



Home Office

# **Country Policy and Information Note**

## **Malaysia: Sexual orientation and gender identity or expression**

**Version 1.0**

**June 2020**

# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

## Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Assessment

Updated: 30 June 2020

## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of persecution and/or serious harm by state or non-state actors because of the person's actual or perceived sexual orientation and/or gender identity or expression.

### 1.2 Points to note

1.2.1 This note provides an assessment of the general situation of gay men, lesbians, bisexuals, trans and intersex persons as well as those perceived as such. They are referred hereafter collectively as 'LGBTI persons', though the treatment and experiences of each group may differ.

1.2.2 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Exclusion

2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses applies. If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection. Each case must be considered on its individual facts and merits.

2.2.2 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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### 2.3 Convention reason(s)

2.3.1 A person's actual or imputed membership of a particular social group (PSG).

2.3.2 LGBTI persons in Malaysia form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate

characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.

- 2.3.3 Although LGBTI persons in Malaysia form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.3.4 For further guidance on Convention reasons see the instruction on [Assessing Credibility and Refugee Status](#).

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## 2.4 Risk

### a. General points

- 2.4.1 Paragraphs 35 and 82 of the determination of the Supreme Court's ruling in [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31, heard 10,11,12 May and promulgated 7 July 2010](#), have set out the approach to take and established the test that should be applied when assessing such a claim based on a person's sexual orientation and / or gender identity / expression.
- 2.4.2 For further guidance, see the Asylum Instruction on [Sexual identity issues in the asylum claim and Gender identity issues in the asylum claim](#).

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### b. State treatment of LGB persons

- 2.4.3 The Penal Code does not specifically refer to homosexuality but addresses 'carnal intercourse against the order of nature'. This interpretation includes sex between men and between women and is punishable with a term of imprisonment of up to 20 years and is also punished with whipping (see [Legal context](#)).
- 2.4.4 Laws relating to LGB issues are frequently devolved to Sharia law which applies to Muslims across all 13 states and 3 federal territories. All of them criminalise same sex sexual acts with fines or up to three years' imprisonment and whipping (see [Sharia and customary laws](#)). In general, Sharia law does not apply to non-Muslims although they can be affected by the decisions made in a sharia court, for example in custody and religious conversion cases. Generally non-Muslims are not at risk from prosecution or affected by the imposition of Sharia law (see [Sharia and customary laws](#)).
- 2.4.5 The Australian Department of Foreign Affairs (DFAT) stated in November 2019 that prosecutions in relation to same sex activities have not been common and when they have occurred in recent years, they have been in relation to state-based Sharia legislation rather than federal law. Sharia law has been used to punish both male and female same-sex activity (see [Sharia and customary laws](#) and [State attitudes and treatment](#)).
- 2.4.6 The constitution does not prohibit discrimination on the basis of sexual orientation and gender identity or expression. There is no provision in law for

same sex marriage or civil partnership (see [Legal context](#) and [Societal norms](#)).

- 2.4.7 LGB clubs have been able to operate and were, until recently, left alone by the authorities. In August 2018 Malaysia's oldest gay bar in Kuala Lumpur, the Blue Boy nightclub, which had operated without incident for 30 years, was raided and 20 men were detained and ordered to have counselling for 'illicit behaviour' by the Federal Territory Islamic Religious Department of Malaysia. There have been no further reported raids on the blue boy and it remains open to this date (see [State attitudes and treatment](#) and [Rehabilitation](#)).
- 2.4.8 Government rhetoric towards the LGB community is mixed. A number of those within the government have issued negative messages on LGB rights with ministers stating that the government does not recognise LGB practices as lawful and some stating there are 'no gay people in Malaysia'. One minister criticised LGB rights' campaigners for attending a women's march in 2019. However, although some ministers have spoken out against the discrimination of the LGB community, with the minister of Islamic affairs condemning discrimination in the workplace and the Prime Minister describing the Sharia court caning of 2 lesbian women as 'cruel', reports suggest that the new government that came into power in 2018 continues its predecessor's anti-LGB rhetoric and policies (see [Official views on sexual orientation and gender identity](#)).
- 2.4.9 State and federal authorities have promoted 'rehabilitation' and 're-education' centres aimed at changing a person's sexual orientation or gender identity. The government has also published an e-book intended to steer LGB persons to 'the right path'. It has been reported that LGB persons are encouraged to attend 're-education' centres particularly if they are seeking treatment for HIV and in 2018, the Federal Islamic Development Department and the Federal Territory Islamic Affairs Department claimed to have returned 3,000 LGB persons to cisgender, heterosexual norms (see [Rehabilitation](#)).
- 2.4.10 LGB persons may be encouraged to attend 'rehabilitation centres' for 'gay conversion therapy'. Two news reports about a high-profile raid on a gay club in Kuala Lumpur stated that men were 'sent' or 'ordered' to attend counselling for illicit behaviour. The sources differ on the number of people involved, though, one suggesting 2 and the other 20 (see ["Rehabilitation"](#)).
- 2.4.11 It is unlikely someone could show that encouragement to attend 'conversion therapy' would amount to persecutory treatment. However, if a person can show that they would be forced to attend 'rehabilitation' and 're-education' centres then they are likely to be at risk of persecution/serious harm.
- 2.4.12 Section 37(e) of the Communications and Multimedia Act prohibits content which is deemed to be not in line with public policy. This has included depictions of LGB people and LGB issues. Authorities have censored and banned homosexual, bisexual and transsexual individuals from appearing on state media and have also censored films and songs which promote the acceptance of same-sex relations (see [Censorship/monitoring of online material](#)).

- 2.4.13 The Human Rights Commission of Malaysia (SUHAKAM) was established in 1999 and can inquire into allegations of infringements of human rights. SHUKAM has undertaken several pieces of work on LGB issues since 2010 in order to promote awareness of human rights (see [Ombudsman/complaints mechanisms](#)).
- 2.4.14 In general, LGB persons are unlikely to be of particular interest to the authorities and unlikely to be prosecuted under the Penal Code, although if it was applied it would be disproportionate and discriminatory. Muslim LGB people are likely to be liable to prosecution under Sharia law which would by its nature be persecutory.
- 2.4.15 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.16 For further guidance on assessing risk, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.17 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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c. State treatment of transgender persons

- 2.4.18 Article 8 of the Constitution states that all persons are equal under the law and there should be no discrimination against citizens on the grounds of gender, although there is insufficient clarity on how transgender issues are interpreted in the context of gender equality. The Malaysian Court of Appeal had stated in November 2014 that Sharia law discriminating on the grounds of gender means that harassment of transgender persons is unconstitutional. However, in October 2015, the Federal Court of Malaysia ruled that the state Sharia law was not unconstitutional (see [Constitution and statutory laws](#)).
- 2.4.19 Sharia law applies to Muslims across 13 states and all of the Muslim states have laws which prohibit posing as someone of a different sex, resulting in transgender persons being subject to arrest. Although Sharia law applies to Muslims only, non-Muslims have also been arrested for cross-dressing. Authorities often charged transgender persons with ‘indecent behaviour’ and ‘importuning for immoral purposes’ in public, which is punishable with a fine and up to three months in prison (see [Sharia and customary laws](#), [Arrests and detention of transgender individuals](#) and [Legal context](#)).
- 2.4.20 According to a number of sources Muslim and non-Muslim transgender persons face ‘systemic’ human rights violations and are subject to arrests, harassment and violence from state authorities, including physical and sexual assault during raids and arrests and subsequent placement in re-education centres (see [Arrests and detention of transgender individuals](#)).
- 2.4.21 Sharia law applies to Muslims across 13 states and almost all of the Muslim states have laws which prohibit posing as someone of a different sex, resulting in transgender individuals being subject to arrest. Although Sharia law applies to Muslims only, non-Muslims have also been arrested for cross-

dressing (see [Sharia and customary laws](#) and [Arrests and detention of transgender individuals](#)).

- 2.4.22 Transgender persons are generally unable to change their name and sex marker on their identity card (see [Official discrimination](#)).
- 2.4.23 Owing to their increased visibility, transgender persons are often charged with ‘indecent behaviour’ and ‘importuning for immoral purposes’ in public. They are fined and can be imprisoned for up to three months. Cross dressing is technically not illegal under civil law, but state police have arrested transgender women for public indecency and immorality or under Sharia law for impersonating a women. Transgender persons are particularly vulnerable to being subjected to raids by religious authorities and encouraged into ‘re-education’ centres. As with other members of the LGB community, it is generally reported that attendance is ‘encouraged’, which in itself is unlikely to amount to persecutory treatment, however if a person can show that they would be forced to attend then it is likely that a grant of asylum would be appropriate (see [Arrests and detention of transgender individuals](#) and [Rehabilitation](#)).
- 2.4.24 Transgender persons are often held in detention facilities designated for men leading to both verbal and sexual abuse by other prisoners and staff. State religious officials and police officers have also physically, and sexually assaulted transgender women arrested during raids (see [Arrests and detention of transgender individuals](#)).
- 2.4.25 Several transgender women have reported that abusive arrests have diminished since the court cases and have said that advocacy and awareness raising has restrained some officials, but state officials continue to propagate discriminatory beliefs and fail to denounce violence when it takes place (see [Arrests and detention of transgender individuals](#)).
- 2.4.26 Government views and attitudes towards the transgender community are varied with, for example the minister in charge of Islamic affairs suggesting on the one hand that Islamic authorities should ‘abandon their preoccupation with trans people’s attire’, whilst on the other hand expressing concern about the ‘worrying spread’ of the LGBT lifestyle. Reports suggest that the new government that came into power in 2018 continues its predecessor’s anti-LGBT rhetoric and policies (see [Official views on sexual orientation and gender identity](#)).
- 2.4.27 The risk of arrest for transgender individuals is generally higher than the rest of the LGB community owing to their increased visibility. In general, a transsexual person who is open about their gender identity is more likely to be at risk of treatment which by its nature and repetition amounts to persecution.
- 2.4.28 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.29 For further guidance on assessing risk, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#)

2.4.30 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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d. [Societal treatment of LGB persons](#)

2.4.31 Malaysia is a culturally and religiously conservative country and in general there is a negative view of same-sex relations. There is a strong social taboo against LGB issues among Muslims (see [Societal norms](#)).

