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FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

Malaysia

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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This Country Conditions report on human rights violations of LGBT individuals in Malaysia canvasses reports by the Canadian and U.S. governments, reports by Non-governmental Organizations, scholarship and media reports. It also provides an overview of prohibitions on homosexuality, transvestitism and transgenderism in Malaysia's Criminal and Sharia Law. Finally, it surveys reported Immigration and Refugee Board of Canada and Federal Court of Canada decisions concerning LGBT claimants from Malaysia.

These reports reveal:

- **Malaysian legislation and Malaysian Sharia law criminalize homosexual acts, transvestitism, transsexualism**
- **Malaysian Sharia law criminalizes the expression of issues contrary to fatwa, thus making it illegal for Malaysian Muslims to even defend homosexuality**
- **Malaysian jurisprudence on transgender rights is erratic**
- **Although laws prohibiting homosexual acts are punished with whipping and long-term imprisonment, they are only occasionally enforced**
- **Sodomy laws make gay community vulnerable to exploitation**
- **Gay community suffers ridicule, humiliation and isolation**
- **Malaysian homosexual couples face social and familial impediments**
- **Police raids on LGBT venues in Kuala Lumpur and other areas of Malaysia have occurred recently, resulting in arrests**
- **LGBT detainees report humiliating treatment and deplorable prison conditions**
- **The Minister of Women, Family and Community Development has called the situation of homosexuals in Malaysia “worrying” and assures the welfare system will not discriminate against that sector of the population**
- **LGBT Malaysian Muslims are particularly susceptible to an increasingly repressive program of moral policing**
- **Growing Islamization is linked to physical and verbal harassment of LGBT persons and to vigilante groups who harass and police moral behaviour**
- **The Islam Affairs Department, however, has a substantial force of “vice squads” which targets and arrests homosexual Muslims**
- **National Fatwa Council continues to issue fatwas against the LGBT community including prohibitions on women participating in masculine activities**
- **Transsexuals suffer harassment from police and religious authorities, discrimination in the employment sector and familial rejection**
- **Muslim transsexuals have been arrested by enforcement officers of the Islamic Religious Affairs Department and convicted in Sharia courts**
- **Muslim and non-Muslim transsexuals are arrested under s. 21 of the Minor Offences Act**
- **Arrested individuals report discrimination, humiliation, ridicule and beatings by police or Islamic religious authorities**
- **Muslim transsexuals are legally prohibited from obtaining gender re-assignment surgery**
- **Non-Muslim transsexuals are usually forced to obtain surgery abroad**

- **Malaysian law is unsettled as to the ability of post-operative transsexuals to obtain identity documents that correspond to their gender**
- **Kuala Lumpur has a number of venues catering to gay clientele**
- **Kuala Lumpur based NGO offering HIV/AIDS services to gay men encounters police harassment and homophobic climate impedes health initiatives**
- **There are reports, not specific to the LGBT community, that show abuse and death of detainees during apprehension and detention**
- **Sodomy charges are used as a means of discrediting opponents in politics**
- **The Anwar Ibrahim sodomy trial raises serious questions about judicial independence and impartiality**
- **Transsexuals are particularly subject to violence and agents of persecution include secular and Islamic law enforcement officers**
- **Malaysian nationalism, as articulated by former PM, depends on a notion of homosexuality as a Western threat to Malaysian culture and values**

Legislation in Malaysia

1. *Penal Code* (Act 574), s. 377A.

Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature. Penetration is sufficient to constitute the sexual connection necessary to the offence described in this provision.

2. *Penal Code* (Act 574), s. 377B.

Whoever voluntarily commits carnal intercourse against the order of nature will be punished with imprisonment for a term which may extend to 20 years, and will also be liable to whipping.

3. *Penal Code* (Act 574), s. 377D.

Any person who, in public or private, commits or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, will be punished with imprisonment for a term which may extend to two years.

4. *Minor Offences Act* 1955, s. 21.

Any person who is found drunk and incapable of taking care of himself, or who is guilty of any riotous, disorderly or indecent behaviour, or of persistently soliciting or importuning for immoral purposes in any public road, public place or place of public amusement or resort, or in the immediate vicinity of any court, public office, police station or place of worship, is liable to a fine not exceeding 14 days, and on a second or subsequent conviction to a fine not exceeding RM100, or imprisonment for a term not exceeding three months or both.

5. *Syariah Criminal Offences (Federal Territories) Act 1997* (Malaysia Act 559.12), s. 12.

Anyone who gives, propagates or disseminates any opinion concerning Islamic teachings, Islamic Law or any issue contrary to any fatwa for the time being in force in the Federal Territories shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

6. *Syariah Criminal Offences (Federal Territories) Act 1997* (Malaysia Act 559.12), ss. 2, 25.

"*liwat*" means sexual relations between male persons;

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.

7. *Syariah Criminal Offences (Federal Territories) Act 1997* (Malaysia Act 559.12), ss. 2, 26.

"*musahaqah*" means sexual relations between female persons;

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.

8. *Syariah Criminal Offences (Federal Territories) Act 1997* (Malaysia Act 559.29), ss. 229.

Any person who, contrary to Islamic Law, acts or behaves in an indecent manner in any public place 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.

Case Law: Malaysia

J.G. v Pengarah Jabatan Pendaftaran Negara, [2005] MLJU 366 (H.C. Kuala Lumpur) (QL).

For Plaintiff

- **Medical opinions are persuasive in determining a person's gender.**
- **An individual who has undergone gender re-assignment surgery, who feels, lives and behaves like a women, who has her physical body so attuned and who has the requisite psychological thinking can be declared female by the courts and, in light of the constitutional protection of personal liberty, receive documents reflecting that gender.**

The plaintiff was born male and obtained gender reassignment surgery in 1996. The plaintiff seeks a declaration that she is female and that the Registration Department change the final digit of her identity card to a number reflecting the female gender.

Corbett v. Corbett asserted that courts should “ignore any operative interventions” in assessing an individual’s gender. Foong J., however, noted an Australian case, *Commonwealth v Kevin & Ors*, which stated “biological factors [should be treated] as entirely secondary to psychological ones” and that a person’s gender identification should prevail over his or her biological sex when the two differ.

Foong J. concluded that, in cases following the *Corbett* test, “the garnet is thrown back at the legislative body to make the necessary laws for the Courts to follow if Parliament so wishes.” In doing so, “the legislative body would depend on the medical opinions” :

[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.

Fong J. stated, moreover, the alteration to the plaintiff’s identity card would “give full effect to Article 5(1) of the Federal Constitution which states that ‘no person shall be deprived of his life or personal liberty save in accordance with law.’”

Wong Chiou Yong (P) v. Pendaftar Besar/Ketua Penarah Japatan Pendaftaran Negara, [2005] 1MLJ (High Court IPOH) (QL).

- **The court cannot declare that a post-operative transsexual’s gender identity should reflect her current physiological status instead of her biological status at birth without usurping the role of Parliament and transgressing the judiciary’s function to interpret the law.**

The applicant was born female and underwent a sex change operation. The applicant sought “a declaration that she be accorded her current gender status” and that her Birth Certificate and her National Registration Identity Card be altered or corrected.

Singham J. determined that “the decisive significance in the determination of this application on the identity of the applicant is not the physiological test but the biological test when she was born . . .” Deciding in favour of the applicant “would usurp the function of Parliament . . .”

According to the justice, “[t]he human and practical to accept the reality of gender reassignment would depart from the proper approach of construing the Births and Deaths Registration Act 1957 and the National Registration Act 1959.” The applicant’s birth certificate was based on “exclusively biological criteria” and the fact that the applicant’s psychological sex is “at variance” with those criteria does not show that there was a factual error on the certificate.

Singham J. did, however, note that “[t]ranssexuals should be given an opportunity to lead normal lives and change their gender status after they have undergone reassignment surgery and the necessary legislation be introduced in order to enable them to change their gender from female to male or vice versa in their personal documents so as to enable their ‘individual quest for inner peace and personal happiness’ so long as it is not detrimental or a disservice to the societal interest at large or breaching the social interest of public order or percept of morality.”

Dato’ Seri Anwar bin Ibrahim v. Public Prosecutor and Another Appeal [2004] 3MLJ (F.C.) (Q.L.).

The appellants were charged with the offence of sodomy under s. 377B of the Penal Code.

Abdul Hamid Mohamad FCJ allowed the appeal. Knowledge of the date of commission was held to be important to a sodomy conviction. Moreover, the complainant’s evidence appeared to have been obtained coercively.

Case Law: Canada

1. Country Conditions for Homosexuals and Available State Protections

Immigration and Refugee Board of Canada

L.U.M. (Re) [1996] C.R.D.D. No. 193, No. U95-04575 (Immigration and Refugee Board of Canada).

Positive

- **An LGBT person who would live as an openly gay man in Malaysia would be exposed to a risk of persecution from various sectors and would have no available state protection.**
- **Although no factor appears to be dispositive, the following appear to be persuasive: legislative prohibitions that are enforced, homophobic attitudes of government and public officials, Sharia laws on apostasy, requirements of discretion by LGBT persons, physical attacks by police, entrapment by police, extortion by police, lack of avenues for redress for rights abuses, homophobic vigilantism and refusal of local human rights groups to address LGBT rights abuses.**

The claimant is a citizen of Malaysia and based his claim on grounds of his religion and on the grounds of his membership in a particular social group, homosexuals. He alleged he had been segregated from other students when showering at school and had been molested by a medical doctor. He avers that being both gay and Muslim made him susceptible to a risk of persecution in Malaysia. The claimant alleged learning about police raids on gay bars in Kuala Lumpur, detention of LGBT persons, rapes by police and forced HIV/AIDS tests.

The Board considered the following documentary evidence: ss. 377 and 377A of Malaysia's Penal Code prohibit homosexual acts; prosecutions under this legislation occur; government and public officials in Malaysia display attitudes of extreme non-tolerance; laws permitting "preventative detention" are used "when available evidence is insufficient to bring formal charges"; enforcement of Sharia laws prohibiting apostasy in Malaysia; prohibitions on homosexual conduct in Sharia; while "practical tolerance is the rule with respect to discreet homosexual behaviour, a male person has to comply with his role and is expected to marry and beget children"; an Ontario human rights officer reported regular entrapment of gays by police with ensuing prosecutions, frequent physical attacks and extortion by police and no avenues for redress for denial of service or dismissal from employment; statements by a gay Toronto teacher who had lived in Malaysia that Malaysians gays marry to conceal their orientation, that wealthy gays have better means to protect themselves, that police brutality toward gays occurs, that Islamic fundamentalists are violently homophobic and that homosexuals must be discreet; SUARAM, a human rights body refused in April 1993 to include LGBT within its definition of human rights.

