“I Don’t Want to Change Myself”
Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia
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Justice for Sisters is a grassroots campaign organized by concerned members of the public to raise public awareness about issues surrounding violence and persecution against the Mak Nyah community in Malaysia.

For more information, please visit our website: https://justiceforsisters.wordpress.com
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Glossary

Terminology Related to Sexual Orientation and Gender Identity

Bisexual: The sexual orientation of a person who is sexually and romantically attracted to both women and men.

Cisgender: Denoting or relating to a person whose sense of personal identity and gender corresponds with their sex assigned at birth.

Conversion Practices: Sustained and deliberate efforts to change a person’s sexual orientation or gender identity. These practices are often referred to as “conversion therapy,” though they do not have therapeutic value and have been rejected as harmful by leading healthcare associations, and often take place outside of healthcare settings.

Gay: A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is toward other men.

Gender: The social and cultural codes (linked to but not congruent with ideas about biological sex) used to distinguish between society’s conceptions of “femininity” and “masculinity.”

Gender Identity: A person’s internal, deeply felt sense of being female or male, both, or something other than female or male.

Gender Nonconforming: Behaving or appearing in ways that do not fully conform to socially prescribed gender roles and norms.

Heterosexual: The sexual orientation of a person whose primary sexual and romantic attraction is toward people of another sex.

Homophobia: Fear of, contempt of, or discrimination against homosexuals or homosexuality, usually based on negative stereotypes of homosexuality.
**Homosexual:** The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

**Intersex:** An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

**LGBT:** Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as “sexual and gender minorities.”

**LGBTQ/LGBTIQ/LGBTQI:** Umbrella terms used to refer inclusively to those who are lesbian, gay, bisexual, and transgender along with those who are queer and/or intersex.

**Queer:** An inclusive umbrella term covering multiple identities, sometimes used interchangeably with “LGBTQ.” Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.

**Sexual Orientation:** The way in which a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or another sex, or to both or others.

**Sexual Orientation and Gender Identity Change Efforts:** Attempts to change a person’s sexual orientation or gender identity, which may include conversion practices.

**Transgender:** The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to permanently alter their physical characteristics to conform to their gender identity.

**Transgender Men:** Persons designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

**Transgender Women:** Persons designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.
Transphobia: Fear of, contempt of, or discrimination against transgender persons, usually based on negative stereotypes of transgender identity.

Glossary of Arabic and Bahasa Malaysia Terms Used in This Report

Mak nyah: Transgender woman.

Mukhayyam: Camps, run by the federal Islamic Affairs Department (JAKIM) and various state Islamic departments, that in accordance with the belief that LGBT people should be “rehabilitated,” undertake sexual orientation and gender identity change efforts, known as conversion practices, targeting Muslim LGBT people.

Ustad/ustaza: Religious teacher.

Liwat: Same-sex conduct, particularly anal sex, with a similar connotation to the term “sodomy.”

Musahaqah: Female same-sex conduct.

Pondan: A pejorative term that can designate queer men, trans women, and gender nonconforming people assigned male at birth.
Summary

In February 2021, Nur Sajat, a cosmetics entrepreneur, failed to appear in court in the western Malaysian state of Selangor to answer to criminal charges for “insulting Islam” based on her attire. Malaysia’s religious enforcement officials sprang into action. Selangor’s religious department issued a warrant for her arrest and announced that it had mobilized 122 religious affairs officers to hunt her down. Months later, when Nur Sajat resurfaced in neighboring Thailand, Malaysia sought her extradition. Malaysian authorities insisted that Sajat need not worry: the massive deployment of law enforcement and diplomatic wrangling to force her back to Malaysia was intended not to “punish” but rather to “educate” her.

After a public outcry in her defense, Thailand allowed Sajat to stay in the country under the protection of the United Nations High Commissioner for Refugees, and eventually to settle in Australia.

Nur Sajat is a transgender woman, and her plight illustrates the extent to which government authorities in Malaysia are willing to go to enforce the rigid gender roles by which they compel all Malaysians to abide.

The Malaysian government relies on the force of the law to prohibit expression and conduct that fall outside of a heterosexual, cisgender norm. It is one of only a handful of countries that explicitly makes gender nonconformity a criminal offense. Malaysia also criminalizes consensual same-sex conduct at both the federal and state levels. Its officials frequently insist, as in the case of Sajat, that the laws criminalizing lesbian, gay, bisexual and transgender (LGBT) people are intended not primarily to punish, but rather to return them to “the right path.”

The same day that Selangor threw the full weight of its religious affairs department behind the pursuit of Nur Sajat, the Federal Court, Malaysia’s highest court, issued a ruling invalidating a state law that criminalized consensual same-sex relations. In 2019, a court in Selangor had convicted 5 men of “attempted sexual intercourse against the order of nature” under section 28 of Selangor’s Syariah (Sharia, or Islamic law) criminal enactment.
The court sentenced each of the men to six to seven months in prison, fines, and six strokes of the cane. The presiding judge stated that the punishment was meant to rehabilitate the accused men and isolate them from “others and their environment.”

One of those convicted, I.K., with the support of Malaysian human rights defenders, filed an application with the Federal Court seeking a declaration that section 28 was invalid on the grounds that the state legislature has no power to enact laws penalizing acts that are already criminalized under federal law. On February 25, 2021, the court ruled in I.K.’s favor, and nullified Selangor’s law, a significant victory for LGBT people who have long lived with the risk of arbitrary arrest by state religious enforcement officials.

Malaysia’s state Sharia enactments, which permit the punishment of caning for consensual same-sex relations as well as for gender nonconformity, are among the many laws and policies in Malaysia that discriminate against LGBT people. State Sharia laws, enforced by state Islamic religious departments, are only applicable to Muslims, who account for approximately 60 percent of Malaysia’s population.

Under Malaysia’s federal system, the federal penal code governs the entire country and covers most criminal acts. The federal penal code also criminalizes consensual same-sex relations, imposing a sentence of 20 years in prison and mandatory whipping. In addition to institutionalized discrimination and human rights violations that amount to torture, LGBT people also face discrimination and violence from members of the public. Perpetrators are rarely held accountable.

But the battles regarding the use of the law to subject LGBT people to criminal prosecution are only part of the story in Malaysia. In the background is overt state hostility and tacit acceptance of socio-cultural antipathy toward sexual and gender diversity. This pervasive animus influences law enforcement, judicial outcomes, family behavior, and public discourse in media toward and about LGBT people. Counternarratives are scant. Indeed, the government actively silences counternarratives that affirm LGBT people’s existence and equality, violating rights to freedom of association, peaceful assembly, and expression.

Officials under successive Malaysian governments have typically coded their approach to sexual and gender diversity in a logic of “prevention” and “rehabilitation,” backed by the
threat of punishment. Former Prime Minister Muhyiddin Yassin, who was in office between March 2020 and August 2021, described LGBT people as a threat to Islam, backed by “foreign influences,” and a “disorder” that requires counseling. His religious affairs minister, Zulkifli Mohamad, announced on Facebook in July 2020 that religious enforcement officers had “full license” to arrest transgender people and “counsel” or “educate” them so that they “return to the right path.” The preceding government, led by Prime Minister Mahathir Mohamad, adopted a slightly more conciliatory approach, with his Islamic affairs minister, Mujahid bin Yusof, stating in 2018 that the government would “take proactive measures to curb the growing lesbian, gay, bisexual, transgender (LGBT) issues, and help them to return to the right path and lead a normal life.”

While officials sometimes claim punitive measures are only used as a last resort, prevention and rehabilitation efforts also result in concrete harms to LGBT people.

“Prevention” takes place in schools, where some students who are perceived as queer or gender nonconforming are forced to undergo mandatory “counseling” sessions. State religious officials have provided workshops to educational institutions and parents on preventing homosexuality and transgender expression. They have also organized events at universities and for the general public that feature self-proclaimed ex-gay and ex-trans people who say they have returned to the “right path” and that other LGBT persons can and should do so as well.

In accordance with the belief that LGBT people should be “rehabilitated,” the federal Islamic Affairs Department (JAKIM) and various state Islamic departments run camps, known as mukhayyam, which include sexual orientation and gender identity change efforts, also known as “conversion” practices, targeting Muslim LGBT people. JAKIM boasted in 2018 that 1,450 LGBT people had “recovered” from the “disease” through mukhayyam since the program was initiated in 2012. By June 2021, the government reported that 1,733 LGBT people had attended these programs.

Driven by state-sanctioned activities and officials' statements, the logic of prevention and rehabilitation is also deeply rooted among members of the public. Some LGBT people are coerced into heterosexual marriages by their families based on the idea that marriage can prevent or cure same-sex attraction. Christian pastors and private therapists in Malaysia also engage in conversion practices. LGBT Malaysians report that pressure to change
contributes to harms including bullying and suicidal ideation. The officially sanctioned discourse on the need to “change” or return to “the right path” contributes to discrimination, restricted access to justice, vigilante violence, and imprisonment.

The state’s insistence that being LGBT is unacceptable, its funding of conversion practices, and its failure to respond to harmful conversion practices by non-state actors, all harm LGBT people.

The Malaysian government should immediately stop sponsoring, funding, and otherwise supporting conversion practices and should, in consultation with LGBT community groups, educate public officials, including police, judges, and government staff, on gender, diversity, and human rights. At the same time, the government should repeal laws that discriminate on the basis of sexual orientation and gender identity. The logic of prevention, rehabilitation, and punishment of LGBT people should be replaced by a government commitment to acceptance, inclusion, and non-discrimination.
Methodology

Human Rights Watch and Justice for Sisters conducted the research for this report between March 2018 and July 2021. Human Rights Watch researchers traveled to Malaysia in March 2018 and January 2019 and worked in partnership with Justice for Sisters to interview LGBT Malaysians about their experiences with violence, discrimination, arbitrary arrests, state censorship of LGBT content, and conversion practices.

Justice for Sisters has worked continually on these topics since its founding in 2010 and conducted additional interviews both in person and by telephone or video in late 2021 due to limitations on travel related to the Covid-19 pandemic. Altogether Human Rights Watch and Justice for Sisters interviewed 73 LGBT people in Malaysia, including people living in Kuala Lumpur, Selangor, Negeri Sembilan, Kelantan, Penang, Pahang, and Kedah, along with journalists, human rights practitioners, lawyers, and other informed sources.

Participation in interviews was voluntary and interviewees were informed that they could end an interview at any time. No one was compensated for participation in this research. Interviews were conducted in English or Bahasa Malaysia by researchers fluent in those languages.

Human Rights Watch and Justice for Sisters also closely monitored media, compiling statements by government officials and reports on human rights violations affecting LGBT people in Malaysia, and reviewed documents, including court filings and publications by Malaysian government agencies.

Human Rights Watch and Justice for Sisters wrote to the Malaysian government to request information on the government’s position on conversion practices, criminalization, and discrimination with respect to LGBT Malaysians. The letters are included in the annex to this report.
I. Background

After 61 years of single-party rule, Malaysia’s elections in May 2018 brought about what was expected to be a sea change. Voters roundly rejected the Barisan National (BN) coalition, led by incumbent Prime Minister Najib Razak of the United Malays National Organization (UMNO), which was implicated in corruption and poor governance. The new Pakatan Harapan coalition swept into power led by 93-year-old former Prime Minister Mahathir Mohamad, who had reinvented himself as the unlikely voice of a more youthful, secular, and ethnically diverse opposition; Mahathir’s reinvention was done in part through a partnership with former opposition leader Anwar Ibrahim, his erstwhile political foe whom Mahathir’s previous administration had repeatedly imprisoned on politically motivated sodomy charges.

The election results inspired optimism for human rights reform in Malaysia. But much of the optimism was short-lived. Human rights advances failed to live up to expectations.¹ With respect to the rights of LGBT people, the ruling Pakatan Harapan coalition succumbed to pressure from the Islamist-led opposition. Initially tarred by the opposition as overly “pro-LGBT,”² Pakatan Harapan retreated, its leaders claiming Malaysia could not accept equal rights for LGBT people.³

In February 2020, a split within the Parti Pribumi Bersatu Malaysia (Bersatu) between Prime Minister Mahathir and his deputy, Muhyiddin Yassin resulted in a move by Yassin to align his faction with UMNO and other members of the Barisan Nasional coalition, and Parti-Islam Se-Malaysia (PAS), an Islamic political party. As a result, the ruling Pakatan Harapan coalition was toppled in a controversial decision by the sultan who refused to countenance Mahathir’s claims that he still commanded and could show a majority in parliament. Bersatu leader Muhyiddin Yassin, backed by UMNO and PAS, prevailed and

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became prime minister as the head of a new coalition government that was broadly unfriendly to LGBT rights.4

At the heart of Malaysia’s political wrangling are battles over the country’s ethnic and religious identity. The constitution defines Islam as the federation’s official religion, while other religions “may be practiced in peace and harmony.”5 Secular criminal law coexists with state Sharia criminal codes, with the use of Sharia limited to specific circumstances outlined in the constitution. Malay Muslims make up approximately 60 percent of Malaysia’s population, according to official statistics.6

Malay nationalist politicians have increasingly relied on a narrative that Malay Muslims are embattled and must reclaim their rightful place of uncontested political dominance. At the same time, those who are seen to challenge narrowly defined precepts of Islam are regarded as threats who must be defeated or silenced, if they cannot be brought back into the fold.

Criminalization of Sexual Orientation and Gender Identity in Malaysia

Malaysia’s federal penal code, a relic of British colonialism,7 punishes any form of anal or oral sex with up to 20 years in prison.8 In principle, this applies to partners of any sex. A 2017 penal code amendment added mandatory whipping to the prescribed sentence.9

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8 Under section 377A, “Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.” Laws of Malaysia, Act 374, Penal Code, as of October 1, 2018, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS51339%202015.pdf (accessed July 29, 2022), art. 377A.
9 Laws of Malaysia, Act 374, Penal Code, as of October 1, 2018, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS51339%202015.pdf (accessed July 29, 2022), art. 377B. “Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.”
best-known instances of the use of Penal Code section 377 were a series of politically motivated prosecutions of Anwar Ibrahim in the 1990s and 2000s as part of an effort by then-Prime Minister Mahathir to eliminate a key political rival.10

Each state, and the federal territories (composed of Kuala Lumpur and Putrajaya), also has its own Syariah Criminal Offenses Enactment that is enforceable against Muslims. The stated purpose of Sharia enactments is to regulate “offences against precepts of the religion of Islam.”11 In most states, Sharia legislation criminalizes both consensual same-sex conduct between women as well as men, and gender nonconformity. The details of Malaysia’s state laws are found in Annex I.12

Cultural Pressures to Change Sexual Orientation, Gender Identity in Malaysia

Section II of this report discusses Malaysians’ experiences with practices intended to alter a person’s sexual orientation or gender identity (SOGI), often referred to as “conversion therapy.” Given that these are scientifically discredited and harmful practices, the term “therapy” is a misnomer. A more accurate and comprehensive term is “conversion practices,” or sustained and deliberate efforts to change a person’s sexual orientation or gender identity.

Conversion practices in Malaysia are driven by the combination of a repressive legal regime, a socially conservative environment, a restrictive interpretation of Islamic precepts, and political expediency that leads to government officials making inflammatory anti-LGBT statements, combined with assertions that LGBT people can and should change their sexual orientation or gender identity.13

10 The Women’s Candidacy Initiative reported around 2009 that since 1938, the “unnatural offences” law had only resulted in seven prosecutions, four of them of Anwar Ibrahim. “Malaysia: End Political Case Against Anwar,” Human Rights Watch news release, October 23, 2014, https://www.hrw.org/news/2014/10/23/malaysia-end-political-case-against-anwar#.
12 See Annex I.
Pressure to renounce being LGBT in Malaysia cuts across religious groups. Religiously inflected pressure begins at an early age and means that LGBT people are under constant pressure to “change.” Raymond Tai of the nongovernmental organization PT Foundation explained:

School textbooks list homosexuality as bad behavior, and messages from religious officials reinforce that. You grow up learning what you are is a sin. You get out of school feeling that what you are is an abomination.

Bern Chua, an academic at a public university who conducted research among Malay Muslim men, elaborated on the anti-LGBT religious teachings that many of his interviewees had received from a young age:

Basically, they told me when they were young, when they attend any religious classes, one of the lessons will cover sodomy, the story of the prophet Lot. So that becomes part of the early socialization of homosexuality being obscene. And it's being reinforced by the mainstream government discourses.

