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asian-pacific resource & research
centre for women



Justice
For Sisters



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Monitoring Report:

LGBTIQ+ RIGHTS IN MALAYSIA

Monitoring Report: LGBTIQ+ Rights in Malaysia

2020



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About ARROW

ARROW is a regional non-profit women's organisation based in Kuala Lumpur, Malaysia. It has consultative status with the Economic and Social Council (UN ECOSOC) of the United Nations. ARROW strives to enable women to be equal citizens in all aspects of their life by ensuring their sexual and reproductive health and rights (SRHR) are achieved.

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About Justice for Sisters

Justice for Sisters is a grassroots campaign organised by concerned members of the public to raise public awareness about issues surrounding violence and persecution against the Mak Nyah community in Malaysia. The campaign also aims to raise funds to finance court cases that have been brought up against transgenders who have been charged in Syariah court.

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About the Gender Equality Initiative (GEI) in Malaysia

Launched in 2020, the GEI aims to contribute to the implementation of relevant CEDAW and UPR concluding observations and recommendations, specifically the adoption of the gender equality act that aims to abolish discriminatory laws and policies against women and girls and fulfill the human rights of the LGBTIQ community against discrimination and violence in Malaysia.

We are grateful to the European Union for their funding of the initiative and this report.

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List of Acronyms

ARROW	Asian-Pacific Resource & Research Centre for Women
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
GBQ	Gay, Bisexual and Queer
HIV	Human Immunodeficiency Virus
HRD	Human Rights Defender
HRT	Hormone Replacement Therapy
JAKIM	Jabatan Kemajuan Islam Malaysia (Department of Islamic Development Malaysia)
JFS	Justice for Sisters
JHEAT	Jabatan Hal Ehwal Agama Terengganu (Terengganu Religious Affairs Department)
KLASS	Kuala Lumpur AIDS Support Services Society
KPI	Key Performance Indicator
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
MAC	Malaysian AIDS Council
MCO	Movement Control Order
MCMC	Malaysian Communications and Multimedia Commission
MOE	Ministry of Education
MOH	Ministry of Health
MSM	Men who have sex with men
NGO	Non-government organization
NRD	National Registration Department
NSP	National Strategic Plan on Ending HIV/AIDS 2016-2030
SOGIESC	Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics
SUHAKAM	Suruhanjaya Hak Asasi Manusia (Human Rights Commission of Malaysia)
SUARAM	Suara Rakyat Malaysia
TDOR	Transgender Day of Remembrance
UPR	Universal Periodic Review
WHO	World Health Organization

Executive Summary

This report provides findings of a baseline study to contribute to the implementation of the Universal Periodic Review (UPR) recommendations and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) concluding observations in Kuala Lumpur, Perak and Terengganu.

The baseline study was carried out to assess and establish:

1. The situation in Kuala Lumpur, Perak and Terengganu in relation to laws and its enforcement, state policies, employment, education, healthcare, media, human rights defenders.
2. Status of implementation of the UPR recommendations and CEDAW concluding observations in Kuala Lumpur, Perak and Terengganu.

This study is informed by a monitoring framework developed by ARROW to monitor progress, gaps, challenges and way forward in relation to intervention areas. The findings will inform the development of an advocacy plan.

In 2018, Malaysia came under review for CEDAW and UPR. The CEDAW concluding observations and UPR recommendations related to LGBTIQ persons can be summarized into these 3 categories:

THEME	ACTION POINTS OR RECOMMENDATIONS
LAWS	<ul style="list-style-type: none"> • Amend laws that discriminate LGBTI persons; • Allow for recognition of the gender of trans persons; • Introduce anti-discrimination laws that protect LGBTI persons from mistreatment and violence.
STATE POLICIES	<ul style="list-style-type: none"> • Amend laws that discriminate LGBTI persons; • Discontinue measures which aim to “correct” or “rehabilitate” LGBTI women; • Development of public awareness programs
EDUCATION	<ul style="list-style-type: none"> • Adopt anti-bullying policies in schools; • Undertake awareness-raising measures to foster equal rights for LGBTI students

Guided by the recommendations, the baseline report and subsequent monitoring project will focus on four key areas:

1. Criminalisation and legal barriers faced by LGBTIQ persons;
2. State-led anti-LGBTIQ activities and policies;
3. Protection in relation to discrimination and violence against LGBTIQ persons in the areas of healthcare, employment, education, gender-based violence, and human rights defenders (HRD).
4. Media narratives and representation of LGBTIQ persons;

Each section of the report will provide an overview of the issues followed by specific context at the state level.

The report specifies the areas of discrimination that will be monitored—employment, education, healthcare—in order to unpack and deepen the understanding of discrimination experienced by LGBTIQ persons. A section on media was added as the media representation of LGBTIQ persons has had a significant impact in shaping public opinion and acceptance, or lack thereof, of LGBTIQ persons in Malaysia.

Since 2018, there have been no positive changes by the government in relation to LGBTIQ persons. The interviews found that there are LGBTIQ-friendly healthcare providers and teachers who want to better support LGBTIQ patients and students. However, their efforts are typically self-initiated. They lack institutional support, and LGBTIQ inclusive and affirming policies are often absent.

Most of the information gathered was in the areas of laws, employment, healthcare, and media, which are areas that the respondents work in, have access to, or are directly affected by. As all respondents were adults in their late 20s and not working with students or education institutions, there is a lack of information on the education sector, especially at the state level.

FINDINGS

This is a summary of the findings:

1. **Laws that criminalize LGBTIQ persons have a systemic, direct and indirect impact on LGBTIQ persons; in particular they affect access to healthcare, employment and self-acceptance, among other areas.** In Malaysia, 'unnatural sex' is criminalized under the Federal and state Syariah laws. State Syariah laws also criminalize 'non-cisgender gender identity and cisnormative gender expression' as well as sex between persons of the same sex and gender. Other laws, in particular, solicitation of sex, are also used against LGBTQ people disproportionately.

The interviews and other documentation record cases of raids, surveillance, arrest, detention and prosecution of LGBTQ persons in Kuala Lumpur, Perak and Terengganu under various laws that directly criminalize sexual orientation, gender identities, gender expression and consensual sex, or other laws. Some raids are carried out with the purpose to 'curb the growing LGBT ideology'.¹

The punishment meted out in some cases was severe, and amounted to torture as well as degrading and cruel treatment. In particular, in two cases involving attempts to have sexual intercourse in Terengganu² and Selangor,³ the severe punishments, which included fines and caning, were seen as a deterrence.⁴

Many cases of arrests of transgender women due to sex work were reported and gathered through the interviews and other documentation. Trans women face increased employment discrimination, resulting in limited options of employment with sex work as one of the options of employment. The discrimination is often compounded by the criminalisation of trans women.

Meanwhile, indirect impact of criminalisation manifests in a profound fear of being outed, which impacts among other rights, access to services, opportunities, and information.

2. **State-funded anti-LGBTIQ activities** continue at the state level and target all within the LGBTIQ umbrella. The programmes have resulted in establishment of smaller groups, led by former participants of the state-led programmes. It is important to note that the monitoring of

anti-LGBT programme at the state level is insufficient due to lack of human resources, capacity and other resources.

3. **The lack of legal gender recognition** has a systemic impact on trans and non-binary persons. The impact ranges from lack of disaggregated data to widespread discrimination, resulting in deprivation of the right to live with dignity and limited access to services, opportunities, and information.
4. **Discrimination against LGBTIQ persons continues and is often prolonged**, as LGBTIQ are not connected to community support systems, have little information regarding complaint mechanisms, and face uncertainty over whether LGBTIQ persons have the right to make complaints and fear of reprisals, in particular of being outed. Compounded by the criminalisation and social attitudes towards LGBTIQ persons, the respondents do not report cases of discrimination or violence as they do not want to prolong the case due to the cost of discrimination being high on the individuals involved.

LGBTIQ people also face violence in private and domestic spaces which is almost invisible to the public. The interviews documented experiences of LGBTIQ persons being subjected to forced marriages, physical violence, surveillance, and restriction of movement, including by family members. Through our interviews, we found that survivors are reluctant to lodge police reports because they do not want to further jeopardize their relationship with the perpetrator.⁵ Underage LGBTIQ people are also at risk of loss of financial support, tighter movement control and violence if they try to seek help.⁶

The complex relationship with the perpetrators, in this case, family members coupled with concerns over protection given the climate of criminalisation hinders LGBTIQ persons from making reports of their experiences. Further, the available redress mechanisms are often punitive in nature and not aligned with the values and outcomes desired by the survivors, who do not want to punish their family members.

Discrimination faced by LGBTIQ persons in healthcare, employment, and education, as well as violence faced in domestic spaces, is not well documented and reported; as a result, the experiences remain invisible with limited redress and justice.

The understanding of discrimination could also be skewed, and there is a stark difference in understanding of discrimination between LGBTIQ human rights defenders and LGBTIQ persons.

The interviews revealed that in some cases, the discrimination experienced by LGBTIQ persons is exacerbated by other identities that are stigmatized, marginalized or criminalized. Thus, the experiences are intersectional, meaning the experience of discrimination has multiple layers and has more than one contributing factor. Some common intersections include sex work, HIV status, union membership, class, and religion.

5. In **healthcare** settings, **discrimination** takes place due to a lack of affirming and non-discrimination policies, training of personnel, and monitoring and evaluation of the programmes and practices. The study reports LGBTIQ persons still face unfriendly practices that hinder them from accessing medical care and causes them to be at high risk for health problems and diseases.

Malaysia's HIV response has had multiple forms of impact on access to healthcare and other areas. On one hand, HIV response has led to focused interventions for key affected populations, which includes trans women; gay, bisexual and queer men as well as other men who have sex with men (MSM); sex workers; drug users and people living with HIV (PLHIV). Community-friendly health clinics have been established across the country to ensure key affected populations are able to access HIV and STI related services. This initiative is supported by an outreach programme by community-based organizations in each state. The outreach programme connects communities to the clinics, documents negative experiences and carries out outreach to promote the clinics online and offline. This has provided opportunities for healthcare providers to be trained and sensitized to SOGIESC despite resistance from some healthcare providers.

However, it is important to note that HIV intervention in Malaysia is still largely focused on service provision, instead of removal of structural barriers. In the larger scheme of things, the MOH has yet to see the correlation and impact of the criminalisation, discriminatory state led activities and social attitudes towards health-seeking behaviour and self-acceptance.

As a result, there is an increase in HIV prevalence through sexual transmission. The Country Progress Report on HIV/AIDS 2019 projects that by 2030, the MSM key population will become the main key population in Malaysia affected by HIV based on current trends.⁷

6. **Employment discrimination** remains the most concerning area of discrimination for many. The manifestation of such discrimination is unique to the specific population. Transgender women face multiple forms of discrimination based on their gender identity and gender expression. This includes being denied employment opportunities because of their gender identity and gender expression. Meanwhile, queer men are denied fair employment opportunities if they are HIV positive. A queer woman respondent attributed the sexist and misogynistic environment at the workplace coupled with fear of being outed as factors that prevented her from seeking formal employment opportunities.
7. **The lack of protection for Human Rights Defenders** coupled with the criminalisation and social stigma towards LGBTIQ persons creates a hostile environment for HRD to carry out their work and activism.
8. **The negative LGBTQ representation in the media** adversely affects LGBTQ people. It contributes to the stigma and reinforces the status quo that excludes the protection and needs of LGBTQ people. Subsequently, this heightens the stress of LGBTQ people with their family members, affecting their mental health and safety.

Methodology

The study employed several methods to gather information for this baseline report. The information gathered focused on experiences and events between 2018 and 2020.

First is a desk review, which involved collation of Parliament Hansards, legal analysis, human rights reports by SUHAKAM and Suaram, and existing documentation and media monitoring by JFS. Some of JFS' documentation is not publicly available, but can be made available if needed.

There is a disproportionality of information between lesbian, gay, bisexual, queer and non-binary experiences and trans experiences. There is more documentation on trans experiences through multiple documentation and reports, for example the Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity) by SUHAKAM in 2019.⁸ However, there is still a lack of information on lesbian, gay, bisexual, queer and non-binary persons, and trans persons outside of Selangor and Kuala Lumpur. Interviews with lesbian, gay, bisexual, queer and non-binary persons were mostly relied on to address the information gap.

The lack of capacity and human resources in monitoring and documenting human rights violations and LGBTIQ related activities held at the state level is reflected in the report.

Further, there is a lack of access to statistics and information in relation to LGBTIQ experiences in Malaysia. For example, statistics on arrests of LGBTIQ persons are not up-to-date or easily available.

The lack of gender recognition coupled with the lack of intersectional and disaggregated data results in a lack of comprehensive data on people who do not fall within the two binary genders. Currently, the data that is collected is as per the gender marker on legal documents. Thus, this typically excludes trans and non-binary people.

Legal gender recognition is a practical solution in addressing not only data gaps, but also ensuring trans and non-binary people live with dignity. It would enable a more representative, dynamic, and accurate collation of information, critical for formulation of needs and rights-based policies.

Second is by interviews with LGBTIQ persons, activists and community organizers. The interviews were held between 26 June and 4 July 2020. The interviews were conducted virtually due to the movement control order (MCO) in response to the Covid-19 pandemic and for all parties' convenience. We have interviewed a total of 16 people, with a duration ranging from 40 minutes to 120 minutes. The questions asked were open-ended and guided by a questionnaire developed by Justice for Sisters.

In total, 17 interviews were conducted in Kuala Lumpur, Perak and Terengganu. 13 of the 17 interviewees were with human rights defenders or community-based groups that provide services to LGBTIQ persons. The interviewees age and ethnicity are incomplete. The age of the interviewees ranges from 20s – 50s. At least seven were in their 20s and 30s. With regard to ethnic background, seven were Malays, five were Chinese, one was mixed, others are unknown.

TABLE 11: NUMBER OF INTERVIEW CARRIED OUT IN KUALA LUMPUR, PERAK, AND TERENGGANU BASED ON GENDER IDENTITY AND SEXUAL ORIENTATION

Gender Identity and Sexual Orientation	Kuala Lumpur	Perak	Terengganu
Lesbian, Bisexual, Queer Women	3	1	—
Gay, Bisexual, Queer Men	5	—	1
Trans Women (*all trans women identified as heterosexual)	—	4	—
Gender Queer (*one respondent also identified as trans feminine)	2	—	1
Total Number of Interviewees	10	5	2

Due to the MCO, the interviews were carried out online. This limited the number of interviews that were carried out as the digital divide between Kuala Lumpur and other states is wide. Respondents outside of Kuala Lumpur largely communicate and connect to the internet via mobile devices using their mobile phone data. This limited the possible methods of interviews. Some interviews were carried out using voice notes over WhatsApp, while others were carried out via other online platforms. All interviews were transcribed and analyzed.

The baseline study did not interview any state actors. Thus, the findings were limited to LGBTIQ experiences. No LGBTIQ young people were interviewed for this baseline study.

Justice for Sisters also used its insights and engagements on UPR through the Coalition of Malaysian NGOs in the UPR Process (COMANGO) and CEDAW with the Joint Action Group for Gender Equality (JAG).

Section 1:

Overview and Background of Recommendations Received

To date, Malaysia has ratified three of nine UN treaties – the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010.⁹ As a state party to the treaties, the state is obligated to harmonize the treaty into domestic law in order to improve standards of human rights domestically.¹⁰ The state is also expected to submit a national report and be periodically reviewed¹¹ by the respective committees that monitor¹² each human rights Convention.

As a member state of the UN, Malaysia also participates in the UPR process. Unlike the treaty processes, the UPR is a peer review process.¹³ The state can accept, partially accept or take note of the recommendations made by other countries.

CEDAW

Malaysia's latest review by the CEDAW committee was in 2018.¹⁴ Malaysia acceded to CEDAW in 1995. Signatories to the Convention are obliged to submit a report on the government's compliance with CEDAW to the CEDAW committee for a review every four years. NGOs can also participate in this process by submitting reports to the committee. The CEDAW-related processes are overseen by the Ministry of Women, Community and Development.

Malaysia has only been reviewed twice by the CEDAW Committee. In the first review in 2006, no concluding observations were made on LGBTIQ women-related issues.

In the last CEDAW review, the CEDAW Committee made the following concluding observations to Malaysia:

- Amend laws which discriminate LGBTI women;
- Apply a policy that protects LGBTI women from discrimination and violence;
- Discontinue measures which aim to “correct” or “rehabilitate” LGBTI women; and
- Adopt anti-bullying policies and undertake awareness-raising measures to foster equal rights for LGBTI students.

UPR

Malaysia has participated in three cycles of the UPR – 2009, 2013 and 2018.¹⁵ The UPR is a United Nations Human Rights Council (UNHRC) process, which involves a review of the human rights records of all UN Member States every five years. In Malaysia, the UPR-related processes are coordinated by the Ministry of Foreign Affairs.

In the review, each State will report the measure by the state to improve the human rights situations in their countries and recommendations will be given by other Member States to help one another fulfil their human rights obligations.¹⁶ CSOs can also participate in the process by submitting to the “other stakeholders” report, which will be considered during the review.¹⁷

In Malaysia's last review, it received 268 recommendations covering a wide range of areas, including international obligations, civil and political rights, discrimination, and human rights education and training. Of these, 147 recommendations were accepted in full, 37 were partially accepted and 84 were noted.¹⁸

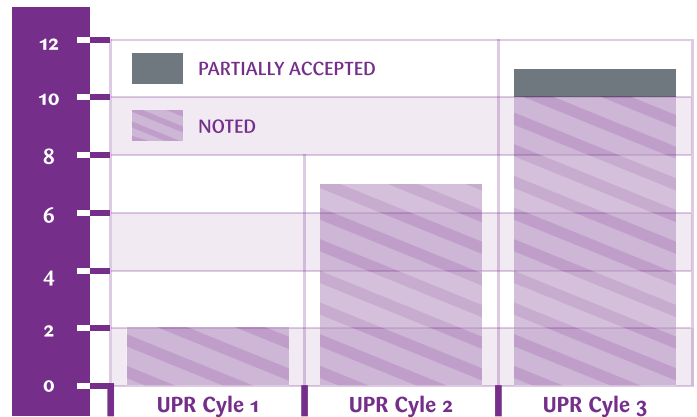
In particular, Malaysia received 11 LGBTIQ-related recommendations. Ten of them, relating to the criminalisation, legal barriers and protection in relation to discrimination and violence against LGBTIQ persons, were noted; one of them, relating to education, was partially accepted.

