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RIGHTS
WATCH

“I’m Scared to Be a Woman”

Human Rights Abuses Against Transgender People in Malaysia



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Printed in the United States of America

ISBN: 978-1-62313-1845

Cover design by Rafael Jimenez

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A Note on Gender Identity

This report addresses human rights abuses faced by transgender people in Malaysia. “**Transgender**” is an inclusive term for anyone whose sex assigned to them at birth—i.e., the designation as “female” or “male” on their birth certificate—does not conform to their lived or perceived gender (the gender that they are most comfortable expressing or would express, if given a choice).

We start from the premise that everyone has a **gender identity**. Most people identify as either female or male, though some may identify as both, or neither. If someone is labeled “female” at birth but identifies as male, he is a **transgender man** (or **transman**). If someone is labeled “male” at birth but identifies as female, she is a **transgender woman** (or **transwoman**). The term “**cisgender**” (i.e. non-transgender) is used for someone who identifies with the same gender, male or female, as the sex they were assigned at birth.

Transgender people, as per the usage in this report, are not simply “cross-dressing” for pleasure; rather, they experience a deep sense of identification with a gender different from the sex assigned to them at birth. They may or may not take steps to physically alter their bodies, such as undergoing **hormone replacement therapy (HRT)** or **sex reassignment surgery (SRS)**.

Gender identity is not the same thing as **sexual orientation**. Like cisgender people, transgender people may identify as heterosexual, homosexual, bisexual, or asexual—that is, they may be attracted to people of the opposite gender, the same gender, both genders, or neither.

Several terms are used to describe transgender and gender non-conforming people. In Malaysia, transgender women are known as *mak nyah*, a non-stigmatizing term developed by transgender women themselves.

The term “**transvestite**” is often used in the Malaysian press, and is also used by government institutions such as the Department of Islamic Development, or JAKIM. However, “transvestite” more accurately refers to a person who cross-dresses from time to time for pleasure. Transvestites, or “cross-dressers,” do not necessarily identify with a

gender different from the gender associated with the sex assigned to them at birth. It is therefore inaccurate to describe Malaysia's *mak nyahs* as "transvestites." However, some transvestites may identify as transgender.

The term "**transsexual**" has also been applied to this population, both by the media and by transgender Malaysians themselves. "Transsexual," however, often has a more narrow meaning: those who use hormones or undergo surgery in order to effect a physical transformation from one sex to another.

Glossary

Assigned sex: The classification of bodies at birth as male or female, based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

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

Cisgender: An adjective used to describe the gender identity of people whose birth sex (the sex they were declared to have upon birth) conforms to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice).

Cross-dressing: The act of wearing clothing and other accoutrements commonly associated with the opposite sex within a particular society.

Fatwa: An edict issued by a Muslim religious authority. According to Malaysian law, fatwas approved by the sultan in each state are published in the gazette and take on the force of Sharia law.

Gay: A synonym for homosexual in many parts of the world.

Gender: The social and cultural codes (as opposed to biological sex) used to distinguish between society's conceptions of "femininity" and "masculinity."

Gender Dysphoria (also Gender Identity Disorder, GID): The formal diagnosis used by psychologists and physicians to describe persons who experience significant discontent with the sex they were assigned at birth. The International Statistical Classification of Diseases and Related Health Problems (ICD-10 CM) classifies GID as a medical disorder. In the United States, the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) replaced "Gender Identity Disorder" with "Gender Dysphoria" in 2013 to avoid the stigma associated with "disorder."

Gender Expression: The external characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress appearance, mannerisms, hair style, speech patterns, and social behavior and interactions.

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

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

Homosexual: The sexual orientation of a person whose primary sexual and romantic attraction is toward people of the same sex.

Hormone Replacement Therapy (HRT): The administration of sex hormones (namely androgen or estrogen) for the purpose of bringing one's secondary sexual characteristics more in line with one’s gender identity.

Lesbian: The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.

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

Mak Nyah: A Malay term which derives from “mak” (mother), coined by transgender Malaysians to refer to transgender women.

Men who have sex with men (MSM): Men who engage in sexual behavior with other men, but do not necessarily identify as "gay," "homosexual," or "bisexual."

Pengkid: A term, mostly used by ethnic Malays, to refer variously to Malay girls and women who dress in a masculine way, use gender neutral or ambiguous names, bind their chests, are in romantic relationships with women, or are butch lesbians, or transmen.

Pondan: A derogatory Malay term for an effeminate male, a gay male, or a transgender woman.

Sex Marker: The label of “female” or “male” on one’s birth certificate or identity card. The term “**gender marker**” is more commonly used, but we use “sex marker,” since the label is largely based on the genitals that one is born with, not on a person’s lived gender.

Sex Reassignment Surgery (SRS): The term refers to surgical interventions to change one’s body so as to resemble a body of the opposite sex. SRS is usually preceded by a minimum period of hormone therapy to induce secondary sex characteristics of the desired sex.

Sexual Orientation: The term refers to a person’s sexual and emotional attraction to members of the same gender (homosexuals, gay men, and lesbians), the opposite gender (heterosexuals), or both genders (bisexuals).

Sex Work: The commercial exchange of sexual services between consenting adults.

Sharia (or Syariah) Law: Islamic law, having jurisdiction over every Muslim in Malaysia.

Transgender (also trans): An adjective used to describe the gender identity of people whose birth sex (the sex they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice). A transgender person usually adopts or would prefer to adopt a gender expression in consonance with her or his preferred gender, but may or may not desire to permanently alter bodily characteristics in order to conform to the preferred gender.

Transgender man (transman): A person designated female at birth, but who identifies and may publicly present, as a man. Transgender men are referred to with male pronouns.

Transgender woman (transwoman): A person designated male at birth, but who identifies and may publicly present, as a woman. Transgender women are referred to with female pronouns.

Transphobia: Fear of and contempt for transgender and transsexual persons, often based on negative stereotypes about transgenderism and transsexuality.

Transvestite: A term that generally refers to a person who sometimes dresses in attire associated with the opposite sex for pleasure, but does not deeply identify with a gender different from the sex assigned at birth.

Transsexual: As used here, a person who seeks to undergo or has undergone bodily modification such as sex reassignment surgery, so that their physical sex corresponds to their felt gender identity. Transsexual people fall under the umbrella term “transgender.”

Map of Malaysia



Malaysia is composed of 13 states and 3 federal territories. © 2014 Human Rights Watch

Summary

I'm scared to be a woman.

—Aisah, 33-year-old transwoman HIV outreach worker, Kuala Lumpur,
January 2013

This is the life I have to live, or it's not life at all.

—Kiki, 33-year-old transwoman medical doctor, Kuala Lumpur, January 2013

Shortly after midnight on June 9, 2014, officials from the Islamic Religious Department in the Malaysian state of Negeri Sembilan raided a wedding party being held in the yard of a private home. They rounded up and arrested 17 invited guests, including the wedding planners and a child. The Religious Department officials beat at least one person during the arrests, choking her and kicking her to the ground. They tore another guest's clothing. Later that day, a state Sharia (Islamic law) court convicted all 16 of the adults who had been arrested and sentenced them to seven days in prison and a fine.

What criminal offense had the wedding guests committed?

Their “crime” was dressing in women's clothing. These guests were transgender women, arrested under a state Sharia law that criminalizes “a man posing as a woman.” They were taken to prison and placed in a segregated cell in the male prison block, where they had their heads shaved. The judge at the Sharia court humiliated them, telling them they looked more “handsome” with shaved heads. After serving their sentences, they were released, having become the latest casualty of state-sponsored discrimination on the basis of gender identity.

Although transgender people historically enjoyed a high degree of acceptance in Malaysia, a series of legislative initiatives, beginning in the 1980s, have criminalized them and forced them further underground. Under these discriminatory laws, transgender people—individuals whose gender identity differs from the sex assigned to them at birth—can be arrested simply for wearing clothing deemed not to pertain to their assigned sex. A constitutional challenge to the state laws in Negeri Sembilan is currently underway, with a ruling expected on November 7, 2014. The ruling, while only binding in Negeri Sembilan, has the potential to fundamentally alter the legal status of transgender people throughout Malaysia.

Arrests of transgender people usually take place under state Sharia laws, which are enforced by state Islamic Religious Departments and are only applicable to Muslims, who make up approximately 60 percent of Malaysia's population. While the language of such laws varies across Malaysia's 13 states and 3 federal territories, most Sharia enactments contain provisions that prohibit "a man posing as a woman," and three states similarly criminalize "a woman posing as a man." As far as Human Rights Watch has been able to ascertain, despite the existence of some laws targeting transgender men ("women posing as men," in the eyes of the Malaysian authorities), all arrests to date under these laws have targeted transgender women. Officers of the Royal Malaysia Police (RMP) (all police in Malaysia belong to the federal RMP) have also at times arrested transgender women under an overly vague provision of the secular federal criminal code that prohibits "public indecency" and applies to people of all religious backgrounds.

Both religious and civil police have perpetrated abuses against transwomen during arrests. In some cases, Religious Department officials physically and sexually assault them during arrest or while in custody, or parade them before the media, humiliating them. Human Rights Watch is unaware of any Religious Department officials having been held accountable for these violations. Transwomen also report that civil police sometimes extort money or sex from them. In cases in which transwomen are sentenced to prison, they are usually placed in male wards, where they face sexual assault at the hands of both wardens and male prisoners.

Transgender people in Malaysia face discrimination and abuse from a range of state officials and agents—including police officers, state Religious Department officials, public sector health workers, prison guards, and public school teachers and administrators. Official discrimination against transgender people is compounded by other forms of discrimination for which the government provides little or no protection: Human Rights Watch found that transgender people are fired from their jobs, evicted from their homes, physically and sexually assaulted, and denied access to health care because of their gender identities. When public officials or private individuals commit violence against transgender people, the victims face serious obstacles—and at times further sexual abuse—from the police who are supposed to be helping them.

Government officials, politicians, and religious leaders fuel the flames of violence and discrimination against transgender people with transphobic and homophobic rhetoric.

Typically, this rhetoric groups together lesbian, gay, bisexual, and transgender (LGBT) people, labeling them as criminal or un-Islamic. Although the government of Prime Minister Najib Razak presents Malaysia to the international community as a “moderate Muslim” country, it has taken a series of public positions that draw on a narrow interpretation of Islam to endorse restrictions on religious freedom, LGBT rights, and gender equality that cater to extremist views.

Transgender people, both Muslim and non-Muslim, have been affected by the Islamization of public policy in multiple ways. Not only are Muslim transgender women criminalized under Sharia enactments, but a *fatwa*, or Islamic decree, issued in 1982 by the National Fatwa Council, prohibits Muslims from undergoing sex reassignment surgery (SRS) and Muslim medical institutions from providing such surgeries. Although in principle, a non-Muslim medical institution could still offer SRS to non-Muslims, most transgender people have found it impossible to find doctors who will perform SRS. The National Registration Department does not allow transgender people—neither Muslim nor non-Muslim—to change the sex marker (“female” or “male”) on their identity cards to match their gender identity. Even when transgender people have undergone SRS outside Malaysia, they are still denied this right, forcing them to live in a legal limbo in which their body does not match the sex listed on their identity card.

At times, Malaysian government institutions have recognized some of the needs of transgender people. Government recognition of transgender women as a “most at-risk population” (MARPP) in the fight against HIV has led to some government outreach aimed at engaging transgender people in HIV prevention efforts and ensuring that those who are HIV-positive receive treatment. The Ministry of Health has reported that prosecutions of transgender people obstruct the fight against HIV by driving them underground, although the Ministry has not undertaken efforts to reform those laws. The federal Department of Islamic Development (*Jabatan Kemajuan Islam Malaysia*, JAKIM), a body established with the purpose of “mobilis[ing] the development and progress of Muslims in Malaysia,” and ensuring the widespread teaching of Islam, has taken on a role in HIV prevention and care; among its activities, it has reached out to transwomen, although its messaging may at times reinforce stigma rather than alleviate it.

Despite the challenges they face, transgender people in Malaysia are not passive victims of their circumstances. A vibrant transgender movement has developed, with trans people

increasingly speaking out and demanding that their rights be respected. The Kuala Lumpur-based organization, Justice for Sisters, seeks to raise public awareness about violence and persecution against transgender women, and supports legal challenges to the state Sharia “cross-dressing” laws. The “I AM YOU: Be A Trans Ally” multimedia campaign aims to promote positive images of transgender people and allows transgender people an avenue to share their stories. Civil society organizations ranging from the Malaysian Bar Council to the Muslim feminist group Sisters in Islam have taken public stances in support of transgender rights.

In 2010, four transgender women filed a constitutional challenge against the “cross-dressing” laws in the state of Negeri Sembilan. The applicants had been arrested repeatedly under the law, in some cases simply for wearing women’s hair accessories. Three of them had been subjected to physical or sexual abuse by the state Religious Department officials who carried out the arrests. Through their lawyer, the women argued that the law prohibiting “a man posing as a woman” violated their rights to freedom of expression, freedom of movement, and equal protection, all of which are guaranteed by Malaysia’s constitution. A judge in the first instance decided against the applicants, and in 2014, their appeal was heard at the Court of Appeal in the federal administrative center, Putrajaya. A ruling is expected on November 7, 2014.

Several transgender people born in the 1950s and 1960s told Human Rights Watch that they remembered a more progressive, less discriminatory Malaysia. Today’s transgender activists aim to remind Malaysians of their more tolerant past, and to ensure that transgender Malaysians are not stripped of their fundamental rights, protected under Malaysia’s constitution and international human rights law, because of their gender identity or expression.

Human Rights Watch calls on the federal and state governments of Malaysia to repeal discriminatory laws and fatwas that deny transgender people their basic rights—and prohibit them from being who they are. State Religious Departments and the federal police should end all forms of abuse against transgender people, including arbitrary arrests and detention; sexual assault, torture and ill-treatment; and extortion of money and sex. The authorities should investigate and appropriately discipline or prosecute those responsible for such abuses. Malaysian government officials, politicians, and religious leaders should cease making inflammatory or denigrating statements about transgender people and should instead take steps to protect them from violence and discrimination.

Key Recommendations

To the Prime Minister of Malaysia

- Retract 2012 statement that Malaysia should “fight” against LGBT people, and call on the Malaysian public to practice tolerance and to stop discriminating against people on the basis of gender identity or sexual orientation.

To the Department of Islamic Development (JAKIM)

- Call on all state Religious Departments to repeal provisions within state Sharia enactments that criminalize transgender people.
- Call on all state Religious Departments to end the practice of conducting raids targeting transgender people.
- Cease efforts, through outdoor boot camps or other initiatives, to “convert” transgender people to cisgender.

To the State Legislative Assemblies

- Repeal provisions within the various state sharia enactments that criminalize “a man posing as a woman” or “a woman posing as a man.”

To State and Federal Territory Islamic Religious Departments

- Cease carrying out raids that target transgender women.
- Investigate allegations of physical and sexual abuse and extortion of transgender women by state Religious Department officials, and hold accountable all personnel found to have committed such abuses.

To the State Fatwa Committees

- Repeal fatwas that have been gazetted in several states (Johor, Kedah, Malacca, and Perak) that prohibit “pengkid” (“tomboys” or tomboy-like behavior).

To the Royal Malaysia Police

- Investigate allegations of physical and sexual abuse and extortion of transgender women by state Religious Department officials and by police officers, and bring

criminal charges against any officials and officers found to have played a role in such abuses.

To the Federal Parliament

- Amend article 8(2) of the Constitution, which prohibits discrimination on gender and other grounds, to include sexual orientation, gender identity, and gender expression. In the absence of a constitutional amendment, pass legislation prohibiting discrimination on these grounds.
- Repeal provisions of federal territory Sharia enactments that criminalize “a man posing as a woman” or “a woman posing as a man.”

To the National Registration Department

- Amend the National Registration Guidelines to allow for transgender people to change their names and the sex markers on their identity cards based on their expressed gender identity.

Methodology

Human Rights Watch conducted field research in Malaysia in January 2014 in four states—Selangor, Negeri Sembilan, Penang, and Pahang—and in the Federal Territory of Kuala Lumpur. A Human Rights Watch researcher interviewed 66 people, including 42 transgender women (several of whom were also activists and outreach workers) and 3 transgender men; as well as lawyers; HIV prevention and outreach workers; human rights activists; a criminologist, a psychologist, and a medical doctor; a representative of the federal Department of Islamic Development (JAKIM); a representative of the governmental human rights commission (SUHAKAM); an elected state assemblyman; and foreign diplomats. Human Rights Watch contacted the Ministry of Health and the Prison Department by email to inquire about policies affecting transgender people, but neither agency responded.

Most transgender interview subjects were introduced to Human Rights Watch by the activist group, Justice for Sisters, or by other community organizations that work with transgender people. Interviews were conducted in English or in Malay, Tamil, or Cantonese with the assistance of an interpreter. All persons interviewed provided verbal informed consent to participate and were assured that they could end the interview at any time or decline to answer any questions. Most interviewees have been given pseudonyms, and in some cases other identifying information has been withheld to protect their privacy and safety. No one was compensated for their participation. Some participants were reimbursed for modest transport costs incurred to go to interview locations.

Although Human Rights Watch only conducted primary research in four states and in one federal territory, some transgender women we interviewed had previously lived in other locations, including Sabah, Sarawak, Kelantan, Kedah, and Johor, and reported on forms of discrimination they faced in those locations. Secondary research, including review of other reports on transgender people in Malaysia, suggests that the types of human rights abuses documented in this report are also common in other states. For instance, Dr. Teh Yik Koon, a professor of sociology and criminology at the National Defense University, conducted a 2000 survey of 507 transgender women in eight states and territories, including six of those in which Human Rights Watch did not conduct research. Teh's research documents arbitrary arrests and abuse by the police and religious authorities, as well as other abuses and consequences, such as employment discrimination and family rejection, that are similar to those documented here.

I. Background

Malaysian criminologist Teh Yik Koon, in her groundbreaking work *The Mak Nyahs: Malaysian Male to Female Transsexuals* (2002), recounts an interview with a 63-year-old *mak nyah* (transgender woman):

Mak Yam revealed that during her younger days, things were very different from now. Transsexuals were a happy lot at that time as they were left to be who they wanted to be. ... The police and the Islamic religious authorities had never bothered them. In fact, the police were good to them and accepted them as they were.¹

Human Rights Watch research in Malaysia elicited similar recollections. Mak Lil, an elderly transgender woman and former sex worker in Kuantan in the eastern state of Pahang, remembered the early 1980s: “There was no violence at that time, and no harassment from the police or the religious authorities.”²

Sarah, a 52-year-old transwoman in Kuala Lumpur, said that she faced little discrimination before the National Fatwa Council issued a fatwa in 1982 against sex reassignment surgery: “I came out [as a transwoman] in the early 80s [before the fatwa]. Then, there was not much discrimination. Everything was going well—I seldom received discrimination. Only after the fatwa came out, so many things happened.”³

Not all transgender women share such a rosy picture of the past, but what is clear from the historical record is that transgender people have long had a visible presence in Malaysia and, during some periods, have faced significantly less discrimination than they do today. According to anthropologist Michael Peletz, historical texts from the 15th to 19th centuries testify to the existence at that time of “androgynous” priests or courtiers, both male and female:

¹ Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals* (Singapore: Eastern Universities Press, 2002), pp. 129-30.