The Board also noted previous decisions in which the Board concluded that Islamic fundamentalism in Malaysia is hostile to homosexuality and has advocated stiffer penalties as well as vigilante action. Additionally, "the situation in Malaysia is worse for those gays and lesbians who are also Muslim or of Muslim origin."

The Board held that the claimant, because he accepts his sexual orientation, would find it difficult to "live a deeply closeted lifestyle" and would live as an openly gay man in Malaysia, would be "expose[d] to certain risks from various sectors" and would not receive state protection.

D. (C.J.) (Re) [1995] C.R.D.D. No. 86, Nos. M94-04229 and M94-04258 (Immigration and Refugee Board of Canada).

Positive

- **A co-dependent homosexual couple would face persecution and would not be able to avail themselves of state protection.**
- **The presence of a gay advocacy group, the scope, capability and effectiveness of which is not known, is not sufficient to establish an IFA.**
- **Because Christianity is not necessarily commensurate with tolerance of homosexuality, the presence of a large Christian community is not sufficient to demonstrate the existence of an IFA.**
- **Draconian punishments (i.e. whipping) that are incommensurate with the legislative objective can be establish persecution.**
- **It is not intelligent to assume that a state whose law is the basis for the claimant's fear of persecution would also provide protection to the claimant.**

The claimants are citizens of Malaysia claiming refugee status on the basis of a well-founded fear of persecution by reason of their membership in a particular social group, namely homosexuals, their religion and ethnic background. The claimants were in a

long-term, co-dependent homosexual relationship and had been arrested, beaten and raped by police. After an attempt to lodge a complaint, one claimant was threatened with a gun. The family of one claimant ejected the couple, threatened to pour acid on their faces and successfully urged the police to make a warrant for their arrest.

The Board found the following documentary evidence to be persuasive: the country ranks 55th out of 88 states on the UN Development Program's Human Rights Index (an index which measured, among other things, freedom from arbitrary arrest and personal rights such as homosexual relations between consenting adults); enforced legislative prohibitions on homosexual acts; that whereas the Canadian prohibitions on homosexual acts limit culpability to public sex, the Malaysia Penal Code makes no such distinction.

Although the Christian province of Sabah was suggested as an IFA, the Board was unconvinced that the pervasive presence of Christianity "necessarily commensurates with tolerance of homosexuality." No documentary evidence had been issued on this issue had been adduced. Kuala Lumpur was also rejected as an IFA. The presence of a gay advocacy group, the "scope, capability and effectiveness" of which was not known, could not establish an IFA.

The Board noted that punishments of whipping and stoning for homosexual acts were "disproportionately punitive" and are "to be considered persecutory." It cited the Handbook on Procedures and Linden J. that draconian punishments can be viewed as persecutory, given the objective of the legislation.

The Board also observed that it was not intelligent:

to assume that the state, which of necessity must enforce its own laws, would at the same time offer protection to these claimants here, who protest that state law and social custom are among the bases of their fear of persecution.

2. State Protection and Police in Malaysia in General

Immigration and Refugee Board of Canada

M.O.G. (Re) [2000] C.R.D.D. No. 94, No. M99-11668 (*Immigration and Refugee Board of Canada*)

Negative

- **Failure of a police officer to document a complaint, when the assailants could not be identified, is not clear and convincing evidence of a denial of state protection.**
- **Based on the Malaysian government's effort to prevent communal violence and punish activities inciting violence, its wariness of Islamic fundamentalism and its efforts to end a clash between Muslims and Hindus, there is evidence that state protection exists for religious minorities in Malaysia.**

The claimant was a Malaysian citizen claiming that he would be persecuted based on his religion and race.

On the matter of state protection, the Board found:

The claimant testified that following his attack by the Muslim Malays in November 1999, he and his father went to report the incident to the police. He said that the sergeant asked him a lot of questions, but declined to file a report since the attackers could not be identified. The sergeant further told him that his situation was a case of racial tension, and that he would inform the leaders of the community, as he knew them. Although the panel finds that the sergeant could have documented the claimant's complaint, however, his failure to do so is not "clear and convincing" evidence that he is denied of state protection available to him. The panel notes that the sergeant did seek information from the claimant about his problems, and that he offered to bring the issue to the attention of the leaders in the community.

Furthermore, according to Human Rights World Report 1999, the Malaysian government places a "high priority on preventing communal violence and punishing any activities seen as a possible incitement to violence. It is also said to be "wary of ...extremist brands of Islam", and quick to warn religious leaders against overzealous interpretation of Islamic law (IPS 25 Aug. 1997). Following the March 1998 clash between Muslims and Hindus in front of a mosque near George town, the capital of Penang State, police had reportedly arrested 107 people and seized various weapons. (18-19)

I.G.E. (Re), [1998] C.R.D.D. No. 239 (Immigration and Refugee Board of Canada)

Negative

- **The presence of an active police force and evidence that members of the claimant's own ethnicity constitute 10% of that police force will not show state protection is unable to a citizen of Malaysia based on his ethnicity or religion.**

The claimant was a Malaysian citizen of Chinese ethnicity and Buddhist religion who alleged that he would face persecution in Malaysia due to his ethnicity and religion.

On the matter of state protections and the police, the Board found:

In my view, given the evidence of an active police force in Malaysia, even to the point that arguably Draconian measures are taken to eradicate the country of various crimes, given also the claimant's own evidence that there may be as much as ten per cent of the Malaysian police who are of his own ethnic origin, and given this Response to Information Request just cited in Exhibit 7, the claimant has not shown by clear and convincing confirmation the Malaysian state's inability to offer him protection from the kinds of attacks he cited having occurred to him in 1995 and shortly thereafter. (11)

Kaur v. Minister of Citizenship and Immigration [1997] F.C.J. No. 71, 68 A.C.W.S. (3d) 917.

Application granted

- **A rape by police will not be a random act of violence when it occurred in the context of activities for which the claimant alleges she was persecuted.**

The claimant alleged that she was member of an opposition party in Malaysia and had been arrested and sexually assaulted by police.

Jerome A.C.J. found that the Board's conclusion that the applicant was a "random victims of violence which could have occurred anywhere" was not sustainable. The rape had occurred with reference to her demonstrations and political activities and the claimant was detained as a result of her political activities. During her detention she was queried about her political activities.

Governmental Reports

Canada

1. Immigration and Refugee Board of Canada, "Treatment of sexual minorities (August 2004-August 2005)" (30 August 2005) MYS100434.E, online: < http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=449509>.

- **Laws prohibiting homosexual acts punished with whipping and long-term imprisonment but only enforced occasionally with short jail time or fine**
- **Naval and military leaders vow to exclude gays from military**
- **Sodomy conviction of former deputy PM overturned; Court awards \$1.2 million US for damages due to slanderous pamphlet**
- **Presence of LGBT bars, clubs, saunas and hotels in Kuala Lumpur**
- **Alleged vice squad assisting police in apprehension of indiscreet LGBTs**
- **No laws prohibiting gender re-assignment surgery or therapy but no laws permit transsexuals to change their identity documents**
- **Transsexuals experience harassment by police and religious authorities, discrimination in employment sector and rejection by family**

Article 377 of the Malaysian punishes "carnal intercourse against the order of nature" with whipping and imprisonment for a maximum of 20 years. Section 377A of the Code deems male-receptive oral and anal intercourse to fall within this category. The US *Country Reports 2004* assert the laws are enforced and the Associated Press states that they are only enforced occasionally with a punishment of a short jail term or fine.

According to *Today*, Associated Press and *New Straits Times*, Chief Mohd Anwar Mohd Nor of the Royal Malaysian Navy stated gays and lesbians would never be permitted to

join the navy. A day later, according to Associated Press, the deputy defence minister stated LGBTs would not be permitted to enlist because their behaviour is against Islam.

After six years in prison, former deputy PM Anwar Ibrahim was released. Malaysia's High Court overturned his sodomy conviction and reportedly awarded him \$1.2 million US in damages for a pamphlet issued in 1998 by political opponents denouncing him for many reasons, including his alleged homosexuality. PM Mahathir Mohamed fired Ibrahim based on the allegations.

Asian LGBT websites contain details on LGBT-friendly bars, clubs, saunas and hotels in Kuala Lumpur but warn of "vice squads" that assist police in apprehending indiscreet LGBTs. The existence of these squads not corroborated by other IRB sources. Homosexuality is, according to *Country Reports 2004*, socially and culturally taboo.

Although no laws prohibit gender reassignment surgery or therapy, Malaysian transsexuals cannot change their identification documents to reflect their gender. As a result, an article in the *Malaysian Bar* claims, they undergo harassment and persecution by police and religious authorities, are refused employment and the right to marry, face difficulty opening bank accounts or applying for passports.

Although there is no data on arrests of transsexuals because there are no legal prohibitions on transsexualism, an article in the *Malaysian Bar* states that transsexuals detained by police often become victims of sexual violence like forced stripping. *The Sunday Mail* and *New Straits Times* report the arrest of a cross-dresser who was only released by police when they realized he was not Muslim; the victim complained to police of "wrongful arrest, abuse of power and brutality." Another person who had undergone a sexual change lost a bid to be legally recognized as male in the Ipoh High Court. Transsexuals have difficulty finding employment, are often abandoned by their families and many allegedly turn to prostitution.

2. Immigration and Refugee Board of Canada, "Malaysia: The situation of sexual minorities" (13 August 2004) MYS42857.E, online: < http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=433731>.

- **Scarce information on the situation of Malaysian sexual minorities**
- **Although homosexuals are "left alone if they keep to themselves", one gay website reports 100 annual arrests by morality police**
- **Politically-motivated conviction of deputy PM on sodomy charges**
- **Gay publications report flourishing gay community with bars, clubs, saunas**
- **Transsexuals harassed by police, denied employment opportunities and can be fined under Sharia**
- **Reported arrest of 45 transsexuals for staging beauty pageant**

Information concerning the situation of Malaysian sexual minorities is "scarce."