2.4.32 LGB persons have faced threats, stigma, violence- including sexual violence, and discrimination from society. Some members of the LGB community hide their identity to avoid discrimination and ostracism by their family, who are often the perpetrators of violence against them. Some families have opted to send their children, who identify as LGB, to official or private 're-education' centres (see [Societal norms](#), [Societal treatment, violence and discrimination](#) and [Rehabilitation](#)).

2.4.33 According to sources online LGB hate speech has increased since the 2018 elections (see [Official views on sexual orientation and gender identity](#)).

2.4.34 Sources report that there are some organisations operating in Malaysia providing various forms of assistance and support to LGB persons, but that they are finding it difficult to work towards meaningful change. Whilst some human rights groups have publicly condemned discriminatory statements made by government officials some have also faced multiple forms of reprisals themselves as activists. There have also been some prominent Malaysian Muslim activists who have spoken out against the persecution of the LGBT community (see [LGBT groups, civil society and human rights NGOs](#)).

2.4.35 There are a number of gay bars and LGB friendly venues in Malaysia although evidence suggests that these are predominantly in Kuala Lumpur and geared towards foreign tourists. An interview with an openly gay musician acknowledged that the situation for everyday gay Malaysians was regressing but described his experience of being gay in Kuala Lumpur as a positive one and that the 'queer scene' is thriving (see [Gay 'scene' or 'community'](#)).

2.4.36 The level and frequency of discrimination and violence faced by members of the LGB community differs according to their socio-economic status, religion, geographic location and degree of openness. LGB persons who come from poorer rural areas are more likely to have to hide their sexuality within their social groups than those from urban areas who are well educated and of a high socio-economic status. In general, society is more tolerant to LGB people in Kuala Lumpur than in areas along the east coast peninsular or Sarawak and Sabah (see [Societal norms](#)).

2.4.37 Although LGB persons may face some societal discrimination in employment opportunities and negative media coverage, there are few reports of societal violence against them and it is unlikely that they would face a real risk of serious harm or persecution sufficient to qualify for protection. If a person does not openly express their sexual orientation or gender identity,

consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.

- 2.4.38 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.39 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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#### e. Societal treatment of transgender persons

- 2.4.40 Transgender persons face violence, blackmail, verbal and physical abuse, discrimination from their families and members of society, particularly those from a Muslim background where there is a strong social taboo against LGBT issues. Violence against transgender persons is under reported and often dismissed in reported cases although there have been a few cases covered by the media and two thirds of transgender women are said to have faced some form of physical or emotional abuse (see [Discrimination and violence against transgender individuals](#)).
- 2.4.41 Transgender persons face a negative representation in the media and even though they are employed in a range of professions transgender individuals are widely perceived and portrayed as sex workers, which carries a stigma in Malaysia. They are sometimes required by employers to use toilets based on the gender assigned at their birth (see [Discrimination and violence against transgender individuals, Societal norms](#) and [Access to services](#)).
- 2.4.42 Transgender persons also face discrimination and derogatory language when accessing healthcare, especially when it is linked to HIV/AIDS treatment, which is prevalent in the trans community. In 2019 a transgender activist was selected by the Ministry of Health to represent the trans community on a board that sets policy for the strategy to reduce HIV in Malaysia. This appointment sparked backlash from the general community who were reassured by the Minister of Health that the appointment didn't mean the government recognised LGBT culture or lifestyle but that efforts needed to be made to make healthcare inclusive and accessible to those in need. Transgender individuals have also reported discrimination and stigma when accessing employment and educational facilities (see [Access to services](#)).
- 2.4.43 The level and frequency of discrimination and violence faced by transgender persons may differ according to their socio-economic status, religion, geographic location and degree of openness. Transgender persons who come from poorer rural areas may be more likely to hide their gender identity than those living in more urban areas who are well educated and of a higher socio-economic status (see [Societal norms](#)).
- 2.4.44 In general, transgender people in Malaysia face a risk of societal discrimination and violence and those who are open about gender identity may be at risk of treatment which by its nature and repetition amounts to

persecution. However, this may differ depending on an individual's socio-economic status, religion and geographic location.

- 2.4.45 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.46 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.47 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from state actors, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors – including ‘rogue’ state actors – decision makers must assess whether the state can provide effective protection.
- 2.5.3 State authorities have been responsible for arrests, violence, detentions, harassment and discrimination towards LGBTI persons with reports of the police physically and sexually assaulting them. However, there is evidence of the authorities prosecuting some of the perpetrators of violence and murders against the LGBTI community, although in many instances the police ruled out hate crime as a motive.
- 2.5.4 It would be unreasonable to expect a person identifying as LGBTI to seek protection from the authorities. LGBTI persons are not arrested due to their sexuality but are arrested due to same sex sexual activity although as stated above the law is rarely enforced.
- 2.5.5 In general, the state appears able but unwilling to offer effective protection and the person will not be able to avail themselves of the protection of the authorities. However, each case will need to be considered on its facts.
- 2.5.6 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.5.7 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2.6 Internal relocation

- 2.6.1 Where the person has a well-founded fear of persecution from state actors, they are unlikely to be able to relocate to escape that risk.
- 2.6.2 Where the person has a well-founded fear of persecution from non-state actors, decision makers must determine whether the person could relocate internally to a place where they would not face a real risk of persecution or

serious harm and where they can reasonably be expected to stay. Each case must be considered on its individual merits.

- 2.6.3 The law allows for freedom of movement which is generally respected. Certain areas are more likely to face restrictions such as in the eastern Sabah and Sarawak States, where more traditional values persist. However, sources indicate that people are able to internally relocate and do so, usually to larger urban areas. This has included transsexual persons who have been able to move and gain employment in Kuala Lumpur.
- 2.6.4 An LGBTI person may be able to relocate to urban areas such as Kuala Lumpur (the capital) which has a population of 7.78 million and where sources suggest there is possibly more of a tolerance of LGBTI persons. Each case must be considered on its facts with the onus on the person to demonstrate why they are unable to relocate to another area.
- 2.6.5 Internal relocation is not viable if it depends on the person concealing their sexual orientation and / or gender identity/expression in the area of relocation for fear of persecution.
- 2.6.6 See also the country policy and information [Background Note on Malaysia](#).
- 2.6.7 For further guidance on internal relocation see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.6.8 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2.7 Certification

- 2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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# Country information

Section 3 updated: 22 June 2020

## 3. Legal context

### 3.1 Constitution and statutory laws

3.1.1 Article 8 of the Constitution states that all persons are equal under the law and there should be no discrimination against citizens based only on the ground of religion, race, descent, place of birth or gender in any law<sup>1</sup>. However, the Asia Pacific Transgender network report of 2017 noted that:

‘The addition of ‘gender’ in Article 8 occurred via an amendment, which came into force on 28 September 2001, and was precipitated by Malaysia’s signing and ratification of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1995. In Malaysia, the second highest court (the Court of Appeal) has deemed that Article 8’s prohibition of discrimination on the ground of gender means harassment of trans people is unconstitutional. However, given that discourse on this matter is limited, there is insufficient clarity on how trans issues are interpreted in the context of gender equality.’<sup>2</sup>

3.1.2 In their 2018 Global Workplace Briefing on Malaysia, Stonewall state that ‘There are no laws prohibiting discrimination based on sexual orientation and/or gender identity [...] Article 8 of the Constitution protects the right to equality before the law for all citizens regardless of religion, race, descent, place of birth, or gender. Sexual orientation and gender identity are not included in this list.’<sup>3</sup>

3.1.3 Article 10 of the Constitution allows for the right to freedom of speech and expression by every citizen<sup>4</sup>.