² Human Rights Watch interview with Mak Lil (pseudonym), Kuantan, Pahang state, January 18, 2014.

³ Human Rights Watch interview with Sarah, Kuala Lumpur, January 19, 2014.

[T]he evidence indicates the existence in the Malay Peninsula in the late pre-modern and modern era of a pre-Islamic class of male-bodied priests or courtiers, referred to by the term *sida-sida* ... who were said to be involved in ‘androgynous behavior,’ such as wearing women’s clothes and possibly performing tasks generally undertaken by women.

Peletz also finds references to “female *sida-sida*,” and to “*sida-sida* and their wives,” suggesting that these individuals included “male- as well as female-bodied persons involved in transgender practices.”⁴ *Sida-sida* and other ritual specialists known as *pawing*, which included women dressing as men, were reported in Malaysian palaces well into the 20th century.⁵

Joseph Goh, a PhD candidate in gender and sexuality studies at Malaysia’s Monash University, writes:

Trans* persons have long been important figures in the landscape of the Malay archipelago. In the 19th century, the *manang bali* or Iban shamans who dressed as women were respectable curers and local leaders. Right up to the 20th century in the archipelago, many transwomen were royal courtiers. Transwomen village performers were also favourably treated by the Sultan of the state of Kelantan in the 1960s.⁶

Although the ritual roles of transgender people diminished in the 20th century, Peletz found during fieldwork in the 1970s and 1980s that, “normatively orientated Malays still exhibited considerable tolerance and respect for individuals involved in transgenering, assuming they merited tolerance and respect on other grounds as well.” Some transgender people maintained a particular ritual status as *mak andam*, or “ritual practitioners whose roles include planning weddings and beautifying brides.”⁷

⁴ Michael Peletz, *Gender Pluralism: Southeast Asia Since Early Modern Times* (New York: Routledge, 2009), pp. 58-59.

⁵ *Ibid.*, pp. 60-61.

⁶ Joseph Goh, “Trans*cending tribulations: Malaysian Mak Nyahs,” *New Mandala*, February 11, 2014, <http://asiapacific.anu.edu.au/newmandala/2014/02/11/transcending-tribulations-malaysian-mak-nyahs/> (accessed June 3, 2014).

⁷ Peletz, *Gender Pluralism*, pp. 188-89.

Beginning around 1980, sex reassignment surgery (SRS) was available to transgender people in Malaysia. A team of surgeons performed these surgeries at the University of Malaya Hospital. However, in 1982, the National Fatwa Council learned about the surgeries and issued a fatwa banning SRS.⁸ The hospital facilities shut down in 1983, even though fatwas issued by the National Fatwa Council have no legal authority.

In 1987, transgender women in Kuala Lumpur coined the term “*mak nyah*” to identify themselves, and formed the Federal Territory Mak Nyah Association. In what trans activist Khartini Slamah describes as a “strategic alliance,” the association successfully sought small grants from the Federal Welfare Department to allow transgender women to start small businesses, noting that the department “look[ed] on *mak nyahs* as a social problem and want[ed] to rehabilitate us as biological men.” The association mobilized transwomen to file complaints against street gangsters and pimps who were violent toward them, and sought to change public perceptions of transwomen as being “only good for sex and entertainment.” After three years, however, JAWI, the Religious Department in the federal territory of Kuala Lumpur, banned the association.⁹

Politicization of Islam and Rising Transphobic and Homophobic Discourse

The political context since the 1980s in Malaysia has been marked by increasing regulation of the body, sexuality, and gender identity, and, in parallel, an increasing Islamization of domestic politics.¹⁰ Mahathir Mohamad of the United Malay National Organization (UMNO), the key party within the Barisan Nasional coalition that has ruled Malaysia since independence in 1957, became prime minister in 1981 and remained in power until 2003.

Under Prime Minister Mahathir, UMNO developed a 1982 policy guideline “for the incorporation of Islamic ethics in governance.” Manifestations of UMNO’s increasingly hardline stance included the introduction of whipping as a punishment for women who

⁸ See Appendix I for the text of the fatwa.

⁹ Human Rights Watch telephone interview with Khartini Slamah, June 17, 2014; Khartini Slamah, “The Struggle to be Ourselves, neither Men nor Women: Mak Nyahs in Malaysia,” in *Sexuality, Gender and Rights: Exploring Theory and Practice in South and South East Asia*, ed. Radhika Chandiramani and Geetanjali Misra (Thousand Oaks, CA: SAGE Publications, 2006), p. 110, <https://limthianleong.files.wordpress.com/2008/09/mak-nyah-in-malaysia.pdf> (accessed June 1, 2014).

¹⁰ Human Rights Watch interviews with a Malaysian women’s rights activist, Kuala Lumpur, January 10, 2014, and with Penang state assemblyman Teh Yee Cheu, Penang, January 16, 2014; Ahmad Farouk Musa, “Political Islam: A Brief Analysis on the Trajectory and Discourse in Malaysia,” 2010, p. 6, on file with Human Rights Watch.

engage in “illicit sex” and the attempt to prevent Christians from using the word “Allah.”¹¹ It is in this context that transwomen reported increasing harassment, particularly from state Religious Department officials.

Between 1985 and 2012, every Malaysian state and federal territory introduced Sharia criminal enactments that included provisions criminalizing “a man posing as a woman” or “a woman posing as a man” (see Appendix I). Malaysia thereby became one of the few countries in the world that explicitly criminalizes transgender people.¹² Further, from 2008 to 2010, seven states issued fatwas against “*pengkid*,” which roughly translates as “tomboy” or “masculine woman.” The fatwas, which have been gazetted in four states, specifically state that women who have a “masculine appearance or gestures” or a “male sexual instinct” are forbidden in Islam.¹³

¹¹ Ahmad Farouk Musa, “Political Islam: A Brief Analysis on the Trajectory and Discourse in Malaysia,” 2010, p. 5, on file with Human Rights Watch. Ahmad finds that, “Despite being a secular-nationalist party, UMNO has always been trying to ‘out-Islamize’ its nemesis, PAS.” Ibid., p. 4; A representative of Women’s Aid Organisation told Human Rights Watch that although Najib’s government has taken some steps to promote gender equality, government pandering to extremist religious views has meant that the reform agenda on family law, including marriage and divorce, domestic violence, and child marriage, has come to a standstill. Email communication from Women’s Aid Organisation to Human Rights Watch, July 16, 2014.

¹² Other countries that criminalize “cross-dressing” or “posing as the opposite sex” include Kuwait, Nigeria, Guyana, Tonga, and Italy. In Kuwait, a provision of the Penal Code prohibits “imitating the opposite sex in any way.” See generally, Human Rights Watch, “*They Hunt Us Down for Fun: Discrimination and Police Violence Against Transgender Women in Kuwait*,” January 2011, <http://www.hrw.org/sites/default/files/reports/kuwait0112ForUpload.pdf>. A 2013 court ruling in Guyana found Guyana’s cross-dressing laws to be unconstitutional, but ruled that cross-dressing could still be prohibited if for “immoral purposes.” Neil Marks, “Guyana court rules cross-dressing is not a crime,” Reuters, September 9, 2013, <http://www.reuters.com/article/2013/09/09/us-guyana-crossdressing-idUSBRE98811V20130909> (accessed May 29, 2014). In Nigeria, several states’ sharia enactments criminalize trans people: for instance, a law in Kano that prohibits “indecent dress that is against the practice of Islam” has been used against transwomen, and Bauchi state prohibits “men dressing as women.” “Islamic police arrest 150 in Nigeria accused of indecent dress, prostitution and cross-dressing,” *The Telegraph*, October 23, 2013, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10398365/Islamic-police-arrest-150-in-Nigeria-accused-of-indecent-dress-prostitution-and-cross-dressing.html> (accessed August 7, 2014); “Nigeria Islamic court tries 18 for cross-dressing,” Reuters, August 22, 2007, <http://www.stuff.co.nz/oddstuff/7578/Nigerian-Islamic-court-tries-18-for-cross-dressing/> (accessed August 7, 2014). The law in Tonga that prohibits males from “impersonating” females have never been enforced. Sue Farran and Alexander Su’a, “Criminal Law and *Fa’afafine* and *Fakaleiti* in the South Pacific,” *Journal of South Pacific Law*, Vol. 9, Issue 1, 2005, <http://www.usp.ac.fj/index.php?id=13297> (accessed June 16, 2014). Samoa decriminalized cross-dressing in 2013. See: Anna Leach, “‘Impersonating a woman’ decriminalized in Samoa,” post to “images on concrete words on paper” (blog), May 2, 2013, <http://imagesonconcretewordsonpaper.wordpress.com/2013/05/02/impersonating-a-woman-decriminalized-in-samoa/> (accessed June 16, 2014). An Italian ordinance against unauthorized wearing of “disguises” has been used to prosecute transwomen—the last known case was in 1976—and laws against cross-dressing are on the books in Paris, but are not enforced. Email communication from Carla LaGata, Transgender Europe, to Human Rights Watch, June 14, 2014. In the United Arab Emirates, a vague law on “indecent acts,” article 358 of the Penal Code, is used regularly to convict transgender people or people who are cross-dressing. See, for example, Salam al Amir, “Filipino fashion professionals jailed for cross-dressing in Dubai,” *The National*, June 17, 2014, <http://www.thenational.ae/uae/courts/filipino-fashion-professionals-jailed-for-crossdressing-in-dubai> (accessed June 17, 2014). Saudi Arabia has arrested and sentenced people to flogging and imprisonment for cross-dressing, despite having no written law prohibiting it. See: Human Rights Watch, “Saudi Arabia: Drop ‘Cross-Dressing Charges,’” June 24, 2009, <http://www.hrw.org/news/2009/06/24/saudi-arabia-drop-cross-dressing-charges>.

¹³ Such fatwas exist in Johor, Kedah, Kelantan, Malacca, Pahang, Perak, and Sarawak. They have been gazetted in Johor, Kedah, Malacca, and Perak. See: <http://www.e-fatwa.gov.my/> (accessed June 25, 2014).

In 1998, the Malaysian authorities discovered the power of tainting their political rivals with homosexuality allegations. They arrested Deputy Prime Minister Anwar Ibrahim, who had emerged as a political rival to Prime Minister Mahathir, on charges of corruption and sodomy.¹⁴ One month after Anwar's arrest, UMNO politicians closely linked to Mahathir formed "The People's Voluntary Anti-Homosexual Movement," or Pasrah, which pledged to "shield" the Malaysian people from the "disgusting practice" of homosexuality.¹⁵

Anwar was convicted of corruption in 1999 and of sodomy in 2000. He spent six years in prison before the Federal Court, Malaysia's highest court, overturned his sodomy conviction in September 2004. After a brief period of self-imposed exile, Anwar returned to Malaysia and became the de facto leader of the political opposition, soon becoming a thorn in the side of the UMNO government. He was charged with sodomy yet again in 2008, won acquittal in the court of first instance in January 2012, but was subsequently convicted on appeal in March 2014.¹⁶ He has filed an appeal to the Federal Court.

Politics and anti-LGBT sentiment again intertwined when police banned the Seksualiti Merdeka (Sexuality Independence) festival in 2011. LGBT rights activists initiated the festival in 2008, featuring workshops, talks, and performances on sexual diversity and LGBT rights within the broader human rights context. It was held without incident for three years, attracting hundreds of participants, before police banned it, claiming the festival constituted a "threat to public order."¹⁷ According to one of the organizers, the festival was "collateral damage" in an UMNO smear campaign against Ambiga Sreenevasan, an outspoken political activist and head of a coalition for free and fair elections, who had been scheduled to officiate the 2011 festival in her personal capacity.¹⁸

An increasingly competitive political field, in which UMNO barely scraped through to narrow electoral victories against the opposition coalition in both 2008 and 2013, has led

¹⁴ "Rights Group Decries Anwar Sentence," Human Rights Watch news release, April 15, 1999, <http://www.hrw.org/news/1999/04/14/rights-group-decries-anwar-sentence>.

¹⁵ "PM's daughter slams Malaysian anti-gay group," *BBC*, October 23, 1998, <http://news.bbc.co.uk/2/hi/asia-pacific/199468.stm> (accessed May 31, 2014).

¹⁶ Graeme Reid, "Same As It Ever Was," *Foreign Policy*, March 13, 2014, <http://www.hrw.org/news/2014/03/13/same-it-ever-was-1> (accessed May 30, 2014).

¹⁷ "Malaysia: Reverse Ban on Sexual Diversity Festival," Human Rights Watch news release, November 8, 2011, <http://www.hrw.org/news/2011/11/08/malaysia-reverse-ban-sexual-diversity-festival>.

¹⁸ K. Pragalath, "Seksualiti Merdeka a collateral damage," *Free Malaysia Today*, November 3, 2013, <http://www.freemalaysiatoday.com/category/nation/2011/11/03/seksualiti-merdeka-a-collateral-damage/> (accessed July 10, 2014).

UMNO to increasingly resort to scapegoating of minorities.¹⁹ The government has also instrumentalized the specter of sexual rights to disparage human rights more broadly. In 2013, Malaysia was evaluated during the Universal Periodic Review at the UN Human Rights Council in Geneva. The Coalition of Malaysian NGOs in the UPR Process (COMANGO), a coalition of 54 human rights groups, made a submission documenting a broad range of human rights violations committed by the Malaysian government, including those based on sexual orientation and gender identity.²⁰ A coalition of Muslim NGOs objected, accusing COMANGO of “disrupting national peace.”²¹ The government’s response was to ban COMANGO, calling it “un-Islamic” due to its support for basic rights for LGBT people, as well as its efforts to highlight violence toward the Shiite community, a minority in the predominantly Sunni Muslim country.²²

Discourse by government officials, politicians, and religious leaders on LGBT rights has become increasingly vitriolic. In 2012, Prime Minister Najib Razak, who took office in 2009, stated in an event reportedly attended by 11,000 imams and mosque committee members that “LGBTs, pluralism, liberalism — all these ‘isms’ are against Islam and it is compulsory for us to fight these.”²³ In March 2013, the Ministry of Information, Communication and Culture sponsored a play called “Asmara Songsang” (“Abnormal Desire”), performed in schools and universities around the country, the explicit aim of which was to “warn young

¹⁹ Lim Li Min, “Still in the Closet,” *Foreign Policy*, July 3, 2014, http://www.foreignpolicy.com/articles/2014/07/02/still_in_the_closet (accessed July 10, 2014). “The gains made by the opposition, including the Pan-Malaysian Islamic Party (PAS), over the last two elections have driven the ruling party to try to appeal to the conservatives within its power base. As a result, minorities, be they racial or sexual, have come under pressure.”

²⁰ COMANGO, “Stakeholder Report on Malaysia,” July 15, 2013, <http://wao.org.my/file/file/Coalition%20of%20Malaysian%20NGOs%20in%20The%20UPR%20Process%20UPR%202013%20Submission.pdf> (accessed July 10, 2014).

²¹ Joseph Sipalan, “Malaysia no place for LGBT rights, religious freedom, says Islamist group,” *The Malay Mail Online*, November 4, 2013, <http://www.themalaymailonline.com/malaysia/article/malaysia-no-place-for-lgbt-rights-religious-freedom-says-islamist-group> (accessed July 10, 2014).

²² Zurairi Ar, “Home Ministry outlaws Comango, labels member groups ‘un-Islamic,’” *The Malay Mail Online*, January 8, 2014, <http://www.themalaymailonline.com/malaysia/article/home-ministry-outlaws-comango-labels-member-groups-un-islamic> (accessed June 29, 2014). Four Malaysian organizations that work directly with LGBT people also submitted a shadow report highlighting violations based on sexual orientation and gender identity, but came under less scrutiny as the report was less widely publicized within Malaysia; See: Knowledge and Rights with Young people through Safer Spaces (KRYSS), Seksualiti Merdeka, Justice for Sisters and PT Foundation, “Malaysia: Human Rights Violation against Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons,” March 2013, <http://wao.org.my/file/file/Coalition%20of%20Sexual%20Orientation%20and%20Gender%20Identity%20SOGI%20Malaysia%20UPR%202013%20Submission.pdf> (accessed July 10, 2014).

²³ Hafidz Baharom, “Najib: LGBTs, liberalism, pluralism are enemies of Islam,” *The Malaysian Insider*, July 19, 2012, <http://www.themalaysianinsider.com/malaysia/article/najib-lgbts-liberalism-pluralism-are-enemies-of-islam> (accessed May 21, 2014).

people about the perils of being lesbian, gay, bisexual, and transgender.”²⁴ The following month, Deputy President Muhyiddin Yassin referred to the LGBT rights movement as a threat to Islam, backed by “foreign influences.”²⁵ In December 2013, an UMNO delegate who was chair of the Johor Islamic Religious Committee stated that, “LBGT exists in the West so that bad people (*orang jahat*) can be purged, leaving behind only the good people to inherit the earth.” He specifically claimed that transgender people “do not live long.”²⁶

Intolerant government rhetoric filters down to the general public, influencing public attitudes toward transgender people and the broader LGBT community. Dr. Teh Yik Koon, the author of the 2002 study of transwomen, told Human Rights Watch: “Their situation being illegal leads to discrimination against them. People rely on the government to tell them what’s right and wrong—especially when it comes to [what is perceived as] a religious question.”²⁷

Jina, a 22-year-old transwoman in Petaling Jaya, linked the politicization of LGBT rights and the inaccurate media portrayal of trans people:

There’s a lot of politicization of the LGBT community at the moment. ... We’re not looking for ‘LGBT rights’ in the sense of the Western world, such as same-sex marriage. The issue for trans people is the [lack of] positive media coverage of trans people. A more fair view would also decrease violence.

Jina noted that Malaysian media rarely reports on successful transgender people, citing the example of Jessie Chung, a popular transgender singer and performance artist who is largely ignored by the media.²⁸

²⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, “Country Reports on Human Rights Practices for 2013: Malaysia,” <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (accessed July 10, 2014). The Ministry of Information, Communication and Culture no longer exists—it has been replaced by a Ministry of Communication and Multimedia, and a Ministry of Tourism and Culture.

²⁵ Zurairi Ar, “Beware of LGBT and freedom of religion movements, Muhyiddin tells Muslims,” *The Malaysian Insider*, April 22, 2013, <http://www.themalaysianinsider.com/malaysia/article/shun-fatwas-from-politicians-muhyiddin-tells-muslims> (accessed July 21, 2014).

²⁶ Nigel Aw, “LGBTs exist to purge the bad, says Umno delegate,” *Malaysiakini*, December 13, 2013, <http://www.malaysiakini.com/news/248754> (accessed June 2, 2014).

²⁷ Human Rights Watch interview with Dr. Teh Yik Koon, Kuala Lumpur, January 22, 2014.