Despite legal prohibitions with punishments including flogging, a prison sentence or

death, IPS and the *Taipei Times* reports that the laws are rarely enforced and “homosexuals are ‘left alone if they keep to themselves.’” One gay website reported 100 annual arrests by morality police for attempting to commit homosexual acts. In 1998, former deputy PM Anwar Ibrahim was convicted under for engaging in sodomy and received a 9 year sentence; many believe the charges and subsequent conviction were politically motivated. Gay publications report a flourishing gay community with bars, clubs, saunas and gay organizations.

In Malaysia, according to newspaper reports, *mak nyahs* (transsexuals) can be fined under Sharia law and are harassed by police, denied employment opportunities, often turn to the sex trade, face social stigma and familial abandonment. 45 *mak nyahs* were arrested and put on trial in Kedah for staging a beauty pageant.

3. Immigration and Refugee Board of Canada, “Malaysia: Update to MYS41879.E of 25 August 2003; arrests, convictions or charges against Islamic and non-Islamic lesbians, gays, and/or bisexuals; sentence imposed on these individuals; whether non-Muslim homosexuals or bisexuals are targeted by the religious police” (21 June 2004) MYS42734.E, online: < http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=433735>.

- **Reports of judicially sanctioned flogging and rehabilitation camp for LGBTs**
- **Media hostility to LGBT community**
- **High-ranking government officials, including PM, denounce homosexuality and defend sodomy laws**

Although the Research Directorate could not find specific information on arrests, convictions or charges against lesbians, gays or bisexuals in Malaysia, *The Independent* reported judicially sanctioned flogging and *The Nation* stated that arrested homosexuals are forced to go to a rehabilitation camp.

The Women’s Aid Organization, in August 2003, submitted a memorandum to the Malaysian Human Rights Commission protesting media attacks of LGBTs. PM Mahathir Mohamad made a national television broadcast denouncing and warning LGBTs in September 2003. Mohamed’s successor and Minister Rais Yatim have both protected the nation’s sodomy laws.

Despite legal and social barriers, the LGBT community in Malaysia is increasingly visible and boasts a number of bars, clubs and saunas.

4. Immigration and Refugee Board of Canada, “Malaysia: Information on the treatment of lesbians; the penal code as it applies to lesbians and gays; whether lesbians are arrested or charged under the law (2002-2003)” (25 August 2003) MYS41879.E, online: < http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=433746>.

- **Malaysia blocks UN vote on prohibition of discrimination based on sexual orientation**
- **Head of education and research at Islamic Affairs Department calls homosexuality “a sin worse than murder”**
- **Islamic Affairs Department manages a police force of 50 officers authorized to arrest homosexual Muslims; in 1999, 111 men arrested in Kuala Lumpur**

In April 2003, Malaysia was one of four Islamic nations to block a UN vote to expand the definition of discrimination to include discrimination on the basis of sexual orientation. According to an International Lesbian and Gay Association (ILGA) *World Legal Survey*, Malaysia's sodomy laws were rarely enforced until the rise of Islamic fundamentalism. According to *The Advocate* and ILGA, caning in relation to homosexual activities is being introduced in parts of the country. *Time Magazine* also reported that the head of education and research at the Islamic Affairs Department condemned homosexuality as “a sin worse than murder” and that the Department manages a group of 50 enforcement officers authorized to arrest homosexual Muslims. In 1999, the force arrested 111 men in Kuala Lumpur.

According to *Time Magazine*, there was growing recognition in Malaysia of the LGBT community. A lesbian softball team was reported to have participated in the Sydney Gay Games and the Pink Triangle Foundation, in December 2002, hosted a gay and AIDS-themed film festival in Kuala Lumpur.

United States of America

1. U.S. Department of State: Bureau of Democracy, Human Rights, and Labor, 2008 *Country Reports on Human Rights Practices* (25 February 2009), online: < <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119046.htm>>.

- **Sporadic enforcement of sodomy laws and religious and cultural taboos on homosexuality**
- **Mandatory testing for all Muslims prior to being married**
- **Reports of deaths during apprehension and detention, police abuse of detainees and arbitrary arrests and detentions (reports did not state that these incidents occurred to members of the LGBT community)**

“Although there are no laws that prohibit homosexuality, laws against sodomy and “carnal intercourse against the order of nature” exist and were enforced sporadically. Religious and cultural taboos against homosexuality were widespread.

The government's response to HIV/AIDS was generally nondiscriminatory, although stigmatization of AIDS sufferers was common. On December 18, the deputy prime minister announced mandatory HIV screening, starting in 2009, for all Muslims prior to being married. He attributed the need for this screening to the rising rate of HIV infection among women. According to the government, more than 82,000 HIV/AIDS cases had been identified since 1986, with over 1,500 new cases identified during the year.”

Although the Bureau concluded that the government generally respected the human rights of its citizens, individuals have died “during police apprehensions and while in police custody.” There were also reports of police abuse of detainees, arbitrary arrest and detention under statutes allowing detention without trial. These violations were not mentioned specifically in reference to the LGBT community.

2. U.S. Department of State: Bureau of Democracy, Human Rights, and Labor, 2006 *Country Reports on Human Rights Practices* (6 March 2007), online: <<http://www.state.gov/g/drl/rls/hrrpt/2006/78780.htm>>.

- ***Brokeback Mountain* banned due to homosexual references**

In addition to the information quoted in the 2008 *Country Reports on Human Rights Practices*, the 2006 report noted that the “government censored and banned films for profanity, nudity, sex, violence, and certain political and religious content. Films banned during the year included *Brokeback Mountain*, due to its references to homosexuality . . .”

3. U.S. Department of State: Bureau of Democracy, Human Rights, and Labor, 2002 *Country Reports on Human Rights Practices* (31 March 2003), online: <<http://www.state.gov/g/drl/rls/hrrpt/2002/18252.htm>>.

- **Sodomy trial of deputy PM Anwar Ibrahim raises serious questions about judicial independence and impartiality**

The Bureau observed that the sodomy and corruption cases against former deputy PM Anwar Ibrahim “raised serious questions about judicial independence and impartiality.” Many legal experts asserted that Ibrahim was “a political prisoner because he was charged, tried and convicted in a legal process that was politically motivated and patently unfair.” Ibrahim was beaten by former Inspector General of Police Rahim Noor while in detention. During the corruption trial, “the judge made several questionable rulings that greatly limited Anwar’s ability to defend himself.” Ibrahim’s attorney was sentenced to 3 months imprisonment for contempt of court for raising in court charges of prosecutorial misconduct. The judge also tolerated police and prosecutorial misconduct and denied Ibrahim “the ability to rebut evidence of sexual misconduct.” With respect to Ibrahim’s sodomy trial, the prosecution and police deliberately offered inconsistent evidence which the judge deemed permissible. The judge also ignored evidence that one of the witnesses was coerced by police and refused to compel the PM to testify, despite assertions that the sodomy charges were part of a conspiracy orchestrated by the PM.

Non-governmental Organization Reports

Amnesty International

1. Amnesty International, “Fear for safety/torture or ill-treatment” (3 August 2007) ASA

28/002/2007.

- **Transsexual beaten by religious law enforcement officials in Malacca**
- **Violence against transsexuals is rising in Malaysia and agents include secular and religious law enforcement officers**
- **Plans to build “rehabilitation centre” for transsexuals**

In Malacca state on July 20, 2007, a male-to-female transsexual “was seriously beaten by state religious officials who detained her while she was talking to friends . . .” The three enforcement officers of the Islamic Religious Affairs Department, punched and kicked the victim. As a result of the assault, the victim “had to undergo surgery on 31 July for a pre-existing abdominal hernia condition, which had been aggravated by the assault.” The victim was detained under a Sharia prohibition against cross-dressing.

According to Amnesty, violence against transsexuals is rising in Malaysia; agents include secular and religious law enforcement officers. Officials in Terengganu were planning to establish a rehabilitation centre for transsexuals “due to fears that men were becoming more ‘effeminate’ and that many transsexual people were ‘back into their old habit’ even after serving time in prison.”

Human Rights Watch

1. Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* (New York: Human Rights Watch, 2008).

- **Sodomy charges used as a means of discrediting opponents in politics**
- **Efforts to create a gender-neutral definition of rape evolve into criminal laws against lesbianism**

Human Rights Watch recounted the two sodomy trials of former deputy PM Anwar Ibrahim. It stated that, like the first trial, the second trial was part of a “political frame-up” intended to discredit the politician:

It was Anwar’s second trial for what the Malaysian press universally called “sodomy.” Like the first charges, nine years earlier, these showed every sign of a political frame-up. Anwar had been preparing to return to political life in a parliamentary by-election when the allegations broke. If Malaysia’s government believed, as India’s apparently did, that the colonial-era law mirrored deep social prejudices, then the case was a perfect tool to discredit him.

Yet according to an opinion poll, two-thirds of Malaysians thought politics lurked behind the charges, and only one-third believed the criminal-justice system could handle Anwar’s case fairly.⁶ Regardless of how Malaysians felt about homosexual conduct, they did not trust the government to administer the law. The state’s handling of the evidence fed suspicions. Police had sent the man who filed the complaint to a hospital, for anal examinations designed to prove the charges:

standard procedure in many countries. Embarrassingly, however, the tests—later leaked on the internet—apparently found no proof. The government vacillated, too, between charging Anwar with consensual and non-consensual “sodomy.” The uncertainty came easy. The law had only relatively recently made a distinction between the two—and it still provided virtually identical punishments, regardless of consent. (2-3)

The report also noted the link between sodomy and sexual perversion in Malaysia. It cited a judge in Malaysia who, in 1958, did not allocate a punishment of whipping to an offender on grounds that homosexual was comparable to sado-masochism (48).

The report also noted that “campaigns in Malaysia, Sri Lanka, and Botswana that meant to create a gender-neutral definition of rape ended with lawmakers re-defining “unnatural offences” to include sex between women” (47).

International Lesbian and Gay Association (ILGA)

1. International Lesbian and Gay Association, “Malaysian human rights activist Farish Noor sounds the alarm on the rise of fascism in Malaysia and elsewhere,” (31 January 2005), online:
<http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=1&ZoneID=3&FileID=478>.