3.1.4 In their 2018 Global Workplace Briefing on Malaysia, Stonewall state that ‘Article 10 of the Federal Constitution protects the rights to freedom of speech, expression and peaceful assembly of citizens. These rights can be restricted but there are no LGBT-specific restrictions.’<sup>5</sup>

3.1.5 The International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) report, ‘State-sponsored Homophobia’, 13th Edition, 2019 (The ILGA report), stated: ‘In November 2014, the [Court of Appeal](#) found section 66 of the Syariah [Sharia] Criminal Enactment of Negeri Sembilan State criminalising cross-dressing unconstitutional. The court observed that the existence of a law that punishes gender expression is degrading and deprives those affected of their dignity and value in society.’<sup>6</sup>

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<sup>1</sup> Attorney General’s Chambers of Malaysia, ‘Federal Constitution, As at 1 November 2010’, [url](#)

<sup>2</sup> APTN & others, ‘Legal gender recognition in Malaysia a legal & policy...’, page 17, 2017, [url](#).

<sup>3</sup> Stonewall, Global Workplace Briefing 2018, ‘Malaysia’, 2018, [url](#)

<sup>4</sup> Attorney General’s Chambers of Malaysia, ‘Federal Constitution, As at 1 November 2010’, [url](#)

<sup>5</sup> Stonewall, Global Workplace Briefing 2018, ‘Malaysia’, 2018, [url](#)

<sup>6</sup> ILGA, ‘State-sponsored Homophobia’, 13th Edition, (p452), 2019, [url](#)

- 3.1.6 However, in October 2015, the Federal Court of Malaysia ruled that the state Sharia law was not unconstitutional<sup>7 8</sup>.
- 3.1.7 The Malaysia Penal Code does not specifically refer to homosexuality but deals with actions that go against the ‘order of nature’. Article 337A of the Penal Code, states: ‘Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.’<sup>9</sup>
- 3.1.8 Article 377B of the Penal Code, states: ‘Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years and shall also be punished with whipping.’<sup>10</sup>
- 3.1.9 Section 377D provides for punishments for acts of indecency: ‘Any person who, in public or private, commits, or abets the Commission of, or procures or attempt to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.’<sup>11</sup>
- 3.1.10 The Human Dignity Trust report ‘Breaking the silence’, dated May 2016, noted that ‘...consensual sexual conduct between women is criminalised through the statutory penal codes ... [in Malaysia] by using gender neutral language applicable to both male and female same-sex conduct...  
‘Some States [including Malaysia] initially had male-only gross indecency provisions...[Malaysia] amended their penal codes to apply equally to lesbians and bisexual women...in 1998’.<sup>12</sup>
- 3.1.11 Freedom House’s report ‘Freedom in the World 2020’ stated that in Malaysia ‘Same-sex sexual relations are punishable by up to 20 years in prison under the penal code, though this is generally not enforced.’<sup>13</sup>

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## 3.2 Sharia and customary laws

- 3.2.1 The Human Dignity Trust report ‘Breaking the silence’, published in 2016 noted that ‘Malaysia devolves its penal law to Malay states which may choose to implement Sharia law.’<sup>14</sup>
- 3.2.2 The same report also noted that ‘Female same-sex sexual conduct is also criminalised in most jurisdictions where Sharia law is applied in addition to or in the absence of a statutory criminal provision. according to the international lesbian and gay association, this includes ...Malaysia’.<sup>15</sup>
- 3.2.3 The Asia Pacific Transgender network report of 2017 noted that:

<sup>7</sup> Reuters, ‘Malaysia court upholds ban on cross dressing by transgender...’, 8 October 2015, [url](#).

<sup>8</sup> HRW, ‘Malaysia: Court Ruling Sets Back Transgender Rights’, 8 October 2015, [url](#)

<sup>9</sup> Attorney General’s Chambers of Malaysia, Penal Code, As at 1 February 2018, [url](#)

<sup>10</sup> Attorney General’s Chambers of Malaysia, Penal Code, As at 1 February 2018, [url](#)

<sup>11</sup> Attorneys General’s Chambers of Malaysia, Penal Code, As at 1 February 2018, [url](#)

<sup>12</sup> Human Dignity Trust, ‘Breaking the silence’ pages 8 & 10, May 2016, [url](#).

<sup>13</sup> Freedom House, Freedom in the World 2020, 4 March 2020, [url](#).

<sup>14</sup> Human Dignity Trust, ‘Breaking the silence’ page 42, May 2016, [url](#).

<sup>15</sup> Human Dignity Trust, ‘Breaking the silence’ page 9, May 2016, [url](#).

'Malaysia has 13 states and 3 federal territories. all have state-enacted Islamic laws that criminalise trans women based on their gender identity and gender expression, while some criminalise trans men.'<sup>16</sup>

3.2.4 The below table shows the states which have sharia law, the sections of the criminal code which relate to the LGBT community and the fine and/or imprisonment relevant upon conviction under those sections.

State	Law	Fine	Imprisonment
<a href="#">Negeri Sembilan</a>	Section 63. Liwat. (male person who commits an act of liwat [sodomy] with another male person)	≤ RM 3,000 (approx. £564)	≤ 2 years
	Section 64. Musahaqah (Any female person who commits musahaqah [sexual relations] with another woman)	≤ RM 3,000	≤ 2 years
	Section 65. Sexual intercourse against the order of nature	≤ RM 3,000	≤ 2 years
	Section 66 male person posing as a woman	≤ RM 1,000 (approx. £188)	≤ 6 months
<a href="#">Kedah</a>	Section 14. Liwat.	≤ RM 5,000 (approx. £940)	≤ 3 years
	Section 15. Musahaqah.	≤ RM 500 (approx. £94.0)	≤ 4 months
	Section7. Pondan	≤ RM 1,000	≤ 6 months

<sup>16</sup> APTN & others, 'Legal gender recognition in Malaysia a legal & policy...', page 30, 2017, [url](#).

State	Law	Fine	Imprisonment
<a href="#">Kelantan</a>	Section 14. Liwat	≤ RM 5,000	≤ 3 years (and or 6 strokes of whipping)
	Section 15. Musahakah	≤ RM 500	≤ 4 months
	Section 7. Pondan	≤ RM 1,000	≤ 6 months
<a href="#">Malacca</a>	Section 56. Liwat	≤ RM 5,000	≤ 3 years
	Section 58. sexual intercourse against the order of nature	≤ RM 5,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 59. Musahaqah.	≤ RM 1,000	≤ 6 months
	Section 72. Male person posing as woman	≤ RM 1,000	≤ 6 months
<a href="#">Sabah</a>	Section 82. Liwat.	≤ RM 5,000	≤ 3 years
	Section 76. Sexual intercourse against the order of nature	≤ RM 5,000	≤ 3 years or caning not exceeding six strokes or to any combination
	Section 77. Musahaqah.	≤ RM 1,000	≤ 6 months
	Section 92. Male person posing as woman or vice versa	≤ RM 1,000	≤ 6 months

State	Law	Fine	Imprisonment
<a href="#">Selangor</a>	Section 27. Sexual relations between persons of the same gender.	≤ RM 2,000 (approx. £376)	≤ 1 year
	Section 28. Sexual intercourse against the order of nature	≤ RM 5,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 30. male person posing as woman	≤ RM 1,000	≤ 6 months
<a href="#">Penang</a>	Section 25. Liwat.	≤ RM 5,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 26. Musahaqah.	≤ RM 5,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 28. male person posing as woman	≤ RM 1,000	≤ 1 year

State	Law	Fine	Imprisonment
<a href="#">Terengganu</a>	Section 30. Musahaqah.	≤ RM 5 ,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 33. male person posing as woman	≤ RM 1,000	≤ 1 year
<a href="#">Johor</a>	Section 25. Liwat.	≤ RM 5 ,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 26. Musahaqah.	≤ RM 5 ,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 28. male person posing as woman	≤ RM 1,000	≤ 1 year
<a href="#">Perak</a>	Section 53. Musahaqah.	≤ RM 2,000	≤ 1 year
	Section 55. male person posing as woman	≤ RM 1,000	≤ 1 year

State	Law	Fine	Imprisonment
<a href="#">Sarawak</a>	Section 22. Liwat	≤ RM 5,000	≤ 3 year or whipping not exceeding six strokes or to any combination thereof
	Section 23. Musahaqah	≤ RM 5,000	≤ 3 year or whipping not exceeding six strokes or to any combination thereof
	Section 25. male person posing as woman	≤ RM 1,000	≤ 1 year
<a href="#">Pahang</a>	Section 33. male person posing as woman	≤ RM 1,000	≤ 1 year
	Section 34. Female person posing man	≤ RM 1,000	≤ 1 year
<a href="#">Federal Territories</a>	Section 25. Liwat.	≤ RM 5,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 26. Musahaqah.	≤ RM 5,000	≤ 3 years or whipping not exceeding six strokes or to any combination thereof.
	Section 28. male person posing as woman	≤ RM 1,000	≤ 1 year

State	Law	Fine	imprisonment
<a href="#">Perlis</a>	Section 7. Pondan (male posing as female) or female posing as male	≤ RM 5,000 (approx. £942)	≤ 3 years
	Section 7. Pondan (female posing as men)	≤ RM 5,000	≤ 3 years