Malaysia has gradually received an increasing number of LGBTIQ-related recommendations over the years as illustrated in Chart 1. Thus far, out of the total 20 recommendations received, only one was partially accepted. To illustrate what action points were covered in the LGBTIQ-related recommendations (refer to Table 2).¹⁹

It should be noted that some recommendations contain more than one action point. For instance, Canada's recommendation in the 3rd UPR cycle contains two action points: First, review and repeal laws that directly or indirectly criminalise

consensual same-sex sexual activity and second, take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity.²⁰

CHART 1: MALAYSIA'S RESPONSE TO LGBTIQ-RELATED RECOMMENDATIONS ACROSS ALL THREE UPR CYCLES



Source: Human Rights Commission of Malaysia (SUHAKAM), THE UNIVERSAL PERIODIC REVIEW: A Practical Guide to the 3rd Universal Periodic Review (UPR) of Malaysia (2018 -2023), 2019; https://www.suhakam.org.my/wp-content/uploads/2020/05/UPR-Booklet-ENG_FINAL.pdf.

TABLE 2: ACTION POINTS RECOMMENDED IN THE UPR CYCLES

Action Points	UPR Cycle 1	UPR Cycle 2	UPR Cycle 3
Review and repeal laws that discriminate persons on the basis of their sexual orientation and gender identity as well as consensual sexual activities	2	5	5
Legal gender recognition	—	—	1
Protection against discrimination	—	3	7
Anti-bullying	—	—	1

Source: Human Rights Commission of Malaysia (SUHAKAM), THE UNIVERSAL PERIODIC REVIEW: A Practical Guide to the 3rd Universal Periodic Review (UPR) of Malaysia (2018 -2023), 2019; https://www.suhakam.org.my/wp-content/uploads/2020/05/UPR-Booklet-ENG_FINAL.pdf.

As a state party to the treaties, the state is obligated to harmonize the treaty into domestic law in order to improve standards of human rights domestically. The state is also expected to submit a national report and be periodically reviewed by the respective committees that monitor each human rights Convention. Malaysia has only been reviewed twice by the CEDAW Committee. In the first review in 2006, no concluding observations were made on LBTQI women-related issues.

Section 2:

Background of Malaysia, Kuala Lumpur, Perak, and Terengganu

Malaya gained independence from British colonization in 1957. Sabah and Sarawak joined Malaya and formed Malaysia in 1963. Malaysia is a plural society. As of 2019, the country is comprised of Bumiputeras (62.5%), Chinese (20.6%), Indians (6.2%), others (0.9%) and non-Malaysian citizens (9.8%).²¹

Malaysia adopts a constitutional monarchy with a Federal and Parliamentary system.²² It has a federal state system with federal laws that apply across the whole country. Meanwhile, each of the 13 states has its own legislative and executive branches. Each state and the Federal Territory of Kuala Lumpur has an Islamic Department and Council whose roles are to regulate Islamic religious affairs.

The Federal Constitution of Malaysia is the supreme law in Malaysia, and Article 5 to 13 protect the fundamental liberties of citizens. In particular, Article 8(2) of the Constitution prohibits discrimination on the grounds of gender. Although gender is not defined under the Constitution or the Interpretation Acts, gender is understood as a binary, not as a spectrum.²³ Sex and gender are considered the same and they refer to a person's physical characteristics only; for instance, sex chromosomes, gonads, sex hormones, internal reproductive systems and external genitalia.²⁴

Despite the criminalisation of LGBTQ persons under various laws and state-led efforts that target LGBTQ persons, state actors have insisted that the fundamental rights of LGBTIQ people are protected under the Federal Constitution,^{25, 26} and that LGBTIQ people in Malaysia are treated equally²⁷ and have access to government services and assistance without discrimination.²⁸ In a press statement by the Ministry of Women, Family and Community Development on its CEDAW review, the government stated that “Malaysia upholds the rights and dignity of all persons in Malaysia. They also stated that in any case of discrimination, “due process of the law will be exercised accordingly,” in response to questions regarding discrimination against LGBTI persons.²⁹

This skewed understanding of gender and discrimination, criminalisation and approach on LGBTIQ issues have marginalized and denied equality, justice and dignity for LGBTIQ persons. Case in point, the Gender Equality Bill was stalled due to the use of ‘gender’ in the bill, which was deemed as expansive and inclusive of LGBTIQ persons.

The general attitudes towards LGBTIQ persons are reflected by some of Malaysia's state actors, including ministers, state assembly persons and members of Parliament. The common narratives are ‘LGBTIQ people are Western ideas’,³⁰ ‘LGBTIQ people are a result of the failure of family institutions’,³¹ ‘The state needs to increase punishment to curb the “spread of LGBTIQ”’, and ‘LGBTIQ people need to be cured or corrected with the right approach and effort’.

In a post by JAKIM on its social media, it stated that JAKIM does not agree with LGBT behaviour; however, it does not deny the rights of LGBT people to be ‘guided’ and ‘advised’ (to the right path or to be rehabilitated). The post further stated that although Jakim ‘*menyantuni*’ or reaches out with compassion to the LGBT communities who want their religious rights and to be guided with wisdom and compassion, that does not mean that JAKIM compromises with the behaviour that contradicts the Syariah guidelines.³²

In 2011, the then Minister of Religious Affairs announced that the government had adopted two approaches in dealing with the LGBTIQ issues – prevention and enforcement of laws. In October 2019, Fuziah Salleh, the then Deputy Minister of Religious Affairs, shared in Parliament that the government takes a non-punitive and rehabilitative approach through a dakwah method in responding to LGBTIQ-related issues. She added that Islam teaches its followers to hate the act, not the human being. This approach pushes LGBT people into immoral or criminal activities. The government also believes that 83% of the LGBTIQ population is in sex work, and it is important to guide them out of sex work and not isolate them further.³³

Despite the government having shifted to a “soft approach”, the persecution and prosecution of LGBTIQ persons is still ongoing. It is important to note that this approach is still harmful and widely discredited as it causes long-term psychological and emotional harm.

HISTORY AND ORIGINS OF CRIMINALISATION

Sexuality and gender diversity have always been documented in the Malay Archipelago, for example, among the Manang Bali, a group of gender nonconforming shamans from the indigenous Iban tribe; and the Bissu, someone who has aspects of all genders combined from the Indonesian Bugis people.³⁴

Some anti-LGBTIQ laws in Malaysia are rooted in colonialism, for instance, Section 377 of the Penal Code. Section 377 was an attempt by the colonists to impose their moral virtues and standards of behavior by reforming the colonized, at the same time protecting the colonizers against moral lapses.³⁵

Post-colonialism, the state has embraced and reinterpreted Section 377 as evidenced by the multiple amendments.³⁶ In fact, one of the most frequently recurring themes by members of Parliament and state actors is to introduce harsher laws against LGBTIQ people, despite the over-criminalisation under Federal and state laws.

Originally worded as ‘whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished ...’,³⁷ Section 377 underwent a major review in 1989 resulting in the introduction of five new sections under Federal law - section 377 A, B, C, D and E. These new sections specified what constitutes carnal intercourse and criminalised consensual carnal intercourse. Another amendment in 2017 resulted in an increase of punishment under Section 377, and Section 377B currently imposes mandatory whipping for consensual sex between adults.³⁸

The criminalisation of sexual orientation, gender identity, and gender expression under the Syariah Criminal Offences Enactment, on the other hand, began from 1985 onwards.

To date, there are many laws that criminalize LGBTIQ persons on the basis of sexual orientation, gender identity and gender expression, and many have been prosecuted under these laws. For detailed information on this, please refer to the section on criminalisation and legal barriers.

THE GROWING LGBTIQ ACTIVISM IN MALAYSIA

Nevertheless, LGBTIQ activism has flourished over the last 30 years. There are registered groups that are able to access funding from the Malaysian AIDS Council (MAC), ministries, and other funders. It is important to note that the access to government funding is mostly related to HIV response. Secondly, there are non-registered groups, who organize open houses, gatherings, and other social events.

There has been a rise in LGBTIQ visibility and activism in the past few years. The founding and banning of Seksualiti Merdeka, an annual sexuality rights festival, in 2008,³⁹ and the transgender case challenging the constitutionality of Section 66 of the Negeri Sembilan Syariah Criminal (Negeri Sembilan) Enactment 1992⁴⁰ prompted increased trans visibility in Malaysia. The participation of LGBTIQ human rights groups’ in the human rights processes and mechanisms, including CEDAW and the UPR, have also increased with each cycle.

Kuala Lumpur

The Federal Territory of Kuala Lumpur is the capital of Malaysia, geographically located in the state of Selangor. The estimated population of Kuala Lumpur in 2019 is 1.78 million. The labour force of Kuala Lumpur as of 2019 is 863,400 persons, with an unemployment rate of 2.6%.⁴¹

The demarcation between Kuala Lumpur, Klang Valley, and Selangor is not entirely distinct. Klang Valley does not have an official demarcation; it is made up of adjoining cities and towns in the most urban areas of Selangor. The cities and towns in Klang Valley are well-connected due to the highly developed transport system.

As a Federal Territory, Kuala Lumpur does not have a state legislative assembly and a Chief Minister or Menteri Besar (MB).⁴² Kuala Lumpur is administered by the Kuala Lumpur City Hall (DBKL).⁴³ It has a Federal Territories Islamic Religious Department (JAWI)⁴⁴ and the Federal Territories Islamic Religious Council (MAIWP).⁴⁵

Between 2017 and 2018, the *Mufti*⁴⁶ had several engagements with the transgender community in Kuala Lumpur. It was reported that he empathised with the struggles faced by

the transgender community. He even proposed the *fatwa*⁴⁷ declaring 'transgender people as un-Islamic' to be revisited, adding that the 'phenomenon' is not inherently wrong. Citing Islamic teachings, he said there was a need to distinguish between men who impersonate as women, and those who are born physically male but possess a female gender identity.⁴⁸ However, this was short-lived. In July 2020, in his capacity as the Minister of Religious Affairs, he gave "full license" for Islamic authorities to arrest and "educate" transgender people.⁴⁹

LGBTIQ Communities in Kuala Lumpur

LGBTQ activism and networks are concentrated in the Klang Valley. There are more support services and community groups for LGBTQ people compared to other states. This includes HIV services for gay men and trans women, shelter for trans women, mental health support, and online and offline community support, amongst others, provided by groups of various sizes and registration status.⁵⁰

Perak

The estimated population of Perak in 2019 is 2.51 million.⁵¹ The labour force of Perak in 2019 is 1,080,300 persons, with an unemployment rate of 3.4%.

Ipoh, the capital city of Perak, only comprises 3% of the entire state. Yet Ipoh is the only urban area in the state. Other districts include Sungai Siput, Batu Gajah, Setiawan, Teluk Intan, Slim River, Kuala Kangsar, Taiping, Bagan Serai, and Grik, which according to some interviewees can be considered as rural areas.

Perak has a State Legislative Assembly composed of 59 members representing constituencies throughout the state.⁵² The state has a state executive council, composed of state assembly representatives who are responsible for different portfolios including finance, education, housing, healthcare, infrastructure, amongst others.⁵³ The role of the exco is to govern the state by formulating policies and development programs, managing budget and finance, debate on issues concerning the state, and propose and amend laws.

In addition, there is the Perak Islamic Religious Department (JAIP) and Perak Islamic Religious Council & Malay Customs (MAIPK) responsible for Islamic affairs within the state.⁵⁴ The Perak state also introduced a youth parliament in 2016 by the then Chief Minister, Datuk Seri Dr Zambry Abdul Kadir to increase youth participation in law and policy making among others.⁵⁵ In March 2018, the youth parliament was in session for three days. Among the seven motions that were tabled and debated in the youth parliament was 'LGBT'. In particular, the motion discussed the growing LGBT ideology, their call for recognition, and measures to prevent the growing LGBT ideology by strengthening family institutions.⁵⁶

In the same year, the Perak *mufti* called for actions to address the growing trend of 'immoral activities', including the rise of LGBT population in the country. He criticized the lack of enforcement of existing laws and suggested parental effort in giving children a strong educational foundation consisting of strong religious belief and good moral behaviour.⁵⁷

LGBTIQ Communities in Perak

Based on our interviews, there does not seem to be a large community comprising all genders and sexualities in Perak. LGBTQ persons may still be connected to other LGBTQ persons, however, consisting primarily of friends. The general environment that stigmatizes LGBTQ persons does not allow LGBTQ issues to be openly talked about. In turn, it acts as a barrier for LGBTQ persons to meet each other or socialize.

YS, a human rights defender in Ipoh, said it is difficult to estimate the size of the LGBTQ community due to their lack of visibility, but there is a visible trans women community, including migrant trans women.⁵⁸

Factors that influence how LGBTQ people socialize include their identities, language, social background, place of residence and occupation. For example, sex workers are usually connected because of their work, thus they are more connected physically.

The interviewees shared that the most common way for people to connect is through social media and WhatsApp groups. However, the interviewees also pointed out there should not be an assumption that accessibility to the internet means that LGBTQ persons will be able to find LGBTQ groups in Malaysia; the key factor is visibility and whether the environment is conducive for LGBTQ human rights groups to operate.

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YS has received cases of discrimination and violence by LGBTQ persons from areas outside of Ipoh through non-LGBTQ networks. YS was approached because other people knew she was doing LGBTQ-related work. YS' visibility allows people to reach her and seek assistance. The visibility of LGBTQ activists facilitates access to information and support.

Thus far, there is only one registered HIV community-based organization in the state, *Pekasih*, which is located in Ipoh. The group is funded by the MOH for key affected populations. They provide safe sex kits and HIV tests and organize prayer sessions and communal events. One of the trans women interviewees said that she and other trans women often reach out to *Pekasih* whenever they need assistance, "Whatever issues that trans women have, we will channel it to *Pekasih*".⁵⁹ Sometimes, cases of discrimination against trans women are also referred to *Pekasih*, because the community does not know who else to refer the cases to.

Terengganu

The estimated population of Terengganu in 2019 is 1.25 million. The labour force of Terengganu in 2019 is 488,200 persons, with an unemployment rate of 3.5%.⁶⁰

The Terengganu State Legislative Assembly is composed of 32 members representing constituencies throughout the state.⁶¹ Similar to Perak, the state has a state executive council,

composed of excos who are responsible for governing the state according to their different portfolios.⁶²

In addition, there is the Terengganu Religious Affairs Department (JHEAT) and Islamic Council and Malay Customs Terengganu (MAIDAM).⁶³ The State Religious Department's roles include creating a community that practices Islam in all aspects of life and upholding justice according to Islamic laws.⁶⁴

In December 2017, Terengganu State Exco for Communications, Multimedia and Special Functions Ghazali Taib announced their plan to cooperate with JHEAT to help the trans women community in the state. However, the ultimate objective was to "correct" their gender identity.⁶⁵

LGBTIQ Communities in Terengganu

The interviewees shared that the LGBTQ people in Terengganu tend to keep to themselves. Despite knowing that there are other LGBTQ people within the proximity, there are no support groups and gatherings whatsoever. Social activities are limited to small gatherings of four to six individuals eating together at restaurants. One of main hindrances is the restriction of freedom of expression due to the very low acceptance of LGBTQ people in the state.⁶⁶

*"A gay person has no freedom to express themselves at all due to the conservative and culturally less acceptance environment in Terengganu," T said.*⁶⁷

*"They keep to themselves with their own work, and activities. The groups are not connected or linked with government and private agencies. They are usually with their own group," P said.*⁶⁸

Any existing groups are of a very small number and there is very limited cross interaction. It is difficult for members of the LGBTQ community from different ethnicities to connect due to language barriers and cultural differences.⁶⁹

Section 3:

Findings

3.1 Criminalisation and Legal Barriers

There are many laws that criminalize persons based on consensual sexual acts, sexual orientation and gender identity and gender expression under the Federal and state laws. In addition, trans and non-binary persons experience legal barriers to change their name, gender marker and other gendered details in legal documents. Other than laws, there are also *fatwas*—some of which are gazetted at the state level—that declare trans people as haram, prohibit change of details in legal documents and legal recognition, and prohibit participation and organization of LGBTIQ-related events.

In general, the laws and *fatwas* have wide-reaching impact, from violation of right to dignity, privacy, freedom of expression, self-determination, and public participation, to the restriction of access to healthcare services. The laws create a chilling effect on the rights of LGBTIQ persons and reinforce negative perceptions towards them, resulting in marginalization of LGBTIQ persons.

Following a *fatwa* on trans people in 1982, gender affirmation surgeries and some trans specific health care services provided in University Hospital were discontinued, denying access to health care for all trans people. In addition, the *fatwa* has also had an insidious impact on application by trans people to change name and gender marker in legal documents.⁷⁰ Over the years, applications by trans people to change name, gender marker and last digit of the serial number in the identification card have been rejected.

In recent years, there has been a growing call to curb LGBTQ visibility, in particular on social media. Other laws have also been used to silence LGBTQ-inclusive voices. In March 2019, the organizers of the Women's March were subjected to police investigation under **Section 4(1) of the Sedition Act 1948**⁷¹ and **Section 9(5) of the Peaceful Assembly Act 2012**,⁷² as the march had visible participation of LGBTQ persons.⁷³

SUMMARY OF LAWS THAT CRIMINALIZE PERSONS BASED ON SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEXUAL ACTS, AND OTHER LEGAL BARRIERS

FEDERAL LAWS

- **Penal Code 377** criminalizes consensual carnal intercourse between adults.
- Laws that disproportionately affect LGBTQ persons.
- **Dangerous Drugs Acts** are often used to raid gay friendly clubs, saunas and other establishments.
- **Section 372B** of the Penal Code.
- **Section 21 of the Minor Offences Act** (Public Indecency law).

