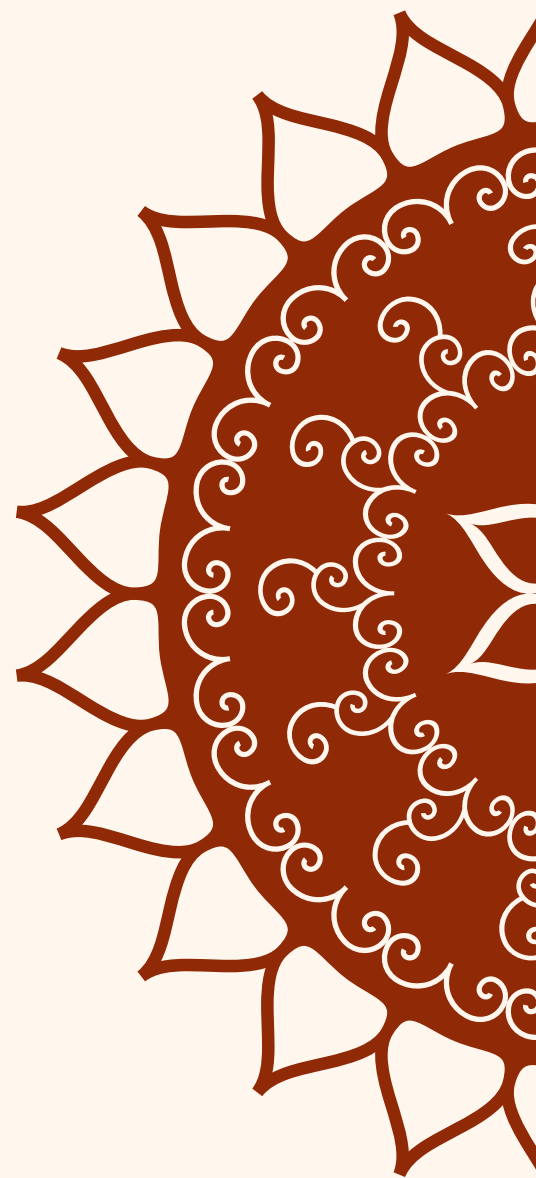




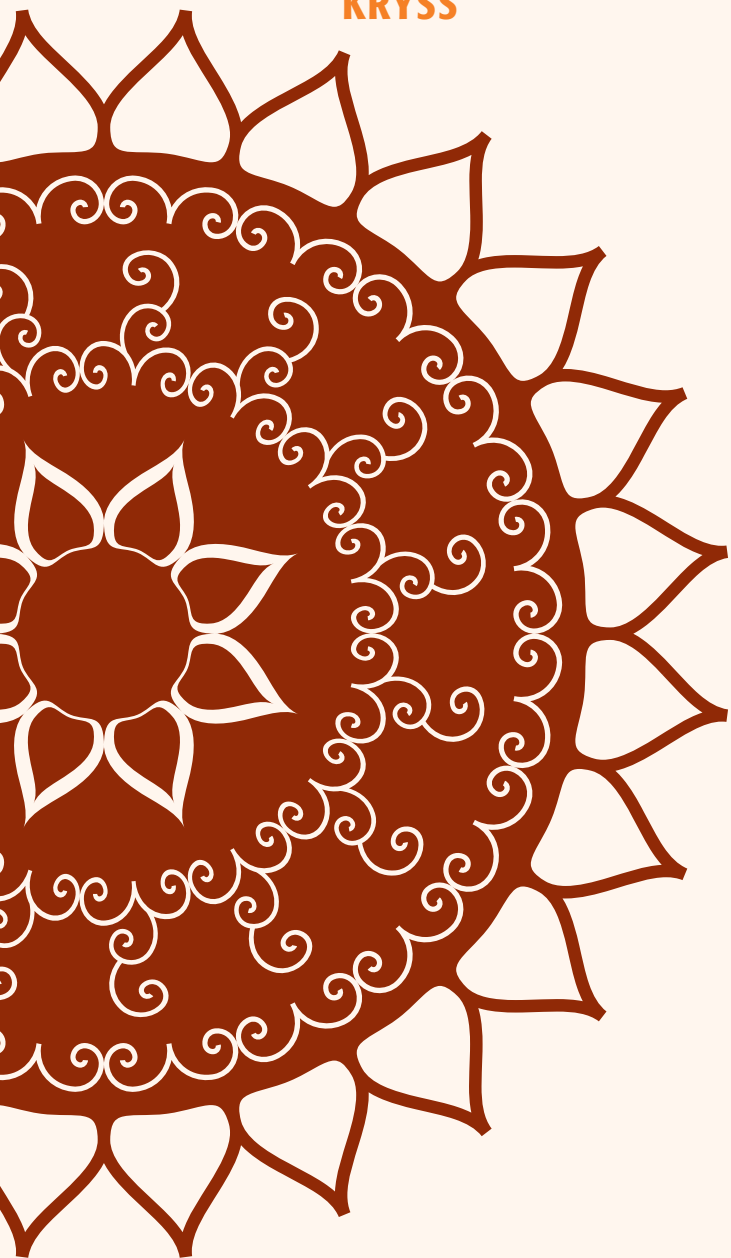
# MALAYSIA



# ON THE RECORD

Violence Against Lesbians, Bisexual Women  
and Transgender Persons In Malaysia

**KRYSS**



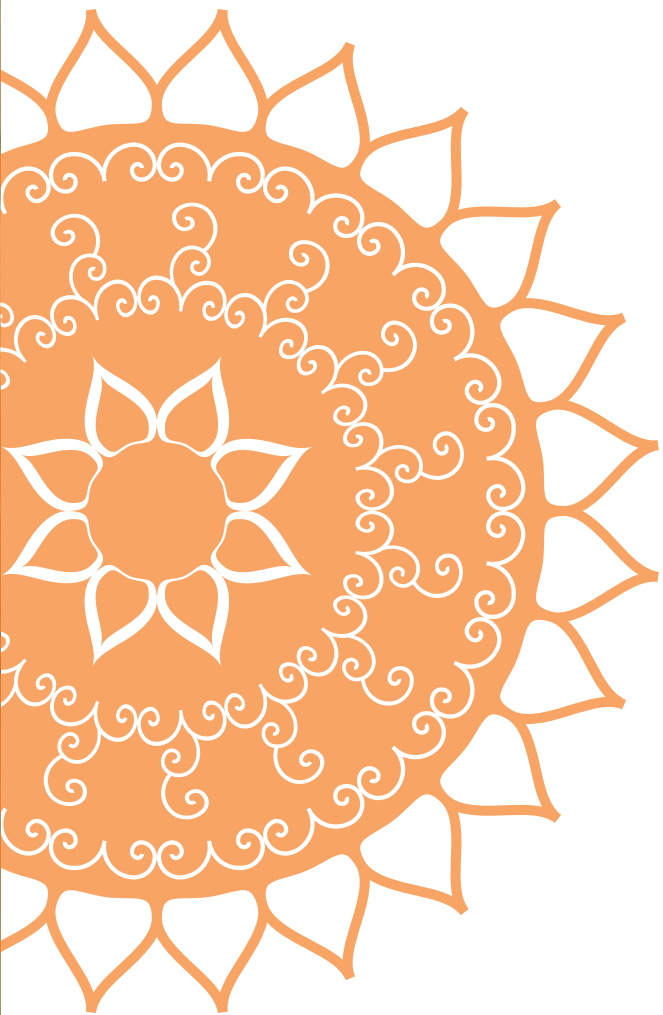


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Photo: Grace Poore



## INTRODUCTION

The Malaysian team is part of a regional research project involving Japan, Pakistan, Philippines and Sri Lanka. All country teams adopted a standardised methodology (semi-structured interview questionnaires) developed by the International Gay and Lesbian Human Rights Commission (IGLHRC).

The documentation team comprised five interviewers who collected data on violence and discrimination experienced by LBT persons between November 2010 and November 2011. The interviewers primarily relied on the snowballing method, a method relying on referrals by contacts such as community leaders and interviewees. The community leaders either privately contacted or used social media (Facebook) and closed mailing lists to encourage their members in their respective networks to participate in the research.

The methodology was translated from English into Malay and Chinese for use in Malaysia. The methodology was not translated into Tamil as we did not anticipate many interviewees who only spoke Tamil, however, one interview was conducted primarily in Tamil. Interviewers simplified and shortened the methodology to avoid repetition of questions. Interviewers used local and colloquial terminology (pengkid, mak nyah, ladyboy) in addition to the more common terminology like lesbian and transgender. They used this local terminology even for interviews that were conducted in English, since Malaysians tend to be bilingual.

In keeping with the focus of the regional research project, we will refer to our interviewees as lesbians, bisexual women, trans persons, transmen or transwomen. For brevity, we will use the acronym LBT persons except when referring to a particular group of interviewees.

Although the range of interviewees for this research cannot represent the full spectrum of LBT persons nor all of their experiences of violence, stigma and discrimination in Malaysia, this research succeeds in highlighting both critical and outstanding issues related to the human rights of LBT people in Malaysia.

# INTERVIEWEE DEMOGRAPHICS

A total of 50 interviews were conducted with LBT persons and 20 interviews with stakeholders, such as educators, lawyers, and representatives from the women’s movement, all of whom have articulated their support for the LGBT community in Malaysia. However, the level and visibility of their support varies according to the nature of their work and pressure faced from State and non-State actors. Five LBT interviews were later excluded from the pool and this report because they self-identified as gay men and were outside the parameters of the research. Two stakeholder interviews were also excluded because their information was unrelated to this research.

There were difficulties locating bisexual women for this research because they are more invisible, partly due to discrimination that bisexual women face within the lesbian community.<sup>1</sup> There were similar difficulties locating pengkid interviewees because of limited contacts with people who identified themselves as pengkid.

The Malaysian research findings are based on 45 semi-structured interviews with people who identify themselves as lesbian (16), bisexual (3), pansexual<sup>2</sup> (1), queer (1), pengkid (3), transman (8) and transwoman (13). Their ages range from 20 to 51 years old. Two interviewees chose not to “label” themselves but were at the time of the interviews in relationships with pengkids. Three transgender persons identified themselves as pansexual, bisexual and lesbian. Among these, 26 are Malays, 13 are Chinese, 5 are Indians and one is Punjabi.

Most of the transwomen interviewees were from lower income backgrounds. The lesbians, bisexual women and transmen were mostly from middle

- 1 Some people in the lesbian community see bisexual women as indecisive, not trustworthy or not to be taken seriously because of their attraction to both women and men.
- 2 Pansexual refers to people who have fluid sexual orientation.

and higher income backgrounds. The snowballing method used to identify interviewees drew LBT people who were within the activist or social networks of those who did outreach for the research.

Twelve of the 45 interviewees had completed secondary education; 21 completed tertiary education; six qualified with diplomas; 14 had obtained Bachelor degrees, and one interviewee had a Masters degree. One transgender person out of the thirteen transgender people we interviewed had a diploma; three others had bachelor degrees, while four had dropped out of school.<sup>3</sup>

## MALAYSIA

### PRIMARY LOCATION OF LBT INDIVIDUALS INTERVIEWED



More than half of the interviewees reside in the federal capital, Kuala Lumpur, and the state of Selangor. Most of the interviewees from Selangor are from Petaling Jaya, a satellite town of Kuala Lumpur. Sixteen out of 45 interviewees were from Penang in the north of the country.<sup>4</sup> The resulting

- 3 There are more school dropouts among the transwomen interviewees due to family rejection, lack of acceptance in schools, and employment discrimination. These factors have a combined adverse impact on transwomen, especially if they are also from poorer families and forced to live on the fringe of society.
- 4 Kuala Lumpur, Selangor (Petaling Jaya) and Penang are major cities in Malaysia with better public transportation and facilities.



geographical concentration of the interviewees is likely due to the snowballing method used to identify interviewees.

Almost all 45 interviewees said that they became aware of their same-sex attraction and/or gender identity or expression at a very young age – four or five years old. “Same-sex attraction” was also a determining indicator for transgender interviewees as young children in their road to discovery of their gender identity. Interviewees who were not “outed” (sexual orientation or gender identity revealed without a person’s permission or knowledge, or inadvertently) by their friends or family members revealed their own identities (i.e., came out) to their parents when they were in their twenties or older. While economic reasons, religion and dependency on parents primarily influenced when people chose to come out, the culture of respecting elders and not wanting to upset parents were equally influential factors. The phrase “know but don’t ask” or similar sentiments were commonly expressed during the interviews.

Nine of thirteen transwomen interviewees shared that they started “cross-dressing” at a very young age – six or seven years old – and had friends or a support network to guide their gender transition. Those without a support network of peers or other transwomen friends transitioned later – some in their late twenties.

Transmen interviewed for this research were certain of their attraction towards women but were unsure of their gender identity, due to lack of information, not having the local vocabulary to self-identify, and a significant absence of a transmen’s support network in the country. They tended to remain in lesbian circles and identified as butch lesbians. Four of the eight transmen started transitioning comparatively much later – in their thirties and forties.

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Social movements and human rights activism are mostly centred in Kuala Lumpur, Selangor and Penang. In fact, most of the rights-based Non-Governmental Organizations (NGOs) in Peninsula Malaysia are situated in Petaling Jaya.

Three pengkid interviewees said they liked wearing boyish attire from a young age and preferred to play with their male siblings. Pengkids have always been visible in Malaysia and are not seen as a new phenomenon within the LBT community. It is an identity largely adopted by a segment of gender non-conforming women who are ethnically Malay (and ostensibly Muslims).

## COUNTRY CONTEXT

Lesbians, bisexual women, queer<sup>5</sup> and transgender persons (transwomen<sup>6</sup> and transmen<sup>7</sup>), and other gender non-conforming people and communities currently face rising hostility, discrimination and abuses in Malaysia. They are unprotected by a political system, which is geared towards promoting and imposing a specific vision of Malaysia.