- 3.2.5 The Herald Malaysia online stated in an article from 2017 that Sharia law in Malaysia does not apply to non-Muslims<sup>17</sup>.
- 3.2.6 World, a news site that report on events from a Christian world view noted, in an article from 2017, that ‘Malaysia operates a dual court system: Civil courts cover the entire country and sharia courts preside over Muslim matters of family law and religious observance. Sharia court jurisdiction includes Muslims who wish to leave Islam. Non-Muslims have no standing in sharia courts but can be affected by their decisions’.<sup>18</sup>
- 3.2.7 Human Rights Watch, in a June 2019 report, noted: ‘The country’s thirteen states and federal territories each have their own Sharia criminal enactment, applicable to Muslims. Almost all such state laws prohibit same-sex relations<sup>19</sup>. The June 2019 HRW report and another undated HRW also note that they prohibit “posing” as someone of a different sex, not in its federal criminal code but in the Sharia codes of each of its states and its federal territory, ‘making Malaysia one of the few countries in the world that locks people up simply for being transgender’<sup>20 21</sup>.
- 3.2.8 The Human Rights Commission of Malaysia (SUHAKAM) listed the State laws penalising cross-dressing and non-binary behaviour in its 2019 report on transgender persons<sup>22</sup>.
- 3.2.9 The US Department of State’s International Religious Freedom Report for 2018 (The USSD IRF Report 2018), published on 21 June 2019 stated that ‘Under sharia, caning is permitted in every state. Offenses subject to caning, sometimes in conjunction with imprisonment, include consensual same-sex sexual relations...’<sup>23</sup>
- 3.2.10 The same report also noted: ‘Sharia courts have jurisdiction over Muslims in matters of family law and religious observances. Non-Muslims have no standing in sharia proceedings, leading to some cases where sharia court rulings have affected non-Muslims who have no ability to defend their

<sup>17</sup> The Herald Malaysia online, ‘Syariah Laws In Malaysia’, 25 February 2017, [url](#).

<sup>18</sup> World, ‘Islamist hardliners plan to expand sharia law in Malaysia’, 27 February 2017, [url](#).

<sup>19</sup> HRW, “The Deceased Can’t Speak for Herself:” Violence Against LGBT..., 25 June 2019, [url](#)

<sup>20</sup> HRW, “The Deceased Can’t Speak for Herself:” Violence Against LGBT..., 25 June 2019, [url](#)

<sup>21</sup> HRW, #OUTLAWED- “The love that dare not speak its name”, undated, [url](#).

<sup>22</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (pages 20-22), 2019, [url](#)

<sup>23</sup> USSD, ‘IRF Report’, 21 June 2019, [url](#).

position or appeal the court's decision...The relationship between sharia and civil law remains largely unresolved in the legal system.'<sup>24</sup>

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### 3.3 Other legal provisions affecting LGBTI persons (including intersex)

3.3.1 There is no legal recognition of same-sex relationships and there are no laws for same-sex couples to adopt children<sup>25</sup>.

3.3.2 According to the 4th Muzakarah [Conference] of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 13-14th April 1982 'a person who was born as a khunsa musykil [intersex] who has two private parts of male and female, it is permitted to undergo operation to retain the most functional private part according to the suitability'<sup>26</sup>.

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Section 4 updated: 30 June 2020

## 4. State attitudes and treatment

### 4.1 Arrests and detention of gay men

4.1.1 The 2019 SUHAKAM report on transgender persons noted 'Based on the Attorney General's Chambers and Royal Malaysia Police statistics, a total of 171 cases have been charged under section 377B of Penal Code from 2010 to 2014.'<sup>27</sup>

4.1.2 Several sources noted that in August 2018 the country's oldest gay bar, the Blue Boy club, had been raided. Twenty men were detained and ordered into counselling for illicit behaviour. Authorities had claimed the raid was part of an anti-drug operation, but one government minister suggested that the motivation had been to "mitigate the LGBT culture from spreading into our society"<sup>28 29</sup>. The bar had been operating without interference for around 30 years<sup>30</sup>. The club continues to operate at the time of writing this report<sup>31</sup>.

4.1.3 Several sources reported in November 2019 that 5 men were sentenced to jail, fines and caning by the Selangor Syariah High Court for attempted sexual intercourse following a 2018 raid on an apartment<sup>32 33 34</sup>. Four of the 5 men were caned and released pending appeal of their jail sentence and the fifth was hoping to appeal his entire sentence. A further 6 individuals were due to face trial on the same charges<sup>35 36 37</sup>. The Nikkei Asian Review,

<sup>24</sup> USSD, 'IRF Report', 21 June 2019, [url](#).

<sup>25</sup> Stonewall Global Workplace Briefings 2018, Malaysia, (The Legal Landscape), [url](#)

<sup>26</sup> HRW, "'I'm scared to be a woman"- Human Rights Abuses Against...', 24 September 2014, [url](#).

<sup>27</sup> SUHAKAM, 'Study on discrimination against transgender persons...', (page 25), 2019, [url](#)

<sup>28</sup> The Guardian, 'Malaysia accused of 'state-sponsored homophobia' ...', 22 August 2018, [url](#)

<sup>29</sup> Mamba online, 'Malaysia | Country's oldest gay bar raided to "stop..."', 20 August 2018, [url](#).

<sup>30</sup> Mamba online, 'Malaysia | Country's oldest gay bar raided to "stop..."', 20 August 2018, [url](#).

<sup>31</sup> Blue Boy Club, [url](#).

<sup>32</sup> Reuters, 'Malaysia sentences five men to jail, caning and fines for gay sex', 7 Nov 2019, [url](#)

<sup>33</sup> Amnesty International, 'Malaysia: Quash 'despicable' caning sentence...', 8 November 2018, [url](#).

<sup>34</sup> Suaram, 'Human Rights Overview Report on Malaysia 2019' (Gender and Sexuality), [url](#)

<sup>35</sup> Amnesty International, 'Caning of four men is a terrible warning to LGBTI people', 18 Nov 2019, [url](#)

<sup>36</sup> The Strait Times, 'Malaysian men caned for gay sex under Islamic law', 19 November 2019, [url](#).

<sup>37</sup> Nikkei Asian Review, 'Malaysia's LGBT community under siege as...', 20 November 2019, [url](#).

noted in November 2019, 'The exact number of convictions is unknown due to the absence of official figures, activists say, as people tend not to speak out. But raids are mostly conducted by Islamic authorities targeting Muslims, who are subject to both Sharia and civil law in Malaysia's dual legal system. "Trans women have been convicted in Sharia courts consistently," said Siti Kasim, a lawyer and human rights defender, but "never" gay people until recently.'<sup>38</sup>

- 4.1.4 The leading opposition leader and former Deputy Prime Minister Anwar Ibrahim was twice convicted of sodomy in 1999 and 2015. In February 2015 he was jailed for 5 years after he lost his appeal against his conviction on sodomy charges. It was widely thought that the charges were politically motivated<sup>39 40</sup>. In May 2018 he received a royal pardon and was released from prison<sup>41</sup>.
- 4.1.5 According to the Australian Government Department for Foreign Affairs and Trade (DFAT) Country Report for 2019 stated that 'prosecutions in relation to LGBTI activities have not been common. When they have occurred in recent times, they have been in relation to state-based Syariah legislation rather than federal law...' <sup>42</sup>

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## 4.2 Arrests and detention of lesbians

- 4.2.1 Several sources reported that in August 2018 a sharia court ordered a lesbian couple to be caned after they were caught having sex in their car. The sentence was carried out in the courtroom in front of witnesses<sup>43 44 45</sup>. According to one of the sources President Mahathir later denounced the punishment, saying it "did not reflect the justice or compassion of Islam"<sup>46</sup>.
- 4.2.2 HRW, reporting in June 2019, stated 'In September 2018, a Sharia court sentenced two women to caning for purportedly attempting to engage in homosexual relations.'<sup>47</sup>

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## 4.3 Arrests and detention of transgender individuals

- 4.3.1 The Asia Pacific Transgender network report of 2017 noted that:  
'Trans people in Malaysia face systemic and widespread stigma and human rights violations. Muslim trans people are subject to arrests, harassment and assault from federal, state, and local Islamic religious authorities, and often avoid reporting these incidents for fear that the police will not protect them. Due to limitations in the separation of state and religion [...] state-enacted

<sup>38</sup> Nikkei Asian Review, 'Malaysia's LGBT community under siege as...', 20 November 2019, [url](#).

<sup>39</sup> ILGA, 'State-sponsored Homophobia', 13th Edition, (p451), 2019, [url](#)

<sup>40</sup> DFAT, 'Country Information Report Malaysia' (para 3.134), 13 December 2019, [url](#)

<sup>41</sup> DFAT, 'Country Information Report Malaysia' (para 3.134), 13 December 2019, [url](#)

<sup>42</sup> DFAT, 'Country Information Report Malaysia' (para 3.134), 13 December 2019, [url](#)

<sup>43</sup> The Guardian, 'Malaysia accused of "state-sponsored homophobia"', 22 August 2018, [url](#)

<sup>44</sup> HRW, 'World Report 2019 – Malaysia', 17 January 2019, [url](#)

<sup>45</sup> NST, 'Uproar in Malaysia over LGBT groups at Women's Day march', 10 March 2019, [url](#)

<sup>46</sup> NST, 'Uproar in Malaysia over LGBT groups at Women's Day march', 10 March 2019, [url](#)

<sup>47</sup> HRW, "The Deceased Can't Speak for Herself:" Violence Against LGBT ..., 25 June 2019, [url](#)

Islamic law affects the lives of non-Muslim trans people as well, with all trans Malaysians regardless of religion being unable to access gender affirmation surgery and obtain legal gender recognition.<sup>48</sup>

4.3.2 In their 2018 Global Workplace Briefing on Malaysia, Stonewall reported that ‘Islamic laws banning cross-dressing are used against Muslim trans people. Under these laws, trans people are often arrested and trans women have their hair shaved off, which can be very traumatic. There has also been an unprecedented number of raids conducted by the religious authorities at trans events since some groups challenged the cross-dressing laws in court. Non-Muslim trans people are targeted under public decency acts, often for attending group events.’<sup>49</sup>

4.3.3 In a June 2019 report HRW noted that:

‘State religious officials and police officers have [...] physically and sexually assaulted transgender women arrested during raids to enforce Sharia laws that prohibit “a male posing as a female.”