- **Moral policing of Malaysian Muslims is becoming increasingly repressive and threatens a demonized LGBT community**
- **100 Malay-Muslims rounded up at nightclub, detained and kept in confined spaces (unclear if nightclub was LGBT)**
- **“Very real repressive undercurrents” in Malaysian society**
- **Moral campaigns are a means of expanding the state’s power**

According to the report, Malaysian Muslims “are forced to live under the constant threat of a myriad of increasingly repressive, intrusive and constricting laws governing their practice, understanding and expression of normative Islam.”

In January 2005, 50 moral guardians said to be working for Jawi (Jabatan Agama Islam Wilayah Persekutuan) rounded up 100 Malay-Muslim citizens at a nightclub in Kuala Lumpur. Non-Muslims were instructed to enjoy themselves in another part of the club while Muslims were segregated by gender, ordered to crouch on the ground, ferried into caged spaces on trucks and locked in cramped cells. Officers harassed women in particular. The report did not state whether the nightclub was an LGBT venue.

According to Noor, “what is being done in the name of ‘safeguarding Islam’ has serious repercussions for the future of Malaysia; the status of all Malaysian citizens—be they Muslims or non-Muslims; Malaysia’s international image and standing, and its own credibility as a supposed ‘bastion of moderate Islamism at work.’” The demonization of Muslim gays and lesbians has been part of this campaign to enforce a moral order

reflective of Islam. Noor states that the “bottom line is that all these so-called ‘moral campaigns’ are nothing more than an exercise of expanding the power of the state and the powers-that-be.” Noor described this “moral police” as “authoritarian bullies.”

Noor gave an alarming assessment of Malaysia: “It should be painfully obvious to all by now that there are very real repressive undercurrents in Malaysian society.”

International Gay & Lesbian Human Rights Commission

1. International Gay & Lesbian Human Rights Commission, “Malaysia: ‘In this Country, An Accusation of Sodomy Is Defamation of Character,’” (3 July 2008), online: <<http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/238.html>>.

- **Opposition leader Anwar Ibrahim convicted of sodomy in 1998 but released in 2004 is again being charged with allegations of sodomy**
- **Anwar Ibrahim’s lawyer claims homosexuality is culturally accepted as long as it is not flaunted and that police violence and harassment against LGBT Malaysians does not demonstrate systemic abuse of gay people**
- **Beatings of transgendered persons and police raids on private gay parties**

Malaysia’s opposition leader Anwar Ibrahim, who was convicted in a sodomy case in 1998 and released in 2004 has been accused by police of committing sodomy with an aide; Ibrahim is now suing the aide for defamation. Ibrahim argues the 1998 charges were part of a political conspiracy and views the new charges ‘as yet another frame-up attempt.’ Anwar Ibrahim’s “political background as a Malay nationalist and Islamist who was part of the movement to Islamize Malaysia, made him particularly vulnerable to sodomy charges which effectively discredited him among his supporters in 1998.”

According to Sivarasa Rasiah, homosexual behaviour is culturally accepted in Malaysia as long as it is not publicly flaunted. He also claimed there is no anti-gay movement in the country. His response to reports of vicious beatings of transgender people and police raids on private gay parties was: “‘I haven’t heard of these reports. But police harassment, yes and police related violence, yes. But this is about abuse of power. Raids happen to other people too not only gay people. It’s not a systemic abuse of just gay people.’”

The author of the report noted that many people in Asia stated that it was not part of Asian culture to flaunt sexuality and that the right to express sexual orientation was conflated with that argument. However, the author notes, “the standard for acceptable or unacceptable public display of sexuality applies unevenly even for heterosexuals, depending on their sex, age, class, ethnicity, religion and other factors. The difference for LGBT people is that the standard is not only about exercising public decorum or discretion but the basic right to exist without criminal sanctions, not to mention religious condemnation, medical pathologization and/or community pressure to conform.”

International Federation for Human Rights

1. International Federation for Human Rights, *Malaysia – “The Boa Constrictor”*: *Silencing Human Rights Defenders*, (March 2003), online: <http://www.unhcr.org/refworld/docid/46f1468a0.html>.

- **Stringent legislations preserve authoritarian government and inhibit the activities of human rights defenders**

According to the report, Malaysian “authorities have at their disposal a vast array of very stringent legislation used to stifle peace political dissent . . .” (7). Under the Internal Security Act, “any person can be detained by the police for up to 60 days without trial for an act of allegedly prejudicing the security of the state . . .” (7). Detainees under this Act are reportedly subject to various forms of torture (7). The Sedition Act criminalizes seditious tendencies and words (10). Other laws exist to inhibit the activities of human rights defenders. Cumulatively, these pieces of legislation create “a climate of fear” and had “led to a massive self-censorship among journalists, NGOs, lawyers and judges, political opponents and trade unionists” (13).

ISIS International-Manila

1. Zaitun Mohamed Kasim, “Sexuality Under Attack: The Political Discourse on Sexuality in Malaysia” (14 September 2006) online: http://www.isiswomen.org/index.php?option=com_content&task=view&id=270&Itemid=163.

- **Push for greater Islamization in Malaysia linked to laws repressing sexuality**
- **Physical and verbal harassment of non-traditional gender and sexual identities**
- **Particular vulnerability of effeminate men**
- **Rise in vigilante groups who harass and police moral behaviour**

Kasim asserts that the “push for greater Islamisation” in Malaysia allows state and non-state actors to call “wittingly and unwittingly . . . for the implementation of rules, laws, and policies that are deeply influenced or inspired by the ideology of Islamic conservatism . . .” She also contends that the scope of Sharia has expanded in Malaysia and the process of codifying fatwas is “shock[ing]”:

The Shariah Enactment had also been amended to give fatwas the automatic force of law upon gazetting; anyone who gives, propagates, and/or disseminates any opinion contrary to any fatwa in force commits a criminal offence. Technically, every time a writer, organisation, or individual asserts the rights of the individual to freedom of expression, they breach the fatwa.

According to Kasim, female sexuality is a major target of Malaysia’s Islamization project. There is, moreover, “pressure for non-Muslims to adopt the Malay-Muslim normative.”

Individuals with untraditional gender or sexual identities are “victimized either verbally

and/or physically, or treated as fair game for ridicule and harassment. Many ‘accept’ the verbal taunts as the price they have to pay for access to the public sphere.” Although masculine women “may attract some amount of comment and/or ridicule,” effeminate men “face greater difficulty.” Those whose effeminacy does not defy gender norms too sharply are “considered ‘acceptable’ and many find themselves able to maneuver public spaces” but transsexuals and feminised men “have straddled being shunned with put-downs on the one hand; yet are also accepted as part of the community—as comic relief anomalies of the village/area.”

Kasim states that, “[w]ith the growing conservatism and the sharper they defy gender and sexual identity norms, the more that transgendered and transsexual persons, particularly male-to-female transsexuals, become vulnerable to legal prosecution under both the civil and Shariah legal systems as well as being easy targets for public persecution, sexual and physical violence, and harassment.” There is an increasing tendency to call male effeminacy a problem “that requires fixing.” The Minister of Social Unity and National Development stated, in 2003, that steps needed to be taken to prevent an increase of “soft” male students at universities. There are, according to Kasim, “also anecdotal reports of university students being sent out of classes because they were “too soft” and told to come back when they become ‘real men.’”

The “growing perceived need for the state to control” moral conduct transforms personal values into legal values with legal force. The intensifying conservatism in Malaysia has seen the rise of vigilante groups who police and harass other individuals and groups. Men cross-dressing or transsexuals are “frequently arrested and charged” for prostitution, drug use, loitering and “indecent behaviour.” Muslims are sometimes also charged in the Sharia courts. Transsexuals suffer deplorable conditions in detention including sexual violation and verbal harassment.

2. Leti Boniol, “Closets Are Not For Us: Views From Five Lesbians Compiled,” (1999) online:

<http://www.isiswomen.org/index.php?option=com_content&task=view&id=563&Itemid=217>.

- **Malaysian state as the main repressor of lesbian rights**

“In Malaysia, the state is the main repressor of lesbian rights. There are no laws outlawing homosexuality, transsexuality or lesbianism but the judiciary interprets certain laws to repress Malaysians' rights to determine their own sexual orientation. Transsexuals are often arrested and charged under Section 21 of the Minor Offences Act, reports Nadiyah Bamadhaj. The offense is called "indecent behaviour" and is punishable by fines or jail terms and a haircut. Sodomy and oral sex are also illegal under Malaysia's Penal Code.”

Media Reports

1. “Anwar Malaysia sodomy trial delay,” *BBC News* (8 July 2009) online: <

<http://news.bbc.co.uk/2/hi/asia-pacific/8139641.stm>>.

- **Anwar's alleges second sodomy charge is false and politically-motivated**

For the second time, former Deputy PM and political leader is accused of sodomy. Anwar was convicted and spent six years in prison in the late 1990s. According to Anwar, who denies the allegation, the law is being exploited by his opponents to keep him from power.

2. "Malaysian police probe gay deportee," *Asian Pacific Post* (8 July 2009) online: <http://www.asianpacificpost.com/portal2/c1ee8c4418e1e94f0118ec7bf58e0064_Malaysian_police_probe_gay_deportee.do.html>.

- **Police want to question refugee claimant and state he would not have been arrested unless he had committed an offence**

Malaysian police want to question A. Kulenthiran, an allegedly LGBT Malaysian who made a refugee claim in Canada. Musa Hassan, the Inspector-General of Police, wanted information concerning his alleged arrest and stated, "[I]f he did not commit any, how could the police arrest him?" His deputy has ordered an investigation into Kulenthiran's allegations. Kulenthiran has reportedly gone into hiding since his return.

3. Ty Burr, "What you didn't hear on the Oscars if you live in Malaysia," *The Boston Globe* (25 February 2009) online: <http://www.boston.com/ae/movies/blog/2009/02/what_you_didnt.html>.

- **References to homosexuality censored in broadcast**

References to homosexuality were censored from a broadcast of the Academy Awards by Malaysia's satellite provider, Astro.

4. Julia Ziemer, "Malaysia's fatwa council explains how 'tomboys' become lesbians" *pinknews.co.uk* (27 November 2008) online: <<http://www.pinknews.co.uk/news/articles/2005-9694.html>>.