²⁸ Human Rights Watch interview with Jina (pseudonym), Petaling Jaya, January 23, 2014.

A Dual Legal System

Muslims, who according to government statistics comprise about 60 percent of Malaysia's population, are subject to both federal criminal law and state-level Sharia (Islamic law) criminal enactments. The stated purpose of Sharia enactments is to regulate "offences against precepts of the religion of Islam by persons professing that religion."²⁹ Sharia enactments in each state are voted into law by secular State Legislative Assemblies, composed of representatives of all faiths; according to Sharia and constitutional lawyer Nizam Bashir, non-Muslim members generally defer to Muslim representatives in debating and passing the enactments.³⁰

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\$314).³¹ 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\$1,559), and whipping of up to six strokes.³² However, Sharia courts rarely hand down sentences of imprisonment or whipping, generally resorting to fines.³³

In most of Malaysia's states, the highest religious authority is the sultan, a hereditary position. Each sultan appoints a mufti, whose role is to advise him on the laws of Islam. The mufti may play a role in law-making through his role as chair of the state Fatwa Committee. A *fatwa* is usually issued in order to resolve an issue when there is some doubt whether a particular practice is permissible (*halal*) or forbidden (*haram*) in Islam.

²⁹ Laws of Malaysia, Act 355, Syariah Courts (Criminal Jurisdiction) Act 1965, section 2, <http://www.agc.gov.my/Akta/Vol.%208/Act%20355.pdf> (accessed June 2, 2014).

³⁰ Human Rights Watch interview with Nizam Bashir, Kuala Lumpur, January 11, 2014. See also: Rosilawati Rosedi, "Awas geng mak nyah, tomboy," *Sinar Harian*, May 23, 2012, <http://www.sinarharian.com.my/edisi/pahang/awas-geng-mak-nyah-tomboi-1.50263> (accessed July 23, 2014).

³¹ Nasimah Hussin, Ramizah Wan Muhammad, and Majdah Zawawi, "Punishment under the Criminal Jurisdiction of Shariah Courts of Malaysia: Issues and Prospect for Reform," December 2012 (draft paper presented at the Inter-disciplinary.net 2nd Global Conference, "Reframing Punishment: Opportunities and Problems," Sydney, Australia, February 7-9, 2013), endnote 7, <http://www.inter-disciplinary.net/probing-the-boundaries/wp-content/uploads/2012/12/hussinpunpaper.pdf> (accessed June 2, 2014).

³² Laws of Malaysia, Act 355, Syariah Courts (Criminal Jurisdiction) Act 1965, section 2.

³³ Hussin, Muhammad, and Zawawi, "Punishment under the Criminal Jurisdiction of Shariah Courts of Malaysia: Issues and Prospect for Reform," pp. 4-5.

Each state has a slightly different procedure for establishing fatwas. For example, in the state of Selangor, which encircles Kuala Lumpur and comprises its suburbs, if the committee decides on a fatwa, the state Religious Council submits it to the sultan. If the sultan assents to the fatwa, it is gazetted (published in the official gazette) and becomes binding on all Muslims in the state. The fatwa then becomes part of Sharia criminal law, in the sense that in Selangor, the Sharia criminal enactment states that any person who defies, disobeys, or disputes a fatwa shall be guilty of an offense, and shall on conviction, be liable to a fine of up to RM 3,000 (US\$ 935) or sent to prison for up to two years.³⁴ Some Muslims argue that the practice of institutionalizing fatwas within the law goes against the true meaning of fatwas in Islam, stating that they are intended only to serve as advisory opinions.³⁵

Malaysia also has a National Fatwa Committee, whose role is to give guidance to state religious councils regarding fatwas that may affect the national interest.³⁶ However, the National Fatwa Committee has also issued fatwas of its own, such as the 1982 fatwa that banned sex reassignment surgery. Technically, such national-level fatwas have no legal value, as they are not gazetted under the laws of any state.

As state law, Sharia law is inferior to federal law, which prevails in case of a conflict.³⁷ The federal constitution enjoys supremacy over all state laws, and protects fundamental rights for both Muslims and non-Muslims. 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.³⁸

³⁴ Rajen Devaraj, "Understanding *fatwa* in the Malaysian context," *Aliran Monthly*, vol. 25, 2005, Issue 2, <http://aliran.com/archives/monthly/2005a/2h.html> (accessed June 3, 2014).

³⁵ See, for example, Zainah Anwar, "Only in Malaysia: where we have gone wrong with fatwa," *The Star*, August 4, 2013, <http://www.thestar.com.my/Opinion/Columnists/Sharing-The-Nation/Profile/Articles/2013/08/04/The-essence-of-fatwa/> (accessed June 3, 2014).

³⁶ Rajen Devaraj, "Understanding *fatwa* in the Malaysian context," *Aliran Monthly*, vol. 25, 2005, Issue 2, <http://aliran.com/archives/monthly/2005a/2h.html> (accessed June 3, 2014).

³⁷ Constitution of Malaysia, art. 75: "If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void."

³⁸ 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." Art. 10(2) provides specific circumstances in which parliament may restrict freedom of speech, assembly, and

Sex Work and Double Stigmatization

Many transgender women in Malaysia face a double stigma. They are stigmatized by families, potential employers, government officials, and communities because of their gender identity and expression. And they are widely perceived to participate in sex work, which is stigmatized in Malaysia, regardless of whether sex workers are transgender or cisgender, female or male. Leela, a transgender HIV outreach worker, told Human Rights Watch, “In the media, transgenders are always portrayed as sex workers, even though we have transgender doctors and lawyers.”³⁹ In fact, while a large number of transgender women do participate in sex work, others work in a wide range of professions: Human Rights Watch interviewed transgender doctors, social workers, HIV outreach workers, hairdressers, makeup artists, cleaners, receptionists, and marketing representatives, among others.

A 2002 study of 507 transgender women in Malaysia found that 54 percent identified as sex workers, and 92 percent had received payment for sex at least once.⁴⁰ Although sex work is poorly regarded in Malaysia, many transgender people make an informed and conscious choice to participate in sex work, and a number of the transwomen interviewed by Human Rights Watch were relatively satisfied with this occupation or preferred it over the available alternatives. Others are driven to sex work due to employment discrimination and the lack of economic opportunities in other sectors. One transgender woman told Human Rights Watch that she was trafficked into the sex industry under threat of violence, and escaped after six months.⁴¹

Malaysian federal criminal law prohibits “soliciting for the purposes of prostitution,” a charge that is sometimes applied to non-Muslim transgender sex workers who are picked up in police raids.⁴² Muslim transgender sex workers are usually handed over

association “in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality.”

³⁹ Human Rights Watch interview with Leela (pseudonym), Kuala Lumpur, January 19, 2014.

⁴⁰ Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*, p. 72.

⁴¹ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014.

⁴² Laws of Malaysia, Act 574, Penal Code (2006), section 372B: “Whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both.” Human Rights Watch interviewed two transgender women who had been charged with prostitution, although one said her case was dismissed, and the other was released after paying a bribe.

to the Religious Department officials, as discussed in the next chapter. Sex workers are also arrested under section 21 of the Minor Offences Act, which criminalizes “indecent behavior,” or section 27, which targets “every prostitute behaving in a disorderly or indecent manner.”⁴³ Sharia enactments in the Federal Territories and some states, including Kelantan, Kedah, and Malacca, specifically criminalize prostitution, although the laws only apply to “women”—presumably excluding transgender women, who are defined as men under Malaysian law.⁴⁴

Criminalization of Same-Sex Conduct

Both federal criminal law and state Sharia enactments criminalize adult consensual same-sex conduct. These laws have very rarely been enforced, and there are no known cases in which laws against same-sex conduct have been used to prosecute transgender people, although the laws constitute a risk to transgender people because they are widely perceived as homosexual.

Section 377B of the federal Penal Code prohibits consensual anal and oral intercourse between persons of any sex. The maximum sentence for anal or oral rape, 20 years in prison, is identical to the maximum sentence for consensual anal or oral sex.⁴⁵

Sharia enactments in nearly all Malaysian states 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.⁴⁶

⁴³ Laws of Malaysia, Act 336, Minor Offences Act (1955). Section 21 provides a sentence of three months in prison or fine of RM 100 (US \$31) for “indecent behavior,” while section 27 provides a sentence of one month in prison or a fine of RM 100 (US \$31) for “every prostitute behaving in a disorderly or indecent manner in or near any public road or in any place of public resort.”

⁴⁴ For example, Laws of Malaysia, Act 559, Syariah Criminal Offences (Federal Territories) Act, 1997, section 21, states: “Any woman who prostitutes herself 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.” See <http://www.agc.gov.my/Akta/Vol.%2012/Act%20559.pdf> (accessed June 2, 2014). Sharia criminal enactments from other states can be found at: Syariah Judiciary Department Malaysia (Jabatan Kehakiman Syariah Malaysia, JKSM), E-Syariah Official Portal, <http://www.esyariah.gov.my/> (accessed July 11, 2014).

⁴⁵ Laws of Malaysia, Act 574, Penal Code (2006), sections 377B and 377C.

⁴⁶ JKSM, E-Syariah Official Portal, <http://www.esyariah.gov.my/> (accessed July 28, 2014). Terengganu 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 passed by Terengganu’s legislative assembly provides 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 cannot be enforced, as it contradicts the federal Syariah Courts (Criminal Jurisdiction) Act 1965 (Incorporating all amendments through 2006), which

Recent Progress in Trans Activism

Despite challenges, transgender rights activists have made recent progress on several fronts in Malaysia. In 2013, trans activists developed the “Be a Trans Ally” campaign, featuring video testimonies that highlight both the strength and the struggles of trans Malaysians, and distributing educational materials covering subjects ranging from what pronouns to use to refer to trans people, to the importance of creating safe spaces within the health care and education sectors.⁴⁷ The organization, Justice for Sisters, conducts regular outreach to communities to sensitize them on trans issues and maintains an active presence on social media. PT Foundation, an HIV/AIDS organization, has invested in training transgender people as peer educators and program coordinators, several of whom are now regionally and internationally recognized professionals in their field.

Outside Kuala Lumpur, too, transgender people have become increasingly visible. In the eastern state of Pahang, *mak nyahs* working with the Drug Intervention Community of Pahang, an NGO, participated in an Independence Day 2013 parade.⁴⁸ In July 2013, an assemblyman in the northwestern state of Penang, Teh Yee Cheu of the opposition Democratic Alliance Party, appointed a transwoman, Hezreen Shaik Daud, as his political secretary.⁴⁹ Hezreen is the first openly transgender person working within the Malaysian political establishment. Teh has also sought to establish a transgender welfare committee within state government, with the aim of addressing discrimination against trans people, although he has faced resistance from other state politicians.⁵⁰ In May 2014, he withdrew a motion to establish the committee due to lack of political support, although he plans to reintroduce the motion at the assembly’s next session in November 2014.⁵¹

provides limits on punishments that can be meted out by state sharia courts; See text box, “A Dual Legal System,” above. The Pahang Syariah Criminal Offences Enactment 2013 criminalized cross-dressing for the first time in the state, but did not criminalize *liwat* or *musahaqah*. Jabatan Agama Islam Pahang (Pahang Islamic Religious Department), Official Portal, “List of Shariah Law Offences,” <http://jaip.pahang.gov.my/index.php/perkhidmatan/penguatkuasa/senarai-kesalahan-undang-undang-syariah> (accessed August 8, 2014).

⁴⁷ See: “I Am You: Be A Trans Ally” campaign website, <http://mytransally.weebly.com/> (accessed June 3, 2014).

⁴⁸ Joseph Goh, “Trans*cending tribulations: Malaysian Mak Nyahs,” *New Mandala*.

⁴⁹ Josephine Jalleh, “Transgender political sec of Tanjung Bungah rep hopes for equal treatment,” *The Star*, July 12, 2013, <http://www.thestar.com.my/News/Nation/2013/07/12/Transgender-Tanjung-Bunga-rep.aspx/> (accessed June 3, 2014).

⁵⁰ Human Rights Watch interview with YB Teh Yee Cheu, Penang, January 16, 2014.

⁵¹ “Penang rep forced to withdraw transgender rights committee motion,” *The Malay Mail Online*, May 9, 2014, <https://my.news.yahoo.com/penang-rep-forced-withdraw-transgender-rights-committee-motion-111400527.html> (accessed June 3, 2014).

II. Criminalization and Mistreatment of Transgender People under Sharia Law

On June 9, 2014, 16 transgender women and one child were arrested while attending a wedding in Jempol district, Negeri Sembilan. Islamic Religious Department officials raided the wedding party, held at a private home, and arrested the transwomen, several of whom were wedding planners, known locally as *mak andam*, while others were invited guests. The officials beat one of the women—choking her and kicking her—and tore another woman’s clothing in the course of the arrest. The 16 adults were sentenced to seven-day prison sentences and fines. Because they are legally considered “men,” they served their sentences in the male ward of Sungai Udong prison. There, prison authorities forcibly shaved their heads in what the women said was an effort to negate their gender identity.⁵²

The wedding guests were arrested under article 66 of the Syariah Criminal Enactment, 1992, which reads: “Any male person who, in any public place wears a woman’s attire or 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.”⁵³

Their arrest occurred shortly after a hearing at the Court of Appeal in Putrajaya in which the applicants challenged the constitutionality of Negeri Sembilan’s “cross-dressing” law. In 2011, four transgender women had filed a case in the Negeri Sembilan High Court calling for judicial review of the law, on the grounds that it violates fundamental rights protected by the constitution, including the right to freedom of expression. When their case was rejected by the High Court in 2012, they filed an appeal. The Court of Appeal, Malaysia’s second highest court below the Federal Court, is expected to issue a ruling on November 7, 2014.

Transwomen in Negeri Sembilan are far from alone in being victimized under this sort of law. Arrests of transgender women under Sharia law take place throughout Malaysia. Laws

⁵² Justice for Sisters, “Jempol Report,” unpublished document, June 2014, on file with Human Rights Watch.

⁵³ Enactment No. 4 of 1992, Syariah Criminal (Negeri Sembilan) Enactment 1992, http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/100ae747c72508e748256faa00188094/12a8b0079203e95b48257611000946ec?OpenDocument (Section 66). For the full text of the criminal code, see: http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/e104e38380c81565482576100004b463?OpenDocument (accessed June 2, 2014).

vary from state to state; some penalize a “male person posing as a woman for immoral purposes,” and are primarily used against transgender sex workers (though “immoral purposes” is undefined), whereas others penalize a “male person posing as a woman” under *any* circumstances. In four states, Sharia laws also penalize a woman posing as a man. Maximum sentences range from six months to three years in prison, and fines from RM 1,000 (US\$314) to RM 5,000 (\$1,559). In some states, the Islamic Religious Departments, tasked with enforcing Sharia law, carry out systematic raids against transgender women, often with the participation of the civil police.

Human Rights Watch conducted research in Kuala Lumpur, Penang, Selangor, Negeri Sembilan, and Pahang. Of these states, only in Pahang, the state that most recently criminalized cross-dressing, in 2012, did the transgender women we interviewed report that they were unaware of any arrests of transwomen under Sharia laws. Transwomen we interviewed also recounted being arrested by Religious Department officials in Kedah, Johor, Malacca, and Sarawak.⁵⁴ Those that were taken before the Sharia courts were almost inevitably found guilty; they had no legal representation and were given little opportunity to defend themselves.⁵⁵ In most cases, they were not imprisoned but were required to pay fines—sometimes amounting to a month’s salary or more.

Aston Paiva, the lawyer representing transgender women in the Negeri Sembilan case, told Human Rights Watch that rights violations against transwomen are particularly pronounced in states that prohibit cross-dressing under all circumstances. In those states, he said:

The moment a transgender person or a transsexual person walks out of a house, or is sitting in a restaurant, having something to eat, she can be arrested. So there’s this chilling effect on the ability to move around public places. The law applies in all public places, and as you can see, [transgender people] would be directly and continuously affected by such a law.⁵⁶

⁵⁴ Teh Yik Koon’s research found that transwomen reported particularly high levels of harassment from the religious authorities in Kuala Lumpur, Kuching (Sarawak state) and Johor Bahru (Johor state). Teh Yik Koon, “Exploring HIV Related Needs for Safety Among Transsexuals or *Mak Nyahs*,” Technical Support Consultant’s Report, April 2007, p. 26, on file with Human Rights Watch. A shorter version of this article is available at: Yik Koon Teh, “HIV-related needs for safety among male-to-female transsexuals (mak nyah) in Malaysia,” *Journal of Social Aspects of HIV/AIDS*, vol. 5 no. 4 (December 2008), <http://www.tandfonline.com/doi/pdf/10.1080/17290376.2008.9724917> (accessed August 7, 2014).

⁵⁵ Human Rights Watch interview with Beka (pseudonym), Kuala Lumpur, January 13, 2014.

⁵⁶ Human Rights Watch interview with Aston Paiva, Kuala Lumpur, January 23, 2014.

Beka, a 31-year-old transgender woman from Kedah state, is one of many transgender women who have been subjected to multiple arrests: she told Human Rights Watch that she has been arrested five times for dressing as a woman. On one occasion, she was fined RM 3,000 (US\$935), simply for sitting in a parked car with her friends, wearing a traditional Malay *kebaya* (blouse and long skirt).⁵⁷ She lost her job as a result of the arrest, as detailed in the section on employment discrimination, below. On another occasion, in 2012, she was arrested while distributing condoms to other transgender women in her role as an outreach worker for a registered public health organization.

Beka recalled:

I was doing outreach to deliver condoms to transgender people, as a volunteer with [a public health organization] in Kedah. I had walked halfway to where the TGs [transgender] were that I needed to do outreach to, at a road by the railway track, when I saw the religious authorities. I saw the white van with the high beam, and knew it was the religious authorities.

Beka tried to run, but was caught, while the transgender women she was trying to reach all managed to escape. The religious official who arrested her rifled through her bag and found condoms, which he confiscated, threatening to charge her with prostitution. But when she was taken to the Religious Department, she was given a letter that accused her of “dressing and acting like a woman.” Beka said, “I did not really feel afraid [of getting charged] that time because I was just wearing jeans and a T-shirt—but they still accused me, even though I was not dressed as a woman that day.”⁵⁸

The most recent time Beka was arrested, she was attending a private, invitation-only beauty pageant held at an upscale hotel. Although the law in Kedah only applies to cross-dressing in public, religious officials raided the private function, overstepping their legal mandate. Aisah, a 33-year-old transwoman, has been arrested five times in Johor since 2002. The first time she was arrested, religious officers picked her up in the street and handcuffed her, without explaining who they were until after they had shoved her into a van. Aisah recalled that as one officer at the Religious Department took her statement, “Another

⁵⁷ Human Rights Watch interview with Beka, Kuala Lumpur, January 13, 2014.