‘Several Malaysian trans women have reported abusive arrests have diminished since an appeals court struck down as unconstitutional a state “cross-dressing” law in 2014. Malaysia’s highest court overturned the ruling on a technicality, but trans women say advocacy and awareness-raising have restrained officials. [...] But even when state agents are not the culprits of violence, they bear responsibility for propagating discriminatory beliefs that may lead to hate crimes and for failing to denounce violence when it takes place.’<sup>50</sup>

4.3.4 The 2019 SUHAKAM report on transgender persons noted ‘Whereas Syariah laws apply only to Muslims, non – Muslims have also been subjected to “moral policing”. They are subjected to arrests during police raid in entertainment outlet and by municipal council for roaming around on the street as cross dressers which may be accused of disorderly behaviour in public places. A non-Muslim transgender could also be charged under the Section 21 of Minor Offence Act 1955 for “obscene” behaviour.’<sup>51</sup>

4.3.5 The SUHAKAM 2019 report on transgender persons, which involved 100 transgender respondents between the age of 18-70 years, noted that:

‘There were 48 respondents in the study who shared that they had been arbitrarily questioned/stopped because of their gender identity and gender expression by the authorities [...] Out of the 100 respondents, 39 transwomen respondents shared that they were arrested by the authorities because of their gender identity and/or gender expression [...] Respondents further shared that during the arrest by the police, most were not informed of ground of arrest (25/39); were not informed of their legal rights (20/39); convinced, encouraged or threatened by the authorities to plead guilty (15/39); recorded statement was not read or confirmed before it was signed (13/39) and lastly personal belongings confiscated without been recorded (11/39) [...] During detention in police lock-up, majority of the transwomen

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<sup>48</sup> APTN & others, ‘Legal gender recognition in Malaysia a legal & policy...’, page 9, 2017, [url](#).

<sup>49</sup> Stonewall, Global Workplace Briefing 2018, ‘Malaysia’, 2018, [url](#)

<sup>50</sup> HRW, “The Deceased Can’t Speak for Herself:” Violence Against LGBT..., 25 June 2019, [url](#)

<sup>51</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (page 25), 2019, [url](#)

were detained and placed in cisgender men facilities [...] In prison, there were only 2 transwomen who were detained in cisgender men facilities and placed in the same cell with cisgender men inmates. Other remaining transwomen were placed in cisgender man facilities but either different block, cell or in solitary cell [...] Respondents experienced sexual violence while in detention or imprisonment by authorities and inmates [...] Only 22 respondents said that they felt safe while there were in detention or imprisoned and 16 respondents felt not safe'.<sup>52</sup>

- 4.3.6 As noted in the US Department of State's human rights report for 2019 (USSD Report 2019) published in March 2020:

'Authorities often charged transgender persons with "indecent behaviour" and "importuning for immoral purposes" in public. Those convicted of a first offense faced a maximum fine of RM25 (\$6.25) and a maximum sentence of 14 days in jail. The sentences for subsequent convictions are fines of up to RM100 (\$25) and up to three months in jail. Local advocates contended that imprisoned transgender women served their sentences in prisons designated for men and that police and inmates often abused them verbally and sexually.'<sup>53</sup>

- 4.3.7 The 2019 DFAT report which is based on a range of sources including in-country reporting, stated:

'While cross-dressing is not technically illegal under civil law, state-level police have arrested transgender women under the Minor Offenses Act (1955) for public indecency and immorality, or (where applicable) under Syariah-based law for impersonating women....

'In-country sources report that their increased visibility makes transgender individuals particularly vulnerable to being subjected to raids by religious authorities and subsequently placed in re-education centres. Transgender women are held in male custodial facilities, and numerous human rights organisations have reported allegations that state religious officials, corrections officers, and fellow detainees have subjected transgender women to physical or sexual violence and degrading treatment while in custody.'<sup>54</sup>

- 4.3.8 DFAT went on to assess that LGBTI individuals face a moderate risk of official discrimination which can include being subjected to prosecution, 're-education', exclusion from public spaces and employment opportunities. The DFAT report further assesses that 'some of these risks are higher for transgender individuals, and for those located in poorer and rural areas.'<sup>55</sup>

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## 4.4 Treatment of intersex persons

- 4.4.1 CPIT could find no specific information on intersex persons in the sources consulted ([see bibliography](#)).

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<sup>52</sup> SUHAKAM, 'Study on discrimination against transgender persons...', (page 100), 2019, [url](#)

<sup>53</sup> USSD, 'Country Report 2019', 11 March 2020, [url](#).

<sup>54</sup> DFAT, 'Country Information Report Malaysia', (para 3.130 & 3.139), 13 December 2019, [url](#)

<sup>55</sup> DFAT, 'Country Information Report Malaysia', (para 3.141), 13 December 2019, [url](#)

## 4.5 Official discrimination

4.5.1 According to the website Equaldex, transgender individuals do not currently have the right to change their legal gender<sup>56</sup>. There was a case in 2005 in which a transgender individual was able to change their name, sex marker and related last digit on their identity card<sup>57</sup>, however, this has not acted as a precedent and according to the DFAT report ‘the National Registration Department does not generally allow transgender people to access such changes. In 1983, the National Fatwa Council banned Muslims from undergoing sexual reassignment surgery (SRS). Neither SRS nor transition therapy are available in Malaysia.’<sup>58</sup> In January 2017 the Star reported that ‘the Court of Appeal has overturned a decision that allowed a woman who had a sex change to be legally declared a man.’<sup>59</sup>

4.5.2 The Star reported in March 2018 that:

‘The Election Commission will not stop transgender voters from casting their ballots despite a different gender stated in their MyKads. EC Election Academy registrar Nik Aminudin Nik Shahar Shah said a voter who appeared as a lady but with a MyKad that showed he’s a man would still be allowed to vote. Polling clerks, he said might face difficulties verifying the person’s identity. Nik Aminudin said the clerk would inform the presiding officer and the voter would have to fill in and sign Form 11. “This is to confirm that he or she is the same person in the MyKad, before being allowed to vote. “As long as the person has a valid MyKad and the person’s name is found in the list of registered voters, he or she will not be turned away,” he said’.<sup>60</sup>

4.5.3 On the same subject Monash University noted that ‘Although transgender Malaysians have the basic right to vote, they can only do so based on the gender identities assigned to them at birth, not the genders that they have appropriated to represent their authentic selves. In other words, they can vote in accordance with state stipulations, not on their own terms as free Malaysian citizens. To this day, transgender Malaysians are still barred from officially amending their biologically-determined genders on their MyKads’.<sup>61</sup>

## 4.6 Official views on sexual orientation and gender identity

4.6.1 The government failed to accept any recommendations, made in the UN Universal Periodic Reviews (UPR) in 2013 or 2018, with regard to sexual orientation and gender identity, citing religious belief and ‘moral consensus’<sup>62</sup>  
<sup>63</sup>.

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<sup>56</sup> Equaldex, ‘LGBT rights in Malaysia’, undated, [url](#).

<sup>57</sup> Icj, ‘JG v. Pengarah Jabatan Pendaftaran Negara, High Court of Kuala Lumpur, 25 May 2005’, [url](#).

<sup>58</sup> DFAT, ‘Country Information Report Malaysia’, (para 3.130), 13 December 2019, [url](#)

<sup>59</sup> The Star, ‘Court overturns decision in trans man’s case’, 6 January 2017, [url](#)

<sup>60</sup> The Star, ‘EC: Transgenders can vote too’, 31 March 2018, [url](#).

<sup>61</sup> Monash University, ‘#GE14 Selective Recognition: Transgender...’, 24 February 2020, [url](#).