- **National Fatwa Council rules against women participating in masculine activities**

A fatwa passed in October by the National Fatwa Council rules against women who participate in masculine activities including lesbian sex and dressing as a man. The fatwa currently holds the status of "official advice to the Islamic community" but could be implemented into national Sharia law. Director-General of the Council "identified seemingly innocuous actions such as dressing in a masculine way as something that could lead on to greater 'crimes' such as lesbianism." Sharia law in Malaysia punishes lesbian activities with imprisonment, fines and whipping.

5. Sylvia Tan, "Malaysia's PT Foundation turns 21" *fridae.com* (27 November 2008)

online: < <http://www.globalgayz.com/country/Malaysia/view/MYS/gay-malaysia-news-and-reports-2008#article1>>.

- **Kuala Lumpur-based NGO offering HIV/AIDS support, care and prevention services as well as counseling to gay men encounters police harassment**
- **Police harassment and raids on gay venues**
- **Homophobic climate impedes LGBT health-oriented initiatives**

Malaysian NGO was founded in 1987 to provide support, care and prevention services to vulnerable communities. It offers HIV/AIDS counseling, prevention, support and care services, as well as counseling services. The group deals with harassment and raids by law enforcement officials. The group operates outreach services to gay men at clubs, saunas, massage centres and park. The NGO's representative noted that police harassment and raids on clubs, saunas and massage centres and local tabloid coverage of these venues was hindering these outreach efforts. They are operate a drop-in centre for "support group sessions, HIV screening, social outings, sports, coffee evenings, and other community events."

The NGO identified the homophobic climate of the country as a particular challenge to the health of LGBT Malaysians:

The marginalisation of gay men in Malaysia (as a result of the highly moralistic and conservative society, a hostile media and the rise of political Islam) has also led to a lack of a gay community culture and consciousness. This makes it difficult to inculcate a healthy responsible gay community that would look after itself and members of the community.

The NGO did note that the Malaysian government was providing excellent treatment to MSM in Malaysia in terms of HIV/AIDS care.

6. "Penang police arrest 70 at 4 raids," *fridae* (4 November 2008) online: <<http://www.fridae.com/newsfeatures/printer.php?articleid=2328>>.

- **70 men arrested in raid on Penang gay venues**

Police in Penang arrest 70 men following a raid at a gay sauna and two massage parlors according to *The Star*. Sources allege that there were no sex parties in progress at the time of the raids.

7. "Malaysian police target gay people in Saturday afternoon raids," *pinknews.co.uk* (3 November 2008) online: <<http://www.pinknews.co.uk/news/articles/2005-9470.html>>.

- **70 men arrested in raids for alleged homosexual acts**

Over 70 gay men arrested by "anti-vice police" in a series of raids. A massage parlour, health club and two other properties were raided.

8. Tony Grew, "Malaysia's Muslims ban lesbian sex and other 'masculine behaviour'" *pinknews.co.uk* (24 October 2008) online:
<<http://www.globalgayz.com/country/Malaysia/view/MYS/gay-malaysia-news-and-reports-2008#article1>>.

- **Fatwa prohibits lesbian sex and other masculine behaviors for Muslim women**

The National Fatwa Council of Malaysia issued a fatwa against lesbian sex and other masculine activities (including wearing men's clothes) for female Muslims. Last year a Malaccan court annulled a marriage between a transgender man and a woman.

9. "Transvestite teacher to be transferred," *The Star* (19 September 2008) online:
<<http://thestar.com.my/news/story.asp?file=/2008/9/19/nation/2063461&sec=nation>>.

- **Individual who participated in a cross-dressing event transferred to an administrative post, according to Director-General of Education**

The Director-General of Education, stating transvestite teachers would not be suitable for a position in which they served as role models, announced a teacher would be transferred to an administrative post. The teacher had admitted in Sharia/Syariah court in Banchok to having participated in a beauty contest for transvestites. The teacher was "hit with a RM 1,000 personal and good behaviour bond for two years" by the court.

10 "The Straits Games in Kuala Lumpur, Oct 10-12," *fridae* (11 September 2008) online: <<http://www.fridae.com/newsfeatures/2008/09/11/2119.the-straits-games-in-kuala-lumpur-oct-10-12>>.

- **Malaysia's Leadership Program for Gays organizes gay sports event to be held in Kuala Lumpur**

Malaysia's Leadership Program for Gays (LPG) is organizing a gay-oriented sports competition in which over 175 men from Malaysia, Singapore, Hong Kong, Taiwan, Thailand and Phillippines are registered to participate. The events will be held in Kula Lumpur for the fourth time since the initiative's inception in 2002. Although there have not been female participants to date, organizers are keen to hear from that population segment.

11. Sylvia Tan, "In the spirit of merdeka: Malaysians hold first ever sexuality rights festival," *fridae.com* (2 September 2008) online:
<<http://www.globalgayz.com/country/Malaysia/view/MYS/gay-malaysia-news-and-reports-2008#article1>>.

- **400 persons attend sexuality rights festival in Kuala Lumpur**

In Kuala Lumpur, Malaysia's LGBT community hosts the country's first sexuality rights festival which comprised of film screenings, talks, workshops and performances.

Speakers included the human rights activist Dr. Farish Noor, an MP and party leader, a clinical sociologist, a social worker with and HIV/AIDS NGO and an academic. Topics of discussion included harassment and police brutality against transsexuals, the July 2007 beating of a transsexual by Religious Affairs Department enforcement officers (resulting in the need for a hernia operation), the inability of Muslims to obtain gender re-assignment surgery. An estimated 400 persons attended the festival.

12. "LGBT offerings at Freedom Film Fest in Johor Bahru, Juching and Penang" *fridae.com* (12 September 2008) online:
<<http://www.fridae.com/newsfeatures/article.php?articleid=2297&viewarticle=1>>.

A film festival, running in Kuala Lumpur, Johor Bahru, Kuching and Penang, will feature three LGBT related films.

13. "Malaysian transvestites appeal one-week jail sentence," *fridae.com* (28 July 2008) online:
<<http://www.fridae.com/newsfeatures/article.php?articleid=2268&viewarticle=1>>.

- **16 Muslims arrested by local Islamic Religious Affairs Department for dressing as women and sentenced to one week in jail and \$310**

16 Muslim men were arrested by Kelantan Islamic Religious Affairs Department in a raid on a beauty pageant. Participant were sentenced to seven days in prison and fined \$310US by a Sharia Court. The department chief stated such activities were contradictory to Islamic practices.

14. Faslika Das, "Activist: Transgender lot needs help as they can't get jobs," *The Star* (20 July 2008) online:
<<http://thestar.com.my/news/story.asp?file=/2008/7/20/nation/21863209&sec=nation>>.

- **Transgender community is deprived of educational and employment opportunities and should be extended welfare benefits assured to gays**
- **Extension of welfare benefits to gays will not address their problems**

This article contends that the Governments "offer of welfare aid to homosexuals should be extended to the *Mak Nhay* (transgender) instead" because this group faces severe employment discrimination and is deprived of educational opportunities. The extension of welfare benefits to homosexuals will not solve that community's problems, particularly a gay person's ability to discuss his or her sexual preference: "[T]he Government must address discrimination against homosexuals [and] the money allocated for welfare could be used for campaigns to educated the public on sexual orientation."

15. "Ng: Welfare aid for gays, too," *The Star* (17 July 2008) online:
<<http://thestar.com.my/news/story.asp?file=/2008/7/17/nation/21846232&sec=nation>>.

- **Minister of Women, Family and Community Development assures that welfare system will not discriminate against gays**

Minister of Women, Family and Community Development stated states the homosexuals can apply for and receive welfare aid “if the meet the necessary welfare requirements.” The Ministry, she stated, does not discriminate based on sexual orientation. The Ministry’s report to the Cabinet on homosexuals in Malaysia addressed the lack of legal status of homosexuals in the country.

16. “Homosexual Problems Worry Minister,” *Bernama: Malaysian National News Agency* (16 July 2008) online:
<<http://www.bernama.com/bernama/v5/newsindex.php?id=346595>>.

- **Malaysian government study of Malaysian LGBT community reveals isolation, ridicule, bullying and harassment**
- **Minister of Women, Family and Community Development finds problems “worrying” but asserts that the ministry will not neglect this population**

A study commissioned by the Women, Family and Community Development Ministry revealed the isolation of the LGBT community from mainstream Malaysian society and the subjection of that community to bullying, ridicule and harassment. The Minister, Datuk Dr. Ng Yen Yen found these problems “worrying.” She stated “The ministry also will not neglect them who are part of society.”

17. “14 Detained in Malaysian Gay Bust,” *The Advocate* (13 May 2008) online:
<http://www.advocate.com/news_detail_ektid54256.asp>.

- **14 gay men arrested in raid on Penang fitness center**

A fitness centre in Penang, Malaysia was raided for a third time in the past year and 14 men were arrested. The gym is believes to be a front for a gay club.

18. Killan Melloy, “Malaysian Cops Crack Down on Gay Life” (12 May 2008) *Edge Boston*, online:
<<http://www.edgeboston.com/index.php?ch=news&sc=glbt&sc2=news&sc3=&id=7434>>

- **“Operation Rose” targets areas where gay men and transsexuals meet**
- **14 men arrested in May 2008 and 34 in November 2007 at fitness centre for alleged homosexual activity**

On May 10, 2008, police raided a fitness centre in Penang, arresting over a dozen men for alleged homosexual activity. Police attested to finding condoms littered about the facility. 34 men were arrested in November 2007 at a similar raid on the centre. The raids are part of a police effort, called “Operation Rose,” which targets areas where gay men and transsexuals assemble.

19. “Last refugee bid refused to gay Malaysian,” *CBC News* (5 March 2008), online: <<http://www.cbc.ca/canada/ottawa/story/2008/03/05/qc-malay0305.html>>.

- **Board doubts that claimant was actually homosexual**
- **Police detained claimant for five days, seeking a confession as to his sexuality, abusing him physically and sexually**
- **Human rights lawyer calls returning him to Malaysia unconscionable; Amnesty International Malaysia representative states his freedom of expression is at risk**

A. Kulenthiran, a refugee claimant from Malaysia claimed his homosexuality made him a police target and that he was detained for five days by police (seeking a confession of his sexuality) who abused him physically and sexually.