⁵⁸ Ibid.

officer in the room was hurling insults at me—“You were born a man, you’re not scared of God. What kind of human being are you?”⁵⁹

Like Beka, Aisah has also been arrested at a private function: a transgender beauty pageant at a five-star hotel in Johor. She said, “I don’t know why the religious officers came inside the hotel, because it was a private party.”⁶⁰

Non-Muslim transgender women are also caught up in Religious Department roundups. Aisah said that in 2009, religious officials raided a disco in Johor and arrested 76 transwomen, loaded them all into vans and took them all to the Religious Department lockup. Only once they arrived did they sort through the women’s IDs, allowing Indian and Chinese women to go. Aisah remembered, “A Chinese TG was crying the whole time: ‘This isn’t fair, I’m not Muslim. What’s their right to arrest me?’”⁶¹

Civil police, although they are only mandated to enforce secular criminal law, often play a role in the arrests of Muslim transgender women. Leela, a 38-year-old transgender HIV outreach worker in Kuala Lumpur, believes their aim is to extort money from transwomen, who fear being transferred to the religious authorities. Police arrested Leela arbitrarily in 2013, while she was on her way home from work:

Last year I was arrested in Chow Kit. I had just finished work, and was going to buy *nasi lemak* [a rice dish]. I was not doing sex work, but was in a sex work place. There are lots of police there who always catch transgenders who do sex work—they want money. Three of them surrounded me. I said, ‘What did I do?’ They wanted to charge me under Sharia law for cross-dressing, even though they were civil police.

They took me to Chow Kit police station and put me in lockup. A police officer tried to scare me by saying they would take me to the Sharia law court. I said, ‘Send me—I didn’t do anything wrong.’ I think he was trying to

⁵⁹ Human Rights Watch interview with Aisah (pseudonym), Kuala Lumpur, January 13, 2014.

⁶⁰ Ibid.

⁶¹ Ibid.

scare me in order to get money, but I knew my rights.⁶² Most transgenders, if you don't give money, they send you to the Sharia law court. After half an hour he released me.⁶³

According to longtime trans activist Khartini Slamah, police treatment of transgender people has improved following efforts by the transgender community to engage in dialogue with the authorities beginning in the 1990s. However, Slamah noted: “We have not experienced such improvements with the religious anti-vice squad.”⁶⁴

Arbitrary Arrests

State Sharia enactments provide no guidelines as to what constitutes “posing as a woman.” This ambiguity leads to arbitrary enforcement against those who may look effeminate, regardless of whether or not they are dressed in distinctively “female” clothing (a category which in itself has no clear definition).

Aisah, whose arrest during a disco raid in Johor is recounted above, was arrested solely because she has breasts, a result of the hormone replacement therapy (HRT) she has undergone since age 14:

One thing I don't understand—I was wearing a T-shirt, shorts and flip-flops, and they charged me as [impersonating] a woman. ... I asked them why I was accused of wearing women's clothing. They said, ‘Because you have breasts.’⁶⁵

After another religious official questioned why she should be detained if she was only wearing a T-shirt and shorts, Aisah was released on the condition that she attend a three-hour counseling session by religious teachers (*ustaz*). There, she recalled, “They said things like, ‘You need to be a man, you were born a man.’”⁶⁶

⁶² Even if Leela had been transferred before the religious authorities, Sharia law in Kuala Lumpur only prohibits cross-dressing “for immoral purposes”; see Appendix 1.

⁶³ Human Rights Watch interview with Leela, Kuala Lumpur, January 19, 2014.

⁶⁴ Khartini Slamah, “The Struggle to be Ourselves, neither Men nor Women: Mak Nyahs in Malaysia,” p. 111, footnote 6.

⁶⁵ Human Rights Watch interview with Aisah, Kuala Lumpur, January 13, 2014.

⁶⁶ Human Rights Watch interview with Aisah, Kuala Lumpur, January 13, 2014.

Nurul, who has also undergone HRT, was arrested in 2000 in Kuala Lumpur. She was wearing a gender-neutral T-shirt and jeans, but when religious authorities spotted that she had a bra on underneath, they arrested her. According to Nurul:

I said, ‘Why are you arresting me when I’m wearing jeans and a T-shirt?’ They said, ‘Because you’re wearing a bra.’ I said, ‘I have breasts! This is between me and God, this has nothing to do with you.’ They let me go because I was brave enough to stand up for myself.⁶⁷

Shila, a 40-year-old transwoman in Negeri Sembilan, said the religious authorities have arrested her 20 to 30 times over the past 20 years, regardless of how she is dressed:

Even before I started dressing like a woman, I was already being arrested by the religious authorities. When I was younger, I was already targeted just for wearing baby T’s. I don’t understand their thinking and their laws. ... They would say, ‘Why are you wearing a tight T-shirt? This is a female T-shirt.’ I didn’t understand, because that was the fashion back then—men wore very tight T-shirts and flare pants.⁶⁸

⁶⁷ Human Rights Watch interview with Nurul (pseudonym), Seremban, January 21, 2014.

⁶⁸ Human Rights Watch interview with Shila (pseudonym), Seremban, January 15, 2014.

Manis's Story

I was at a beauty pageant in Kedah state in September 2012. I was invited as a trainer on HIV among the participants. There were 40 to 50 altogether. It wasn't just a pageant—we had sessions on how to use a condom, how to ask a partner or client to use a condom—I was there to educate my community. My session was held the night before. The whole thing was very educational. I find that organizing such a thing is a good thing.

The next day we heard a rumor that there might be a raid—that someone had reported the event to the religious authorities. We said the event should go on because everyone had turned up. Everyone was dressed in ball gowns, tuxedos. We [decided to] proceed with the dinner, but would not have loud music or dancing.... It was at a private location at a golf course resort. Not just anyone can enter.

[Then] we saw someone signaling to us to disperse. My God, I got goose bumps. About 20 religious authorities came in. They came in their white vans with the name of the Religious Department. I was in shock—I did not expect the event to be raided by them. People started running helter-skelter through the golf course to escape and jump over the fence. The religious authorities [used] the golf carts to chase after them. It was like we were criminals! I was asking myself, “What have we done? Did we kill someone?” About eight people were caught and accused of being cross-dressers.

We've had dialogue before with JAKIM [the Department of Islamic Development]. I asked them, “Would you mind if I put on lipstick only?” The authority asked, “Are you crazy?” I said, “We are not crazy people, just like you. Just because I was born with a male genitalia does not make me male.” I told them, “Science will help you understand this.” But they reject that we have the knowledge, and refused to sincerely engage with us on this. I suggested a four-hour session to share my experience. They said they don't have the time. They don't really want to understand the issues. They come up with laws without understanding the issues. How can you accuse me of cross-dressing when you don't even know what cross-dressing is? It's not what you have between your legs. It's how you carry yourself. ... I'm not “cross-dressing.” I'm 24/7 in this attire and this identity.

Violence and Sexual Assault by Religious Department Officials during Arrest and Detention

Several transwomen we interviewed had experienced physical or sexual assault, or both, at the hands of the Religious Department officials who arrested them.

*Sexual Assault and Stripping*⁶⁹

In 2011, Religious Department officials arrested Victoria, a transgender woman in Seremban, Negeri Sembilan, at a roadside food stall at about 11 p.m. They took her to the Negeri Sembilan Religious Department, where they stripped and sexually assaulted her:

They were rough. One of them squeezed my breasts. I was completely humiliated. ... They stripped me completely naked. One of them took a police baton and poked at my genitals. Everyone was looking—the men [Religious Department officials] as well as the women. They took photos of my naked body.

They treated me like an animal. I said, ‘Why do you treat me as an animal? I am also a human being. I’m a child of God.’⁷⁰

Adik, another transwoman in Seremban, was detained and sexually assaulted by Religious Department officials in early 2012, apparently because they were curious about her body:

I was picked up but I was not taken to the Religious Department. They touched me, molested me, and then allowed me to go. It wasn’t an official raid. They were just going around in a car. ... They put me in the back seat of the car, between them. While [two of them] were touching my breasts and holding them, they asked, ‘How did you get this done?’ They drove around for about half an hour before they let me go.⁷¹

⁶⁹ Teh Yik Koon’s research provides further evidence of sexual abuse by religious officials. For instance, she reported: “The respondents [in Kuching, Sarawak] said that when they were brought back to the police station, they were asked to strip in front of other men. They were also put in the same lock up as other men and they were only allowed to wear their underwear. One even mentioned that there was a case where the police officer massaged the *mak nyah*’s private parts in front of the others in the lock up.” Teh Yik Koon, “Exploring HIV Related Needs for Safety Among Transsexuals or *Mak Nyahs*,” p. 26.

⁷⁰ Human Rights Watch interview with Victoria (pseudonym), Seremban, January 15, 2014.

⁷¹ Human rights Watch interview with Adik, Seremban, January 15, 2014.

The laws against cross-dressing, in themselves, invite sexual abuse, as they may require religious officials to verify the sex of the individuals they arrest. A recent report authored by the Malaysian organization Knowledge and Rights with Young people through Safer Spaces (KRYSS), and published by the International Gay and Lesbian Human Rights Commission (IGLHRC), recounts the story of Ima, a transwoman, who stated: “After being arrested, we were all brought to the Religious Department of Perak. We were asked to take off our blouses so that they could see our breasts but that was not enough for them. They wanted to touch them.”⁷²

Women’s Aid Organisation reported a similar case in Malacca in 2010, in which Religious Department officials arrested a transwoman and forced her to strip naked in front of them. The head of the Malacca Religious Department reportedly told a newspaper at that time:

We were carrying out our duties under the state religious laws. ... Abdul Qawi was wearing a woman’s bra and panties and we did not strip with the intention to embarrass him. ... He may feel his rights as a person had been violated, but as Muslims we have the responsibility to ensure he does not go astray.⁷³

Physical Assault

Serafina, a transgender woman in Seremban, told Human Rights Watch that in May 2010, Religious Department officials, carrying out a nighttime raid, caught her in the street wearing pajamas, which they apparently judged to be too feminine:

They chased me into a hotel and grabbed me. They hit me, punched me in the face, choked me, and told me I was guilty. I felt dizzy and collapsed. One of them tried to stomp on my chest, but I was saved by someone who pulled me away.⁷⁴

⁷² KRYSS, “On the Record: Violence Against Lesbians, Bisexual Women And Transgender Persons In Malaysia,” in International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia*, May 6, 2014, <http://iglhrc.org/content/violence-through-lens-lbt-people-asia> (accessed August 6, 2014).

⁷³ Women’s Aid Organisation, *Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW (2012)*, p. 231, citing the “Religious Department firm against cross-dressing,” *Malay Mail*, April 21, 2011. (Human Rights Watch was unable to access the cited article, as the Malay Mail does not post archives from pre-2013 online, but an archived version of the article is available here: <https://groups.yahoo.com/neo/groups/TNUKdigest/conversations/messages/68290> (accessed July 21, 2014).

⁷⁴ Human Rights Watch interview with Serafina, Seremban, January 15, 2014.

Religious officials arrested Beka in 2009 when she was on the main road in Kedah town, dressed in a knee-length sundress. The official who arrested her was rough with her, Beka recalled: he grabbed her by the arm, and when her shoes came off as she was led toward the Islamic Department van, he would not allow her to get them. When she tried to get her shoes, Beka said, the religious official pushed her down and kicked her in the leg, causing her to bleed.⁷⁵

Shila was injured during the course of an arrest in 2010 in Negeri Sembilan, when religious officials chased her and threw a flashlight (torch) at her, which struck her on the leg and caused her to fall. Religious officials denied her treatment for her injuries: “I was bleeding when we arrived at the office, and they just left me be, with blood gushing, and left to do another raid.” Shila added, “I got off easy—there were two other transgenders who were stepped on and beaten up.”⁷⁶

Nisha Ayub, a transgender activist with the organization, Justice for Sisters, described a 2007 case in which Malacca state Religious Department officials arrested a transwoman: “They actually kicked her, punched her, to the extent that she had to be admitted to the hospital, because she had [preexisting] hernia problems. Because of the beating, she had to go for surgery.”⁷⁷

Nisha filed a complaint with the local police, but the victim chose not to pursue the case: “She was afraid it would jeopardize her because she is a Muslim and she is a sex worker, so she was afraid that she would be targeted [again] if she were to carry on the case against the Religious Department.”⁷⁸

⁷⁵ Human Rights Watch interview with Beka, Kuala Lumpur, January 13, 2014.

⁷⁶ Human Rights Watch interview with Shila, Seremban, January 15, 2014.

⁷⁷ Human Rights Watch interview with Nisha Ayub, Kuala Lumpur, January 21, 2014. See also, Women’s Aid Organisation, *Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW (2012)*, p. 196; Amnesty International, “Urgent Action Alert: Malaysia Transexual Arrested; Fear for Safety, Torture or Ill-Treatment,” August 3, 2007, <http://www.amnesty.org/en/library/asset/ASA28/002/2007/en/024eaa03-d373-11dd-a329-2f46302a8cc6/asa280022007en.html> (accessed July 22, 2014).

⁷⁸ Human Rights Watch interview with Nisha Ayub, Kuala Lumpur, January 21, 2014.

Extortion by Religious Authorities

Religious Department officials have at times extorted money from transgender people, whom they know are vulnerable and cannot easily seek recourse. Aisah told Human Rights Watch that when religious officials arrested her in Johor in 2010, “One of them recognized me from previous cases and asked me to give him my money and my hand [mobile] phones. Then he released me, and warned me, “I don’t want to ever see your face here again.”⁷⁹

Extortion can also be sexual. An official with Family Health Development Association (FHDA), a sexual and reproductive health organization in Penang that works with the transgender community, told Human Rights Watch, “For transgender people, the religious law on cross-dressing is a big risk. Some give a bribe or sexual services when they are arrested—so the risk of HIV increases.”⁸⁰

Violation of Privacy Rights

Transwomen told Human Rights Watch that religious officials had forcibly entered their homes or places of work to carry out arrests.⁸¹ In 2012, Religious Department officials forcibly entered the home of Izzati, a transgender woman in Seremban, while conducting a warrantless raid. Izzati, who as a Christian was not subject to Sharia law, was in front of her apartment building with three transgender Muslim friends. When a group of 10 Religious Department officials arrived in the neighborhood in several vehicles, Izzati’s three friends rushed up to the apartment and locked the door. Izzati remained downstairs, where the officials confronted her. She told Human Rights Watch:

They checked my IC [identity card] and saw I wasn’t Muslim. Then they went up to my room because they [had seen] my friends going up to my room. They forcibly took the keys out of my handbag. They pulled the bag from me, looked into it, pulled the keys out, and opened the grill [on the front door]. Then they went upstairs, opened the door, took photos, and arrested and

⁷⁹ Human Rights Watch interview with Aisah, Kuala Lumpur, January 13, 2014.

⁸⁰ Human Rights Watch interview with a representative of FHDA, Georgetown, January 16, 2014.

⁸¹ While the federal Criminal Procedure Code sets out a clear requirement for arrest warrants, the Sharia laws in Negeri Sembilan do not.

charged the three Muslim transwomen who were upstairs. They were charged with cross-dressing.⁸²

Public Humiliation

Religious authorities who have arrested transgender women have on several occasions called television news crews, with the apparent aim of publicly humiliating the victim. One television journalist told Human Rights Watch that both the religious officials and the police “always call us when they are going to do raids and arrest *mak nyah*.”⁸³

Shila, Sunny and Adik, three transwomen in Seremban, were victims of one such raid in July 2013. Shila recounted:

They brought in TV 3, a public TV station, which has a show called ‘999’ where they show raids. ... They forced people to do interviews with the media. We didn’t have a choice. We got in an argument with the *ustad* [religious official] but they forced us to do an interview. They asked, ‘What’s the price? Who are your clients?’ What’s the benefit of us answering them? But we had to answer them.⁸⁴

Consequences of Arrests

Being arrested under state cross-dressing laws has consequences for transgender women that go beyond the penalties prescribed by the courts. Beka told Human Rights Watch that she was fired from her job as a waitress in a restaurant after she was arrested the first time:

Because of that I lost my job. [My arrest] was published in the newspaper, with a blur on my face, but my statement was there. ... My colleagues at work spread around the story. My manager got the newspaper, and he said, ‘I don’t agree with that.’ My manager knew I was a *mak nyah*, but he was upset that I was in the paper, so he fired me.⁸⁵

⁸² Human Rights Watch interview with Izzati, Seremban, January 21, 2014.

⁸³ Email communication to Human Rights Watch from a Malaysian journalist, July 22, 2014.

⁸⁴ Human Rights Watch interview with Shila, Seremban, January 15, 2014.

⁸⁵ Human Rights Watch interview with Beka, Kuala Lumpur, January 13, 2014.

The arrests of transgender women also have broader social consequences. Criminalization of transgender women poses a threat to HIV prevention work among transgender communities. Beka’s experience of arrest at the hands of Religious Department officials while distributing condoms to transgender sex workers, as part of the outreach work of a recognized NGO, may serve as a deterrent to other would-be HIV outreach workers.⁸⁶ Raids on beauty pageants held in private locations, which serve as an opportunity to bring together the trans community and provide education on HIV prevention, as Manis experienced in Kedah, have a similar, deterrent effect.⁸⁷

The Negeri Sembilan Case

The constitutionality of Sharia laws that criminalize cross-dressing is currently being challenged in a case before the Court of Appeal in Putrajaya. The applicants, four transgender women from Seremban, first challenged the constitutionality of the state laws with the Negeri Sembilan High Court in February 2011. The High Court judge rejected their application in October 2012 on the grounds that the applicants, as Muslims, were bound by state Sharia law and that constitutional provisions protecting fundamental liberties were therefore irrelevant. According to lawyer Aston Paiva, who was representing the transwomen, the decision was “not based on *anything* in Malaysia law.”⁸⁸

Serafina, one of the applicants, said that her personal experience led her to join the case:

In 2009 ... the nightmare started of getting caught by the religious officials. The first time, I was coming from home, wearing pajamas, going to see my friends to give them some cosmetics. They [the religious authorities] were doing a raid. ... I tried to run. They came with a van. They caught me and pulled my hair. I was shocked. They wouldn’t show their identity cards. I said I didn’t do anything. I didn’t have heels or women’s clothes on. The evidence was just my pajamas, which had kitten prints.

⁸⁶ Human Rights Watch interview with Beka, Kuala Lumpur, January 13, 2014.

⁸⁷ Human Rights Watch interview with Manis, Kuala Lumpur, January 19, 2014.

⁸⁸ Human Rights Watch interview with Aston Paiva, lawyer, Kuala Lumpur, January 10, 2013.

I was arrested three times in one year. The last time, I was wearing unisex tennis shorts and a loose T-shirt in yellow and purple. They arrested me because of my slippers and hair bands.

It's so wrong. I didn't do anything to them, I'm just trying to be what I want to be in life. If we win the case, maybe we can change the rules.⁸⁹

Should the Court of Appeal ruling, expected on November 7, 2014, favor the applicants, it will only be binding in Negeri Sembilan. However, given the similarity of the cross-dressing laws across Malaysia's states and federal territories, transwomen and their allies in other states could file similar challenges, and those state high courts would be required to treat the Court of Appeal ruling as precedent.⁹⁰ Thus, the Negeri Sembilan case has the potential to contribute significantly to the fulfillment of constitutional rights for transgender people throughout Malaysia.

