects without trial for up to 39 days before the Home Affairs Minister must issue a detention order.¹¹ The Minister may then 'in the interest of public order' issue a detention order of up to 2 years, renewable indefinitely, on any person he or she is satisfied 'has been or is associated with any activity related to or involving trafficking in dangerous drugs...' Alternatively, the Minister can choose to impose a restriction order, of up to 2 years renewable indefinitely, related to the suspect's place of residence and freedom of movement. This can also include ordering a person to present himself at the nearest police station. The Malaysian Bar website notes that contravention of a restriction or condition would result in a commission of an offence and the offender can 'be punished with

⁶ 'Perak Full Map' (undated) Malaxi.com website

http://malaxi.com/ShowMap.php?t=Perak%20Full%20Map&i=maps/perak/perak_full_map.jpg - Accessed 26 May 2010 – Attachment 4.

⁷ 'Gopeng' 2010 Wikipedia website, 30 May (last updated) <http://en.wikipedia.org/wiki/Gopeng> - Accessed 26 May 2010 – Attachment 5.

⁸ 'Gopeng' 2010 Wikipedia website, 30 May (last updated) <http://en.wikipedia.org/wiki/Gopeng> - Accessed 26 May 2010 – Attachment 5.

⁹ 'Kampung Lawan Kuda' 2009, Wikipedia website, 17 August (last updated)

http://en.wikipedia.org/wiki/Kampung_Lawan_Kuda - Accessed 25 May 2010 – Attachment 6.

¹⁰ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.22

<http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

¹¹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1

<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

imprisonment for a term not exceeding five years and not less than three years'.¹² The USDOS report also notes that police frequently detained suspected narcotics traffickers under this Act after courts acquitted them of formal charges.¹³

The Asian Human Rights Commission claims that mass arrest in Malaysia is common in cases connected to drug activities. In particular, it notes that the arrest of anyone remotely connected to the crime or crime victim is equally common, especially in high-profile cases.¹⁴ This is confirmed by a 2005 Amnesty International report on policing in Malaysia (2005 Amnesty Report) which also states that arrests of ordinary criminal suspects at times appear indiscriminate, especially during police operations against illegal drug activities.¹⁵

General Remand Orders

The 2005 Amnesty report states that Malaysia's *Criminal Procedure Code* empowers a police officer to arrest without a warrant when a person is suspected of committing a 'seizable' offence. These are offences punishable with death or with 3 years imprisonment or more.¹⁶ It is of note that penalties for drug offences in Malaysia are severe and include a mandatory death penalty for drug trafficking. Many drug offences would therefore likely be categorised as 'seizable' offences.¹⁷ According to NGO reports, the *Criminal Procedure Code* requires the police to bring a suspect arrested without a warrant before a magistrate within 24 hours, and if it has not been possible to complete investigations, to apply for a remand detention order (renewable up to a maximum of 15 days from arrest).¹⁸ The Asian Human Rights Commission notes that the magistrate often, as a matter of 'due course', grants a remand order against the suspect without checking the desirability for such an order.¹⁹ The 2005 Amnesty report also claims that in cases of suspected petty crimes, scores of detainees can be presented in batches before the magistrate, who then questions individuals cursorily, if at all, before granting remand orders.²⁰

¹² Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.22 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; Hector, C. 2006, 'Detention Without Trial Laws in Malaysia' The Malaysian Bar website, 23 January http://www.malaysianbar.org.my/human_rights/detention_without_trial_laws_in_malaysia_.html - Accessed 20 May 2010 – Attachment 9.

¹³ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1 <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

¹⁴ Asian Human Rights Commission 2004, 'Malaysia: Police Brutality, Shootings and Deaths in Custody' Asian Human Rights Commission website, 24 June (Posted) <http://malaysia.ahrchk.net/mainfile.php/General/68> - Accessed 20 May 2010 – Attachment 10.

¹⁵ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.33 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

¹⁶ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.33 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

¹⁷ Australian Department of Foreign Affairs and Trade 2010, 'Travel Advice; Malaysia' Smart Traveller website, 19 April http://www.smarttraveller.gov.au/zw-cgi/view/advice/malaysia#Local_Laws - Accessed 27 May 2010 – Attachment 11; Kuppusamy, B. 2007, 'Hundreds of Migrants Face Execution for Drug Crimes' *Inter Press Service*, 29 June <http://ipsnews.net/news.asp?idnews=38380> - Accessed 27 May 2010 – Attachment 12.

¹⁸ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.33 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; Asian Human Rights Commission 2003, 'Urgent Action Malaysia: Death and Torture in Custody' Asian Human Rights Commission website, 10 June <http://www.ahrchk.net/ua/mainfile.php/2003/458/> - Accessed 20 May 2010 – Attachment 13.

¹⁹ Asian Human Rights Commission 2004, 'Malaysia: Police Brutality, Shootings and Deaths in Custody' Asian Human Rights Commission website, 24 June (Posted) <http://malaysia.ahrchk.net/mainfile.php/General/68> - Accessed 20 May 2010 – Attachment 10.