The claimant lost his refugee status case because of doubts as to his sexuality. A humanitarian appeal and pre-removal risk assessment were both rejected. A human rights lawyer stated that it would be unconscionable not to act. The Malaysia coordinator for Amnesty International Canada stated that, while it was unclear as to whether the claimant’s life would be at risk, his right to freedom of expression certainly was at risk.

20. “No sex party going on a Penang fitness centre, say those arrested” *fridae* (22 November 2007) online: <<http://www.fridae.com/newsfeatures/article.php?articleid=2097&viewarticle=1>>.

- **Individuals arrested in police raid claim they were not engaged in intercourse**
- **Detained individuals endure humiliating treatment and deplorable prison conditions**
- **Despite the non-enforcement of Malaysia’s sodomy laws, they make the gay community vulnerable to exploitation**

Persons arrested in a police raid on a fitness centre claim they were fully dressed at the time of their arrival. The detainees were detained in a prison lockup and released upon signing a bond. They were detained, some for up to two days, bound in handcuffs and chains, endured verbal insults, stripping, deplorable prison conditions. They are unlikely to be charged but were “in court before a magistrate and remanded for two days.”

According to Shannon Shah of Amnesty International Malaysia, such raids do not occur in isolation but often occur in a sequence.

Despite the fact that the law is not enforced, it leaves the gay community vulnerable to exploitation. According to the article, Malaysia’s sodomy laws hang “like the proverbial sword of Damocles over the heads of gay men.” The laws are employed as a “tool to intimidate, harass, extort and exploit gay men and gay-friendly businesses.” The law bears the effect of publicizing an individual’s orientation:

The attendant publicity – the potential outing – is that very thing which makes gay

men vulnerable. The press too is not ashamed to exploit this vulnerability selling itself with sensational news.

The law frequently drives the gay community underground and thus impedes the work of HIV prevention groups.

21. Douglas Sanders, "Visiting Malaysia," *fridae* (7 November 2007) online: <<http://www.fridae.com/newsfeatures/2007/11/07/1932.visiting-malaysia>>.

- **Although academics can discuss sexuality, sexual diversity remains a taboo topic**

This article noted that, at the International Convention of Asia Scholars in Kuala Lumpur in 2007, sexuality and homosexuality were topics freely discussed. However, Sanders notes that "there is no public discussion of sexual diversity [and] no discussion of the criminal law still in place". The mass media frequently censored topics concerning sexual diversity.

22. "Malaysian police arrest 37 at gay sex party," *The Guardian* (6 November 2007) online: <<http://www.guardian.co.uk/world/2007/nov/06/gayrights.malaysia>>.

- **37 men arrested at party for commission of homosexual acts**
- **Police surveillance of gay sex-friendly spaces**

A tip leads police to raid gay sex party and arrest 37 men in Penang. Police chief Azam Abdul Hamid stated "police were also carrying out surveillance at other centres suspected of allowing gay sex under an ongoing operation to check vice activities in Penang island."

Liau Y-Sing, "Malaysia's Muslim transsexuals battle sex change woes," *Reuters* (2 September 2007) online: <<http://www.reuters.com/article/inDepthNews/idUSKLR29014720070903>>.

- **Employment discrimination brings Malaysian transsexuals to sex industry**
- **Malaysian Muslims prohibited from obtaining gender re-assignment surgery**

Interviewee is a Muslim transsexual who alleges to have turned to prostitution due to employment discrimination on the basis of his sexual identity. Malaysian Muslims are prohibited from obtaining gender re-assignment surgery. The article places Malaysian transsexuals in "legal limbo" because while a court in February 2005 ordered a change in birth and identity documents that reflected the plaintiff's sex change operation, the government invalidated a marriage between a woman and a transsexual.

23. "Malaysia to block planned gay church," *IOL: News for South Africa and the World* (13 August 2007) online: <http://www.int.iol.co.za/index.php?set_id=1&click_id=3&art_id=nw20070813123702129C586691>.

- **Malaysian Minister of Tourism vows to block LGBT-friendly church**

An openly gay ethnic Chinese Malaysian pastor plans to “establish a church embracing homosexuals, bisexuals and transsexuals.” According to the country’s tourism minister, the government will block the plan.

24. “Malaysia’s first openly gay Christian pastor attacks bias toward homosexuals,” *The New York Times* (12 August 2007) online:
<http://www.nytimes.com/2007/08/12/world/asia/12iht-malaysia.1.7087662.html?_r=1>.

An openly gay minister stated an intention to form a church that ministers to LGBT Malaysians in Kuala Lumpur. The minister states that he has received “very nasty” phone text messages. According to the article, a church that accepts homosexual relationships would face stiff opposition from both Muslim and Christian conservatives in Malaysia.”

25. “News around the world,” *fridae* (28 February 2007) online:
<<http://www.fridae.com/newsfeatures/2007/02/28/1797.news-around-the-world-28-feb-07>>.

- **Woman who appears lesbian barred from club and reports to Malaysian press who publish the story**

“A woman in the Malaysian capital of Kuala Lumpur has gone to the press saying that a club had refused her entry because of her tomboyish appearance, a euphemism commonly used to mean butch lesbian.”

The club’s manager told *The Malay Mail*, “The club has the right to bar them from entering because this involves our image. In my opinion, we can't have these people because other patrons would feel intimidated by their behaviour. We are not discriminating against them but this is how we take care of our image. It's not good for the club. But gay people are allowed to work here.”

26. Juno Parrenas, “Out in the World” (2006) 31:12 *Lesbian News*

- **Raids on LGBT bars in Kuala Lumpur**
- **Visibly lesbian couples exist and it is “a common phenomenon” for women to love women**

According to Parrenas, LGBT bars are raided in Kuala Lumpur “because same-sex sexual identity is perceived as being a western thing.” The author, however, reported the existence of visibly lesbian couples in the city and that “it is a common phenomenon for women to fall in love with other women.”

27. “Prominent Malaysian transsexual sees progress in societal acceptance,” *The*

Associated Press (12 December 2006) online: <
<http://www.globalgayz.com/country/Malaysia/view/MYS/gay-malaysia-news-and-reports--2#article1>>.

- **Transsexual states NGO efforts are improving conditions for transsexuals**

A transsexual whose marriage to a man was deemed invalid, stated that transsexuals were gaining greater acceptance in Malaysia and that “anti-discrimination campaigns by nongovernment groups have helped to change the way in which many people view them.”

28. Rex Wockner, “Kuala Lumpur Police Raid Massage Parlors,” (2 March 2006)

- **Police raid suspected gay haunts and conduct urine testing on men before releasing them**

“Police in Kuala Lumpur, Malaysia, raided three massage parlors suspected of being “gay haunts” on Feb. 10, the Malay Mail newspaper reported. They conducted urine testing on 25 men and released them after the tests showed negative for illegal drugs.

The police reported seeing condoms, lube, nudity, and men about to engage in what the Mail called “immoral activities.” Operators of two of the venues were ticketed for operating without a license, the report said.”

29. “Malaysia Police conduct second round of raids on ‘gay’ spas” *fridae* (22 February 2006) online: <<http://www.fridae.com/newsfeatures/2006/02/22/1582.news-around-the-world-22-feb-06>>.

- **Second round of police raids on Kuala Lumpur “gay” spa in two week span**

The Malay Mail reported two other “gay” spas were raided by police in Kuala Lumpur as part of a second sting operation within two weeks. Police had been monitoring the venue. The report featured two photos of unidentifiable men.

30. “8 Oscar nods but still too taboo for China, Malaysia,” *fridae* (1 February 2006) online: <<http://www.fridae.com/newsfeatures/2006/02/01/1569.news-around-the-world-1-feb-06>>.

Brokeback Mountain, a Hollywood film about a same-sex relationship, is banned in Malaysia

31. Alex Au, “Malaysia: transsexual marriage invalid,” *fridae* (21 November 2005) online: <<http://www.fridae.com/newsfeatures/2005/11/21/1526.malaysia-transsexual-marriage-invalid>>.

- **Marriage between a transsexual and a man well-attended but declared invalid**

A married between a transgender man and another man was declared invalid by the Deputy Home Affairs Minister. Leaders of Malaysia's Christian community also denounced the marriage. The marriage, however, had 850 attendees including friends and family.

Islam forbids sex change among Muslims and most Malaysians seeking gender re-assignment surgery go to Thailand or Singapore.

32. Clarence Chua, "Local Churches say no to gay bishop," *The Star* (9 August 2003) online:

<<http://thestar.com.my/news/story.asp?file=/2003/8/9/nation/5999177&sec=nation>>.

Malaysian Christian leaders denounce homosexuality as immoral and sinful and assert that homosexuals cannot be church leaders.

33. "Malaysian authorities raid drag queen pageant," *fridae* (31 October 2002) online:

<<http://www.fridae.com/newsfeatures/2002/10/31/448.msian-authorities-raid-drag-queen-pageant>>.

- **80 cross-dressers arrested for violation of Malaysian Sharia law**

In a Malaysian town in Johor, 80 drag queens were arrested will likely be charged under Sharia law.

34. Mubarak Dahir, "More fallout from the war: some Muslim allies of the United States may take this opportunity to crack down on gay men and lesbians from their countries," *The Advocate* (20 November 2001) at 28.

- **Fear of backlash on LGBT rights in Malaysia due to pressure from Islamic fundamentalists and shift in focus away from human rights**

Governments in many Islamic countries will likely use this reprieve from international pressure regarding human rights to appease the Islamic religious right in their own countries, explains Faisal Alam, a Pakistani-American Muslim living in Washington, D.C., who is founder of the gay and lesbian Muslim group Al-Fatiha. "Just like American government officials have political pressure from Christian fundamentalists, other governments have similar pressure from Islamic fundamentalists," he says. "One way governments have long caved in to fundamentalists is to crack down on gays." He predicts the backlash will be worse in such Muslim countries as Indonesia and Malaysia, where in the past few years gay men and lesbians have won some degree of freedom to meet in clubs and establish their own organizations. "This will be an excuse to turn the clock back."

35. Nicholas Watt, "Malaysian PM rebuked for threat to UK gay ministers," *The Guardian* (2 November 2001) online:

<<http://www.guardian.co.uk/politics/2001/nov/02/houseofcommons.politics>>.