While Malaysia may have inherited the British colonial laws that prudishly criminalise consensual anal and oral sex acts (carnal intercourse) between adults, it is the current State’s identity politics and the institutional strengthening of Malaysia’s Islamization that has witnessed the increasing importance and influence of state-administered syariah (sharia) or Islamic law.<sup>8</sup> Syariah laws criminalise Muslims for lesbian sexual relations (*musahaqah*), sex between men (sodomy), sex that is considered “*against the order of nature*” (*liwat*), and for “posing” or “impersonating” as the opposite sex (e.g., cross-dressing). Government representatives actively reject sexual orientation and gender identity issues as human rights issues in various national, sub-regional (such as, at the Association of Southeast Asian Nations/ASEAN Intergovernmental Human Rights Commission) and international fora.

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5 The term “queer” is used as a reference to people whose sexual orientations are fluid and as an umbrella term that rejects the binary and often oppositional understanding of sex (male-female) and sexuality (homosexual-heterosexual).

6 Male-to-female transgender persons.

7 Female-to-male transgender persons.

8 Syariah laws are Islamic laws.

Moral policing rose to greater heights in Malaysia in the 1980s. It was the same time as when Mahathir, as Malaysia's fourth Prime Minister, pursued an arguably aggressive Islamization agenda. He systematically established Islamic mechanisms and institutions that would grow in their influence over all decision-making in the country – from Ministries and Federal government agencies to the judiciary<sup>9</sup> and the Office of the Attorney General. For example, in 1983, a *fatwa*, or a religious edict, was introduced to ban sex reassignment surgery (SRS) for transgender persons, also known as transgender people. Prior to the banning, sex reassignment surgeries were in fact carried out in Malaysia by four surgeons, including a Malay Muslim doctor, who performed the surgeries in the University Hospital, a semi-government hospital. Following the fatwa, the hospital-based SRS services were shut down, despite doctors' attempts to convince the religious authorities to allow the surgeries to go forward.<sup>10</sup>

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#### Fatwas prohibit tomboys or tomboy behaviour.

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A 2008 survey of 804 Malay Muslims from five states in Malaysia (three administered by UMNO and two by PAS), describes the kind of Islam practiced in Malaysia today and enforced through state institutions as self-righteous, arrogant, supremacist, patriarchal, misogynist and puritanical.<sup>11</sup> Prior to the colonization of Malaysia by the British, sexual and gender diversity were widely tolerated in the country and also in the region. Old historical texts and manuscripts between the fifteenth to nineteenth centuries such as the *Sejarah Melayu* or Malay Annals, bear evidence that non-heteronormative people existed and were accepted in the Malay society. Michael G. Peletz suggests that *sida-sida*,

palace official or eunuchs, who lived in the inner chambers of the palace, would wear women's clothes and perform tasks that were usually performed by women at that time. Some engaged in sexual relations with men and some with both women and men.<sup>12</sup> One Malay anthropologist, Shamsul AB, provides a first-hand account of having seen *sida-sida* in the royal palace as a child. He recalls them as “typically male-bodied individuals who assumed many of the mannerisms of females along with female or ‘mixed’ (dual-gendered) attire, and were believed by the population at large to share normative female erotic orientations toward men, or to be celibate and asexual like eunuchs...”<sup>13</sup> He further affirms that there had been “... both considerable tolerance for and acceptance of *pondan* [transvestites]” by the Malay society in the Malaysian Peninsula until 1980's.<sup>14</sup>

In fact, a reflection of this history and acceptance was evident in the late 1980s.<sup>15</sup> In 1987, the Welfare Department granted the Persatuan Mak Nyah<sup>16</sup> Wilayah Persekutuan (Association of Transsexuals in Federal Territory) 50,000 Malaysian Ringgit to start small businesses. According to Khartini Slamah, a transgender activist, in her article *Mak Nyahs in Malaysia*, the association was shut down after about three years as a result of a religious intervention.<sup>17</sup>

Hostility towards the LGBT community intensified in September 1998 when Mahathir dismissed Anwar Ibrahim, his then Deputy Prime Minister, on grounds of corruption and allegedly having sexual

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9 The loss of an independent judiciary was sealed with the severe split in UMNO in 1987 and the direct challenge against Mahathir as President of UMNO at the time.

10 Jeswan Kaur, “Let the Doctors Decide,” *The New Straits Times*, December 12, 2005, <http://kashihoney.blogdrive.com/archive/176.html>.

11 Riaz Hassan. *Inside Muslim Minds*. (Carlton, Victoria: Melbourne University Press, 2008), 49–54, 286–287.

12 Michael G. Peletz, *Gender Pluralism: Southeast Asia Since Early Modern Times* (New York, NY: Routledge, 2009).

13 Ibid.

14 Michael G. Peletz, *Reason and Passion: Representations of Gender in a Malay Society*, (Berkeley, Los Angeles and London: University of California Press, 1996).

15 It is unknown if State actors were even aware of the existence of transmen at the time. Until today, visibility of transmen is still low, since most would prefer to remain in stealth mode and undetected.

16 A local term for male-to-female transgender person or transwoman.

17 Slamah, Khartini, “Mak Nyah in Malaysia,” *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia*, SAGE (2005), 105-106.

relations with two men. Following the dismissal of Anwar Ibrahim, the People's Voluntary Anti-Homosexual Movement (PASRAH) was formed by members of the United Malays National Organization (UMNO), the dominant Malay political party of the ruling coalition since Malaysia's independence in 1957, to "wipe out homosexuality"<sup>18</sup> in Malaysia. PASRAH, which no longer exists, was chaired by Ibrahim Ali,<sup>19</sup> a former Member of Parliament and present member of UMNO as well as the current President of Pertubuhan Pribumi Perkasa Malaysia (PERKASA), a Malay supremacist and nationalist organization that advocates for the protection of Malay-Muslim rights. PERKASA has recently expanded its political agenda to include an aggressive anti-LGBT stance.



Photo: Rose Marie, *Violence is Not Our Culture*, KRYSS, 2012

In October 2008, the National Fatwa Council announced a fatwa (Islamic edict or opinion) against *pengkid*, a term that loosely translates as tomboys for individuals in the Malay Muslim community who fall within the spectrum of lesbian butch and transman (see Glossary for more details).<sup>20</sup> The announcement of the fatwa against tomboys sparked protests from people, notably non-Malay Muslims. Many Malay Muslim conservatives, such as members of the National Fatwa Council, nationalist

pressure groups, politicians, bloggers,<sup>21</sup> and some members of the public, saw these protests of non-Muslims against the *pengkid* fatwa as interference in an Islamic matter.<sup>22</sup> Presently, fatwas have been gazetted (officially announced to the public and published in a journal or state controlled newspaper) in the state of Malacca and the federal capital, Kuala Lumpur, to prohibit tomboy or tomboy behaviour.

In November 2011, Seksualiti Merdeka,<sup>23</sup> an annual sexuality rights festival, was banned by the Royal Police of Malaysia. The authorities deemed Seksualiti Merdeka as a devianist cult, a free sex party<sup>24</sup> and a threat to national security.<sup>25</sup> Subsequently, Seksualiti Merdeka and its organisers as well as allies were investigated under Section 298A of the Penal Code<sup>26</sup> and Section 27A(1)(C) of the Police Act 1967<sup>27</sup> for creating disunity and disharmony in Malaysia.<sup>28</sup> Many prominent activists including some pro-Islamists saw the banning of Seksualiti Merdeka as politically motivated by

18 Walter Williams, "Islam and the Politics of Homophobia: The Persecution of Homosexuals in Islamic Malaysia Compared to Secular China," *Islam and Homosexuality*, Volume 1, edited by Sahib Samar, 12, California: ABC-CLIO.

19 Ibid.

20 Julian Lee. *Islamization and Activism in Malaysia*, (Singapore: ISEAS Publication), 132.

21 "Surat Terbuka Rakyat Malaysia kepada NGO Bukan Islam : Jangan Cabar Fatwa !!!" (Open Letter by Malaysians to Non-Muslim NGO: Do not challenge Fatwa!!!), *Ustaz Moden's Weblog*, <http://ustazmoden.wordpress.com>.

22 The controversy was used to further promote ethnic and religious divides between Malay Muslims and non-Malays in Malaysia. Steven Daniel, "IGP to Non-Muslim NGOs: 'Stay out of Muslim matters,'" *The Star Online*, accessed on November 13, 2008, <http://www.thestar.com.my>.

23 Seksualiti Merdeka is an annual sexuality rights festival held in Kuala Lumpur, and each year since 2008, the organisers and supporters comprise a coalition of Malaysian NGOs and individuals. Seksualiti Merdeka means "Sexuality Independence".

24 Clara Chooi, "Marina Mahathir livid over 'free sex' slur on Seksualiti Merdeka," *The Malaysian Insider*, November 7, 2011, <http://www.themalaysianinsider.com>.

25 Jo-Ann Ding, "Seksualiti Merdeka: Threat to national security?," *The Nut Graph*, March 12, 2012, <http://www.thenutgraph.com>.

26 Section 298A of the Penal Code empowers police to take action against anyone who causes disharmony, disunity, feeling of enmity, hatred, ill-will or prejudice or for the maintenance of harmony or unity on the grounds of religion.

27 Section 27A(1)(C) of the Police Act 1967 empowers police to act against any activity that takes place on private premises but is deemed prejudicial to the interest and security of Malaysia or that would excite a disturbance of the peace.

28 Ibid.

the Malay ruling elite. They pushed the discourse of sexual orientation and gender identity into the public sphere again, with even greater intensity and aggression, creating another wave of fear for the LGBT community. In response, community leaders and Seksualiti Merdeka organisers filed a judicial review of the police action. However, the judge, Justice Rohana Yusof, ruled in favour of the authorities and dismissed the judicial review.<sup>29</sup>

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Relationships between two women or between a gender-variant person and a woman are seen as an affront to the dominant patriarchal and heterosexist culture in Malaysia.

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Following the ban of Seksualiti Merdeka, there were more concerted efforts by the ruling coalition and conservative groups to “curb homosexuality.” In April 2012, Muhyiddin Yassin, current Deputy Prime Minister and Minister of Education, called on school counsellors to curb the spread of LGBT groups. According to him they represent a “negative culture, which was previously prevalent only in Western countries. He pledged 100,000 Malaysian ringgit to the Malaysian International Counselling Association to improve the skills of counsellors to tackle the emergence of LGBT groups in a “strong and effective manner” (a euphemism for depriving such groups of their right to freedom of association).<sup>30</sup> In July 2012, Najib Razak, Malaysia’s current Prime Minister, declared “LGBT, liberalism and pluralism as enemies of Islam” and called on the people to defend the government from those foreign influences.<sup>31</sup>

Following his statements, in September 2012, the

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29 Justice Rohana Yusof, in her decision, said that Section 21 of the Police Act empowers the police to impose a ban pending investigation and that the application was academic in nature. See “Seksualiti Merdeka fails to get ban reviewed,” Seksualiti Merdeka website, <http://www.seksualitimerdeka.org>.

30 Anna Leach, “Malaysian Deputy Prime Minister says LGBT people need counselling,” *Gay Star News*, April 5, 2012, <http://www.gaystarnews.com/node/1847>.

31 Hafidz Baharom, “Najib: LGBTs, liberalism, pluralism are enemies of Islam,” *The Malaysian Insider*, July 19, 2012, <http://www.themalaysianinsider.com>.

Teacher’s Foundation of Malaysia and Putrajaya Consultative Council of Parents and Teachers Associations released guidelines, endorsed by the Ministry of Education, to help parents identify gay and lesbian “symptoms” in their children.<sup>32</sup> In March 2013, a play titled *Asmara Songsang* (Deviant Love) was performed in Istana Budaya (the Palace of Culture), which is a national performing arts space, with content that reduced LGBT individuals to predatory thugs. They were portrayed as recruiting young people into their “club,” funded by the opposition party to carry out the party’s “agenda.” The play ended with all the LGBT characters being struck by lightning. At the close of the play, the actors rallied their audience to reject LGBT individuals. This play was supported by the Ministry of Information, Communications and Culture,<sup>33</sup> and was performed across the country at government-funded colleges, universities, technical institutes and teacher training centres.<sup>34</sup> Presently, the Malaysian Film Censorship Board prohibits any positive portrayal of LGBT characters. All LGBT characters must die or repent at the end of a movie or television drama.<sup>35</sup>

The State’s ruling coalition owns and controls most of the mainstream media, making it easy for the government to propagate anti-homosexual and transgender messages to the public.<sup>36</sup> On March 31, 2013, *Utusan Malaysia*, a national Malay language newspaper published an article in the family section, titled “Together Against Deviant Culture,”

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32 Susan Loo, “Guidelines to identify gay and lesbian symptoms published,” *FreeMalaysiaKini2* website, September 13, 2012, <http://www.freemalaysiakini2.com> (site discontinued).

33 Alia Ali, “Oh, Inverted World,” *Kakiseni*, March 12, 2013, <http://blog.kakiseni.com>.

34 Kate Hondal, “Anti-gay musical tours Malaysian schools and universities,” *The Guardian*, March 28, 2013, <http://www.guardian.co.uk>.

35 Nina Hidayat, “Bad or Ugly: Malaysian Education Ministry Supports Gay Guidelines,” *Venus Buzz*, <http://www.venusbuzz.com>.

36 UMNO owns 49.77 percent of Utusan Malaysia, a Malay daily that propagates Malay supremacist ideas, and the daily has run several articles to discredit Anwar Ibrahim by associating him with the LGBT movement. ida Lim, “Umno owns 49.77pc stake in Utusan, court told,” *The Malaysian Insider*, August 13, 2012, <http://www.themalaysianinsider.com>.

citing the gay marriage debates in France. The author called on Malaysians to protect the family institution against the menace of LGBT people.<sup>37</sup>

The Malaysian government's rigorous efforts to curb vice have increased stereotyping of LGBT persons as criminals. As a result, many gay establishments such as clubs and saunas are being shut down or targeted by the enforcement agencies and media, thus regulating LGBT persons' participation in the public sphere by leaving them very limited physical spaces to socialise. Some establishments have taken precautionary measures to avoid the attention of public morality enforcement agencies and imposed special restrictive measures on LGBT patrons. Interviewees in the northern state of Penang reported that several clubs in that state officially prohibit entry to transwomen, and where exceptions are made, club and sauna owners impose behaviour restrictions. Butch lesbians reported mandatory beverage purchases as a condition for entry into clubs, and drinks were sold at much higher prices to butch lesbians and pengkid.

## INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES

Malaysia has ratified three international human rights conventions – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, the Convention on the Rights of the Child (CRC) in 1995, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. In 2010, the government removed three of eight initial reservations for CEDAW,<sup>38</sup> leaving reservations

to Article 9(2)<sup>39</sup> and Article 16(a)<sup>40</sup> (c)<sup>41</sup> (f)<sup>42</sup> (g)<sup>43</sup> pertaining, in particular, to equality upon entering into marriage and within marriage.

These reservations reflect Malaysia's firm belief in the position of men as the decision-makers and heads of households, and the notion that women and men have different rights with regard to their children. Domestically, the government has yet to pass an act for the protection and promotion of women's rights. While article 8(2)<sup>44</sup> of the Federal Constitution was amended in 2001 to include a right to non-discrimination on the basis of gender, many Muslim women are still denied equal rights when seeking reparation on divorce and inheritance issues through the syariah courts.<sup>45</sup> Non-Muslim women also suffer from the lack of legislation ensuring their right to non-discrimination.

In 2006, Malaysia was elected as a member of the United Nation Human Rights Council (UNHRC), then re-elected for a second term in 2010 after garnering support from 179 out of 188 countries.<sup>46</sup>

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37 Hafizahril Hamid, "Bersatu menentang budaya songsang," *Utusan.com*, March 31, 2013, <http://www.utusan.com.my>.

38 Meera Samanther, "Press Statement from the Joint Group for Gender Equality," WAO.org, July 6, 2012, <http://www.wao.org.my>.

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39 9(2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

40 16 (a) The same right to enter into marriage

41 16 (c) The same rights and responsibilities during marriage and at its dissolution

42 16 (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

43 16 (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation

44 Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

45 Honey Tan, "Measuring Up To CEDAW: How Far Short Are Malaysian Laws and Policies?" March 17, 2003, Women's Centre for Change, Penang, <http://www.wccpenang.org/files/docs/honey-measuring-up-to-cedaw.pdf>.

46 Malaysia's membership on the Human Rights Council is despite its poor track record on human rights, especially on minority and vulnerable communities, such as refugees,

In March 2012, Malaysia and 56 other members of the Organization of Islamic Conference (OIC) walked out in protest during the UN High Commissioner's presentation on the status of the human rights of LGBT people.<sup>47</sup>

Similarly, in 2009, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR was tasked with the responsibility of drafting a human rights declaration for ASEAN to standardise human rights in the region.<sup>48</sup> Malaysia opposed the inclusion of sexual orientation and gender identity in the ASEAN Human Rights Declaration and lobbied other ASEAN members to do the same.<sup>49</sup>

## MANIFESTATIONS OF VIOLENCE

### STATE VIOLENCE

#### Violence in the Name of Religion

LBT people whose gender expression was more visible, meaning they are not able to pass as “straight” (heterosexual) or as cisgender (people whose gender identity and gender expression conform with the gender they were born with) were more likely to be targeted for violence and discrimination. Gender non-conformity is perceived

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migrant workers, indigenous people and LGBTQ people. “Malaysia re-elected to UN Human Rights Council,” *The Star Online*, May 14, 2010, <http://thestar.com.my>.

47 Eesha Pandit, “UN Human Rights Council makes slow progress for LGBT rights,” *Feministing.com*, March 13, 2012, <http://feministing.com/2012/03/13/un-human-rights-council-makes-slow-progress-lgbt-rights/>

48 Yohanna Ririhena, “First ASEAN human rights declaration criticized,” *The Jakarta Post*, October 29, 2012, <http://www.thejakartapost.com/news/2012/10/29/first-asean-human-rights-declaration-criticized.html>

49 Malaysia, Singapore and Brunei were three countries in the ASEAN coalition, which blocked consensus on the inclusion of SOGI in the ASEAN Human Rights Declaration.

as an overt challenge to societal expectations. Transwomen<sup>50</sup> in particular tended to experience more oppressive and discriminatory behaviours from State actors, namely police officers and Islamic religious officers. These State actors arbitrarily detained transwomen, stopped transwomen at unauthorised roadblocks, questioned them with sexual undertones, and arrested transwomen for violation of syariah law prohibitions against dressing in gender-nonconforming clothing and displaying gender-nonconforming behaviour in public.<sup>51</sup> The transwomen interviewees also reported that Islamic religious officers teased, humiliated, intimidated and threatened them.

Thirteen transwomen interviewees said that their arrests by police officers or officers of state level Islamic departments took place while they were out in public – performing in clubs, hanging out or having meals outdoors. Two transwomen who were stopped at roadblocks by police officers in Penang and Kuala Lumpur reported that the police asked if they “needed company,” hinting that the officers wanted to have sex with the transwomen.<sup>52</sup> Another transwoman reported that two police officers in Penang asked her and her transwomen friends for “protection money” – about fifteen to twenty Malaysian ringgit (USD \$5-6) in exchange for not being arrested.<sup>53</sup>

Severity of violence directly correlated with the interviewee's socio-economic class, actual or perceived ethnic heritage, and religion. For instance, Muslim transwomen from lower income groups, especially sex workers and showgirls, faced more severe treatment by State actors and were more often persecuted under syariah laws than Muslim transwomen from higher economic strata.

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50 Male-to-female transgender persons.

51 The Islamic religious authorities have no power to arrest although they have reportedly detained many Muslim transwomen for various syariah transgressions. It is unclear as to why police officers are making arrests under syariah laws.

52 Ann, interview with research team member, November 2010. Erika, interview with research team member, June 2011.

53 Jess, interview with research team member, March 2011.

## JAIME

Jaime is a 47-year-old Chinese Malaysian woman, who says she was “born in the wrong body.” At the age of five, she was molested by a neighbourhood boy, and later by her art teacher. At the age of eleven, Jaime was certain of her attraction to men, but the mix of shame and pleasure that resulted from her childhood abuse had made her afraid and wary of people.

Her family shunned her and denied her identity as a girl as she was growing up. Jaime often felt that she had brought embarrassment to the family, especially to her parents. Her mother would say, “You would never amount to anything much.” Jaime felt routinely pressured to suppress her sexual and emotional expressions, and as a result of this continuous pressure, she attempted suicide at the age of fourteen.

Jaime looked to God for answers to the purpose of her existence in the world. As a staunch Catholic, it was difficult for her, even as a teen, to be repeatedly told by the church that it was wrong to masturbate or to discover one’s sexuality. In her early adult years, Jaime felt she was finally ready to have intimate relationships with men, but she continued wondering if she was a gay man or a woman trapped in the wrong body. She said, “When guys touched me, I liked it. I wanted to go further. I like to be hugged, I like to be kissed, I like affection, but this thing inside me will tell me, ‘You’re not female’ and ‘You’re not gay.’”

Her family’s continued denial of who she was and the church’s continued rejection of her gender identity increased Jaime’s feelings of insecurity and self-degradation, and she often had thoughts of suicide although she never made any further attempts. Jaime suppressed her desire to wear female clothes and tried convincing herself that she did not have the desires of a woman. When Jaime became a college lecturer, she

suppressed her gender expression so that she could be a “good role model” to her students. She knew that cross-dressing would expose her to ridicule, and this further increased her anxiety.

Since Jaime grew up in the 1980’s, when there was very limited access to information and communication with people from the transgender community, she felt even more isolated and depressed. It was only in 2002 at the age of 39 that Jaime finally decided to start her physical transition and arranged for a sex reassignment surgery in Thailand. She said, “I wanted to do my vaginoplasty first because I wanted to continue teaching. I thought I should do my breast augmentation later. I wanted a slow transition. I was never a cross-dresser, I never showed my feminine or female side except for in my character [behaviour]. I don’t know why. I guess I was afraid to be ostracised.” It was at the hospital in Thailand that she first found genuine support and acceptance from the trans community.

For four years after her operation, Jaime struggled with how to change her sex on her national identification card because her appearance did not correspond with her picture on her card. As a result, she persistently had problems with the bank, immigration authorities when she travelled abroad, and the police. Her new physical identity and appearance also caused great discomfort amongst the students and her colleagues at the college where she was teaching. Since her surgery, men, both friends and strangers have come up to her and asked to touch her breasts. She understands their curiosity but she also understands that this is sexual harassment. For Jaime, the worst form of violation was being denied her true identity and being ostracised by society for simply existing.

In general, transwomen said that they avoid going to the police or seeking legal remedy even when they are experiencing violence for fear of being ridiculed and further harassed by the authorities. Professor Dr Teh Yik Koon, in her research *The Mak Nyahs: Malaysian Male to Female Transsexuals*, found that 71 per cent of 507 interviewees had been forced to strip in front of others by state officials, 47 per cent had been humiliated in front of others, 9 per cent had been beaten up in custody by the police, and some were even invited to have sex with the police officers.<sup>54</sup> Although Professor Dr Teh's research was conducted in 2001, violence by State actors, namely the police and Islamic religious officers persists to this day. Violence sometimes escalates when over-zealous officers are involved or if officers retaliate when police reports or legal action is taken against them for their abuse of power.

Mimi, a 35-year-old transwoman, who filed a police complaint for sexual harassment, recounted police officers in Penang trivializing and dismissing her case without conducting an investigation.

Five years ago ... when I lodged a report with this inspector, I said, 'this boy ... molested me' ... I think, that policeman, was a family friend [of the perpetrators]. They [police] tried to help them [perpetrators] . . . They said to me, '*Aiyoh*, you are man. Man and man, no problem' ... my answer was better. 'Why do you arrest Anwar Ibrahim?'<sup>55</sup> Just leave it like that *la*. Man and man, who cares? Why you arrest him?' The inspector kept quiet.<sup>56</sup>

Jess, a 20-year-old transwoman, was arrested at a food stall for wearing women's attire and "posing as a woman," which is a criminal offence under Malaysia's syariah (sharia/Islamic law).<sup>57</sup> She recounted:

When I was arrested that night, it was around one something, at night ... they had a raid. I just finished a show. I was in my heavy make-up, [and] we decided to go have something to eat, and at that area, there were some mak nyah who were selling their bodies. They came and arrested one mak nyah ... standing like 200 meters away from me, not that far from me ... There were three of us, me and two friends of mine, also ladyboys. They came over and asked for our identification cards. I was eating. 'Give me your identification card?' there were a lot of people around so I didn't want people to come and be nosy. I gave my identification card. 'Come, follow him, get into the van.' ... All three of us followed them, and then we realised that we have been arrested. After that, they straightaway made a call, 'Sir, we have 2 *pondans* here, Malay. The other one is Indian. What shall we do with the rest? Tomorrow we bring them to the Religious Department' . . . After that, they placed me in a lock-up. They investigated and everything, and [for] evidence, [they took] my eyelashes, my bra; they have yet to return them.<sup>58</sup>

Jess explained that her arrest caused tension with her parents who doubted her story of being arbitrarily arrested. Her parents, like most people assumed that typically only sex workers are arrested under this law, and therefore assumed that Jess was engaging in criminal, stigmatised activity. Jess suffered mild depression as a result of the arrest and the conflict it caused in her family.

Ann, who is Indian (an ethnic minority community in Malaysia) transwoman had been arrested 36 times and sentenced to eight months in prison. She served only two weeks because her mother bailed her out of prison for 800 Malaysian ringgit (USD \$267). Ann said she had been abused and humiliated in prison by the wardens. She emphasised that she does not consume illegal drugs, is not a sex worker, and

54 Y. K. Teh, *Mak Nyahs* (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity, IJT 5,3 (2001), [http://www.symposion.com/ijt/ijtvo05no03\\_04.htm](http://www.symposion.com/ijt/ijtvo05no03_04.htm).

55 In 1998, then Deputy Prime Minister Anwar Ibrahim was dismissed and charged for corruption and sodomy.

56 Mimi, interview with research team member, March 2011.

57 Jess, interview with research team member, March 2011.

58 Ibid.



therefore had not broken any laws. She is, however homeless and drives a trishaw (three-wheeled pedalled taxi) for a living, placing her at the bottom of the social hierarchy. Since she is Indian, Ann cannot be subjected to the “posing as woman” syariah law in her state, so the police charged her under Section 21 of the Minor Offences Act for public indecency and for alleged drug use. They referred to her low body weight as “evidence” of illegal drug use. Ann’s arresting officers had sexually harassed her.<sup>59</sup> She recounted:

They sentenced me to prison for eight months. In prison they bullied me a lot. The prison officers told me, ‘We will put [you] in the cells with boys.’ They abused me a lot in prison ... they would ask us to run to a Saroja Devi (Indian female movie star) song. They would play some old songs and make us run from a distance to the flagpole .... make the boys laugh at us. They would take the flag and wrap it around us ... they would twist our hands ... make us sit in the sun. ... The warden would insult us ... would ask us, ‘How about if I come to your cell? There are only two of you there. Can I do you?’ They would talk to us in a very vulgar manner ... Once I got out, the police in court asked me, ‘Where are you going to go once you are released, where are you going to sleep? Do you want me to come along to keep you company?’ ... I was asked by a police officer, the officer who handcuffs you and brings you to court, he was an Indian man ... about 45 years old. He asked me, ‘Should I come along?’<sup>60</sup>

## Violence in Schools

All government schools in Malaysia enforce and promote gender stereotypes and conformity. For instance, Malay and Muslim girls are encouraged to wear the hijab in schools; some schools even

make it mandatory, using the rationale that wearing the hijab would “protect their modesty.” In government schools, girls are not allowed to have very short hair and boys are not allowed to have long hair; the definition for “short” and “long” is arbitrarily decided by the school administration. Schools also have gender specific uniforms. Transgender persons we interviewed said that they felt “very uneasy in the school uniforms and having to behave a certain way.” They said they could not focus on their studies.