STATE SYARIAH LAWS

- **Liwat** criminalizes sexual relations between men. Liwat is criminalized in 11 states except Pahang, Perak, and Selangor.

- **Musahaqah** criminalizes sexual relations between women. *Musahaqah* is criminalized in 13 states except Pahang.
- **Sexual relations between persons of the same gender** can be found in Selangor.
- **Sexual intercourse against the order of nature** can be found in four states - Selangor, Sabah, Melaka and Negeri Sembilan.
- **Male person posing as a woman** criminalizes trans women based on gender identity and gender expression in all states in Malaysia.
- **Female person posing as a man** criminalizes trans men based on gender identity and gender expression in four states in Malaysia - Sabah, Pahang, Perlis and Negeri Sembilan.

OTHER LEGAL BARRIERS

- Change of name and gender marker on legal documents
- *Fatwas* in relation to LGBTQ persons have had adverse impacts specifically on access to healthcare, self-determination and right to live with dignity. Some of the key *fatwas* in relation to trans and gender diverse persons that have been discussed by the Fatwa Committee of the National Council for Islamic Affairs are:
 - Gender affirmation surgery (1982). This *fatwa* declares trans people as haram or illegal and prohibits gender affirmation surgeries.⁷⁴
 - Position of transgender person (1983 and 1989). This *fatwa* declares trans people as haram or illegal.
 - Ruling on IC. Only gazetted in Selangor.
 - *Fatwa* on *pengkid* (trans masculine identity). At least seven states in Malaysia declare *pengkid* as *haram* in their state gazette - Johor, Kedah, Perak, Melaka, Kuala Lumpur, Pulau Pinang, and Terengganu.⁷⁵
 - Other *fatwas* include prohibition to organize and participate in MSM related events (Pahang, unclear if gazetted).⁷⁶ There are also *fatwas* issued against Comango for supporting the human rights of LGBTQ persons among other things. (Pahang, unclear if gazetted).⁷⁷

Despite the climate of over-criminalisation of LGBTQ persons in Malaysia, harsher sentences and introduction of new laws to punish LGBT persons are a running theme in Parliament, media and social media.

Case in point, in a Parliament session in July 2019, the former Prime Minister, Dr Mahathir Mohamad, was asked whether the government intends to increase heavier punishment for unnatural sex offenders for stronger deterrent effect. He responded that the government has no plans to review the existing Sections 377B and 377C as they were adequate.⁷⁸

SECTION 66 OF THE NEGERI SEMBILAN SYARIAH CRIMINAL OFFENCES ENACTMENT

In 2019, Section 66 of the Negeri Sembilan Syariah Criminal Offences Enactment, which criminalized ‘male persons who wear women’s attire or pose as a woman’, was amended to include ‘for immoral purposes’.⁷⁹ The punishment was also increased from a fine not exceeding RM 1,000 or a term of imprisonment not exceeding six months or both, to a fine not exceeding RM 3,000 or a term of imprisonment not exceeding two years or both.⁸⁰ Additionally, Section 66A was introduced to criminalize female persons who wear men’s attire or pose as a man.⁸¹

In tandem with this is the increasing criminalisation at the state level and climate of prosecution, where LGBTQ are sentenced to harsh punishments, creating a wave of fear among LGBTQ persons to express themselves, participate in LGBTQ related social events, gatherings and activities, among other things.

TREND OF ARREST AND PROSECUTION

GR, one of the interviewees, observed the current trend of arrest under Syariah laws’ uses *liwat*, encouraging vice, among other provisions.⁸² Indeed, there have been more sex related cases under Federal and state Syariah laws that have been reported in the media and through community networks between 2018 and 2020. In 2019, in a high-profile case involving a minister and a political secretary, the two were investigated under Section 377D for gross indecency.⁸³ The investigation was later dropped.

Between the three states, Terengganu reported the highest number of arrests under various provisions of the Terengganu state Syariah laws.

GR also observed that trans women specifically face multiple forms of criminalisation.

*“Under civil laws, there are laws against sex workers. It doesn’t say that it criminalizes LGBTIQ people, but many who are arrested under this law (372B) are from the community.”*⁸⁴

Section 372B of the Penal Code criminalizes soliciting sex ‘for the purpose of prostitution or any immoral purpose’ and imposes an imprisonment for a term not exceeding one year or with fine or with both.”

INCREASED VULNERABILITY AND INEQUALITY UNDER THE LAW FACED BY TRANS WOMEN

The lack of legal gender recognition, stereotypes and systemic discrimination compound the vulnerability of transgender women, in particular to arbitrary arrest, detention, harassment and mistreatment.

The lack of opportunities and discrimination in the employment sector, in addition to the criminalisation of sex work, increases the vulnerability of trans women sex workers, as well as LGBTQ sex workers, to arbitrary arrest and detention, hate crimes as well as other forms of human rights violations with impunity.

Further, because of the stereotype of trans women as sex workers, the risk of arrest extends to trans women who are not sex workers. Trans women who are in areas perceived as sex work hotspots are also vulnerable to harassment and arbitrary arrest.

I’m Scared To Be A Woman, a report by Human Rights Watch (HRW) published in 2014, documented the following experience:

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

*They took me to Chow Kit police station and put me in lockup. A police officer tried to scare me by saying they would take me to the Sharia law court. I said, ‘Send me—I didn’t do anything wrong.’ I think he was trying to scare me in order to get money, but I knew my rights. Most transgenders, if you don’t give money, they send you to the Sharia law court. After half an hour he released me.”*⁸⁵

LEGAL GENDER RECOGNITION

According to documentation, research and anecdotal evidence, trans people were able to change the details (name, gender marker and last digit of the serial number in IC) in their legal documents, including the national identification card and birth certificate, between the 1980s and early 2000s, although limited to only post-operative trans people. However, the complex and costly process has become increasingly restrictive over the years, despite legal precedence allowing amendments in legal documents for trans people.

In several cases on legal gender recognition, judges have used Article 5 of the Federal Constitution, which grants the liberty of a person to find a ruling in favour of transgender people.⁸⁶

Cases have been unsuccessful because courts rely on Corbett vs Corbett and Bellinger vs Bellinger as precedents.⁸⁷ Based on these cases, the four criteria required to determine ‘sex’ to make the changes include chromosome, gonads, genital, and psychological factors. This approach is not only outdated, but inconsistent with facts on sex and gender. Neither chromosome nor genitals determine our gender identity.

In 2016, Justice Nanthan Balan relied on Article 5 of the Federal Constitution, which grants the liberty of a person to find a ruling in favour of transgender people. The judge departed from Corbett and followed the approach taken by an Australian case - Attorney General for the Commonwealth v Ken and Others, where “the court emphasized on the importance of abandoning the chromosomal factor and highlighting the imperative need to view the matter from the physiological and physiological perspective.”⁸⁸ The judge then ruled,

“The Plaintiff has a precious constitutional right to life under Article 5(1) of the Federal Constitution and the concept of ‘life’ under Article 5 must necessarily encompass the Plaintiff’s right to live with dignity as a male and be legally accorded judicial recognition as a male.”

The decision by Justice Nanthan Balan was set aside by the Court of Appeal in 2017 following an appeal by the National Registration Department (NRD).⁸⁹

In SUHAKAM’s report, 20 respondents shared they had tried to change their name and/or gender marker in their identification card. Out of the 20, only six respondents were successful

in their applications. Two of the respondents succeeded in changing their name, one respondent changed their gender marker, and three respondents changed both their name and gender markers.⁹⁰

86 respondents stated that they would prefer to change their gender marker in their identification cards. These are the provided reasons:⁹¹

- Their physical features conformed to male or female but this was not reflected in their identification card
- To be recognised as woman or man
- To avoid discrimination based on gender
- To ease daily affairs such as movement, access to education and religion
- To reflect current identity in their identification card
- It would give benefits, advantages, comfort, confidence and boldness to them
- It would be easier to obtain jobs
- To avoid confusion on their gender

Indeed, the absence of legal gender recognition not only outs and violates trans people's privacy, it also contributes to their mistreatment.

- A trans woman interviewee from Perak shared her experience of being caught in a club raid in 2019 by the police, state Islamic department and the anti-drugs agency. During the raid, she and her trans women friends were made to stand in gender-segregated lines based on their gender marker in their identification card. In addition, they faced verbal violence, including being told that they are men. They were humiliated and degraded in front of others during the raid.
- Nur Sajat is a public figure and entrepreneur who identifies as an intersex woman. Her experience of being hounded by the authorities and some members of the public over her gender identity since 2018 resulted from the lack of legal gender recognition. JAKIM then insisted that Nur Sajat needed to undergo a lengthy process in order for authorities to officially verify her gender.⁹² This would not have happened if legal gender recognition were in place.

“...the court emphasized on the importance of abandoning the chromosomal factor and highlighting the imperative need to view the matter from the physiological and physiological perspective.”

CASE STUDY: HARM CAUSED BY THE LACK OF LEGAL GENDER RECOGNITION ON PRIVACY, FREEDOM OF RELIGION AND GENDER-BASED VIOLENCE

The 2020 incident of Nur Sajat's visit to Mecca prompted multiple incidents of online gender-based violence against her. The public backlash over her wearing of women's attire in Mecca resulted in doxxing and hate speech. Several documents including a copy of passport and travel documents, which allegedly state Sajat's deadname (assigned name at birth that the person no longer identifies with) spread like wildfire. This sparked harmful online comments and a shift in the way in which the media describes Sajat.⁹³

Many media outlets participated in amplifying the doxxing and breach of privacy by republishing the legal and travel documents on their platforms. The media also began calling Sajat by the deadname associated with her, which is extremely regressive, unethical and degrading.⁹⁴

However, instead of investigating the perpetrators for non-consensual disclosure of personal data under Section 8 of the Personal Data Protection Act 2010, Mujahid Rawa and the MCMC on the other hand discussed actions that could be taken against Sajat.⁹⁵ The state, choosing to prioritize its diplomatic relationship between Malaysia and Saudi Arabia over her safety, placed her under greater harm.

Kuala Lumpur

Under the Kuala Lumpur Syariah Criminal Offences (Federal Territories Act) 1997,⁹⁶ Section 25 criminalizes liwat i.e. sexual relations between male persons; Section 26 criminalizes musahaqah i.e. sexual relations between women; Section 28 criminalizes male person posing as woman.

No cases of arrests under the Federal Territory's Syariah laws were reported in the media or recorded through the interviews for this study between 2018 and 2020. However, in July 2020, the Minister for Religious Affairs gave full license for JAWI to arrest transgender people for rehabilitation purposes.⁹⁷

TABLE 3.1: SYARIAH LAWS THAT CRIMINALISE LGBT PERSONS IN KUALA LUMPUR

State Observed: Kuala Lumpur	Relevant Sections
Syariah Criminal Offences (Federal Territories Act) 1997	Section 25 - Liwat Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.
	Section 26 - Musahaqah Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.
	Section 28 - Male Person Posing as a Woman Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Source: Kuala Lumpur Syariah Criminal Offences (Federal Territories Act) 1997, http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Federal_Updated.nsf/b3ac9c218c8efdc4482568310022d8b3/d31866f9fa58ec974825708200081476?OpenDocument.

A number of civil society organizations expressed concerns over violations of constitutional and human rights as well as disappointment over the remark, saying that it will hamper the Minister's previous efforts in engaging with the transgender community when he was a *mufti*.⁹⁸ In addition, since the statement, the transgender community have been very concerned about their personal security, safety and well-being.⁹⁹

Further, trans women sex workers, in particular have been subjected to entrapment, arrest and detention under Section 372B of the Penal Code for solicitation of sex.

In August 2018, a reportedly famous gay club in Kuala Lumpur was raided. It was a joint operation by the police, the Kuala Lumpur City Hall (DBKL), the Federal Territories Islamic Religious Department (JAWI), and the National Anti-Drug Agency (AADK). The Regional Ministry Secretary-General said the area had serious drug addiction problems; but Federal Territories Minister Khalid Samad said the raid was done to curb LGBT "culture" from spreading.¹⁰⁰

Perak

Under the Perak Crimes (Syariah) Enactment 1992¹⁰¹ Section 53 criminalizes musahaqah i.e. sexual relations between female persons and Section 55 criminalizes men posing as woman.

The information gathered in relation to arrests in Perak largely focused on the experiences of trans women. No information available on the arrest and harassment in relation to trans men, queer men and queer women was obtained based on media and social media monitoring as well as via the interviews.

Based on the interviews, between 2018 and 2020, there were some cases of arrest, mostly involving trans women by the Perak State Islamic Department. The trans women interviewees observed that the Perak State Islamic Department has been patrolling areas where trans women usually gather.¹⁰² In December 2019, a trans woman was arrested by the State Islamic department in Taiping. However, she was released without charges on the same night of her arrest. The reasons for the arrest were unclear, but attributed to being out at night in a sex work hotspot.¹⁰³ This underscores the harm of the laws in increasing arbitrariness of the law and harassment and surveillance of LGBTQ persons with impunity.

TABLE 3.2: SYARIAH LAWS THAT CRIMINALISE LGBT PERSONS IN PERAK

State Observed: Perak	Relevant Sections
Crimes (Syariah) Enactment 1992 (Perak)	Section 53 - <i>Musahaqah</i> A female person who willfully commits <i>musahaqah</i> is guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or both.
	Section 55 - Man Posing as a Woman A man who wears a woman's attire and in any public place poses as a woman for immoral purposes is guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Source: Negeri Perak, Enactment No. 3 of 1992, Crimes (Syariah) Enactment 1992, http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/873fa95efb313e3f482576b1000eba50?OpenDocument.

Access to justice is limited for transgender women who are sex workers, especially in cases in which the police or state actors are the perpetrators. The multiple forms of discrimination and persecution leave them in increased vulnerability to theft, mistreatment, and violence. However, they are often hesitant to lodge police reports due to the lack of interest, seriousness and urgency in dealing with the reports by the police.¹⁰⁴

In 2020, a case of extortion by a police officer was reported. The police officer was on patrol when they saw a trans woman and her customer. The customer was asked for a bribe of RM 200. The case was not reported to the police.

In some situations, trans women would bribe the police to escape from legal prosecution, violence or mistreatment. Based on the interviews, being sentenced to prison and getting their heads shaved is a grave concern and trauma experienced by many trans women. Nevertheless, the impact after any interaction with the police is significant.

“It’s the impact after the incident, they experience trauma, they are afraid to be in public and around people, to work as sex workers even though that’s their only source of income. It takes them a while to recover from the stress. The cases are not known widely or reported in the media, so their family members and the general public are not aware of the issues. So, the impact on their relationship with family members and society is probably low. But the impact on themselves is high. They feel heightened phobia when they see law enforcement agencies.”¹⁰⁵

Terengganu

Under the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001¹⁰⁶ Section 30 criminalizes *musahaqah* i.e. sexual relations between any female person and Section 33 criminalizes a male person posing as a woman.

While these are the direct laws that criminalize people based on SOGIE, other laws are also used to prosecute LGBTQ persons on the basis of their gender identity, gender expression, sexual orientation or LGBTQ experiences, as evidenced by the documented cases.

Further, unlike other states, there are higher reports on the legal prosecution of lesbian, bisexual, gay, trans people in Terengganu between 2018 to 2020. This suggests there is higher scrutiny of LGBTQ people in the state.

In 2018, at least two persons have been subjected to fines and six strokes of cane each for attempt of *musahaqah* under Sections 42 and 30 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001.¹⁰⁷ They were publicly caned in front of over 100 onlookers in the court.¹⁰⁸ Many netizens used the opportunity to target the LGBTQ community by calling them sinners, immoral, useless, and an embarrassment to the family, amongst other names.¹⁰⁹

TABLE 3.3: SYARIAH LAWS THAT CRIMINALISE LGBT PERSONS IN TERENGGANU

State Observed: Terengganu	Relevant Sections
Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001	Section 30 - <i>Musahaqah</i> Any female person who commits <i>musahaqah</i> shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.
	Section 33 - Male Person Posing as a Woman Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to an imprisonment for a term not exceeding one year or both.

Source: Enactment No. 7 of 2001 Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001, http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/a0ec76f7d4fe076c4825766300171712?OpenDocument.

In 2019, the Islamic Department arrested two men who were found in an intimate position in a car.¹¹⁰ They were sentenced to fines for public indecency under Section 34 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001.¹¹¹ The Terengganu Syariah Enactment does not have provisions criminalizing *liwat*, but other laws were used against them. This shows even without provisions explicitly criminalizing same sex relations or ‘unnatural sex’, LGBTQ persons can still be subjected to criminal persecution.

In both of these cases, they had no legal representation and pleaded guilty. It is challenging to find affordable and affirming Syariah lawyers who are willing to represent in such cases. They are also most likely not connected to LGBTIQ human rights groups.

P, one of our interviewees, observed that trans women are vulnerable to being targeted by the state Islamic Department under various laws, as evidenced by cases of arbitrary arrest of trans women in Terengganu, including in their private homes. As a result, transgender people are afraid to go out and work due to fear of arrest.¹¹²

A group of trans women was arrested for not performing Friday prayers under Section 16 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 in Kuala Terengganu in April 2019.¹¹³

The law that penalizes failing to perform Friday prayers is only applicable to male persons,¹¹⁴ but the section was used against the trans women. The enforcement of the law in this matter

shows that that any gendered law is taken to be gender binary, and gender is taken to be sex assigned at birth. It also shows that the State Religious Department does not understand, recognize and respect the identities of trans women. Moreover, there is a disregard of the challenges and risks faced by trans women when performing prayers in a mosque.¹¹⁵

As a result, every Friday during prayer time, they would not stay at home but go hide in other places.¹¹⁶

“The impact is, the trans women community, and myself included, yes, it’s compulsory for men, but it’s their own prerogative. In my opinion. But it’s the way the arrest is carried out. They arrest us at home. It’s not like we are hanging out in public spaces. There are so many men who hang out in the parks, by the beach during prayer time, but why don’t they arrest them. So, in terms of impact, we are afraid. Afraid to go out. Every Friday, when it’s 12 noon, we will not be home. We run to some other places. Perhaps people may say just go do the Friday prayers, but when people see ‘pondan’ at the Friday prayer, what will people say to us?”¹¹⁷

GR shared that in 2020, five trans women were arrested in Terengganu. They are being investigated for abatement and encouraging vice under Sections 42 and 55 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001.¹¹⁸ No information is available on trans men based on media, social media and interviews.