⁸⁹ Human Rights Watch interview with Serafina, Seremban, January 15, 2014.

⁹⁰ There is only one Court of Appeal in Malaysia, and its rulings serve as precedent for all lower courts. Email communication to Human Rights Watch from Aston Paiva, July 18, 2014.

III. Police Harassment of Transgender People

Federal criminal law in Malaysia, unlike state Sharia laws, does not explicitly criminalize transgender people, but they still may be arrested by the federal Royal Malaysia Police under federal statutes related to indecent behavior and prostitution.

Jenn, a transgender sex worker, was arrested in 2009 with a group of cisgender (non-transgender) female sex workers during a raid of a hotel in Brickfields, a bustling neighborhood in central Kuala Lumpur. When police noted that the sex on her identity card was male, they brought her out to the street and presented her to the gathering crowd. “They were informing the public that I was not female,” said Jenn. “It made me feel shy, sad, humiliated. They also brought TV cameras with them. I hid my face.”⁹¹

Rokiah said police in Kuantan, the capital of Pahang, arrested her in 2004, sexually groped her, and placed her in a male police cell, accusing her of prostitution and of “wearing girl clothes.” She was released on bail and went to Kuala Lumpur to file a complaint against the police who had groped her. She does not know if there was any follow-up to the complaint, but the police dropped the charges against her.⁹²

Azlene was also arrested by police in Kuantan in 2004 on prostitution charges. They put her in a male cell and shaved her head. When she was taken to court, Azlene pled not guilty: “We said, ‘Prostitution is just for woman, my identity card says male.’ In court I dressed like a man. It contradicted the accusation.” Although the definition of prostitution under federal criminal law is gender-neutral (as opposed to under Sharia law, where it only applies to women), the court acquitted Azlene.⁹³

Transgender people detained by the police under other laws are also subjected to mistreatment. Police sexually assaulted Chunhua, a 27-year-old transwoman in Kuantan, when stopping her in the course of a “routine” drug check in October 2013. In Kuantan, as in several other Malaysian cities, police stop passersby’s and require them to take on-the-spot urine tests. They used this opportunity to abuse and humiliate Chunhua:

⁹¹ Human Rights Watch interview with Jenn, Kuala Lumpur, January 22, 2014.

⁹² Human Rights Watch interview with Rokiah, Kuantan, January 17, 2014.

⁹³ Human Rights Watch interview with Azlene, Kuantan, January 17, 2014.

I was arrested by the police once [and forced] to do a urine test. They were stopping people randomly. The police were a bit rough. They asked me to show my sexual parts—in a parking lot, in front of other people. I was dressed in women’s clothing. For other men, they asked them to pee behind trees, but for me, they wanted to see the penis. They said, ‘Oh, quite big!’

It was humiliating. The others were laughing at me. The police were saying, ‘You want to be a *pondan*, but you have a penis.’ They touched my breasts and my butt. They just looked at the penis. Then they let me go because my urine was okay.⁹⁴

Police also subject transgender women to extortion. Karima, a 40-year-old transgender HIV activist, did sex work in the Chow Kit neighborhood of Kuala Lumpur for two months in 2007 when she faced a personal financial crisis. On one occasion, her client was a police officer. Karima said, “After sex with him, he comes out with his police identity card and says, ‘I have things to do and you know I’m a policeman, I’m expecting services free of charge.’”⁹⁵

Sharan, a transwoman in Kuala Lumpur who briefly engaged in sex work, told Human Rights Watch: “When I was a sex worker, the police were my customers, but un-paying customers. They said, ‘I’m there to help you.’” Sharan felt that if she refused to have sex with the police for free, she could be arrested.⁹⁶

The organization KRYSS, in its May 2014 report on violence against lesbian and bisexual women and transgender people in Malaysia, cites one transgender interview subject who “reported that two police officers in Penang asked her and her transwomen friends for ‘protection money’—about fifteen to twenty Malaysian ringgit (US \$5 to US \$6) in exchange for not being arrested.”⁹⁷

⁹⁴ Human Rights Watch interview with Chunhua, Kuantan, January 17, 2014.

⁹⁵ Human Rights Watch interview with Karima, Kuantan, January 18, 2014.

⁹⁶ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014.

⁹⁷ KRYSS, “On the Record: Violence Against Lesbians, Bisexual Women And Transgender Persons In Malaysia,” p. 14. According to an activist from Justice for Sisters, low-ranking, low-paid police routinely extort small bribes from transwomen. Email communication to Human Rights Watch, July 22, 2014.

HIV outreach workers raised concern that police conduct forced sex workers to have sex without condoms. Noor, who works with an HIV outreach program in the northern state of Perak, said, “We do distribution of condoms [to transgender sex workers], but when there are raids in hotels, police will say to people, ‘I’m taking you to lockup because you have condoms.’”⁹⁸ In a 2006 qualitative study of 15 transgender women, all but one of whom had engaged in sex work, respondents said police would normally charge transgender women with prostitution if they were caught carrying more than three condoms.⁹⁹

Transgender women’s experiences with the police vary, and some face little police harassment. Shila, a 40-year-old transgender woman in Negeri Sembilan, told Human Rights Watch, “Unlike the religious authorities, the police don’t care so much about these issues [cross-dressing]. They treat us okay. I’ve had no problems with the police in 15 or 20 years of living here. They’re like friends.”¹⁰⁰ However, Justice for Sisters reported that other transwomen have been arbitrarily detained in Negeri Sembilan.¹⁰¹

⁹⁸ Human Rights Watch interview with Noor (pseudonym), Kuala Lumpur, January 14, 2014.

⁹⁹ Teh Yik Koon, “Exploring HIV Related Needs for Safety Among Transsexuals or *Mak Nyahs*,” p. 26.

¹⁰⁰ Sunny (pseudonym), a transwoman in Seremban, made a similar comment: “The police are okay and don’t discriminate.” Human Rights Watch interviews with Shila and Sunny, Seremban, January 15, 2014.

¹⁰¹ Email communication from a representative of Justice for Sisters to Human Rights Watch, July 21, 2014.

IV. Sexual Assault by Wardens and Detainees in Lockup and in Prison

Transgender women who are detained in a male lockup (at either the religious office or the police station), or sentenced to prison in male cells, typically face grave dangers to their security. They are regularly stripped down to their boxer shorts in lockup, exposing their breasts to male inmates—a practice that “invites gang rape,” according to an official at a community organization that works with transgender women.¹⁰² Occasionally, transwomen are placed in separate police or prison cells, sometimes due to individual negotiations with police officers or wardens.¹⁰³

Human Rights Watch documented two cases in which transgender detainees were raped by prison wardens, employees of the Malaysian Prison Department. Aina, a transgender woman who was arrested on drug charges in 2006, told Human Rights Watch that she was forced to have sex with the warden at Taiping prison.¹⁰⁴ Erina was imprisoned on an assault charge and held in the men’s ward at Sungai Buloh prison from 1998 to 2000. There, she was forced to have sex without condoms with the warden, “about two times a week,” and with male prisoners. She said, “I complained to the high officers, the sergeant, but they did not take action.”¹⁰⁵

In other cases, fellow prisoners sexually assault transwomen, who receive no protection from the authorities. In 2009, police carried out a raid on sex workers in the Brickfields neighborhood of Kuala Lumpur and arrested Jenn, a transgender sex worker, along with a group of cisgender female sex workers:

They took us to lockup at Brickfields Police Station. The girls went to the female lockup, and I went to the male lockup. I was abused by the men in the lockup. One of them forced me to perform oral sex on him. The police

¹⁰² Human Rights Watch interview with a representative of FHDA, Georgetown, January 16, 2014.

¹⁰³ Ibid; Email communication with a Justice for Sisters representative, July 21, 2014. The FHDA representative said that in recent years, some *mak nyah* in Penang have been placed in a separate cell specifically for transgender women, and a Justice for Sisters representative said she had also seen this practice, though it was not systematic.

¹⁰⁴ Human Rights Watch interview with Aina (pseudonym), Kuala Lumpur, January 22, 2014.

¹⁰⁵ Human Rights Watch interview with Erina, Kuala Lumpur, January 19, 2014.

didn't know it was happening because they were completely separated from us—the cell was completely closed.¹⁰⁶

Nisha Ayub, a transgender activist, was sentenced to three months' imprisonment in 2000 after being arrested under Malacca's cross-dressing law. When she arrived at the prison, the wardens subjected her to an anal exam. Then, she said,

I was asked to strip naked in front of everyone. They made fun of my breasts, my implants. The wardens actually purposely asked me to show my breasts in front of all the other inmates, [taking me] from one cell to the other cell. It was something that I can't forget until today. I was actually pleading to the warden, 'Please don't do this, please don't do this,' but he just ignored me. It was really scary, because those men in there, those other inmates, when they look at me and they look at my breasts, they were screaming and shouting and cheering.

When they put me in the cell, I thought I was safe, but I wasn't. I met an elderly transgender woman who was there and she told me, 'Please be careful, make sure you get somebody to protect you.' But I was so naïve and I didn't know what was going on.

Nisha's fellow inmates attacked her and forced her to perform oral sex on them the following morning during the breakfast queue. She told Human Rights Watch that she had grown up in a conservative family, and that this was her first sexual experience:

I was molested by six or seven inmates. They actually forced me to do oral sex with them, and it was done openly. ... And when you are in prison, you can cry, you can beg, or whatever, people don't care. They just do what they want to do. ... If they want sex, they want sex.

And from there, I took the advice from the elderly trans woman to get someone to protect me. I met a warden who basically protected me and

¹⁰⁶ Human Rights Watch interview with Jenn (pseudonym), Kuala Lumpur, January 22, 2014.

in return, I had to give him sexual favors. It's not something that I'm proud to talk about. But, it's something that I had to do, just to protect myself.¹⁰⁷

¹⁰⁷ Human Rights Watch interview with Nisha Ayub, Kuala Lumpur, January 21, 2014.

V. Failure to Investigate Crimes against Transgender People

In the cases reported to Human Rights Watch, transgender people who had been the targets of assault because of their gender identity found it difficult to obtain access to justice. They felt they were not or would not be afforded equal protection of the law.

Several women in Kuantan told Human Rights Watch that they had been physically assaulted by an apparent vigilante group that targeted transwomen engaged in sex work.¹⁰⁸ In one particularly serious case, in July 2013, Lily, a transwoman from Thailand, was attacked and beaten into a coma.¹⁰⁹ Hafiza, a 32-year-old transgender sex worker and friend of Lily's, said: "My friend was beaten into a coma and got 78 stitches. Nothing happened. The police found the stick that she was beaten with, and the knife used to assault her, but nothing happened. The police here don't take care of us."¹¹⁰

Hafiza said that she too had been attacked, with three or four of her friends, by a group of about eight men, one night in January 2012 when they were on the street looking for clients. Hafiza said one of the men hit her in the head with an iron rod, and stabbed her with the rod in the thigh. "I just wanted to die, but I fought back," Hafiza said. "They were saying, 'We want you to die.'... I launched a police report, but since the police don't care about transgenders, they didn't take it seriously. They didn't do anything to investigate. They never invited us to the police station to identify any of the guys."¹¹¹

Hafiza said she was attacked again in late 2013 by a group of three men, one of whom hit her on the back with an iron rod. The police were passing by and managed to catch one of the suspects. However, Hafiza said:

I was called to the station to identify him. I talked to the police and wanted to bring a lawyer. Then the guy was just taken to Kuantan Court and was fined

¹⁰⁸ Ong Han Sean, "Transsexuals being targeted by gang," *The Star*, February 16, 2012, <http://www.thestar.com.my/News/Nation/2012/02/16/Transsexuals-being-targeted-by-gang/> (accessed August 6, 2014).

¹⁰⁹ Azrul Mohd Khalib, "Lily's story and Seksualiti Merdeka," *The Malay Mail Online*, August 26, 2013, <http://www.themalaymailonline.com/opinion/azrul-mohd-khalib/article/lilys-story-and-seksualiti-merdeka> (accessed June 3, 2014).

¹¹⁰ Human Rights Watch interview with Hafiza (pseudonym), Kuantan, January 17, 2014.

¹¹¹ *Ibid.*

400 RM (US \$125), without a fair trial. That's not worth what I've been through. So I feel angry. The court never called me as a witness. The police told me, 'Just hold on, don't get a lawyer.' I feel it's no use to reopen the case.¹¹²

There are occasional exceptions, in which police investigate crimes against transgender people. Nisha Ayub of Justice for Sisters told Human Rights Watch that at an organization where she had provided services to the transgender community, one of her clients, a mute, homeless transgender woman, suddenly disappeared in August 2009. Several days later, Nisha saw a picture of her client in a newspaper:

Her body was found in a riverbank somewhere in Kuala Lumpur. And it was devastating, because no one wanted to claim her body. So I went there to claim her body, to do her rites, to do everything for her. It was really heartbreaking, when you go to the morgue, to look at her lying there and know that she was killed.¹¹³

Police conducted investigations, and one suspect was prosecuted and convicted.¹¹⁴

But often, police respond to crimes against transgender people by blaming, harassing, or revictimizing them. Sharan, a transgender woman in Kuala Lumpur, said that in December 2011 she was abducted by a man who pulled his car over while she was walking down the street in Chow Kit. He talked her into his car by asking for her help in getting a package to another transgender woman. He then locked the doors and drove her out of Kuala Lumpur. Sharan asked why they were driving such a long distance:

He said, 'I have 13 guys who are waiting to rip you apart. They are really hungry for sex. So just shut up and have sex with them. All you people are cursed to go through this. Who asked you all to change yourselves?'

¹¹² Ibid.

¹¹³ Human Rights Watch interview with Nisha Ayub, Kuala Lumpur, January 21, 2014. See also: Yuki Choe, "Two Months Ago: Another Transgender Found Dead," Yuki's Box of Chocolates (blog), <http://yukishock.blogspot.com/2009/10/two-months-ago-another-transgender.html> (accessed July 23, 2014).

¹¹⁴ "Man to hang for transvestite's murder," *The Malaysian Insider*, May 28, 2012, <http://www.themalaysianinsider.com/malaysia/article/man-to-hang-for-transvestites-murder> (accessed July 23, 2014). Human Rights Watch opposes the death penalty in all circumstances.

He pulled over the car and took out three knives—a long hunting knife and two short knives. He was playing with a knife on my skin. He said he'd already killed seven [ethnic] Malay transgenders and I was his first Indian. I said, 'What do you get out of this?' He said, 'I'm satisfied because you should not exist.'

After threatening to rape and kill Sharan, however, the man just robbed her of the contents of her handbag and left her by the road. Sharan went to Chow Kit police station to report the incident, and was referred to Dang Wangi police headquarters. Sharan described the crime to a police sergeant, providing the license plate and model of the car. However, as she was recounting the experience, the police sergeant stopped her and asked her for sex. Over the next several days, the police officer called her repeatedly, telling her he was 'horny' and asking, 'When are you going to suck my dick?' He did not provide her with any update on the case. According to Sharan:

After five days he stopped calling me and did not answer my calls. I called Dang Wangi station and they told me the case was closed a few days ago because of not enough evidence.¹¹⁵

Sharan said this was not an isolated incident. She had reported a previous house break-in and a case involving negligent driving, but, she said, 'Every time I've had an encounter with the police, the police have always asked me for sexual favors.'¹¹⁶

Hezreen, a transgender woman in Penang, said that in May 2009, she was attacked by a man who followed her into her house, tore her shirt open, and stole her mobile phone, before running away. When Hezreen went to report the incident to the police, they suggested that the man had followed her into her house because she offered him sex. Hezreen filed a police report, but the police asked her to drop the case, and to her knowledge, never conducted investigations. She concluded, 'I can't trust the police. If anything happens, they blame the transgender. They accuse the victim.'¹¹⁷

¹¹⁵ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014.

¹¹⁶ Ibid.

¹¹⁷ Human Rights Watch interview with Hezreen, Penang, January 16, 2014.

Nisha Ayub said that the case of her mute client who was killed—in which a suspect was convicted—was unusual, and that most cases are not even reported: ‘A lot of the trans community faces [violence], but a lot of them don’t want to report it. They feel that just because they are trans people, they’re not protected under the law.’¹¹⁸

¹¹⁸ Human Rights Watch interview with Nisha Ayub, Kuala Lumpur, January 21, 2014.

VI. Broader Discrimination

Transgender people in Malaysia experience discrimination in access to health care, employment, housing, education, and government services. Employment law, education law, and health care law in Malaysia contain no provisions prohibiting discrimination on any ground, so the only recourse available to Malaysians who experience discrimination in these sectors is the Constitution—which explicitly prohibits discrimination on the basis of gender, except with respect to education.¹¹⁹ No existing law in Malaysia protects people from discrimination on the basis of their gender identity—nor on the basis of sex or sexual orientation—and negative rhetoric by politicians, government officials, and religious leaders provides cover for those who fail to respect transgender people’s rights. As of this writing, the National Unity Consultative Council (NUCC) had drafted a National Harmony and Reconciliation Bill that would prohibit discrimination on the grounds of gender, including sexual orientation and identity, but the bill had not yet been debated in parliament.¹²⁰

Health Care

Many of the transgender people interviewed by Human Rights Watch had experienced discrimination in the health care sector. They said health workers ogled and commented on their bodies, refused to touch them, or touched their sexual organs unnecessarily, and that they were placed in male or female wards without regard for their gender identity.

Sharan went to Sungai Buloh government hospital just outside Kuala Lumpur in 2011 for fever, sore throat, and a migraine:

I went to a nurse at the general hospital. The nurse didn’t want to touch me. She asked me to put in the thermometer myself [in my mouth], then to put it back in the tray, and then she immediately put it in a separate container with lots of Dettol. She taught me how to use the [blood] pressure machine, to squeeze it, tighten it, so that she wouldn’t have to touch me. I felt as if I have a disease—if you touch me, are you going to become transgender as well?

¹¹⁹ Constitution of Malaysia, arts. 8, 12; See also: The Equal Rights Trust in partnership with Tenaganita, *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia*, November 2012, p. 259.

¹²⁰ Hemananthani Sivanandam, “Harmony Bill to address gender bias and sexual leaning,” *The Star*, July 8, 2014, <http://www.thestar.com.my/News/Nation/2014/07/08/Harmony-Bill-to-address-gender-bias-and-sexual-leaning/> (accessed July 9, 2014).

