Questions

1. What is the situation at present in Malaysia for homosexuals?

RESPONSE

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The following research updates RRT Research Response MYS17043, dated 20 October 2004, which provides information on legal, political and societal attitudes towards homosexuals in Malaysia (RRT Country Research 2004, Research Response MYS17043, 20 October – Attachment 19; also see: Gay Resource Guide – Malaysia, last updated 26 March 2005).

Homosexuality continues to be unacceptable as well as illegal in Malaysia. The latest US Department of State report on human rights (2005) states “laws against sodomy and ‘carnal intercourse against the order of nature’ exist and were enforced. Religious and cultural taboos against homosexuality were widespread” (US Department of State 2006, Country Reports on Human Rights Practices for 2005 – Malaysia, March, Section 5 – Attachment 21).

The available information suggests that Malaysia is undergoing a move towards increased Islamic conservatism, and that this is affecting both Muslim and non-Muslim Malaysians. Homosexuality continues to be vilified by politicians and in the media. There are a few gay and lesbian support organisations, as well as gay-friendly venues (mainly in Kuala Lumpur), but these tend to be discreet, and maintain a low profile. Recent police raids have occurred against gay-patronised establishments. The stigma surrounding HIV/AIDS has also affected attitudes towards homosexuals. According to the UNAIDS Country Report on Malaysia for 2006:

The conservative climate in this country is upheld by religious beliefs which subsume strong views on issues pertinent to HIV/AIDS, such as homosexual practices, premarital sex, multiple partners, commercial sex, drug use, and condom use. The non-acceptance of

(For information on Malaysia’s increasing conservatism, see: ‘A difficult balance to strike; Islam Hadhari, Malaysian PM’s moderate vision, may be backfiring’ 2006, Today, 24 June – Attachment 7.)

Law

A chapter on Malaysia in Women of the World: East and Southeast Asia states that:

There are no constitutional guarantees against discrimination on the ground of sexual orientation. Homosexual acts are punishable offences under civil, criminal, and Islamic laws. The penal code criminalizes “unnatural offences,” which are interpreted to include homosexuality. A relevant provision of the code was invoked for the first time against a former deputy prime minister in a case involving alleged homosexual activity between two consenting adults. Transsexuals are often arrested and charged under the Minor Offences Act 1955 for “indecent behavior.” Under the tenets of Islam, homosexuality is considered morally worse than adultery because it is against nature and the divine objective of creation and reproduction. Liwat (sexual relations between male persons) and musahaqah (sexual relations between female persons) are punishable offences under the Syariah Criminal Offences (Federal Territories) Act 1997 (‘Malaysia’, Women of the World: Laws and Policies Affecting Their Reproductive Lives, East and Southeast Asia 2005, The Center for Reproductive Rights & Asian-Pacific Resource and Research Centre for Women (ARROW), p. 100 http://www.crlp.org/pdf/Malaysia.pdf – Accessed 1 February 2007 – Attachment 2).

While homosexuality is not specifically mentioned in the Malaysian Penal Code, ‘unnatural offences’, involving any gender, deemed to be ‘against the order of nature’ are punishable by up to 20 years imprisonment and whipping. Under Section 377 of the Penal Code:

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.

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.

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.
According to a 2004 report on sexual minorities in Malaysia by the Immigration and Refugee Board of Canada, in addition to corporal punishment and imprisonment, punishments for homosexual acts include the death penalty (Immigration and Refugee Board of Canada 2004, MYS42857.E – Malaysia: The situation of sexual minorities (January 2002 – August 2004), 13 August – Attachment 3).

A paper presented at the Sexuality and Human Rights in Muslim Societies in South/Southeast Asia Conference (2004) outlines the two sets of laws in Malaysia, and the effects of Islamic morality laws on both Muslim and non-Muslim Malaysians:

There are two sets of laws in Malaysia: the civil system, which applies to all persons residing in Malaysia; and the state-administered Islamic or Shariah laws which are ostensibly only applicable to Muslims. The Federal Constitution delineates that “matters of Islam” will be handled under the Shariah laws. However, what has been happening in effect is a quiet “redefinition” of what is considered “matters related to Islam.” The scope of Shariah laws in the country has slowly widened, from personal status laws on marriage, divorce, custody, and maintenance to matters related to the individual’s piety, practices, and preferences (such as fasting, Friday prayers, sexual orientation, and consumption of alcohol).