- **Malaysian PM threatens to expel gay diplomats who bring their partners**
- **20 men detained in police raids on Kuala Lumpur gay clubs**

Kuala Lumpur police raided a gay club and detained 20 men. Chief of Police Datuk Meor Chek Hussein stated he had received reports on gay activities and that actions have “long been taken against alleged illegal gay activities.”

PM Mahathir Mohamad of Malaysia “threatened to expel gay British Ministers if they visited his country with their partners.” He also stated that, in Malaysia, a homosexual would not be acceptable as a PM, in relation to the trial of Anwar Ibrahim.

Nizam Zakaria, “Police detain 20 at KL gay club,” *fridae* (14 September 2001) online: <<http://www.fridae.com/newsfeatures/2001/09/14/209.police-detains-20-at-kl-gay-club>>.

36. “Police raid Kuala Lumpur, Singapore saunas,” *fridae* (2 August 2001) online: <<http://www.fridae.com/newsfeatures/2001/08/02/179.police-raids-kuala-lumpur-singapore-saunas?n=sea&nm=Thirty-five+people+have+been+arrested+in+a+gay+sauna+in+Kuala+Lumpur%2C+while+in+Singapore%2C+two+men+have+been+charged+with+gross+indecency>>.

- **29 men arrested in gay club in Kuala Lumpur**

29 men were arrested in a gay club in Kuala Lumpur, according to the *Straits Times* and *AsiaNews Network*. While 29 customers were released, 6 employees will be charged in court for operating the premise without a valid licence and violating regulations.

38. David Liebhold, “Coming Out in the Open,” *Time* (2 October 2000) online: <http://www.time.com/time/asia/magazine/2000/1002/malaysia_gay.html>.

- **Despite growing prevalence of LGBT venues and rare occurrence of police raids, Islamic Affair Department operates a morality police which arrests gay Muslims**

According to this report, gay clubs, discos and saunas are growing in prevalence in Kuala Lumpur and police “rarely launch raids.” LGBT Malaysians are also becoming more open about their sexuality, through the Internet and increased exposure to foreign attitudes. The Anwar controversy has also been a catalyst to unprecedented discussions of sexuality in the country.

At the same time, the Islamic Affairs Department “operates a kind of morality police” that is empowered to arrest Muslims for religious transgressions. According to the report, “[u]sually in response to tip-offs, officers arrest several gays each month, generally for being in a room together.”

Although “[t]here is no centralized record of sodomy cases that have come before the Malaysian courts, but lawyers say there have been only a few instances concerning consenting adults, and no one can recall a sentence of more than three years. Given this

official lenience, many gays believe it's better to keep a low profile than risk a backlash.”

39. Mageswary Ramakrishnan, “‘During the Anwar Trial it Was Easy To Get Lucky: Interview with Openly Gay Journalist,’” *Time* (26 September 2000) online: <<http://www-cgi.cnn.com/ASIANOW/time/features/interviews/2000/09/26/int.malay.gay1.html>>.

Kuala Lumpur journalist Ashley Lee states the gay community is growing in Malaysia and amenities catering to that population are multiplying. The interviewee stated that, despite knowing the location of gay clubs, authorities left the LGBT community alone.

40. Mageswary Ramakrishnan, “‘Homosexuality is a Crime Worse Than Murder’: Interview with Malaysia’s morality police,” *Time* (26 September 2000) online: <<http://www.time.com/time/asia/features/interviews/2000/09/26/int.malay.gay2.html>>.

- **Authority in Malaysia’s Islamic Affairs Department states 111 arrests of homosexual Muslims in Kuala Lumpur in 1999**

Abdul Kadir, head of education and research at Malaysia’s Islamic Affairs Department stated that the department made 111 arrests in Kuala Lumpur last year, 165 in 1998 and 166 in 1997. After a tip-off, the law enforcement division of the Islamic Affairs Department often conduct raids. Usually individuals are dressed by the time these officers arrive and they are instead charged with attempting to commit homosexual acts. Abdul Kadir called homosexuality “a crime worse than murder.”

Scholarship

1. Walter L. Williams, “Strategies for Challenging Homophobia in Islamic Malaysia and Secular China,” *Nebula* (March 2009), online: <<http://www.asylumlaw.org/docs/sexualminorities/MalaysiaChinaWilliams030609.pdf>>.

- **Powerful political factors and homophobic religious thought ensure “continued enforcement” of sodomy laws**
- **Women non-conforming to gender norms face police and non-state harassment**
- **National Human Rights Commission does not recognize sexual minority rights**
- **Police employ entrapment methods, charge gay men with attempted sodomy and submit them to “Islamic counseling sessions”**
- **Former PM describes Western pressure to adopt freedoms like those of sexual orientation as “the main danger facing Malaysia’s future”**
- **Government agents force HIV prevention groups to stop condom distribution**
- **People’s Voluntary Anti-Homosexual Movement advocates stiffer penalties**
- **Obsession with policing morals according to Islamic ideology represses sexuality**
- **Law prohibiting anyone from giving, propagating and disseminating opinions contrary to any fatwa essentially prohibits statements advocating gay rights**
- **Expansion of Sharia brings non-Muslim LGBT persons within the law’s ambit**
- **Effeminate students expelled from Malaysian universities**

- **Legal prohibitions on university faculty from engaging in political debate and on the appearance of LGBT person on television ensure silencing of gay activism**
- **Media participates in homophobia, publishing photographs of arrested gays**
- **Police raids on gay businesses and private parties in Kuala Lumpur and Penang**
- **Surveillance tactics**
- **Deplorable prison conditions (beatings) and long prison waits before trial**
- **Police harassment, threats, humiliation and physical abuse of suspected homosexuals and use of bribery**

The author of the article is Professor of Anthropology and Gender Studies at the University of Southern California and has served as an expert witness for asylum cases for Chinese and Malaysian claimants.

According to Williams, the “continued enforcement” of the country’s colonial sodomy law is attributable to “powerful political factors combined with the influence of Islamic religious beliefs . . . [and the fact that] dominant Muslim thought today is quite oppressive to gay and lesbian people” (6). Malaysia’s sodomy laws are “selectively and systematically enforced to vilify and persecute homosexuals” (6). Their vague wording permits prosecution for any type of erotic interaction between men (7). Lesbians are not caught by the law’s ambit and there are not prominent cases of persecution of lesbians but Malaysian women failing to “conform to gender expectations can expect harassment both from police and from the general population” (7).

Recent crackdowns on homosexuals in Islamic nations (Iran, Afghanistan, Egypt, Nigeria and Saudi Arabia) suggest, Williams avers, homosexuals are “in grave danger” of murder or imprisonment in countries “where fundamentalist Islamic influences” dominate.

Anwar Ibrahim’s trial shows that “the existence of the sodomy law [may have been exploited by PM Mahathir Mohamed] to have his major political rival arrested” (8). The National Human Rights Commission, established in reaction to international criticism surrounding the affair, “defines human rights solely as those provided for in the Malaysian Constitution, and this does not include rights for homosexuals” (9).

Mahathir’s government justified its treatment of Anwar by intensifying attacks on homosexuality (9). Williams cites a *Time Magazine* article in which a top-ranking official in the Islamic Affairs Department denounced homosexuality as a crime worse than murder and stated that there could not be a right to sexual orientation (9). The official stated that police employ entrapment methods, charge homosexuals with attempted sodomy and subject them to “Islamic counseling sessions” (9). Mahathir has characterized pressure by the West to adopt certain freedoms (including that of sexual orientation) as “the main danger facing Malaysia’s future” (10).

Hostility to recognition of sexual minorities has led to hostility to HIV prevention efforts. According to Human Rights Watch’s *World Report 2002: Special Issues and Campaigns*, “government inspectors have forced AIDS prevention groups in Malaysia to

stop distributing condoms, at a time when HIV infections are rising” (10).

In 1998, Mahathir’s supporters organized Pasrah, a political group called, in English, “The People’s Voluntary Anti-Homosexual Movement” whose goal is to “wipe out” homosexuality in the country through severe legal penalties (11). The organization is government supported and its chair is a member of the party currently controlling the government. Malaysian human rights group Suaram has protested that Pasrah attempts “to incite discrimination and condemnation of gay men and lesbians is a misguided form of political support for the Prime Minister” (11). Pasrah’s stated goal is to “educate the public” on the “moral danger of homosexuality” (11-12); current sodomy laws and punishments of flogging and 20 years imprisonment, it contends are too lenient (12).

Zaltun Mohamad Kasim, a women’s rights activist, has stated that conservative Islamic ideology is inspiring a “growing obsession with . . . guarding and policing morality” (12). A new law providing that “anyone who gives, propagates, and/or disseminates any opinion contrary to any fatwa [Islamic directive] in force commits a criminal offense” (12). Because Muslim leaders have issued a fatwa condemning homosexuality, persons advocating gay rights are “subject to arrest merely for stating their opinion” (12). According to Zaltun, the expanding scope of Sharia in Malaysia allows laws discriminating against LGBT persons to enter municipal and subsidiary legislation, regulations and policy directives; as a result, non-Muslims are becoming subject to Sharia and its homophobic strictures (12).

Zaltun Mohamad Kasim states LGBTs are often falsely charged with breaching prostitution and public morality laws (12). They are also subject to public persecution, sexual and physical violence and harassment (12). Vigilante Islamist groups and individuals in universities, workplaces and public spaces also harass and police individuals (12-13). Effeminate students at Malaysian universities were expelled and informed they wouldn’t be re-admitted until they became “real men” (13).

Legal prohibitions preventing university faculty from engaging in political debates and a policy prohibiting gays and lesbians from appearing on television ensure the LGBT community has “no one to speak up for them in Malaysia” (13).

Malaysia’s media is supportive of the government’s policies, particularly those on the LGBT community. Publishers “must apply annually to the government for a permit” and most major media is “owned by top government officials” (13). Thus, governmental hostility to gay rights ensures “any news relating to gay and lesbian rights, especially including calls for ending discrimination against homosexuals, is suppressed . . .” (13).

On February 22, 2006, the country’s main newspaper *The Malay Mail*, rather than criticizing the raids, published photographs of men arrested in raids on gay businesses in Kuala Lumpur on the front page (13-14). Articles accompanying the images compared the men to prostitutes and used local slang in reference to homosexuals (14).

