

# Malaysia: Human Rights Violation against Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons

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Submitted by Knowledge and Rights with Young people through Safer Spaces (KRYSS), Seksualiti Merdeka, Justice for Sisters and PT Foundation to the Human Rights Council for Malaysia's United Nations Universal Periodic Review 2013

## 1. Executive Summary

1.1 Hostility towards the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community in Malaysia greatly intensified following the banning of Seksualiti Merdeka (SM), an annual sexuality rights festival organized in Kuala Lumpur since 2008.

1.2 Since the banning of SM in 2011, there have been concerted efforts by the government to politicize issues pertaining to sexual orientation and gender identity (SOGI) and encourage hate, stigmatisation, discrimination and persecution of LGBTIQ people. For example, in January 2012, two posters—one with the image of Anwar Ibrahim, the opposition leader, along with the text “free sex gathering 901” and “sodomy no matter what” were plastered in a few areas in Kuala Lumpur and Selangor. Similarly, another poster with the face of Bersih's 2.0 chairperson, Ambiga Sreenevasan, was placed around Kuala Lumpur and Selangor with the text “vote Ambiga, vote free sex”. Both posters had one of SM's logos and the words lesbian, gay, bisexual and trans. These posters were intended to fuel hate and politicise the LGBTIQ for political mileage by the existing ruling coalition government, Barisan Nasional (BN), and in particular by the ruling Malay political party, UMNO.

1.3 The current Malaysian government, under the leadership of Najib Tun Razak, who has internationally called for a global movement of Muslim moderates, has also spoken out and voted against the protection and promotion of the human rights of LGBTIQ persons at both regional and international levels. The Malaysian government strongly opposed the inclusion of SOGI in the ASEAN Human Rights Declaration in 2012. As a result, SOGI was not included in the declaration. In March 2012, Malaysia, along with the members of the Organization of Islamic Cooperation (OIC), walked out of the UN inter-governmental debate on violence and discrimination against LGBT people.

1.4 Malaysia has two sets of laws – civil laws that are administered at the federal level, which applies to all citizens, and syariah laws that are administered at the state level, which have limited jurisdiction and these laws only apply to Muslims. Same-sex sexual activities and “cross dressing” are criminalized in Malaysia, under both civil and syariah laws. The British introduced the Penal Code 377 that criminalises carnal intercourse in the 1860s. Syariah laws exist to criminalise sodomy (liwat) and lesbianism (musahaqah). All 13 states have laws that prohibit ‘male person posing as woman’, while 3 states have laws that criminalise ‘female person posing as man.’ In 1983, the National Fatwa Council introduced a new fatwa (religious edict) to prohibit

sex reassignment surgery for transpeople, which was previously allowed and conducted by local doctors in a semi-government hospital. Subsequently, postoperative transpeople are not allowed to change their name, gender and other relevant details in their official documents, including identification card, to match their reassigned gender, although there is already a legal precedence.

## **2. Substantive Violations**

### **2.1 Freedom of expression, assembly and association**

2.1.1 Seksualiti Merdeka (SM), or loosely translated as Sexuality Independence, is an annual sexuality rights festival organized in Kuala Lumpur since 2008. Datuk Ambiga Sreenevasan, then-chairperson of Bersih 2.0, a coalition of NGOs that seeks electoral reform, was supposed to officiate the 2011 festival, themed “Queer without Fear”. Her role as the officiator of the festival drew attention, especially from the pro-government and pro-Islamist conservatives, to the festival, which had been smoothly organized for the previous 3 years. SM’s name was deliberately publicly misinterpreted as “free sex” and as a result of the protests and police reports lodged against SM, primarily by pro-government and Muslim groups, Datuk Khalid Abu Bakar, the deputy inspector-general of police banned SM, as it “could create disharmony, enmity and disturb public order”, and ordered an investigation of SM under Section 27A(1)(C) of the Police Act<sup>1</sup> as well as 298 A of the Penal Code.<sup>2</sup>

2.1.2 SM in a statement called for a dialogue between the IGP to better understand the objectives of the festival organisers. However, the IGP refused to meet with SM.

2.1.3 Following the ban, in November 2011, Chief Minister of Malacca, Datuk Seri Mohd Ali Rustam announced that Malacca, a southern state in Malaysia, intends to enact specific laws (syariah laws) to categorize lesbianism and homosexuality as a deviant cult. The state of Pahang made a similar announcement through Abdul Rahman Osman, an Islamic scholar.

2.1.4 While SM was banned for creating disharmony, there was no opposition by the state actors towards the Jaringan Melayu Malaysia (JMM) or The Malaysian Malays Network-led protest to denounce “free sex” and LGBT persons in April 2012 in University Putra Malaysia’s stadium. 3,000 people, according to some reports, attended the protest, supported by 18 NGOs and students from 8 institutions of higher learning.