<sup>62</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (page 33), 2019, [url](#)

<sup>63</sup> Article 19, ‘Malaysia: Fulfil UPR commitments,...’, 14 March 2019, [url](#)

- 4.6.2 In February 2017 the Malay Mail reported that the government’s Islamic Development Department (JAKIM) had released a video explaining how Muslims can ‘help’ LGB people change their sexual orientation. The video claimed that non-heterosexual orientation is a ‘test of Allah’ and people must ‘face the test appropriate with what Islam demands’<sup>64</sup>.
- 4.6.3 On-line news sites, Benar News and the Strait News, reported in July 2018 that Malaysia’s religious affairs minister, Mujahid Yusof Rawa, had urged the public to stop discriminating against LGBT people in the workplace<sup>65 66</sup>. The Strait Times went on to further note that he had said that such discrimination can push LGBT persons into the sex industry<sup>67</sup>. The Malaysian Independent reported that the Malaysian Islamic Development Department (Jakim) had noted 80% of transgender individuals were involved in the sex industry and Mujahid Yusof Rawa had stated that authorities would help them return to the “right path”, with the government organising campaigns, seminars and camps to reach out to the LGBT community<sup>68</sup>.
- 4.6.4 Reporting in 2018, Human Rights Watch stated:
- ‘Malaysia’s new government has put out a series of mixed messages on where it stands with regard to the rights of lesbian, gay, bisexual and transgender (LGBT) people.
- ‘On the one hand, the minister in charge of Islamic affairs in the new Pakatan Harapan government, Mujahid Yusof Rawa, has condemned bullying and workplace discrimination against LGBT people.
- ‘He has suggested that the Islamic authorities should abandon their preoccupation with trans people’s attire, an obsession that in recent years has prompted dozens if not hundreds of arrests of trans women under state Syariah [sharia] laws, which criminalise “a male person posing as a female.” (Trans women are not “male persons,” but since Malaysia will not allow them to change their gender markers on their official documents, they are considered male under the law.)
- ‘On the other hand, on July 23 [2018], he asserted before Parliament that the government is concerned with the “worrying” “spread of the LGBT lifestyle” and told his critics not to “stand on the Friday pulpit and accuse the Harapan government of being friendly to LGBT.” And on July 29 [2018], according to media reports, he said the government would organise “camps” and “seminars” for LGBT people, reportedly adding that, “Parents need to be aware that this can be stopped from the beginning. We are ready to guide and help because we have the expertise.”’<sup>69</sup>
- 4.6.5 On August 8 2018, Mujahid Yusof Rawa, the minister of Islamic affairs ordered the removal of portraits of two lesbian, gay, bisexual and transgender (LGBT) activists from a public photography exhibition, because

<sup>64</sup> Malay Mail, ‘Sexual orientation can be changed, Jakim says in new...’, 13 February 2017, [url](#).

<sup>65</sup> Benar News, ‘Malaysian Religious Affairs Minister Voices Support for LGBT...’, 17 July 2018, [url](#).

<sup>66</sup> Strait News, ‘LGBT rights protected but must abide by Malaysian laws, says...’, 23 July 2018, [url](#).

<sup>67</sup> Strait News, ‘LGBT rights protected but must abide by Malaysian laws, says...’, 23 July 2018, [url](#).

<sup>68</sup> FMT, ‘We have experts to help LGBT return to ‘right path’, says Mujahid’, 29 July 2018, [url](#)

<sup>69</sup> HRW, Malaysia Should Find ‘Right Path’ on LGBT Rights, 7 August 2018, [url](#)

'they promoted LGBT activities' and 'was not in line with government policy', according to a Reuters news report<sup>70</sup>.

- 4.6.6 In 2018 Malay Mail reported that Malaysian opposition leader, Datuk Seri Ahmad Zahid Hamidi had stated that the Indonesia earthquake was divine retribution for LGBT activities. The report stated that:

'Speaking at the Dewan Rakyat today during Question Time, Ahmad Zahid said he was worried that Malaysia might similarly incur the wrath of Allah due the LGBT community's activities here. "We look at the situation in Malaysia, we are worried because we know what happened in Palu recently where there was an earthquake and tsunami. It was reported that there were more than 1,000 members of their community who were involved in such (LGBT) activities.

"As a result, the entire area was destroyed. This is the punishment of Allah. My question is whether Jakim's programmes (to rehabilitate the LGBT) is successful because data shows that in the middle of the year more than 1,000 (LGBT) joined these programmes. We need to ensure that Malaysia and those who are against LGBT are spared Allah's punishment," said Ahmad Zahid. In his reply, Minister in Prime Minister's Department (Religious Affairs) Datuk Seri Mujahid Yusof Rawa said 1,450 members of Malaysia's LGBT community voluntarily participated in government programmes, adding that some have since returned to the "path of Islam".<sup>71</sup>

- 4.6.7 In March 2019 CNN reported that the Malaysian Tourism Minister Mohamaddin Ketapi had told German reporters that he wasn't aware of gay people in the Muslim-majority Southeast Asian country, stating that "I don't think we have anything like that in our country"<sup>72</sup>.
- 4.6.8 In March 2019 several sources reported that Malaysian minister Mujahid Yusof Rawa had criticised the presence of lesbian, gay, bisexual, and transgender (LGBT) groups at a march celebrating International Women's Day. He stated that it was "a misuse of democratic space"<sup>73 74 75 76 77</sup>.
- 4.6.9 The Star reported in May 2019 that the People's Justice Party [PKR] president Datuk Seri Anwar Ibrahim had stated that 'Malaysia must not bow down to international pressure over lesbian, gay, bisexual and transgender (LGBT) issues', he went onto say that 'although the country had to take into consideration the concerns of the international community, foreigners did not have any right to dictate terms on the issue.'<sup>78</sup>
- 4.6.10 In a June 2019 report HRW noted that:
- 'The new coalition government, led by the Pakatan Harapan party, has delivered to a certain extent, dropping politically motivated charges against

<sup>70</sup> Reuters, 'Malaysia orders pictures of LGBT activists removed from exhibit', 8 August 2018, [url](#)

<sup>71</sup> Malay Mail, 'Zahid says Indonesia quake was divine retribution for LGBT...', 23 October 2018, [url](#)

<sup>72</sup> CNN, 'There are no gay people in Malaysia says tourism minister', 7 March 2019, [url](#).

<sup>73</sup> New Straits Times, 'Uproar in Malaysia over LGBT groups at Women's Day...', 10 March 2019, [url](#).

<sup>74</sup> South China Morning Post, 'Where does Malaysia stand on gay rights?...', 11 March 2019, [url](#)

<sup>75</sup> Suaram, 'Human Rights Overview Report on Malaysia 2019' (Gender and Sexuality), 2019, [url](#)

<sup>76</sup> HRW, 'World report 2020', 14 January 2020, [url](#).

<sup>77</sup> USSD, 'Country Report 2019', 11 March 2020, [url](#).

<sup>78</sup> The Star, 'M'sia must not bow to international pressure on LGBT...', 15 May 2019, [url](#).

many activists and investigating corrupt officials. Yet, it has pointedly refused to embrace LGBT equality.’

‘Instead, the current administration continues its predecessor’s anti-LGBT policies, focusing on “rehabilitation” and prohibition of so-called “promotion of LGBT culture” (any form of LGBT visibility), while maintaining the threat of sanction through state and federal laws. The ethnically and religiously diverse Pakatan Harapan coalition appears determined to legitimize its Islamic credentials to bolster support among Malay Muslims, many of whom voted in favor of the long-ruling UMNO party or Islamist opposition parties in 2018. This battle for the Malay heartland, presumed to be socially and religiously conservative, causes politicians from across the political spectrum to emphatically adopt anti-LGBT positions.’<sup>79</sup>

4.6.11 SUARAM’s (a Malaysian HR NGO) Human Rights Overview Report on Malaysia 2019 has reported that:

‘The recognition and identity of the LGBTIQ community remain a contentious issue in Malaysia, as the government and certain sections of the public at large continue to harass and deny them that human right. Officials in various positions of power condone the rejection of the community on public platforms and this has hindered the progress of Malaysia into becoming a more inclusive society [...] To sum up, the LGBT community still faces significant challenges in Malaysia and this pattern of harassment and silencing is showing no signs of slowing down. These challenges come from nearly all layers of society, as seen in the various examples above: the ruling government, Opposition, professional organisations and even members of the public.’<sup>80</sup>

4.6.12 The former Prime Minister, Mahathir, has made several statements that LGBT issues are “only for the west” or “promoted by western countries” and not in keeping with Malaysian culture and values, though he described the caning of two lesbians in the state of Terengganu as “cruel”<sup>81</sup> <sup>82</sup> (for further information on the caning incident see also [Arrests and detention of lesbians](#), [Religious views](#) and [Law enforcement](#)).

4.6.13 Nikkei Asian Review, (a Japanese financial newspaper), noted in November 2019 ‘Few politicians have spoken up on LGBT rights. Charles Santiago, a member of parliament from the ruling coalition, is one of the few politicians to speak up on LGBT rights. He acknowledges there is no “political will” to embrace equality for LGBT people. But the MP is clear on his personal position: “Consenting adults need to be treated as such. LGBT communities should be given their rights”.’<sup>83</sup>

4.6.14 DFAT in their December 2019 report stated that ‘Despite the general improvement in the human rights climate resulting from the change of government in May 2018, in country sources report that LGBTI issues remain sensitive. The new administration has been unwilling to engage with

<sup>79</sup> HRW, “The Deceased Can’t Speak for Herself:” Violence Against LGBT..., 25 June 2019, [url](#)

<sup>80</sup> Suaram, ‘Human Rights Overview Report on Malaysia 2019’ (Gender and Sexuality), 2019, [url](#)

<sup>81</sup> South China Morning Post, ‘Where does Malaysia stand on gay rights?..’, 11 March 2019, [url](#)

<sup>82</sup> HRW, ‘World report 2020’, 14 January 2020, [url](#).