The media again participated in this culture of homophobia by publishing photographs of

a police raid of a private gay party in Penang in November 2007 (14). That raid, according to Penang police chief Azam Abdul Kadir, was part of “Operation Clean.” “Operation Clean” aimed to prevent “vice activities” and consisted of similar raids on other gay parties and, according to hints by the police chief, surveillance (14).

When a person in Malaysia is arrested, he or she must wait “in jail for a long time, sometimes up to eight years, before being brought to trial” (14-15). Prison conditions are deplorable, with frequent beatings by guards (15). According to Williams, “extensive publicity regarding government condemnation of homosexuality [sends a] message to the police and others that persecution of homosexuals is acceptable” (15).

According to an interview with an ethnic Chinese Malaysian gay male, Malaysian police generally believe homosexuals deserve the death penalty (15). The interviewee claimed that LGBT Malaysians receive no police protection and are often persecuted, beaten harassed and tortured (15). He alleged that, while sitting in a public park associated with homosexual activity in a suburb of Kuala Lumpur with a friend, he was threatened by police who suspected he was homosexual, handled roughly and had his car searched (15). The officers told the interviewee, “There is no place at all in this world for people like you guys. You guys are disgusting. You’re animals and do not deserve to be born to this world. The only place for you is hell” (15). Despite the fact that nothing sexual was occurring between the interviewee and his friend, the police wanted to arrest the men; the officers yielded after a bribe (16). According to Williams, this fear of arrest “was based on a realistic fear of what happens to gay people who come under the control of the law enforcement system” (16).

2. Carol Johnson, “Analyzing the Politics of Same-Sex Issues in a Comparative Perspective: The Strange Similarities between John Howard and Mahathir Mohamad,” (2006) 14 *Intersections: Gender, History and Culture in the Asian Context*.

- **Former Malaysian PM construes LGBT rights initiatives as form of colonialism**
- **Attempts to construct nationalism around a notion of homosexuality as Western**

According to Johnson, “Mahathir argues that attempts to improve the position of homosexual citizens in Malaysia are attempts to impose western values on Malaysian society and are another form of colonialism.” She asserts that the former longtime PM attempts “to mobilize a post-colonial nationalism by critiquing an alleged western ‘respect’ for homosexuality.”

3. Larry Catá Backer, “Emasculated Men, Effeminate Law in the United States, Zimbabwe and Malaysia,” 17:2 *Yale Journal of Law and Feminism* 1.

- **Malaysian nationalism deems effeminate men foreign, alien and corrupt**

This article analyzed the trial of Anwar Ibrahim as an exemplar of how “religion provides the primary socio-cultural setting within which gender meaning operates” (22)

According to Backer, “[n]ationalism brands men with feminine traits as foreign, alien and

corrupting: a danger to the state and the political order” (22). Anwar Ibrahim was “gendered [in his trials] ‘not-male,’ and thus corrupt and unworthy of power, since the socio-political hierarchy demands a morally fit male leader” (44). The Anwar incident, and other remarks made by former PM Mahathir reveal, according to Backer, that the “political is both gendered and enforced through institutions of an apparently neutral legal system” (46).

4. Honey Tan Lay Ean, “Jeffrey Jessie: Recognising Transsexuals,” *13th Malaysian Law Conference* (17 November 2005) online:
<http://www.malaysianbar.org.my/gender_issues/jeffrey_jessie_recognising_transexuals_by_honey_tan_lay_ean.html>.

“As can be seen, the experiences of transsexuals with the Law – religious or civil - have mostly been in the negative. But transsexuals have no choice except to engage with it – their mere being brings them into a collision course with the Law.”

5. Yik Koon Teh, “*Mak Nyahs* (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity,” 5:3 *The International Journal of Transgenderism*.

- **Malaysian transsexuals are deemed sexual deviants and are social outcasts**
- **Gender reassignment surgery or treatment is prohibited to Muslims**
- **Lack of medical expertise and Islamic prohibitions on gender reassignment for Muslims necessitates that gender reassignment surgery be obtained abroad**
- **Prohibitive costs limit accessibility of treatment**
- **55% of transsexuals report arrests by police and 28% report arrests by Islamic religious authorities**
- **Arrested individuals report discrimination, humiliation, ridicule and beatings by police or Islamic religious authorities**

According to Teh, Malaysian transsexuals are “labeled as sexual deviants and are generally shunned by society.” In 1983, Malaysia’s Conference of Rulers issued a *fatwa* prohibiting sex change operations for all Muslims. However Non-Muslim transsexuals “are generally allowed to be *mak nyahs*” but they too may be charged with “indecent behaviour” under section 21 of the Minor Offences Act.

According to Teh’s survey of 507 transsexuals, 74% had secondary school education but only 3% had attended a post secondary institution. 54% were sex workers and 73% had an income of less than \$US 263 per month; 30% lived below or around the poverty line.

Only 4% had any gender reassignment surgery. Due to Islamic laws prohibiting these operations for Muslims and a lack of medical expertise, these operations must be performed overseas; the costly procedure is not affordable to many trans Malaysians. Many Muslim respondents were also reluctant to seek surgery due to promises to parents and conflicts with Muslim burial rites.

Malaysian transsexuals can be charged with indecent behaviour under section 21 of the

Minor Offences Act and Muslims are additionally subject to penalties under Sharia law. According to Teh, the “Islamic religious authority, like the police, can also carry out raids among the Muslim community to identify wrongdoing against Islam.” 55% of respondents stated that they had been “caught by the police at some time.” The survey found that the “main reasons that they had been caught by the police seemed to be for cross-dressing (33%), indecent dressing (18%), prostitution (16%), a drug test, (13%), during a police raid or operation (10%), and loitering late at night (6%).” 71% of those who had been taken to a police station reported having been stripped and 10% stated they were forced to wear men’s clothed; 47% stated that they had been shamed and 46% were ridiculed or subject to discrimination and 9% were beaten. Police assumed they were of little moral fibre and “did not treat them humanely.”

Muslim transsexuals were subject to Islamic law enforcement and its courts. 28% of the respondents reported having been caught by Islamic religious authorities. The Sharia courts are active in prosecuting transsexuals:

At the Syariah Court, 55% of this group of respondents were charged with cross-dressing. About 30% were charged with indecent behaviour, 9% were charged with a drug offence, and 6% were charged with prostitution. The majority (93%) of those who had been caught by the police and/or the Islamic authorities said that they would not stop cross-dressing, while only 7% said that they would.

5. Ismail Baba, “Gay and Lesbian Couples in Malaysia,” (2001) 40:3/4 *Journal of Homosexuality* 143.

- **Isolation of LGBT persons in Malaysia and fears of being identified as gay**
- **Lack of formal social services on the governmental level**
- **Malaysian couples find co-habitation difficult due to social and familial pressures**

LGBT persons “are not well accepted by their family nor by Malaysian society” (145). Due to social prejudices, they “prefer to join together in big cities or small towns in search of moral support, acceptance, and even employment, especially in the sex industry” (145). Many “live in fear of being identified [as LGBT] and constantly suffer some form of stress” (145). A number of LGBT Malaysians “lead hidden lives” and seek acceptance through heterosexual marriage (146). Moreover, “Malaysia has not been very positive when responding to gay and lesbian related issues” (146).

There are, according to Baba, “no formal social services at the government level” catering to LGBT persons and the Pink Triangle, an NGO specializing in HIV/AIDS issues, is the only organization that addresses LGBT issues in the country (147). This NGO, according to complaints, “has not been fully effective” in its assistance to the gay community; one former member stated that “the organization is reluctant to play an active role for fear of political and social repercussions” (147).

Although there are venues catering to LGBT persons in Kuala Lumpur, the mass media is

largely homophobic and, due to religious and social pressure, “it is very difficult for gays and lesbians to come out in the open” (147-148). Their community is “denied civil and legal protection” and LGBT Malaysians are isolated from “mainstream” society in Malaysia (155).

Baba’s first case study recounted a relationship between a lesbian couple, one European and the other Malay-Muslim (149). Family pressures keep the couple from co-habitation and necessitate that the Malay partner hide the relationship from her children (149-150).

The second case study addressed a relationship between a Malay-Muslim and an ethnic Chinese (150-151). The Malay partner was previously married with children and the Chinese partner faces considerable and stress-inducing pressure to marry (151). Both participate in the gay community and are able to be open there; they “entertain and attend gay social gatherings as a couple” (151). Two of the Chinese partner’s previous partners “have ended up married but continue to actively have ongoing sexual relationships with other men” (151).

The third case study addressed a 10-year relationship between two Malay men, one of whom was previously married (151-152). One of the partners, however, did not consider himself homosexual and was uncomfortable in the gay community (153).

6. Baden Offord, “The Apartheid of Homosexuality,” (1999) 18 *Forum: Centre for Citizenship and Human Rights* 6.

- **In Malaysia, homosexuality is configured as something alien and serves as a “political and cultural tool of difference.”**

Offord recounts the sodomy trial of Anwar Ibrahim and an incident in 1992 in which PM Dr. Mahatir Mohamad stated that democracy would lead to homosexuality (6). According to Offord, “[t]his conflation of homosexuality with democracy was used by Dr. Mahatir to consolidate Malaysia’s cultural borders (and its postcolonial status) to maintain the purity and uniqueness of the Malaysian people” (6). Offord contends that homosexuality is a means of distinguishing the indigenous from the alien (or the “other”) (6-7). Offord contends that the denunciation of Anwar Ibrahim as gay was a means of making the politician and his liberal ideals foreign (7). In Malaysia, homosexuality serves as a “political and cultural tool of difference.”

LGBT Associations in Malaysia

1. **Leadership Program for Gays (LPG):** <<http://www.mylpg.net/index.html>>

LPG is based in Kuala Lumpur which organizes sport and recreational activities and seeks “to provide social and moral support for the well-being” of Kuala Lumpur’s LGBT community.

2. **Pelangi Community Foundation:** <<http://www.pelangifoundation.org/>>.

A gay oriented HIV/AIDS NGO.

3. **PLU Penang:** <www.plupenang.com>.

A Penang-based group for the LGBT community.

4. **Pink Triangle Foundation:** <<http://www.ptfmalaysia.org/>>.

An HIV/AIDS group based in Kuala Lumpur which provides services to vulnerable communities. The Foundation has programs targeting transsexuals and men who have sex with men.