Lam Cheong, a 51-year-old transman, recalled his difficulties while he was a student, in relating to his peers in school and being forced to conform to societal gender norms. His story was not that different from the difficulties trans students experience today. Lam Cheong recalled:

Obviously I was in a girl school. I basically could not really relate to my classmates because I knew that I was like very different because they started talking about girlish (teenage) things ... I just didn’t fit in. ... I was born woman but I certainly did not feel comfortable wearing a skirt or a dress. Because of that, I basically did not want to improve myself in school ... in my young mind, I always thought that if I were to come out to work, I would have to live a life as a woman, dress in women’s clothes to go to work.<sup>61</sup>

In addition to dress codes, gender specific facilities such as student accommodations (in residential schools), often create problems for transgender persons. Two educators interviewed for this research shared their experiences of students who confided in them regarding these problems.<sup>62</sup> The educators said that effeminate or transgender students often are moved to rooms that are nearer to the wardens’ rooms so that the wardens can keep an eye on their conduct and police them. Student accommodation away from campus is often expensive, and finding

59 Ann, interview with research team member, November 2010.

60 Ibid.

61 Lam Cheong, interview with research team member, June 2011.

62 Habiba, interview with research team member, June 2010. Jasmine, interview with research team member, May 2011.

lodging on a house-sharing basis can be hard for anyone. However, it is often more challenging for transgender persons since this hinges on the level of acceptance by friends at the school or members from their own (ethnic or income) backgrounds and how they feel about sharing a house with a transgender person.

The present policy of the Education Department of the Federal Territory (Kuala Lumpur) categorises homosexuality and “gender confusion” as a serious offence, with recommended penalties such as: stern warning, whipping/caning, fine, suspension, expulsion, or being charged in court.<sup>63</sup> This policy is published in a student handbook, produced and distributed by the Education Department. It sets the environment in schools on how LBT students are to be treated by school authorities, teachers and students.

Fourteen interviewees recalled their experiences in school during the 1980s and 1990s, showing that violence towards LBT persons in educational institutions, such as verbal humiliation, sexual abuse, and school expulsion for non-conforming sexual orientation or gender expression, has remained relatively constant over the years.

Jess, a twenty-year-old transwoman, recalled boys in her school attempting to force her to give them oral sex in the school toilet after physical education. When she refused, the boys threatened to beat her up. Jess stood her ground, which scared them. The matter reached the school counsellor and disciplinary teacher, but Jess did not name the perpetrators.<sup>64</sup>

Nova, a 29-year-old Chinese lesbian, recalled being expelled from her secondary school when she was sixteen, after her girlfriend’s parents “outed” her to the teachers in school. Nova’s girlfriend’s parents were not pleased that their daughter was dating a girl.<sup>65</sup>

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63 “Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW,” Women’s Aid Organization (2012), 206, <http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>.

64 Jess, interview with research team member, March 2011.

65 Nova, interview with research team member, January 2011.

Aminah, a 30-year-old Malay transwoman, recalled her life as a student in an all-boys boarding school, where sexual relations between boys was seen as part of an initiation process. Even so, Aminah’s seniors in school beat her up when they discovered her attraction towards a male school-mate. Aminah recounted:

I was beaten up by a group of seniors when I was 13, for saying that one of the seniors was hot ... So I told him [my friend] that like, ‘I totally like that senior’ because I thought he’s hot, somehow word got around, and got to that senior and he felt offended or something, and said that they had to do something about me. So, he rounded up some of his seniors and confronted me. And made me confess that I had said something like that and then they beat me up, for saying that I like a boy.<sup>66</sup>

## Violence by Medical and Mental Health Professionals

Nearly 30 interviewees for this research said they generally avoided seeking health care unless they had a trusted doctor. Several of our interviewees stated that mental health professionals, doctors and gynaecologists are ill-equipped to deal with their specific needs, lack sensitivity, and do not have accurate and updated information to treat LBT persons. Two transwomen reported being stared at and verbally insulted by nurses and attendants during a routine health check-up at a hospital.

Gia is a post-operative transwoman who completed her sex reassignment surgery (SRS) in early 2000 in Thailand. In order to change her name on her identification card to match her reassigned gender, Gia was required to provide a letter from a gynaecologist working at a government hospital that confirmed the requisite surgeries.

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66 Aminah, interview with research team member, January 2011.

Nova is a 28-year-old Chinese Malaysian woman, who realised that she was attracted to women at an early age. “Ever since I was young, I’ve asked myself all those questions, even from a young age, 5 or 6, ... even when I watch T.V ... I’ve always found myself very attracted to the lady [in a program]. I’m never attracted to the men.” Nova had her first real crush on a girl when she was twelve years old.

Nova did not want to go to the private all-girls high school that her parents had chosen because of rumours that it was a “lesbian school.” However, she quickly felt at home because she found other girls like her and befriended them. As a student, she was a high achiever.

When she was sixteen, Nova’s romantic partner of two years, Linda, found out about Rachel, who Nova was secretly dating at the same time. Linda told the school authorities that Nova was a lesbian, and the whole school learned not only of Nova’s relationship with Rachel but also her relationship with Linda. Nova was suspended from the boarding school sleeping quarters where she was living at the time, and the teacher told her, “You have a disease. I do not want you to stay in the hostel because you will spread this disease to other people.”

Nova did her best to persuade the school headmistress to allow her to stay in school. Her parents tried to do the same. Nova was instructed by the headmistress to see a psychiatrist and “if the psychiatrist gives a report that says that you are okay, then I’ll allow you to stay in school.” Nova did not want to leave school so she went to a psychiatrist. When the new school year began, Nova could not find her name on the class list. The psychiatrist’s report had not been sent. Nova begged to be allowed to finish school and complete her final examination year but the headmistress refused.

“Later ... I went to the University Hospital and asked them if they [had sent] the report [to my school, and only then did they send] the report but it was too late already [and I remained suspended]. . . . [T]hat really shattered me completely .... Because I loved my school so much ... . That’s what I told [the head mistress].... [B]ut she just said... they are trying to weed out lesbianism because apparently [the school] has a bad reputation.”

After Nova was expelled, the discipline teacher<sup>67</sup> interviewed Nova’s “first ever girlfriend” with whom she was involved when she was about thirteen years old. “Whoever I was supposed to have [had] a relationship with, the teacher interviewed . . . So I think, I was used as a scapegoat, to expel me, to send out a message to all my friends who are gay or [others who] are gay in that school. If you want to be gay, you want to be out and proud, this is what you will get.”

“The thought of me leaving that school made me scared more than anything. So I did not go to the psychiatrist because I wanted to be healed. No. I know that I am gay and even though the headmistress did say that you have to go to the psychiatrist to say that you are not gay and to make sure that you are not gay. But I knew it was an excuse.” Nova added, “I think [the school was] fighting very hard against [the bad reputation] . . . They became very strict on everyone, especially my group of friends. ... I think that it was my own mistake because I did things the way I wanted to, I was never shy, I never [hid] who I was and maybe that cost me, but I also feel that [the] education system does not... have the right to tell me whether I can be in school or not *lah*. I still believe that *lah*.”

67 A discipline teacher is in charge of enforcing student discipline.

The first doctor she met in the Kuala Lumpur General Hospital was a Malay doctor who refused to certify her document because he believed the hospital and the Malaysian government do not recognise sex reassignment surgery, that it was not within his mandate to certify that Gia had undergone sex reassignment surgeries. Gia felt that the doctor refused to help her because he might have considered it sinful (according to his Muslim beliefs).

Gia said she was lucky to find another doctor who was Chinese (non-Muslim), who agreed to certify that she had undergone SRS. Gia was then able to get her name changed on her national identification card by the National Registration Department. However they would only change Gia's name and not also the gender marker. Her gender remains "male" on her identification card.<sup>68</sup>

## PUBLIC VIOLENCE

### Violence on the Streets

Twenty-six out of the 45 LBT persons we interviewed had experienced verbal violence by strangers in public places. The perpetrators tended to be from the same ethnic backgrounds as the respondents, usually using their mother tongue (primary or first languages) to make disparaging comments, do name-calling and cat-calling – sometimes accompanied by lewd gestures. Many interviewees said that the content of the verbal violence suggested that the perpetrators' needed to maintain ownership over women that belonged to their ethnic group. Sexually demeaning words such as *pondan*, *bapok*, *ombote*, dyke, goddamn lesbian, tomboy and pengkid were used, as well as howling sounds like "au"<sup>69</sup> and religious condemnation. In some cases, the verbal insults escalated into physical violence, including throwing fruit peels or even bags of urine or faeces<sup>70</sup> at the interviewees. Verbal attacks against gender-variant women –

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68 Gia, interview with research team member, February 2011.

69 "Au" is a sound made by people to imply that one is "sissy."

70 Anecdotal information from casual conversations with transwomen sex workers from mainland Penang in December 2010.

butch lesbians, pengkid and their female partners – included: "Do you want to be fingered?" "It is not like you have a penis! You cannot feel anything without a penis," "Do you need a man?" "Are there no other men in this world?" "You can never satisfy her the way that I can," "If any one of you, if you take off your pants and you have a penis, I will chop mine off."

These verbal attacks are likely linked to a perceived challenge to the perpetrators' masculinity when gender-variant people adopt "masculine roles." Relationships between two women or between a gender-variant person and a woman are seen as an affront to the dominant patriarchal and heterosexist culture in Malaysia. These verbal attacks also indicate anger and disappointment by men towards transwomen, and in these cases, possibly perceiving transwomen as intentionally acting to embarrass and shame them as men from a particular ethnicity or religion. Some transwomen have been told by men to "Stop pretending" or "You are a man, but you want to be a *pondan*."

In some cases, complete strangers confronted lesbian and pengkid interviewees who were with their partners, demanded to know if they were lovers or the nature of their relationship, or warned the couples that they were behaving shamefully.

Emilia, a Chinese lesbian was stopped by a group of Indian men when she was walking with her Indian girlfriend. The men approached Emilia and her girlfriend, and asked the girlfriend in Tamil if she was a lesbian. The couple quickly walked away.<sup>71</sup>

In the 1990s, Padang Kota in Penang and Dataran Merdeka in Kuala Lumpur were two places where transwomen hung out, which later turned into places for the general public to come and *lepas geram* (let out their anger, express ultra violence) towards transwomen.

Regina, a transwoman from Penang, talked

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71 Emilia, interview with research team member, January 2011.

about her transwomen friends being surrounded by a group of men, demanding sexual services.<sup>72</sup> Samera, a transwoman from Kuala Lumpur, recalled her transwomen friends being beaten up, pulled into strangers' cars, and forced to have sex with unknown men in the perpetrators' cars. Samera herself had stones thrown at her and her friends by strangers in passing cars.<sup>73</sup>

## Cyber Bullying

Communication and social interactions in Malaysia have changed since the 1990s with the introduction of the Internet. The Internet has brought new tools and avenues for activism, especially on issues such as LGBT rights. On the other hand, the Internet has also become a space for violence and public bullying, which can be directed anonymously. Katrina, a lesbian in her thirties, who was part of the campaign in support of Fatine Young,<sup>74</sup> was called "pig" and told she was "fat and ugly and that's why guys do not want to have sex with you." The attackers questioned her sexual orientation. She received death and rape threats by online users she did not know. Some of the online attackers said they wished that God would punish Katrina and that she would die a horrible death.<sup>75</sup>

Mei Mei, a 27-year-old lesbian, explained that she experienced Internet bullying when an anonymous online chatter, to whom she revealed her sexual orientation, made disparaging remarks: "You women need guys to straighten you all up ... if you don't date a guy, if you don't have sex with a guy, you are not a complete woman."<sup>76</sup>

72 Regina, interview with research team member, June 2011.

73 Samera, interview with research team member, May 2011.

74 In 2010, Fatine Young, a transwoman from Malaysia facing deportation from the United Kingdom, fought to remain in the UK with her partner. A group of lesbians, gays, bisexuals, queer and transgender persons started a local campaign on Facebook to mobilise support for Fatine.

75 Katrina, interview with research team member, January 2011.

76 Mei Mei, interview with research team member, March 2011.

## Negative Influence of Religion

The politicization of homosexuality and transgenderism and the use of religion to propagate gender stereotypes in Malaysia have influenced not only the way LBT people view themselves but also the perceptions others have about the LBT community.

Twelve interviewees explained that family members, friends and strangers used religious arguments against them or insisted that homosexuality is abnormal. Four out of these twelve interviewees are Christians.

Emilia, a lesbian, is a Buddhist, and some of her siblings converted to Christianity when they grew older. When Emilia's family members discovered her sexual orientation, one of her Christian brothers frequently told her that homosexuality is a sin, and gave her Bibles to read. Her brother also gathered his friends and together they preached to Emilia about the wrongs of homosexuality.<sup>77</sup>

Stacy, a bisexual Malay woman in her early twenties, discovered her bisexuality when she was about 15 years old after having a crush on a girl in school. Although nothing sexual happened between the two, her friends in school felt obligated to "bring her to the right path." When their "interventions to save her" failed, Stacy's friends isolated her. As Stacy recounted:

We met in May 2000 ... we were talking on the phone everyday. My friends from my school knew about it because when they attend events, they could see it, right. And then they started asking, 'What's going on? Are you going out with this girl? Are you dating this girl? What's going on?' ... 'Like, you do know that it is wrong, right? It is against the religion.' And these were not just Muslim people telling me, because I have a fair bit of friends of different religions and races and beliefs, and they all said the same thing. 'Stacy, it is wrong.'

77 Emilia, interview with research team member, January 2011.

What the hell is wrong with you?<sup>78</sup>

Regina, a Malay transwoman in her forties, was publicly harassed by a group of Malay men during an event she hosted. The men in the audience shouted, “The prophet does not acknowledge you as his follower.”<sup>79</sup>

Naim, a Malay transman in his early forties, said a group of boys shouted, “Pengkids are sinful” to him at a night market.<sup>80</sup>

The research shows several, mostly negative references to pengkid in Malay comic books, literature, movies and newspapers. The research also shows the existence of pengkid support networks made up exclusively of pengkids on social networking sites such as MySpace and Facebook.

## PRIVATE VIOLENCE

### Violence by Family and Friends

The LBT people interviewed for this research told us that they faced violence: when they disclosed their non-conforming sexual orientation or gender identity; or when their sexual orientation or gender identity was accidentally discovered or publicised without their permission.

Thirteen LBT interviewees suffered physical violence from their family members. The physical violence was an escalation from the emotional violence they had experienced.

Malay transwomen reported physical violence and verbal violence for being effeminate, including repeatedly being told to be more masculine by family members and friends. Interviewees who exhibited gender non-conformity as children often suffered violence by family members from a very young age.