When I told the doctor about it he said, ‘They’re just nurses.’ I said, ‘Yes, but they’re supposed to treat patients properly.’¹²¹

She also faced overly curious health workers:

Another time in 2010, I had a migraine. I went to the local [private] clinic, Reddy Clinic, nearby here. The doctor asked me to lie on the examination bed. I said, ‘I have migraine.’ He was checking my crotch area, put his finger in my belly button, and said, ‘I’m checking to see if you have any stomach upset.’ I just walked out—he just wanted to feel me.¹²²

Ron, a middle-class transgender man in Kuala Lumpur, said that although he found most doctors in the private sector were open-minded, “I had one case of a doctor who checked my pelvic area even though I was there for something completely unrelated.”¹²³

Many trans people are unable to afford private clinics and instead seek treatment at government facilities, where they may face more serious discrimination. Naz, a transgender woman in Seremban, felt humiliated by health workers when seeking treatment for low blood pressure at Port Dickson General Hospital, a government hospital, in 2008:

One time I overdosed on hormones. I had low blood pressure. I was raced to the emergency room. My family was there. I was on the bed half awake, aware of what was happening. There were all these trainees, new doctors. They opened my clothes, were pointing at my breasts, asking, ‘Is this a man or a woman?’ I felt humiliated and also embarrassed because my family was there. What mother would want to hear that? I felt very small at the time.¹²⁴

Another transgender woman, also known as Nazz, went to a government hospital in Penang for treatment for dengue fever. She said, “I could hear [hospital staff] chatting

¹²¹ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014.

¹²² Ibid.

¹²³ Human Rights Watch interview with Ron (pseudonym), Kuala Lumpur, January 23, 2014.

¹²⁴ Human Rights Watch interview with Naz, Seremban, January 15, 2014.

while I was waiting, ‘Is that a boy or a girl? I think it’s a *mak nyah*,’ ‘I think it’s a sissy boy.’ It hurt, but I just kept my head down—I don’t want to cause any trouble.”

She said that following that experience, “I prefer private [hospitals], even though I have to pay more. Most of the time they treat me like a person.”¹²⁵

Erina, in Kuala Lumpur, was hospitalized for two days in 2011 for a high fever. She was placed in a male ward because of the “male” sex marker on her identity card, despite her request to be placed in a female ward. Doctors and nurses quizzed her about her gender identity, asking questions unrelated to the condition for which she was seeking treatment. “They treated me like they treat people with HIV. They were clearly not comfortable,” Erina told Human Rights Watch.¹²⁶

Discrimination in the health sector is not across the board, and may reflect individual rather than systematic bias.¹²⁷ Some transwomen said that they had encountered positive experiences with doctors and nurses at public hospitals, including one HIV-positive transwoman from Kedah who said her doctor at Sultanah Bahiyah public hospital was supportive of her gender identity.¹²⁸ All six transwomen Human Rights Watch interviewed in Kuantan said they had not faced discrimination from health workers. “They treat me like a normal person,” Hafiza explained.¹²⁹

But fear of discrimination means some transgender people abstain from seeking medical care. Dorian, an activist who has developed a network of transmen throughout Malaysia, said many who have not fully transitioned are afraid to seek out gynecological services: “For [transmen] who are stealth, they don’t go for Pap smears at all.”¹³⁰

Rabisan, a transman who has not undergone sex reassignment surgery and who occasionally engages in sex work with male clients to make money, was anally raped by a

¹²⁵ Human Rights Watch interview with Nazz, Georgetown, January 16, 2014.

¹²⁶ Human Rights Watch interview with Erina, Kuala Lumpur, January 19, 2014.

¹²⁷ Teh Yik Koon’s 2006 study found that most respondents were treated well when seeking health care, while a few complained of stigmatizing treatment, particularly from nurses. Teh, “Exploring HIV Related Needs for Safety Among Transsexuals or *Mak Nyahs*,” p. 31.

¹²⁸ Human Rights Watch interview with a transwoman, name and location withheld.

¹²⁹ Human Rights Watch interview with Hafiza and other transwomen, Kuantan, January 17, 2014.

¹³⁰ Human Rights Watch interview with Dorian, Kuala Lumpur, January 13, 2014.

client on one occasion. He did not seek medical treatment because he was embarrassed at the prospect of revealing his female genitalia to a doctor: “I was embarrassed. I couldn’t seek help. I would have to explain all these things, reveal my ‘parts.’”¹³¹

Most of the transgender people we interviewed said that they take hormones to alter their physical appearance and affirm their gender identity. Fearing stigma, most do not seek the support of medical professionals, instead buying over-the-counter hormones with no medical advice. Family Health and Development Association in Penang, one of the few service providers that assists transgender people with hormone intake, found that most participants in its outreach programs were taking excessive doses, which may produce dangerous side effects.¹³²

HIV Prevalence and Inadequate Support

Discrimination in the health sector is particularly problematic given transgender women’s vulnerability to HIV.¹³³ It is difficult to estimate HIV prevalence among criminalized populations that are stigmatized and socially marginalized, however the most recent estimate of HIV prevalence among transgender women was 5.7 percent, significantly higher than the 0.4 percent prevalence found among the general population.¹³⁴ Public health experts suggest that this may significantly underestimate the true prevalence.¹³⁵ In addition, HIV awareness and prevention are believed to be much lower among transgender women than rates measured among the overall population. Teh Yik Koon’s study of 507 *mak nyah* found that respondents had low levels of awareness of HIV and of condom use, and the majority reported that they did not regularly use condoms.¹³⁶

An official at an organization conducting HIV prevention work in Penang said,

¹³¹ Human Rights Watch interview with Rabisan (pseudonym), Kuala Lumpur, January 13, 2014.

¹³² Human Rights Watch interview with a representative of FHDA, Georgetown, January 16, 2014.

¹³³ Despite popular perceptions, some transgender men also engage in penetrative sex with male partners and are also at risk—a risk that is heightened by transmen’s reluctance to seek health services, including for sexually transmitted infections (STIs).

¹³⁴ Ministry of Health Malaysia, Disease Control Division, HIV/STI Section, *Global AIDS Response Progress Report 2014*, March 26, 2014,

http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2014countries/MYS_narrative_report_2014.pdf, p. 19, p. 21 (accessed July 1, 2014). A new Integrated Biological and Behavioral Surveillance (IBBS) survey is expected to be conducted by the Ministry of Health, in partnership with HIV organizations, in the second half of 2014.

¹³⁵ See Adeeba Kamarulzaman, presentation at CROI (Conference on Retrovirals and Opportunistic Infections) 2014, <http://www.croiwebcasts.org/console/player/22039?mediaType=podiumVideo&> (accessed July 21, 2014). Kamarulzaman’s research suggests that as many as 35 percent of transgender sex workers in Kuala Lumpur may be HIV-positive.

¹³⁶ Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*, pp. 78-86.

Transgender women tend not to go to government health facilities, which are free of charge, to seek health care. They're subjected to people sneering at them, shouting out their male names—even in anonymous HIV screening situations. One transgender woman had staff shout out, 'This man is going to an anonymous HIV screening!' So if this continues, no one will ever go for medical screening—if you have a bad experience, you won't go back.¹³⁷

A number of NGOs throughout Malaysia conduct HIV outreach to transgender people, providing the kinds of friendly services they may not find in government hospitals. The federal Department of Islamic Development, JAKIM, has also taken an interest in HIV outreach to transgender people, but their approach is problematic: at times welcoming, JAKIM also uses stigmatizing language and rejects transgender people's own understandings of their gender identity. For instance, JAKIM's 2010 "HIV and Islam" manual, published in partnership with the Ministry of Health, recognizes that transgender people may be at risk in part due to stigma, discrimination, low self-esteem, and lack of social support structures, but also professes that they are lacking in "religious comprehension" and need "counseling in sexuality and moral values."¹³⁸ Advice for HIV prevention in JAKIM's manual includes advice like: "Never commit to wrongful sexual acts like adultery, sodomy and lesbianism. The best way to protect yourself from sexually transmitted diseases like HIV is by avoiding adultery and sin."¹³⁹

Employment Discrimination

When asked about her biggest concern as a transwoman, Nazz, a 31-year-old transwoman in Penang, immediately responded, "Jobs." She continued:

Most [transgender women] work on the streets as prostitutes because they don't have any choices. Most are not highly educated. Most have been rejected from jobs. ... Malaysia should prohibit this discrimination.¹⁴⁰

¹³⁷ Human Rights Watch interview with a representative of FHDA, Georgetown, January 16, 2014.

¹³⁸ JAKIM, *Manual on HIV/AIDS in Islam*, 2010, on file with Human Rights Watch, p. 5.

¹³⁹ *Ibid.*, p. 42.

¹⁴⁰ Human Rights Watch interview with Nazz, Georgetown, January 16, 2014.

The absence of any law protecting Malaysians from employment discrimination based on gender identity or expression leaves women like Nazz—who said she was turned away from several interviews for retail jobs as soon as the employer realized she was transgender—with no recourse in such situations. Beka, from the northern state of Kedah, told Human Rights Watch she had been rejected on the basis of her gender identity more than 10 times by prospective employers, including an international corporation.¹⁴¹

Natasha, a 33-year-old transgender woman in Penang, told Human Rights Watch that despite her efforts to neutralize her appearance and blend in, she still faced job discrimination:

When I go for an interview, whether a factory, shopping complex, hotel, or anywhere, I dress in a simple way—no make-up; if I have long hair at the time I bun it up. [But] they would tell me, ‘No, we don’t want transgender women.’¹⁴²

Sharan said she thought that employers were more interested in her body than her job qualifications:

Since [the government] made us seem like aliens, it’s hard to find jobs. When I go for an interview, if the interviewer is male, the first thing he asks me is, ‘Are your breasts real? When did you decide to change?’ I explain I’m a transsexual woman. ‘Do you have a penis or a vagina? Do you have sex with men or women? Which toilet do you go to? Did you do your operation? Why did you choose to take hormones?’ It’s nothing relevant to the job. And it’s not just one place—this has happened at almost every interview I’ve gone to. And then they tell you they’ll call you in two weeks, but you don’t get any phone calls. Or they SMS asking, ‘Are you free tonight?’ There’s no agency that you can report job discrimination to.¹⁴³

¹⁴¹ Human Rights Watch interview with Beka, Kuala Lumpur, January 13, 2014.

¹⁴² Human Rights Watch interview with Natasha (pseudonym), Penang, January 16, 2014.

¹⁴³ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014.

Malaysian employment law prohibits sexual harassment against employees, but not prospective employees; no law or institution in Malaysia protects transwomen from sexual harassment during the job application process.¹⁴⁴

Victoria, a 33-year-old transgender woman from Seremban, has not been fired from a job because of her gender identity, but told Human Rights Watch that when she worked at a petrol station of a global company, she was forced to dress as a man. “That’s not necessary—I know who I am,” she said.¹⁴⁵

Suvati, a 24-year-old trans woman in Kuala Lumpur, found that not only did one prospective employer treat her in a discriminatory manner, he also called the police on her when she tried to stand up for herself. She went for a job interview at an international call center, where her interviewer, upon realizing she was transgender, began to insult her, calling her *pondan* and telling her transgender people are a curse:

He said, ‘You are a she-male, I cannot accept you. The company will get a bad name.’ I started crying and arguing with the guy, trying to explain what problems we go through. The guy said, ‘Since you’re arguing with me a lot, I’ll call the police.’

Several police officers arrived at the office, and Suvati was able to explain that she had simply been speaking up in response to the interviewer’s insults. She told them she wanted to file a complaint against the company:

I said, ‘I want to come into your station to report this international company. I need to make a report on the guy by name, actually.’

The lady police officer said, ‘If you come and file a report, it will never get looked at because you’re a she-male.’ I said, ‘Just forget it.’¹⁴⁶

¹⁴⁴ Malaysia Employment (Amendment) Act 2012, art. 27, “New Part XVa.” The law only covers alleged sexual harassment brought by and against employees and the employer.

¹⁴⁵ Human Rights Watch interview with Victoria, Seremban, January 15, 2014.

¹⁴⁶ Human Rights Watch interview with Suvati, Kuala Lumpur, January 22, 2014.

Other employers are more accommodating, as Hezreen found when she worked for a fast food restaurant in Kuala Lumpur:

I got a job at [an international fast food chain] in the kitchen crew. I did not have a house so I was put in the male hostel. I couldn't stand it. I asked to stay at the women's hostel, but they were uncomfortable with me. So I transferred to a small room in the manager's hostel.¹⁴⁷

Education

Many transgender people face discrimination in school—in some cases, as early as primary school, and in other cases, in secondary school or college. Azlene, a 31-year-old transwoman in Kuantan, recalled: “I quit school at age 11 because people around me were always bullying me. I was stressed. I felt like I was going to explode.”¹⁴⁸

Adik, a transwoman in Seremban who has undergone SRS, told Human Rights Watch why she dropped out of university:

There are two reasons I don't want to continue my studies. I already feel like I'm half a woman because of the surgeries; if I go to university I'll have to follow their dress code and wear a shirt and pants. Second, the changed shape of my body would show. Also, I would have to stay in a student hostel with other male students. I wouldn't feel comfortable if they asked me questions. I would continue my studies if it were in a place that was more accepting of *mak nyahs*.¹⁴⁹

Adik had been in university prior to her SRS. One reason she dropped out was that she was forced to share a room with a man and to attend all-male classes. She asked college officials to make an exception for her, but they refused.

The Education Department of the Federal Territory (Kuala Lumpur) has an explicitly discriminatory policy that calls for punishment, including caning, suspension, and

¹⁴⁷ Human Rights Watch interview with Hezreen, Georgetown, January 16, 2014.

¹⁴⁸ Human Rights Watch interview with Azlene, Kuantan, January 17, 2014.

¹⁴⁹ Human Rights Watch interview with Adik, Seremban, January 15, 2014.

expulsion, for homosexuality and “gender confusion.”¹⁵⁰ Women’s Aid Organization, an organization based in Kuala Lumpur, has documented one case of a lesbian expelled from secondary school due to her sexual orientation. Human Rights Watch is not aware of cases in which this policy has been enforced against trans people.¹⁵¹

Sexual Assault and Harassment in School

Four transgender women interviewed by Human Rights Watch reported sexual assault and harassment by their fellow students—and in one case, by a teacher—which may also contribute to the drop-out rate.

Aisah, who started hormone therapy at the age of 14 and began developing breasts, experienced sexual harassment in secondary school, but fought back: “Male students in school loved to squeeze my breasts, and I would punch them in the face.” Teachers were of no help, she said: one curious teacher also squeezed Aisah’s breasts, and quizzed her about whether she was taking hormone pills.¹⁵²

Sharan said that at age 14, she had never heard the term “transsexual,” but believed she had a deformity that consisted of male genitalia cleaved onto what she experienced as a female body. She said she was treated as a “girl” by the other boys in her all boys’ school, treatment that culminated in gang rape when one boy, and then others, forced themselves on her in a field outside the school:

I was in a shocked state, and couldn’t move. I was thinking to myself, ‘Run, run,’ but couldn’t do anything. He pushed me on the ground and removed my clothes. I felt like the dirtiest person on earth. I could just say, ‘Stop it,’ but couldn’t push him away.

The boy covered Sharan’s mouth to silence her, and proceeded to anally rape her. Then, she said,

¹⁵⁰ Women’s Aid Organisation, *Malaysian NGO Alternative Report assessing the Government’s progress in implementing CEDAW (2012)*, April 2012, p. 77, p. 227, http://www.wao.org.my/Reports_74_6_1.htm (accessed June 24, 2014). The report cites *Translated excerpt from “Buku Peraturan Disiplin: Sekolah Menengah, Wilayah Persekutuan Kuala Lumpur” (Disciplinary Rule Book: Secondary School, Federal Territory of Kuala Lumpur), Jabatan Pelajaran Wilayah Persekutuan Kuala Lumpur (Department of Education), 2008, p. 74.*

¹⁵¹ Email communication from a representative of Justice for Sisters to Human Rights Watch, July 21, 2014.

¹⁵² Human Rights Watch interview with Aisah, Kuala Lumpur, January 13, 2014.

I saw the grass rustle. There were seven of them and they took turns.

I had no one I could talk to. I knew the teachers or my parents would blame me for being like this because I was born deformed.¹⁵³

Natasha, a 33-year-old transgender woman in Penang, recalled that in secondary school,

Other boys started teasing me and would touch me and make sexual advances. They would grab my hand, pinch my butt, touch my chest area. They all hinted at wanting to have sex with me. ... I went to the boys' toilet but I was always disturbed there. The boys would prevent me from leaving the toilet. They would pinch me and touch me, and call me names like '*pondan*.'¹⁵⁴

Family Violence and Rejection

Some transgender people are mistreated and rejected by their own families. Dorian, a transman, said that shortly after he turned 18, when he still identified as a butch lesbian, his father found out he was dating a woman:

He slapped me across the face and said, 'This is my house, you follow my rules. I don't accept all this. If you still want to be like that then you can leave. I'll help you pack and I'll close the door behind you.' At that point I'd had enough and said, 'I'm going to leave.' I told my mom I was leaving. She tried to stop me. But she was worried that Papa would kill me. My dad, when he's angry he can't control himself.¹⁵⁵

In the six years since, Dorian has reestablished contact with his mother's side of the family, but his father, he said, 'still pretends I don't exist.'¹⁵⁶

Azlene, a trans woman from the northwestern state of Perlis, said her parents rejected her at the age of 8 or 9 because she was considered too feminine. Azlene went to live with

¹⁵³ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014.

¹⁵⁴ Human Rights Watch interview with Natasha, Georgetown, January 16, 2014.

¹⁵⁵ Human Rights Watch interview with Dorian, Kuala Lumpur, January 13, 2014.

¹⁵⁶ Human Rights Watch interview with Dorian, Kuala Lumpur, January 13, 2014.

more tolerant relatives, but came back to her mother's house at age 13. However, Azlene said, 'My mother noticed everything I was doing was feminine. She didn't like it. My mother beat me and did not accept me as her child. I was frustrated, my heart was broken. I went back to my aunt's house.'¹⁵⁷ Only after five years with no communication did Azlene's mother reach out to her, willing to accept her for who she was.

KRYSS reported several cases of violence against trans people by family members. One transwoman reported that as a gender non-conforming child, she was beaten on a daily basis by her father: "He would use wires, metal rods to hit me. He has even broken my arms."¹⁵⁸ Another transwoman told KRYSS that her father hit her and imprisoned her in the house as an attempt to regulate her gender identity,¹⁵⁹ while a third transwoman said that her older brother, an army commander, beat her and stripped her when he found her wearing women's clothes.¹⁶⁰

Domestic violence in Malaysia can be prosecuted under Penal Code provisions on hurt, criminal force, and assault, and a separate Domestic Violence Act sets forth procedures for seeking a protection order against a family member.¹⁶¹ Human Rights Watch is not aware of any attempts by transgender individuals to use this law to seek protection or a remedy for family violence.

¹⁵⁷ Human Rights Watch interview with Azlene, Kuantan, January 17, 2014.

¹⁵⁸ KRYSS, "On the Record: Violence Against Lesbians, Bisexual Women And Transgender Persons In Malaysia," p. 25.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*, p. 29.

¹⁶¹ Laws of Malaysia, Act 521, Domestic Violence Act 1994; See also: Women's Aid Organization, "Domestic Violence," http://www.wao.org.my/Domestic+Violence_37_5_1.htm#sthash.5i3q65Eh.dpuf (accessed July 9, 2014).