²⁰ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.34 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

NGO reports also highlight the problem of ‘chain smoking orders’ being made against a suspect where the police inform the magistrate that the suspect is being investigated for another offence as well; they thus call for a further and different remand order. The suspect is then further detained and sometimes taken to different jurisdictions to ‘solve’ other crimes. In the different jurisdiction, the suspect is sometimes further remanded, and the presiding magistrate may not have been informed of the suspect’s history of being consecutively remanded.²¹ In its 2006 report on Malaysia’s Indefinite Detention under the Emergency Ordinance, Human Rights Watch states that ‘chain smoking orders’ are related to the Emergency Ordinance (see below) because when police fail to collect evidence after a few rounds of remand orders, they often seek an Emergency Ordinance Order to detain the suspect for an additional 60 days.²²

The Malaysian Human Rights Commission (also known as SUHAKAM) wrote a report released in October 2002 titled ‘The Rights of Remand Prisoners’ which claims that police and magistrates have grossly abused remand procedures. It highlighted abuses such as: police extortion; no access to lawyers on the ground that it would interfere with police investigation; remand proceedings conducted in private between the police and the magistrate; the readiness of magistrates to grant remand orders without considering whether it was necessary to further investigation; the common practice of ‘chain smoking orders’; and the deplorable conditions of lockups such as congestion, absence of bed sheets, dirty blankets, inadequate clothing and deprivation of privacy.²³ The 2005 Amnesty report notes that detainees ill-treated in this manner are reported to be predominately from disadvantaged socio-economic or educational backgrounds, often accused of petty crimes or rounded up in drugs or other anti-crime sweeps, who may be regarded as not having high status, influence or the means to access legal protection.²⁴ It is of note that both reports make no mention of particular mistreatment against ethnic Chinese in detention.

Emergency (Public Order and Prevention of Crime) Ordinance 1969

The Emergency (Public Order and Prevention of Crime) Ordinance (EO) empowers the police to detain suspects for up to 60 days with a view to ‘preventing any person from acting in a manner prejudicial to public order’ or for the ‘suppression of violence or the prevention of crimes involving violence.’ Under the EO, police are not required to obtain a remand detention order from a magistrate. The Home Affairs Minister can then issue a 2 year detention order, renewable indefinitely. The detainees are transferred from police custody to a detention camp for the duration of the order. Alternatively, the Minister can choose to issue a restriction order controlling the suspect’s freedom of movement and place of residence. Implementation of the order is supervised by the police where the suspect has to report to the police on a weekly basis and is typically required to remain indoors from 8 pm to 6 am.²⁵

²¹ Asian Human Rights Commission 2004, ‘Malaysia: Police Brutality, Shootings and Deaths in Custody’ Asian Human Rights Commission website, 24 June (Posted) <http://malaysia.ahrchk.net/mainfile.php/General/68> - Accessed 20 May 2010 – Attachment 10; Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.35 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

²² Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, p.17 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

²³ Asian Human Rights Commission 2004, ‘Malaysia: Police Brutality, Shootings and Deaths in Custody’ Asian Human Rights Commission website, 24 June (Posted) <http://malaysia.ahrchk.net/mainfile.php/General/68> - Accessed 20 May 2010 – Attachment 10.

²⁴ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.38 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

²⁵ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.20 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; Human

Human Rights Watch claims that the EO does allow detainees the opportunity to challenge the decision to detain them before an executive-appointed Advisory Board which can make non-binding recommendations to the government about which detainees should be released. It claims, however, that the Advisory Board recommends release in only 2% of cases and review by the Advisory Board is *ad hoc* and not scheduled periodically.²⁶ A 1989 amendment eliminated judicial review of the merits of EO detentions but still allows for judicial review of ‘procedural requirements’ of the detention order. According to Human Rights Watch, EO detainees who have successfully challenged their detention on procedural grounds are often re-arrested after a judicial order declares their detention invalid and orders their release.²⁷

The 2005 Amnesty report states that the EO has become an extraordinary law to deal with categories of suspected criminals who are regarded as difficult to bring to justice by the ordinary process of law, either due to lack of evidence or the inability of the prosecution to find witnesses who are willing to give testimony.²⁸ The Malaysian government publicly admits that the EO is used to detain criminal suspects when the government has insufficient evidence to try them under existing criminal law.²⁹ The Ordinance is mostly applied in the context of police special ‘operations’ or ‘sweeps’ against suspected gang activities in particular districts.³⁰ The report, however, does not specify which districts this applies to.

NGOs such as Human Rights Watch and Amnesty International claim that EO detainees have been subjected to torture and ill-treatment, held in poor detention conditions, held incommunicado for up to sixty days and denied access to counsel and family members.³¹

The Restricted Residence Act 1933

According to the USDOS Report, this Act allows the Home Affairs Minister to place individuals under restricted residence away from their homes. These persons may not leave the residential district assigned to them, and they must present themselves to police on a daily basis. Authorities may renew the term of restricted residence every 2 years. The Minister is authorised to issue the restricted residence orders without any judicial or administrative hearings. The government continued to justify the act as a necessary tool to remove suspects from the area where undesirable activities were being conducted.³²

Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, p.7 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

²⁶ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, pp.7-8 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

²⁷ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, pp.8 & 20 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

²⁸ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.20 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

²⁹ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, p.34 <http://www.hrw.org/en/node/11224/section/7> - Accessed 20 May 2010 – Attachment 14.

³⁰ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.20 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

³¹ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.21 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, Sections IV & V <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

³² US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1 <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

The Internal Security Act 1960

This Act empowers the police to arrest, without evidence or a warrant, individuals that they believe have acted, or are ‘about to’ or ‘likely to’ act in any manner that would threaten Malaysia’s security, ‘essential services’ or ‘economic life.’ Detainees can be held for up to 60 days for investigation after which the Home Affairs Minister can issue a 2 year detention order which can be renewed indefinitely without the detainee ever being charged with a crime or tried in a court of law.³³ A number of sources indicate that this law is primarily used to detain parliamentary opposition party members, civil society activists, ‘deviationist’ Muslim groups, Shi’ias, journalists, trade unionists and alleged Islamist ‘extremists’ or ‘terrorists’. Therefore it is unlikely to be used in drug-related matters.³⁴

3. Can police detain persons without bringing them before a court?

Yes. Though the Malaysian authorities are required to bring a criminal suspect detained without a warrant before a magistrate within 24 hours of arrest, they are able to apply for numerous remand detention orders from different magistrates to prolong detention during investigation. The *Dangerous Drugs (Special Preventive Measures) Act 1985*, the *Internal Security Act 1960* and the *Emergency (Public Order and Prevention Crime) Ordinance 1969* also allow for prolonged detention without trial and with limited opportunity for judicial review.