<sup>83</sup> Nikkei Asian Review, ‘Malaysia’s LGBT community under siege as...’, 20 November 2019, [url](#).

LGBTI advocacy groups or to consider any substantial changes in its approach to LGBTI issues, including through its rhetoric.’<sup>84</sup>

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#### 4.7 Religious views

4.7.1 A HRW article from June 2019, reported: ‘[R]eligious authorities in Terengganu state, which is run by the opposition Malaysia Islamic Party (PAS), caned two women for lesbian acts, some ruling party officials voiced objections regarding the nature of the punishment, and PH (Pakatan Harapan) leader Anwar Ibrahim suggested that same-sex relations should be decriminalized.’<sup>85</sup>

4.7.2 DFAT in their 2019 report stated:

‘In-country sources report that their increased visibility makes transgender individuals particularly vulnerable to being subjected to raids by religious authorities and subsequently placed in re-education centres.

‘The National Department of Islamic Development [JAKIM] and other state religious authorities have occasionally conducted raids on LGBTI events (similar raids reportedly target unmarried heterosexual couples and those suspected of other ‘non-Islamic behaviour’). In August 2018, for example, authorities raided a Kuala Lumpur nightclub known to be popular among the LGBTI community, detaining twenty men. JAKIM subsequently ordered the men to undergo counselling for “illicit behaviour”, while a government minister released a statement hoping that, the raid would “mitigate the LGBTI culture from spreading in our society”. While the majority of such raids have occurred in public places, state religious officials have also reportedly conducted raids on private premises on occasion, sometimes accompanied by members of the Royal Malaysia Police [RMP]. In-country sources have suggested that authorities conduct such raids as a means of creating income through extorting or blackmailing those targeted.’<sup>86</sup>

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#### 4.8 “Rehabilitation”

4.8.1 Reporting in 2018, HRW, stated:

‘Jakim [the federal Islamic development department] and the Federal Territory Islamic Affairs Department (Jawi) claim to have returned 3,000 LGBT people to the “right path,” or to cisgender, heterosexual norms. But pressuring LGBT people to “return” to the gender assigned at birth or heterosexuality is, by medical and psychiatric consensus, a harmful and impractical goal. Asking LGBT people to change increases stigma, blame, and social isolation, and can drive people away from crucial public health programmes...

‘In April 2018, students at the University Sains Malaysia organised an event that aimed to correct LGBT people and bring them “Back to Fitrah [Nature].” Jakim officials have advocated for anti-LGBT education in public schools.

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<sup>84</sup> DFAT – ‘Country Information Report -Malaysia’ (para 3.131), 13 December 2019, [url](#).

<sup>85</sup> HRW, 25 June 2019, [url](#)

<sup>86</sup> DFAT – ‘Country Information Report -Malaysia’ (para 3.135 & 3.133), 13 December 2019, [url](#).

And transgender women describe being asked to change while accessing health care. “Aliya,” 39, described going to an HIV clinic in Penang that claimed to be friendly to transgender women. A member of the staff asked her, “How long are you going to be like this?” “This was in 2016,” Aliya said, “and I didn’t go any more.”<sup>87</sup>

- 4.8.2 Religious Affairs’ Minister, Mujahid Yusof Rawa, announced in October 2018 that the government had published an e-book called Panduan Hijrah Diri (Guide for Rehabilitation) for the Lesbian, Gay, Bisexual and Transgender (LGBT) people that would steer them back to the right path. “The book Hadith Sahih Mengenai Perlakuan LGBT and leaflets on ‘Understanding LGBT from the perspective of a Muslim’ can also be downloaded,” and reiterated that the LGBT lifestyle would not be accepted in Malaysia<sup>88</sup>.
- 4.8.3 According to an article by Malay Mail, the 146-page book consisted of ‘nine chapters, forming a step-by-step guide that includes topics of “Start of the Journey”, “Realisation”, “Understanding the Challenges and Tests”, and “Controlling Your Lust”’.<sup>89</sup>
- 4.8.4 In 2016 the government launched a five-year action plan called Pelan Tindakan Menangani Gejala Sosial Perlakuan LGBT 2017 – 2021, working alongside 22 partners, including the Ministry of Health, Ministry of Youth and Sport, the Ministry of Women, Development and Community, state Islamic departments and other state agencies to address social skills and curb LGBT behaviour<sup>90</sup>.
- 4.8.5 The types of rehabilitation programmes were described by Malaysia Kimi, an online news portal, in April 2019:

‘The Mukhayyam programme - a three-day camp introduced in 2011, designed as a strategy to reduce HIV transmission among key affected populations, namely Muslim transwomen. The programme, listed in the National Strategic Plan to End Aids 2016-2030, has a few goals: 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. The government on multiple occasions has promoted the Mukhayyam programme as a rehabilitation camp. This was further reinforced by the director of Jakim, who was quoted in an article in July 2017 saying that the programme aims to guide and provide spiritual awareness for the LGBT community through a religious approach to return the participants “to the right path”. He noted that participants had changed their appearance, managed their romantic attractions and abandoned their homosexual behaviour. There are also Mukhayyam camps for gay men and lesbian women. The Malaysian Aids Council has also issued a statement denouncing the harmful effects of the Mukhayyam programme.’<sup>91</sup>

- 4.8.6 Further adding:

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<sup>87</sup> HRW, ‘Malaysia Should Find ‘Right Path’ on LGBT Rights, 7 August 2018, [url](#)

<sup>88</sup> Malaysia Kini, ‘Gov’t launches e-book on LGBT rehabilitation’, 23 October 2018, [url](#)

<sup>89</sup> Malay Mail, 24 October 2018, [url](#)

<sup>90</sup> Malaysia Kini, 19 April 2019, [url](#)

<sup>91</sup> Malaysia Kini, 19 April 2019, [url](#)

‘Various seminars and programs have been conducted targeting students, school counsellors, parents, volunteers, health staff and representatives of Muslim NGOs, that encourage people to avoid committing “LGBT acts”, and encourage others to identify and curb “LGBT behaviours” within their families, social circles, and workplaces... Jakim claimed they had reached out to over 2,000 LGBT people between 2006 and 2014 to return them “to the right path” through its volunteer and outreach programmes.’<sup>92</sup>

#### 4.8.7 The 2019 DFAT report stated:

‘Authorities at federal and state level have promoted so-called rehabilitation or re-education programs aimed at changing sexual orientation or gender identity, also known as conversion therapy. The Minister for Religious Affairs claimed in October 2018 that 1,450 people had “voluntarily” taken part in outreach programs organised by JAKIM since 2011. The Minister’s comments came while launching a JAKIM e-book guide called “Self-Transitioning from Homosexuality”, which remains available for download in the Google Play Store application. In-country sources report that the JAKIM rehabilitation programs are located in residential locations within neighbourhoods, with participants segregated by sex and subject to curfews. The programs reportedly teach participants how to pray, give them spiritual coaching, and “re-educate” them about their sexual identity. The federal government also reportedly runs seminars for non-LGBTI students, parents, and volunteers to equip them with knowledge on the psychosocial, psychological, and psycho-spiritual needs and health of the LGBTI community.

‘A number of state governments also run re-education programs for LGBTI individuals. The Terengganu government has reportedly run a “re-education boot camp” or ‘behaviour corrective program’ in Besut for effeminate teenage males since 2010, to which boys selected for effeminate behaviour were sent for physical training and religious and motivational classes; while the Negeri Sembilan Religious Affairs Department reportedly held a two-day camp as part of the state’s “Action Plan Against Social Ills of LGBT 2017-2021”. The Selangor State Government also reportedly offers inducement payments to members of the LGBTI community to undergo treatment by any institution, Muslim NGO or group that can “liberate, manage, protect, treat, and rehab [the] community”.