At both public and private secondary schools, transgender people reported being called in for “counseling” sessions, where school counselors subjected them to efforts to change their gender identity or expression.

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14 According to the most recent census in 2010, approximately 61.3% of the population of Malaysia practiced Islam, 19.8% practiced Buddhism, 9.2% practiced Christianity, 6.3% practiced Hinduism, and 1.3% practiced Confucianism or Taoism. US Department of State, “2020 Report on International Religious Freedom: Malaysia,” May 12, 2021, https://www.state.gov/reports/2020-report-on-international-religious-freedom/malaysia (accessed July 26, 2022). Human Rights Watch and Justice for Sisters interviewed people who experienced conversion practices in both Muslim and Christian religious contexts. Although we did not conduct any firsthand interviews with people who experienced conversion practices in Buddhist religious settings, the organization People Like Us Hang Out (PLUHO) documented at least one case involving a gay man who was raised Buddhist and said that his parents took him to Thai Buddhist temples to attempt to make him straight. He said they also took him to a Christian church, although they were not Christian. Human Rights Watch and Justice for Sisters interview with Gavin Chow, Kuala Lumpur, April 6, 2018.


16 Human Rights Watch and Justice for Sisters interview with Bern Chua, George Town, April 2, 2018.

17 Justice for Sisters interviews with Eva, Kelantan, 2018, with Sherry, location withheld, 2018; Human Rights Watch and Justice for Sisters interview with Hezreen Sheikh Daud, George Town, April 5, 2018.
Some Christian churches also advance anti-LGBT narratives and conduct conversion practices. Darren Tan, a 28-year-old gay man from Johor, said that at age 15 he underwent repeated exorcisms in two churches over a period of months. He said:

I was shamed. I was told that I will turn into a pedophile [and] grow up to have sex with young boys. And that my spirit was weak. It was very traumatic. I was pinned down and people were praying over me, cupping the side of my head, [they] shouted at me to get the demons of possession out of me. I was shaking and thought it was working.\(^{18}\)

After a lack of “progress,” Darren’s mother tried another church, where the exorcisms continued. At this point, Darren said, “I thought to myself if God let me die, I will happily take it.” He began to experience suicidal ideation:

The ceiling of the school hall. I would be there. It had a railing. I have fantasized of committing suicide from there. The thought of Hell overpowered me. There were times standing on the roadside, and I daydreamed about running into a car.\(^{19}\)

Linda, a trans woman in her early twenties, described how her parents took her to a seminar offered by ex-trans pastor Edmund Smith in May 2016:

A lot of queer kids were there, dragged there by their parents. The parents were clinging to every word he said, and the kids were just crying.... He was saying he [became] a trans woman because his mom said feminine things into the womb. He plays into where people are not educated, plays on their fears and experiences. I was heartbroken. Everyone was crying and upset about being queer.

She described his sermon:

\(^{19}\) Ibid.
[He said] I was trans because I hated my penis. He presented gender as an influence from the outside, he conflated sexuality and gender identity, he kept emphasizing his marriage to a woman, he kept portraying LGBT as a lifestyle, how he's sick and tired of the “lifestyle,” emphasizing queer people get HIV, gays have sex in parks — and people were just eating it up. At the end, he brought up a program for healing us. He also emphasized a connection between queerness and sexual abuse and made lots of biblical references. He said, “When God comes in, your queerness goes out.”

There was a lot of guilt, a lot of shame. I was terrified.²⁰

Some Christian churches—like state Islamic institutions, discussed in Section II—deny they are forcing anyone to undergo conversion practices. For instance, one Chinese Christian church states on its website that it seeks to “assist individuals who desire restoration of their sexual identity to God’s original intention.”²¹ The church denies that it conducts “conversion therapy,” emphasizing that individuals are not coerced into participating and maintaining that it helps those who “choose” to give up their “gay lifestyle.”²²

These apparently voluntary practices reinforce the idea that sexual and gender diversity are inherently wrong, a message that is reinforced by state officials. “[Through] mukhayyam programs or giving airtime in national broadcasts to homophobes and talking about returning to the right path, [the government] is already showing who’s accepted and who’s not accepted in this country,” said Amira, a queer woman.²³

Some families also begin pushing conversion practices on LGBT or gender nonconforming children early on. The PT Foundation’s Raymond Tai said, “We get calls from parents who want to get psychiatric help to straighten their gay child.”²⁴

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²³ Human Rights Watch and Justice for Sisters interview with Amira (pseudonym), January 2019, date and location withheld.
Anti-LGBT and pro-“change” discourse continues to permeate the environment of LGBT young adults. “We are seen as ‘baa’—someone who brings bad luck, causes disasters,” said Azim, a 27-year-old gay Muslim man who considered suicide at age 25 due to pressure related to anti-LGBT rhetoric.\textsuperscript{25} He said:

I’ve heard a lot of messages that LGBT should change... People say, “We don’t want LGBT to become a disaster in Malaysia.” [At university] there was pressure from friends to change: “Do you want to change? Until when do you want to be gay? The Prophet disowns the followers [who are LGBT].” ... This harassment continued until I finished my studies.... I wanted to kill myself. I went to the Klang River and wanted to jump. My boyfriend came in his car and drove me back home.\textsuperscript{26}

Some figures who previously identified as LGBT but now identify as reformed or converted heterosexual and cisgender people have developed popular followings in Malaysia, including among both Muslims and Christians. One interviewee described how an American evangelical came to speak at her church in Kuala Lumpur, bringing with him a Malaysian Chinese ex-lesbian who claimed to have been cured of her attraction to women by the American Evangelical’s charismatic church.\textsuperscript{27}

The failure of Malaysian authorities to provide accurate information about sexual orientation and gender identity, combined with the visibility of ex-trans people in Malaysia, affects trans people who have no desire to change or suppress their gender identity. Hezreen Sheikh Daud, a trans activist in Penang, said:

This is one of the problems we are facing. A few of the transgenders transform, become “cisgenders.” A few of the transgenders say, “Then we can change!” Maybe they change for their parents, but it’s not change inside. My parents say, “They can change, why you don’t change?”\textsuperscript{28}

\textsuperscript{25} Human Rights Watch interview with Azim (pseudonym), 27, Kuala Lumpur, Malaysia, March 30, 2018.
\textsuperscript{26} Ibid.
\textsuperscript{27} Human Rights Watch and Justice for Sisters interview with Sivananthi Tharenthiran, Kuala Lumpur, April 6, 2018.
\textsuperscript{28} Human Rights Watch and Justice for Sisters interview with Hezreen Sheikh Daud, George Town, April 5, 2018.
Mainstream media reinforces anti-LGBT prejudices and change narratives. Some television channels feature therapists who claim LGBT people can change their sexual orientation or gender identity.\textsuperscript{29} In an environment where these claims are not countered by authoritative sources sharing accurate information about sexual orientation, gender identity, and human rights, people in Malaysia can more easily be misled. Nadia, a transwoman in Sungai Petani, said social media postings about “changing” contributed to pressure from friends and family members:

These Facebook postings and news have also led to former schoolmates to say, “Oh, you should change, or return to how you were in school, and change slowly, bit by bit.” But they don’t understand. When I was in school, I was like that because of the laws and regulations. You weren’t allowed to be yourself. You had to have short hair, wear the uniform. If I had the opportunity, I would have transitioned in school.

The stuff in the media makes people confused. And then it also increases transphobia. And the parents end up putting pressure on people to change, because they themselves are getting confused. I felt pressure from my parents to change, especially when they see [ex-trans] people in the media.\textsuperscript{30}

Anti-LGBT Government Positions

If the government just stops talking about LGBT people, that would be a huge thing already. They’re talking to a nation that already has its own phobia, and they reinforce their phobias. If they would just stop talking about us, it would give us breathing room.

— Amira, a queer woman, January 2019

In March 2022, Google removed a smartphone app that the Malaysian government had produced in 2016 claiming it could help LGBT people “abandon homosexual behavior” and

\textsuperscript{29} Human Rights Watch interview with Raymond Tai, Kuala Lumpur, March 30, 2018.

\textsuperscript{30} Human Rights Watch and Justice for Sisters interview with Nadia (pseudonym), Sungai Petani, April 5, 2018.
“return to nature.”\textsuperscript{31} The antecedents to this app and its removal run deep through Malaysia’s contemporary political history. Over the past two decades, successive Malaysian governments have all propagated anti-LGBT sentiment and promoted conversion practices, through their policies and the remarks of high-level officials.

Under the first administration of Mahathir Mohamad, as UMNO leader and prime minister from 1981 to 2003, state-sanctioned animosity towards LGBT people became a fact of life. In 1998, after the first arrest of Anwar Ibrahim on politically motivated sodomy charges, UMNO politicians formed “The People’s Voluntary Anti-Homosexual Movement,” or Pasrah, which pledged to “shield” the Malaysian people from the “disgusting practice” of homosexuality.\textsuperscript{32}

Under Mahathir’s successor, Abdullah Ahmad Badawi (2003-2009), LGBT issues received little attention,\textsuperscript{33} but the administration of Najib Razak (2009 - 2018) regularly scapegoated LGBT people.\textsuperscript{34} Najib in 2012 described “LGBTs” as a foreign scourge that Malaysians must “fight.”\textsuperscript{35} His deputy prime minister, Zahid Hamidi, said in 2017, “We cannot import Western culture, especially LGBT, into our country.... I believe there are other positive values that can be brought here.”\textsuperscript{36} Government rhetoric focused on the need to “eliminate” LGBT culture.\textsuperscript{37}

When Mahathir returned to the premiership in May 2018 on a platform of fighting corruption and improving respect for human rights, and with Anwar Ibrahim now in his

\textsuperscript{35} Ibid.
party coalition, some LGBT people hoped for change. Instead, officials took no steps to address discriminatory laws and policies, and patterns of anti-LGBT rhetoric and incidents continued. In June 2019, Mahathir described “LGBT” as a Western import that should be rejected.\footnote{38}

In an environment where adherence to conservative morality, couched in religious terms, has political utility, political parties vie with each other to claim moral superiority. An anti-LGBT stance becomes a political signal. Hence the ethnically and religiously diverse Pakatan Harapan coalition appeared to take an anti-LGBT stance as a political signal to prove its credentials, particularly among those who voted against them in 2018.\footnote{39} “It’s part of the battle for the Malay heartland,” said Hazri H., a gay activist in Kuala Lumpur. “Since UMNO’s gone, [political parties] have to out-Islam [each other], fueling the feeling of hate against the LGBT community.”\footnote{40}

Within the Pakatan Harapan coalition itself, the Amanah Negara party, an offshoot of PAS that offered a multi-ethnic and religiously diverse alternative to PAS’s Muslim-exclusive membership, supported raids on LGBT people and venues, and the “eradication” of “LGBT.”\footnote{41}

When two women were caned in opposition-run Terengganu state in September 2018 for allegedly attempting same-sex relations, the government condemned the sentence of caning but presented a united front in opposition to greater acceptance and recognition of


\footnote{39} Jha, “Malaysia’s LGBT community under siege as government ignores abuse,” Nikkei Asia.

\footnote{40} Human Rights Watch and Justice for Sisters interview with Hazri H., Kuala Lumpur, January 3, 2019.

LGBT people.\textsuperscript{42} Mahathir described “LGBT” as among “things we cannot accept.”\textsuperscript{43} Anwar called for mobilization against “LGBT tendencies and their ideas.”\textsuperscript{44} Deputy Home Minister Mohd Azis Jamman condemned LGBT “culture” and advocated censorship of content that “promotes such culture.”\textsuperscript{45}

Mahathir’s religious affairs minister, Mujahid Yusof Rawa, promoted the scientifically discredited idea that LGBT people should “change” their sexual orientation or gender identity and return to the “right path.”\textsuperscript{46} In August 2018, Mujahid ordered the removal of portraits of LGBT activists Nisha Ayub and Pang Khee Teik from a photo exhibit on patriotism, critiquing them for “the promotion of LGBT culture in Malaysia.”\textsuperscript{47}

In March 2019, Mujahid called for the arrest of women’s march organizers over public demonstrations of support for LGBT rights at the march. He stated: “[The] government is very firm that LGBT practices will not be accepted at all in this country. How is it possible that we recognize an act that is wrong in law?”\textsuperscript{48}

The religious affairs minister in Muhyiddin’s government, Zulkifli Mohamad, called for the arrest and “rehabilitation” of transgender people in a July 2020 statement that Malaysian and international human rights groups condemned as “legitimizing harassment.

\textsuperscript{48}Ida Lim, “Mujahid shocked Women’s Day march was used to promote LGBT,” Malay Mail, March 9, 2019, https://www.malaymail.com/news/malaysia/2019/03/09/mujahid-shocked-womens-day-march-was-used-to-promote-lgbt/1730905 (accessed April 4, 2021).
discrimination and violence against transgender people.\textsuperscript{49} Muhyiddin’s religious affairs deputy minister, Ahmad Marzuk Shaary, announced in January 2021 that the government had established an anti-LGBT task force, and that one of its aims was to amend article 355 of the Syariah Courts (Criminal Jurisdiction) Act to allow for stronger penalties for gender nonconformity.\textsuperscript{50}

Prime Minister Ismail Sabri Yaakob has continued the government’s harmful rhetoric. In September 2021 he boasted that as of June that year, 1,769 LGBT Malaysians had attended JAKIM “rehabilitation” camps, or mukhanyam.\textsuperscript{51} The prime minister has also signaled support for a bill that would strengthen Sharia courts, potentially portending increased negative legal outcomes for LGBT people.\textsuperscript{52}


\textsuperscript{51} On March 10, 2022, JAKIM officials told parliament: “Thank you Mr. Speaker, thank you Honorable Kemaman. The government through JAKIM and several Islamic religious agencies under the Federal level and also in collaboration with the state government, JAIN (state Islamic depts) which has taken several initiatives to address and curb this culture. Among them is that we implement the Mukhanyam Program and worship camp for the participants who, as of today, 1,769 people have participated in this Mukhanyam Program or worship camp since we introduced it in 2011 until March 2022.” On file with Human Rights Watch and Justice for Sisters.

II. State Rhetoric on Changing Sexual Orientation and Gender Identity in Malaysia

Through successive governments, the Malaysian state’s position has been unambiguous: LGBT people should change their gender identity or sexual orientation or should be prepared to face the consequences of social ostracization, discrimination, humiliation, and violence.

State-sponsored conversion efforts primarily target Muslims. The state’s active promotion of conversion efforts, however, effectively gives permission to Christian churches and mental health professionals to pursue similar efforts.

Government officials have claimed at times to adopt a “compassionate” approach toward LGBT people, seeking to convince them of the benefits of adopting a cisgender, heterosexual identity. But when LGBT people are not compliant with the social pressure to only express heterosexual and cisgender identities, the threat of punishment looms.

Malaysian taxpayers fund the government’s sexual orientation and gender identity change efforts. These include the three-day mukhayam retreats, public events, and initiatives such as an e-book published by JAKIM in 2018 on “rehabilitation” of LGBT people and a JAKIM video in 2017 claiming sexual orientation can be changed. A government think

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tank, the Institute of Islamic Strategic Research Malaysia (Iksim), was established in 2012 to combat sexual and gender diversity along with blasphemy, and it held numerous public events before Mahathir’s government shut it down in 2018 for mismanagement of state funds. In addition, the Malaysian government has established at least 12 ex-LGBT organizations, pumping resources, including economic empowerment programming, towards those who renounce their gender identity or sexual orientation.

Manis Chen, a long-time transgender rights activist, said state-sponsored conversion practices by the religious authorities were having an effect:

> When the religious authorities keep drilling into your head, “You’re a sin, you’re a sinner,” you start to believe it. The government pumps a lot of money to fight LGBT.... They impose their beliefs. They keep drilling into our head that we are wrong. So those who are just discovering themselves, who are not empowered yet, will be swayed.

### Mukhayyam

Since 2011, JAKIM and state Islamic departments have organized a series of retreats for LGBT people, often for transgender women, with the stated objective of bringing them closer to Islam. The retreats, known as mukhayyam, are premised on the presumption that sexual and gender minorities are lacking in their understanding of Islam compared to the general population. In 2015, the deputy minister in charge of Islamic affairs called for JAKIM’s budget to be increased, in part to fight the “extremist ideology” of LGBT people.