As outlined previously, the *Criminal Procedure Code* requires the police to bring a suspect detained without a warrant before a magistrate judge within 24 hours. If the police are unable to complete an investigation, they must apply for a remand detention order from a magistrate renewable for up to 15 days for the purposes of completing the investigation. As a way of getting around the 15 day limit, police sometimes take the accused person before a different magistrate judge and request remand for investigation into another offence. This tactic is then repeated several times and is referred to as ‘chain-smoking orders’.³⁵

The *Dangerous Drugs (Special Preventive Measures) Act 1985*, *Internal Security Act 1960* and the *Emergency (Public Order and Prevention Crime) Ordinance 1969* allow for detention without trial as long as the police (or the Minister) are satisfied that reasons for the detention or the imposition of a restriction order exist. The police have the power to arrest and detain a person under these Acts for a period not exceeding 60 days, provided that there exists ‘reason to believe’ that there are grounds which would justify his/her detention. The Home Affairs Minister can then either make a detention order or restriction order; the length of which can

³³ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, p.13 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7.

³⁴ Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, pp.18-19 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1

<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

³⁵ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, p.16 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.; Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, pp 33-36 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; ‘Laws of Malaysia: Act 593 Criminal Procedure Code Incorporating all amendments up to 1 January 2006’ 2006, Malaysian Attorney-General’s Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20593.pdf> - Accessed 20 May 2010 – Attachment 15.

be up to two years but which can be renewed for an unlimited period.³⁶ Judicial review of the merits of EO detentions are not permitted but judicial review of 'procedural requirements' of the detention order are, though EO detainees who have successfully challenged their detention on procedural grounds are often re-arrested after a judicial order declares their detention invalid and orders their release.³⁷

4. Does an accused person have the right to be charged and released on bail?

The right to bail is limited to less serious offences and bail is not granted where the offence is punishable with death or life imprisonment and, in relation to drug offences, where the offence is punishable with imprisonment of more than 5 years or where it is not in the public interest to grant bail.

According to the Malaysian Bar, offences are classified as bailable, non-bailable and unbailable offences. A bailable offence means bail has to be offered as of right for such offences as voluntarily causing hurt, cheating and defamation. Non-bailable means the court has discretion to grant bail for such offences as rape, theft, infanticide and causing grievous hurt by dangerous weapons or means. When an offence is described as unbailable, no bail will be offered for offences punishable with death or life imprisonment such as drug trafficking, murder, or kidnapping.³⁸

Under section 41B of the *Dangerous Drugs Act* bail is not granted to a person charged with an offence under the Act which is punishable with death, with imprisonment for more than 5 years or where the offence 'is punishable with imprisonment for five years or less and the Public Prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person'.³⁹

It is of note that the offence of 'Harbouring an offender' under section 212 of the *Penal Code* states that:

Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment for a term

³⁶ Hector, C. 2006, 'Detention Without Trial Laws in Malaysia' The Malaysian Bar website, 23 January http://www.malaysianbar.org.my/human_rights/detention_without_trial_laws_in_malaysia_.html - Accessed 20 May 2010 – Attachment 9.

³⁷ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia's Emergency Ordinance*, August, p.8 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

³⁸ The Malaysian Bar 2009, 'Bail' The Malaysian Bar website, 7 August http://www.malaysianbar.org.my/bail_.html - Accessed 25 May 2010 – Attachment 16; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1 <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8; 'Laws of Malaysia: Act 593 Criminal Procedure Code Incorporating all amendments up to 1 January 2006' 2006, Malaysian Attorney-General's Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20593.pdf> - Accessed 20 May 2010 – Attachment 15.

³⁹ 'Laws of Malaysia: Act 234 Dangerous Drugs Act 1952 Incorporating all amendments up to 1 January 2006' 2006, Malaysian Attorney-General's Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%205/Act%20234.pdf> - Accessed 20 May 2010 – Attachment 17.

which may extend to one-fourth part of the longest term of imprisonment provided for the offence or with fine or with both.⁴⁰

Given the above, people charged with ‘harbouring an offender’ may not be granted bail, subject to the nature and seriousness of the offence for which that offender had been charged.

5. Is there provision for legal representation for accused persons?

Accused persons have the right to legal representation but the provision of legal aid is limited. Access of detainees to legal counsel, though guaranteed in law, is also routinely denied by police officers.

Section 255 of the *Criminal Procedure Code* states that ‘Subject to any express provision of law to the contrary, every person accused before any Criminal Court may of right be defended by an advocate.’⁴¹ The Malaysian Bar, however, claims that the provision of legal aid by the Malaysian Government under the *Legal Aid Act 1971* is ‘severely limited’. In criminal cases for example, the Government’s Legal Aid Bureaus only handle cases in situations where an accused pleads guilty and wishes to make a plea in mitigation; as a result of which, ‘many accused still languish in prison without legal representation’.⁴² The Malaysian Bar Council runs a number of Legal Aid Centres which provide representation for all criminal matters for all those who qualify except offences that carry capital punishment (death and life sentences).⁴³

For those with legal representation, the Malaysian Constitution provides the right of access to counsel. According to Human Rights Watch, prior to 2002, Malaysian courts had narrowed this right by finding that the right cannot be ‘exercised immediately after’ arrest if it impedes police investigation, but in that year a Federal Court decision found that denial of rights to counsel during the initial 60 day period was a clear violation of the Constitution.⁴⁴ According to the Malay human rights organisation, SUARAM, in 2007 the *Criminal Procedure Code* was amended to include a new Section 28A requiring an arresting officer to enable the suspect to contact his/her lawyer free of charge within 24 hours of arrest.⁴⁵ In practice, however, a range of sources confirm that authorities continue to deny detainees access to legal counsel and this is particularly the case with EO detainees.⁴⁶

⁴⁰ ‘Laws of Malaysia: Act 574 Penal Code Incorporating all amendments up to 1 January 2006’ 2006, Malaysian Attorney-General’s Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20574.pdf> - Accessed 20 May 2010 – Attachment 18.