3.2 State-led Anti-LGBT Activities and Policies

State-led anti-LGBT activities and policies refer to the state policies or directives, allocation of funds for activities, and other efforts by the state that are exclusionary and harmful. Harm extends beyond individual harm to include the collective, not limited to physical, psychological and emotional aggression, discrimination, and violence faced by LGBTIQ persons due to the state's actions.

In Malaysia, there are multiple state-initiated anti-LGBT programmes, most of which focus on rehabilitation and conversion of LGBT persons.¹¹⁹ These programmes reinforce misinformation regarding LGBT people. For example, the myths that 'LGBT behaviours' are caused by hormonal imbalances, psychological disorders, excessive sexual desires, or a lack of parental or spiritual guidance; that LGBT people deliberately defy cultural, religious, and societal norms; that LGBT persons are the sole vectors of HIV; and that LGBT identities can be corrected.

On 23 July 2018, Mujahid Rawa listed the government-sponsored LGBTIQ programmes in Parliament:¹²⁰

- JAKIM's voluntary treatment and rehabilitation programme, 'Ilaj Wa Syifa';
- The Mukhayyam program – a 3-day camp introduced as a strategy to reduce HIV transmission among key affected populations, namely Muslim trans women. The programme, listed in the National Strategic Plan to End AIDS 2016-2030,¹²¹ aims to create awareness about HIV, Islam and being a good Muslim; offer job placement and financial assistance for startups; and encourage participants to abandon immoral behaviour, including one's sexual orientation and gender identity. There are also Mukhayyam camps for gay men and lesbian women. The Global AIDS Response Progress Report 2016 has noted that there is no evidence to prove the efficacy of this programme.¹²²
- Seminars and programs targeting students, school counsellors, parents, volunteers, health staff and representatives of Muslim NGOs, that encourage people to avoid committing 'LGBTIQ acts', and encourage others to identify and curb 'LGBTIQ behaviours' within their families, social circles, and workplace;
- JAKIM's e-book 'Panduan Hijrah Diri' (available on Google Play Store), and other publications, including a compilation of hadith on 'LGBT acts' and a brochure '*Memahami*

LGBT dari Perspektif Seorang Muslim' (Understanding LGBT from a Muslim's perspective), which promotes conversion practices.

- A 5-year action plan – ***Pelan Tindakan Menangani Gejala Sosial Perlakuan LGBT 2017-2021*** (Action Plan to address Social Ills LGBT behavior 2017-2021).¹²³ This action plan which aims to proactively and effectively curb 'LGBT behaviour' is endorsed by 22 partners, including the Ministry of Health, Ministry of Sport and Youth, Ministry of Women, Development and Community, state Islamic departments and other state agencies.

According to JAKIM's data, nine activities were held under their 'treatment and rehabilitation programmes on gender confusion' in 2019 – four seminars on gender confusion related issues targeting the public and five LGBT community intervention programmes:¹²⁴

- Two mukhayyam programmes for the lesbian and gay communities
- One appreciation programme of Islam (preventing wayward life) for women prisoners
- Forum for ex-trans people
- One ibadah (worship) national camp for gay and transgender community

JAKIM's Director General said the "gender confusion education, treatment, and rehabilitation programme" has reached over 1,700 LGBT persons since it began in 2011. He added many have hijrah and are now assisting JAKIM and state Islamic departments as facilitators.

The effect of a series of state-endorsed online and offline anti-LGBT narratives cause stress and anxiety among LGBT people. YS shared that some of the common questions that she frequently receives include questions about whether LGBT is illegal in Malaysia, and Muslim LGBTQ persons would question about Syariah laws and what can be done against them. She also observed that the existing communities have over time stopped social gatherings due to the fear of arrest and intervention by the authorities. This illustrates the impact of anti-LGBT sentiments and narratives on LGBTQ persons being isolated from their support systems.

Kuala Lumpur

The interviewees noted that some programmes were held between 2018 and 2020. However, they were not able to provide details.¹²⁵

Perak

There were a number of activities that were held in Perak, including seminars by state and non-state actors.

The interviewees were not aware of activities targeting LGBT persons in Perak between 2018 and 2020. However, they noted that targeted trans women participants were invited to the state organized programmes in the neighbouring state.¹²⁶ The interviewees observed monetary incentives when attending these programmes being a pull factor for trans women, who are already economically marginalized.¹²⁷

Some former participants have formed local groups or initiatives with the aim of returning other LGBT people to the right path. The interviewees noted that local initiatives focused on recitals of quran for ‘effeminate men’ by former trans women participants of the programme, who now identify themselves as ‘men’. This forms a cycle whereby LGBTQ persons who participate in the programme, succeed in ‘returning to the right path’ or suppressing their gender identity and sexual desires, and become motivated to convert other LGBTQ persons in their local communities.

In April 2019, there was an LGBT rehabilitative seminar organised by the Islamic political party, PAS.¹²⁸ Objectives of the seminar include bringing awareness about the importance of family institutions to prevent involvement in LGBT community practices, recognizing LGBT symptoms and the best approach to curb the spread of the perverted culture.

The interviewees observed monetary incentives when attending these programmes being a pull factor for trans women, who are already economically marginalized.

Terengganu

There are more documented anti-LGBT activities between 2018-2020 in this state as opposed to Kuala Lumpur and Perak. Addressing the high number of trans women sex workers, the Terengganu Religious Affairs Department, JHEAT, “strives to ensure immoral activities can be curtailed”.¹²⁹ The approach of the Department to help trans women sex workers is rather narrow, as they continuously deal with the matter through the lens that LGBT people are immoral.¹³⁰

In December 2017, Terengganu State Exco for Communications, Multimedia and Special Functions Ghazali Taib announced their plan to cooperate with JHEAT to help the trans women community in the state.¹³¹ Their plan was to:

- identify the exact number of trans women in Terengganu and the reasons for their involvement in sex work.
- Provide rehabilitation and counselling sessions to help the trans community “overcome” their gender identity disorder.
- Provide assistance for trans women who are doing sex work to venture into other kinds of businesses.¹³²

In July 2018, Minister for Islamic Affairs Muzahid Rawa launched program seminar *Peradaban dan Kecelaruhan Gaya Hidup (orientasi seks songsang)* (a Civilization and Lifestyle disorder) (perverted sexual orientation) seminar in Kuala Terengganu with the cooperation of JHEAT. His social media accounts reported the attendance of more than 300 participants.¹³³

P observed that the state government had started engaging with the trans community in the last three years through the State Islamic Council. In 2017, the State Communications, Multimedia & Special Duties Committee has had dialogues with the trans women community in Terengganu to discuss how to assist them in terms of work opportunities, training and courses.

Although the interviewees welcomed state engagement and assistance for the trans community with respect to jobs, T said if the trans community wants to gain assistance from the state, they have to attend courses that contain elements of “*kembali ke pangkal jalan*” (guiding them back to the right path). T felt the intention of “*kembali ke pangkal jalan*” is unnecessary and disrespectful to the community.¹³⁴ In other words, the plan to assist trans women could have been more effective if it is

without the pressure or expectation to change their gender identity.

There is a lack of understanding from the authorities that it is the structural and systemic discrimination that contribute to the marginalization of trans women in Terengganu and in Malaysia as whole, despite existence of research and reports on the matter.¹³⁵

T also observed that the state used to organize Mukhayyam programmes, but they did not bring much benefit to the community. P noted the programmes for the LGBT community were not beneficial as they did not gain new knowledge, for example, knowledge on healthcare and the law. In short, P described that the programmes seem to be held just for fulfilling KPIs.¹³⁶

On the other hand, P felt the programmes organized by LGBTIQ groups, especially from Kuala Lumpur, were impactful. Often, the trans women are uninformed of their legal rights when they are arrested, so they do not know what to do in such situations. The LGBTIQ groups address this by providing briefings on the laws, the rights of persons arrested, the available channels to contact for the welfare of LGBT people, and the people to meet for assistance, amongst others.¹³⁷

*“The impact was big, we hope that there will be more of events like that in Kuala Terengganu because without that information we don’t know how to fight our cases, the laws that can be used against us, what are the court process, who can enter our home, who do we connect with and agencies that can help us.... As a result of the programme I see some growth in the community even if it’s small,”*¹³⁸

3.3 Protection in Relation to Discrimination and Violence Against LGBTIQ Persons

Article 8(1) and 8(2) of Federation Constitution provide that “all persons are equal before the law and entitled to the equal protection of the law” and “there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment”.

As mentioned in the introduction section, the understanding of gender is limited to man and woman in heterosexual dynamics.

The combination of criminalisation and prejudice against LGBT people, and lack of active protection for LGBTIQ people through a Comprehensive Anti-Discrimination Act and Gender Equality Act, not only creates a chilling effect on their other rights, but also leaves LGBTIQ people unprotected against discrimination in workplaces, educational institutions, healthcare institutions, and other areas.

The approach of the Department to help trans women sex workers is rather narrow, as they continuously deal with the matter through the lens that LGBT people are immoral.

Yet, cases of discrimination and violence are rarely reported due to fear of reprisals. The Human Rights Commission of Malaysia (SUHAKAM) has a complaint mechanism under the Complaints and Monitoring Division (CMD). However, there have not been many LGBTIQ-related complaints over the past years. SUHAKAM’s 2018 annual report states they received a total of four complaints on discrimination, hate speech and challenges within the criminal justice system between June 2010 and 2 March 2017, and only one complaint from a trans woman on workplace discrimination in 2018.¹³⁹

The interviews we conducted reveal the discrimination faced by LGBTQ persons is intersectional. The interviewees shared that in some cases, it is difficult to determine the cause of discrimination, as the discrimination is often caused by two or more reasons that are intertwined and intrinsically linked. For example, the discrimination faced by GBQ men sometimes intersects with their HIV status.¹⁴⁰

3.3.1 Healthcare

The report has more recorded experiences in the healthcare settings in Kuala Lumpur and Selangor due to SUHAKAM’s report. Most of our information is still limited to the experiences of transgender people and GBQ men. For both trans women and GBQ men, the health information provided is still very limited to HIV. On the other hand, there is little documentation on the experiences of queer women and non-binary people due to their invisibility.

LGBTIQ AND HEALTHCARE POLICIES, GUIDELINES

The National Strategic Plan on Ending HIV/AIDS 2016-2030 (NSP) is a roadmap to ending the HIV epidemic by the Ministry of Health (MOH). Guided by the vision of “Ending AIDS”, Malaysia adopts, “Three Zeros: Zero new infections, zero discrimination and Zero AIDS related deaths.”¹⁴¹

The NSP identifies four key strategies:

- **Strategy 1:** Testing and treatment to end AIDS
- **Strategy 2:** Improving the quality and coverage of prevention programmes among key populations by addressing the primary drivers of HIV transmission in Malaysia, injecting drug use and sexual transmission
- **Strategy 3:** Reduction of Stigma and Discrimination
- **Strategy 4:** Ensuring quality strategic information and its use by policy makers and planners through monitoring, evaluation and research.¹⁴²

Among activities listed under Strategy 2 that target key affected populations, in particular, men who have sex with men (MSM) and transgender women, are outreach and upscaling health services, among others. However, it also includes the following activities:

- Behaviour Change to minimize risk of acquiring HIV & STIs infection through spiritual support and guidance for MSM. This activity, which is intended to be carried in the form of camping for 3 days 2 nights or ‘Mukhayyam’, aims to ‘provide guidance and motivation to improve the skills of identifying, guiding and giving spiritual awareness through religious approach (tauhid) to face the challenges of life and abandon the practice of unnatural sex.’ Meanwhile, one of its targets is to ensure ‘abstinence behavior from MSM to heterosexual’¹⁴³
- Upscale the ‘Mukhayyam’ Programme¹⁴⁴

The NSP notes that its surveys and surveillance indicate that the steady decline of the reported number of new HIV infections since the peak of the epidemic in 2002 has stagnated since 2010. Further, it notes the trend of infection has been reversed among men having sex with men, transgender persons, and sex workers.¹⁴⁵

The Country Progress Report on HIV/AIDS 2019 states that the HIV epidemic in Malaysia since its beginning has been concentrated among the main key population at high risk of HIV infection in the following order – Person who Inject Drugs

(PWID) followed by Female Sex Workers (FSW), trans women and Men who have Sex with Men (MSM). However, MSM were projected to become the main key population in Malaysia affected by HIV in 2030.¹⁴⁶

It is important to note that all key affected populations are criminalized under the laws in Malaysia, and face severe stigma because of their sexual orientation and gender identities, drug use, and jobs as sex workers. The UNAIDS views punitive laws and practices against lesbian, gay, bisexual and transgender and intersex (LGBTIQ) individuals being a barrier to effective responses to HIV.¹⁴⁷

UNAIDS notes the increased vulnerability faced by the key affected population as a result of the environment that they live in. In Asia, the odds of MSM becoming infected with HIV are nearly 19 times higher than in the general population. Meanwhile, transgender people have shown disproportionately high HIV prevalence ranging from 8% to 68% according to studies.¹⁴⁸ One of the primary interventions recommended by UNAIDS and World Health Organization (WHO) is to target laws, policies, social norms, disenfranchisement, stigma and discrimination.¹⁴⁹

In 2017, the MOH released a booklet titled ‘Guidelines on Dealing with Gender Health Problems in Public Clinics’ (Garis panduan Pengendalian Masalah Kesihatan Gender di Klinik Kesihatan). The guideline aims to provide guidance to health clinics in handling issues relating to gender and contains mixed messages on LGBTIQ persons. For example, it provides tips for parents to correct and prevent their children from becoming LGBTIQ.¹⁵⁰

A research by CERIA with 29 Muslim gay and MSM identified issues that attributed to their poor health seeking behaviour or reluctance to see a doctor: criminalisation, discriminatory laws and policies that reinforced the notion that LGBTIQ people will never be accepted and fear of arrest and expression of identity; societal double discrimination and stigma towards HIV and LGBTIQ people; religious patriarchal interpretation of non-heteronormative sexualities; among other things. As a result, the respondents showed low knowledge on HIV and sexual health, shame and stigma with condom acquisition, internalized issues in terms of self-blame and self-guilt due to familial and societal pressure to marry and ‘return to the right path’.¹⁵¹

It is important to note that all key affected populations are criminalized under the laws in Malaysia, and face severe stigma because of their sexual orientation and gender identities, drug use, and jobs as sex workers. The UNAIDS views punitive laws and practices against lesbian, gay, bisexual and transgender and intersex (LGBTI) individuals being a barrier to effective responses to HIV.

Evidently, these approaches are counterproductive to the MOH's own efforts and goals to prevent HIV and STI, as it pathologized LGBT people into a diseased population that should be cured. Such a notion increases the existing trust deficit of governmental healthcare support within the community.

The abstinence-based policies, lack of comprehensive sex education and the increased allocation of public funds for anti-LGBT activities not only contribute to higher rates of HIV, but also result in adverse socio-economic and health impacts.¹⁵²

EXISTING SERVICES

There are some HIV related efforts by the MOH that aim to increase access to STI and HIV related services for key affected populations, specifically to MSM and transgender women through partnership with the Malaysian Aids Council (MAC) and its partner organizations. The outreach programme promotes government health care services and sexual health information and provides referrals to clinics and hospitals for queer men and trans women.

As a result of this programme, many community friendly clinics have been established all over the country. The list of community friendly clinics can be found on the MAC website.¹⁵³ Some of the interviewees are working in HIV response.

Activists working in this area feel that the healthcare services are improving. Part of the programme includes training of healthcare professionals and staff, where they learn about SOGIE, the need to address people based on their preferred name instead of the name in their identification cards, the

importance of using correct pronouns, and much more. Although some participants were indifferent about the training, it has prompted interests from some others who were eager to learn to provide better quality healthcare. S said that the engagement helps in reducing stigma in healthcare settings.¹⁵⁴

R, an interviewee from Perak, shared that the community friendly clinics are helpful because they are free of charge and patients do not have to wait for too long to receive consultation. This initiative provides not only financial but mental relief to trans women and queer men accessing healthcare services. Due to misconceptions and stigma against LGBTQ people, other patients in the clinic may assume that the trans women are sex workers. Hence, waiting long hours for medical consultation can be anxiety-inducing for trans women and gender non-conforming queer men.

