

HUMAN RIGHTS WATCH

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December 4, 2012

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Dear Prime Minister Najib,

Human Rights Watch is writing to urge you to reconsider your endorsement of a discriminatory and rights-violating policy that vilifies members of the lesbian, gay, bi-sexual, and transgender (LGBT) community in Malaysia.

On June 25, 2012, at the joint launch of the Islamic Scholars Secretariat and in *The Agenda of Islam in National Transformation*, a book of your speeches and messages that you said “charts the journey of the government led by me based on the transformation of the national administration system,” you singled out the LGBT community as one of the prime examples of a “deviant culture” that threatens Malaysia. You told the assembled audience that your government would not tolerate LGBT activities in Malaysia. A report of the event on the website of the Prime Minister’s Office quoted you as saying that “any deviant aspects such as ... Lesbian, Gay, Bisexual and Transgender (LGBT) would not have a place in the country.”

Two days later, on June 27, the Foreign Affairs Ministry replied in writing to a question posed by [Muhamad](#) Husain, the Member of Parliament from Pasir Puteh. He had asked if the Malaysian government planned to officially record a protest with respect to US President Barack Obama’s public statement of support for same-sex marriage. In its reply, the ministry said that you had already expressed your “disappointment” to US Deputy Secretary of State James Steinberg when you visited Washington, D.C. in May 2012. The statement added that “The Malaysian government stand was made clear when we prohibited the recently planned LGBT protest.”

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The following month, on July 19, 2012, when you spoke to over 11,000 Malaysian imams and mosque committee members, you were quoted as saying that “LGBTs, pluralism liberalism – all these ‘isms’ are against Islam and it is compulsory for us to fight these.” Although you went on to say that “We do support human rights,” you qualified that support by adding “but we must do so within the boundaries set by Islam.”

Conditioning respect for human rights on the basis of religious belief runs counter to the universality of human rights embodied in international human rights instruments such as the Universal Declaration of Human Rights (UDHR), which is widely recognized as reflective of customary international law. Specifically, article 1 of the UDHR states that “All human beings are born free and equal in dignity and rights.” Article 2 recognizes that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 7 declares that “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

As a member of the United Nations, Malaysia is bound by these principles of non-discrimination and equality in the UDHR. The Malaysian government cannot simply choose which rights to grant and which to deny to various groups of people in Malaysia. The Malaysia government recognized this when it joined the international consensus at the Vienna World Conference on Human Rights and endorsed the Vienna Declaration and Program of Action on June 25, 1993. Paragraph five of that declaration stated that “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

Moreover, in a ground-breaking report in November 2011, the United Nations Office of the High Commissioner for Human Rights set out the obligation of UN member states to protect the rights of LGBT people. In its conclusion the report stated that “a pattern of human rights violations emerges that demands a response. Governments and intergovernmental bodies have often overlooked violence and discrimination based on sexual orientation and gender identity. The mandate of the Human Rights Council requires it to address the gap: the Council should promote ‘universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.’”

The High Commissioner's report, commissioned under a landmark resolution on "Human rights, sexual orientation and gender identity" and adopted by the UN Human Rights Council on June 17, 2011, made numerous recommendations, including several that are relevant to Malaysia. They include: (1) "repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct"; (2) "enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity"; and (3) "ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity."

In a 2010 statement, UN Secretary-General Ban Ki-moon also acknowledged the obligation to protect. "Where there is tension between cultural attitudes and universal human rights, rights must carry the day," he said. And on the occasion of an event organized by Human Rights Watch on June 28, 2012, Ban's message said, "Violence and discrimination against lesbian, gay, bisexual and transgender people are a human rights violation: a violation that States have a moral duty and legal obligation to address.... No custom or tradition, no cultural values or religious beliefs, can justify depriving a human being of his or her human rights."