⁴¹ ‘Laws of Malaysia: Act 593 Criminal Procedure Code Incorporating all amendments up to 1 January 2006’ 2006, Malaysian Attorney-General’s Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20593.pdf> - Accessed 20 May 2010 – Attachment 15.

⁴² Malaysian Bar Council Human Rights Committee 2008, ‘HRC Responds: Legal Aid for all please’ Malaysian Bar website, 4 June http://www.malaysianbar.org.my/human_rights/hrc_responds_legal_aid_for_all_please.html - Accessed 20 May 2010 – Attachment 19.

⁴³ ‘Seeing A Lawyer’ 2005, Malaysian Bar website, 13 April http://www.malaysianbar.org.my/seeing_a_lawyer.html - Accessed 25 May 2010 – Attachment 20.

⁴⁴ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, p.16 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.

⁴⁵ SUARAM 2009, *Malaysia Civil and Political Rights Report 2009 Overview*, SUARAM website, December, p.11 <http://www.suaram.net/sites/default/files/Overview%202009.PDF> - Accessed 20 May 2010 – Attachment 21.

⁴⁶ Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia’s Emergency Ordinance*, August, pp.15-16 <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010 – Attachment 14.; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1 <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8; Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April, pp. 21 & 35 <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010 – Attachment 7; SUARAM

6. Does Malaysia have a non discriminatory justice system?

Sources indicate that the Malaysian criminal justice system discriminates against the local Indian population. No information, however, indicates that the same applies to the local Chinese community.

Racial discrimination is institutionalised in Malaysia, particularly in government-backed 'affirmative action policies' for Bumiputeras (Malays and Indigenous Peoples from Sabah and Sarawak) in land ownership, employment and education, which in some cases resulted in the complete exclusion of other groups.⁴⁷ The constitution, however, states that all persons are equal before the law and entitled to equal protection of the law.⁴⁸ Very little information could be found on the subject of discrimination in the Malaysian criminal justice system, which could be explained by the fact that, whilst there are often local media articles on the sensitive issue of ethnic politics in Malaysia, issues of racial discrimination cannot be discussed publicly in Malaysia without running the risk of prosecution under the *Sedition Act 1948*. This Act prohibits any questioning of the positive discrimination system in place for Bumiputeras and any promotion of 'feelings of ill-will and hostility between different races or classes of the population of Malaysia'.⁴⁹ For example, in a report by Article 19, it notes that the police detained a National Justice Party Supreme Council member under the *Sedition Act 1948* on the basis of his public comments on the brutal treatment of Indian detainees.⁵⁰

Whilst no information was found to indicate that the criminal justice system discriminates against the ethnic Chinese community, a number of sources reveal that the Malaysian police particularly target the local Indian community. According to a 2010 Freedom House Report on Malaysia, police brutality against the Indian community increased after the formation of Hindu Rights Action Force (a coalition of 30 Hindu non-governmental organisations committed to the preservation of Hindu community rights and heritage).⁵¹ Statistics of the Malaysian prison population are also telling. A report by Freedom House reveals that, according to some estimates, in mid-2007, 60% of the detainees at Simpang Renggam detention centre (which is located in Johor and houses detainees held under the EO and the *Dangerous Drugs (Special Preventive Measures) Act 1985*, as well as convicts and remand prisoners) were ethnic Indians.⁵²

2009, *Malaysia Civil and Political Rights Report 2009 Overview*, SUARAM website, December, p.11 <http://www.suaram.net/sites/default/files/Overview%202009.PDF> - Accessed 20 May 2010 – Attachment 21.

⁴⁷ Amnesty International 2009, *Amnesty International Report 2009: The State of the World's Human Rights – Malaysia* <http://www.amnesty.org/en/region/malaysia/report-2009> - Accessed 24 May 2010 – Attachment 22.

⁴⁸ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 1

<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

⁴⁹ 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 – Attachment 23; '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 – Attachment 24.

⁵⁰ Article 19 2003, *Memorandum on the Malaysian Sedition Act 1948*, UNHCR Refworld website, 15 July <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4754187fd> - Accessed 28 May 2010 – Attachment 25.

⁵¹ Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April, p.8 <http://www.unhcr.org/refworld/docid/4be3c8c80.html> - Accessed 24 May 2010 – Attachment 23; 'MALAYSIA: Custodial death revives calls for police reforms' 2009, *Inter Press Service*, 6 February – Attachment 26; 'Malaysian watchdog to monitor brutality on Indians' 2009, *The Hindu*, 4 February – Attachment 27.

⁵² Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April, p.8 <http://www.unhcr.org/refworld/docid/4be3c8c80.html> - Accessed 24 May 2010 – Attachment 23.

Few reports on the relations between the Chinese population and the Malaysian police were found. One incident in December 2005 in which a video was released of a female citizen of China being abused by Malaysian police was widely reported.⁵³ The *International Herald Tribune* indicated that the video ‘sparked protests among the country’s ethnic Chinese minority, who say the likelihood that the women in the video may well have been a Malaysian citizen only attests to the discrimination they face’.⁵⁴ There are, however, numerous reports of large numbers of foreign Chinese female prostitutes detained in Malaysia and Malaysian immigration officers have also been accused of profiling young female Chinese visitors as would-be prostitutes.⁵⁵ Therefore, the above news story is more indicative of general police mistreatment towards Chinese foreign prostitutes rather than the local ethnic Chinese community.

7. Are there any avenues of complaint for persons who claim ethnic discrimination? If so, are they effective?

There are no specific avenues for people to complain of ethnic discrimination. Local citizens are able to lodge complaints with the Malaysian Human Rights Commission in regards to general human rights issues; however, its mandate and ability to act on such complaints is significantly limited. Complaints of police misconduct which includes discriminatory behaviour will be possible with the recently proposed Enforcement Agencies Integrity Commission, but it similarly has no enforcement powers.