Through outreach workers, the programme gathers feedback and reports discrimination of negative experiences. In addition, B, who works with an HIV advocacy organization that provides services for key affected populations, shared that there exist complaint mechanisms for discrimination faced in the hospital. B and the NGO that he works with would help their clients by drafting incident reports and channeling them to MAC, clinic management units, or MOH.¹⁵⁵ However, people have refused to make reports or withdrawn their reports due to fear of their name being disclosed.¹⁵⁶

GY shared that there is resistance from the community during the outreach phase when they are getting people to be tested. There is a fear of the government or anyone else taking actions against them if their sexual orientation or behaviour is revealed. Some clients would even ask how the data is stored and who can access them.¹⁵⁷

Due to the fear of disclosure of anonymity and privacy, they do not want their information to be on government records. The fact that HIV is seen as a Key Performance Indicator (KPI) in the model of the outreach programme is unhelpful to this concern. It does not protect privacy. GY felt that the harm of data leakage is huge, because people finding out that someone is HIV positive and might be gay could be dire.¹⁵⁸

P observed that people often find it difficult to follow through when lodging complaints, as they lose their motivation as time goes by. However, in some cases, the silence turned into vengeance. After the unpleasant incident, the patients still have to return to the same place for treatments and checkups, but the

relationship and trust between the patient and the healthcare institution is ruined.¹⁵⁹

While there are community case workers and outreach workers to encourage trans women to seek services at the clinic, trans women communities feel the clinics do not address trans-specific healthcare needs. This is reflected in the numbers of people who access services at the government health clinics.¹⁶⁰

GAPS IN THE HEALTHCARE SYSTEM

Interviewees noted that specific services, for instance pre-exposure prophylaxis (PreP), are not readily available in government clinics. There are other options, for example, going to a private clinic, getting a prescription from a doctor and then buying it from a pharmacy, or going to the hospital. However, the price of one bottle is expensive. In Kuala Lumpur, the cheapest price to buy PreP is RM90; whereas the price from private clinics ranges from RM120 – RM150. S shared that based on his experience, only three out of 10 people who asked about PreP can afford it.¹⁶¹

As for when a person is diagnosed HIV positive, GY shared that only the first line of medication (i.e. Efavirenz and Nevirapine) is fully subsidized. If a person living with HIV (PLHIV) has difficulties adhering to these two medications, they would have to go to the second line. This becomes a problem as the second line of antiretroviral therapy (ARV) medication is not fully subsidized. Although there are more types of ARV in private healthcare services, the cost is high, ranging between RM180 and RM500 per month.¹⁶²

Moving on, healthcare that only prevents HIV/AIDS is insufficient. There are serious gaps in the healthcare system when it comes to the healthcare needs of LGBTIQ populations, especially queer women and gender non-binary people.

Further, the national health care system lacks trans specific healthcare, including hormone replacement therapy (HRT), gender affirmation surgeries or procedures, and mental health support. FS shared that HRT is available in some private hospitals, but it is very costly.¹⁶³ This is causing an adverse impact on transgender and non-binary people. Self-administered hormones with limited or no medical guidance are a common practice among transgender people in Malaysia. Without gender affirming services, it is difficult to manage the side effects or complications.¹⁶⁴

Most respondents in the SUHAKAM study agreed the gaps in the healthcare system include:¹⁶⁵

- Lack of gender affirming surgeries
- Lack of information on trans specific healthcare needs
- Lack of gender affirming therapy on SOGI
- Lack of specific clinic/department that deals with SOGI
- Lack of knowledgeable healthcare professionals and experts in trans-specific healthcare services
- Lack of HRT
- Lack of sensitive and friendly mental health professional physicians and experts

The interviews revealed there are LGBTIQ-friendly and gender-affirming doctors, but their existence is largely based on their individual initiative. Anti-discrimination and LGBTIQ-inclusive policies would help create a uniformly safe and enabling environment for LGBTIQ people to access healthcare.

Moreover, due to the visibility of transgender and gender non-conforming people and lack of legal gender recognition, they are at risk of discrimination even while accessing non- sexual health-related healthcare services.

Self-administered hormones with limited or no medical guidance are a common practice among transgender people in Malaysia. Without gender affirming services, it is difficult to manage the side effects or complications.

ACCESS TO INFORMATION ON SEXUALITY, SEX

The interviewees shared that currently, those who have access to information, protection and services are those in urban areas. In suburban areas, accessibility to information may be limited due to lower internet accessibility; even if they do have access to information, accessibility to protection and services may be hindered by long distances and high costs.¹⁶⁶

The interviewees observed an increase of HIV positive people at a young age. They identified the lack of comprehensive sex education and the stigma against LGBTIQ people as contributing factors. Without access to affirming information and services, LGBTIQ youths are unable to make independent informed decisions.¹⁶⁷

The interviewees pointed out the need for sex education in schools, as this will overcome the disparity of access to internet connection in urban and rural areas.¹⁶⁸

DISCRIMINATION IN HEALTHCARE SETTINGS

In terms of accessing healthcare, there have been many anecdotal and documented reports of LGBTQ patients who have experienced discrimination at medical facilities in Malaysia, from doctors who won't touch them, to being openly shamed by doctors, to receiving hasty, inadequate diagnoses and treatment.¹⁶⁹ Their experiences of discrimination have resulted in a lack of trust towards healthcare institutions. Even if they do visit the doctor, they are often unable to disclose an accurate and honest description of their health and history due to fear of discrimination.¹⁷⁰

B noted that there were reports of passive-aggressive comments in the health clinics, for instance asking the patients when they will repent and when they are getting married. B shared a case that they received of a staff nurse who proposed to matchmake a queer man client with a woman, despite knowing the client's sexual orientation. This resulted in the client requesting to seek treatment from another clinic.¹⁷¹

A 2018 study that aimed to understand the way in which stigma and personal views held by medical professionals affected services provided to trans people was conducted on a total of 436 physicians at two major university medical centres in Kuala Lumpur, Malaysia.¹⁷² The study reported:

“Due to transgender stigma, physicians may feel shame as a consequence of having a transgender patient or transgender colleague. Physicians may also believe that transgender people do not deserve good care, leading to poor delivery of care. Given the high global burden of HIV among transgender women (i.e., high prevalence of HIV compared to other at-risk groups, including Men who have sex with men [MSM] and persons who inject drugs [PWID]), providers may be prejudiced against transgender women and be afraid of contracting HIV from transgender women, which may in turn contribute to discriminatory treatment. Physicians may also hold stereotypes about transgender people, such as the belief that all transgender people are promiscuous and do not care about their health, which could further contribute to discriminatory treatment.”

MENTAL HEALTH

There is a growing awareness to include mental healthcare in outreach programmes and HIV healthcare services due to emerging mental health needs among PLHIV.¹⁷³

Some community clinics provide mental health services. However, it is unknown whether they are LGBTIQ-friendly, as there is no client satisfaction feedback of government healthcare services, and what constitutes LGBTIQ-friendly service is undefined. Currently, the outreach programme provides referrals to verified mental health services, for instance LifeLine, Befrienders, and PT Foundation. They outreach workers also refer clients to private practitioners if they can afford it.

Kuala Lumpur

There are community-friendly government clinics and hospitals in Kuala Lumpur for HIV and STI testing, for example the Kuala Lumpur Health Clinic, Ampang Hospital, and Gombak Health Clinics.¹⁷⁴ There are also several private clinics and PTF's Community Health Care Clinic (CHCC), which sponsors testing kits and gives free testing kits as an alternative.¹⁷⁵

However, the opening hours of the government health clinics are limited to working hours on weekdays. It is very difficult for people to apply for leave to visit the doctor during these working hours. GY observed that the location of some health clinics is very difficult to reach by public transportation.¹⁷⁶

In some government clinics that provide HIV screening and medication, due to the lack of space, HIV positive patients were made to wait in the same room. This creates discomfort and concerns over privacy for those seeking services, as other patients would associate everyone in that area to be HIV positive. Otherwise, or due to the lack of rooms, patients assessing HIV-related healthcare were made to wait by the corridor. This is not friendly in terms of privacy.¹⁷⁷

These factors hinder people from going to the government community friendly clinics and speak to the need to upscale government clinics and hospitals.

Experiences of Trans People in Healthcare Settings

This part of the report provides a further look into the experiences of transgender people in accessing healthcare services. Most of the information on transgender people is from the 2019 study by SUHAKAM and there are more documented experiences of trans women than trans men in Kuala Lumpur and Selangor.¹⁷⁸

The study categorized the experiences of mistreatment by trans people at healthcare services.¹⁷⁹ Out of the 100 respondents, at least 20% have experienced:

- Use of name as per IC when calling their name
- Being mocked and ridiculed by healthcare professionals
- Being asked probing and irrelevant questions regarding sex life by healthcare professionals
- Suggested religious or other forms of therapy to ‘cure’ gender identity by healthcare professionals

A trans woman shared that when she was admitted to a government hospital ward due to dengue fever, she requested for an early discharge. This was because she felt looked down on by hospital staff, patients and also patients’ visitors due to her gender identity. She further shared that she became a topic of gossip among the hospital staff and overheard one of them called her “*pondan*”.¹⁸⁰

Another trans woman who had undergone gender affirmation surgery shared that she was placed in a male ward and had to prove herself a woman by disclosing her genitalia to the healthcare professional. When brought for her X-ray, she was laughed at by hospital staff and ridiculed for being “in denial” over her “original” identity.¹⁸¹

Four trans women shared that they were examined by healthcare professional in an inappropriate manner (sexual harassment). Among the experiences were queries about their genital organs, the size of their breasts, and in some instances, they were grabbed and molested.¹⁸²

The study found that although there had been cases where respondents were assigned hospital wards according to their gender identity or in an isolated room, the placement of the trans women was mostly in male wards and the placement of trans men were in female wards.¹⁸³ The respondents were uncomfortable with the placements. The placements of ward according to sex assigned at birth relates to the lack of legal

gender recognition for trans and non-binary people and the lack of inclusive policies for transgender people in healthcare settings.

In the study, only 53 out of 100 respondents were comfortable to disclose their SOGI to the medical health professional.

No information is available on queer women based on media, social media and interviews.

Perak

There are at least five community friendly government health clinics in Perak - two in Ipoh, two in Taiping and one in Teluk Intan.¹⁸⁴ They provide blood tests and consultations, among other things.

O said that they refer at least 10 new trans women to the clinics annually, and about four trans women (new and recurring) at most monthly. However, more queer men and MSM access the clinics, at least 10 people per month.

R also shared a pleasant experience accessing government healthcare services in 2018. During her admission in the general hospital due to oil burns, the doctors, although using the details as per her IC, added ‘Ms’ as her salutation. Moreover, during her consultations with the doctor and medical assistance, they referred to her according to her gender identity.

No information is available on trans men and queer women based on media, social media and interviews.

Terengganu

There are at least two community-friendly government health clinics in Terengganu. Both are located in Kuala Terengganu - Klinik Kesihatan Seberang Takir or Hospital Sultanah Nur Zahirah.¹⁸⁵ There is also an NGO named Karisma which will refer and bring clients to the aforementioned health clinics. The healthcare services the government health clinics provide include HIV and STI tests for about RM2.

However, discrimination still happens towards LGBTQ people in those places. The interviewees observed that when patients tested HIV positive, the doctor would start questioning the sexual choices of the patients. D shared that this is unhelpful, because patients come forward to access healthcare services, not to be lectured.¹⁸⁶ Besides, this may create a sense of hostility that would prevent LGBTQ people from coming forward. P also observed that when issues of discrimination are not meaningfully addressed, it creates resentment and a lack of trust in the healthcare system.

LGBTQ people can also go to the general hospital, but T shared that the staff and environment in the hospital are still unfriendly, and other patients may give judgmental stares.

A trans woman interviewee in Terengganu also shared her experience being placed in a male ward at the general hospital after being admitted due to an accident. Although she requested for a private room, the nurse ignored her request and did not convey the message to the doctor.¹⁸⁷

No information is available on trans men and queer women based on media, social media and interviews.

3.3.2 Employment

Based on the interviews, employment discrimination happens at two stages: pre-employment and in the workplace. Pre-employment discrimination includes unequal access to employment opportunities due to their SOGIE. Workplace discrimination includes being forced to hide one's identity or conform to cisgender, endosex and heterosexual norms. It could also include facing reprimands and warnings from employers for being pro-LGBTQ or attending an LGBTQ inclusive march, as reported in the 2019 Women's March. Some were even threatened by their colleagues to report them to their employers.¹⁸⁸

Based on SUHAKAM's Study on Discrimination Against Transgender Persons, 27% of the respondents experienced sexual harassment from colleagues and 25% experienced sexual harassment from customers.¹⁸⁹ The Women, Family and Community Development Ministry is expected to table the Sexual Harassment Bill by the end of 2020.¹⁹⁰

Self-administered hormones with limited or no medical guidance are a common practice among transgender people in Malaysia. Without gender affirming services, it is difficult to manage the side effects or complications.

In September 2019, the government planned to amend the law to cover hiring discrimination. based on gender, religion, race, disability, marital status, pregnancy and language and discrimination involving the terms and conditions in an employment contract. However, it was announced a month later that the ministry has no plans to include protection for job seekers.¹⁹¹

R shared that employment discrimination against trans women is not conveyed openly and explicitly. It is usually privately and verbally communicated during the interview or hiring process.¹⁹² They are given the option to work as long as they agree to comply with the company's rules which include gender binary dress codes and appearances. The most common complaint is that trans women are being asked to cut their hair short and wear men's attire.

While there are complaint mechanisms for cases of discrimination, LGBTQ people are reluctant to lodge complaints. This is due to fear of being outed,¹⁹³ fear of being unfairly dismissed, and fear of being treated differently, amongst others.

Typically, anti-discrimination or diversity and inclusivity policies in the workplace do not include LGBTIQ people. The risk of reprisals as mentioned and the lack of a written policy that protects LGBTIQ people not only leave them unsure of the commitment of the company to protect all workers, it also leaves spaces for employers to abuse the vague wordings of the policies. As such, LGBTIQ people are unable to make use of the safety mechanisms provided to report harassment and discrimination in the workplace.¹⁹⁴

Kuala Lumpur

The interviews in Kuala Lumpur covered experiences of queer women, queer men and trans people, unlike in other states.

Transgender People

In the 2019 study by SUHAKAM,¹⁹⁵ the Commission had interviewed 64 respondents who were working full time, 45 working part time, ten who were unemployed and five who were still students. A total of 21 respondents had been working more than one part time job.

Among these respondents, sex worker was the second most frequent full-time job (20 out of 64) and part-time job (15 out of 45). This shows that many respondents had taken up sex work as their source of earnings, often because of denial of mainstream jobs due to their gender expression. This is pre-employment discrimination.

As for workplace discrimination and lack of protection from harassment, the study found 53% of the respondents were asked inappropriate and intrusive questions by colleagues; 48% experienced name calling, hate speech hateful jokes about SOGIE from colleagues; 35% were disallowed to express their authentic gender identity; 27% experienced sexual harassment from colleagues; and 25% observed unequal policies or lack of transgender-friendly or sensitive policies in the workplace.¹⁹⁶

FS observed that the problem lies in company policies, whereby trans women are classified based on the gender marker in their legal documents. Hence, they are forced to present themselves according to the identity in their legal documents, for example by having short hair and wearing men's attire. This has caused mental and emotional distress to trans women at their workplace, including while using toilets and performing prayers.¹⁹⁷

FS also shared that between 2018 and 2020, she heard some trans women were not able to pass the interview process. Their work opportunities were lost due to their gender identity.

Lesbian, Bisexual, and Queer Women

Q, a bisexual woman, shared that her choices of jobs has been limited due to her fear of being outed and the multiple forms of sexism in formal work environments. Exposure to misogynistic views, microaggressions, and sexual harassment affects their mental health and stress level at work.

*"At my previous job, they have misogynistic jokes, and I feel like I have to keep it to myself because they are of higher rank than me. So, it's kind of a struggle, because when you have this belief, and you face all this b*****t around you, and at the same time you have to act professional, it actually is very difficult. So ya, there are two things, one I get anxiety being queer as a government staff and two trying to be cool about these people passing remarks, you have this locker room kinda thing, it's really frustrating, and it does affect my choice of jobs in life."*¹⁹⁸

Q's experience is not an isolated experience. The hostile environment causes LGBTQ people to be on high alert at all times, as they risk losing their job and source of income if their employer and colleagues find out that they are LGBTQ, or are outspoken about LGBTQ issues in their personal life or online. Additionally, it is very difficult for LGBTQ people to speak up for themselves when coming across anti-LGBTQ narratives at the workplace. The lack of anti-discrimination laws that include LGBTIQ people is a gap to be addressed for this issue.

*"I know there are people who are okay with LGBTIQ, but there are also other people who are not okay with you being gay. What if one of your colleagues is homophobic and he or she doesn't like you, it's so easy to say that 'hey this person should not work here, this person is gay'. Which I don't understand, what does my sexuality have to do with my capability to contribute to the business or the work that I am supposed to do. But that's the thing, you become paranoid about it, at the back of my head, I cannot be so open about it. And, it's just not comfortable at all. You are scared because just because of who you are. They could use that to shut your career down, and shut your income."*¹⁹⁹

Among these respondents, sex worker was the second most frequent full-time job (20 out of 64) and part-time job (15 out of 45). This shows that many respondents had taken up sex work as their source of earnings, often because of denial of mainstream jobs due to their gender expression.

Gay, Bisexual, and Queer Men

B shared that there are cases of discrimination that intersect with a person's HIV status.²⁰⁰ D added that in some cases, it is difficult to determine the cause of discrimination. It could be because of their sexual orientation or their HIV status, or both.²⁰¹ This shows the intersectional experiences of gay men who are HIV positive.

Company hiring policies that require the disclosure of HIV status makes it difficult for people who are HIV positive to acquire jobs.²⁰² Following, this affects the employment opportunities of key affected populations, for instance trans women and GBQ men.

GY shared that there are cases where the men are asked to resign when their HIV positive status is disclosed. When this happens, they do not know what to do but to resign.²⁰³ The lack of knowledge on their employment rights makes them more vulnerable to being subjected to discrimination.

Moreover, the likelihood of LGBTQ people losing their home is higher when they are financially constrained. D shared that most people who sought assistance from the NGO he is in are paid minimum wage and live in accommodations provided by their companies. Hence, once they are fired, they have nowhere else to go.²⁰⁴

Between 2019 and 2020, the NGO that D works with received approximately 13 related cases. 12 of which are employment-related discrimination. About ten people were employed but got fired, one lost their income during the MCO and could not continue paying for rent, one went back to their family when they lost their job but got disowned when their family found out their sexual orientation, and the last one was a refugee who needed a place to stay temporarily.²⁰⁵

Perak

The information related to employment is on trans women. All five interviewees in Perak talked about the lack of employment opportunities for trans women and the workplace discrimination experienced by trans women. This includes restriction of self-expression, restriction to use toilets based on gender identity, being subjected to misgendering and use of dead names, amongst others.