### **2.2 State sanctioned violence and lack of protection by the state**

2.2.1 In July 2012, Datuk Dr Mashitah Ibrahim, Deputy Minister in the Prime Minister’s Department in her response to a question by a Member of Parliament of the opposition party regarding gender based discrimination and protection in Parliament, said that while Article 8(2)<sup>3</sup> of the Federal Constitution protects one from

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<sup>1</sup> Empowers police to act against any activity that takes place on private premises but is deemed prejudicial to the interest and security of Malaysia or that would excite a disturbance of the peace.

<sup>2</sup> Allows police to take action against anyone who causes disharmony, disunity, feeling of enmity, hatred, ill-will or prejudice or for the maintenance of harmony or unity on the grounds of religion.

<sup>3</sup> Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or **gender** in any law or in the appointment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

gender discrimination, the word gender should not be interpreted as a person's sexual orientation or gender identity such as being a lesbian, gay or bisexual.

2.2.2 On 22 March 2012, Datuk Dr Mashitah had shared in the Parliament several measures by the Prime Minister's Department to curb homosexuality, including training volunteers to approach the LGBT community and instruct NGOs to carry out anti-homosexual campaigns.

### **2.3 Anti-LGBT efforts in schools**

2.3.1 On 31 March 2011, JMM, in collaboration with the Parents Teachers Associations (PTA) launched their "no to LGBT and free sex" campaign in a government school in Kuala Lumpur. JMM's president, Azwanddin Hamzah, announced that 30 government schools in East Malaysia support the campaign. The Deputy Education Minister Datuk Dr Wee Ka Siong denied the Education Ministry's involvement in the campaign. Although he advised the state education departments and schools to monitor the activities of the PTA, no concrete actions are known to be taken.

2.3.2 Every student in Kuala Lumpur is given a student handbook by the Education Department of Kuala Lumpur that outlines the dress code and all the offences into three categories—serious offence, moderate offence and light offence. Lesbian/gay and "gender confused" are treated as serious offences that can be punished with a strict warning, whipping (1-3 times on padded derriere using a light *rotan/cane*), compensation/fine, suspension (no longer than 14 days), expulsion, or charged in court. The introduction of such codes in schools contravenes the spirit and the commitment Malaysia made in ratifying the Convention of the Rights of the Child.

### **2.4 Targeting people on the basis of their gender expression and identity**

2.4.1 In April 2011, 66 secondary school boys (13-17 years old) in Terengganu who had exhibited effeminate tendencies were selected and sent to a four-day boot camp organized by the Terengganu Education Department to be rehabilitated. Two participants whom were interviewed and named in the press were 17 years old.

2.4.2 In September 2012, the Foundation of Malaysian Teachers and the Consultative Council of Parents and Teachers Associations, released a guideline to identify gay and lesbian symptoms in children so that parents can take early corrective measures. The Education Ministry, which initially endorsed the guidelines, which listed four symptoms for gays and lesbians, respectively, later denied their involvement.

### **2.5 Hate Speech**

2.5.1 In July 2012, Malaysia's Prime Minister, Datuk Seri Najib Razak declared the LGBT community as an enemy of Islam to a crowd, reportedly of over 11,000 imams and mosque committee members from around Malaysia. He was quoted saying "LGBTs, pluralism, liberalism – all these 'isms' are against Islam and it is compulsory for us to fight these." Since then, many calls were made to the Islamic religious leaders and the general public to defend the government against the LGBT. There were also attempts to further demonise the LGBT as a Jewish agenda and liken the LGBTIQ community to Jews and so enemies of Muslims, a statement made by Syed Hassan Syed Ali, secretary-general of Perkasa, in October 2012.

2.5.2 In November 2012, the Deputy Prime Minister, Tan Sri Muhyiddin Yassin, in his opening speech at the UMNO Youth, Women (Wanita) and Young Women (Puteri) assemblies, the Malay Muslim front of the ruling government, branded LGBTIQ persons as a new deviant ideology, which is based on secular liberal thinking from the west that is against religion (read, Islam). He warned the audience that the LGBTIQ groups are pressuring governments to recognize their deviant behaviour that is frowned upon by the religion. He linked LGBT persons with the opposition party (Pakatan Rakyat), and questioned the leadership and piety of the opposition leader, who is Muslim for saying that the colonial sodomy law in Malaysia is archaic. He advised the audience not to accept such deviant behavior just because it is allowed in the West as a human right. He even congratulated the Malaysian Prime Minister on his wise leadership for not succumbing to the pressure by the LGBTIQ pressure groups that were advocating for the inclusion of SOGI in the ASEAN Human Rights Declaration.

2.5.3 In the same month, the wife of the current Malaysian Prime Minister, Rosmah Mansor justified the anti-LGBT position of the Malaysian government as the state's approach to curb the spread of HIV and AIDS.