There does not appear to be a specific complaint mechanism regarding ethnic discrimination in Malaysia. This is likely due to the institutionalised system of discrimination in favour of Malays and the enactment of the *Sedition Act 1948*.⁵⁶ It is also of note that Malaysia is not a party to the Convention on the Elimination of all Forms of Racial Discrimination.⁵⁷

The Human Rights Commission of Malaysia (SUHAKAM) is empowered to receive individual complaints relating to violations of human rights.⁵⁸ 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

⁵³ Kent, J. 2005, ‘Video puts Malaysia police in dock’, *BBC News*, 25 November

<http://news.bbc.co.uk/2/hi/asia-pacific/4470422.stm> – Accessed 24 August 2007 – Attachment 28.

⁵⁴ Arnold, W. 2005, ‘Video sets off furor between Malaysia and China’, *International Herald Tribune* website, 9 December <http://www.ihf.com/articles/2005/12/08/news/malay.php> – Accessed 24 August 2007 – Attachment 29.

⁵⁵ ‘Chinese women top list of foreign prostitutes detained in Malaysia’ 2009, *monstersandcritics.com* website, source: *Deutsche Presse-Agentur*, 21 March http://www.monstersandcritics.com/news/asiapacific/news/article_1465963.php/Chinese_women_top_list_of_foreign_prostitutes_detained_in_Malaysia – Accessed 28 May 2010 – Attachment 30; ‘Malaysia investigates abuse claim’ 2005, *BBC News*, 26 November <http://news.bbc.co.uk/2/hi/4468810.stm> – Accessed 28 May 2010 – Attachment 31; Kent, J. 2005, ‘Video puts Malaysia police in dock’ *BBC News*, 25 November <http://news.bbc.co.uk/2/hi/asia-pacific/4470422.stm> – Accessed 28 May 2010 – Attachment 32.

⁵⁶ 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 – Attachment 23; ‘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 – Attachment 24.

⁵⁷ ‘Committee on the Elimination of Racial Discrimination’ (undated) Office of the United Nations High Commissioner for Human Rights website <http://www2.ohchr.org/english/bodies/cerd/> – Accessed 28 May 2010 – Attachment 33.

⁵⁸ Special Rapporteur on the Right to Education 2009, ‘Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum: mission to Malaysia’, *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, p.6 <http://www.unhcr.org/refworld/docid/49f06efd2.html> – Accessed 24 May 2010 – Attachment 34; Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April, p.9 <http://www.unhcr.org/refworld/docid/4be3c8c80.html> – Accessed 24 May 2010 – Attachment 23.

Constitution of Malaysia. This appears to limit its mandate extensively as Article 153 of the Constitution protects the special position of Malays and therefore a complaint that challenges this would not be considered.⁵⁹ SUHAKAM is also 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.⁶⁰ Some observers consider that, because it has only limited independence, it avoids dealing with matters that the Government considers too sensitive. Nor does it have any mechanism for ensuring that its recommendations are implemented and is not taken seriously enough by the senior Government authorities. It has also been criticised for being slow to respond to complaints or not responding at all.⁶¹

According to media and NGO sources, a proposal to set up an oversight committee watching over the police force was extensively discussed and debated during the administration of former Prime Minister Abdullah Badawi who set up a Royal Commission to inquire into the police force. The Commission's recommendation to create an independent body to watch over the police force and check abuses was never implemented, largely because of strong opposition from the police force.⁶² Notwithstanding this, in June 2009, legislation creating the Enforcement Agencies Integrity Commission (EAIC) was passed in Parliament which can receive complaints of misconduct against enforcement officers. Misconduct includes 'any act or inaction of an enforcement officer which, in the opinion of the Commission, is unreasonable, unjust, oppressive or improperly discriminatory.'⁶³ According to Freedom House, however, it is only empowered to investigate and make recommendations to the Attorney General's Chambers rather than prosecute independently. Moreover, its broad scope, encompassing 21 agencies, has shifted scrutiny away from the police.⁶⁴ It is unclear when this Commission will begin to function.

⁵⁹ Soong, K.K. 2009, '1 Malaysia – Beyond the Hype' SUARAM website, 20 October <http://www.suaram.net/node/238> - Accessed 28 May 2010 – Attachment 35; 'Laws of Malaysia Act 597 Human Rights Commission of Malaysia Act 1999' (undated) HURIGHTS Osaka website http://www.hurights.or.jp/database/E/nhri_law/malaysia.html#4 - Accessed 28 May 2010 – Attachment 36.

⁶⁰ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 5

<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

⁶¹ Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, p.6

<http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010 – Attachment 34; Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April, p.9

<http://www.unhcr.org/refworld/docid/4be3c8c80.html> - Accessed 24 May 2010 – Attachment 23; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 4

<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8; The 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, p.101

http://www.asiapacificforum.net/about/annual-meetings/13th-malaysia-2008/downloads/ngo-report-statements/ANNI_2008.pdf - Accessed 28 May 2010 – Attachment 37.

⁶² 'Demand Rises for Independent Body to Check Police Force' 2010, *Inter Press Service*, 6 May – Attachment 38; Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April, p.14 <http://www.unhcr.org/refworld/docid/4be3c8c80.html> - Accessed 24 May 2010 – Attachment 23.

⁶³ 'Enforcement Agency Integrity Commission Bill 2009' (undated) Malaysian Bar website http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=1990 - Accessed 28 May 2010 – Attachment 53.

⁶⁴ Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April, p.14 <http://www.unhcr.org/refworld/docid/4be3c8c80.html> - Accessed 24 May 2010 – Attachment 23.