The PAS state governments have also used this provision to enact their own versions of hudud laws [Islamic laws stating the limits ordained by Allah and including the deterrent punishments for serious crimes] in two states, over and above the existing Syariah Criminal Offences Enactments (SCOE) and a civil system already enforced throughout the country. All three sets of laws contain numerous provisions that, blatantly and tacitly, disproportionately discriminate against and violate the rights of women and the lesbian, gay, bisexual, and transgender (LGBT) community.


**Police/Law enforcement**

According to a paper prepared for the Asia-Europe Foundation (ASEF) 2005 dialogue on ‘Policies and Perceptions of Sexual Minority Groups in Asia & Europe’, the laws against homosexuals “were hardly enforced till recently with the upsurge in Islamic hardliners. In 1998 the former Deputy Prime Minister Dr Anwar Ibrahim was charged with four counts of sodomy. The charges were recently dropped. Following these charges an Anti-Homosexual Voluntary movement was initiated.” Kasim states that “[t]he growing conservatism in the country has also given rise to self-appointed ‘vigilante’ Islamist groups or individuals in the universities, the workplace, and also in public spaces, who have taken it upon themselves to harass and police other individuals and groups” (Asia-Europe Foundation (ASEF) 2005, Country Studies document prepared for ‘Policies and Perceptions of Sexual Minority Groups in Asia & Europe’, Cultures & Civilizations Dialogue: Talks on the Hill, 6-8 March http://www.civdialogue.asef.org/documents/COUNTRYSTUDIESFinal.pdf – Accessed 2
A BBC article in 2005 reports on the practise in some State Islamic departments of launching raids to catch Muslims alleged to be committing ‘immoral acts’, and planned moves by the Malaysian government to curb such moral policing. The article states:

The Malaysian government has moved to curb so-called moral policing following complaints about state snooping into citizens’ private lives. State Islamic departments have been told to seek permission from the police before launching raids to catch Muslims alleged to be committing immoral acts.

…A coalition of human rights, labour and women’s groups called on the government to stop the spread of moral policing.

Their protest was prompted in part by a raid in January by the Kuala Lumpur Islamic department on a fashionable nightclub.

…The government has now decided that future raids will have to be sanctioned and closely monitored by senior police officers.

Meanwhile, Malaka’s chief minister, Mohammed Ali Rustam has stood down a snoop squad he had instigated to monitor the behaviour of Muslim couples in the state.

The cabinet had ordered the unit be disbanded.

The 60-strong squad organised by the local 4B Youth Movement had already turned in a number of people to the religious authorities for kalwat, the offence of a man and a woman being alone together in private.


While Shariah laws ostensibly only cover Muslims, the investigation and enforcement of these laws by ‘vice-prevention squads’ have affected all Malaysian citizens. A June 2006 report published in Singapore’s Today has highlighted the view, expressed by a number of commentators and human rights groups, that Malaysia is presently undergoing a process of “Islamisation” which increasingly impinges on ethnic Chinese, and other non-Malay/Muslim Malaysians; noting that “[a] young Chinese couple caught kissing in public were [recently] made to stand trial on charges of indecency” and that “[n]ew rules compel non-Muslim policewomen to wear headscarves in parades.” The report states that these cases “signal an
incursion of conservative Muslim values into public life” (‘A difficult balance to strike; Islam Hadhari, Malaysian PM’s moderate vision, may be backfiring’ 2006, Today, 24 June – Attachment 7).

The precedence given to Islamic law, or Shariah, is also affecting the private lives of non-Muslims in Malaysia. Although the previously mentioned BBC article from 2005 reported that the Malaysian government had moved to “curb so-called moral policing following complaints about state snooping into citizens’ private lives”, such incidents are still occurring. In October 2006 The Star reported that an American couple were raided by religious enforcement officers, accusing them of committing khalwat (close proximity). The article states that:

On Oct 12, Barnhart, 62, and his wife Carole, 61, were in their rented condominium in Kuah when enforcement officers continuously knocked on their door at 2am, accusing them of committing khalwat (close proximity).