R observes also that the negative social perception against trans women is higher in places where there is sex work.²⁰⁶ This seems to generate a cycle whereby trans women are denied employment opportunities due to negative perception; yet resorting to sex work reinforces the negative perception.

"I think the discrimination is mostly in relation to employment. But, I am not sure where can we report cases of discrimination in Ipoh. Mostly, I have heard that people are asked to cut their hair, wear men's attire. The cases that I heard are mostly of cleaners at supermarkets who are asked to dress like men", E said.²⁰⁷

"At my workplace, I still use the men's toilet. I am cautious when I use the toilet. I am not sure what are the issues when it comes to toilets with other trans women workers", K said.²⁰⁸

The interviews also showed a disparity of knowledge on their rights and grievance redress mechanisms between interviewees who are activists and non-activists. The former are more aware of the existing redress mechanisms due to wider connections.

YS shared about a gender discrimination case she received outside Ipoh in 2019.²⁰⁹ A trans woman working in a hospital was asked by her supervisor to cut her hair short. After clarifying what she wanted out of the case, which was to stop the harassment about her gender representation, they wrote a letter to the company that hired her detailing the discrimination she experienced. Since then, the harassment in terms of her attire and hair length has stopped.

In the same hospital, there are also other trans women employees from various religious and ethnic backgrounds, but they were not subject to the same mistreatment. It was

deduced that this particular trans woman was targeted because she was a union member. It may be that the supervisor wanted to harass a unionist but cannot do so, as the union will fight back. However, the supervisor found a way by picking on a unionist who is transgender and harassing them based on their gender identity and expression.

Further, even self-employed trans women face increased discrimination and threats on their businesses. In 2018, several transgender entrepreneurs suffered backlash for displaying their products in an entrepreneur's convention. Their booths were forced to close due to a protest by an NGO.²¹⁰

No information is available on trans men, queer women and queer men based on media, social media and interviews.

Terengganu

The trans women community in Terengganu face largely similar experiences as the trans communities in other states. There are working opportunities, but some require them to dress and present themselves against their identity, according to their sex assigned at birth. "The employers want the staff to keep their personal lifestyle out from the workplace," T said.²¹¹

T shared a case of employment discrimination of a HIV positive gay man. In January 2020, a gay man who worked as an insurance agent tested positive for HIV. When his employer found out, he was fired due to the fear of loss of customers if people knew he was HIV positive. It was unclear how his HIV status was leaked. Despite his attempts to explain to his employer on HIV transmission methods, he was fired and the reason cited by Human Resources was because he lied in his health report. He was referred to MAC to file an incident report, but the progress of that report is unknown.²¹²

No information is available on trans men and queer women based on media, social media and interviews.

3.3.3 Education

Students face multiple forms of barriers, discrimination and violence based on gender expression or actual and/or perceived SOGI in educational institutions, which includes primary, secondary and tertiary education. The discrimination and violence come from multiple actors, including peers, teachers, administrators and others, and the acts may not be limited to the school compound.²¹³

T observed there is a lack of concern of bullying incidents against LGBTIQ people in school settings. They may face cyberbullying online, bullying by peers in school; people might deliberately create trouble and harmful situations for them; even teachers might hold negative perceptions and side-line them in classes. In such a stressful and unsupportive environment, it is difficult for them to focus on their studies, as they are more worried about their health and safety.²¹⁴

"When there is bullying such as sexual harassment, physical assault on the gay individual, the teacher often takes it lightly or not settle it properly as many of them think that the LGBTIQ adolescents deserve it due to their feminine, flamboyant behavior. And they often also use religion and values to discriminate against these students and humiliate them in front of everybody. When I grow up as well, I was bullied for being gay and soft and when I made a complaint to the teacher, he blamed it on me instead that I should do some reflection on myself," T said.²¹⁵

CASE STUDY: DEADLY IMPACT OF NAME-CALLING AND BULLYING

In some cases, bullying escalates with age. One high-profile case is the physical and sexual assault that led to the death of an 18-year-old boy in 2017. The perpetrators used to bully the victim in their former school. This continued despite all of them having left the school.

The victim had always been taunted and called 'pondan', a derogatory term for effeminate men or trans women. In the hospital prior to his death, the victim's mother recognized one of the perpetrators who beat him up three years prior. At that time, his mother went to school to

warn the boy, but received an explanation from him that he was only “playing with him”. The victim could not lodge a complaint to the teacher because the perpetrator threatened to beat him up if he did.²¹⁶ It can be seen here that the “playful” bullying escalated to causing grievous harm that resulted in the death of the victim.

A teacher later revealed that he was targeted for being effeminate.²¹⁷ Hence, it can be said that the teachers in the victim’s former school also seem to know about the ongoing bullying. However, news reports did not reveal whether any actions were taken to tackle the incidents.

Anti-bullying initiatives must recognize there may be extenuating circumstances which make it difficult for victims to come forward for fear of reprisal by the alleged bully. This corresponds to whether teachers are trained and equipped to adequately identify and address bullying in school, including being able to identify signs and refer for counseling.²¹⁸

These are some critical areas that need to be examined in understanding the experiences of LGBTQ, non-binary and gender nonconforming students in educational institutions:

1. Several school rules, regulations and circulars by the state Education Departments and Ministry of Education penalize and impose corporal punishment against non-heterosexual and cisgender expressions and identities, mirroring the Federal and state Syariah laws.

The Ministry of Education’s Circular No 7/2003 Power to Cane imposes corporal punishment for the following items that are categorized as serious offences. A student can be caned not more than three times on buttocks covered with clothes using a light cane for committing a serious offence.²¹⁹

- Adultery, sexual relation between men, unnatural sex (melakukan zina, liwat, hubungan luar tabii)
- Prostituting, becoming degenerated, *pondan*²²⁰ (*melacur/menjadi bohsia/bohjan/pondan*).

At the state level, a student discipline rule book for secondary school students by the Federal Territory Education Department also categorizes homosexuality and ‘gender confusion’ as a serious offence, and imposes corporal punishment and other forms of punishments against students because of their sexual orientation, gender identity and gender expression.²²¹

These school rules and guidelines in educational institutions create a restrictive environment for LGBTQ, non-binary and gender nonconforming students to express and be themselves and increase their vulnerability to violence and cruel and degrading treatment.

2. Curriculum, syllabus, textbooks and revision books. L shared in Form 6 revision books, there are contents that demonize LGBT persons, including saying that LGBT is a western value and contradicts with our Asian culture and values, and that LGBT bring disease in our society and in our country. However, the problem extends beyond the textbooks. It is the overall system, including the environment, policies, and practices, which punish students based on gender expression; bullying in schools, and encouragement to return to the right path.²²²
3. Counseling and other support and redress mechanisms in educational institutions. There is a difference in acceptance and viewpoint in terms of SOGIESC depending on private schools and national schools.
4. Discriminatory practices that restrict participation of LGBTQ, non-binary and gender nonconforming students in non-gender stereotypical activities, campaigns and activities that promote misunderstanding and harm against LGBTQ persons, among others.

Based on our interviews, anti-LGBT activities are not only carried out by the state, but also by various public universities. D shared that in 2017 and 2018, anti-LGBT activities in universities were carried out frequently and openly by Muslim Students Associations and Islamic Student Unions, among others.²²³ There were concerted efforts by university students to host and advertise their anti-LGBT initiatives²²⁴ including seminars,²²⁵ hashtag campaigns, calling for submissions and video competitions. This creates an environment that is non-accepting of LGBTQ students in the universities.

LGBTQ teachers and administrative staff in educational institutions also face multiple forms of barriers and discrimination. Anecdotal evidence shows that LGBTQ teachers and administrative staff often hide or do not feel safe to express their SOGIE.²²⁶

Two cases in relation to LGBTQ discrimination surfaced on social media and media in 2019:

- Gender diverse students were being targeted and subjected to ‘gender awareness’ corrective programmes by a counseling unit in Sabah. The programme was published in a 2017 yearbook, but came to public light when it was reported by the media in 2019;²²⁷

- A student was caned by a teacher for using a pejorative term for gay men and trans women against the teacher.²²⁸

The MOE’s interventions in both cases are commendable. However, long-term, proactive and comprehensive interventions are needed to address discrimination against LGBTIQ persons in educational institutions.

CASE STUDY: INCREASING AWARENESS OF DIVERSITY AND INCLUSIVITY IN SCHOOLS

There are several LGBTIQ human rights groups that work with students, young people and with schools. An NGO founded in 2014 has been carrying out anti-bullying seminars in secondary schools based on invitations. In their seminars, they address stereotypes and misconceptions of LGBT people, introduce SOGIE, and discuss mental health awareness.²²⁹

Due to the lack of societal acceptance--hence the discourse about SOGIE--the NGO’s outreach to the schools is restrained by personal contacts. The invitations are largely based on the initiative of individuals teachers and counsellors who are looking for information on SOGIE.

“.. they feel empowered and they are not afraid, and they know what kind of language that they can use when people bully them or attack them, information or things that they can do when they receive homophobic or transphobic aggression,” said YS.²³⁰

“The teachers... shared with us their issues about needing support to help LGBT students. Sometimes, this is the way for teachers to find out, or get knowledge and information on SOGIE. Because they can’t rely on the school to provide the knowledge. It depends on the initiative of the teachers,” L said.²³¹

Such LGBT-inclusive initiatives have faced challenges from school administrations, teachers, and parents. For example,

they are unable to title workshops on SOGIE as they are, because they would not be approved; such workshops are usually titled vaguely. There was also a case where students shared the session on social media and it received concerns by teachers and parents. The counsellor who invited the group was warned by the school, and the group was disallowed from entering the school from that point onwards.

YS also shared that because the programmes were being carried out based on individual invitations and not by schools themselves, they are not sustainable because the programmes would be discontinued when the staff leave the school.²³²

Besides anti-bullying initiatives, the NGO published a legal handbook and shared a copy each to the counselling units of Chinese independent schools. The handbook can be photocopied for students who want it as there is no copyright. YS said that the handbook received many positive comments and praised the content as important because it helped them know about the legal situation in Malaysia.²³³

There is also another NGO which provides live chats to all members of society. The NGO received 20 cases from May to December 2018; and 50 cases in 2019. L shared that the community face loneliness, lack of companionship, challenges living in the closet and coming out, lack of information about health issues especially sex education, lack of knowledge on access to hormones, bullying, family disownment, depression and suicidal ideation.²³⁴

Kuala Lumpur

The experiences of LGBTQ persons in educational institutions are limited, especially in states outside of Kuala Lumpur and Selangor. This is reflected in the report. The study mostly includes information based on research, reflection of experiences in educational institutions as adults, media and social media monitoring, and review of school rule books and circulars, where available.

Student Rulebook

A student discipline rule book for secondary school students by the Federal Territory Education Department includes 'gender confusion' and 'homosexuality' as serious offences, which can subject students to stern warning, expulsion, caning, suspension, fine, and being charged in court.²³⁵

Experiences of transgender persons in educational institutions The 2019 study by SUHAKAM covered the experiences of transgender people in educational institutions. The study consisted of 100 respondents, with the majority being from the 18-29 age group, followed by the 30-39 age group.

The report found that:

- The majority of the respondents were either aware of or questioning their SOGI while in educational institutions.
- The rampant hate speech and name calling from peers, teachers/lecturers and administrators were shared by the respondents
- Bullying incidents were a common experience faced by the transgender persons due to their SOGIE.
- More than half of the respondents shared that they felt uncomfortable with the binary school uniforms.
- The issue of toilets was raised by the respondents due to their gender identity.
- Sexual violations such as unwanted sexual gestures, language, images, molestation or unwanted touching, threat of rape and rape or coerced sex occurred in educational institutions. The perpetrators of the incidents included peers and teachers/lecturers.
- The study also shows that the educational system lacks any redress mechanism which transgender children trust, to discuss the unique challenges faced by them.

A student discipline rule book for secondary school students by the Federal Territory Education Department includes 'gender confusion' and 'homosexuality' as serious offences, which can subject students to stern warning, expulsion, caning, suspension, fine, and being charged in court.

A trans woman interviewee shared her experience facing discrimination in university. R recalled her experience of being advised multiple times to quit her studies by the head of department of her university, because her gender identity may bring shame to the faculty. This caused the interviewee a lot of stress, so she quit her studies mid-way through.²³⁶

At that point in time, R has just started medically transitioning. This added to the vulnerability as their trans identity visibility was heightened. Further, she did not have access to any LGBTIQ groups and was not equipped with the knowledge about their rights.²³⁷

*"In university, I didn't experience verbal violence and bullying, but the discrimination came from the institution, as they could not accept my gender identity. I feel that is a kind of bullying too, because they know we are powerless at that time, so that is used as an opportunity. The university refers us to counseling... to address the depression. I don't think that is the solution because the depression comes from the institutions," R said.*²³⁸

In addition, in SUHAKAM's 2019 study on discrimination faced by transgender persons, five respondents shared their experiences of sexual violence, which includes being either raped or gang raped by peers while they were at or outside of the school compound. Three of the respondents had not reported the matter to the school authorities, or public authorities, and not even to their parents. This was due to shame or lack of knowledge of their rights.²³⁹

In two cases when the rape incidents were disclosed to parents or teachers, the respondents related that these incidences were not heeded, or they had to take the blame for being themselves.²⁴⁰ This goes to show that an unsupportive environment for transgender or gender diverse people is a major hindrance for them to seek redress when they are being violated.

Perak

The interviewees from Perak had limited engagement with educational institutions and connections with young people. Through a brief engagement with a university in Perak an interviewee learned that the trans women students in the university were facing challenges to express themselves freely. She was, however, unable to provide further support for the students.²⁴¹

No information is available on trans men and LGB people based on media, social media and interviews.

Terengganu

No other information is available based on media, social media and interviews.

3.3.4 Violence

This section includes cases of violence experienced by LGBTQ people on the basis of actual or perceived SOGIE in public as well as private spheres perpetrated by unknown persons, school mates, gangsters, customers/clients, family members, authorities and members of the public. Violence includes multiple forms of aggression, not limited to physical violence and physical spaces.

In many of these cases, those seeking assistance were LGBTQ persons who are young or unemployed, which increases their vulnerability to marginalization.

There are similarities in the types of cases gathered in all three states:

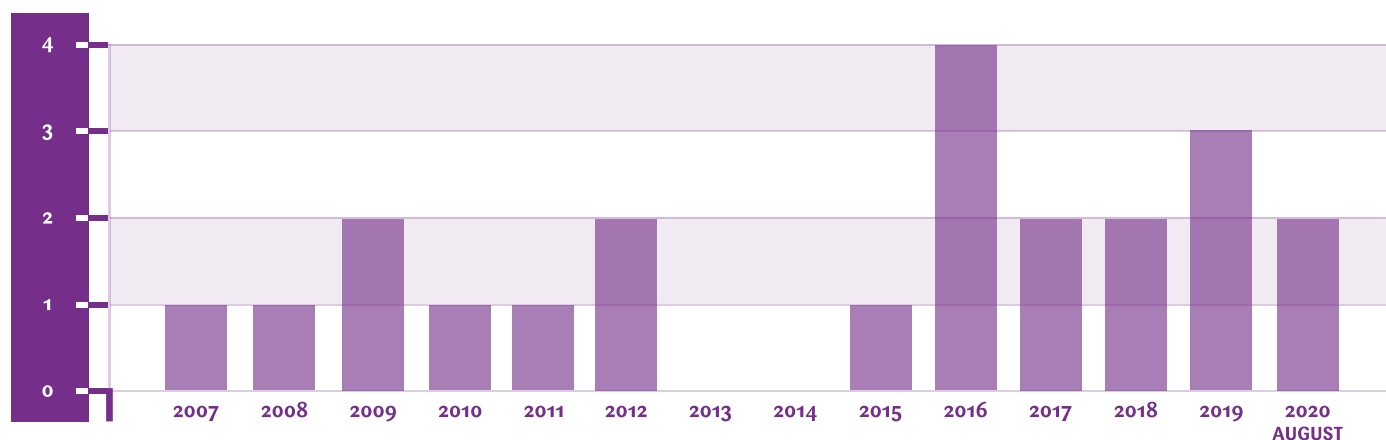
- The documented cases of hate crimes and murder are limited to trans women, which underscores the increased vulnerability faced by trans women because of their gender identity, gender expression, and stigma against sex workers. As of August 2020, two cases of murder of trans women in Kuala Lumpur and Johor were recorded.²⁴² Meanwhile, cases

of hate crimes against gay, bisexual and queer men are common, but underreported and poorly documented. While cases of hate crimes and murders are underreported and misreported (as victims are often misgendered), there is an upward trend of murders in the last five years.²⁴³ Between 2016 and August 2020 alone, at least 13 cases of murders have been reported. This makes up 62% of the total 21 cases that have been recorded between 2007 and August 2020 (14 years).

- Harassment, intimidation, violence, include violence experienced by trans women sex workers from gangsters. Based on a consensus dialogue in 2014, the estimated sex worker population size in Malaysia is about 45,000, out of which 21,000 are female sex workers and 24,000 transgender sex workers.²⁴⁴ SUHAKAM's 2019 study found that out of the 100 respondents who were transgender, 20 out of 64 full-time workers and 15 out of 45 part-time workers had taken up sex work. Of the 35 respondents who had taken up sex work, 28 stated they faced violence from clients/customers, 25 of them from authorities and 29 of them from members of the public.²⁴⁵
- Online gender-based violence is discussed throughout the report in connection with reprisals against human rights defenders and LGBTQ persons as well as online anti-LGBT campaigns. In a 2018 collective statement, LGBTIQ human rights groups and allies reported various forms of discrimination and violence experienced by LGBTQ persons and allies following the 14th General Elections, including
 - doxxing or dissemination of personal information or photos without consent;
 - hateful and violent messages and threats;
 - boycott campaigns against trans women-owned businesses;
 - increased vulnerability of being reported to enforcement agencies.²⁴⁶ Typically, online users report LGBTQ-related content or issues by tagging enforcement agencies and state actors in social media posts;

The study documented a case of catfishing experienced by a young queer man.²⁴⁷

- Four cases of domestic violence, including surveillance, disownment and forced marriages by family members in Perak.