More insidious is the underlying purpose of mukhayyam: using state resources to advance a vision of “nature” that is incompatible with sexual and gender diversity, manipulating

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LGBT people into believing they are deviant. The Malaysian government has also sought to justify mukhayyam as an HIV prevention strategy. Malaysia’s National Strategic Plan to End HIV/AIDS, 2016-2030, describes one of the objectives of mukhayyam as encouraging Muslim MSM to “abandon the practice of unnatural sex.”

JAKIM practices double-speak with regard to mukhayyam, at times reassuring participants that it has no intention to change them, and at the same time publicly claiming success in its mission to “convert” LGBT people.

Emma, a 35-year-old trans woman in Kedah, said that when she attended mukhayyam in 2012, a JAKIM official assured her the goal was not to change her gender identity. Then the local paper published a picture of Emma and other transgender women with the headline, “Trans Women Return to the Right Path.” In 2018, JAKIM’s family, social, and community development deputy director Mohd Izwan Md Yusof boasted that 1,450 LGBT people had “recovered” through mukhayyam. By June 2021, the government reported that 1,733 LGBT people had attended these programs.

Participation in mukhayyam is voluntary, unlike the Islamic “counseling” sessions that trans women are frequently sentenced to by Sharia courts for non-normative gender expression, discussed below. People attend for a range of reasons. Some value the opportunity to learn more about the Quran and Islam. In other cases, as trans activist Sofia put it, “People’s attitude is, ‘We can’t afford to go anywhere, so if they want to take us for a retreat, okay.’”

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64 Human Rights Watch and Justice for Sisters interview with Emma, Alor Setah, April 4, 2018.
66 Ang, “M’sia PM Ismail Sabri: Over 1,730 M’sian LGBTs have been sent to ‘religious’ rehab camp,” Mothership.
Multiple interviewees described how state Islamic authorities incentivize participation in the mukhayyam program by paying not only for lodging and travel but also by subsidizing rent and funding small businesses for selected participants.\textsuperscript{68} Azim, a gay man who attended a mukhayyam program in December 2017 facilitated by the Kedah Islamic department, said “I benefited from mukhayyam, but not on changing myself. Number one was economic – business.” He started several small businesses with funding from the state Islamic department.\textsuperscript{69}

Once they arrive at mukhayyam, facilitators provide participants with Islamic instruction and subject them to numerous techniques aimed at inducing sexual orientation or gender identity change. Azim said facilitators stoked fears that LGBT people would go to hell if they did not repent:

To make us change, they remind us about death. “Oh, when you’re dead, what happens?” There was an activity, a visualization or reflection. There’s a white piece of cloth, kapan, at funerals when Muslim people die. They covered everyone with this cloth. They created a funeral-like atmosphere with incense. They asked us to think about our childhood and growing up, and also to think about death. They also had background sounds that were scary and horrible. It made people start to cry.\textsuperscript{70}

Azim said he attempted to change after attending the program, dating a woman for seven months before realizing he was not romantically interested in women.\textsuperscript{71}

Amy, a trans woman who attended mukhayyam in Kedah, echoed Azim’s description of the program:

They want to brainwash us, smoothly. They bring up funeral rites. “What are you going to do when you die? Think about your family.”...It’s not just

\textsuperscript{68} Human Rights Watch interviews with Mitch Yusmar, executive director, SEED Foundation, and with Azim (pseudonym), Kuala Lumpur, March 30, 2018.
\textsuperscript{69} Human Rights Watch and Justice for Sisters interview with Azim (pseudonym), Kuala Lumpur, March 30, 2018.
\textsuperscript{70} Ibid.
\textsuperscript{71} Ibid.
funeral rites but also afterlife. They’ll say things like, “When you die, you’ll be questioned what you did in life.”

Sofia, a trans activist, attended a session aimed at MSM in Johor in 2015 because of her work with an HIV prevention organization. She said: “They come and discuss with you, ‘When are you going to go back to your nature?’... They are indirectly lecturing you not to be MSM.”

Sofia recalled that the organizers “used scare tactics, showing videos of a natural disaster, suggesting that if you’re against God, this will happen.... [T]hey said fitrah is always binary and that same-sex relationships are bad, and they relate it to the Prophet Lot.”

Nadia, who attended mukhayyam twice in 2015 and 2016, said she found it “coercive.” One session was largely focused on HIV, while another was “boot camp style—hiking, playing futsal [indoor soccer], things that are associated with boys and masculinity.” She said:

They tell you think about your parents, think about death, to think about your sin, and “why you choose to be something like this.” A lot of it is to make people think ... maybe they should just stick to their assigned roles, their sex at birth.

Nadia described one film shown to attendees depicting the story of a teenage boy who, they are told, had not prayed regularly. The film showed his body being buried and then after two hours, dug up out of the grave. “They said, ‘Look at the body, he has bruises, his nose is bleeding, he looks like he’s been beaten up,’” Nadia said, explaining that the objective of the film is to illustrate how even in death, one’s sins during life can manifest as physical wounds and suffering. “When I watched the video, I was afraid,” Nadia said. “It gives people the sense they have to think twice about who they are.”

74 Ibid.
75 Human Rights Watch and Justice for Sisters interview with Nadia (pseudonym), Sungai Petani, April 5, 2018.
76 Ibid.
77 Ibid.
Some mukhayyam attendees said that they enjoyed the retreats and experienced conversion pressure as subtle or nonexistent. Marcella, a trans woman from Klang, said:

We had talks on religious knowledge, and they tried to get to know us. They didn’t ask us to change but wanted us to get to know Islam. I was happy with the program. I learned a lot. They didn’t force us ... they want us to change by ourselves.  

But Farah, who attended mukhayyam several times, saw the change narrative as fundamental to the program:

They talk about the beauty of nature, and they ask us to be grateful, and at the end of the program they use their psychology and it’s very insidious, to say that “So this is your nature, so you have to go back to nature.”

Farah also criticized the mukhayyam approach to HIV prevention. At a retreat in the Cameron Highlands in 2018, she said,

They used a slideshow without blurring the face of the person living with HIV and I was so shocked. We work in the HIV field, and I was speechless. [My colleague] and I stood up and said, “What is this? This is about ethics, why did you not blur the face?” The session was on repentance of the community. This is to scare us—if you’re a mak nyah [transgender woman], you’ll get HIV, if you’re a mak nyah you’ll die of HIV.

The Malaysian AIDS Council (MAC), Malaysia’s predominant umbrella organization on HIV and AIDS prevention, education, and treatment, initially partnered with JAKIM in organizing mukhayyam, seeing it as an opportunity to conduct HIV prevention work. But evidence suggests that the program does little to educate or prevent HIV. According to one activist, “[t]hey approached [our group] and we rejected it. They had already prepared the module

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78 Human Rights Watch and Justice for Sisters interview with Marcella, Klang, January 5, 2019.
79 Human Rights Watch and Justice for Sisters interview with Farah (pseudonym), Kelantan, January 6, 2019.
80 Ibid.
without consulting us. The way we saw the module, praying and everything, it had nothing to do with HIV.”81

MAC eventually dissolved the partnership. A trans woman and employee at MAC described the initial partnership and its breakdown:

The JAKIM manual on HIV and Islam has information about not discriminating. This was the origin of collaboration between MAC and JAKIM. With mukhayyam, initially JAKIM said there would be no conversion, just spiritual education.

We later got [negative] feedback from communities. The MAC approach is a health approach, not corrective. The community gave feedback that mukhayyam was a corrective approach. There was another manual, ‘Islam and Transgender,’ in Bahasa, which says that a trans woman is a ‘man’ who changes to female experience. We were in ‘unnatural’ categories.82

MAC provided a formal statement on the dissolution of the partnership:

In its later iterations, the programme deviated from its original intent. It was when rehabilitative and reparative components were introduced that MAC dissociated itself from the Mukhayyam programme. MAC remains firm and steadfast in its stand that LGBT people do not require rehabilitation to correct their sexual orientation and/or gender identity.

Guided by scientific evidence and principles of human rights, MAC denounces any measures to intervene health behaviour that lacks scientific credence and violates an individual’s rights to health, dignity, safety and protection.83

Situ, a trans activist, said that mukhayyam programs are “still covering HIV, but they call local healthcare providers, not MAC.”84

Other Government Services and Programs

Because so many government services and programs are delivered through JAKIM or through state Islamic departments, discrimination and pressure to “change” can be omnipresent when Muslim LGBT people attempt to access services.

A trans activist in the east coast described how JAKIM partnered with private sector actors to offer trans people job training and capital to start small businesses, in part based on the premise that trans people are engaged in sex work and should be provided alternative forms of employment.85 The financial rewards are a subtle incentive to be cisgender, whereby trans people are led to understand that if they present as cisgender they will continue to get these incentives and support. The support, while sometimes welcome, comes at a cost. The activist said:

They have gathered all the different government agencies to help us with employment opportunities and capital to start a business, like a salon business. So, when you come for the interview, the employers say, ‘Can you change?’ So that is the new challenge for us. The community has to make some sacrifices. If you want to access these benefits and these opportunities, you could just change your appearance and present in a more masculine way for the job training and then change back, because we don’t have a choice, to access these benefits...

That’s the thing with JAKIM, there are all these tentacles to attract people to join the program. Because if it’s just JAKIM alone, we are a little more suspicious because it’s solely toward religion, but when they bring these other agencies it’s more appealing.86

A former resident at a shelter for transgender women and women with disabilities, run by an ex-trans Muslim person and funded by the Selangor Islamic Religious Council (Majlis Agama Islam Selangor, or MAIS) recalled how she was required to use a male name and pronouns at the shelter and to dress in male attire when the ustaz (religious teacher) from

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MAIS was present, which she believed was an action meant to ensure continued funding by demonstrating that the shelter was succeeding in gender identity change efforts.\textsuperscript{87}

**Mental Health and Counseling Services**

Mental healthcare providers are obligated to abide by standards of care based on the best interests of their patient and states should regulate their compliance. For LGBT patients, support for mental health means providing care that affirms their identity. The American Psychiatric Association (APA), which sets global standards for mental health diagnostics in its Diagnostic and Statistical Manual (DSM), removed the diagnosis for homosexuality from the DSM in 1973.\textsuperscript{88}

The World Health Organization (WHO) removed homosexuality from its International Classification of Diseases (ICD) in 1990.\textsuperscript{89} Then in 2019, WHO published its new International Classification of Diseases (ICD-11), which removed “transsexualism” and “gender identity disorder” as “mental disorders” and introduced a new chapter on sexual health.\textsuperscript{90}

International health bodies and a growing number of national mental health professional associations\textsuperscript{91} and health ministries around the world have developed non-discrimination policies with regard to treatment for LGBT people. These include national mental health organizations in Turkey, Lebanon, Hong Kong, Thailand, India, South Africa, Brazil, the

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\textsuperscript{87} Human Rights Watch interview with “Natasha” (pseudonym), Kuala Lumpur, Malaysia, March 30, 2018; Human Rights Watch interview with “Mamu” (pseudonym), Kuala Lumpur, Malaysia, March 30, 2018.


Philippines, and Argentina. The World Psychiatric Association (WPA) stated in 2016 with regard to conversion practices that, “The provision of any intervention purporting to ‘treat’ something that is not a disorder is wholly unethical.” The WPA stated that:

The WPA holds the view that lesbian, gay, bisexual and transgender individuals are and should be regarded as valued members of society, who have exactly the same rights and responsibilities as all other citizens. This includes equal access to health care. ...

The WPA acknowledges the social stigma and consequent discrimination of people with same-sex sexual orientation and transgender gender identity. It recognizes that the difficulties they face are a significant cause of their distress and calls for the provision of adequate mental health support.

The WPA supports the need to de-criminalize same-sex sexual orientation and behaviour and transgender gender identity, and to recognize LGBT rights to include human, civil and political rights.

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94 Ibid.
Some governments have sought to prohibit mental health practitioners from carrying out so-called conversion therapy or to closely regulate such practices. Others, while not specifically addressing conversion practices, prohibit mental health “treatments” that are not in accordance with diagnostic standards.

But in Malaysia, affirming mental health services are difficult to come by. In some cases, therapists subject people to conversion practices, seeking to change their gender identity or sexual orientation. And Malaysia has taken no steps to prohibit or dissuade health care professionals from engaging in sexual orientation and gender identity change efforts. On the contrary, government rhetoric encourages families and LGBT individuals themselves to seek out such services, and signals to providers that such practices have the official sanction of the government, to the detriment of LGBT patients.

Vizla Kumaresan, one of the few LGBT-affirming therapists in Malaysia known to activists, said parents sometimes approach her with the assumption that she can “fix” something that is wrong with their child. Other clients come to her after suffering harmful conversion practices from another mental health professional.

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96 Under India’s Mental Healthcare Act of 2017, section 3(1) and 3(2)(b) mental illness should be determined “in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation)” and shall not be determined on the basis of “non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person’s community.” The government may cancel the registration of a mental health establishment if it does not conform to the law (section 67(3)). The law also includes criminal penalties of up to six months in prison and a fine for any practitioner contravening its provisions (section 108). In China, article 26 of the Mental Health Law requires that the diagnosis and treatment of mental disorders respect individuals’ basic rights and human dignity. The law also requires that the diagnosis and treatment of mental disorders comply with diagnostic standards and standards on the categorizations of mental disorders. Under such standards, conversion practices in therapeutic settings should be prohibited. Chen, Hanhui & Phillips, Michael & Cheng, Hui & Chen, Qi & Chen, X & Fralick, D & Zhang, Y & Liu, M & Huang, J & Bueber, M. (2012). Mental Health Law of the People's Republic of China (English translation with annotations), Shanghai Archives of Psychiatry, vol. 24, pp. 305-21. 10.3969/j.issn.1002-0829.2012.06.001. See also Human Rights Watch, “Have You Considered Your Parents’ Happiness?” Conversion Therapy Against LGBT People in China (New York: Human Rights Watch, 2017), https://www.hrw.org/report/2017/11/15/have-you-considered-your-parents-happiness/conversion-therapy-against-lgbt-people.


The harmful impacts of conversion practices are well-documented. Linda, a 23-year-old trans woman, said that at age 21 her family made her see a therapist from the National Association of Christian Counsellors to attempt to change her gender identity. Linda agreed to see the therapist because she feared her parents, who said she was “crazy,” would otherwise try to institutionalize her. After three or four sessions, Linda brought up her father’s physical violence toward her, and her father ended the therapy. During the time in which her parents sought to convert her, Linda said, “I was depressed, anxious, wasn’t sleeping... I got so depressed and tried to kill myself. I didn’t eat for 2 weeks and lost 10 or 15 kilograms. I wanted to die.”

Malaysia’s national human rights commission, SUHAKAM, conducted interviews with transgender people in Kuala Lumpur and Selangor in 2016 and documented forms of discrimination they experienced, including conversion practices. In one case:

A trans woman shared that she was advised by a mental health professional to experience sex with a sex worker to deal with her gender identity. The mental health professional asked her to reclaim her masculinity and told her that she had an identity crisis due to her mixed-race lineage. She further explained that the mental health professional had a stereotype against trans woman and expected her to confirm to the stereotype. It took her eight years to find more supportive services for her needs.

Some LGBT people who could benefit from affirming mental health services forego seeking care because they believe they will be subjected to discrimination. Azim, a gay man, experienced suicidal ideation at age 25 after being bullied in university. He said: “I didn’t

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try to go to a counselor. I didn’t believe that a counselor could accept me if I’m honest with them that I’m gay.”

Silencing of LGBT Rights Narratives

The Malaysian government has gone beyond promoting the idea that LGBT people can and should change their gender identity or sexual orientation. It also shuts down counternarratives that affirm LGBT people’s existence and equality, violating their rights to freedom of association, assembly, and expression.

Attacks on Freedom of Association and Assembly

The governments of Muhyiddin, Najib, and Mahathir all shut down events aimed at affirming LGBT rights. In 2017, when the LGBT rights organization Pelangi held an event at a community space, a conservative media outlet ran an “exposé” on the event.

In response, the Malaysian police, the Minister for Religious Affairs, and the Federal Territories Islamic Department (JAWI) all said they were launching investigations of Pelangi. The organizers, who had held multiple public events in the past without attracting negative attention from the authorities, became nervous and, fearing arrest, adopted a lower profile. Meanwhile, Pelangi also faced challenges in trying to formally register as a nongovernmental organization in late 2016 and early 2017. Both the Register of Societies and the Home Ministry on appeal, rejected its application without explanation.

On March 8, 2019, Malaysian feminists held a march to commemorate International Women’s Day. The protest was not primarily LGBT-focused, but one speaker condemned anti-trans violence. LGBT people and allies, some carrying rainbow flags, were visibly present.