He said the officers demanded to see his marriage certificate, although he had told them that they were Christians and should not be subjected to Islamic law (Habibu, S. 2006, ‘Couple in khalwat raid may drop second home plan’, The Star, 28 October http://thestar.com.my/news/story.asp?file=/2006/10/28/nation/15839442&sec=nation – Accessed 1 February 2007 – Attachment 8).


The PT Foundation held information sessions about legal rights in the face of this increasing harassment by police. A statement on the PT Foundation website says:

The recent rounds of police raids at various gay patronised venues have precipitated a sense of unease and panic, doom and gloom within the gay community. Codenamed “Operation
Duck-flus”, this harassment by the authorities is a challenge to the colourful gay lifestyle in KL which has increasingly come to be accepted as the norm.

Irrespective of what you think of the harassment, one thing is clear: if this continues, there will be severe repercussions – on personal sense of freedom, on businesses, on our AIDS/HIV prevention work, and more damagingly, on the good name of gay people given the intense media fuel pouring. We are reliably informed that this is an ongoing operation which may yet continue for many more weeks to come (‘S for Survival – learn your legal rights in the face of harassment’ 2006, PT Foundation website, March [http://www.ptfmalaysia.org/SunSession/2006March05.htm – Accessed 1 February 2007 – Attachment 12].

Media
The 2004/2005 Spartacus International Gay Guide\(^1\) states that “[h]omosexuality is a taboo in the media or is portrayed in a negative light together with criminal activities.” The previously mentioned statement on the PT Foundation website claims that attitudes towards homosexuals were being influenced by the “intense media fuel pouring” accompanying the police crackdowns on gay venues (Gmünder, Bruno 2004, ‘Malaysia’, Spartacus International Gay Guide, 33\(^{rd}\) Ed, Bruno Gmünder Verlag GMBH, Berlin, p. 682 – Attachment 16; ‘S for Survival – learn your legal rights in the face of harassment’ 2006, PT Foundation website, March [http://www.ptfmalaysia.org/SunSession/2006March05.htm – Accessed 1 February 2007 – Attachment 12]).

An article in February 2006 from Utopia News claims that the media chose to sensationalise the police raids, despite little evidence of any wrong doing. The article states that:

> Human rights in Malaysia took another downturn today as the English-language newspaper, The Malay Mail, used their front page to equate homosexuals with prostitutes. Referring to recent high profile police raids on Kuala Lumpur discos, spas and saunas popular with gay men, the paper used local slang to slur the country’s gay citizens: “Round-up of the Day! Chicks [female prostitutes], Ducks [male prostitutes] and Gays.”

In a full page exposé, the paper chose to display pictures of patrons shot by police inside a private men’s club, unprecedented behavior from the local media.

An article which appeared last week in the Malay press, luridly detailing suggestive activities inside a popular local men’s spa, seems to have been the trigger for the police actions against a number of clubs, saunas, and massage businesses.


\(^1\) The Spartacus International Gay Guide (Gmünder, Bruno 2004, Spartacus International Gay Guide, 33rd Ed, Bruno Gmünder Verlag GMBH, Berlin) is a travel guide for gay males. Gay travellers, gay orientated businesses and gay organisations submit information to the Guide on a voluntary basis. The editor does not verify the accuracy or the currency of the information. **For this reason, care should be exercised when deciding what reliance to place on the content of the Spartacus International Gay Guide in connection with review decision making.**
According to the Malaysian human rights group, *Suara Rakyat Malaysia* (SUARAM), the government’s restrictive laws have brought about a “high level of self-censorship among local media” and the “media remains the main target of the government in its efforts to control freedom of expression.” In June 2005, Prime Minister Abdullah Ahmad Badawi threatened to take action against print media publishers for carrying articles, question-and-answer columns and advertisements focusing on sex. In 2006, the Malaysian film distributor UPI chose not to apply to the state-run Film Censorship board for approval to show the Academy Award-winning movie, *Brokeback Mountain*, which is about a gay relationship. An article dated 17 January 2006 states that, “Golden Globe fave, *Brokeback Mountain*, has been censored by the Malay film board. Actually, UPI, the film’s distributor, has decided to self-censor itself, not even bothering to seek the strict board’s approval. I guess they know what the answer will be already.” The publicity manager told the Associated Press that “*Brokeback Mountain* is definitely not going to make it here because its themes wouldn’t be right for our local audiences” (SUARAM 2005, *Malaysia: Civil And Political Rights Report*, http://www.suaram.net/2005-hr-exec-summ-eng.pdf – Accessed 11 September 2006 – Attachment 13; ‘Malaysia Says No To Brokeback Mountain’ 2006, Queerty website, 17 January http://www.queerty.com/queer/movies/malaysia-says-no-to-brokeback-mountain-20060117.php – Accessed 1 February 2007 – Attachment 17).