VII. Access to Gender Recognition and Sex Reassignment Surgery

Many transgender people in Malaysia, to affirm their identities and to end cycles of arrest and harassment, would like to change the sex marker on their identity cards, and to be officially recognized as the gender with which they identify. Some also seek sex reassignment surgery (SRS) in order to physically alter their bodies. In both cases, they face significant obstacles.

Gender Recognition

Transgender Malaysians have found that it is virtually impossible to change the sex marker on their identity cards (IC). There is no law that 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. A deputy minister in the Prime Minister's Office told parliament in 2012 that such changes are not permitted even for those who have had sex reassignment surgery.¹⁶² Nor can transgender people change the names on their identity cards. According to longtime transgender activist Khartini Slamah, name changes were permitted until 1996, when a stricter policy came into place:

A transsexual undergoing a sex change can add a new name to the birth name, resulting in two names on the identity card: one male and one female. According to the Registry Department, which issues identity cards, this measure is needed to ensure that *mak nyahs* do not marry men, since Islam forbids sex or marriage between men, and even *mak nyahs* who have had sex change operations are considered men.¹⁶³

Courts have issued conflicting opinions as to whether individuals who have undergone SRS can be administratively recognized according to their chosen gender. In the first case, *Wong Chiou Yong (P) v. Pendaftar Besar/Ketua Penarah Japatan Pendaftaran Negara*

¹⁶² Teoh El Sen, "LGBT 'not protected by Federal Constitution'," *Free Malaysia Today*, June 19, 2012, <http://www.freemalaysiatoday.com/category/nation/2012/06/19/lgbt-not-protected-by-federal-constitution/> (accessed May 21, 2014).

¹⁶³ Khartini Slamah, "The Struggle to be Ourselves, neither Men nor Women: Mak Nyahs in Malaysia," p. 110.

(2004), involving a transgender man who sought to change his official sex to male after undergoing sex reassignment surgery, the Ipoh High Court ruled that “a positive decision in response to this application would conflict with the spirit and intention of the legislature expressed in [the Births and Death Registration Act 1957 and the National Registration Act 1957],” neither of which make any provisions for gender changes except in the case of an “error” in the stated gender on the birth certificate. The bench determined that this was a matter for parliament rather than the courts, while noting that transsexuals would indeed benefit from laws allowing for gender recognition.¹⁶⁴

However, *J.G. v. Pengarah Jabatan Pendaftaran Negara* (2005), heard the following year in the Kuala Lumpur High Court, yielded an outcome in favor of the petitioner, a transgender woman who had also undergone SRS. The judge found:

[I]n this instant case, the medical men have spoken: the plaintiff is FEMALE. They have considered the sex change of the plaintiff as well as her psychological aspect. She feels like a woman, lives like one, behaves as one, has her physical body attuned to one, and most important of all, her psychological thinking is that of a woman. ... the defendant [the state] is empowered by law under s 6(2)(o) of the National Registration Act 1959 to make a correction and alteration in the register and identity card. ¹⁶⁵

But in 2011, the Terengganu High Court rejected a similar application by Aleesha Farhana, a 25-year-old transgender woman who had undergone SRS. Aleesha died 12 days later of a heart attack, which doctors said was brought on in part by depression.¹⁶⁶

¹⁶⁴ Wong Chiou Yong (P) v Pendaftar Besar/Ketua Pengarah Jabatan Pendaftaran Negara, November 4, 2004, on file with Human Rights Watch; Equal Rights Trust in partnership with Tenaganita, *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia*, pp. 121-122; University of Toronto, Faculty of Law, “Malaysia: Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity,” February 12, 2009, http://ihrp.law.utoronto.ca/utfl_file/count/documents/SOGI/Malaysia_SOGI_2009.pdf (accessed June 3, 2014).

¹⁶⁵ *J.G. v Pengarah Jabatan Pendaftaran Negara*, Judgment of James Foong, J, December 9, 2005, http://www.malaysianbar.org.my/selected_judgements/jg_v_pengarah_jabatan_pendaftaran_negara_2005_hckl.html (accessed June 3, 2014); See also: University of Toronto, Faculty of Law, “Malaysia: Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity.”

¹⁶⁶ Shazwan Mustafa Kamal, “Transgender ‘Aleesha’ dies of heart attack, depression,” *The Malaysian Insider*, July 30, 2011, <http://www.themalaysianinsider.com/malaysia/article/transgender-aleesha-passes-away#sthash.L6oNLS73.dpuf> (accessed June 3, 2014).

In the interim, the National Registry has continued to deny transgender applicants the right to change their identity cards, infringing upon their rights to non-discrimination and freedom of expression. Sharan, a Hindu transgender woman who has undergone sex reassignment surgery in Thailand, petitioned the National Registry to change her name and gender on her IC, but she received a letter of rejection, which provided no explanation for the decision. According to Sharan, Hinduism not only validates the existence of transsexuals, but, according to one interpretation, calls on the followers of one deity to undergo castration as a religious duty.¹⁶⁷ She said: “The federal constitution provides for [religious freedom]—so as a Hindu transgender, these are our rights.”¹⁶⁸

Sex Reassignment Surgery

Around 1980, a team of doctors and psychologists at the public University of Malaya Hospital began performing sex reassignment surgery on transgender people. Dr. Khairuddin Yusuf, one of the physicians on the team, recalls having performed SRS on at least six transgender patients. When Khairuddin and his colleagues realized that their post-operative patients were having difficulties finding jobs because their bodies no longer matched the sex listed on their identity cards, they successfully lobbied the National Registry Department to change their patients’ sex markers. Then, he said,

The [National] Fatwa Council heard about it. They expressed concern. We explained the science behind it to them. ... Our languages were totally different. They didn’t get the language of science. I understood what Galileo was facing. Science challenges conventional wisdom. I was explaining the importance of transgender people getting jobs, that we have to help our patients. They did not explain their reasoning. ... [Our reasoning] was not accepted, so I closed the services. ¹⁶⁹

The fatwa issued by the National Fatwa Council in 1982 against sex reassignment surgery is not legally binding because it was not gazetted by any state. This means there is

¹⁶⁷ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014. See also: Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (Belmont, CA: Wadsworth Publishing Company), 1999, pp. 34-37.

¹⁶⁸ Human Rights Watch interview with Sharan, Kuala Lumpur, January 13, 2014. The Constitution in article 3(1) states: “Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.”

¹⁶⁹ Human Rights Watch interview with Khairuddin Yusuf, Petaling Jaya, January 20, 2014.

technically no legal barrier to SRS in Malaysia.¹⁷⁰ However, few hospitals have performed the surgeries since 1982. In one case that appears to be exceptional, Wong Chiou Yong, the applicant in the court case discussed above, apparently did undergo SRS in 2002 in Penang.¹⁷¹ None of the transgender people interviewed by Human Rights Watch knew of any hospitals that would currently perform such surgeries.

Because no facilities currently perform SRS in Malaysia, transgender people who wish to undergo SRS must travel abroad. Many of those Human Rights Watch interviewed had undergone the surgery in Thailand, or were planning to do so. However, many found the cost prohibitive. Those who go to Thailand for SRS generally do not receive any counseling before or after the operation, whereas when SRS was carried out in Malaysia before 1982, trans people who elected to undergo SRS also received counseling.¹⁷²

¹⁷⁰ Human Rights Watch interview with Aston Paiva, Kuala Lumpur, January 10, 2014.

¹⁷¹ *Wong Chiou Yong (P) v Pendaftar Besar/Ketua Pengarah Jabatan Pendaftaran Negara*, November 4, 2004, published in *Malaysia Law Journal*, 2005, p. 557.

¹⁷² Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*, p. 49.

VIII. Government Response

The Malaysian government is not uniformly hostile toward transgender people. Government bodies, including the Ministry of Health, the Ministry of Women, Family and Community Development, the Department of Islamic Development (JAKIM), and the police, have been somewhat receptive to dialogue initiated by trans people and their advocates. In some cases, dialogue is initiated by the authorities themselves, most notably JAKIM, but government approaches that fail to recognize transgender people’s right to be who they are can end up reinforcing stigma and perpetuating mistrust.

JAKIM and the State Religious Departments

Government religious authorities in Malaysia maintain a relationship with transgender people that is mired in contradictions—perhaps due to diverse beliefs, within JAKIM and in the different states, as to what constitutes an Islamic approach to gender diversity. A JAKIM official, who only agreed to speak to Human Rights Watch on the condition of anonymity, acknowledged that “arresting or punishing anyone is not going to change them.” However, he also claimed that the phenomenon of *mak nyah* is “new to Malaysia—not more than 20 years,” that it comes from absorbing American media, and that *mak nyah* can be convinced to “stop being transsexual.”¹⁷³

JAKIM has organized a program called Mukhayyam, a form of outreach to the transgender population in which trans people are invited to participate in camping outings combined with courses on spiritual development. Karima, a transgender HIV activist in Kuantan familiar with the program, explained that the program appears to be aimed at changing transwomen into men:

We don’t want [Mukhayyam] here. We saw that in Penang and Selangor, they were using it to try to change people. ... Their approach is not relevant. We are not men, and can’t be changed into men. If you ask me to wear a military uniform, I’m still a transgender.¹⁷⁴

¹⁷³ Human Rights Watch interview with a JAKIM official (name withheld), Putrajaya, January 23, 2014.

¹⁷⁴ Human Rights Watch interview with Karima (pseudonym), Kuantan, January 18, 2014.

Manis, a transgender woman in Kuala Lumpur, said:

Their intention is to brainwash us. They do cross-country running, climbing hills, trying to change us—to them we are sissies who haven't done any physical activity. They think this will toughen us up. Like I'll climb to the top of the hill and suddenly become Alexander, or Peter. They don't understand what gender identity is.¹⁷⁵

In some states, the state Religious Departments also do outreach to transgender people. In Kuantan, Karima said, the state Religious Department has reached out to transgender people, inviting them to meetings that she finds less problematic than JAKIM's:

They don't touch on changing us. They say, 'As good Muslims you must have some sort of belief.' They encourage us to pray. They don't call us sinners. It's not acceptance, but tolerance.¹⁷⁶

In Perak, according to one transgender outreach worker, the state Religious Department is planning to launch a program to train transwomen in doing make-up, tailoring, and running a small business.¹⁷⁷ While better than a punitive approach, the program seems to be based on the flawed premise that they are only transgender in order to make money, and that economic alternatives will allow them to abandon their gender identity.

Ministry of Health

The government of Malaysia recognizes transgender people as a most-at-risk population in the fight against HIV/AIDS. Malaysia's Country Coordinating Mechanism, the body that coordinates the national HIV response, includes a transgender representative and a sex worker representative—critical to ensuring that at-risk populations' real needs are recognized and addressed. The National Strategic Framework on HIV/AIDS (2011-2015) includes a commitment to scale up HIV prevention efforts targeting transgender people and men who have sex with men (MSM). It also pledges to develop strategies to address barriers and challenges that prevent the efficient and effective delivery of HIV prevention services to

¹⁷⁵ Human Rights Watch interview with Manis, Kuala Lumpur, January 19, 2014.

¹⁷⁶ Human Rights Watch interview with Karima, Kuantan, January 18, 2014.

¹⁷⁷ Human Rights Watch interview with Mari (pseudonym), Kuala Lumpur, January 13, 2014.

at-risk populations, including transgender people.¹⁷⁸ The Ministry of Health provides some funding to the Malaysian AIDS Council (MAC), an umbrella organization working on HIV/AIDS prevention and treatment throughout the country, and MAC uses some of these funds to conduct outreach to transgender people and to sensitize local authorities on transgender issues. A report from the Ministry of Health states that prosecutions of transgender people under laws prohibiting “cross-dressing” have a negative impact on the fight against HIV/AIDS by driving the transgender community further underground.¹⁷⁹

However, the Health Ministry has taken a less proactive stance in addressing sexual transmission of HIV—which would involve deeper engagement with transgender people, sex workers, and men who have sex with men—than in responding to transmission related to the use of intravenous drugs. To address drug-related transmission, the ministry has established a National Task Force on Harm Reduction, and Malaysia has been at the cutting edge compared to many of its neighbors in introducing programs like needle and syringe exchanges and methadone clinics. In comparison, Malaysia has lagged behind in addressing transmission among trans people, sex workers, and men who have sex with men.¹⁸⁰ While trans people and their allies have engaged with health departments in particular states in order to address concerns regarding discriminatory treatment from health workers, HIV activists are unaware of any coordinated effort from the Ministry of Health to address what appears to be a national problem.¹⁸¹ The Health Ministry did not respond to an email from Human Rights Watch, dated June 11, 2014, inquiring what steps it is taking to address HIV prevention among transgender people.

Stakeholder Meetings with Local Government

In some parts of Malaysia, organizations that work with transgender women have actively reached out to public officials, seeking to build dialogue and reduce discrimination. Early indications suggest that in some cases these meetings can be effective.

¹⁷⁸ Government of Malaysia, Ministry of Health, “National Strategic Plan on HIV and AIDS, 2011-2015,” 2011, http://www.moh.gov.my/images/gallery/Report/NSP_AIDS_2011_2015.pdf (accessed August 7, 2014), p. 20.

¹⁷⁹ Government of Malaysia, Ministry of Health, “Malaysia: 2010 UNGASS Country Progress report,” March 2010, http://data.unaids.org/pub/Report/2010/malaysia_2010_country_progress_report_en.pdf (accessed August 7, 2014), p. 14.

¹⁸⁰ Human Rights Watch telephone interview with a representative of the Malaysian AIDS Council, June 27, 2014; Email communication to Human Rights Watch from a Kuala Lumpur-based HIV activist, June 12, 2014.

¹⁸¹ Human Rights Watch telephone interview with a representative of the Malaysian AIDS Council, June 27, 2014.

In Seremban, the director of the public hospital organized such a meeting in November 2013 at the request of an HIV outreach organization that works with transgender women. Health workers, religious authorities, and the police were present, as were three transgender outreach workers. According to Nurul, one of the transwomen who attended the meeting, treatment by hospital workers has improved since the meeting took place.¹⁸² Izzati, another outreach worker, said that raids targeting transgender women decreased after the meeting, although a massive raid in June 2014, in which 17 trans people were arrested, calls into question whether the change is durable.¹⁸³ In Penang, organizations like FHDA have conducted workshops to sensitize religious officials and other government bodies about gender identity, leading to a decrease in arrests, according to one transgender activist.¹⁸⁴ According to several sources, outreach appears to be more effective in addressing police conduct toward transgender people than in reducing raids and arrests by Religious Department officials.¹⁸⁵

Non-Discrimination Initiatives

In June 2014, the National Unity Consultative Council, a government body, announced three draft bills: the Racial and Religious Hate Crime Bill, the National Harmony and Reconciliation Bill, and the National Harmony and Reconciliation Commission Bill.¹⁸⁶ The bills have been developed with the primary aim of addressing racial and religious intolerance. However, the draft National Harmony and Reconciliation Bill would prohibit “unfair discrimination” on numerous grounds, including gender and “sexual orientation and identity.” The draft has generated some backlash among conservative legislators, and at the time of writing, it was unclear whether such provisions would be included in the final draft.¹⁸⁷ A bill prohibiting discrimination on the grounds of both gender and sexual orientation and identity, although the draft does not explicitly address gender identity or gender expression, would go a long way towards establishing legal protections for transgender people in Malaysia.

¹⁸² Human Rights Watch interview with Nurul, Seremban, January 21, 2013.

¹⁸³ Human Rights Watch interview with Izzati, Seremban, January 21, 2014.

¹⁸⁴ Human Rights Watch interview with Hezreen, Georgetown, January 16, 2014.

¹⁸⁵ Human Rights Watch telephone interviews with transgender activist Khartini Slamah, June 17, 2014, and with a representative of the Malaysian AIDS Council, June 27, 2014.

¹⁸⁶ National Unity Consultative Council, Draft National Harmony and Reconciliation Bill 2014, June 10, 2014, on file with Human Rights Watch.

¹⁸⁷ Email communication to Human Rights Watch from a member of the Malaysia Bar Council, June 27, 2014.

IX. International and Malaysian Law

Malaysia is not a party to many of the core international human rights conventions that countries around the world have widely ratified¹⁸⁸, 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.¹⁸⁹ Malaysia has nonetheless ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁹⁰ and the Convention on the Rights of the Child (CRC).¹⁹¹

As a United Nations member state, Malaysia has affirmed acceptance of the Universal Declaration of Human Rights, whose provisions are broadly accepted to reflect customary international law.¹⁹² 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.¹⁹³ Everyone also has rights to freedom of expression, association, peaceful assembly, religion and movement.¹⁹⁴

The UN Committee on the Elimination of Discrimination against Women, which monitors government compliance with CEDAW, has stated in its General Recommendation on core obligations under the treaty that:

¹⁸⁸ Only 10 countries in the world have ratified fewer human rights treaties than Malaysia. Office of the High Commissioner on Human Rights (OHCHR), “Status of Ratification – Interactive Dashboard,” <http://indicators.ohchr.org/> (accessed July 11, 2014).

¹⁸⁹ All three treaties provide protection on the basis of gender identity. The Committee on Economic, Social and Cultural Rights has clearly stated that it 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 requires 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.

¹⁹⁰ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

¹⁹¹ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

¹⁹² Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

¹⁹³ Universal Declaration of Human Rights, articles 5, 7, 9, and 12.

¹⁹⁴ Universal Declaration of Human Rights, articles 13, 18, 19 and 20.

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.¹⁹⁵

Under the CRC, governments are obligated to prevent discrimination against children on the grounds of sexual orientation.¹⁹⁶ 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.¹⁹⁷

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity—a set of principles developed by international human rights experts and endorsed by the UN—encourage countries to consider measures that would allow all people to define their own gender identity.¹⁹⁸

¹⁹⁵ UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/2010/47/GC.2, October 19, 2010, <http://iglhrc.org/sites/default/files/450-1.pdf>, para. 18.

¹⁹⁶ UN Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland - Isle of Man, CRC/C/15/Add.134, October 16, 2000, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/450/54/PDF/G0045054.pdf?OpenElement>, para. 22 (“It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention.”).

¹⁹⁷ Convention on the Rights of the Child, 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.”

¹⁹⁸ Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2007, <http://www.refworld.org/docid/48244e602.html> (accessed July 11, 2014), principle 3.

In Malaysia, 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.¹⁹⁹

Malaysia’s federal constitution prominently features a chapter on “fundamental liberties.” Article 4 protects against arbitrary arrests. Article 8 states that “All persons are equal before the law and entitled to the equal protection of the law,” including on the basis of gender. 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). The constitution provides parliament broad authority to enact laws to restrict expression, association, and religion on the basis of “morality.”²⁰⁰ The UN Human Rights Committee has repeatedly said that 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.²⁰¹

Under Malaysia’s constitution, Sharia law, as state law, is inferior to the constitution and cannot be put forward as justification for the violation of constitutional rights,²⁰² nor can states usurp the role of parliament to limit fundamental rights.²⁰³

Despite its international obligations and constitutional guarantees protecting equality and freedom of expression and other basic rights, Malaysian law and policy discriminate against transgender people on numerous grounds:

- State cross-dressing laws violate recognized rights to equal protection and freedom of expression, and impose undue restrictions on rights to privacy and freedom of movement for transgender people.
- The risk of arbitrary arrest and detention constitutes part of the daily reality of many transgender people.

