



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

Malaysia - Researched and compiled by the Refugee Documentation Centre of Ireland on Tuesday 26 November 2013

Information homosexuality including: legality, applicable penalties, societal attitudes, treatment of lesbians

Commenting on events of 2012, a report published in April 2013 by the *United States Department of State* points out that:

“Section 377 of the Penal Code states that sodomy and oral sex acts are “carnal intercourse against the order of nature” but was rarely enforced...Religious and cultural taboos against same-sex sexual conduct were widespread” (United States Department of State (19 April 2013) *Country Reports on Human Rights Practices 2012, Malaysia*, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons/Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity).

A report issued in January 2013 by *Freedom House* notes:

“Members of the LGBT (lesbian, gay, bisexual, and transgender) community face discrimination and harassment. In 2012, Prime Minister Najib called the LGBT community an example of a “deviant culture” that threatens Malaysia. His remarks were consistent with those found in the country’s mainstream media. Homosexual conduct is punishable by up to 20 years in prison under the penal code, and some states apply their own penalties to Muslims under Sharia statutes” (Freedom House (January 2013) *Freedom in the World 2013 - Malaysia*).

In September 2013 *Human Rights Watch* states:

“In violation of international standards against discrimination, Malaysian leaders continue to denigrate lesbian, gay, bisexual and transgender (LGBT) persons...Malaysia still criminalizes what it terms “carnal intercourse against the order of nature,” under article 377 B of the penal code. Those convicted face penalties including fines, whippings, and imprisonment for up to 20 years” (Human Rights Watch (3 September 2013) *Malaysia 2013 Universal Periodic Review Submission*).

In November 2013 a publication by the *Kaleidoscope Trust* notes:

“Restrictions in LGBTI human rights have played quite a big part in the politics of Malaysia for the last decade, largely driven by the ruling government and its proxies, such as the 'People's Anti-Homosexual Voluntary Movement' (PASRAH) and, during the first Anwar sodomy trial era, the Malaysian Malay Network (Jaringan Melayu Malaysia)” (Kaleidoscope Trust (10 November 2013) *Speaking Out: The rights of LGBTI citizens from across the Commonwealth - Malaysia*).

A publication issued in May 2013 by the *International Lesbian Gay Bisexual Trans and Intersex Association* lists the legislation associated with homosexuality, noting:

“Penal Code (Consolidated version 1998) 239

Unnatural Offences

Section 377A. Carnal intercourse against the order of nature.

"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."

Section 377B. Punishment for committing carnal intercourse against the order of nature.

"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."

Section 377C. Committing carnal intercourse against the order of nature without consent, etc.

"Whoever voluntarily commits carnal intercourse against the order of nature on another person without the consent, or against the will, of the other person, or by putting other person in fear of death or hurt to the person or any other person, shall be punished with imprisonment for a term of not less than five years and not more than twenty years."

Section 377D. Outrages on decency.

"Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years." (International Lesbian Gay Bisexual Trans and Intersex Association (May 2013) *State-Sponsored Homophobia, A world survey of laws: Criminalisation, protection and recognition of same-sex love*, p.73).

References

Freedom House (January 2013) *Freedom in the World 2013 - Malaysia*

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Human Rights Watch (3 September 2013) *Malaysia 2013 Universal Periodic Review Submission*

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International Lesbian Gay Bisexual Trans and Intersex Association (May 2013)

State-Sponsored Homophobia, A world survey of laws: Criminalisation, protection and recognition of same-sex love

http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf

Attachment not included due to IT limitations

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Kaleidoscope Trust (10 November 2013) *Speaking Out: The rights of LGBTI citizens from across the Commonwealth - Malaysia*

<http://www.ein.org.uk/members/country-report/speaking-out-rights-lgbti-citizens-across-commonwealth-malaysia>

This is a subscription database

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United States Department of State (19 April 2013) *Country Reports on Human Rights Practices 2012, Malaysia*

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

Sources Consulted

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Electronic Immigration Network
European Country of Origin Information Network
Freedom House
Google
Human Rights Watch
Immigration and Refugee Board of Canada
Internal Displacement Monitoring Centre
International Crisis Group
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Lexis Nexis
Minority Rights Group International
Online Newspapers
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United Kingdom Home Office
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