**HIV/AIDS**


The PT Foundation is a non-government organisation that deals with gay and lesbian issues in Malaysia. The website states:

> PT Foundation (previously known as Pink Triangle) is a voluntary non-profit making organization providing HIV/AIDS and sexuality education, prevention, care and support program for marginalized communities. We work with six communities that are difficult to reach due to societal discrimination – drug users, sex workers, transsexuals, homosexual men and women, and people living with HIV/AIDS (‘About Us’ (undated), PT Foundation website http://www.ptfmalaysia.org/about_us.htm – Accessed 2 February 2007 – Attachment 32).

PT programs are limited to Kuala Lumpur and, since HIV/AIDS has become a major concern in the nation, its tasks have become very much focused on HIV/AIDS related issues. It has been recognised by the government as one of the most active organisations to fight the
disease. According to Dr Baba, the organisation has been reluctant to take too active a role in gay and lesbian issues for fear of political and social repercussions, but by focusing on HIV/AIDS issues PT members feel that they can still render social services indirectly to its members without being too visible about it (Ismail, Baba 2001, ‘Gay and Lesbian Couples in Malaysia’, Gay and Lesbian Asia: Culture, Identity, Harrington Park Press, New York, pp. 147 & 159-160 – Attachment 18; for more information on the PT Foundation, see: RRT Country Research 2004, Research Response MYS17043, 20 October – Attachment 19).

Social
Increasing Islamic conservatism in Malaysia is juxtaposed by increased exposure to other value systems and lifestyles through electronic communication forms such as the internet. According to an article on homosexuals in Muslim contexts, “[i]n countries where beingouted as a non-heterosexual is dangerous, people are reaching out to other LGBTIs via the Internet. While often a tool of the privileged, it does nevertheless provide a channel for exchange and solidarity.” The PT Foundation website contains a list of Malaysian gay community websites. Utopia-Asia also has community links and listings of venues, etc. by state and city. Although there are links to a couple of support groups on these sites, there was little evidence of local gay Malaysian activist or lobbying groups (Helie, A. 2006, ‘Threats and Survival: The Religious Right and LGBT Strategies in Muslim Contexts’ Queering: Social Movements and Feminist Theories, Women In Action (WIA), No. 1, 2006, 14 September: cited on Isis International – Manila website http://www.isiswomen.org/index.php?option=com_content&task=view&id=272&Itemid=135 – Accessed 2 February 2007 – Attachment 27; for community and social links see: ‘Links for MSM’ (undated), PT Foundation website http://www.ptfmalaysia.org/msm_links.htm – Accessed 2 February 2007 – Attachment 33; and ‘Travel & Resources: Malaysia’ (undated), Utopia-Asia website http://www.utopia-asia.com/tipsmala.htm – Accessed 2 February 2007 – Attachment 34).