8. Please indicate if there are any recent reports on discrimination against the ethnic Chinese in Malaysia?

Beyond reports of the mistreatment of a Chinese national in detention referred to previously and the long established system of institutionalised discrimination in favour of ethnic Malays in areas such as education, government employment and business and land ownership,⁶⁵ no other recent reports of specific discrimination against the Chinese community were found. It appears, however, that tensions are mounting between the local Malays and minority ethnic communities as a result of recent reforms to the constitutional system of preferences.

In 2006 it was reported that speakers for the government coalition's main dominant political party, the United Malays National Organization (UMNO) 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.⁶⁶ As a result of waning public support, however, according to an article by the *South China Morning Post*, last year's annual assembly of the ruling Coalition was not as controversial as previous years; that is, there was 'no verbal bashing of Chinese and Indian minorities, no hardline pro-Malay rhetoric'.⁶⁷ Furthermore, in 2009, in order to boost the flagging economy, Malaysia's new prime minister, Najib bin Tun Abdul Razak, announced that foreigners investing in parts of the service sector would no longer be required to take ethnic-Malay partners, who currently must own 30% of any joint venture in the areas of health, tourism, and business and technology services.⁶⁸

Whilst there are few reports of regular hostility between ethnic communities and the Malay population, it appears tensions are brimming under the surface and any significant change to the status quo could result in violent behaviour towards the ethnic minorities. For example, in August 2009, *Associated Press* reported that Muslim protesters stomped on a cow's head amid anger over plans to build a Hindu temple in their neighbourhood.⁶⁹ In January 2010, it was reported that eight churches had been attacked over 3 days amid a dispute over the use of the word 'Allah' by local Christians (Malaysian Christians are mostly Indian or Chinese).⁷⁰ A Malaysian nationalist group also claimed that any further changes to the system of preferences could spark 'a time bomb in society, because dissatisfaction will rise among Malays and could cause political and social unrest'.⁷¹

9. Is Malay the language of instruction in schools?

At the primary school level there are Malay national schools, Chinese and Tamil national schools whereby the language of instruction is Malay, Mandarin or Tamil respectively. English and Malay are, however, compulsory subjects for all primary schools. At the secondary level the language of instruction in all national schools is Malay. There are, however, a number of private independent Chinese schools who teach in Mandarin.

⁶⁵ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March, Section 6

<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010 – Attachment 8.

⁶⁶ 'World Directory of Minorities: Malaysia – Chinese' 2009, Minority Rights Group International website <http://www.minorityrights.org/4528/malaysia/chinese.html> - Accessed 17 October 2008 – Attachment 39; 'Tall buildings, narrow minds – Malaysia at 50' 2007, *The Economist*, 1 September – Attachment 40

⁶⁷ Kuppusamy, B. 2009, 'Umno searches its soul amid waning support' *South China Morning Post*, 2 November – Attachment 41.

⁶⁸ 'Malaysia relaxes racial policies' 2009, *Wall Street Journal*, 23 April – Attachment 42.

⁶⁹ Zappei, J. 2009, 'Malaysia party head: End racial 'siege mentality' *The Associated Press*, 14 October – Attachment 43.

⁷⁰ Ng, E. 2010, 'Church attacks in Malaysia deepen racial tension' *The Associated Press*, 11 January – Attachment 44.

⁷¹ Yoong, S. 2010, 'New nationalist group fights to keep affirmative action program for Malay Muslim majority' *The Associated Press*, 24 March – Attachment 45.

Primary School

According to a range of sources, there are two main types of public primary schools in Malaysia: national (*Sekolah Kebangsaan* in Malay, abbreviated as SK) and national-type (*Sekolah Jenis Kebangsaan*, abbreviated as SJK). National-type schools are further divided into Chinese national-type schools (*Sekolah Jenis Kebangsaan Cina*, SJK(C)) and Tamil national-type schools (*Sekolah Jenis Kebangsaan Tamil*, SJK(T)). National schools are government-operated, while national-type schools are mostly government-assisted, though some are government-operated.⁷²

The medium of instruction is Malay for SK, Mandarin and simplified Chinese characters writing for SJK(C), and Tamil for SJK(T). Malay and English are compulsory subjects in all schools. All schools use the same syllabus for non-language subjects regardless of the medium of instruction. In January 2003, a mixed medium of instruction was introduced so that students would learn Science and Mathematics in English. Due to pressure from the Chinese community, SJK(C) teach Science and Mathematics in both English and Chinese. However, the government reversed the policy of teaching Science and Mathematics in English in July 2009, and previous languages of instruction will be reintroduced in stages from 2012.⁷³

Secondary School

According to the 2010 Report of the Special Rapporteur on the Right to Education, the second cycle of studies is the lower secondary or academic secondary, which in national schools is taught in Malay and is intended for boys and girls between the ages of 11 and 14, who have to complete three years of studies. The third stage is the upper secondary, which is also taught in Malay in national schools. This stage is of two years' duration and intended for boys and girls between 14 and 16. It is possible to study Mandarin and Tamil, as well as Iban (an indigenous language) as an optional subject.⁷⁴

There are a number of secondary schools administered and financed by the Chinese communities which use Mandarin as the language of instruction. The Government does not recognize the examination that is taken at the end of the programme of studies in these schools. In consequence, pupils from these schools have to sit two end-of-cycle examinations.⁷⁵

⁷² 'Education in Malaysia' 2010, Wikipedia website, 19 April (last updated) http://en.wikipedia.org/wiki/Education_in_Malaysia - Accessed 28 May 2010 – Attachment 46; Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, p.8

<http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010 – Attachment 34.

⁷³ 'Education in Malaysia' 2010, Wikipedia website, 19 April (last updated) http://en.wikipedia.org/wiki/Education_in_Malaysia - Accessed 28 May 2010 – Attachment 46; Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, p.8

<http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010 – Attachment 34; 'Malaysian Chinese' 2010, Wikipedia website, 21 May (last updated) http://en.wikipedia.org/wiki/Malaysian_Chinese - Accessed 20 May 2010 – Attachment 47.