Human Rights Watch is also concerned that members of your government not only deny the universality of international human rights but deny that Malaysia's constitution protects homosexuality. For example, Minister Nazri Abdul Aziz, de facto law minister in the Prime Minister's Department, stated that "If a certain act is within the rights of the constitution but is not consistent with Islam, the act is not applicable in Malaysia." Consistent with that belief, government officials have joined with nongovernmental actors to implement a variety of discriminatory policies and programs targeting LGBT people that apparently are attempts to eradicate so-called "gay culture." These policies and programs violate human rights and should be halted at once.

In March 2012, the government began training volunteers to "convert gays" with the deputy minister in the Prime Minister's Department, Mashitah Ibrahim, asserting that preventive measures were only half the battle. She said, "There is the Federal Territory Sharia Criminal Offenses Act 1997 with sections on prostitution, pimping, sodomy, improper conduct and cross-dressing that can be used as the 'stick of enforcement.'"

Other suggested measures included instructing civil society groups to carry out anti-homosexual campaigns, using the government-controlled media to highlight the effect of homosexuality on health, and a government initiated homosexual rehab center. In April 2012, Deputy Prime Minister Muhyiddin Yassin added that effective counseling can stem the rise in numbers of LGBT cases.

Even foreign policy with Southeast Asian neighbors is not immune to your government's anti-LGBT rights agenda. Deputy Prime Minister Tan Sri Muhyiddin Yassin recently stated publicly that Malaysia worked hard to keep the right to protection based on sexual orientation and gender identity out of the ASEAN Human Rights Declaration (AHRD) adopted at the ASEAN Summit in Phnom Penh, Cambodia in November 2012. Nongovernmental organizations involved in the consultation processes related to the drafting of the AHRD were also told by Muhammad Shafee Abdullah, the Malaysian commissioner to the ASEAN Inter-government Commission on Human Rights, that he had been strictly instructed by the government to ensure that rights of LGBT persons were not recognized in the AHRD.

In September 2012, the Ministry of Education participated without objection in at least one seminar organized by nongovernmental groups that promoted "guidelines" for parents to identify gay and lesbian "symptoms" in their children and work toward eradication. The guidelines identified as so-called gay symptoms included a preference for tight-fitting, light-colored clothes and for carrying large handbags, when "hanging out." So-called lesbian symptoms listed include having no affection for men and distancing themselves from women other than their female companions. The guidelines are generally introduced during seminars on "Parenting in addressing the issues of LGBTs" and warn that "Once the children have these symptoms, immediate attention should be given."

And in November 2011, the Malaysian government violated basic rights to freedom of expression and association by approving a police ban on the fourth annual Seksualiti Merdeka (Sexual Diversity) festival as a "threat to public order." The ban discriminated against a celebration on the basis of the sexual orientation of its organizers. It stood in contradiction to your Malaysia policy to promote "unity in diversity." The festival was to consist of talks, workshops, literary events, art exhibitions, and a stage performance focusing on "the human rights of people of diverse sexual orientations and gender identities." In addition, in March 2012 your government blocked judicial review of the ban on the grounds that since the projected festival was long since passed there was no reason to continue the case. The decision leaves the future of the festival in legal limbo. Human Rights Watch urges that your government reverse itself and publicly announce it will permit the next Seksualiti Merdeka festival to take place without interference from the authorities.

Malaysia also continues to criminalize sexual relations between consenting adults under article 377 of the Penal Code, which makes illegal "carnal intercourse against the order of nature." Consenting adults in Malaysia should have the freedom to choose their own partners and the section of the law referring to non-consensual sex acts should be replaced by a gender-neutral rape law. Revoking section 377 would mean emancipating Malaysia's legal system from its colonial past and historical prejudices.

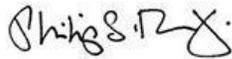
The Malaysian government should immediately seek the repeal of article 377, eliminate all other laws and policies that discriminate against LGBT people, and end projects that seek to change and convert, or alternatively stigmatize and marginalize LGBT people. The government should also initiate a sustained public awareness campaign aimed at ending hostility to and threats against the LGBT community.

We look forward to your response.

Sincerely,



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Advocacy Director, Lesbian, Gay, Bisexual and Transgender Program



Phil Robertson
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CC:

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