Despite Malaysia’s state sanctioned homophobia, the internet allows for an underground local gay community, and Malaysia is described by some gay travel guides as having a ‘vibrant gay scene’, albeit with cautions for discretion when visiting. It must be noted that these guides are written for foreign travellers who have a degree of immunity to the local laws. A Malaysian travel advisory on the Utopia-Asia website states that:

Gay life in Malaysia, as in other Asian countries, is blossoming despite conservative religion-based discrimination and outdated colonial-era laws. Former Deputy Prime Minister, Anwar Ibrahim, was famously removed from office by a trumped-up sodomy conviction that was reversed by Malaysia’s high court in 2004. Muslims, both local and visitors, are also subject to religious law which may (though rarely does) punish gay or lesbian sexual activity with flogging and male transvestism with imprisonment. Even though religious law does not apply to non-Muslims, Islam is the state religion under Malaysia’s constitution and thus homosexual citizens face official discrimination. Police may arrest any person (Muslim or not) for sex in a public place (i.e. cruise spots), so visitors are well-advised to respect Malaysian law and customs while they are guests in the country. Having said that, police generally have not detained foreigners during raids on local gay businesses, focusing instead on ethnic Malay customers, almost 100% of whom are considered Muslim at birth by law [researcher emphasis added] (‘Travel & Resources: Malaysia’ (undated), Utopia-Asia website http://www.utopia-asia.com/tipsmala.htm – Accessed 2 February 2007 – Attachment 34).

The inconsistency in descriptions of a ‘blossoming’ Malaysian gay scene in the same paragraph as cautions about ongoing raids on local gay businesses by police, highlights the
Malaysian authorities’ efforts to appear to be taking a strong stand against homosexuality whilst still carrying out “pro-western economic policies”. According to a briefing paper on ‘Policies and Perceptions of Sexual Minority Groups in Asia & Europe’, in terms of economics, attitudes towards homosexuals may differ from the law, and “the ‘Pink Dollar’ may sway many authorities, which still officially oppose homosexuality, to turn a blind eye. Although these countries may make it illegal to be homosexual they accept the economics of homosexuality.” As the previously quoted Utopia Asia guide states, foreigners are not generally detained, with police focussing on Malaysian customers (Carr, Adam 2003, ‘A Twofaced Society’, Gay Australia website, 14 March – Attachment 20; Asia-Europe Foundation (ASEF) 2005, ‘Policies and Perceptions of Sexual Minority Groups in Asia & Europe’, briefing paper for Cultures & Civilizations Dialogue: Talks on the Hill, 6-8 March, Section 2.3.4 http://www.asef.org/go/subsite/ccd/documents/briefingpaperfinal.pdf – Accessed 2 February 2007 – Attachment 28).

Politics
According to the previously mentioned research paper, ‘Policies and Perceptions of Sexual Minority Groups in Asia & Europe’, the movement in Asia for legal and social tolerance of homosexuality has not gained ground in part because the concept of homosexual identity is alien to many countries. The paper states that many Asian countries “consider themselves as traditional and relatively conservative cultures where homosexuality is conceived as something against the tradition and something imported from/specific to the western countries. And finally, the laws followed the Islamic law or Victorian laws, both against homosexual practices.” Kasim states that “Sexuality in Malaysia, as with most other discourses in the country, is mired within a political system that teeters on ethnic and religious faultlines. In this push for greater Islamisation, both state and non-state actors are unwittingly calling for the implementation of rules, laws, and policies that are deeply influenced or inspired by the ideology of Islamic conservatism.” Anissa Helie states that homosexuality in conservative Muslim contexts is portrayed as a “Western depravation” and the concept of homosexual rights is viewed as a product of a foreign ideology. Activists are thus labelled as a threat to social order as well as traitors to their nation, community, or faith (Asia-Europe Foundation (ASEF) 2005, briefing paper for ‘Policies and Perceptions of Sexual Minority Groups in Asia & Europe’, Cultures & Civilizations Dialogue: Talks on the Hill, 6-8 March, Section 2.3.4 http://www.asef.org/go/subsite/ccd/documents/briefingpaperfinal.pdf – Accessed 2 February 2007 – Attachment 28; Kasim, Z. M. 2004, ‘Sexuality under Attack: The Political Discourse on Sexuality in Malaysia’, Queering: Social Movements and Feminist Theories, Women In Action (WIA), No. 1, 2006, 14 September. Cited on Isis International – Manila website http://www.isiswomen.org/index.php?option=com_content&task=view&id=262&Itemid=15 6 – Accessed 1 February 2007 – Attachment 4; Helie, A. 2006, ‘Threats and Survival: The Religious Right and LGBT Strategies in Muslim Contexts’ Queering: Social Movements and Feminist Theories, Women In Action (WIA), No. 1, 2006, 14 September; cited on Isis International – Manila website http://www.isiswomen.org/index.php?option=com_content&task=view&id=272&Itemid=13 5 – Accessed 2 February 2007 – Attachment 27).