CHART 2: REPORTED CASES OF MURDER OF TRANS WOMEN IN MALAYSIA BETWEEN 2007 AND AUGUST 2020

Source: Justice For Sisters, November 2019, <https://justiceforsisters.wordpress.com/2019/11/20/malaysian-government-must-take-urgent-and-meaningful-actions-to-curb-the-increasing-discrimination-and-violence-against-transgender-persons/>.

In many of the reported cases, the LGBTIQ people sought assistance as they faced violence after their family members discovered their sexual orientation and gender identity, their relationship or HIV status.

Between 2019 to 2020, S and their group received at least 10 cases of GBQ men being rejected by their family and sought shelter, because their sexuality was discovered. Most of the people in those cases were in their early 20s. Some of them were still pursuing higher education when they were disowned.²⁴⁸

During the MCO, there were 2 cases from Johor. The first case involved a young couple aged 21-year-old and a 19-year-old. When their family found out about their sexuality, they refused to let them work. They were disowned when they insisted on working. The second case was a 20-year-old student. When his family found out about his sexuality, they wanted him to stop his studies. When he insisted on studying, he was disowned.²⁴⁹

Cases of property damage, theft and break in were reported in Terengganu. All cases involved trans women.

Justice for Sisters and other groups and individuals have also documented at least 12 cases of break ins and property destruction by persons in residential areas, strangers or unknown perpetrators; physical attacks, humiliation and

torture by vigilante groups disguised as community policing or residential groups in 2017 and 2018.²⁵⁰

The SUHAKAM report notes that 31 respondents had experienced multiple forms of microaggressions and violence because of their gender identity and gender expression.²⁵¹

The cases illustrate a few key points:

1. The severity and vulnerability of LGBTQ persons facing violence varies depending on their age, financial independence and availability of financial support, patriarchal and conservative family structures that they live in, gender identity and expression, and HIV status, among others.
2. The common theme is in all cases, the victims lack access and options to redress or social support. As a result, they end up in situations that further victimize them.

The victims face insurmountable barriers seeking redress due to the environment that ostracizes them and blames the violations they experience on their nonconforming SOGIE. They fear being mistreated when they reach out for help. In fact, our report documented that in some cases, they were made to bear the blame.²⁵² Our report also found that the lack of knowledge of their rights contributes to the

barriers seeking redress, although protection from reprisals is not guaranteed.

The victims face multiple barriers seeking redress due to fear of being mistreated by the authorities, fear of their nonconforming SOGI being disclosed, and fear and guilt of taking action against family members, among others.

3. The lack of knowledge and access to LGBTIQ-affirming and inclusive support services, and lack of prior knowledge regarding their human rights and the legal framework in Malaysia limit their options for redress.
4. The lack of a rights-based, survivor-oriented and gender-sensitive approach in responding and analysing crimes against LGBTIQ people hinder the police and the government from understanding the trend of violence and increased vulnerability experienced by LGBTIQ people, and designing effective and meaningful responses to address violence against LGBTIQ people.²⁵³

Kuala Lumpur

The interviews in Kuala Lumpur document the violence experienced by transgender people, (mostly trans women), by unknown persons, school mates, customers/clients, family members, authorities and members of the public.

- **Hate crimes and murder**

In January 2019, a trans woman who was a sex worker died from multiple injuries in Klang, an area slightly outside of Kuala Lumpur. The police said the case was linked to a mobile phone theft and were quick to dismiss that it was related to LGBTIQ issues. However, LGBTIQ advocates questioned whether the perpetrators would act in such a violent way if the victim was not a transgender person.²⁵⁴

As of August 2020, two cases of murder of trans women in Kuala Lumpur and Johor were recorded. Both cases were reported in June 2020. The case in Kuala Lumpur involved a migrant trans woman.

No information is available on trans men, queer women and queer men based on media, social media and interviews.

Perak

This section includes violence experienced by trans women, queer men, and queer women by unknown persons and gangsters, as well as family members. However, no information is available on trans men.

The types of cases reported in Perak, include

- **Hate crimes and murder**

In October 2019, a trans woman in Perak was reportedly murdered. The case was either unreported or misreported and was discovered through community networks.²⁵⁵ The outcome of the case was unknown.

- **Harassment, intimidation, violence**

There have been incidents of physical violence in the last two years; most of the victims were sex workers. Some sex workers faced intimidation by gangsters who asked for protection money; failure to pay would result in physical violence. These cases are often unreported because they were afraid that would make the situation worse.²⁵⁶

- **Online violence**

The case reported was a young gay man who had been a victim of blackmail and catfishing in 2016-2017. He refused to make a police report out of fear that his case would be exposed. Besides worrying about his private pictures being leaked, his worries were increased by that fact that he did not want his family and friends to find out that he was gay.²⁵⁷

- **Domestic violence**, including surveillance by family members and forced marriages. In total, four cases of violence, including surveillance and forced marriages, were reported by family members in Perak.

Surveillance by Family Members. Between 2017 and 2018, two cases of surveillance by family members were reported by a queer young woman and gay young man. Both were students and not financially independent. They sought assistance from an interviewee, as their phones and whereabouts were closely monitored by their family members after finding out their sexual orientation.²⁵⁸

The lack of a rights-based, survivor-oriented and gender sensitive approach in responding and analysing crimes against LGBTIQ people hinder the police and the government from understanding the trend of violence and increased vulnerability experienced by LGBTIQ people, and designing effective and meaningful responses to address violence against LGBTIQ people.

The interviewee laid out their options – lodging a police report, talking to their parents, exploring options of studying in other states or outside of Malaysia, and tolerating their parents until they finish their education, as the two were in the last stages of their education. At the same time, the interviewee also expressed the prospective risks of escalation of violence and surveillance as a result of the interventions. In both cases, the two opted to finish their education and be more financially independent in order to wane off the surveillance and restrictions imposed by their family members.²⁵⁹

Forced Marriages. Two cases of forced marriages of queer women who were Muslim were reported in Perak between 2017 and 2019. In both cases the women were married off to suitors found by their family members within a month after discovering their sexual orientation or relationship.²⁶⁰

The 2019 case involved a couple - a queer woman and a trans man. Upon discovering her relationship with a trans man, the family members confined her at home, her phone calls and text messages were surveilled, and her family members quickly found her a match. In a matter of a few days, she was moved to a different state in Malaysia and was married off.²⁶¹

There were several commonalities in these cases. In both cases, the women were subjected to surveillance and restriction of freedom of movement, had no supportive family members to intervene, had no knowledge and access to women's rights groups and LGBTIQ human rights groups, and had no prior knowledge regarding their human rights and the legal framework in Malaysia.

The interviewee noted that those who sought assistance were very afraid of the Syariah laws, as they lacked understanding of their laws and their rights.²⁶² The interviewee identified that they specifically needed assurance from a Muslim person, which can be challenging to locate outside of Kuala Lumpur.

CASE STUDY: FINDING JUSTICE FOR VIOLENCE BY FAMILY MEMBERS

A recurring theme includes people being unsure of their legal rights. They are often threatened by their families that they could be forced to marry, or forced to come home under Syariah law.

In one of the cases, the interviewee even brought a lawyer along to give free legal advice to a Muslim queer woman under distress.²⁶³ However, the interviewee felt they still have doubts because they are not Muslims. It can be seen that the fear of the law coupled with the lack of Malay Muslim people to alleviate their doubts on their legal rights keeps them disempowered.

In such situations, survivors often refuse to report the matter, because they do not want to antagonize their family members. There was a case involving physical abuse, but even after the suggestion of lodging a police report, the survivor was reluctant to do so as they felt guilty and did not want to bring shame to the family.²⁶⁴

Most struggling LGBTQ people expressed intentions to move to other states or more urban areas. However, some are financially constrained. This could be influenced by their social class, discrimination faced during education, and lack of employment opportunities.

Such experiences have a profound impact on the mental health of LGBTQ people. As observed, they suffer with guilt, shame, and anxiety; some also suffer with suicidal thoughts.²⁶⁵

Terengganu

The cases of violence gathered in Terengganu is limited to experiences of trans women. No information is available on trans men, queer women and queer men. The types of cases reported in Terengganu include property damage and theft. The perpetrators of violence were unknown due to the lack of investigation and evidence from the scene of crime i.e. CCTV recordings and eyewitnesses.

In 2018, there was a case whereby the car of a transgender person was splashed with mud and the side mirror was destroyed. It happened right in front of their house in a residential area. The victim called the police and lodged a report. However, it was reported that the perpetrator was not caught or found from the police investigation.²⁶⁶

P shared that there was a case of theft and break ins of a trans woman's home in 2018. Police reports were lodged, but there was no outcome on the case. As such, they move to another place for their safety.²⁶⁷

3.3.5 Human Rights Defenders

The Model National Law on the Recognition and Protection of Human Rights Defenders defines human rights defender as 'any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.'²⁶⁸

Some argue that the definition of LGBTIQ HRD should be flexible, as the visibility of being a LGBTIQ person in and of itself can have multiple effects on human rights, especially in a context that vilifies LGBTIQ persons, even if they may not have the human rights awareness, consciousness or language. Their visibility, among others, could invite backlash, expand spaces for activism, push boundaries for acknowledgement or engagement on LGBTIQ-related issues.²⁶⁹

Four categories of human rights defenders in relation to human rights of LGBTIQ persons were identified for the purpose of this study:

- **LGBTIQ persons who work on human rights of LGBTIQ persons.** This includes LGBTIQ HRD who work as individuals or collectively in diverse forms and scales. Some LGBTIQ HRD are more susceptible to backlash due to their visibility. LGBTIQ HRD who are Malay Muslim persons face additional risks due to their actual or perceived religious background.
- **LGBTIQ human rights groups,** among others, face vilification and surveillance by state and non-state actors.
- **HRDs who work on human rights of LGBTIQ persons,** includes allies and others who support and advocate for human rights and inclusion of LGBTIQ persons.
- **LGBTIQ persons working on any area of human rights** face multiple restrictions and challenges to express their sexual orientation, gender identity and gender expression in the area that they work in. Their perceived or actual sexual orientation, gender identity and gender expression may increase their vulnerability to reprisals. On the other hand, the reprisals that they face due to their activism may have additional sexual orientation and gender intersections. KT shared an openly young gay man HRD who faced backlash by non-state actors for speaking out on racism on his social media platforms in June 2020 was also targeted because of his sexual orientation.

The environment in Malaysia for activism on human rights of LGBTIQ persons is restrictive and increasingly becoming more hostile. The HRDs face prolonged reprisals due to the lack of protection for human rights defenders compounded by criminalisation and bias towards LGBTIQ persons. Q shared that the visibility of their LGBTIQ activism is limited by financial instability, and that correlates with the anxiety of being outed and its repercussions heightened by the existence of laws and such.²⁷⁰

In R's engagement with government stakeholders, she has raised concerns over the increasingly hostile attitude towards LGBTQ people in Malaysia. The government stakeholders are of the view that "Malaysians are sensitive when it comes to LGBT issues". R observes that the refusal of the line ministries to undertake awareness raising efforts on LGBTQ issues among the general public causes prolonged hostility towards LGBTQ persons.²⁷¹

The environment in Malaysia for activism on human rights of LGBTIQ persons is restrictive and increasingly becoming more hostile. The HRDs face prolonged reprisals due to the lack of protection for human rights defenders compounded by criminalisation and bias towards LGBTIQ persons.

Further, KT highlighted the gaps in access to support services, in particular for LGBTIQ HRD. Those who are not connected to LGBTIQ networks feel more alone.²⁷²

The following cases show a range of reprisals against HRD due to their LGBTIQ activism and their actual or perceived sexual orientation and gender between 2018 and 2020. While most of these cases happened in Kuala Lumpur, the impact was felt nationwide. The cases show that the reprisals could be linked to an event, publication or statements on LGBTIQ related human rights issues. At the same, the reprisals against HRDs have a cumulative effect, as evidenced by the increase in severity in each episode of reprisals that they face.

- **Censorship.** Portraits of two LGBTIQ HRD in an exhibition in conjunction with the Independence Day in August 2018 were removed following instructions by the Federal Government', as the portraits were deemed as 'promoting LGBTIQ lifestyle'.²⁷³
- **Loss of employment for LGBTIQ persons, HRD or allies.** In May 2018, a LGBTIQ human rights defender was forced to resign his position as a press officer for the Minister of Youth and Sports following backlash over his LGBTIQ activism and sexual orientation by online users. The incident demonstrated the severity and prolonged reprisals that LGBTIQ human rights defenders face, and the limited access to opportunities for LGBTQ persons in Malaysia.
- **Police investigation.** The organizers of the march were called for a police investigation under Section 4(1) of the Sedition Act 1948 and Section 9(5) of the Peaceful Assembly Act 2012 (PAA) in March 2019.²⁷⁴ While the investigation on the Women's March was dropped, the state's heavy-handed response to the LGBTIQ visibility in the march resulted in increased security and safety risks for LGBTIQ human rights defenders and organizers.

- **Increased vulnerability of being reported to the police or other state agencies.** In 2018, a police report was lodged by the Terengganu PAS Youth against the then SUHAKAM Commissioner for issuing a statement in response to the caning of two queer persons in Terengganu for attempt of musahabah (sexual relations between women). The statement by SUHAKAM was deemed as "insulting the Syariah High Court's decision...meted out to the women...in accordance with God's orders and no one had the right to question it."²⁷⁵

In August 2020, four police reports were lodged against a HRD by JAKIM and non- state actors²⁷⁶ for publishing content on conversion therapy, which included state funded conversion activities. In a statement, Jakim said it lodged a police report as the content, 'likened the Mukhayam programme to western therapy practices such as using electric shock, surgery, forced marriages and corrective rape' and as the 'allegations are manipulative, malicious and seen as wanting to hinder and restrict the right to freedom of religion of Muslims in the LGBTIQ community who want to lead a better life in line with the requirements of Islamic law'.²⁷⁷

- **Property damage.** The Women's March in 2018 faced reprisals due to LGBTIQ visibility in the march. Unknown perpetrators damaged one of the organizer's cars, which was parked in a guarded neighborhood where they live.

Other than these reprisals, many HRD who defend human rights of LGBTIQ persons face 'everyday reprisals or backlash' because of their activism. R and T both shared experiences of facing backlash on social media. T has been told that they are 'morally and religiously corrupted for supporting the LGBTQ community'.²⁷⁸

The reprisals against HRD can have far reaching and layers of impact, including direct impact on the HRD and groups affected by the reprisal and indirect impact on the broader LGBTIQ persons and communities.

The indirect impact includes a chilling effect on rights, including, but not limited to the ability to exercise freedom of expression, association and assembly among LGBTIQ persons as a result of the reprisals against defence of human rights of LGBTIQ persons. For example, the 2019's Women's March had significantly lower LGBTQ visibility due to reprisals experienced by the organizers and attendees the previous year.

The reprisals and hostile environment against LGBTQ visibility and activism has an adverse impact on the support and solidarity by civil society groups and other allies on LGBTIQ-related issues. It makes groups reevaluate their support on LGBTIQ-related issues and its impact on their work, including their relationship with stakeholders and support from members of the public. KT noted that this is one of the biggest costs for the LGBTIQ movement, which is a small and under-resourced movement in Malaysia.

Meanwhile, some direct impacts on the HRD includes:

- Loss of employment for LGBTQ persons, HRD or allies.
- Social ostracization
- The personal and collective threats can have an impact on the HRD's mental health and well-being. It can also aggravate existing mental health issues.

KT added that the stereotype and expectation for HRDs to be resilient and take risks by allies and funders make it challenging for HRDs to be vulnerable. At the same time, in the context of reprisals, HRDs are expected to be highly functioning and not to break down to avoid a chain reaction among their peers. This bar is definitely set very high for LGBTIQ HRD. Consequently, it makes it challenging for HRD to recognize and address impact on mental health.

Kuala Lumpur/Selangor

Most of the cases of reprisals on page 80 and 81 happened in Kuala Lumpur. However, it had a nationwide impact.

Perak

YS highlighted their increased vulnerability to physical violence when providing emergency response to LGBTQ persons due to violence or restrictions by family members or others. Due to the nature of their work coupled with the lack of activism in Perak, in some cases, YS provides such support alone. YS acknowledges the personal risks that they face in providing support for LGBTQ persons.

Terengganu

No information on HRDs were gathered from the interviews.

3.3.6 Media Narratives and Representation

Media representation of LGBTQ people has shifted through the years, including in television post-2000. In early 1991²⁷⁹ *Jangan Ketawa*, a TV sketch show consisting of drag queens, was aired on mainstream television.²⁸⁰ The reruns were aired on Astro, satellite television provider, in the early 2000s. Mainstream television too, had included queer content in their programming. For example, in 2004, a local TV station had aired *Queer Eye for the Straight Guy*.

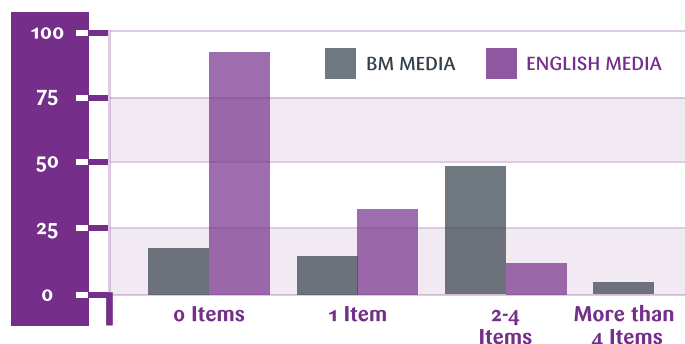
*"We even had Queer Eye for the Straight Guy back in the day, which was aired openly on 8tv. The show had so many good messages, but it didn't translate. When it comes to the Malay community, they prefer to listen to things in their mother tongue." Q said.*²⁸¹

Media representation indicates the level of social acceptance enjoyed by LGBTQ people. In Malaysia, LGBTQ persons are often caricatured, censored, sensationalized, and misgendered in the media. S observed that in the media, LGBTQ people are often still used as a joke. For instance, using drag queens as a joke and overemphasizing their femininity.²⁸²

B, on the other hand, observed the talk shows hosted in Metro, Utusan Malaysia and TV3 misinform the public not just on LGBTIQ issues, but also on HIV issues. They tend to sensationalize issues faced by LGBTQ people instead of unpacking them.²⁸³

Misgendering of trans women in Malay media is higher than in the English media. The Malay media more often than not, are not held accountable by their target audience when misgendering occurs, unlike the English media.²⁸⁴ This suggests the target audience may agree with such acts of dismissing the gender identity and degrading of trans women.