⁷⁴ Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, p.9

<http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010 – Attachment 34.

⁷⁵ Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum : mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, p.9

The language of instruction at all levels for mathematics and science is English. In regards to this, the Special Rapporteur found that pupils and teachers face serious difficulties, especially in rural areas, despite the efforts made to train teachers in that language. He also noted learning difficulties for children whose mother tongue is different from the language of instruction, i.e. Malay. Cases of secondary school pupils experiencing serious learning difficulties are common, firstly because their mother tongue is not Malay; secondly because they have to learn mathematics and science, inherently complex subjects, in a third language, English, totally alien to their environment.⁷⁶ This issue is further explored in a 2008 article by the Singapore-based English-language daily, *The Straits Times*, which reports on the consequences for Chinese students when they attend secondary school in which the medium of instruction becomes Malay. It claims that 90% of Chinese children in Malaysia go to Mandarin-medium primary schools but less than 5% go 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. According to Chinese educationist, Goh Kean Seng, 'Many drop out because they cannot cope with the change in the medium of instruction'. The Malaysian Chinese Association (MCA) estimates that 25% of Chinese students quit studying before they are 18, when they are due to sit for the government exams. Among the dropouts, some become apprentices in workshops, picking up skills like plumbing or motor-repair but some find themselves in illicit trades, such as peddling pirated DVDs or collecting debts for loan sharks.⁷⁷

Attachments

1. 'Perak Map' (undated) TalkMalaysia.com website <http://www.talkmalaysia.com/perak-map.html> - Accessed 25 May 2010.
2. 'Perak' 2010, Wikipedia website, 23 May (last updated) <http://en.wikipedia.org/wiki/Perak#Demographics> - Accessed 26 May 2010.
3. 'Map Malaysia' 2010, Melaka International Trade Centre website, 22 February (last updated) <http://mitc.org.my/mitc/pages/location/map-malaysia.php> - Accessed 26 May 2010.
4. 'Perak Full Map' (undated) Malaxi.com website http://malaxi.com/ShowMap.php?t=Perak%20Full%20Map&i=maps/perak/perak_full_map.jpg - Accessed 26 May 2010.
5. 'Gopeng' 2010, Wikipedia website, 30 May (last updated) <http://en.wikipedia.org/wiki/Gopeng> - Accessed 26 May 2010.
6. 'Kampung Lawan Kuda' 2009, Wikipedia website, 17 August (last updated) http://en.wikipedia.org/wiki/Kampung_Lawan_Kuda - Accessed 25 May 2010.

<http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010 – Attachment 34.

⁷⁶ Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum: mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March, pp 18-19.

<http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010 – Attachment 34.

⁷⁷ Hor, C.K. 2008, 'Battle to save Malaysia's Chinese dropouts' *Asia One News*, source: *The Straits Times*, 30 January <http://www.asiaone.com/News/Education/Story/A1Story20080130-47357.html> - Accessed 20 May 2010 – Attachment 50.

7. Amnesty International 2005, *Malaysia: Towards Human Rights-Based Policing*, 6 April <http://www.amnesty.org/en/library/info/ASA28/001/2005> - Accessed 24 May 2010.
8. US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Malaysia*, 11 March <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135998.htm> - Accessed 20 May 2010.
9. Hector, C. 2006, 'Detention Without Trial Laws in Malaysia' The Malaysian Bar website, 23 January http://www.malaysianbar.org.my/human_rights/detention_without_trial_laws_in_malaysia.html - Accessed 20 May 2010.
10. Asian Human Rights Commission 2004, 'Malaysia: Police Brutality, Shootings and Deaths in Custody' Asian Human Rights Commission website, 24 June (Posted) <http://malaysia.ahrchk.net/mainfile.php/General/68> - Accessed 20 May 2010.
11. Australian Department of Foreign Affairs and Trade 2010, 'Travel Advice: Malaysia' Smart Traveller website, 19 April http://www.smarttraveller.gov.au/zw-cgi/view/advice/malaysia#Local_Laws - Accessed 27 May 2010.
12. Kuppusamy, B. 2007, 'Hundreds of Migrants Face Execution for Drug Crimes' *Inter Press Service*, 29 June <http://ipsnews.net/news.asp?idnews=38380> - Accessed 27 May.
13. Asian Human Rights Commission 2003, 'Urgent Action Malaysia: Death and Torture in Custody' Asian Human Rights Commission website, 10 June <http://www.ahrchk.net/ua/mainfile.php/2003/458/> - Accessed 20 May 2010.
14. Human Rights Watch 2006, *Malaysia: Convicted Before Trial: Indefinite Detention Under Malaysia's Emergency Ordinance*, August <http://www.hrw.org/en/node/11224/section/5> - Accessed 20 May 2010.
15. 'Laws of Malaysia: Act 593 Criminal Procedure Code Incorporating all amendments up to 1 January 2006' 2006, Malaysian Attorney-General's Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20593.pdf> - Accessed 20 May 2010.
16. The Malaysian Bar 2009, 'Bail' The Malaysian Bar website, 7 August <http://www.malaysianbar.org.my/bail.html> - Accessed 25 May 2010.
17. 'Laws of Malaysia: Act 234 Dangerous Drugs Act 1952 Incorporating all amendments up to 1 January 2006' 2006, Malaysian Attorney-General's Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%205/Act%20234.pdf> - Accessed 20 May 2010.
18. 'Laws of Malaysia: Act 574 Penal Code Incorporating all amendments up to 1 January 2006' 2006, Malaysian Attorney-General's Chambers website <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20574.pdf> - Accessed 20 May 2010.
19. Malaysian Bar Council Human Rights Committee 2008, 'HRC Responds: Legal Aid for all please' Malaysian Bar website, 4 June http://www.malaysianbar.org.my/human_rights/hrc_responds_legal_aid_for_all_please.html - Accessed 20 May 2010.
20. 'Seeing A Lawyer' 2005, Malaysian Bar website, 13 April http://www.malaysianbar.org.my/seeing_a_lawyer.html - Accessed 25 May 2010.