105 Ibid.
The march’s LGBT-inclusiveness immediately attracted criticism. Police and politicians characterized the march as an “illegal LGBT assembly.”107 Islamic Affairs Minister Mujahid said the protesters “abused democratic space to defend something that is wrong by Islam.”108 The UMNO women’s leader also condemned the presence of a visible LGBT contingent, saying it could cause great damage to social institutions.109

Over the next nine days, the police summoned nine people, including speakers and members of the organizing committee, for investigation under the Peaceful Assembly Act and Sedition Act, which has long been used to penalize peaceful political dissent. It criminalizes any conduct with a “seditious tendency,” such as broadly tending to “excite disaffection against” or “bring into hatred or contempt” the government, the judiciary, the king, or the ruler of any state. The Peaceful Assembly Act requires organizers of assemblies to give police notice of any event 10 days in advance, which the Women’s March organizers said they had done.110 The prosecutor’s office eventually dropped the case.111

Nongovernmental institutions may also stifle freedom of association when issues of sexual orientation and gender identity are in the balance. Alan G., a student at a private university, attempted to initiate a queer student group in 2016. He was thwarted by the university administration. “[W]e were sort of told to suppress it,” Alan G. said, on the grounds that “it’s illegal,” although the law bans same-sex conduct, not identities.112 Denied permission to register, the group then attempted to organize LGBT-inclusive activities through other student organizations. The effort eventually sputtered out. Alan G. said:

There’s basically no way to do these things anymore, to organize, because of all the bureaucracy they throw at us…. At its peak, we had 5 committee members and 20 members. We’d have film screenings, a sharing circle. Now we don’t do anything, because it’s hard.

A lot of the advocates I work with face mental health issues directly related to what we’re doing. We were fighting for this, but we were crumbling ourselves. We felt like, what can we do? We felt like we’re so tiny, which is demoralizing.113

Even before the Covid-19 pandemic, restrictions on civil society organizing showed little sign of improvement. As a 2020 report from ARROW, Justice for Sisters, and the Gender Equality Initiative in Malaysia noted, “[s]ince 2018, there have been no positive changes by the government in relation to LGBTIQ persons.”114

Mitch, an activist in Kuala Lumpur, explained: “We are regressing, in many aspects, as conservative strand of Islam becomes dominant in shaping the politics and policies that dictate the lives of the country’s citizens including LGBT persons.” He described how, “Scapegoating transgender persons has become a tactic applied by ultra conservative and nationalist politicians,” and that “The exploitation of societal homo/transphobia has proven a convenient way to divert public attention away from government failure to address pressing social issues and rising inequalities.”115

“The situation has worsened under this administration as the anti-LGBT lobby now has free reign and unrestricted access to government machineries and institutions to expand SOGI change efforts, clamp down of LGBT organizing and amplify hate speech towards LGBT community,” said Numan, an LGBT rights activist.116

113 Ibid.
**Attacks on Freedom of Expression**

The Malaysian government has long sought to shut down pro-LGBT expression, including in cultural production. The Home Affairs Ministry's “Guidelines on Film Censorship” prohibit portraying “homosexual and unnatural sex” and “transgender behavior and lifestyle” in films.\(^{117}\) In 2017, the Film Censorship Board instructed Disney to cut four minutes of gay content from the children’s film *Beauty and the Beast*, arguing that Malaysia does not accept “LGBT ideology.”\(^{118}\) Disney refused, and censors backed down by accepting the film if it carried a PG-13 rating.\(^{119}\) In August 2019, Malaysian authorities successfully censored gay scenes from the Elton John biopic, “Rocketman.”\(^{120}\)

Other art forms are also targeted. In February 2018, authorities canceled a planned concert by Denise Ho, a lesbian singer from Hong Kong who has publicly supported LGBT equality.\(^{121}\) In December 2020, the Home Ministry banned the book “Gay is OK! A Christian Perspective,” with the ministry’s secretary-general denouncing homosexuality as both illegal and immoral.\(^{122}\) The author and publisher filed in March 2021 a legal challenge against the ruling, arguing that the ban is unconstitutional.\(^{123}\) In February 2022, the High Court ruled in favor of the author and publisher and revoked the government’s ban.\(^{124}\)

Calling out government anti-LGBT actions can also carry risks. In July 2020, activist Nicole Fong criticized Religious Affairs Minister Zulkifli’s statement about arresting transgender


\(^{119}\) Ibid.


people to return them to the “right path,” and condemned Malaysia’s promotion of SOGI change efforts, on Twitter. JAKIM filed a police report against her for defamation, stating that her posts were “manipulative, malicious and seen as wanting to hinder and restrict the right to freedom of religion of Muslims in the LGBT community who want to lead a better life in line with the requirements of Islamic law.” The police did not investigate the complaint.

The government has also censored media stories on LGBT issues. A Chinese language newspaper received a warning letter from the Home Ministry accusing the newspaper of “promoting homosexuality” after it profiled a Chinese LGBT activist in 2018.

As discussed below, the Malaysian government has also attempted to censor gender expression, a protected form of expression under international law.

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III. Policing of Sexual Orientation and Gender Identity

Malaysia inherited its federal prohibition on “unnatural offenses” from its British colonizers in 1871. But independent Malaysia took full ownership of institutionalized homophobia and transphobia. Sharia enactments in nearly all Malaysian states, enacted post-independence in 1957, criminalize both male same-sex conduct (liwat, criminalized in all states but Terengganu and Pahang) and female same-sex conduct (musahaqah, criminalized in all states but Pahang) with sentences of up to three years in prison, caning, and fines. Those laws have been successfully challenged in Malaysia’s Federal Court, as discussed below with regard to the 2019 caning in Selangor, but still remain on the books.

Over the past three decades Malaysian authorities have increasingly relied on actual and proposed use of criminal law to police and punish sexual and gender diversity. Such hardening of criminal penalties includes:

- **The addition of a mandatory whipping penalty for consensual same-sex conduct under federal law in 2017.**
- **The passage of state laws criminalizing gender non-conformity.** Between 1985 and 2019 every Malaysian state and federal territory introduced Sharia criminal enactments containing provisions criminalizing “a man posing as a woman” or “a woman posing as a man” (see Annex I). Malaysia thereby became one of the few countries in the world to explicitly criminalize transgender people. Most recently, Negeri Sembilan amended its law in 2019 to add an offense of “a woman posing as a man” and simultaneously increased penalties; it had previously only criminalized “a man posing as a woman.” From 2008 to 2010, seven states issued fatwas (Islamic edicts) against pengkid, which roughly translates as “tomboy” or...

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129 See Annex I.
130 Laws of Malaysia, Online Version of Updated Text of Reprint, Act 574, Penal Code, as of February 1, 2018. Section 377B reads, “Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.” https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F-833274986/MYS61339%202018.pdf (accessed July 30, 2021).
132 However, Negeri Sembilan also added in its amended law that gender nonconformity was only punishable if “for immoral purposes.” ARROW, Justice for Sisters, and the Gender Equity Initiative (GEI) in Malaysia, “Monitoring Report: LGBTIQ* Rights in Malaysia,” p. 17.
“masculine woman.” The fatwa declare that women who have a “masculine appearance or gestures” or a “male sexual instinct” are forbidden in Islam.\textsuperscript{133}

- \textbf{Increases in penalties under Sharia.} Until 1984, under federal regulations put in place to safeguard Malaysia’s essential secular character, Sharia courts could impose maximum sentences of one year in prison and a fine of up to RM 1,000 (US$\textdollar 314).\textsuperscript{134} These regulations were amended in 1984, such that Sharia courts can now impose maximum sentences of three years in prison, fines of up to RM 5,000 (US$\textdollar 1,559), and whipping of up to six strokes.\textsuperscript{135} In January 2021, the Religious Affairs Ministry called for an amendment to the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) and the state Syariah Procedure Enactments that would allow for increased sentences and would add new offenses targeting people who “insult Islam and commit Syariah offences by using network facilities, services and applications,” including through “promotion of LGBT lifestyle” and demonstrations of gender diversity online.\textsuperscript{136}

State religious officials are responsible for most arrests related to gender identity and sexual orientation that Human Rights Watch and Justice for Sisters have documented. A few cases involve the federal police, including when sex workers are subjected to raids.

Sajaf, a trans woman in Kelantan, said police raided her home in 2018 and arrested her along with her housemates after neighbors reported that sex work was taking place in the home. Sajaf said police held her for five days without telling her exactly what she was being charged with. The police’s first question for her during her interrogation was, “How many pondan are there in Kelantan?” (Pondan is a pejorative term that can designate queer men, trans women, and gender nonconforming people assigned male at birth.) Sajaf said:

\footnote{\textsuperscript{133} Such fatwas exist in Johor, Kedah, Kelantan, Malacca, Pahang, Perak, and Sarawak. They have been gazetted in Johor, Kedah, Malacca, and Perak. E-Fatwa, https://efatwa.muftiwp.gov.my/ (accessed May 16, 2022).}


\footnote{\textsuperscript{135} Laws of Malaysia, Act 355, Syariah Courts (Criminal Jurisdiction) Act 1965, section 2.}

The arresting officer told me, “You people when you’re like this, the Prophet does not even acknowledge your existence as a follower.” ... They also asked me about my hormones, “What is this for? Why do you do this? Do you believe in God?”

Police and religious authorities occasionally undertake joint operations, such as the August 2018 raid on BlueBoy Discotheque Pub, a gay bar in Kuala Lumpur. JAWI religious enforcement officials arrested 20 men and sentenced them to Islamic “counseling.” Then-Federal Territories Minister Khalid Samad later released a statement on the motivations behind the raid, saying “Hopefully this initiative can mitigate the LGBT culture from spreading into our society.”

In a November 2019 case, Immigration Police arrested two Vietnamese tourists for gay sex at a hotel and charged them with “immoral activities” in violation of the Immigration Rules of 1963.

Other authorities, including the Department of Welfare, can also pose a threat to LGBT people in Malaysia. Mikaela, a 43-year-old lesbian, lives with her female partner and has custody of two children from a previous abusive relationship with a man. In 2017, a Department of Social Welfare (Jabatan Kebajikan Malaysia, JKM) officer showed up at her Kuala Lumpur apartment, claiming to be investigating a child neglect complaint. According to Mikaela,

I cut her off and said, “What do you mean I neglect my kids? These kids are at school right now, they go to music class every week, I send them to

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137 Human Rights Watch and Justice for Sisters interview with Sajaf (pseudonym), Kota Bharu, January 6, 2019.
Friday prayer every Friday and wait outside the mosque for them.” She said “Oh, no, there is another report saying there is deviant behavior in the house.”

Mikaela warded off the officer, later informing the welfare department that she had just finished a bitter custody battle and was wary of allowing strangers into her home. Mikaela, her partner, and her children then vacated their home for six months. When they returned, Mikaela packed away the family photos that had previously adorned their walls. She set up a separate bedroom to bolster the pretense that her partner was a housemate. “The insecurity is still there,” she told Human Rights Watch and Justice for Sisters a year after the incident. “I feel like [the authorities] can just knock the door and come into the house.”

Religion, gender, and economics all play a role in the risk of punishment for a nonconforming gender identity or sexual orientation. But for those LGBT people in Malaysia who do face scrutiny by government officials, the stakes are high, as the following cases indicate.

Harassment, Arbitrary Arrests of LGBT People by Religious Officials

Caning in Terengganu

In April 2018, state religious department officials in Terengganu came upon two women in a car in a public square and arrested them, accusing them of “attempting” lesbian sex. In August, Terengganu’s Sharia court sentenced them to six strokes with a cane. It was the first time anyone was convicted under Terengganu’s law against same-sex relations.

The court carried out the caning on September 3, in public, as one Terengganu official told the press, “to serve as a lesson to society.”

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141 Human Rights Watch and Justice for Sisters interview with Mikaela (pseudonym), Kuala Lumpur, April 1, 2018.
142 Ibid.
143 Yi, “Malaysian women to be caned for ‘attempting lesbian sex’,” Reuters.
Several LGBT Malaysians said the public caning affected them deeply. “I thought, that could have been me. I was heartbroken,” a queer woman in Kuala Lumpur said.146

A queer journalist who attended a press conference that authorities held following the caning recounted:

Some of the issues that happened like the public caning have bad effects on the public. Some of the LGBT community feel afraid, they fear being arrested or assaulted by the police, because this was a newspaper headline for many days. It creates a perception that the government is not accepting you, and I think it creates trauma for people.

I went to a press conference after the caning. One of the judges, some of the state assembly persons, and one of the Sharia lawyers were there. They were congratulating each other for the successful caning and showing the public how the caning was done. I saw the two girls run away from the courtroom and the media was chasing them, and I felt very hurt. They disappeared in the whole narrative. Everyone was talking about it, but the two girls had no chance to speak on their own behalf when many others were speaking about them.147

The case attracted international condemnation, drawing global attention to Malaysia’s embrace of torture as a means to police human sexuality.148

At first, the Terengganu caning seemed exceptional: activists could not recall other cases in which people had been sentenced under Sharia enactments, let alone caned, for consensual same-sex relations. Terengganu, a PAS stronghold, was known for its strict interpretation of Islamic law.

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146 Human Rights Watch and Justice for Sisters interview with Amira (pseudonym) January 2019, date and location withheld.
147 Human Rights Watch and Justice for Sisters interview with Wong (pseudonym), Kuala Lumpur, January 5, 2019.
The state legislative assembly attempted to ban liwat (anal sex) in a hudud criminal enactment in 2002. Hudud is a form of Islamic law that applies to crimes mentioned in the Quran and includes punishments of stoning to death, flogging, and amputation. The hudud enactment provided for sentences of death by “stoning the offender with stones of medium size” for married men and whipping of 100 lashes plus one year’s imprisonment for unmarried men who engage in liwat. However, the act was unenforceable because it contradicted the federal Syariah Courts (Criminal Jurisdiction) Act 1965, which limits punishments that can be meted out by state Sharia courts.149

Caning in Selangor

In November 2018, Selangor’s religious department, JAIS, and the National Anti-Drugs Agency (NADA) carried out a raid on a private gathering and arrested 12 men. The gathering allegedly involved sex, and religious officials confiscated condoms and sex toys.

JAIS charged the men with “attempted sexual intercourse against the order of nature” in violation of section 28 and section 52 of the Syariah Criminal Offenses (Selangor) enactment of 1995.150 During the arrest, the authorities subjected the men to humiliating and degrading treatment. According to the Malaysian queer media outlet Queer Lapis, authorities “forced all of the men to pose full-frontal nude,” and to remain nude for over two hours, and photographed them.151

In November 2019, five men pleaded guilty to the charges—on JAIS’s advice, and without access to lawyers—and were convicted.152 They were sentenced to fines, imprisonment, and six strokes of the cane each by the Selangor Syariah High Court, a near-maximum sentence. The presiding judge said the punishment was meant as an effort to rehabilitate

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150 Syariah Criminal Offenses (Selangor), section 28, “Sexual intercourse against the order of nature,” reads: “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 five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.” Selangor Enactment No. 9 of 1995, http://www2.esyariah.gov.my/esyariah/mail/postalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccdd1595843f48256fc 60014e84/489074ad469c8825760a0040fe6470OpenDocument (accessed July 30, 2021).
and isolate them from “others and their environment.”¹⁵³ Four of the men who pled guilty were caned in prison on November 19, while a fifth, who appealed the caning and prison sentence, was not caned.¹⁵⁴ Seven other men pled not guilty. One of them, known as I.K., filed applications in both the Federal Court and the High Court challenging the constitutionality of the law under which he had been convicted.

Malaysia’s Federal Court heard I.K.’s challenge on December 14, 2020. He argued that the enactment of section 28 is ultra vires (beyond the state’s powers) because under Malaysia’s constitution only the federal government may legislate some aspects of criminal law.¹⁵⁵

On February 25, 2021, Malaysia’s Federal Court ruled in I.K.’s favor, finding that Selangor’s state law banning consensual same-sex conduct was unconstitutional and that such matters cannot be legislated by state governments. The court’s ruling pivoted on a “preclusion” clause in Malaysia’s constitution. The justices ruled that because Malaysian federal law already criminalizes adult, consensual same-sex conduct under section 377 of the penal code, Selangor’s state law was redundant and therefore unconstitutional.¹⁵⁶ The ruling put a temporary stay on the use of similar state-level Islamic laws across Malaysia.