The restrictions on gender and sexual expressions,

largely imposed by family members and friends, took several forms, including being discouraged and forbidden to continue their intimate relationships, restricted from dressing in what felt most comfortable, and restricted from showing affection to their partners. Some of these restrictions were also self-imposed, as the interviewees reported that they did not want to “humiliate” their family members by being themselves. Many transwomen interviewees, who have transitioned (from male to female) said that they dress modestly or wear unisex clothes when they visit their parents.

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*My brother would also hit me because I walked like a girl and didn't do boy things. Even my mother used to hit me with a broom. I couldn't stand the abuse from my family members and so I ran away from home.*

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Three lesbians reported that their parents used verbal pressure to force them to meet mental health professionals or religious leaders (specifically a known ex-gay pastor) so that they could be “corrected.”

Fatima’s mother sent her to a psychiatrist, who is a family friend, after discovering Fatima’s sexual orientation. “My mum did that. They sent me to the psychiatrist. And the doctor is actually her friend ... Nothing changed. Nothing will change. I am not crazy, so why send me there when the place is for people with mental problems?” Fatima reported.<sup>81</sup>

Jason, a 22-year-old transman, said that when his sister found out about his gender identity, she found him a mental health counsellor.<sup>82</sup>

All the mental health professionals or religious leaders who were suggested to the interviewees by family members were friends of the family or someone that their parents knew. This suggests that parents and family members of the interviewees place great importance on keeping their children’s sexual orientation and gender identity a

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78 Stacy, interview with research team member, April 2011.

79 Regina, interview with research team member, June 2011.

80 Naim, interview with research team member, February 2011.

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81 Fatima, interview with research team member, April 2011.

82 Jason, interview with research team member, October 2011.

secret, and that the end goal is the “correction” of their children’s sexual orientation and/or gender identity. To an extent, these are actions persuaded by the State’s official stance towards LBT persons. The research also shows that parents and family members of gender non-conforming persons are sometimes also targeted and socially pressured to conform, particularly when the non-conforming gender expression is very visible. The parents are made to feel like bad parents for not nurturing their children into becoming “model citizens,” i.e., gender conforming, heterosexual, married and religious. Parents are pressured by extended family members, friends, and neighbours to change their transgender children. Shirley, a trans-woman shared her family’s story:

My father is like quite famous in that area, kampong [village], so a lot of people, kampong [village] people also talked about me, like, ‘Why are you so soft?’ ... so a lot of people give more pressure to my parents when they hear all these [questions], like, ‘Why is your son very soft?’<sup>83</sup>

## MOST COMMON TYPES OF VIOLENCE AGAINST LBT PEOPLE

### Emotional Violence

Almost all 45 interviewees reported that they had experienced multiple incidents of emotional violence in their lifetimes, primarily from family members and people in their immediate circle. This violence included: being told to revert to their assigned gender or to behave in accordance with socially and culturally prescribed gender-conforming roles and expression; name-calling; being subjected to personally demeaning comments; people around them exhibiting discomfort because of their sexual orientation, gender identity and/or gender expres-

83 Shirley, interview with research team member, January 2011.

sion; being forced to meet with a religious authority or a mental health professional; being stared at;<sup>84</sup> subjected to silent treatment or isolation; deprived of financial support; and being told that homosexuality is abnormal or a sin according to the religion.

Interviewees reported that immediate and extended family members would express and verbalise their discomfort with the way they dress, walk and behave with comments such as, “Dress like a normal person, have short hair, dress like male,” “Why are you dressed like a woman? Why do you waste your money on these illogical things [made for women]?” “Why are you like this? Don’t you know you are a boy?” “Our family, we don’t do this kind of things so please stop all your nonsense and then just start seeing guys.”

One lesbian interviewee mentioned that her mother monitored her activities by recording her telephone conversations and following her when she left home.

Eight interviewees reported that comments or interrogations about their sexual orientation or gender identity were sometimes followed by questions regarding marriage, asked in public settings such as family gatherings. Bear, a lesbian, said her immediate family and relatives constantly pressured her to marry a man:

I know I am with a woman, my family members know that I am dating a woman. Sometimes my sister would ask me, ‘How long are you going to be like this? It is not like you are not pretty. A lot of men want you. When are you going to get married? You are already 22 years old. Don’t be like this,’ they would say. ‘Why don’t you want to find a guy?’<sup>85</sup>

Like most cultures, procreation and heterosexual marriage is valued in Malaysia.<sup>86</sup> Being lesbian or

84 Ten out of the 45 interviewees, all of them gender non-conforming, reported being stared at in public spaces.

85 Bear, interview with research team member, April 2011.

86 Christina Tan, “Women are delaying marriage and having fewer

transgender is sometimes treated as bad luck for other members of the family. Ann, a transwoman, reported that her family members are afraid that her gender identity will ruin her siblings' chances of marriage. The bad luck of having a transgender child was attributed to some wrongdoing by the mother, father or both parents.<sup>87</sup>

Hostility by family members discouraged the interviewees from coming out to their families, especially to selected family members. Two lesbians, who have come out to most of their family members, have yet to tell their fathers about their sexual orientation because of their fathers' perception and attitudes towards LGBT persons.

Two other lesbian interviewees explained that their inability to come out to selected family members, or keeping a single-family member in the dark about their sexual orientation, created dilemmas and anxiety for them. Both interviewees felt that the negative comments made by their family members about LGBT persons in general were in reality directed at them. One of them is Emilia, who said:

... we [my father and I] had discussion about gay people, especially during the American Idols, Adam Lambert winning the title and all. [My father] actually said ... that, 'every parent hopes for their children to be normal. If one of the children is gay, lesbian they need to be treated as a disabled person....' When I heard that, I did try to tell him a little bit of, no, you should not treat it as a disabled child; he's not disabled, he can work, he can be brilliant and all but, just that they choose to love differently but he should not be treated as a disabled person. ... So from then onwards, I thought that I better not let him know that I am one, his disabled child."<sup>88</sup>

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children," *The Star Online*, July 12, 2010, <http://www.thestar.com.my>.

87 Ann, interview with research team member, November 2010.

88 Emilia, interview with research team member, January 2011.

## Physical Violence

Nine interviewees told us that they suffered physical violence, such as being beaten up and confined or imprisoned by their family members. Seven of them were transgender persons – six transwomen and a transman. The violence was triggered by one or several of a set of factors: seeing the interviewees in female attire; discovery of personal belongings such as erotic videos in their personal spaces; expressed dislike of the interviewees' reassigned gender; upon discovering the interviewees' sexual orientation; catching them in the act (having sexual relations) at "cruising" areas; or discovering that the interviewees are sex workers. Violence, including expression of discomfort and desire to "correct" the interviewees, was most often perpetrated by the dominant male figure in the family. In some of the cases, the perpetrators belonged to the State's uniformed units.

Florence, a 35-year-old Malay transwoman, informed us that her brother, an army commander, physically violated her when she was a teenager transitioning as a transwoman, both in public and private spaces. As Florence explained:

My brother used to hit me in the beginning. My brother took my dad's handcuffs. He hit me and then he handcuffed me. Shaved my head and handcuffed me to an electric pole in Padang Kota (a famous place in Penang where the transwomen and sex workers used to hang out). He kicked my friends.<sup>89</sup>

Ann, an Indian transwoman who is twenty years old, shared that her family members, especially her father, had physically violated her since she was an infant because, even as a baby, she looked like a girl. He also instructed other members of her family to treat her poorly. As a child, Ann exhibited feminine tendencies and took comfort in undertaking stereotypical women roles, which did not please the men in her family. Ann recounted her horrific experiences:

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89 Florence, interview with research team member, February 2011.



[I was abused] daily. I injured my head in several places. He [my father] would hit me, burn me, and injure my head. When he hits me, he would not hit me using his hands; he would use wires, metal rods to hit me. He has even broken my arms. I was staying with him until I was seven years old. I can tell you that I suffered a lot. When I was born, he would tell [my family] not to feed me milk. He used to abuse me in so many ways ... [My uncle] was no different too. He didn't like the way I walked, my style, he said, 'Your face is like a girl's face,' 'Why do you dress that way?' 'Why do you walk like that?' Using that as reasons, he would hit me and then spread chili paste all over the bruises. He would spread chili paste on open wounds. I couldn't stand his abusive behaviour so ... I left his house to live with my mother. However, my brother didn't like me living with my mother at all. They didn't like the way I walked, talked, etc. I lived with my mother until I was fifteen years old. They used to start rumours about me, and my brother would also hit me because I walked like a girl and didn't do boy things. Even my mother used to hit me with a broom. I couldn't stand the abuse from my family members and so I ran away from home.<sup>90</sup>

In some instances, guilt, shame and anxiety experienced by family members or others in the interviewees' lives resulted in physical and other forms of violence towards the interviewees. Transwomen who were sex workers were even more vulnerable to violence due to the negative perceptions of sex workers and the taboo surrounding sex work. Florence, a transwoman, faced violence by her brother upon discovering her gender identity and occupation as a sex worker, even though her brother himself engaged transwomen sex workers. According to Florence:

He loves going to the *pondan*. I know. So

if he can help it, he doesn't want his sibling to be a sex worker. I was in Malacca [a southern state in Malaysia] doing sex work; I knew he was there ... All my friends knew him. I showed them his photo [and asked] 'Do you know this man, *nyah?*' [and they asked me], 'Who is this, *nyah?*' '*Nyah*, it is my brother.' [And they told me], 'You wait. At two am he will come by to use *pondan*. He will go to that *pondan*'s house.' I watched. It was so surreal. Since then, I stopped holding back. [I told my brother], 'When I was younger you didn't want me to be a *pondan* but you yourself like to have sex with *pondan*. You are a scumbag.' Since then, he doesn't dare to do anything to me. Doesn't even dare to touch me. ... After that he said, he admitted it himself, 'If I can help it, I don't want my own sibling to do that sort of job. If you want to be a woman, be a woman but find a decent job.'<sup>91</sup>

Florence has tried to get out of sex work. She has looked for work at several places, but they have all rejected her because of her gender identity.

Ima, a 30-year-old transwoman from Penang, told us that her father beat her up and imprisoned her in the house because he did not like her interacting with neighbours and friends. She said:

My dad has hit me before. I can't accept him, like I said earlier, I won't be able to accept him even in the afterlife, and he is my biological father. I cannot accept him for what he has done to me. When someone makes a mistake... he doesn't investigate, he just hits... I ran away to my mother's place.... but my dad imprisoned me. Like, he didn't allow me to interact with other people, like he would make me stay at home. I felt disappointed. Why do you have to imprison me in the house? Because I am effeminate like this? But why can't I interact with people? Others can interact with each other. That's how

90 Ann, interview with research team member, November 2010.

91 Florence, interview with research team member, February 2011.

I felt... I don't even have the time to interact with my own siblings.<sup>92</sup>

Other than physical violence from family members, three transwomen reported physical violence from schoolmates, employers and strangers. Ann, a twenty-year-old Indian transwoman, noted that when she was younger, her employers had beaten her up, slapped her, and thrown hot water at her because of her gender expression. Ann comes from a very low-income household and started working when she was seven years old.<sup>93</sup>

## Sexual Violence

Thirteen transgender interviewees had been sexually abused by both known and unknown perpetrators, such as family members, intimate partners, strangers, friends, acquaintances, and State actors (i.e., police officers). The sexual violence they experienced included: lewd gestures; touching of the interviewee's breasts/chest; being forced to stroke the perpetrator's genitals; and being forced to re-enact sexual activities to the perpetrator. The transwomen interviewees reported sexual objectification, as they were presumed to be sex workers or to enjoy providing sexual favours to any man who wanted sex.

Several transwomen interviewees noted that they had been held hostage for sexual favours, a common occurrence in Malaysia. Aminah, a 30-year-old transwoman who works as an executive in Kuala Lumpur, was pressured by a taxi driver to give him oral sex in his taxi. She recounted:

I was coming back from work, a little bit after midnight, from Bukit Bintang. So I hailed a taxi ... I said, 'Please take me back to my place.' ... He turned around and looked at me and said, 'Oh, uh, can you sit in front please?' And I naively said yes, for some reason ... he said, 'Could

you please go down on me?' Yeah, he asked me to give him a blowjob, and I said, 'No, I'm not interested, please don't ask me to do this and you know, please take me back to my place or just, you know, I'll pay you whatever you need, just stop me off.' He said, 'No, I don't need your money; I need you to give me a blowjob,' that's what he said insistently. And he took my hand and he put my hand on his crotch and asked me to stroke his penis, and obviously he was driving and he forced me to put my hands back on his penis. So, he had one hand on the steering wheel and the other hand on my hand pushing on his penis, all this while he was driving. And I resisted, and he stopped for a while but then he pulled over at one point at a really dark place, and he asked me to go down on him again, and I said no. The doors were all locked, so I couldn't go out, it was really dark, it was about twelve or one [am] that time ... I cried, I pleaded, I begged of him, please take me back home, it's late at night, I don't do this, please don't force me into doing this, and I don't, because I just don't do this, period. ... The thing that hurt me the most was that he said, 'you are the first transgender I encountered that is like you. All the other *mak nyahs* that I have encountered would just go down on me.' And then he said, 'Oh, I thought all of you like this. And I assumed by all of you he meant transgender people enjoy giving blow jobs to men. I said, No, I don't enjoy giving blow jobs to strangers, yeah, that's what I told him. And then when I started crying, I think I started to panic and he said, 'Okay, okay, I'll send you home.'<sup>94</sup>

Even friends and acquaintances are sexually abusive. Shirley, a 34-year-old transwoman, was "jokingly" asked by an acquaintance to provide blowjobs to unknown men publicly. The incident had occurred twice, and the same acquaintance once grabbed her buttocks in a public place. Shirley

92 Ima, interview with research team member, February 2011.

93 Ann, interview with research team member, November 2010.

94 Aminah, interview with research team member, January 2011.

explained that she was shocked and that she did not know how to react in those situations, as she had never been subjected to such harassment prior to that incident. As a result, she is cautious and worried to come out as a transwoman, as she anticipates similar incidents occurring in the future.<sup>95</sup>

The prevalence of sexual violence towards transwomen, especially transwomen who are also sex workers, has normalised sexual violence for some. Normalizing violence makes sense given the criminalization, stigmatization and lack of protection of the human rights of transwomen (and lesbians, bisexuals and queer women), all of which reduced their self-worth, and left them feeling helpless in violent situations.