CHART 3: NUMBER OF ELEMENTS OF DISCRIMINATION IN LGBTQ-RELATED ARTICLES IN THE MEDIA IN JULY 2018



Source: Justice for Sisters, Brief media analysis of media content on LGBTQ in July 2018. Items monitored in the articles include: (1) Promotion of rehabilitation, correction of LGBTIQ persons, (2) Rejection of LGBTIQ persons based on religion or culture, (3) Misconceptions about LGBTIQ persons, (4) Call for actions against LGBTIQ persons, (5) Association with Pakatan Harapan (PH), (6) Use of derogatory terms.

A media analysis of Malaysian media content on LGBTQ in July 2018 found that there are disparities in standards of media reporting and representation of LGBTQ people in the media based on language and medium of the media outlets. The analysis found that Bahasa Malaysia (BM) media contained more elements of discrimination than English media.²⁸⁵

Our interviewees shared similar observations that now, in comparison to media in other languages, the mainstream and Malay media often portray LGBTQ people in a negative light from a religious perspective and using social norms.²⁸⁶ English and Mandarin media are more likely to portray LGBTQ people neutrally or positively. YS observed that post-2018, some English and Mandarin media started picking up better language.²⁸⁷

IMPACT OF MEDIA BIAS

The media bias has wide-ranging impacts on LGBTQ people—it affects the relationships of LGBTIQ people and their families and escalates state reprisals, amongst others.

The increased stigma from negative portrayals of LGBTQ people and narratives of LGBTQ people being successfully ‘rehabilitated’ strain their relationships because the pressure to “return to the right path” escalates. These experiences cause LGBTQ to feel alienated and unworthy or undeserving to be part of their families. The stress creates distance between

LGBTQ people and their family members, resulting in adverse impact on emotions and well-being all around.

“When the reported news are negative, about sex work, there are questions by the family members, when do you want to change, do you want to die like this, doing sex work. This stress creates distances between trans women and their family members, their emotions and well-being are affected,” said R.²⁸⁸

“Nothing in the media about trans women is positive. Everything is negative. And the reports give negative impact, and have an impact on the family. They feel uncomfortable, as if we are foreigners, we don’t deserve to be their children,” said K.²⁸⁹

Negative media representation of LGBTQ people reinforces the misconceptions that they are perverted; that they are moral vices; and that they can be punished or rehabilitated to “return to the right path”. When LGBTQ people are portrayed as less worthy of respect, dignity, equality and justice, it, in turn, heightens societal tolerance of violence and discrimination against LGBTQ people with impunity.

Our interviews found that the anti-LGBTQ narratives contributes to deepening of racial and religious divisions and harmful stereotypes in Malaysia. Due to the religious framework in the state-endorsed anti-LGBTQ initiatives and anti-LGBTQ sentiments, GY observed that some LGBTQ people tend to have increased fear and anxiety.

There is a perception of Malay people, especially cis Malay men as being ‘anti-LGBT’ or homophobic and transphobic. Because the state often reiterates that Islam does not accept LGBTQ people, coupled with the understanding that Malays are Muslims, it creates the perception that Malay people are anti-LGBTQ. As a result, some LGBTQ people have developed stereotypes and heightened sense of fear of Malay Muslim persons in general.

“Some people pointed out that the fact that as an LGBTQ person we walk on the street and we see another stranger, particularly cis man Malay, we have that fear that this person might be one of the persons online targeting LGBTQ. I also feel the same way when we enter into a majority Malay neighbourhood. Something play at the back our minds that how of these people, what are these

people saying online, the Malaysian people with religious sentiment who say LGBT boleh pergi mampus (translation: LGBT can go die) narrative, and that kind of affects the way that non-muslim deal with Malay Muslim persons. There were a few people who agreed and shared that they felt the same way before.”²⁹⁰

However, the birth of digital media has resulted in some changes in LGBTQ representation. Although some digital media are more LGBTQ-affirming and positive, some are tempted to sensationalize LGBTQ-related news for profit. “... in this profit driven world, there is a huge temptation for the media to use LGBTQ as a money-making tool,” G said.²⁹¹ Some media tend to release content that is quick and easy to be made viral, which includes LGBTQ issues. When this happens, the integrity and ethics of the media to protect marginalized groups are compromised.

INFLUENCING FACTORS OF MEDIA REPRESENTATION

Our report found the varying media representation of LGBTIQ people correlates with

- **Renewal of licenses of media outlets**
- **Target audience and market demands.**
- **The Guidelines on Film Censorship** by the Ministry of Home Affairs prohibits ‘homosexual and unnatural sex scenes’, ‘scenes of men and women or homosexuals embracing in a provocative manner’, and ‘scenes that depict transgender behaviour and lifestyle’.²⁹²

The legal framework, socio cultural sanctions and market demands combined restrict affirming representation of LGBTQ people and increase self-censorship among media, film makers and content creators to avoid backlash.

Q shared that a friend who is in the local film-making industry is constrained by local market demands. Since the series was targeted to local communities i.e. the Malay market, they have to produce content that paints LGBTQ people in a negative light, based on the blanket assumption of the Malay audience’s perception of LGBTQ persons and to avoid backlash from the Malay audience.

“I also have a friend who works in film, and she made a series, and portrayed LGBT in a very negative light. She knows me, and knows that I am gay. But it was her job to do a story about the queer community. I have known

her for so long since secondary school. The series was in Malay language. She has to do her job because that’s what the Malay market wants. Even if they produce something positive, they will probably get shunned straight away. Sometimes producers have no choice and they want to cater to want the Malay community wants,” Q said.

“I also know a few LGBT persons who work in the mandarin media, but they don’t cover LGBT topics. The LGBT topics are always difficult to be approved by editors,” YS said.

However, the birth of digital media has resulted in some changes in LGBTQ representation. Although some digital media are more LGBTQ-affirming and positive, some are tempted to sensationalize LGBTQ-related news for profit.

Unlike the Guidelines on Film Censorship, the MCMC Content Code is a voluntary and self-regulatory Code that sets out guidelines and procedures for good practice and standards of content disseminated for public consumption by service providers in the communications and multimedia industry.’

The Code includes ‘sexual orientation ‘and ‘gender’ as protected grounds of discrimination under several sections, including the General Principles, bad language,²⁹³ advertisements,²⁹⁴ specific broadcasting,²⁹⁵ and news and current affairs.²⁹⁶

2.0 General Principles

2.9 Code subjects will ensure, to the best of their ability, that their Content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio economic status, political persuasion, educational background, geographic location, sexual orientation or physical or mental ability, acknowledging that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms as contained in the Federal Constitution and other relevant statutes.”²⁹⁷

Kuala Lumpur

In 2019, the Women's March in Kuala Lumpur received wide media coverage due to visible participation, presence and inclusion of LGBTQ persons. Homophobia, transphobia and misogyny coupled with the click bait media economy created hypervisibility of the march, resulting in a wider anti-LGBTQ panic. Some media outlets especially mischaracterized the Women's March as an LGBTQ march or as being hijacked or tainted by LGBTQ presence.²⁹⁸

This sparked an escalation of hate speech and discrimination against participants and organizers of the march by both state and non-state actors. They include -

- The collective tagging of various state actors on social media, including the Minister in the Prime Minister's Department (Religious Affairs), the Ministry of Women, Family, and Community Development and the police by netizens on social media, to call for state action against organizers and participants of the march.²⁹⁹
- The lodging of more than 50 police reports against the organizers.³⁰⁰
- The investigation of organizers under the Peaceful Assembly Act 2012 (PAA) due to the allegations of the rally taking place without a permit. This is contrary to the fact that they did submit a notice ten days prior to the march.³⁰¹
- The expressed disappointment by Minister for Religious Affairs Mujahid Rawa over the 'misuse of democratic space' and reiteration that Malaysia does not accept LGBT.³⁰²
- The report of at least four cases related to employment, which included being issued warning letters by employers, being probed by colleagues and employers, threats to report the participants to employers for being pro-LGBT or attending an LGBTQ inclusive march.
- The report of two students in public universities reprimanded by the university dean or head of department for participating in the march.

MCMC Content Code... includes 'sexual orientation' and 'gender' as protected grounds of discrimination under several sections including the General Principles, bad language, advertisements, specific broadcasting, and news and current affairs.

Perak

There are state-level media and social media pages that publish state-level news. Taiping Zone is one of the social media pages that focuses on Perak related news. According to R, the admin of the page in the past had posted photos of alleged sex work spots with discriminatory captions, raising concerns over the safety and security of trans women.³⁰³

Terengganu

According to the interviewees, the local media platforms do not frequently report LGBT issues. P observed that the only two things that are reported are the arrest of transgender people, and when the transgender community participates in a state programme, the photos taken during the programme will be circulated in social media, television, and blogs.³⁰⁴

P added that there has been misuse of power in the dissemination of photos of arrest, detention or participation in state-led activities. For instance, when the news involves the arrest of trans women, the photos used are from the Islamic department, instead of the media who were present at the place of the incident.³⁰⁵

There are several online platforms that share local news, including the Facebook page "Terengganu Voice" and other online social sites. These sites often display negative attitudes against LGBT people, use inaccurate and derogatory terms to refer to trans women and gay men, for instance 'pondan', 'lifestyle' and 'way of entertainment'.³⁰⁶

With the rise in discrimination, violence and crimes against LGBT persons, it is imperative that the government adopts evidence and rights-based approaches in addressing these emerging issues. The government should work towards implementing the Concluding Observations by the CEDAW committee and the UPR recommendations.

In addition, these are specific recommendations to contribute towards the implementation of the Concluding Observations and the UPR recommendations

Section 4:

Conclusion and Recommendations

FEDERAL GOVERNMENT

Ministry of Health

1. Create a feedback mechanism to assess 'LGBTIQ friendliness' of healthcare services.
2. Build capacity of healthcare providers on LGBTIQ health needs, care and human rights of LGBTIQ persons.
3. Develop a roadmap for inclusion of comprehensive LGBTIQ-affirming healthcare services in the national healthcare system.

Ministry of Education

1. Undertake a study on existing policies and practices in relation to LGBTIQ students in educational institutions.
2. Engage LGBTIQ groups to create an efficient referral system in order to provide support for LGBTIQ students.
3. Implement comprehensive anti-bullying policies and mechanisms in educational institutions.
4. Equip and build capacity of educators, counselors and school staff on human rights of LGBTIQ persons, skills to address bullying and homophobia and transphobia in education institutions.
5. Introduce comprehensive sexual education in educational institutions.

Ministry of Women, Family and Community Development

1. Engage the gender studies departments from public and private universities as well as LGBTIQ human rights groups in understanding gender and sexual orientation.
2. Introduce the Gender Equality Act.

Ministry of Human Resources

1. Undertake research on employment discrimination against LGBTIQ persons.
2. Introduce laws that prohibit employment discrimination based on gender identity, gender expression, sexual orientation, sex and HIV status.

Ministry of Home Affairs and the National Registration Department

1. Review practices that disallow legal gender recognition in legal documents, including IC and birth certificate in order facilitate change of name, gender marker and other gendered details in legal documents.

SUHAKAM

1. Undertake a human rights impact assessment of the laws, policies, state-funded activities and practices in relation to LGBTIQ persons.
2. Establish a multi stakeholder committee to create a roadmap towards inclusion of LGBTIQ persons.

State Governments

1. Undertake a human rights impact assessment of state Syariah laws, policies and practices in relation to LGBTIQ persons.
2. Carry out awareness-raising efforts.
3. Engage LGBTIQ human rights groups to identify their needs and concerns in order to develop appropriate rights-based response.

Appendix

TABLE 1: LGBTIQ-RELATED RECOMMENDATIONS IN CYCLE 3

Number	Recommendation	Country	Status
151.55	Approve a broad anti-discrimination law that includes the protection of all rights for all people without discrimination.	Uruguay	Noted
151.77	Take the necessary measures to establish in its national legislation a comprehensive legal framework for effective protection against discrimination and violence against LGBTI people.	Argentina	Noted
151.78	Take necessary measures to protect LGBTI persons, in law and in practice, against any form of violence, harassment or discrimination and ensure the full enjoyment of all their fundamental human rights and freedoms.	Austria	Noted
151.79	Review and repeal laws that directly or indirectly criminalise consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity.	Canada	Noted
151.80	Decriminalise consensual sexual relations between adults of the same sex.	Chile	Noted
151.81	Ensure respect for the fundamental rights of all, without discrimination, including in relation to LGBTI persons by decriminalising homosexuality.	France	Noted
151.82	Repeal all legislation that discriminates on the basis of sexual orientation or gender identity to guarantee that LGBTI persons can enjoy all human rights without facing discrimination with regard to work, health, education, housing and other policy.	Germany	Noted
151.83	Repeal all laws that criminalize persons based on their sexual orientation and gender identity.	Iceland	Noted
151.84	Undertake efforts to guarantee and protect the human rights of LGBTI persons in line with international obligations.	Ireland	Noted
151.85	Take concrete steps to protect LGBTI persons from discrimination and violence, including through enactment of explicit nondiscrimination provisions in law, development of public awareness programs and to allow for recognition of the gender of transsexual persons.	Netherlands	Noted
151.224	Take concrete steps to protect LGBTI persons from discrimination and violence, including through enactment of explicit nondiscrimination provisions in law, development of public awareness programs and to allow for recognition of the gender of transsexual persons.	Portugal	Partially Accepted

Source: Report of the Working Group on the Universal Periodic Review, 7 January 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/001/96/PDF/G1900196.pdf?OpenElement>.

TABLE 2: LGBTIQ-RELATED RECOMMENDATIONS IN CYCLE 2

Number	Recommendation	Country	Status
146.98	Take legislative and practical steps to guarantee that LGBTI persons can enjoy all human rights without discrimination.	Germany	Noted
146.99	Introduce legislation that will decriminalize sexual relations between consenting adults of the same sex.	Croatia	Noted
146.100	Decriminalize homosexuality and respect the fundamental rights of LGBT persons.	France	Noted
146.101	Take the necessary measures to eradicate the discrimination based on sexual orientation.	Argentina	Noted
146.102	Delete those provisions that could favour discriminatory practices against persons based on their sexual orientation and gender identity.	Chile	Noted
146.103	Repeal sections of the Malaysian Penal Code that criminalize consensual same-sex conduct between adults.	Netherlands	Noted
146.104	Enact legislation prohibiting violence based on sexual orientation, and repeal laws that directly or indirectly criminalize consensual same-sex sexual activities.	Canada	Noted

Source: Report of the Working Group on the Universal Periodic Review, 4 December 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/188/48/PDF/G1318848.pdf?OpenElement>.

TABLE 3: LGBTIQ-RELATED RECOMMENDATIONS IN CYCLE 1

Number	Recommendation	Country	Status
76(f)	Elimination from the Penal Code of standards which allow for discrimination against people on the grounds of their sexual orientation.	Chile	Noted
88(a)	To respect human rights of all individuals, including homosexuals, by de-penalizing homosexuality.	France	Noted

Source: Report of the Working Group on the Universal Periodic Review, 5 October 2009, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/163/60/PDF/G0916360.pdf?OpenElement>.

TABLE 4: CEDAW's CONCLUSION AND OBSERVATIONS ON:

Criminalisation, legal barriers and protection in relation to discrimination and violence against LGBTIQ persons	<p>The State party undertakes awareness-raising measures to eliminate discrimination and negative stereotypes against lesbian, bisexual, transgender and intersex women. It particularly recommends that the State party to:</p> <p>a. Amend all laws which discriminate against LGBTI women, including the provisions of the Penal Code and Syariah laws that criminalize same-sex relations between women and cross-dressing;</p> <p>b. Apply a policy of zero-tolerance with regard to discrimination and violence against LGBTI women, including by prosecuting and adequately punishing perpetrators;</p> <p>c. Expedite measures to discontinue all policies and activities, which aim to “correct” or “rehabilitate” LGBTI women.</p>
Education	<p>Adopt anti-bullying policies based on alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for LGBTI students.</p>
Women Human Rights Defenders	<p>The Committee is concerned that women human rights defenders, in particular those advocating for Muslim women's rights, the rights of lesbian, bisexual, transgender and intersex women, as well as for democratic reforms, have reportedly been subjected to arbitrary arrests, harassment and intimidation by State authorities as well as religious institutions, including through the adoption of fatwas against women's organizations working on the above-mentioned issues.</p>

Endnotes

- 1 Authorities raid bar, claiming it will 'mitigate LGBTQ+ culture'; DPM says not to 'glamorize' lifestyle, <https://coconuts.co/kl/news/authorities-raid-bar-claiming-will-mitigate-lgbtq-culture-dpm-says/>.
- 2 Kelantan women welcome caning of lesbian couple, <https://www.nst.com.my/news/nation/2018/09/408170/kelantan-women-welcome-caning-lesbian-couple>.
- 3 Conviction for Attempts of Sex Acts Points to Increasing Hostility Towards LGBTQ Persons In Malaysia, <https://www.queerlapis.com/conviction-for-attempts-of-sex-acts-points-to-increasing-hostility-towards-lgbtq-persons-in-malaysia/>.
- 4 Let lesbian caning be a lesson to others, Malay-Muslims say, <https://www.themalaysianinsight.com/s/93672>.
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