Arrests in Kelantan

In 2021, lawmakers in the state of Kelantan enacted the Kelantan Syariah Criminal Code Enactment of 2019, which added new offenses and harsher punishments under Sharia law.¹⁵⁷ Shortly after the provisions took effect in late 2021, dozens of people were charged

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with offenses, with 70 arrests documented by advocates in the first 2 months of 2022 alone.\textsuperscript{158}

The new enactment prescribes a range of offenses related to LGBT people, including musahaqah (female same-sex activity), zina (adultery), kelakuan tidak sopan (indecency), mendedahkan aurat (indecent attire), and individu transgender (being transgender or transgender expression), among other offenses. All of the offenses are punishable with imprisonment, and some of the offenses are punishable with fines, caning, or “rehabilitation” as well.\textsuperscript{159}

\textit{Arrests of Trans Women by State Religious Authorities}

State Religious Department officials in many of Malaysia’s states and federal territories regularly arrest transgender women based on state Sharia enactments that prohibit “a male person posing as a woman” and subject them to various abuses, including assault, extortion, and violations of their privacy rights.\textsuperscript{160}

\begin{quote}
\textbf{Persecution of Nur Sajat}

Malaysian authorities have come down particularly hard on Nur Sajat, a trans cosmetics entrepreneur and social media personality. In 2018, JAKIM threatened to investigate and “verify” Sajat’s gender, reflecting both confusion around gender identity and hostility toward gender diversity.\textsuperscript{161} The Religious Affairs Ministry sought to remove social media posts of her wearing women’s prayer attire while on pilgrimage in Mecca in February 2020, claiming that her posts were causing “unease to Muslims.”\textsuperscript{162}
\end{quote}


In January 2021, Sajat was arrested for allegedly “insulting Islam,” again on the basis of wearing typically feminine attire at a religious event. In February 2021, when Sajat did not appear in court to answer to the charges, the court issued an arrest warrant against her. Selangor’s state religious department, JAINS, claimed it had mobilized 122 religious affairs officers to hunt her down.

The reason she did not appear in court is she had fled to Thailand, where she was interviewed by the United Nations High Commissioner for Refugees and was formally recognized as a refugee.

However, on September 8, 2021, Thai immigration police, acting on a request from the Malaysian government, arrested Sajat at a rented apartment in downtown Bangkok and sent her to Thai immigration detention. However, in the face of widespread international outcry, Thailand quickly moved to release her on bail and subsequently prosecuted her on the charge of illegal entry, to which she pled guilty.

The Malaysian government requested her extradition but claimed it wanted to “reform” rather than punish her. Idris bin Ahmad, the Prime Minister’s Office minister in charge of religious affairs, told reporters: “If [she] has admitted wrong … if [she] wants to return to [her] true nature, there is no problem. We do not want to punish [her], we just want to educate.” Prime Minister Ismail Sabri Yaakob told the media: “The government is serious about the issue of LGBT people in the country, as Malaysia is a country that adheres to the religion of Islam. Any

166 Copy of draft version of the Thai police arrest report for Nur Sajat on file with Human Rights Watch. The report was subsequently revised and the final version dropped any mention of the Malaysian authorities’ request.
individual who violates the law must face action. Nevertheless, at the same time, they need to be guided and be made aware so that they can return to the right path.”

Thailand, acting in accordance with its obligation under customary international law not to return a refugee to face persecution, allowed Nur Sajat to resettle and receive protection in Australia in October 2021.

In 2011, three transgender women, who had been arrested repeatedly under section 66 of Negeri Sembilan’s Syariah Criminal Enactment and subjected to degrading treatment by state religious officers, filed a case challenging the constitutionality of such laws. The Putrajaya Court of Appeal, in a landmark November 2014 ruling, found the Sharia ban on gender nonconformity was “degrading, oppressive, and inhuman” and that so long as it was in force, transgender people would “continue to live in uncertainty, misery, and indignity.” The court held that the law violated rights to life and personal liberty, equality, freedom from gender discrimination, freedom of movement, and freedom of speech, assembly, and association, all of which are protected under Malaysia’s constitution.

But in 2015 the Federal Court overruled the Appeals Court judgment on technical grounds, holding that applicants had used the wrong procedure for challenging the law. Petitioners lost an appeal to the Federal Court ruling in July 2020, and the “cross-dressing” laws remain in place. In 2019, section 66, which had previously criminalized “a male person dressing in women’s clothing or posing as a woman” was amended to include “for immoral purposes,” a change that does not improve upon the law’s restriction of transgender people’s rights given that religious officials have at times suggested that

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being transgender in itself is immoral. At the same time, possible sentences under section 66 were lengthened from six months to up to two years in prison.\textsuperscript{173}

Meanwhile, arbitrary arrests of trans women in Malaysia continue.\textsuperscript{174} While state laws against gender nonconforming attire provide for up to three years in prison, many trans women are subjected to “counseling.” Emma, a trans woman in Kedah, described such an experience after arrest:

I’ve been arrested about seven or eight times. I’ve never been to court, they always just send me to counseling. In the counseling, they say, “How long are you going to be this way? Think about your parents, how do you think they feel, seeing you like this. How long you going to be a fag like this?” They say, “Why are you like this?” I’ll say, “I’ve always been like this, it’s who I am since I was little.” “Are you blaming your parents? Why would you do this to your parents?” [State Islamic department] officers do the counseling, at the religious authority building. The counseling lasts five or six hours. We’d be in the building overnight until sunrise, being questioned by the officers, depending on how many of us were arrested that night.\textsuperscript{175}

During some raids and arrests of LGBT people, religious officials bring along television camera crews, jeopardizing people’s right to privacy, due process and the presumption of innocence, and freedom from discrimination.\textsuperscript{176} Baby, a transgender woman in Kelantan who experienced a raid filmed by television reporters, worried that such exposure could

\textsuperscript{173} Ibid.
\textsuperscript{175} Human Rights Watch and Justice for Sisters interview with Emma, Alor Setar, Kedah state, April 4, 2018.
inflame public violence against trans people. She said, “These raids make it unsafe for us to live in our own country.”

Being visibly supportive of trans people also carries risks. In 2016, JAWI officers arrested human rights lawyer Siti Kasim on charges of “obstructing a public servant” after she objected to a JAWI raid on a private transgender community event. Although a magistrate’s court acquitted her in August 2020, the prosecution appealed, prolonging the judicial harassment of Siti Kasim that has now gone on for five years.

**Attacks and Harassment by Vigilante Groups**

In March 2018, a vigilante group known as Squad Bada’r in Sungai Petani, Kedah, began targeting trans women, including by carrying out “arrests.” Nadia, a trans sex worker, was among those that Squad Bada’r targeted. One of its members solicited her for sexual services, then recorded their conversation and returned to the hotel where she worked in an attempt to arrest her. Security guards kept the man out of the hotel. Nadia said Squad Bada’r had already been active for about three years and had “run amok in Sungai Petani.” In an April 2018 interview, she described the group’s “moral policing”:

> In the last two months, it feels like they’ve increased their attacks on trans women. They also put together a memorandum and a petition-signing campaign, which took place at an open space market, to get rid of trans women. They started off as a small group taking care of the neighborhood and recreational area where people used to jog. At night, there were couples, and that’s where the moral policing started, and that grew into something else.

Nadia described what happened to those “arrested” by Squad Bada’r, including two of her trans friends who were targeted in early 2018:

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179 Human Rights Watch and Justice for Sisters interview with Nadia (pseudonym), Sungai Petani, April 5, 2018.
They don’t send people they arrest to the religious authorities. [T]hey bring them to an area where there are a lot of people, a public place, and would force them to pray. It’s a prayer to repent, in front of people. It’s humiliating. They also bring people to the graveyard and lecture them for almost two hours and make them pray there as well.\textsuperscript{180}

One of Nadia’s friends, she said, “fought back and talked back, and they proceeded to cut her hair with a pair of scissors.”\textsuperscript{181} Although police were aware of the group’s activities, Nadia said, they “haven’t done anything.”\textsuperscript{182} The leader, she said, was an ustad (religious teacher) and used a Facebook group to solicit donations, including vehicles to carry out the “arrests.” As a result of Squad Bada’r’s unimpeded vigilantism and its stated goal of “eradicating” trans women from Sungai Petani, Nadia said, “I’m afraid to go out in public areas.”\textsuperscript{183}

“Restrictions of speech and assembly are getting tighter, politicians and public are more concerned to voice support LGBT issues,” Yee Shan, an activist in Kuala Lumpur, said. “For politicians, they worry that this may affect their political careers, for public they afraid authorities will take action on them,” she said. “At the same time, the government indirectly encourage the rightwing groups to produce anti-LGBT message for their agenda, because despite the overwhelming hate-speech and anti-LGBT comments they have made, not even a single action has been taken against them.”\textsuperscript{184}

\begin{flushleft}
\textsuperscript{180} Ibid.
\textsuperscript{181} Ibid.
\textsuperscript{182} Ibid.
\textsuperscript{183} Ibid.
\textsuperscript{184} Human Rights Watch and Justice for Sisters interview with Yee Shan, July 11, 2022.
\end{flushleft}
IV. Discrimination and Violence

When sexual orientations and gender identities that diverge from a heterosexual, cisgender norm are seen as problems to be handled through prevention, rehabilitation, and punishment, official negation of the rights of LGBT people can contribute to a climate in which discrimination flourishes and violence is not uncommon. Amira, a queer woman, said, “The government is setting the tone for harmful rhetoric. When they flag us as a threat, then it trickles down, at the state level and the community level.”\textsuperscript{185}

While the Malaysian government may not bear direct responsibility for discrimination and violence by members of the public, it sets a tone according to which LGBT people are effectively second-class citizens, a problem to be “eradicated,” in Amira’s words, not a category of the public to be accepted. It is not surprising, in such a context, that members of the public feel entitled to deny LGBT people equal treatment and at times act out violently against them.

Violence

Government anti-LGBT rhetoric may reinforce a belief among members of the public, including LGBT people’s families, that it is acceptable to violently discipline gender nonconforming people for their gender nonconformity. Julia, a trans woman from Alor Setar, said her father beat her to force her to “change”:

Between [age] 14 to 16, I experienced a lot of different types of violence from my dad. He took all my clothes and burned them and took all my makeup and threw it away. When I had long hair, he would cut it with bald patches. When I pierced my ears, he took a pliers and pulled my ears…. My dad would give me [only] rice and water to drink so I would be “corrected.”\textsuperscript{186}

\textsuperscript{185} Human Rights Watch and Justice for Sisters interview with Amira (pseudonym), January 2019, date and location withheld.
\textsuperscript{186} Human Rights Watch and Justice for Sisters interview with Julia, Alor Setar, April 3, 2018.
In recent years, there have been several reports of LGBT people suffering violent physical assaults.

In February 2017, a group of men stabbed and shot to death Sameera Krishnan, a trans florist in Pahang.\(^{187}\) In June 2017, five teenagers in Penang beat to death 18-year-old T. Nhaveen, who had been bullied by classmates for being “effeminate;” the assailants reportedly anally raped him with a bottle.\(^{188}\)

In August 2018, eight men attacked Suki, a trans woman in Seremban province. Suki told Human Rights Watch and Justice for Sisters that the assailants surrounded her and beat her with sticks, striking her head, neck, and back. Her ribcage was broken, and doctors had to remove her spleen. Suki was assigned an investigating officer who took the case seriously and treated her with respect, but other police officers, Suki said, tried to get her to negotiate a “deal” with her attackers, who offered to pay her in exchange for not filing charges.\(^{189}\)

In December 2018, attackers pulled two men from a car and beat them for allegedly engaging in same-sex relations, then circulated a video of the assault on social media.\(^{190}\) Activists filed a police complaint and held a news conference calling for the attackers to face justice. Officials at Dang Wangi central police station in Kuala Lumpur promised to investigate the December 2018 attack, but the victims did not come forward, and no one was arrested. Despite press attention to the case, no government official publicly condemned the assault.

Ace, a lawyer who represents LGBT clients, said the case exemplified how the Malaysian government nourishes vigilantism in an environment in which access to justice is tenuous:


\(^{188}\) Human Rights Watch and Justice for Sisters interview with Q., George Town, April 2, 2018. Q., who led a queer support group and reached out to Nhaveen’s uncle, said, “The uncle told me that Nhaveen mentioned a few times that in school he faced lots of teasing from the boys in schools.”

\(^{189}\) Human Rights Watch and Justice for Sisters interview with Suki, Seremban, January 4, 2019.

What prevented the two guys from coming forward was most likely the threat of charges both in the criminal court and the Sharia court for immoral activity. The moment you're charged, you face public humiliation, even if the charges can’t stick.

It’s a classic example of taking the law into one’s own hands. Those men [the attackers] claimed the moral authority to think they are authorized morally to do what they did....

It’s very ubiquitous. It’s prevalent. When one assumes moral authority over the existing legal authority. Existence of moral superiority led them to do what they did. “It is my authority to curb this.” You decide, “I’m going to deal with this guy, and I’m not going to refer it to the law because it’s my responsibility to nip it in the bud.”191

In 2019, Justice for Sisters raised alarm bells over an apparent increase in violence against trans people, noting that while cases of hate crimes and murders against trans people are underreported and misreported (as victims are often misgendered), at least nine murders of trans people were reported in Malaysia between 2017 and 2019.192 Advocates documented another two murders in 2020 and two murders in 2021.193

Many interviewees said the cumulative impact of the violence is an environment of widespread and constant fear. Hanan, a trans woman in Seremban, said:

No matter what happens to a trans woman sex worker, there’s no justice for us. We all have trauma. When we work on the streets, we pretend to be brave, but we’re still looking out of the corners of our eyes.... I don’t know of any case where anyone was ever convicted [for attacking a trans woman].194

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194 Human Rights Watch and Justice for Sisters interview with Hanan (pseudonym), Seremban, January 4, 2019.
Justice is usually out of reach for LGBT victims. A recent exception was the Nhaveen case, in which five suspected assailants were tried on murder charges after beating an 18-year-old to death for being “effeminate” in 2017. Following a four-year legal process, in December 2021, the Magistrate’s Court in Penang charged the fifth of the men with murder, meaning all five accused have been charged with murder. However, media reports made no mention of the anti-LGBT animus involved in the murder.

Ace, a lawyer who has represented gay and transgender clients, said of the murders of Nhaveen and several trans women murdered in 2018 and 2019:

At the end of the day, the law alone is not enough. You may charge the attackers, but you need education, and people need to accept.... The authorities have not talked about this case or the trans women who were murdered. I would suspect they do know this is hate crime, but they refuse to even talk about hate crimes. When you start talking about hate crimes you have to talk about acceptance. The government must really put the foot down and say this has to stop: LGBT people are people. But of course, the question is whether the government is ready and bold enough to stand up for marginalized people.

A communications professional who follows LGBT issues, echoed this concern:

Not once has the government said, ‘Stop causing violence against this community.’ It’s so basic, you know? Why can’t you just say that? They say, ‘We need to approach them with kindness and guide them back to the right path’ but they do not say ‘Stop the violence.’ They don’t want to recognize that violence is happening, maybe because then they can be held accountable.

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197 Human Rights Watch and Justice for Sisters interview with [name withheld], location withheld, January 7, 2019.
As documented above, the lack of government response to public pressure to change sexual orientation or gender identity and hate speech against LGBT people creates a warped public discourse on sexual and gender diversity. Anti-LGBT hate speech is rife on the internet and sometimes amounts to incitement to violence. One group filed a police complaint in 2018 over social media posts suggesting LGBT people should be killed, but it did not result in any investigation.\textsuperscript{198}

**Discrimination**

A legal environment that criminalizes LGBT people, the absence of non-discrimination protections, and ubiquitous anti-LGBT discourse from high-level government officials contribute to an environment in which discrimination on the grounds of gender identity and sexual orientation flourishes. LGBT people can be confronted with the belief that the burden lies on them to “change” their gender identity or sexual orientation in order to avoid discrimination.

In 2019, the national human rights commission, SUHAKAM, published a report documenting numerous instances of discrimination against transgender women in Kuala Lumpur and Selangor.\textsuperscript{199} When the UN special rapporteur on extreme poverty and human rights cited SUHAKAM’s findings in his 2021 report to the UN Human Rights Council,\textsuperscript{200} the Malaysian government responded by sidestepping the issue of discrimination based on gender identity or sexual orientation.