Mas, a transwoman sex worker from Perak in her thirties, described being raped as the “worst experience in life.” She said that her transwomen friends just laughed it off. She felt their reactions were probably because they were used to such violence. Mas shared that after the rape, she bled and she cried because she could not bear the pain. She internalised the violence for many years, even justifying the rape by telling herself that it was just her bad luck and she had to accept what happened because “that is what you get for being a girl when god made you a boy.”<sup>96</sup>

Sexual violence directed at LBT people often comes from a morbid curiosity with their sex lives, and the notion that sex between two women is erotic.

Yuli, a 27-year-old lesbian was caught making out with her then-lover by a security guard. He threatened to report them to the authorities and asked them if their parents were aware of their relationship. Yuli begged him to let them go. He told them he would allow them to go on condition that they kiss in front of him. They did as they were told and the security guard watched.<sup>97</sup>

A transman, Fred, who is in his twenties, and a

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95 Shirley, interview with research team member, January 2011.

96 Mas, interview with research team member, March 2011.

97 Yuli, interview with research team member, April 2011.

pengkid, reported that men and women molested them and touched them “in the chest area” to satisfy their “curiosity” about gender. Fred confronted those who touched him, and they admitted that their intentions of doing it were to confirm Fred’s gender.<sup>98</sup>

Some perpetrators use sexual violence as a corrective tool to “change back” the sexual orientation and gender identity of LBT people. Bear, a 27-year-old lesbian and former pengkid was threatened with rape over the telephone by some of her male acquaintances when she was in university.<sup>99</sup>

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## Intimate Partner Violence

Like heterosexual relationships, the relationships of LBT persons are not devoid of intimate partner violence. Malaysia’s Domestic Violence Act, which was enacted in 1994 and amended in 2011, does not cover same sex partner violence and violence in unmarried partnerships. The Domestic Violence Act is limited to those in a familial relationship and those who marry the opposite sex.<sup>100</sup>

Seven interviewees disclosed that they had experienced intimate partner violence, suffering from physical and emotional violence caused mostly by their partners’ jealousy, partners’ insecurities about their sexual orientation and/or gender identity, and transference of violence by partners following stigma and discrimination that partners had faced.

Katrina, a lesbian in her early thirties, was physically and emotionally abused by her former partner of more than five years. Katrina was forced to hide her sexual orientation, restricted from socializing with other people, restricted from dressing the way she liked, and was monitored

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98 Fred, interview with research team member, April 2011.

99 Bear, interview with research team member, April 2011.

100 “Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW,” Women’s Aid Organization (2012), 206, <http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>.

and financially controlled. This abuse was partly a projection of the violence and mistreatment that her partner had experienced by her own family members. Katrina's partner's parents were in denial about their daughter's sexual orientation. They frequently pressured Katrina's partner to marry. Katrina's partner's mother even told her daughter that she would be happy to give a dowry to any guy who would marry her. Katrina believed that the pressure from family members, especially the mother, might have made her partner violent. The abuse made Katrina depressed, a condition that continued three years after the relationship ended. She expressed fear that she might treat any future partners the same way that her ex-girlfriend had treated her.<sup>101</sup>

Generally, LBT persons fear reporting abuse, since they do not want their identity exposed and want to avoid further ridicule or harassment by the authorities. No laws are in place that explicitly protect them and their human rights.

Wilma is a lesbian who was in an on-and-off abusive relationship for ten years. She knew that her girlfriend was abusive in another relationship but Wilma thought her partner would be different in the relationship with her. However, things did not change. Wilma recalled friends intervening but she did not want to leave the relationship. After a period of time, she said she could not feel the beatings anymore. She went into a self-deprecating mode, where she blamed herself for the beatings. She finally decided to leave the relationship.<sup>102</sup> Wilma recalled:

I thought about it [lodging a police report] but I never went through [with] it, because of the complication that would arise. And if the police start to ask questions, I was just wasn't ready to answer, 'Why is this girl beating you up?' [laughs] 'Because she's my ....' So, no, I didn't. ... You'd risk having to come out in the papers, this is a sensational

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101 Katrina, interview with researcher, January 2011.

102 Wilma, interview with researcher, April 2011.

story here, I mean two women, one gets beaten and within half an inch of her life, and suddenly the media gets a hold of it, then you'll get really heady headlines 'lesbian goes to court' or something [laughs]. You just don't want that.<sup>103</sup>

Keith, a transman in his twenties, recollected his partner's violence, which resulted in weight loss, drug and alcohol use to cope with the violence. He also recalled lying about the bruises to his friends and preventing them from intervening. Although he has left the relationship, Keith said that he gets nightmares about his violent girlfriend and the abuse he experienced. In the nightmares, he always dies. Lodging a police report did not even cross Keith's mind.<sup>104</sup>

## DISCRIMINATION

LBT persons we interviewed experienced discrimination as part of the violence to which they were subjected. Discrimination often prevented transwomen who did sex work from seeking other employment when the sex work subjected them to violence on the street. Without a secondary education<sup>105</sup> and faced constantly with job discrimination, many transwomen turn to sex work in order to survive.<sup>106</sup> As a result, they later become trapped in the vicious cycle of oppression and poverty.

Fear of discrimination was a key reason for maintaining secrecy about gender identity and/or sexual orientation – to “go stealth” and use “invisibility” as a way to keep jobs and/or earn decent incomes in mainstream jobs.

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103 Ibid.

104 Keith, interview with researcher, February 2011.

105 The Malaysian education system is comprised of two state-funded levels: primary level with 6 standards (age 7 to 12 years old) and secondary level with 5 forms (age 13 to 17).

106 Based on anecdotal information from staff at the PT Foundation, it is known that lesbians have also resorted to sex work. These lesbians come from poorer classes of society.

Ima, a 32-year-old Malay and Muslim *Mak Nyah* (transwoman) went to school until the age of fifteen, when she decided to stop studying and run away from home. She is the second youngest child of ten siblings. Ima left home because there was a lot of pressure from her family to change, to be more of a “man.” In fact, Ima ran away several times, but every time she ran away, she would be found. Her father, a retired police officer, tied or handcuffed her after she was forcefully brought back home. Once, she was even locked in a room for several hours. Ima finally left home for good at the age of seventeen.

When Ima was in her teens, her older brother, a commander in the army, beat her and stripped her when he found her wearing women’s clothes. Ima blames herself for what her brother did because she feels that she embarrassed him by being the way she is.

Ima’s identification card retains her male name and male photograph, which makes it difficult for her to find formal employment. Presently, Ima makes her living as a sex worker. Ima resorted to sex work because she was denied factory jobs after every interview. She explained, “No matter how hard I try, it is as if society cannot accept people like me. So I gave up. I live as a Mak Nyah, like other Mak Nyahs, go out at night, I’m free, it’s easy, it’s easy money, so I began to live like this.”

Ima has been threatened by gangsters, and forced to pay “protection money” on a daily basis even when there are no clients. A man who hung out at the brothel where she worked raped her when she was under the influence of drugs. So far she has not been hit by officers of the Islamic Department or the police. But they harass her frequently because she is *Mak Nyah*.

Ima recounted, “There was a drug raid. I was not the only one at the house, but [there were] seven others. The police came to the house. With us, *Mak Nyah*, they would be rude, even though we talk politely with them. Like they don’t respect us. I had just gone to sleep at the time. I was working at a disco. I had another housemate who really used drugs. My body was clean. I hadn’t taken

any drugs. It was about 2 AM. The police were banging at the door, asking us to open the door. I opened the door, and he kept shouting rudely to unlock the front gate. I told him I was looking for the keys...but when I finally found the keys, they barged in, without taking off their shoes, so I lost my patience and told them off because it was disrespectful of them as Malay officers to enter a Malay person’s house with their shoes on. My urine sample was clear [of drugs] so the police officers could not arrest me. [One officer] tried to break my identity card into two. There’s a line there where he tried to break it. He was really rude. He said things to embarrass me, to put me down”.

There were also many raids by the officers of the Islamic Department. “They use Volunteers of Malaysian People (RELA) officers. The RELA officers don’t have any authority cards but they would break into our houses. They won’t show any warrants.” During one raid, Ima ran into her friend’s house. A RELA officer chased her there. “He didn’t have a warrant. He broke into the house to arrest me. Four others in the house were also arrested. They were all on motorcycles. They were not in uniform and they didn’t identify themselves. [One officer] used very rude language. After being arrested, we were all brought to the religious department of Perak. We were asked to take off our blouses so that they could see our breasts but that was not enough for them. They wanted to touch them. My personal details and clothes were taken. I was charged under the “man posing as woman” section of the syariah law and had to appear in court. But I didn’t admit guilt. This happened four times then [the hearing] got postponed, and finally my case was dismissed.

On a separate occasion, the same RELA officer arrested me and brought me to the religious department. He cut my skirt with a pair of scissors, exposing my underwear and then told me to go home. He cut my hair and then forced me to look for men’s clothes [provided by the religious department]. He cut my skirt because he was frustrated. There were no pants for my size.” [laughs].

Transwomen and pengkid interviewees in Penang reported experiencing employment-based discrimination. Some employers openly expressed that they did not hire lesbians because they are “trouble.” Other employers explicitly stated that they only wanted to hire gender-conforming people, including women who looked feminine.<sup>107</sup> Potential employers refused three transwomen employment opportunities even after the transwomen agreed to conform by dressing like men and cutting their hair.<sup>108</sup>

Since the 1983 fatwa forbidding sex reassignment surgery for Malay Muslims, applications from Malay and Muslim transgender persons to change their assigned gender on their national identity cards have been rejected.<sup>109</sup> In Malaysia, it is challenging for transgender persons to change details to match their reassigned gender<sup>110</sup> on official documents. There is no legal procedure for changing the gender on the identification cards of pre or non-operative transgender persons in Malaysia.<sup>111</sup> All applications for changes on the national identity card must go through the courts, giving

judges and administrative officers autonomy over transgender persons’ identity. However, the National Registration Department Guidelines No. 9 of 2007, which lists acceptable and non-acceptable reasons for name change, indicates that “name representing the wrong sex” is an acceptable reason for a legal name change. According to the Guidelines of 2007, the National Registration Department must change an applicant’s details on the national identity card if he/she is able to provide: a court declaration regarding her/his sex; a government doctor’s confirmation that SRS was completed; a verification from the hospital where the sex change was done; and a copy of the birth certificate. In reality, transgender persons are discriminated against, particularly if they do not hire a lawyer to file the legal application and argue the case. Malay Muslim transgender applicants face an added layer of discrimination because of religious prohibitions.<sup>112</sup>

Discrimination is not only directed at LBT persons but also at allies. A number of stakeholders who are allies of LBT persons told us that they lost job promotions, program funding or donations, and had been denigrated, confronted, questioned and verbally attacked by religious fundamentalists for supporting LGBT persons. One ally, Teh Yee Cheu, a state assemblyperson in Penang, who raised issues faced by transwomen such as welfare, discrimination and violence in the Penang state assembly, was verbally attacked by other members of the state assembly. He was called “*ketua pondan*” (leader of pondans), where *pondan* is a pejorative Malay term for gay men and transwomen.<sup>113</sup>

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107 Ahmad, interview with research team member, November 2010.

108 Jess, interview with research team member, March 2011. Mas, interview with research team member, March 2011. Shirley, interview with research team member, January 2011.

109 In March 2011, Aleesha Farhana, a post-operative transwoman from Pahang, filed an application to change her name and gender in her identification card in response to difficulties she faced in her life. The judge Datuk Mohd Yazid Mustafa disallowed Aleesha’s application, as he feared that the name change would create an adverse social impact. See Farik Zolkepli, “Man seeks to change woman’s name,” The Star Online, May 26, 2011, <http://www.thestar.com.my/Story?file=%2f2011%2f5%2f26%2fnation%2f8756927&sec=nation>.

110 While generally the terms “male” and “female” are meant to denote the biological sex of the person concerned, these terms in themselves tend to take on the engendered expectations of society, the extended gendered socialised meanings of a biological male or female. Hence, we have decided to use the term “assigned gender” rather than “biological sex” or “sex” in this context.

111 A legal precedent was set by Justice James Foong when he presided over a case pertaining to a post-operative transgender person. See Honey Tan, Jeffrey Jessie: Recognising Transsexuals, *The Malaysian Bar*, [http://www.malaysianbar.org.my/gender\\_issues/jeffrey\\_jessie\\_recognising\\_transsexuals\\_by\\_honey\\_tan\\_lay\\_ean.html](http://www.malaysianbar.org.my/gender_issues/jeffrey_jessie_recognising_transsexuals_by_honey_tan_lay_ean.html).

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112 The National Registration Department turns down applications by transgender persons to change their details such as name and gender to match their reassigned gender, generally across ethnicities but especially applications by Malay Muslims. This poses many challenges for transgender persons in their daily lives. So long as a person’s identification card says “male,” that person is treated as a man and is likely to be subjected to ridicule or abuse if her gender expression does not match the identification card.

113 In July 2013, Teh appointed Hezreen Shaik Daud, a transwoman as his political secretary and to oversee the welfare of the transgender community in Penang. He also lobbied the Penang State Assembly to set up a special committee to study the issues faced by the transgender community in Penang. See Josephine

## IMPACT OF VIOLENCE AND COPING METHODS

Physical violence by family members led several LBT persons to leave home at a young age. Eight out of 45 interviewees (5 transwomen, 2 lesbians and one transman) ran away from home as teenagers to escape physical and other forms of violence – in some cases as young teens. Fred, a 24-year-old transman, was forced to leave home at age eighteen because of the violence he experienced from his father and the growing tension in the home. He relocated to another country.<sup>114</sup> Economic and emotional violence from family members also drove LBT persons away from home. Fatima, a 37-year-old Malay lesbian, was outed to her family members by an unknown source when she was nineteen. Her parents withdrew financial support although she was in school and economically dependent on them. They subjected her to prolonged silent treatment. Fatima was forced to leave home. She moved to a different city.<sup>115</sup> Some interviewees, who left home to escape violence, either moved in with their lover or partner or had friends from the community who were willing to support them emotionally.