The prevalence of homophobia within Malaysian society, as well as the laws punishing homosexual activity, were major factors in Mahathir Mohamed’s successful ousting and imprisonment of his political rival, Anwar Ibrahim. In this infamous case, the penal code was invoked against a high profile politician in a case involving alleged homosexual activity
between two consenting adults. In 2000 Anwar Ibrahim was sentenced to 9 years in prison for sodomy. According to Zaitun Mohamed Kasim:

Same-sex sexual relations, particularly between men, is often demonised as “un-Islamic,” “unnatural,” “disgusting,” and, according to the head of Education and Research at Malaysia’s Islamic Affairs Department, when interviewed, “a crime worse than murder” (Ramakrishnan, 2000).


In 2004 the sodomy conviction was overturned and Ibrahim was freed. Despite this, Mahathir Mohamed has continued to highlight the ‘immorality’ of Ibrahim’s (alleged) homosexuality as justification for ousting him. An article dated 9 September 2005 in Agence France-Presse quotes Mahathir as saying:

“In our society, sodomy is not acceptable. Of course, among some media people even, they are gay. They don’t like my taking action against a person for the kind of things that they indulge in. So I became a bad guy because of that,” he told reporters. “But I cannot have a person who is like that in my cabinet who may succeed and become the prime minister. Imagine having a gay prime minister. Nobody would be safe” (‘Mahathir sacked Anwar to prevent Malaysia having ‘gay’ PM’ 2005, Agence France-Press, 9 September http://www.globalgayz.com/malaysia-news.html#article15 – Accessed 2 February 2007 – Attachment 23).

In April 2006 Mahathir said that it was his moral duty to accuse the former deputy prime minister, as Ibrahim’s alleged sexual orientation made him unfit for office, and “it was unacceptable to have a homosexual in his cabinet.” In January 2007, Associated Press quoted a statement of Mahathir’s as saying: “I strongly believe we cannot have a prime minister who is homosexual…Malaysia is officially an Islamic country” (‘Former Malaysia PM: It was “moral duty” to accuse heir apparent of being gay’ 2006, The Advocate, 15 April http://www.advocate.com/news_detail_ektid29653.asp – Accessed 2 February 2007 – Attachment 24; Kanaraju, S. 2007, ‘Mahathir says gays should not rule mostly Muslim Malaysia’, Associated Press (AP), 6 January – Attachment 25).

A 2005 report on sexual minorities in Malaysia by the Immigration and Refugee Board of Canada states:

In response to the British Navy’s agreement to promote the rights of homosexuals, Royal Malaysian Navy Chief Mohd Anwar Mohd Nor allegedly stated in February 2005 that homosexuals would not be admitted into the Malaysian Navy (Today 25 Feb. 2005; AP 24 Feb. 2005; New Straits Times 24 Feb. 2005). He further indicated that he was opposed to “such unnatural sex acts” and needed to “protect the image of the navy” (Today 25 Feb. 2005; New Straits Times 24 Feb. 2005). A day later, the navy chief’s words were echoed by the deputy defense minister, who said gays and lesbians would never be allowed to join the military because their behaviour is “against Islam and also against the laws of [Malaysia]” (AP 24 Feb. 2005) (Immigration and Refugee Board of Canada 2005, MYS100434.E –
**UN Resolution**


**List of Sources Consulted**

**Internet Sources:**

**Databases:**
FACTIVA (news database)
BACIS (DIMA Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue

**List of Attachments**


7. ‘A difficult balance to strike; Islam Hadhari, Malaysian PM’s moderate vision, may be backfiring’ 2006, Today, 24 June. (FACTIVA)