## **2.6 Anti-LGBT theater performance**

2.6.1 On March 1 and 2, 2013, the Ministry of Information Communication & Culture (JASA) in collaboration with a local production company staged for free an anti-LGBT play, entitled *Asmara Songsang* (the deviant lust) at the Istana Budaya, the national performance art theater. The play, which was riddled with spiteful message such as "reject LGBT", "do not be fooled by the persuasion of the devil, do not validate LGBT" and "LGBT will ruin us", portrayed LGBT persons as a gangster club that aggressively recruits both adults and underaged people and forcefully "converts" them into becoming "members" of the LGBT community. The play depicted LGBT persons as rude, sex predators and uncivilised. The play also deliberately associated LGBT persons with the opposition party and social democratic movements such as Bersih. Three children were also casted in the play, and the character that was converted by the LGBT club in the play was a 14-year-old orphan girl from a pious and "good" family who at the end of the play declared the LGBT community as devils. The play is expected to tour the country and be staged in higher educational institutions in 12 states in Malaysia for free. Datuk Fuad Hassan, Director at JASA, said they intend to curb the growing LGBT problem, especially amongst young people, through the play.<sup>4</sup>

## **2.7 Persecution by state officials towards the transwomen community**

2.7.1 In late 2010, a group of transwomen from Negeri Sembilan, a southern state in Malaysia, filed a judicial review of Section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992 that prohibits male persons for posing as women. The state religious department used Section 66 to conduct raids and subsequently, harass and physically, emotionally as well as sexually violate the transwomen in the state of Negeri Sembilan. In January 2011, the transwomen were granted leave by Justice Rosnaini binti Saub. She stated that the transwomen "clearly have a real grievance and are adversely by the act of the respondents in arresting, investigating and charging them for the offence under the impugned section 66." The substantive was heard before Justice Datuk Siti Mariah Ahmad in late 2012. In August 2012, she

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<sup>4</sup> 'Asmara Songsang' Akan Dipentaskan Di IPT, [http://mstar.com.my/hiburan/cerita.asp?file=/2013/3/2/mstar\\_hiburan/20130301133340&sec=mstar\\_hiburan](http://mstar.com.my/hiburan/cerita.asp?file=/2013/3/2/mstar_hiburan/20130301133340&sec=mstar_hiburan) [Malaysia UPR 4.doc](#)

delivered her decision, which was heavily reliant on Islamic texts from the affidavit of one mufti provided by the lawyers from the state government and the Attorney General's office. While she acknowledged that the submissions by the applicants' lawyers were thorough, she completely overlooked the medical and psychiatric evidence as well as the mistreatment that the transwomen have been subjected to because of this law. In her decision, Justice Siti Mariah stated that the applicants are born male and Muslim, and therefore syariah laws still apply to them.

### **3. Concluding Notes**

3.1 The government's concerted efforts to curb homosexuality and transgenderism that are mostly focused in government schools; suggest that the government is undertaking measures to prevent and correct gender non-conformity and gender variance at a young age, which is a clear violation of the Convention of the Rights of the Child, to which Malaysia is a State party.

3.2 The Barisan Nasional government adamantly persists to scapegoat and politicize the LGBTIQ movement and persons by associating the community with the opposition party, its party leader, as well as other social movements which managed to gain some significant ground with the Malaysian people, and thereby effectively reducing the current government's chances for re-election.

### **4. Recommendations**

4.1 The hostility towards the LGBTIQ community, if allowed to persist, has and will further adversely affect the well being of LGBTIQ persons in Malaysia. We call the Malaysian government to:

4.1.1 Immediately stop targeting and intimidating children and adults on the basis of their gender expression, gender identity or sexual orientation, and to make reparation for those who have been harmed through their anti-LGBT programmes in schools and institutions of higher learning.

4.1.2 Prevent and take immediate and meaningful measures to stop hostility and intolerance towards people on the basis of their gender expression, gender identity and sexual orientation.

4.1.3 Provide meaningful protection to LGBTIQ people against all forms of stigmatisation, violence and discrimination.

4.1.4 Repeal and decriminalize all laws that directly and indirectly criminalize same sex sexual activities and cross-dressing.

4.1.5 Lift the ban on sex reassignment surgery for Muslim transpeople.

4.1.6 Engage the LGBTIQ community as human beings with equal rights to understand the issues and concerns of the community.

### **5. Information on the Groups**

5.1 KRYSS is committed in ending the discrimination and violence based on sexual orientation and gender identity. We work primarily with young people and those who are non-heteronormative through creative platforms, research, training, documentation and litigation advocacy.

5.2 Seksualiti Merdeka, an annual sexuality rights festival supported by Malaysian civil society movements and activists, is designed to educate and encourage dialogue and understanding within the LGBTIQ community, between the LGBTIQ community and the heterosexual community across a variety of intersections.

5.3 Justice for Sisters is a grassroots campaign to raise funds and public awareness regarding violence, persecution and discrimination against the Mak Nyah (male-to-female transpeople) community in Malaysia.

5.4 PT Foundation is a community-based, voluntary non-profit making organization in Malaysia providing HIV and sexuality education, prevention, care and support programs for the marginalized communities most affected by HIV/AIDS. We work with drug users, sex workers, transsexuals and men who have sex with men, as well as people living with HIV.