Another impact of family rejection and condemnation is that some of the transwomen believed that their gender identity and gender expression were the result of their fathers' sins, a burden they

had to carry throughout their lives. Ann believes that she was born a transwoman because of the sins committed by her father, a curse placed on him by other transwomen whom her father had abused. However, Ann is very certain about her gender identity, and does not think of herself as a boy.<sup>116</sup> Gia, a Malay transwoman in her late forties, also blamed bad karma. Like Ann, Gia believed that her father's hostile treatment towards transwomen resulted in her being born as a transwoman. Some of Gia's transwomen friends share that same belief.<sup>117</sup>

LBT interviewees who were unable to leave home used various methods to cope with physical and emotional violence by family members. One transman, two transwomen and two lesbians said that they isolated themselves in their rooms or dodged family functions to avoid different kinds of family violence. Ellen is a 31-year-old lesbian,

whose mother beat her because of her sexual orientation. She isolated herself by staying in her bedroom to avoid interacting with her mother, saying, "less interaction, less nagging, less beatings and physical pain." She noted that even as an adult now, she still spends most of her time in her bedroom more than any other room in her house.<sup>118</sup> Another lesbian, Bear, 27 years old and a Malay Muslim, also employed the same method of coping and withdrew herself from her family members when they subjected her to emotional violence upon discovering her sexual orientation.<sup>119</sup> Emilia, a 24-year-old Chinese transwoman bound her breasts whenever she attended a family function to avoid attention being drawn to herself.<sup>120</sup> Shirley, a 34-year-old transwoman, who now lives on her own,



Artwork: Jellene Khoh, *Violence is Not Our Culture*, KRYSS, 2012

Jallen, "Transgender political sec of Tanjung Bungah rep hopes for equal treatment," *The Star Online*, July 12, 2013, <http://www.thestar.com.my/News/Nation/2013/07/12/Transgender-Tanjung-Bunga-rep.aspx>.

114 Fred, interview with research team member, April 2011.

115 Fatima, interview with research team member, April 2011.

116 Ibid.

117 Gia, interview with research team member, February 2011.

118 Ellen, interview with research team member, February 2011.

119 Bear, interview with research team member, April 2011.

120 Emilia, interview with research team member, January 2011.

said that she hated family gatherings. She explained, “All eyes would be on me [and] during hari raya [Eid, a Muslim festival], every year, a lot of relatives will come over to the house, and that’s the most torturous time for me because everybody talks about me like, arrrggghh, I don’t want to hear!’ I always like to stay in the room and don’t come out or meet people.”<sup>121</sup> Another lesbian who was heavily pressured to marry said she avoided family functions.

Some interviewees isolated themselves from the public to spare their family members from having to listen to verbally humiliating questions about the LBT individuals’ sexual orientation or gender identity. These questions were asked by visitors to the home or even strangers.

Discriminatory school environments disrupted LBT student education. Many transgender students, forced to dress in clothes that did not match their gender identity and lesbians whose sexual orientation was discovered, said that they fell behind in their studies because they simply could not focus. Four interviewees actually dropped out of school at an early age, which they said deprived them of an education.

The use of religion had serious negative impact on LBT persons. Pengkid interviewees, who had been repeatedly told that being in a relationship with a woman is sinful and condemned by religious authorities, told us they hoped one day to revert to their assigned female gender and be married with a family in order to lead a “normal” life. These individuals see themselves as sinners for having intimate relationships with women. Malay Muslim transwomen told us that they wanted to revert to their assigned male gender as they approach old age because in Muslim burial rituals, only members of the same assigned gender as the deceased are allowed to bathe her/him, which leaves transgender persons in limbo. Also according to the Malay Muslim custom, women are not allowed to bathe post-operative transwomen.<sup>122</sup>

Some Malay Muslim transwomen said they opted out of SRS or any irreversible surgeries because of religious beliefs and culture.

In situation of public violence, coping included “normalizing” the violence. Many interviewees learned to ignore the violence to the extent that they now feel no longer consciously bothered or affected by it, especially verbal violence by strangers. Ima, a transwoman who experienced verbal violence, rape, extortion, and other forms of violence said she has normalised the violence she faces as a way of coping.

In public situations, LBT persons with adequate material or financial resources were able to prevent, avoid or get out of potentially violent situations that for instance involved police officers, anti-vice officers or religious department officers. Some LBT interviewees used their ethnicity to get out of such situations.

Home health remedies were one way that many LBT persons avoided dealing with medical institutions that were unfriendly and abusive to LBT patients. Interviewees told us that they opted for alternative medicine and self-medication for non-life threatening health issues. This gave them a sense of having more control over their health needs.

Self-harm and suicide were also some ways of coping. Some LBT interviewees reported that the violence and discrimination they faced drove them to attempt suicide, cut themselves and excessively consume alcohol and drugs. At least three interviewees revealed that they had attempted suicide because they were confused about their sexual orientation and gender identity, and had no access to assistance to address the violence that they faced. One interviewee sought assistance from the Befrienders helpline for depression because of her sexual orientation.

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121 Shirley, interview with research team member, January 2011.

122 Y. K. Teh, *Mak Nyahs (Male Transsexuals) in Malaysia: The*

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*Influence of Culture and Religion on their Identity*. IJT 5,3, (2001), [http://www.symposion.com/ijt/ijtvo05no03\\_04.htm](http://www.symposion.com/ijt/ijtvo05no03_04.htm).



Interviewees named family members and friends as their main support system. When this support system became a perpetrator of violence, many had to find creative and healthy outlets for their frustration and pain. Some turned to music while others went on Facebook to rant, seek some calm or distract themselves.

A number of interviewees were aware of online communities – individuals, collectives and organizations that assist LGBT persons. However, most of them had not sought assistance from these online communities primarily because they felt that they were capable of resolving their problems on their own or with the assistance of their friends.

## LEGAL SYSTEM AND LBT PEOPLE

In Malaysia, secular laws – Criminal and Civil – and Islamic or syariah laws co-exist to govern its citizens. Syariah laws are administered at a state level by religious departments, syariah courts and muftis. These laws apply only to Muslims regarding issues such as marriage, divorce, and the creation and punishment of offences in relation to Islam.<sup>123</sup> With the state endorsing Islamic dominance in Malaysia, fatwa also plays a very important role in shaping non-religious public policies and enactment of secular laws. In 1983, the Council of Rulers imposed a ban on SRS for Muslims through a fatwa. Since then, many additional fatwas have been introduced to prohibit Muslims from changing their assigned gender on the national identification card and to prohibit Muslim women from masculine gender expression (i.e., pengkid, butch women or tomboys). Fatwas are enforceable only after they have been gazetted but many are treated as if they are law regardless of their gazetted status.

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123 In practice, this is not necessarily so. See Norani Othman, Zainah Anwar and Zaitun Mohamed Kasim, "Malaysia: Islamization, Muslim politics and state authoritarianism, Muslim Women and the challenge of Islamic extremism."

## Secular Laws

Section 377 comes under Unnatural Offences in the Malaysian Penal Code (Act 574). Sections 377A and 377B criminalise "carnal intercourse against the order of nature" (anal sex, oral sex) between consenting adults regardless of the sexual partner's gender, as well as gross indecency.<sup>124</sup> These sections of the Penal Code have reportedly been invoked only seven times since 1938,<sup>125</sup> four of which were against Anwar Ibrahim, the former Deputy Prime Minister.<sup>126</sup> Punishment for "carnal intercourse against the order of nature" is prison up to 20 years with liability for whipping. Section 377C criminalises rape – non-consensual sexual intercourse that involves oral and anal sex acts carried out under threat of death or hurt to the victim. Punishment for these acts of rape is a prison term of not less than five years and not more than twenty years with liability for whipping. The prevalent notion as expressed in 377C is that oral and anal rape is a lesser crime than anal and oral sex between consenting adults. Section 377D covers "outrage on decency" and criminalises the commission of, attempt to, or conspiracy to commit any act of gross indecency. Punishment is two years in prison.

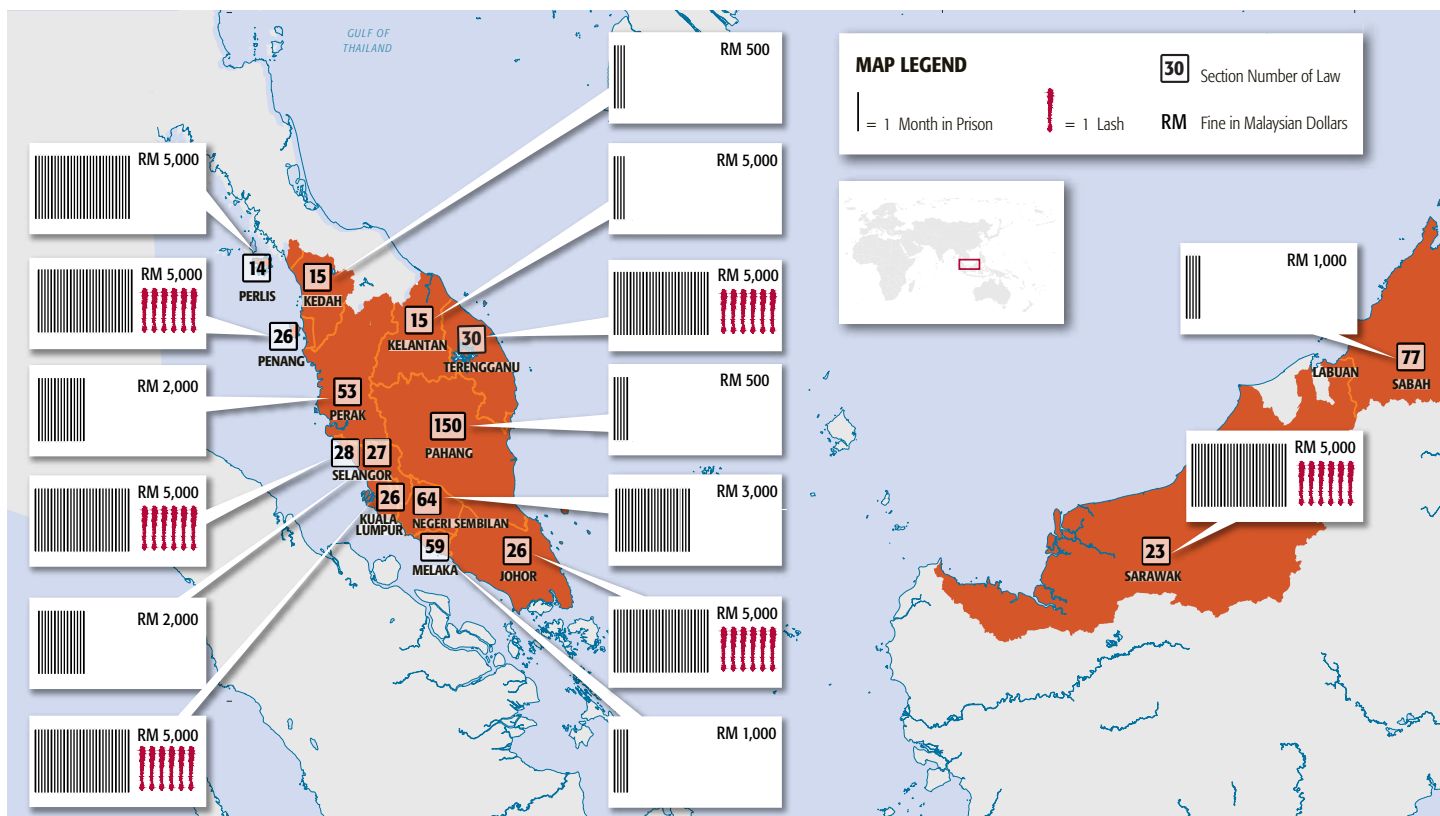
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124 Laws of Malaysia, Act 574 Penal Code, <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>.

125 Ahmad Fuad Rahmat, "A review of 'Homosexuality, Right or Crime?'," *The Malaysian Insider*, <http://www.themalaysianinsider.com/sideviews/article/a-review-of-homosexuality-right-or-crime-ahmad-fuad-rahmat>.

126 Anwar Ibrahim was accused of having "unnatural sex" with two men in 1998 and again with his political assistant in 2008.

## SYARIAH (SHARIA) PENALTIES IN MALAYSIA FOR SAME-SEX RELATIONS BETWEEN WOMEN (*MUSAHAQAH*)



### Section 21 Minor Offences Act 1955 (Act 336)<sup>127</sup>

is a federal law that criminalises drunken, disorderly, or indecent behaviour in public or in the immediate vicinity of a court, public office, police station or place of worship. Punishment is a fine that can be as high as 25 Malaysian ringgit or prison for not more than fourteen days. Second or subsequent convictions result in a fine of 100 Malaysian ringgit, prison for not more than three months, or both. This law is used against transwomen for “disorderly or indecent behaviour.”

There are no specific secular laws that criminalise transgender sex workers, though sex work is criminalised under the secular law in Malaysia. Consequently, the Minor Offences Act is used to criminalise transgender people who are or are perceived to be doing sex work and also for cross-dressing (men posing as women). Both cases are treated as indecent behaviour.

<sup>127</sup> Laws of Malaysia, Act 336, Minor Offences act of 1955 (Revised 1987), <http://www.agc.gov.my/Akta/Vol.%207/Act%20336.pdf>.

### Syariah Laws

Three provisions under syariah laws in Malaysia directly criminalise same-sex sexual relations and gender non-conformity: musahaqah (sexual relations between women), gender non-conforming behaviour (tasyabbuh or “female posing as man” as well as “male posing as woman”), and liwat (carnal intercourse or sex against the order of nature). Unlike the Penal Code that explicitly defines a sex act, the syariah laws allow for a wider subjective interpretation of its offences. For a list of syariah laws and penalties that directly affect LBT persons,<sup>128</sup> see Appendix B and Appendix C.

<sup>128</sup> Ibid.