The government stated that, “Malaysia provides access to basic free education for all and do not discriminate children [sic] from different races, religion, gender and socio-economic background.”\textsuperscript{201} But SUHAKAM’s report found that for transgender people, discrimination is endemic,\textsuperscript{202} echoing findings by Human Rights Watch in earlier research.\textsuperscript{203}

\textsuperscript{199} Human Rights Commission of Malaysia (SUHAKAM), “Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity).”


\textsuperscript{201} Ibid.

\textsuperscript{202} Human Rights Commission of Malaysia (SUHAKAM), “Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity).”

\textsuperscript{203} Human Rights Watch, I’m Scared to Be a Woman, p. 49.
Discrimination in Employment, Harassment at Work

“I have never had official employment,” Suleika, a trans woman in Klang who does sex work, told Human Rights Watch and Justice for Sisters. “I tried. I applied for a job selling perfume, but the employer said they would [only] accept me if my gender was female on my IC [identity card].”204

The cases of employment discrimination that Human Rights Watch and Justice for Sisters documented for this report all involved trans women. In a 2020 report, Arrow, Justice for Sisters, and the Gender Equality Initiative documented how lesbian, gay, and bisexual Malaysians also face hostility and exclusion in the workplace.205 LGBT Malaysians may conceal their sexual orientation when seeking employment and on the job, out of fear of discrimination.

SUHAKAM’s report on discrimination against trans people found that 57 of 100 interviewees had been denied employment at least once because of their gender identity. Ten of the persons interviewed said they had been refused work ten or more times apparently because of their gender identity.206

Nadia, a trans woman in Kedah, condemned the barriers trans women face in employment:

When there are barriers, we cannot progress, and that really doesn’t allow people to explore their fullest potential. For example, I have a diploma in pharmaceuticals, but I can’t seem to find a job based on my qualifications and experience. When I looked for a job [at a pharmacy in Alor Setar], I was asked to change, to cut my hair, things like that. I don’t want to change myself, so I continued to do sex work.207

Sonia, a 49-year-old trans woman in Seremban, explained how she struggled to find work in the formal sector so relied on part-time work as a wedding planner, a struggling small

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204 Human Rights Watch and Justice for Sisters interview with Suleika (pseudonym), Klang, January 5, 2019.
207 Human Rights Watch and Justice for Sisters interview with Nadia (pseudonym), Sungai Petani, April 5, 2018.
business selling cosmetics on Facebook, and sex work. The combination of anti-LGBT rhetoric and economic instability creates fear for Sonia and her family. She said:

    My parents and siblings ask me to come back [to where they live] because they’re afraid for my life. And I’m also afraid here. It’s difficult to get jobs; when people look at us, they think we’re bad people.\textsuperscript{208}

Other trans women experienced sexual and verbal harassment at work. Alina, a trans woman in Klang who worked part-time in a warehouse, told Human Rights Watch and Justice for Sisters:

    We are harassed while doing our job. One of the fellow workers grabbed me and asked me to do sexual services. The second time, he rubbed his penis on my body.\textsuperscript{209}

The employee was terminated after harassing several trans employees, according to Tricia, a colleague of Alina who is also a trans woman:

    The company terminated the culprit. The issue now is toilets. The management wants us to use the gents, but the guys don’t welcome us into the gents. We want to keep on working, but we need support on how to go about it.\textsuperscript{210}

Shristi, a trans woman in Kuala Lumpur, said she routinely faced unchecked sexual harassment while using the toilet at work. “I have to use the male toilets. Men at work have followed me into the toilets and peered over the stall to look at me when I use the toilet,” she said.\textsuperscript{211} To be allowed to use the female toilets, [management] won’t accept a letter from a private gynecologist,” she said, adding that she has undergone gender-affirming surgery. “I couldn’t get a letter from a public gynecologist.”\textsuperscript{212}

\textsuperscript{208} Human Rights Watch and Justice for Sisters interview with Sonia, Seremban, January 4, 2019.
\textsuperscript{209} Human Rights Watch and Justice for Sisters interview with Alina (pseudonym), Klang, January 5, 2019.
\textsuperscript{210} Human Rights Watch and Justice for Sisters interview with Tricia (pseudonym), Klang, January 5, 2019.
\textsuperscript{211} Human Rights Watch interview with Shristi, Kuala Lumpur, April 2, 2018.
\textsuperscript{212} Ibid.
Lack of Access to Legal Gender Recognition

Discrimination against trans people in Malaysia is fostered by policies that prevent them from changing their names and gender markers on official identity documents.

No law in Malaysia explicitly prohibits gender recognition for trans people, but almost all transgender people who are known to have approached the National Registration Department to request such changes have been rejected. In SUHAKAM’s study of 100 trans women in Kuala Lumpur and Selangor, 86 said they would like to change their gender marker on their documents, but only 20 had tried, and only 4 had succeeded in doing so.\textsuperscript{213} Courts have issued conflicting opinions as to whether individuals who have undergone genital surgery can be administratively recognized according to their chosen gender, and no ruling recognizes the right to do so without surgery.\textsuperscript{214} In the most recent decision, in \textit{Tan Pooi Yee} (2016), the High Court held that the plaintiff was entitled to change his gender marker, but based this on the fact that he was “certified by a medical professional to be a male.” The National Registration Department appealed the ruling.\textsuperscript{215}

The Asia Pacific Transgender Network and SEED Foundation documented the consequences of Malaysia’s failure to introduce legal gender recognition, including violations of the right to privacy, employment discrimination, and cruel and inhuman treatment.\textsuperscript{216}

SUHAKAM’s study found 57 of 100 trans respondents reported incidents in which government officials directly discriminated against them when their appearance did not match the name or gender marker on their identity card. Experiences include being told to

\textsuperscript{213} Human Rights Commission of Malaysia (SUHAKAM), “Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity),” p. 105-106.
\textsuperscript{215} Human Rights Commission of Malaysia (SUHAKAM), “Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity),” p. 25, para 47.
change their gender expression, being told to be a man, being subjected to facial recognition and fingerprint verification, and being teased and mocked.\textsuperscript{217}

Raz, a transgender chef and entrepreneur, personally suffered discrimination due to the lack of an identity card that matched her gender expression, as documented above. She called on the government to address these harms:

\begin{quote}
I think the government should introduce legal gender recognition to reduce discrimination. That’s usually where transgender women become stuck when applying for a job. It would also help in terms of applying for loans, going to study, where we can dress as women.\textsuperscript{218}
\end{quote}


\textsuperscript{218} Human Rights Watch and Justice for Sisters interview with Raz, Kuala Lumpur, January 7, 2019.
VI. Human Rights Obligations under Malaysian and International Law

As a United Nations member state, Malaysia has accepted the Universal Declaration of Human Rights, the provisions of which are broadly accepted as reflecting customary international law. The Universal Declaration of Human Rights upholds the fundamental rights and freedoms that are due to every individual on the basis of their being human: “All human beings are born free and equal in dignity and rights” and are protected from discrimination, arbitrary interference in privacy, family and home, arbitrary arrest and detention, and torture and ill-treatment. Everyone also has rights to freedom of expression, association, peaceful assembly, religion, and movement.

Malaysia is not a party to many of the core international human rights conventions that countries around the world have widely ratified, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Malaysia has ratified the Convention on the Elimination of All

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220 Ibid., arts. 5, 7, 9, and 12.
221 Ibid., arts. 13, 18, 19, and 20.
223 All three treaties provide protection on the basis of gender identity. The UN Human Rights Committee has said that “the prohibition against discrimination under article 26 [of the International Covenant on Civil and Political Rights] encompasses discrimination on the basis of marital status and gender identity, including transgender status.” U.N. GAOR Human Rights Committee, G v. Australia., U.N. Doc. CCPR/C/119/D/2172/2012, June 28, 2017, para 7.12. The Committee on Economic, Social and Cultural Rights has stated that the International Covenant on Economic, Social and Cultural Rights requires protection on the basis of gender identity: “[G]ender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.” UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20 (July 2, 2009), para. 32. The Convention against Torture obligates states to protect “all persons, regardless of... sexual orientation (or) transgender identity” from torture and cruel, inhuman or degrading treatment or punishment. Committee Against Torture, General Comment No. 2, Implementation of article 2 by States parties, UN Doc. CAT/C/GC/2 (January 24, 2008), para. 21.
Forms of Discrimination against Women (CEDAW),\textsuperscript{224} the Convention on the Rights of the Child (CRC),\textsuperscript{225} and the Convention on the Rights of Persons with Disabilities (CRPD).\textsuperscript{226}

Malaysia’s federal constitution prominently features a chapter on “fundamental liberties.” Article 5 protects against arbitrary arrests. Other fundamental freedoms protected by the constitution include freedom of expression and association (article 10), freedom of religion (article 11), and freedom of movement (article 9). Under Malaysia’s constitution, Sharia law, as state law, is subordinate to the constitution and cannot be put forward as justification for the violation of constitutional rights,\textsuperscript{227} nor can states usurp the role of parliament to limit fundamental rights.\textsuperscript{228}

During its last Universal Periodic Review (UPR) before the UN Human Rights Council in November 2018, Malaysia rejected (“noted”) recommendations related to gender identity and sexual orientation, including recommendations to decriminalize consensual same-sex conduct and gender identity and to take steps to attend to discrimination and violence, with the exception on one recommendation that was “partially accepted”: to “implement anti-bullying campaigns in schools addressing all forms of bullying, including that based on actual or perceived sexual orientation, gender identity or gender expression.”\textsuperscript{229}

**Protection from Violence**

The Universal Declaration of Human Rights calls for governments to protect everyone’s life, liberty, and security of the person.

Under the Convention on the Rights of the Child, states are obligated to “take all appropriate legislative, administrative, social and educational measures to protect the

\begin{footnotesize}
\begin{enumerate}
\item Constitution of Malaysia, art. 75.
\item Constitution of Malaysia, art. 74.
\end{enumerate}
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child from all forms of physical or mental violence.”230 The Declaration on the Elimination of Violence against Women calls on states to condemn violence against women, and “not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”231

As the Office of the UN High Commissioner for Human Rights has noted, “Discriminatory laws and practices, including pathologization, can legitimize such violence and create a climate in which perpetrators go unpunished.”232 In constantly pathologizing LGBT people and upholding discriminatory laws, Malaysia’s government contributes to a climate in which LGBT people are viewed as less than full citizens and, as evidenced by this report, are subjected to violence with impunity. Children who are forced to undergo conversion practices may also undergo mental violence, prohibited under the CRC.

Torture and Cruel, Inhuman and Degrading Treatment

Consistent with the Universal Declaration of Human Rights and customary international law,233 everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.

Malaysian law provides for caning as a punishment for several offenses, including—under both federal law and state Sharia enactments—consensual same-sex conduct. Caning as a punishment for a criminal offense is a form of torture.234 Conversion practices can amount to cruel, inhuman and degrading treatment.

The UN special rapporteur on torture has noted:

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230 CRC, art. 19(1).
233 UDHR, art. 5.
States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances.... A clear link exists between the criminalization of lesbian, gay, bisexual and transgender persons and homophobic and transphobic hate crimes, police abuse, community and family violence and stigmatization... Such laws foster a climate in which violence against lesbian, gay, bisexual and transgender persons by both State and non-State actors is condoned and met with impunity.\textsuperscript{235}

The UN special rapporteur on torture has affirmed that forced procedures targeting LGBT and intersex people in medical settings, including so-called “conversion therapy,” can amount to torture or ill-treatment.\textsuperscript{236} The UN Human Rights Committee has emphasized that the prohibition of torture and cruel, inhuman and degrading treatment, “protects, in particular ... patients in teaching and medical institutions,” both public and private.\textsuperscript{237}

Right to Health

The governmental responsibility to regulate conversion practices stems from its obligation to protect and preserve the rights to life and health. States party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child are obligated to uphold the right to the highest attainable standards of physical and mental health.\textsuperscript{238}


Conversion practices do not comport with international diagnostic standards. Because conversion practices do not have legitimate health benefits and carry risks of significant harm, states should take steps to prevent health providers from offering or conducting conversion practices and to hold accountable those that do.

Conversion practices also violate principles of biomedical ethics, which health practitioners are obligated to uphold. For a therapeutic practice to be ethical, it must have a legitimate therapeutic aim, its benefits must outweigh its risks, and patients must be able to consent to it autonomously. Medical associations and professional licensing boards have a role to play in preventing conversion practices through self-regulation, taking disciplinary measures against practitioners who violate codes of ethics by utilizing conversion practices.

The challenges in regulating conversion practices in religious and cultural contexts mean that governments should undertake rigorous efforts to engage with faith leaders, families, and the general public to address the drivers of such practices. Government human rights institutions should investigate and report on the harms of religious-based conversion practices and should provide robust support for survivors, as discussed below.

Children have experienced harms, some very severe, in religious settings, and governments should recognize their obligation to determine whether children are being subjected to potentially harmful practices in such settings. The UN special rapporteur on the right to health has expressed concern about conversion practices aimed at children in Malaysia, noting that they “are not only unacceptable from a human rights perspective but they are also against scientific evidence, and have a serious negative impact on the mental

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239 Supra note 93.
240 For children and adolescents, autonomy develops over time, is balanced between children's assent and guardian consent, and becomes accorded based on capacity. Article 5 of the CRC reflects that the implementation of rights in the convention should take account children’s development and their evolving capacities. The Committee on the Rights of the Child, which oversees the convention, issued General Comment No. 20 on the implementation of the rights of the child during adolescence. It notes that in "seeking to provide an appropriate balance between respect for the evolving capacities of adolescents and appropriate levels of protection, consideration should be given to a range of factors affecting decision-making, including the level of risk involved, the potential for exploitation, understanding of adolescent development, recognition that competence and understanding do not necessarily develop equally across all fields at the same pace and recognition of individual experience and capacity." Committee on the Rights of the Child, General comment No. 20, the implementation of the rights of the child during adolescence, CRC/C/GC20 (2016), December 6, 2016, paras. 18-20.
health and well-being of adolescents.” In some cases, conversion practices in religious settings may amount to emotional abuse of children, prohibited under the CRC. Children should have access to an appropriate complaints mechanism if they experience harm in religious contexts.

**Arbitrary Detention and Institutional Discrimination**

Article 8 of Malaysia’s constitution states that “All persons are equal before the law and entitled to the equal protection of the law,” including on the basis of gender. But despite the averred commitment to equal protection, discrimination against LGBT people is written into Malaysia’s federal criminal code and Sharia enactments through laws that criminalize gender and sexual diversity.

Malaysia is party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In its General Recommendation No. 28 on core obligations under the treaty, the Committee on the Elimination of Discrimination against Women, which monitors implementation of CEDAW, makes clear that obligations under the convention apply to lesbian, bisexual and transgender women, including the obligation to prohibit all forms of discrimination against women, to refrain from engaging in any act or practice of discrimination against women, and to repeal all national penal provisions that constitute discrimination against women.

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242 Committee on the Rights of the Child, General Comment No. 13, the right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13 (2011). In paragraph 21 the committee defined mental violence, prohibited under article 19 of the Convention on the Rights of the Child, and in paragraph 35 explicitly included “religious institutions” among care settings within which states are obligated to ensure that children are free from violence, including emotional abuse. In General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, the committee condemned “the imposition of so-called ‘treatments’ to try to change sexual orientation and forced surgeries or treatments on intersex adolescents.” It urged states “to eliminate such practices, repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds.” Committee on the Rights of the Child, General comment No. 20, the implementation of the rights of the child during adolescence, UN Doc. CRC/C/GC20 (2016) https://www.refworld.org/docid/589dad3d4.html (accessed July 26, 2022), para. 34.


244 CEDAW, art. 2.
The UN Working Group on Arbitrary Detention has held that arrests on the basis of sexual orientation violate the right to equal legal protection against all forms of discrimination, including that based on sex, and that such arrests are by definition arbitrary.\(^2^{45}\)

**Prohibition of Discrimination**

Malaysia has not passed any legislation prohibiting discrimination based on gender identity or sexual orientation. Such discrimination flourishes in sectors including employment, education, and health care.

The core human rights treaties that Malaysia has ratified are clear on the obligation to both prevent and address discrimination. The CEDAW Committee states in General Recommendation No. 28:

> The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.

> Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences.\(^2^{46}\)

The Committee on the Rights of Persons with Disabilities, which oversees implementation of the Convention on the Rights of Persons with Disabilities, stated in its General Comment No. 4:

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States parties must ensure that they consult closely and actively involve organizations, which represent the vast diversity in society, including ...lesbian, gay, bisexual, transgender or intersex persons... Only then can it be expected that all discrimination, including multiple and intersectional discrimination, will be tackled.\footnote{Committee on the Rights of Persons with Disabilities, General Comment No. 6, equality and non-discrimination, U.N. Doc. CRPD/C/GC/6 (2018).}

Accordingly, Malaysia should seek to eliminate discrimination against LGBT persons, including on the basis of sexual orientation and gender identity.