¹⁹⁹ See: Official Portal of the Attorney General’s Chambers of Malaysia, “International Affairs Division,” http://www.agc.gov.my/index.php?option=com_content&view=article&id=132&Itemid=109&lang=en (accessed July 12, 2014).

²⁰⁰ Constitution of Malaysia, arts. 10(2)(a) & (c); and 11(5).

²⁰¹ See, e.g., UN Human Rights Committee, Draft General Comment No. 34, U.N. Doc. CCPR/C/GC/34/CRP.2 (2010), para. 29.

²⁰² Constitution of Malaysia, art. 75.

²⁰³ Constitution of Malaysia, art. 74.

- Those who participate in LGBT organizations and gatherings such as Seksualiti Merdeka (Sexuality Independence festival) have seen their rights to freedom of association and peaceful assembly violated. No transgender association has attempted to register since the dissolution of the Federal Territory Mak Nyah Association in 1990.
- The government has failed to take meaningful steps to address discrimination on the basis of gender identity, in violation of CEDAW. This includes discrimination in the health care sector, employment, and education.
- The government has not adopted measures set out in the Yogyakarta Principles to “fully respect and legally recognise each person’s self-defined gender identity.”

Malaysia should remedy these deficiencies in the application of national and international law to transgender people by adopting the recommendations set forth in the following section.

Recommendations

To the Prime Minister of Malaysia

- Publicly disavow a 2012 statement that Malaysia should “fight” against LGBT people, and call on all Malaysians to practice tolerance and non-discrimination on the basis of gender identity and sexual orientation.
- Condemn statements from religious leaders and politicians encouraging incitement to violence or discrimination against transgender and other LGBT people.

To the Government of Malaysia

- In accordance with the Convention on the Rights of the Child, take all appropriate measures, including legislative reform, to prevent discrimination against children on the grounds of sexual orientation and gender identity.
- In accordance with the Convention on the Elimination of All Forms of Discrimination against Women, take affirmative measures to end discrimination against women, including transgender women, on all grounds set forth by the convention, including sexual orientation.

To the Attorney General’s Chambers

- Call for the revision or repeal of all laws, both Sharia and civil, that discriminate on prohibited grounds under international law.

To the Department of Islamic Development (JAKIM)

- Call on all state Religious Departments to repeal provisions in state Sharia laws or regulations that criminalize transgender people.
- Call on all state Religious Departments to end the practice of conducting raids targeting transgender people.
- Denounce statements from religious leaders encouraging incitement to violence or discrimination against transgender and other LGBT people.
- Ensure that HIV outreach efforts to transgender people are conducted in a nonjudgmental and non-stigmatizing manner.

- Cease efforts, through outdoor boot camps or other initiatives, to “convert” transgender people to cisgender.

To the National Registration Department

- Amend the National Registration Guidelines to allow for transgender people to change their names and the sex markers on their identity cards based on their expressed gender identity.

To the State and Federal Territory Islamic Religious Departments

- Cease carrying out raids that target transgender people.
- Investigate allegations of physical and sexual abuse and extortion of transgender people by state Religious Department officials, and take appropriate action to hold such officials accountable.

To the State Legislative Assemblies

- Repeal provisions of state Sharia enactments that criminalize “a man posing as a woman” or “a woman posing as a man.”
- Decriminalize all forms of consensual sex between adults, including same-sex conduct and sex work.

To the State Fatwa Committees

- Repeal fatwas that have been enacted into law in several states (Johor, Kedah, Malacca, and Perak) that prohibit “*pengkid*” (“tomboys” or tomboy-like behavior).

To the Office of the State Legal Adviser of Negeri Sembilan

- Refrain from appealing a ruling of the Court of Appeal in the transgender women’s case in Negeri Sembilan if the court finds that the applicants suffered discrimination or other violations of their fundamental rights.

To the Royal Malaysia Police

- Cease arrests of transgender women under the “indecent behavior” provision of the Minor Offenses Act (1955).
- Cease police participation in state Islamic Religious Department raids against transgender women.
- Adopt measures to prevent discrimination and other abuses against transgender people who report crimes to police stations and take appropriate disciplinary action against police who commit such abuses.
- Investigate allegations of physical and sexual abuse and extortion of transgender women by state Religious Department officials and police officers, and take appropriate disciplinary or criminal action against officials found to be responsible.
- Do not use possession of condoms as evidence in “indecent” cases under the Minor Offenses Act or prostitution offenses under the penal code.
- In collaboration with transgender human rights defenders, conduct appropriate training and sensitization of police officers on gender identity, and non-discrimination toward transgender people, and international law on sexual orientation and gender identity.

To the Federal Parliament

- Amend article 8(2) of the Constitution to prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression. In the absence of a constitutional amendment, pass legislation prohibiting discrimination on these grounds.
- Ratify the International Covenant on Civil and Political Rights.
- Ratify the International Covenant on Economic, Social and Cultural Rights, which protects against discrimination on gender identity in access to health care, employment and education, among other rights.
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires that states protect transgender persons from torture and cruel, inhuman or degrading treatment or punishment.

- Decriminalize all forms of consensual sexual relations between adults, including same-sex conduct (criminalized under section 377A, 377B and 377D of the Penal Code) and sex work (criminalized under section 372B of the Penal Code).
- Amend section 21 of the Minor Offenses Act (1955), which prohibits “any riotous, disorderly or indecent Behavior,” by either removing references to “indecent Behavior” or clarifying what constitutes such behavior and ensuring that it only encompasses acts that may infringe on the rights or safety of others.
- Amend the Employment Act (1955) to add a provision prohibiting discrimination on the grounds of gender identity or sexual orientation.
- Repeal provisions of federal territory Sharia enactments that criminalize “a man posing as a woman” or “a woman posing as a man.”

To the Human Rights Commission of Malaysia (SUHAKAM)

- Conduct a national inquiry into human rights abuses against transgender people, publish a comprehensive report detailing the results, and urge government action to address these abuses.
- Ensure that annual human rights reports include documentation of abuses on the basis of gender identity or expression and sexual orientation.

To the Ministry of Health

- Conduct appropriate training and sensitization of health personnel, including non-medical staff in public health facilities, on gender identity and non-discrimination toward transgender patients.
- Ensure that training in medical and nursing schools encompasses a module on gender identity and expression that covers medical issues, such as hormone replacement therapy and sex reassignment surgery, as well as non-medical issues, such as stigma and discrimination.
- Conduct off-site HIV testing and basic health screenings for transgender people at locations that they consider safe spaces.

- Establish a National Task Force to address sexual transmission of HIV. Invest more in HIV education and prevention efforts targeting transgender people, including sex workers, and other at-risk populations.
- Support greater public education on condom use, particularly for transgender people, sex workers, and other at-risk populations.

To the Ministry of Human Resources

- Establish a policy prohibiting employers from discriminating in hiring or firing on the basis of gender identity or sexual orientation.

To the Ministry of Communication and Multimedia

- Cease distributing information to the public that denigrates LGBT people.
- Cease collaboration with Religious Department officials and police who misuse the media to document the arrests of transgender women in violation of their due process rights.

To the Prison Department

- When transgender people are imprisoned, determine on a case-by-case basis whether the inmate will be safer housed with men or with women, giving full consideration to the inmate's own views regarding her or his safety.

To the Judiciary

- In collaboration with transgender human rights defenders, conduct training and sensitization of judges and other court personnel on gender identity, non-discrimination toward transgender people, and international law on sexual orientation and gender identity.

To Multinational Corporations in Malaysia

- Ensure that corporate policies and practices are consistent with the UN Guiding Principles on Business and Human Rights and other relevant business and human rights standards, including by ensuring that corporate policies and practices

protect transgender and other LGBT people in all countries of operation, even if not required under local laws.

To the ASEAN Intergovernmental Commission on Human Rights (AICHR)

- Investigate violations of rights of transgender people in Malaysia in accordance with AICHR terms of reference article 4.10 (“to obtain information from ASEAN Member States on the promotion and protection of human rights”), communicate those findings publicly to the Malaysian government, and call upon the government of Malaysia to respond to the commission on alleged violations.
- Amend the ASEAN Human Rights Declaration to explicitly include protection of human rights based on sexual orientation and gender identity.

Acknowledgments

This report was researched and written by Neela Ghoshal, senior researcher in the Lesbian, Gay, Bisexual, and Transgender (LGBT) Rights Program at Human Rights Watch. It was reviewed by Boris Dittrich, advocacy director of the LGBT Rights Program; Phil Robertson, deputy director of the Asia Division; Mickey Spiegel, senior adviser in the Asia Division; Janet Walsh, deputy director of the Women's Rights Program; Aruna Kashyap, senior researcher in the Women's Rights Program; Joseph Amon, director of the Health and Human Rights Division; James Ross, Legal and Policy Director; and Joseph Saunders, deputy program director.

Adam Frankel, associate in the LGBT Rights Program at Human Rights Watch, provided editorial and production coordination and formatted the report. Additional production assistance was provided by Kathy Mills, publications specialist, Grace Choi, publications director, and Fitzroy Hepkins, mail manager. Javad Tizmaghz took the photos for this report.

This report grew out of discussions with members of the trans community in Malaysia, who encouraged Human Rights Watch to produce this report, identified areas of concern, helped shape the design and execution of the research, and reviewed the draft text. We are particularly indebted to Thilaga Sulathireh for her generous assistance with research, interpretation of interviews, and review of the report. Nisha Ayub of Justice for Sisters and Raymond Tai provided invaluable guidance in shaping our research. Aston Paiva and Nizam Bashir assisted with legal analysis and feedback. Danisha Monish and Hezreen Shaik Daud helped us to connect with interview subjects and to better understand the context facing transwomen outside of Kuala Lumpur. We are also grateful to Transgender Europe (TGEU) for sharing information on laws criminalizing transgender people in Malaysia and other parts of the world.

Appendix I: Malaysia’s Sharia (Syariah) Laws on Sexual Orientation and Gender Identity, by State²⁰⁴

Summary of 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 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)

²⁰⁴ 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.

- 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 ²⁰⁵ : 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 <u>for immoral purposes</u> 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 : <i>Liwat</i> . 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) <i>Musahaqah</i> . Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 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) ²⁰⁶ : December 3, 2008 (gazetted): <i>Tomboy</i> , which is a woman with the appearance of a man and who conducts homosexual relations is forbidden in Islam.

²⁰⁵ Malaysian state Sharia laws are available at JKSM, the E-Syariah Portal, <http://www.esyariah.gov.my/>.

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 wilfully 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 wilfully 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 (*tasyabbuh*) 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 on 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.

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)

²⁰⁶ All *fatwas* passed by either state Fatwa Committees or the National Fatwa Committee are available at JAKIM, e-Fatwa Portal, <http://www.e-fatwa.gov.my/>.

LAWS ON SAME-SEX CONDUCT: *Liwat*. Any person who wilfully 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)

Musahaqah. Any woman who wilfully 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 1991²⁰⁷

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 wilfully 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 wilfully 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 *takzir* and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty

²⁰⁷ The Malacca Syariah Criminal Enactment is only available online in Malay. The translations here were provided by Transgender Europe (TGEU).

six months or to whipping not exceeding six strokes or to any combination thereof. (Section 58)

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 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 (gazetted): 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.

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 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)

Musahaqah. Any female person who commits *musahakah* 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)

FATWAS (GAZETTED OR NON-GAZETTED):

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*²⁰⁸. Any Muslim female person found having carnal relations with 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 had 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):

²⁰⁸ In Pahang, the Syariah Criminal Enactment 2013 does not punish sexual relations between women. However, sexual relations between women are criminalized under an older law, the Administration of the Religion of Islam and the Malay Custom of Pahang Enactment 1982 (Section 150); http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/100ae747c72508e748256faa00188094/f6d243cd5569765e482576b30027f88a?OpenDocument (accessed August 8, 2014).

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 Syarak Enactment 1991

LAWS ON GENDER IDENTITY: *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 IDENTITY: *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 wilfully 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 wilfully 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. Muslims 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):

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):

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)

FATWAS (GAZETTED OR NON-GAZETTED):

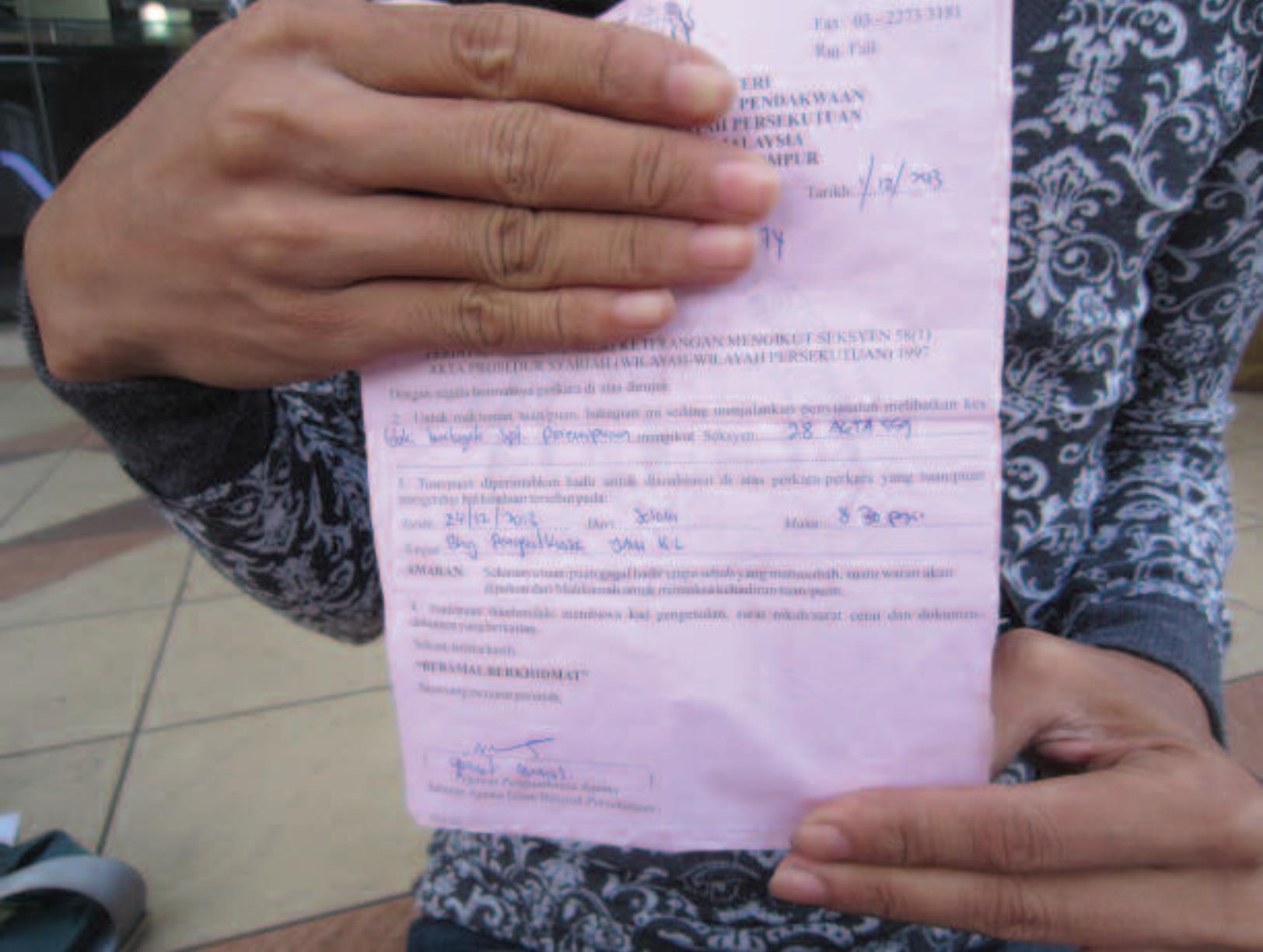
Appendix II: 1982 Fatwa Issued by the National Fatwa Council Prohibiting Sex Reassignment Surgery²⁰⁹

Sexual Transplant from Male to Female

Decision: The 4th Muzakarah [Conference] of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 13-14th April 1982 has discussed sexual transplant from male to female. The Committee has decided that:

1. Sexual change from male to female or vice versa through operation is prohibited by Islamic law
2. A person who is born male remains a male even though he has successfully changed to female through operation
3. A person who is born female remains a female even though she has successfully changed to male through operation
4. However, for a person who was born as a khunsa musykil [intersex] who has two private parts of male and female, it is permitted to undergo operation to retain the most functional private part according to the suitability.

²⁰⁹ JAKIM, E-Fatwa Portal, <http://www.e-fatwa.gov.my/fatwa-kebangsaan/pertukaran-jantina-daripada-lelaki-kepada-perempuan> (accessed July 21, 2014). This is the official JAKIM translation.



Malaysia is one of the few countries in the world that explicitly criminalizes transgender people—individuals whose gender identity differs from the sex assigned to them at birth. Muslims, who according to government statistics make up about 60 percent of Malaysia’s population, are subject to state-level Sharia (Islamic law) ordinances, in addition to the federal criminal law, which institutionalize discrimination against transgender people. All 13 Malaysian states have discriminatory laws that prohibit Muslim men from “dressing as women,” while three states also criminalize “women posing as men,” subjecting transgender people to sentences of imprisonment, whipping, and fines.

“I’m Scared to Be a Woman” is based on interviews with transgender women and men in four states in Malaysia and the Federal Territory of Kuala Lumpur. The report documents abuses against transgender people, particularly assault, extortion, and violations of their privacy rights. It shows that criminalization of transgender people is compounded by other forms of discrimination and abuse from a range of state officials and agents, including police officers, Religious Department officials, public sector health workers, prison guards, and public school teachers and administrators. Many have been physically and sexually assaulted and denied access to health care and employment because of their gender identities.

A constitutional challenge to laws in the state of Negeri Sembilan that prohibit “a man posing as a woman” is currently underway. The ruling has the potential to fundamentally alter the legal status of transgender people in Malaysia. But regardless of the outcome, Malaysia should take concrete steps to put an end to discrimination against transgender people. Human Rights Watch calls on Malaysian federal and state officials to repeal laws and fatwas that deny transgender people their basic rights—in effect prohibiting them from being who they are—and to pass legislation protecting them from discrimination.

(above) “Aina,” a 40-year-old homeless transgender woman, was arrested by police twice in one week in December 2013. They turned her over to the Islamic Religious Department, which charged her with wearing women’s clothing, as indicated in this charge sheet.

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(front cover) “Jina,” a 22-year-old transgender woman, sports a tattoo of a butterfly—a transgender symbol signifying transformation: “There’s a lot of politicization of the LGBT community at the moment, to distract the public from more important issues.”

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