# RECOMMENDATIONS

The Malaysian government's interpretation of Islamic law serves as a rationale for opposing efforts by the international community to promote and protect the rights of LBT persons. The Yogyakarta Principles, which serves as a premise for applying international human rights law to the lives of LBT persons, has little traction with the Malaysian government. International human rights mechanisms have few concrete tools to compel the Malaysian government to discharge its human rights obligations, and state institutions are slow to implement international human rights instruments and consensus documents. This occurs in part because public officials are inadequately trained and in part because there is no political will. Much work is needed on the ground to train lawyers, judges and policymakers on Malaysia's international human rights obligations.

**The following recommendations to the government of Malaysia were included under the section on the General Recommendation 28 of the Malaysian NGO CEDAW Alternative Report 2012.<sup>129</sup> Some of these recommendations were also made to the ASEAN Intergovernmental Commission on Human Rights (AICHR).<sup>130</sup> Based on the research findings, the Malaysian Government is called to undertake the following actions:**

1. To treat all people of diverse sexual orientation, gender identity and gender expression as equals and with respect and dignity.
2. To have consistent and meaningful dialogues with LBT rights groups and relevant stakeholders before developing policies and laws concerning LBT persons.
3. To immediately repeal all laws that directly and indirectly criminalise sexual orientation, gender identity and gender expression; and to harmonise the Yogyakarta Principles with national laws, policies and practices by:
  - Repealing Sections 377A, 377B and 377D of the Penal Code;
  - Repealing Section 21 of the Minor Offences Act 1955 that is used to control and persecute transpeople as well as women;
  - Repealing “liwat” and “musahaqah” under the syariah criminal offences laws; and
  - Repealing “male person posing as a woman”, or vice versa under the syariah criminal offences laws.
4. To expand the understanding of “gender” to include people of diverse sexual orientation and gender identity; and to include “sexual orientation” and “gender identity” in Article 8 of the Federal Constitution of Malaysia, prohibiting discrimination based on sexual orientation and gender identity.
5. To legally recognise transgender persons, both pre-operative and post-operative, as a legitimate identity by allowing transgender persons to change their name, gender and digits in their identification cards and all legal documents to match their reassigned gender.
6. To lift the ban on sex reassignment surgery and reintroduce sex reassignment surgery services, including official pre- and post-operative counselling in hospitals as per the law prior to 1983
7. To immediately stop all LBT corrective programs in schools; to establish policies to prevent programs that promote negative stereotypes of and discrimination against LBT persons; and to prohibit programs that will be damaging to the development of LBT children.

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129 “Malaysian NGO CEDAW Alternative Report 2012,” Women’s Aid Organisation, <http://www.wao.org.my>.

130 “Statement of the First ASEAN Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) People’s Caucus,” ASEAN People’s Forum, May 3-5, 2011, <http://www.iglhrc.org>.

## APPENDIX A: GLOSSARY OF TERMS

**Anak ikan** is a term used for boys or young men who seek sexual services or fancy transwomen or gay men.

**Bapok** is a derogatory term to address gay men or transwomen. Equivalent of faggot.

**Cendut** is a colloquial term for sex work.

**Fatwa** means religious opinion.

**Hadd** is also known as hudud.

**Jambu** is a term used for young effeminate boys or pretty boys.

**Ladyboy** is a self-identifying term used by transwomen when referring to each other or themselves.

**Liwat** refers to sexual relations between men.

**Mak ayam** literally means mother hen. A term that is commonly used for older, senior transwoman who supervises and guides younger transwomen.

**Mak nyah** is an umbrella term for transwomen in Bahasa Melayu. This term has been reclaimed by the transwomen community. Mak Nyah is a combination of two words. Mak means mother. Nyah comes from the word “baba and nyonya,” a community in Malacca.

**Mufti** is a professional jurist who interprets Islamic law.

**Musahaqah or Musahakah** refers to sexual relations between women.

**Ombote** literally means number nine in Tamil. It is used as a derogatory term for effeminate men and transwomen

**Pengkid or peng** are terms used almost exclusively for the Malay community and broadly refers to Malay girls or women who: dress in a masculine way and take on a “masculine roles;” use gender neutral or ambiguous names; bind their chests; are in romantic relationships with women; and/or are butch lesbians and transmen.

**Pondan** is an insulting term, used to address gay men or transwomen. Equivalent of faggot.

**Sotong** literally means squid. Commonly used to insult effeminate boys or men and transwomen.

**Takzir** or ta’zir refers to penalties for crimes that are not proscribed in the Al-Quran and Al-Hadith.

**Tasyabbuh** literally means imitating or copying, establishing or relating to, and following.

**Thirunangai** is an umbrella term for transwomen in Tamil. This word has only recently been discovered by the transwomen community.

**Ummah** refers to a collective nation or Islamic state.

## APPENDIX B:

### SYARIAH (*SHARIA*) PENALTIES IN MALAYSIA FOR SAME-SEX RELATIONS BETWEEN WOMEN (*MUSAHAQAH*)

STATE IN MALAYSIA	SECTION OF SYARIAH LAW	READING OF THE LAW
<b>JOHOR</b>	Section 26 <i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
<b>KEDAH</b>	Section 15 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 500 Ringgit or to imprisonment for a term not exceeding 4 months or to both.
<b>KELANTAN</b>	Section 15 <i>Musahakah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 4 months or to both.
<b>MELAKA</b>	Section 59 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Ringgit or to imprisonment for a term not exceeding 6 months or to both.
<b>NEGERI SEMBILAN</b>	Section 64	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 3000 Ringgit or to imprisonment for a term not exceeding 2 years or to both.
<b>PAHANG</b>	Section 150 Sexual relations with/between women	Any Muslim female person who engages in a sexual act another Muslim or non-Muslim female person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 500 Ringgit or to imprisonment for a term not exceeding 3 months or to both.
<b>PERAK</b>	Section 53 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 2000 Ringgit or to imprisonment for a term not exceeding 1 year or to both.
<b>PERLIS</b>	Section 14 <i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both.

## SYARIAH (*SHARIA*) PENALTIES IN MALAYSIA FOR SAME-SEX RELATIONS BETWEEN WOMEN (*MUSAHAQAH*) *(continued)*

STATE IN MALAYSIA	SECTION OF SYARIAH LAW		READING OF THE LAW
<b>PENANG</b>	Section 26	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
<b>SABAH</b>	Section 77	<i>Musahaqah</i>	Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Ringgit or to imprisonment for a term not exceeding 6 months or to both.
<b>SARAWAK</b>	Section 23	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
<b>SELANGOR</b>	Section 27	Sexual relations between persons of same gender	Any person who engages in a sexual act with another person of the same gender shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2000 Ringgit or to imprisonment for a term not exceeding 1 year or to both.
	Section 28	Sexual intercourse against the order of nature	Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
<b>TERENGGANU</b>	Section 30	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
<b>WILAYAH PERSEKUTUAN KUALA LUMPUR</b>	Section 26	<i>Musahaqah</i>	Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.

# SYARIAH (SHARIA) PENALTIES IN MALAYSIA FOR GENDER NON-CONFORMING BEHAVIOURS

## **CRIMINALIZATION OF TRANSGENDER WOMEN**

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According to syariah laws in all thirteen states and in the federal capital of Malaysia, Kuala Lumpur: any male person who, in any public place, wears a woman's attire and poses as a woman shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Malaysian ringgit or to imprisonment for a term not exceeding one year or to both.

## **CRIMINALIZATION OF TRANSGENDER MEN, BUTCH LESBIANS, WOMEN WHO CROSS DRESS, MASCULINE APPEARING WOMEN**

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Additionally, in the state of Sabah, any female person who, in any public place, wears a woman's attire and poses as a man shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 1000 Malaysian ringgit or to imprisonment for a term not exceeding one year or both.

Higher penalties are imposed in the states of Pahang and Perlis, where any female person who, in any public place, poses as a man (tasyabbuh), shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand Malaysian ringgit or to imprisonment for a term not exceeding one year or to both.

Until May 2012, Pahang was the only state that did not penalise gender non-conformity. It is reported that because of LGBT visibility, it now has syariah laws relating to "male persons posing as women" and "female persons posing as men."<sup>131</sup>

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131 Rosilawato Rosedi, *Awas geng mak nyah, tomboi*, <http://www.sinarharian.com.my/edisi/pahang/awas-geng-mak-nyah-tomboi-1.50263>

## APPENDIX C:

### PUBLIC MORALITY LAWS IN MALAYSIA AGAINST *LIWAT* OR “SEX AGAINST THE ORDER OF NATURE”

STATE IN MALAYSIA	SECTION OF SYARIAH LAW		READING OF THE LAW
<b>KEDAH</b>	Section 14	<i>Liwat</i>	Any person who willfully commits an act of <i>liwat</i> shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. <sup>132</sup>
<b>KELANTAN</b>	Section 14	<i>Liwat</i>	Any person who willfully commits an act of <i>liwat</i> that cannot be punished under the hadd laws (hudud) according to the hukum syarak (Islamic laws) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. <sup>133</sup>
<b>MELAKA</b>	Section 56	<i>Liwat</i>	Any person who willfully commits an act of <i>liwat</i> shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 36 months or to both. <sup>134</sup>
	Section 57	Attempt to commit <i>Liwat</i>	Any person who performs sexual intercourse against the order of nature with any man, woman or animal has to be punished in accordance to takzir and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 36 months or to whipping not exceeding 6 strokes or to any combination thereof. <sup>135</sup>
<b>MELAKA</b>	Section 58	Sexual intercourse against the order of nature	Any person who attempts to perform unnatural sex is guilty of an offence and shall be liable on conviction to a fine not exceeding 3000 Ringgit or to imprisonment for a term not exceeding 24 months or to both. <sup>136</sup>

132 Enakmen Kanun Jenayah SyariahSyariah 1988 <http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/undangbm.nsf/allp/4D82C56A5480936548256F85000279B1?OpenDocument>

133 Enakmen 2 Tahun 1985 Enakmen Kanun Jenayah SyariahSyariah 1985 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State\\_Enact\\_Upd.nsf/f831ccddd195843f48256fca00188094/84a6a5cb3f30215f4825707d002a1424?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Upd.nsf/f831ccddd195843f48256fca00188094/84a6a5cb3f30215f4825707d002a1424?OpenDocument)

134 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State\\_Enact\\_Ori.nsf/100ae747c72508e748256faa00188094/011744f940f251f04825707d002a1424?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/011744f940f251f04825707d002a1424?OpenDocument)

135 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State\\_Enact\\_Ori.nsf/100ae747c72508e748256faa00188094/84a6a5cb3f30215f4825707d002a284c?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/84a6a5cb3f30215f4825707d002a284c?OpenDocument)

136 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State\\_Enact\\_Ori.nsf/100ae747c72508e748256faa00188094/74b75e1cee4acd884825707d002a3b0f?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portallv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/74b75e1cee4acd884825707d002a3b0f?OpenDocument)



<b>STATE IN MALAYSIA</b>	<b>SECTION OF SYARIAH LAW</b>	<b>READING OF THE LAW</b>
	Section 49	Conspiracy to commit sexual intercourse against the order of nature
		Ringgit or to imprisonment for a term not exceeding 24 months or to both. <sup>137</sup>
<b>NEGERI SEMBILAN</b>	Section 65	<i>Liwat</i>
		Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 2 years or to both. <sup>138</sup>
<b>PERAK</b>	Section 48	Un-natural sex
		Any person who performs unnatural sex is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both and to whipping not exceeding 6 strokes. <sup>139</sup>
	Section 49	Attempt to have un-natural sex
		Any person who attempts to perform unnatural sex is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. <sup>140</sup>
<b>PERLIS</b>	Section 13	<i>Liwat</i>
		Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to both. <sup>141</sup>

137 Enakmen 6 Tahun 1991 Enakmen Kesalahan SyariahSyariah (Negeri Melaka) 1991 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State\\_Enact\\_Ori.nsf/100ae747c72508e748256faa00188094/4db8d0ac742b46f14825707d002a02fd?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/4db8d0ac742b46f14825707d002a02fd?OpenDocument)

138 Enakmen 4 Tahun 1992 Enakmen Jenayah SyariahSyariah Negeri Sembilan 1992 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State\\_Enact\\_Ori.nsf/100ae747c72508e748256faa00188094/248c3c8da5eb8b10482570dd00064b5f?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/248c3c8da5eb8b10482570dd00064b5f?OpenDocument)

139 Enakmen 3 Tahun 1992, Enakmen Jenayah (SyariahSyariah)1992 [http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State\\_Enact\\_Ori.nsf/100ae747c72508e748256faa00188094/c8e52d59dd5bcce8482572ad002dc463?OpenDocument](http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/enakmen/State_Enact_Ori.nsf/100ae747c72508e748256faa00188094/c8e52d59dd5bcce8482572ad002dc463?OpenDocument).

140 Ibid.

141 Enakmen Kanun Jenayah SyariahSyariah 1988 <http://www2.esyariahsyariah.gov.my/esyariahsyariah/mal/portalv1/undangbm.nsf/allp/4D82C56A5480936548256F85000279B1?Opendocument>.

## PUBLIC MORALITY LAWS IN MALAYSIA AGAINST *LIWAT* OR “SEX AGAINST THE ORDER OF NATURE” (continued)

STATE IN MALAYSIA	SECTION OF SYARIAH LAW	READING OF THE LAW	
<b>SELANGOR</b>	Section 27	Sexual relations between persons of same gender	Any person who engages in a sexual act with another person of the same gender shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2000 Ringgit or to imprisonment for a term not exceeding 1 year or to both.
	Section 28	Sexual intercourse against the order of nature	Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 Ringgit or to imprisonment for a term not exceeding 3 years or to whipping not exceeding 6 strokes or to any combination thereof.
<b>TERENGGANU</b>			There are no syariah laws that specifically criminalise sex against the order of nature.
<b>PAHANG</b>			There are no syariah laws that specifically criminalise sex against the order of nature.
<b>JOHOR</b>	Section 25		Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
<b>PENANG</b>	Section 25		Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
<b>SABAH</b>	Section 82		Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
<b>SARAWAK</b>	Section 22		Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.
<b>KUALA LUMPUR</b>	Section 25		Criminalise men for <i>liwat</i> but do not specifically target women for similar criminalization.