Under the CRC, governments are obligated to prevent discrimination against children on the grounds of sexual orientation and gender identity.\footnote{UN Committee on the Rights of the Child, General Comment No. 15, the right of the child to the enjoyment of the highest attainable standard of health (art. 24), U.N. Doc. CRC/C/GC/15 (2013), para. 8 (“A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention... These also include sexual orientation, gender identity and health status, for example HIV status and mental health.”).} Although the Committee on the Rights of the Child has not issued recommendations specifically related to gender identity, the treaty prohibits discrimination on any grounds.\footnote{CRC, art. 2(1): “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”} When discrimination, including through school-based programs that discourage free expression of sexual orientation and gender identity, limit LGBT students’ abilities to attend or finish school, the state is depriving those students of their right to education. The committee has repeatedly emphasized that “[a] school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29(1),” the CRC provision specifying the aims of education.\footnote{See, for example, Committee on the Rights of the Child, Concluding Observations: Sweden, U.N. Doc. CRC/C/SWE/CO/5 (Mar. 6, 2015), para. 15; Committee on the Rights of the Child, Concluding Observations: The Bolivarian Republic of Venezuela, U.N. Doc. CRC/C/VEN/CO/3-5 (Oct. 12, 2014), para. 27; Committee on the Rights of the Child, “General Comment No. 1: The Aims of Education,” U.N. Doc. CRC/GC/2001/1 (2001), para. 19.}

The CRC specifies that education should be directed toward, among other objectives, “[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential,” “[t]he development of respect for human rights and fundamental freedoms,” and “[t]he preparation of the child for responsible life in a free society, in the
spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

The Committee on the Rights of the Child has identified steps that governments should take to protect children from bullying, harassment, and other forms of violence. These include challenging discriminatory attitudes that allow intolerance and violence to flourish, establishing reporting mechanisms, and providing guidance and training for teachers and administrators to know how to respond when they see or hear about incidents of violence.

The UN special rapporteur on freedom of religion and belief has called on all governments to repeal discriminatory laws that criminalize persons on the basis of sexual orientation or gender identity or expression. He has also called on governments to address religious practices that violate human rights, including those enacted with reference to religious considerations, and to reaffirm that traditional, historical, religious, or cultural attitudes must not be used to justify violations of human rights. His 2020 report stated:

The Special Rapporteur rejects any claim that religious beliefs can be invoked as a legitimate “justification” for violence or discrimination against women and girls or against people on the basis of their sexual orientation or gender identity. International law is clear that the manifestation of religion or belief may be limited by States, in full conformity with the criteria outlined in article 18(3) of the International Covenant on Civil and Political Rights, to protect the fundamental rights of others, including the right to non-discrimination and equality, a principle upon which all human rights, including the right to freedom of religion or belief, depends.

251 CRC, art. 29(1).
253 Ibid., para. 49.
254 Ibid., paras. 50-51.
Freedom of Expression, Association, and Peaceful Assembly

Malaysia’s constitution provides parliament broad authority to enact laws to restrict expression, association, and religion on the basis of “morality.” According to the constitution, freedom of speech and expression, freedom of assembly, and freedom of association can only be restricted by the Federal Parliament, and not by the state legislatures.

Under international law, permissible restrictions on fundamental liberties must be appropriate to achieve their protective function, be the least intrusive means to achieve the desired result, and be proportionate to the interest to be protected. Freedom of expression includes the right to freedom of gender expression.

Privacy

According to the Universal Declaration of Human Rights, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.” The Yogyakarta Principles, a codification of existing international law standards as they relate to sexual orientation and gender identity, affirm that governments may not attack people’s honor and reputation based on their sexual orientation or gender identity. Further,

The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity,

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256 Constitution of Malaysia, arts. 10(2)(a) & (c); and 11(5).
257 See Constitution of Malaysia, art. 74: “[T]he power to make laws conferred by this Article [on the subject matter of federal and state laws] is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.” Article 10(2) provides specific circumstances in which parliament may restrict freedom of speech, assembly, and association “in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality.”
258 See, for example, UN Human Rights Committee, Draft General Comment No. 34, Freedom of Opinion and Expression, U.N. Doc. CCPR/C/GC/34/CPR.2 (2010), para. 29.
259 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, https://yogyakartaprinciples.org/principle-19/ (accessed July 27, 2022), principle 19. In a 2014 ruling, Malaysia’s Court of Appeal held that a “person’s dress, attire or articles of clothing are a form of expression guaranteed under Article 10(1)(a)” of Malaysia’s Constitution. However, the ruling was overturned on a technicality. EMPOWER Malaysia and Justice for Sisters, “Freedom of Expression and Transgender Women in Malaysia,” p. 24.
260 UDHR, art. 12.
as well as decisions and choices regarding both one’s own body and consensual sexual and other relations with others.\textsuperscript{261}

Malaysia’s laws that prohibit consensual same-sex relations and gender diversity constitute arbitrary interference with privacy.

**Freedom of Movement**

Article 13 of the Universal Declaration of Human Rights guarantees everyone “the right to freedom of movement and residence within the borders of each state.”\textsuperscript{262} Laws prohibiting transgender people from dressing in accordance with their gender identity violate not only freedom of expression, but also freedom of movement, as articulated by Malaysia’s Court of Appeal in the case challenging Negeri Sembilan’s law prohibiting gender nonconforming attire:

Thus, section 66 cannot be said to merely restrict the appellants’ freedom of movement. The impact of section 66 is more severe than that: it has the effect of denying the appellants and sufferers of GID [gender identity disorder] of the right to move freely in public places. In effect, the appellants and other Muslim sufferers of GID will never be able to leave their homes and move freely in the State of Negeri Sembilan without being exposed to being arrested and punished under section 66.\textsuperscript{263}

The responsibility for harmonizing Malaysia’s domestic laws with its obligations under international law rests with the International Affairs Division, an entity within the Attorney General’s Chambers.\textsuperscript{264}


\textsuperscript{262} UDHR, art. 13.


VII. Recommendations

To the Prime Minister and Government of Malaysia:

• Publicly affirm the equality and dignity of lesbian, gay, bisexual, transgender, intersex, and gender-diverse people in Malaysia and condemn conversion practices, discrimination, and violence that target them on the basis of sexual orientation or gender identity or expression.

• Publicly commit to propose legal reforms to:
  ○ Repeal sections 377A and 377B of the Penal Code, which criminalize “carnal intercourse against the order of nature,” and 377D, which criminalizes “gross indecency.”
  ○ Review section 377 of the Penal Code, on “unnatural offences,” together with sections 375 and 376 to develop a comprehensive law against sexual violence.

To the Federal Parliament:

• Reject the proposed law increasing allowable Sharia court sentences under article 355 of the Syariah Court (Criminal Jurisdiction) Act 1965.

• Inquire about federal and state allocation of funds to activities that condemn and aim to rehabilitate or correct LGBT persons, and investigate and terminate any activities that may fall into this category.

• Pass comprehensive antidiscrimination legislation that prohibits discrimination on the basis of sexual orientation, gender identity, and gender expression.

• Pass legislation that allows transgender people to change the name and gender marker on their official identity documents based on self-determination.

• Ratify core international human rights treaties that, among other things, protect against discrimination based on sexual orientation and gender identity, including the:
  ○ International Covenant on Civil and Political Rights;
  ○ International Covenant on Economic, Social and Cultural Rights;
  ○ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
To the Attorney General’s Office:

- Take steps, through the International Affairs Division and in accordance with Malaysian law, toward harmonizing Malaysia’s domestic laws with its obligations under international law, including by drafting and proposing legislative reforms to decriminalize same-sex relations and gender diversity.

To the Department of Islamic Development (JAKIM):

- End all projects and programming supporting conversion practices.
- End mukhayyam projects and programming targeting sexual or gender minorities that reinforce stigma or promote conversion practices.

To the Ministry of Health:

- Ensure adequate training for all health professionals, including mental health professionals, on sexual and gender diversity and LGBT-affirming services.
- Establish a complaints procedure through which people who experience human rights violations in a healthcare setting, including discrimination, denial of services, or conversion practices aimed at changing their gender identity or sexual orientation, can file complaints and seek support and redress.

To the Ministry of Education:

- Prohibit educators and other school staff at all levels from undertaking conversion practices.
- Adopt anti-bullying projects and programming in schools that is inclusive of sexual orientation and gender identity.

To the State Legislative Assemblies and the Ministry of Federal Territories:

- In line with the 2021 ruling in I.K., repeal all legislation that criminalizes liwat (sodomy), or consensual same-sex conduct.
- Repeal all legislation that criminalizes gender diversity, including all laws that prohibit “a male person posing as a woman” and “a female person posing as a man.”
To State Islamic Departments and the Federal Police:

- End all raids and arrests based on gender identity and sexual orientation.
Acknowledgments

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Human Rights Watch and Justice for Sisters are indebted to the many LGBT Malaysians who shared their stories with us. This report is for them, in the hopes that they may one day live in a Malaysia that accepts them for who they are.
Annex I: Laws Criminalizing Sexual Orientation and Gender Identity in Malaysia\textsuperscript{265}

Federal Law

Section 377B of the Penal Code reads: “Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.”

Summary of State Laws

- “Cross-dressing”
  - All 13 states and the Federal Territory (Kuala Lumpur, Putrajaya, and Labuan, governed under one law) prohibit “a man posing as a woman.”
  - In Johor, Pahang, Penang, Perak, Sarawak, Selangor, Terengganu, and the Federal Territory, the law only applies in case of “immoral purposes,” and in Malacca, if “without reasonable excuse.”
  - In Kedah, Kelantan, Negeri Sembilan, Perlis, and Sabah, the law applies regardless of the reason for cross-dressing.
  - Three states—Pahang, Perlis, and Sabah—prohibit “a woman posing as a man.”
- Liwat (anal sex)
  - 10 states and the Federal Territory criminalize liwat.
  - Terengganu passed a Sharia Criminal Offense (Hudud and Qisas) enactment in 2003 that would have punished married offenders with “the punishment of stoning the offender with stones of medium size to death” and unmarried offenders with “the punishment of whipping of one hundred lashes and in addition thereto to one year imprisonment.” However, the law has so far proven

\textsuperscript{265} Human Rights Watch is indebted to Transgender Equality Europe (TGEU) for sharing a version of this table, from which we developed the table as presented here.
unenforceable because it violates limits on Sharia punishments prescribed by federal law.

- According to information available on Malaysian government websites, Pahang and Perak do not seem to criminalize liwat.
- **Musahaqah (sexual relations between women)**
  - 12 Malaysian states and the Federal Territories criminalize musahaqah. Only Pahang does not.
- **Pengkid (tomboy or tomboy-like behavior)**
  - Fatwa committees in Johor, Kedah, Kelantan, Malacca, Pahang, Perak, and Sarawak have issued fatwas against pengkid. The fatwas have been gazetted and therefore have legal status in Johor, Kedah, Malacca, and Perak.
- **Other “sexual offenses” consisting of consensual sex between adults**
  - Malacca criminalizes “sexual intercourse against the order of nature” (undefined) as well as “attempt to commit liwat.”
  - Sabah criminalizes “Intercourse Against the Order of Nature” (undefined).
  - Selangor criminalizes “Sexual relations between persons of the same gender” and “Sexual intercourse against the order of nature” (undefined).

The text of all laws in this chart comes directly from the English language version of the Malaysian government websites, E-Syariah Portal and E-Fatwa Portal, unless indicated otherwise. The text of all fatwas was translated to English from the original Malay by Human Rights Watch.

**JOHOR**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offenses Enactment 1997

**LAWS ON GENDER IDENTITY:** Male person posing as a woman. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 28)
**LAWS ON SAME-SEX CONDUCT:** *Liwat.* Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 25)

*Musahaqah.* Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 26)

**FATWAS (GAZETTED OR NON-GAZETTED):** December 3, 2008 (gazetted): *Tomboy,* which is a woman with the appearance of a man and who conducts homosexual relations is forbidden in Islam.

**KEDAH**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Code Enactment 1988

**LAWS ON GENDER IDENTITY:** *Pondan.* Any male person who, in any public place, wears woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding four months or to both. (Section 7)

**LAWS ON SAME-SEX CONDUCT:** *Liwat.* Any person who willfully commits an act of liwat shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 14)

*Musahaqah.* Any woman who willfully commits musahaqah with another woman shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding four months or to both. (Section 15)
**FATWAS (GAZETTED OR NON-GAZETTED):** April 26, 2010 (gazetted): Whereas, based on the decision made at the 83rd Conference of the Committee for the National Fatwa Council for the Islamic Religious Affairs of Malaysia, the Fatwa to be adopted in the state of Kedah Darul Aman is as follows:

Tomboy behavior, women with the image, appearance and characteristics of a man is forbidden in Islam. Tomboy behavior, by law, is forbidden in the Islamic religion because women who imitate men are condemned by Allah and Prophet Muhammad p.b.u.h because this behavior mimics and resembles (tasyabhuh) another sex which is contrary to their original sex or natural characteristics.

This behavior and aqidah must be restricted in Kedah Darul Aman if a female has/resembles a male in the aspects of physical characteristics, style, hairstyle, adornment, appearance, manner of speech, manner of dress and sensual desires or has homo-sexual instincts (lesbianism).

Therefore, Muslim parents and the community must pay serious attention to this social sickness and emphasize Islamic education and impart proper guidance to their daughters, especially in terms of dressing, behavior and appearance so that tomboy behavior phenomena can be avoided and eradicated because it is contrary to human nature and the laws of Allah.

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**KELANTAN**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Code 1985

**LAWS ON GENDER IDENTITY:** Pondan. Any male person who, in any public place, wears woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding four months or to both. (Section 7)

**LAWS ON SAME-SEX CONDUCT:** Liwat. Any person who willfully commits an act of liwat, which is not liable to the punishment of hadd according to Hukum Syarak, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both and to six strokes of whipping. (Section 14)

Musabaqah. Any woman who willfully commits musahakah with another woman shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding four months or to both. (Section 15)
FATWAS (GAZETTED OR NON-GAZETTED) December 14, 2008 (not gazetted): The meeting of Kelantan Religious Scholars Council and Malay Customs convened on Dec 14, 2008, has discussed the fatwa on tomboy behavior. The meeting has decided to agree on the fatwa as follows:

Women having the appearance and behavior as well as sexual instinct of men are forbidden in Islam. Similarly, men who imitate women in behavior and appearance as well as sexual instinct are forbidden in Islam.

The meeting also urged parents and society to give serious attention to these symptoms and emphasize on education and guidance preferably to the younger generation, especially in terms of dressing, behavior and appearance that such symptoms can be avoided because it is contrary to human nature and the laws of Allah.

MALACCA

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Enactment 1991

LAWS ON GENDER IDENTITY: Men posing as women. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 72)

LAWS ON SAME-SEX CONDUCT: Liwat. Any person who willfully commits an act of liwat shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty-six months or to both. (Section 56)

Attempt to commit liwat. Any person who willfully attempts commits an act of liwat shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty-six months or to both. (Section 57)

Sexual intercourse against the order of nature. Any person who performs sexual intercourse against the order of nature with any man, woman or animal has to be punished in accordance to takzïr and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty six months or to whipping not exceeding six strokes or to any combination thereof. (Section 58)

Musahaqah. Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 59)
**FATWAS (GAZETTED OR NON-GAZETTED):** December 18, 2008 ( Gazette): The Fatwa Committee members unanimously agree on the decision on a few matters as follows:

a) Adopting the decision of the 83rd Conference of the Committee for the National Fatwa Council for the Islamic Religious Affairs of Malaysia held from 22 to 24 October 2008 that:

   i. Tomboy, which is women with the appearance and behavior as well as sexual instincts resembling men is forbidden in Islam.

   ii. Muslim parents and the community are urged to give serious attention to this phenomena and to focus on the best education and guidance for girls especially in terms of dressing, behavior and appearance so that these phenomena can be avoided as it is contrary to human nature and the laws of Allah.

b) Gazetting the fatwa decision in the Malacca State Government Gazette for the purpose of legal enforcement.