21. SUARAM 2009, *Malaysia Civil and Political Rights Report 2009 Overview*, SUARAM website, December <http://www.suaram.net/sites/default/files/Overview%202009.PDF> - Accessed 20 May 2010.
22. Amnesty International 2009, *Amnesty International Report 2009: The State of the World's Human Rights – Malaysia* <http://www.amnesty.org/en/region/malaysia/report-2009> - Accessed 24 May 2010.
23. Freedom House 2010, *Countries at the Crossroads 2010 - Malaysia*, UNHCR Refworld website, 7 April <http://www.unhcr.org/refworld/docid/4be3c8c80.html> - Accessed 24 May 2010.
24. '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.
25. Article 19 2003, *Memorandum on the Malaysian Sedition Act 1948*, UNHCR Refworld website, 15 July <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4754187fd> - Accessed 28 May 2010.
26. 'MALAYSIA: Custodial death revives calls for police reforms' 2009, *Inter Press Service*, 6 February. (CISNET Malaysia CX220393)
27. 'Malaysian watchdog to monitor brutality on Indians' 2009, *The Hindu*, 4 February. (CISNET Malaysia CX219779)
28. Kent, J. 2005, 'Video puts Malaysia police in dock', *BBC News*, 25 November <http://news.bbc.co.uk/2/hi/asia-pacific/4470422.stm> – Accessed 24 August 2007.
29. Arnold, W. 2005, 'Video sets off furor between Malaysia and China', *International Herald Tribune* website, 9 December <http://www.iht.com/articles/2005/12/08/news/malay.php> – Accessed 24 August 2007.
30. 'Chinese women top list of foreign prostitutes detained in Malaysia' 2009, *monstersandcritics.com* website, source: *Deutsche Presse-Agentur*, 21 March http://www.monstersandcritics.com/news/asiapacific/news/article_1465963.php/Chinese_women_top_list_of_foreign_prostitutes_detained_in_Malaysia - Accessed 28 May 2010.
31. 'Malaysia investigates abuse claim' 2005, *BBC News*, 26 November <http://news.bbc.co.uk/2/hi/4468810.stm> - Accessed 28 May 2010.
32. Kent, J. 2005, 'Video puts Malaysia police in dock' *BBC News*, 25 November <http://news.bbc.co.uk/2/hi/asia-pacific/4470422.stm> - Accessed 28 May 2010.
33. 'Committee on the Elimination of Racial Discrimination' (undated) Office of the United Nations High Commissioner for Human Rights website <http://www2.ohchr.org/english/bodies/cerd/> - Accessed 28 May 2010.
34. Special Rapporteur on the Right to Education 2009, 'Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos: addendum: mission to Malaysia', *United National Human Rights Council*, A/HRC/11/8/Add.2, 20 March <http://www.unhcr.org/refworld/docid/49f06efd2.html> - Accessed 24 May 2010.

35. Soong, K.K. 2009, '1 Malaysia – Beyond the Hype' SUARAM website, 20 October <http://www.suaram.net/node/238> - Accessed 28 May 2010.
36. 'Laws of Malaysia Act 597 Human Rights Commission of Malaysia Act 1999' (undated) HURIGHTS Osaka website http://www.hurights.or.jp/database/E/nhri_law/malaysia.html#4 - Accessed 28 May 2010.
37. The 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 http://www.asiapacificforum.net/about/annual-meetings/13th-malaysia-2008/downloads/ngo-report-statements/ANNI_2008.pdf - Accessed 28 May 2010.
38. 'Demand Rises for Independent Body to Check Police Force' 2010, *Inter Press Service*, 6 May. (CISNET Malaysia CX243253)
39. 'World Directory of Minorities: Malaysia – Chinese' 2009, Minority Rights Group International website <http://www.minorityrights.org/4528/malaysia/chinese.html> - Accessed 17 October 2008.
40. 'Tall buildings, narrow minds – Malaysia at 50' 2007, *The Economist*, 1 September. (FACTIVA)
41. Kuppusamy, B. 2009, 'Umno searches its soul amid waning support' *South China Morning Post*, 2 November. (FACTIVA)
42. 'Malaysia relaxes racial policies' 2009, *Wall Street Journal*, 23 April. (CISNET Malaysia CX224913)
43. Zappei, J. 2009, 'Malaysia party head: End racial 'siege mentality' *The Associated Press*, 14 October. (FACTIVA)
44. Ng, E. 2010, 'Church attacks in Malaysia deepen racial tension' *The Associated Press*, 11 January. (FACTIVA)
45. Yoong, S. 2010, 'New nationalist group fights to keep affirmative action program for Malay Muslim majority' *The Associated Press*, 24 March. (FACTIVA)
46. 'Education in Malaysia' 2010, Wikipedia website, 19 April (last updated) http://en.wikipedia.org/wiki/Education_in_Malaysia - Accessed 28 May 2010.
47. 'Malaysian Chinese' 2010, Wikipedia website, 21 May (last updated) http://en.wikipedia.org/wiki/Malaysian_Chinese - Accessed 20 May 2010.
48. Deleted.
49. Deleted.
50. Hor, C.K. 2008, 'Battle to save Malaysia's Chinese dropouts' *Asia One News*, source: *The Straits Times*, 30 January <http://www.asiaone.com/News/Education/Story/A1Story20080130-47357.html> - Accessed 20 May 2010.
51. Deleted.

52. Deleted.

53. 'Enforcement Agency Integrity Commission Bill 2009' (undated) Malaysian Bar website http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=1990 - Accessed 28 May 2010.