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**NEGERI SEMBILAN**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Enactment 1992

**LAWS ON GENDER IDENTITY:** Male person posing as a woman. 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 be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 66)

**LAWS ON SAME-SEX CONDUCT:** Liwat. Any male person who commits an act of liwat with another male person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Section 63)

Musahahah. Any female person who commits musahahah with another woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Section 64)

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 five thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Section 65)
## PAHANG

**SOURCE OF STATE SHARIA LAWS**: Syariah Criminal Enactment 2013

**LAWS ON GENDER IDENTITY**: Pahang criminalizes “men posing as woman” (Section 33) and “women posing as men” (Section 34), with sentences of a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both, according to the Pahang Islamic Religious Department website. Human Rights Watch has been unable to obtain the full text of the law.

**LAWS ON SAME-SEX CONDUCT**: Sexual relations between women. Any Muslim female person found having carnal relations with another Muslim or non-Muslim female person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

**FATWAS (GAZETTED OR NON-GAZETTED)**: (Not gazetted) The Pahang State Islamic Law Consultative Committee Meeting Bill 4/2008 convened on December 26, 2008 discussed the ruling on women imitating men (tomboy) and the meeting decided that tomboy behavior is illegal and the practitioners must repent and return to the original nature of creation. Same-sex relations are illegal because they are contrary to the laws of Allah S.W.T.

## PENANG

**SOURCE OF STATE SHARIA LAWS**: Syariah Criminal Offences Enactment 1996

**LAWS ON GENDER IDENTITY**: Male person posing as a woman. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 28)

**LAWS ON SAME-SEX CONDUCT**: Liwat. Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 25)

Musahaqah. Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 26)
**FATWAS (GAZETTED OR NON-GAZETTED):**

**PERAK**

**SOURCE OF STATE SHARIA LAWS:** Crimes [Syariah] Enactment 1992

**LAWS ON GENDER IDENTITY:** Man posing as woman. A man who wears a woman's attire and in any public place poses as a woman for immoral purposes is guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 55)

**LAWS ON SAME-SEX CONDUCT:** Musahaqah. Any female person who wilfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 53)

**FATWAS (GAZETTED OR NON-GAZETTED):** December 18, 2008 (gazetted): WHEREAS the Fatwa Committee, in exercise of its powers under Section 36 and Section 37 of the Administration of the Religion of Islam (Perak) 2004 (Enactment 4 of 2004), has provided the fatwa contained herein: Whereas pursuant to Section 37 of the same Enactment, His Majesty the Sultan of Perak has consented to the publication of this fatwa in the Gazette and the State Government has been informed about this fatwa: Therefore, as such, in exercise of the powers conferred by Section 37 of the Administration of the Religion of Islam (Perak) 2004 Fatwa Committee, with the consent of His Majesty the Sultan, to make and publish the following fatwa: “tomboys, i.e. women who have the behavior and sexual instincts like men, and men who imitate women (transsexuals/transvestite) either in terms of dressing, appearance and behavior as well as having female sexual instinct is FORBIDDEN in Islam. Parents and the Muslim community should give serious attention to this phenomena and emphasize on the best education and guidance for their children particularly in terms of dressing, behavior and appearance so that such phenomena can be avoided because it is contrary to human nature and the laws of Allah.”

**PERLIS**

**SOURCE OF STATE SHARIA LAWS:** Criminal Offences in the Syarik Enactment 1991
**LAWS ON GENDER IDENTIY:** Pondan. (1) Any male person who poses (tasyubbah) as a woman in any public place shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. 
(2) Any female person who poses (tasyabbah) as a man in any public place shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 7)

**LAWS ON SAME-SEX CONDUCT:** Liwat. Any person who willfully commits an act of liwat shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 13)

Musahaqah. Any woman who willfully commits musahaqah with another woman shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 14)

**FATWAS (GAZETTED OR NON-GAZETTED):**

### SABAH

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offences Enactment 1995

**LAWS ON GENDER IDENTIY:** Male posing as woman or vice versa. Any male person who, in any public place, wears a woman’s attire and poses as a woman or vice versa shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 92)

**LAWS ON SAME-SEX CONDUCT:** Intercourse Against the Order of Nature. Whoever has sexual intercourse against the order of nature with any man, woman or animal, shall be liable to takzir and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to caning not exceeding six strokes or to any combination of such punishment. (Section 76)

Musahaqah. Any woman who willfully commits musahaqah with another woman shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 77)

Liwat. Any male person who willfully commits an act of liwat shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 82)
FATWAS (GAZETTED OR NON-GAZETTED):

SARAWAK

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Offences Ordinance 2001

LAWS ON GENDER IDENTITY: *Man posing as woman. Any man who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 25)

LAWS ON SAME-SEX CONDUCT: *Liwat. Any man who commits liwat* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof (Section 22)

*Musahaqah. Any woman who commits musahaqah* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 23)

FATWAS (GAZETTED OR NON-GAZETTED): December 17, 2008 (not gazetted): The meeting decided that tomboy behavior, i.e. women who have the appearance and behavior as well as the sexual instincts of men is forbidden in Islam. Muslim parents and the community are also urged to give serious attention to this problem and emphasize education and guidance especially to girls, especially in terms of dressing, behavior and appearance so that such symptoms can be avoided because it is contrary to human nature and the laws of Allah.

SELANGOR

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Offences Enactment 1995

LAWS ON GENDER IDENTITY: *Male person posing as a woman. Any male person who, in any public place, wears a woman’s attire or poses as a woman for immoral purposes* shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 30)
**LAWS ON SAME-SEX CONDUCT:** Sexual relations between persons of the 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 two thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 27)

*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 five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 28)

**FATWAS (GAZETTED OR NON-GAZETTED):**

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**TERENGGANU**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offences Enactment 2001

**LAWS ON GENDER IDENTITY:** *Male person posing as a woman.* Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 33)

**LAWS ON SAME-SEX CONDUCT:** *Musahaqah.* Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 30)

_Liwat._ Punishments are prescribed by Sections 13-15 of the (Syariah Criminal Offence [Hudud and Qisas] Enactment 2002), but are not enforced. See summary, above.

**FATWAS (GAZETTED OR NON-GAZETTED):**

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**FEDERAL TERRITORIES**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offences Act 1997
**LAWS ON GENDER IDENTITY**: Male person posing as woman. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 28)

**LAWS ON SAME-SEX CONDUCT**: Liwat. Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 25)

Musahaqah. Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 26)
# Annex II: Universal Periodic Review (UPR)

Malaysia received 6 recommendations from Canada, Chile, France, Portugal, Germany, and Iceland to review and repeal laws that criminalize LGBT people in the 3rd UPR cycle. All recommendations were noted.

<table>
<thead>
<tr>
<th>Recommendations</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>151.79 Review and repeal laws that directly or indirectly criminalize consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity (Canada);</td>
<td>Noted</td>
</tr>
<tr>
<td>151.80 Decriminalize consensual sexual relations between adults of the same sex (Chile);</td>
<td>Noted</td>
</tr>
<tr>
<td>151.81 Ensure respect for the fundamental rights of all, without discrimination, including in relation to lesbian, gay, bisexual, transgender and intersex persons by decriminalizing homosexuality (France);</td>
<td>Noted</td>
</tr>
<tr>
<td>151.82 Repeal all legislation that discriminates on the basis of sexual orientation or gender identity to guarantee that lesbian, gay, bisexual, transgender and intersex persons can enjoy all human rights without facing discrimination with regard to work, health, education, housing and other policy (Germany);</td>
<td>Noted</td>
</tr>
<tr>
<td>151.83 Repeal all laws that criminalize persons based on their sexual orientation and gender identity (Iceland);</td>
<td>Noted</td>
</tr>
<tr>
<td>151.224 Implement anti-bullying campaigns in schools addressing all forms of bullying, including that based on actual or perceived sexual orientation, gender identity or gender expression (Portugal).</td>
<td>Noted</td>
</tr>
</tbody>
</table>
Annex III: Letter to the Malaysian Ministry of Health

Khairil Jamaluddin, Minister of Health
Ministry of Health, Government of Malaysia
Kompleks E, Blok E1, E3, E6, E7 & E10,
Pusat Pentadbiran Kerajaan Persekutuan, 62590, 62000 Putrajaya, Wilayah Persekutuan
Putrajaya
Malaysia

July 15, 2022

RE: Rights of lesbian, gay, bisexual, and transgender (LGBT) people

Dear Minister Jamaluddin:

We write on behalf of Human Rights Watch and Justice for Sisters to inquire about the Ministry of Health’s work to protect the rights of lesbian, gay, bisexual, and transgender people in Malaysia.

Human Rights Watch is an independent non-governmental organization that monitors and reports on human rights in more than 90 countries around the world, including in Malaysia. Justice for Sisters is a grassroots campaign organized by concerned members of the public to raise public awareness about issues surrounding violence and persecution against the Mak Nyah community in Malaysia. We published a report on human rights violations against transgender people in Malaysia in 2014, and undertook follow-up research in recent years. We have prepared another report, which we plan to publish in August 2022. We would like to include the ministry’s perspective in that report, and therefore request your response to the questions below by August 1.

Our research found that officials under successive Malaysian governments have routinely denounced LGBT people, and endorsed discredited conversion practices that seek to change their sexual orientation or gender identity. The criminalization of same-sex activity and gender diversity, as well as persistent anti-LGBT rhetoric and action by state officials, has fostered an environment that encourages widespread discrimination against LGBT people. This persistent hostility threatens the rights to health and privacy and freedoms of expression, association, and peaceful assembly, and puts LGBT people at risk of discrimination, arbitrary arrest and detention, and torture and other cruel, inhuman, and degrading treatment.

1 Human Rights Watch, “I’m Scared to be a Woman:” Human Rights Abuses Against Transgender People in Malaysia, September 2014, https://www.hrw.org/sites/default/files/reports/malaysia0914傅 hacia.pdf

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“IDE DON’T WANT TO CHANGE MYSELF”
Since 2011, the Federal Islamic Affairs Department (JAKIM) and state Islamic departments have organized a series of retreats for LGBT people, often for transgender women, with the stated objective of bringing them closer to Islam. The retreats, known as mukhazham, are based on the presumption that sexual and gender minorities are lacking in their understanding of Islam compared to the general population.

More insidious is their underlying intent: using state resources to advance a vision of “natural” that is incompatible with sexual and gender diversity and attempting to manipulate LGBT people into believing they are deviant. The Malaysian government has also sought to justify mukhazham as an HIV prevention strategy. Malaysia’s National Strategic Plan to End HIV/AIDS, 2016-2030, describes one of the objectives of mukhazham as encouraging Muslim men who have sex with men (MSM) to “abandon the practice of unnatural sex.”

Given the health ministry’s mandate to protect the health of everyone in Malaysia, we request responses to the following questions.

1. What steps has the Ministry of Health taken to ensure adequate training for all health professionals, including mental health professionals, on sexual and gender diversity and LGBT-affirming services?

2. What steps has the Ministry of Health taken to establish a complaints procedure through which people who experience human rights violations in a healthcare setting, including discrimination, denial of services, or conversion practices aimed at changing their gender identity or sexual orientation, can file complaints and seek support and redress.

3. What steps has the Ministry of Health taken to revise the National Strategic Plan to end HIV/AIDS without discrimination, and will the Ministry of Health denounce the use of mukhazham as a conversion practice?

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Thank you for your attention to this important matter. Please send your response to Graeme Reid at reidg@hrw.org. We look forward to hearing from you by August 1.

Sincerely,

Graeme Reid  
LGBT Rights Director  
Human Rights Watch

Elaine Pearson  
Acting Asia Director  
Human Rights Watch

Thilaga Sulathireh  
Justice for Sisters
Annex IV: Letter to the Prime Minister of Malaysia

Ismail Sabri Yaakob, Prime Minister
Prime Minister’s Office
Main Block, Perdana Putra Building
Federal Government Administrative Centre
62502 Putrajaya
Malaysia

July 15, 2022

RE: Rights of lesbian, gay, bisexual, and transgender (LGBT) people in Malaysia

Your Excellency:

We write on behalf of Human Rights Watch to inquire about the
government of Malaysia’s efforts to protect the rights of lesbian, gay,
bisexual, and transgender (LGBT) people in the country.

As you may know, Human Rights Watch is an independent
governmental organization that monitors and reports on human rights
in more than 90 countries around the world, including in Malaysia. We
published a report on human rights violations against transgender people
in Malaysia in 2014, and undertook follow-up research in recent years.
We have prepared another report, which we plan to publish in August
2022. We would like to include your government’s perspective in that
report, and therefore request your response to the questions below by August 1.

Malaysia is obligated under international human rights law to protect the
rights of everyone in the country, including LGBT people. However, our
research found that officials under successive Malaysian governments,
including yours, have routinely denounced LGBT people, and endorsed
discredited conversion practices that seek to change their sexual
orientation or gender identity. The criminalization of same-sex activity
and gender diversity, as well as persistent anti-LGBT rhetoric and action
by state officials, has fostered an environment that encourages
widespread discrimination against LGBT people. This persistent hostility
threatens the rights to health and privacy and freedoms of expression,
association, and peaceful assembly, and puts LGBT people at risk of
discrimination, arbitrary arrest and detention, and torture and other cruel,
inhuman, and degrading treatment.

As you may know, since 2011 the Federal Islamic Affairs Department
(JAKIM) and state Islamic departments have organized a series of

1 Human Rights Watch, “I’m Scared to be a Woman,” Human Rights Abuse against Transgender People in Malaysia, September


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AUGUST 2022
retreats for LGBT people, often for transgender women, with the stated objective of bringing them closer to Islam. The retreats or “rehabilitation” camps, known as mubahayam, are premised on the presumption that sexual and gender minorities are lacking in their understanding of Islam compared to the general population.

More insidious is their underlying purpose: using state resources to advance a vision of “natural” that is incompatible with sexual and gender diversity, manipulating LGBT people into believing they are deviant. Your comments have reflected that as well. In 2021, you told reporters that as of June that year, 1,733 LGBT Malaysians had attended JAKIM mubahayam. You also said: “The government is serious about the issue of LGBT people in the country, as Malaysia is a country that adheres to the religion of Islam. Any individual who violates the law must face action. Nevertheless, at the same time, they need to be guided and be made aware so that they can return to the right path.”

We request responses to the following questions so that they can be reflected in our reporting:

1. What are the government’s plans with regard to repealing sections 377A and 377B of the Penal Code, which criminalize “carnal intercourse against the order of nature,” and 377D, which criminalizes “gross indecency”?

2. What steps has the government taken to instruct relevant ministries to adopt a complaints procedure through which people who experience human rights violations, including discrimination or denial of services on the basis of their gender identity or sexual orientation, or conversion practices aimed at changing their gender identity or sexual orientation?

3. Please explain the rationale of the current appointment of the SUHAKAM commissioners and Malaysia's commitment in upholding human rights for all persons, including LGBT persons. Some of the commissioners in the past have taken anti-rights positions, namely on the rights of LGBT persons. For example, Mohamad Nordin Ibrahim, former Director-General of Islamic Development Department (JAKIM) has actively campaigned against the rights of LGBT persons.

Thank you for your attention to this important matter. Please send your response to Graeme Reid at reidg@hrw.org. We look forward to hearing from you by August 1.

Sincerely,

Graeme Reid
LGBT Rights Director
Human Rights Watch

Elaine Pearson
Acting Asia Director
Human Rights Watch
Officials under successive Malaysian governments have routinely denounced lesbian, gay, bisexual, and transgender (LGBT) people, and endorsed discredited conversion practices that seek to change their sexual orientation or gender identity. The criminalization of same-sex activity and gender diversity, as well as persistent anti-LGBT rhetoric and action by state officials, has fostered an environment that encourages widespread discrimination against LGBT people.

Drawing on interviews with 73 LGBT people in Malaysia as well as advocates, journalists, and service providers, “I Don’t Want to Change Myself” documents how anti-LGBT rhetoric and policy jeopardize the human rights of LGBT people in Malaysia. This persistent hostility threatens the rights to health and privacy and freedoms of expression, association, and peaceful assembly, and puts LGBT people at risk of discrimination, arbitrary detention, and torture or cruel, inhuman, and degrading treatment.

The report calls on the Malaysian government to immediately stop sponsoring, funding and otherwise supporting conversion practices, and instead, in consultation with LGBT community groups, educate police, judges, and other public officials on gender, diversity, and human rights. At the same time, the government should repeal laws that discriminate on the basis of sexual orientation and gender identity.