‘In addition to the programs run by official bodies, a number of private centres also reportedly offer “treatment” to LGBTI individuals through religious counselling. In country sources report that some parents elect to send their children to official or private re-education centres for reasons other than identifying as LGBTI, including in cases involving sex before marriage or drug abuse.’<sup>93</sup>

#### 4.8.8 The Un Special Rapporteur on the sale and sexual exploitation of children reported in her report dated January 2019 that she was ‘also concerned at reports of an increasingly hostile climate and State-supported or -tolerated

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<sup>92</sup> Malaysia Kini, 19 April 2019, [url](#)

<sup>93</sup> DFAT, ‘Country Information Report Malaysia’ ,(para 3.135 & 3.136), 13 December 2019, [url](#)

physical and sexual violence, confinement, isolation, and corrective or rehabilitative practices directed against lesbian, gay, bisexual, transsexual and intersex children'.<sup>94</sup>

- 4.8.9 The USSD report 2019 noted that 'State religious authorities reportedly forced LGBTI persons to participate in "treatment" or "rehabilitation" programs to "cure" them of their sexuality. In February [2019] the federal minister for religious affairs said the government would implement an outreach program for LGBTI individuals that, "apart from providing assistance such as food," would also include "religious education and counselling services so that they can return to leading normal lives."' <sup>95</sup>
- 4.8.10 CPIT was unable to find any sources to corroborate the USSD assertion that LGBTI persons were 'forced' to undergo counselling apart from a report by Mamba Online, quoted above in paragraph 4.1.1, commenting on the 2018 raid on the Blue Boy club, where it said 'There were approximately 100 people in the bar at the time, including tourists. It's understood that two locals were detained and will be send [sic] for counselling.' <sup>96</sup> The Guardian reporting on the same event noted 'Twenty men were detained and ordered into counselling for "illicit behaviour"' <sup>97</sup>

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#### 4.9 Censorship/monitoring of online material

- 4.9.1 Stonewall's Global workplace briefing from 2018 noted that 'Section 37(e) of the Communications and Multimedia Act (1998) prohibits publishing content that is not deemed to be in-line with public policy. This has included depictions of LGBT people and issues.' <sup>98</sup>
- 4.9.2 According to Pink News, in their article, Malaysia government 'demonising' LGBT people by censoring art exhibit, 9 August 2018:  
'A Malaysian Government Minister has been accused of acting to "demonise" LGBT people, after a senior minister ordered an arts festival to remove portraits of local LGBT activists. [...] It was confirmed that Government Minister Mujahid Yusof Rawa, who serves in the office of Malaysia's Prime Minister Mahathir bin Mohamad, ordered the removal of portraits and a rainbow flag from an exhibit at the George Town Festival in Penang. Experts have warned that the news is the latest sign of a dramatic swing against LGBT rights led by the Minister, whose government came to power [in 2018].' <sup>99</sup>
- 4.9.3 In August 2019 Malaysian authorities censored gay sex scenes in the movie "Rocketman", a musical based on the life of British singer Elton John, which depicted gay sex and men kissing. Art critics were outraged accusing the country of becoming a "nanny state"<sup>100 101</sup>.

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<sup>94</sup> UNHRC, 'Visit to Malaysia Report of the Special Rapporteur on....', (para. 24), 17 January 2019, [url](#)

<sup>95</sup> USSD, 'Country Report 2019', 11 March 2020, [url](#).

<sup>96</sup> Mamba online, 'Malaysia | Country's oldest gay bar raided to "stop..."', 20 August 2018, [url](#).

<sup>97</sup> The Guardian, 'Malaysia accused of 'state-sponsored homophobia' ...', 22 August 2018, [url](#)

<sup>98</sup> Stonewall Global Workplace Briefings 2018, Malaysia, (The Legal Landscape), [url](#).

<sup>99</sup> Pink News, 'Malaysia government 'demonising' LGBT people by censoring ...', 9 August 2018, [url](#)

<sup>100</sup> Reuters, 'Malaysia under fire over cuts to gay scenes in Elton John's...', 1 August 2019, [url](#)

<sup>101</sup> USSD, 'Country Report 2019', 11 March 2020, [url](#).

#### 4.9.4 The 2019 DFAT report stated:

‘According to media reporting in March 2019, a BN [Barisan Nasional – ‘National Front’ in English] lawmaker also expressed concerns over sex scenes and LGBTI representation appearing on online media service provider Netflix; however, Malaysia’s Film Censorship Act 2002, which censors “obscene content according to guidelines on security and public order, religion, socio-culture, decorum, and morality, does not apply to the Netflix online streaming service.

‘[...] Authorities have banned homosexual, bisexual, transsexual and transgender individuals appearing on state-controlled media since 1994, while media censorship rules ban movies or songs that promote the acceptance of same-sex relationships. In 2017, authorities initially banned a Disney live action production of “Beauty and the Beast” for an alleged “gay scene”, but backed down when Disney refused to censor the scene...’<sup>102</sup>

#### 4.9.5 The 2019 DFAT report further stated:

‘Media reports indicate that in August 2018, the minister for religious affairs announced a regulator would be established to monitor “LGBTI activity” online. Although no official reports can confirm the establishment of such a regulatory body as at the time of publication, the following international websites with LGBTI related content are blocked by the MCMC [Malaysian Communication and Multimedia Commission]: Planet Romeo (online dating platform), Gay Star News (LGBTI news platform), and Utopia (LGBTI Asia travel and Community Guide). However, local websites with LGBTI content are currently freely available to Malaysians.’<sup>103</sup>

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### 4.10 Ombudsman/complaints mechanisms

#### 4.10.1 The Human Rights Commission of Malaysia (SUHAKAM), noted on its website:

‘SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999, Act 597. Section 2 of this Act defines “human rights” as referring to the “fundamental liberties as enshrined in Part II of the Federal Constitution”...

‘The function of inquiring into complaints about human rights infringements is subject to the conditions imposed by section 12 of the Act. Section 12 empowers SUHAKAM to act on its own motion to inquire into allegations of infringement of human rights, in addition to acting on complaints submitted to it. SUHAKAM, however, may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have been finally decided by any court. Such investigations have to cease if the matter being investigated is brought before the courts.’<sup>104</sup>

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<sup>102</sup> DFAT, ‘Country Information Report Malaysia’, (Paras 3.106, and 3.132), 13 December 2019, [url](#)

<sup>103</sup> DFAT, ‘Country Information Report Malaysia’, (Para 3.106), 13 December 2019, [url](#)

<sup>104</sup> SUHAKAM, Functions, undated, [url](#)

- 4.10.2 In a 2019 report on transgender persons, SUHAKAM referred to its provisions on promoting awareness of human rights and conducting studies in that respect. It noted the Commission had undertaken several pieces of work on the LGBT community since 2010<sup>105</sup>.

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Section 5 updated: 22 June 2020

## 5. Societal norms

### 5.1 Overview

- 5.1.1 The Pew research centre global attitudes survey from 2014 stated that 88% of respondents in Malaysia believed that homosexuality was morally unacceptable, 4% believed it morally acceptable and 6% as not a moral issue<sup>106</sup>.
- 5.1.2 An online news report by Reuters in August 2018, stated: ‘Activists say intolerance of the lesbian, gay, bisexual and transgender community has grown in Malaysia in recent years. In February [2018], a newspaper article detailing how to identify lesbian, gay, bisexual and transgender individuals sparked outrage on social media.’<sup>107</sup>
- 5.1.3 The UNHRC ‘Compilation on Malaysia’ dated 3 September 2018 noted: ‘The Special Rapporteur on health stated that discriminatory societal attitudes towards lesbian, gay, bisexual and transgender persons prevailed in Malaysia and had been exacerbated over the past few decades by the use of a stigmatizing rhetoric by politicians, public officials and religious leaders. The criminalization of same-sex conduct and of different forms of gender identity and expression had reinforced negative societal attitudes and led to serious human rights violations of the rights of that group of the population.’<sup>108</sup>
- 5.1.4 In its 2019 report on transgender persons, SUHAKAM noted: ‘In Malaysia, the lesbian, gay, bisexual and transgender (LGBT) community is often regarded as a taboo. In Malaysia, strict conformity to the binary classification of gender, i.e. male or female, resulted in discrimination against LGBT community that led to many violations of their human rights. This traditional classification is deeply rooted in laws, policies, culture and spiritual beliefs.
- ‘[...] LGBT community calls for equal rights are often demonise in mainstream media, whom have contributed to the negative portrayal of the community. Media reports often perpetuated stereotypes, stigmatise the community, and exposed them to security risks. The existence of the LGBT community itself has been sensationalised and are regarded as a “threat” to society, further alienating the group. Therefore, it could be argued that the LGBT community face lack of acceptance in mainstream Malaysia. Indeed,

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<sup>105</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (page 2), 2019, [url](#)

<sup>106</sup> PRC, ‘Global Attitudes survey – Malaysia’ 15 April 2014, [url](#)

<sup>107</sup> Reuters, ‘Malaysia orders pictures of LGBT activists removed from exhibit’, 8 August 2018, [url](#)

<sup>108</sup> UN Human Rights Council, ‘Compilation on Malaysia’, 3 September 2018, [url](#).

their life in Malaysia has become a challenge and hence it would be appropriate to classify them as a marginalised group.

‘The most common terms for transgender person in Malaysia is, but not limited to, trans woman, trans man, mak nyah, transsexual and thirunagai. However, there are also derogatory and humiliating terms used in Malaysia by state and non-state actors describing transgender individual such as “bapok”, “pondan”, “sotong” (“squid”), “tomboy” and others.’<sup>109</sup>

- 5.1.5 The 2019 DFAT report noted ‘There is a strong social taboo against LGBTI issues, particularly among Muslims, and online abuse is common.’<sup>110</sup>

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## 5.2 Societal norms – gender and sexual identity

- 5.2.1 In February 2018 The Guardian reported that a Malaysian newspaper had published a list of attributes for identifying gay and lesbian people, the Guardian noted that:

‘The article in Sinar Harian featured bullet points of supposedly distinctive qualities that revealed LGBT people. They stated that gay men were easy to identify because of their love of beards, going to the gym – not for exercise but to check out other men – and branded clothing. Their eyes light up when they see handsome men, the article said. The stand-out attributes for lesbians were that they tend to hug each other, hold hands and belittle men, according to the newspaper.’<sup>111</sup>

- 5.2.2 The DFAT report which is based on a range of sources including in-country reporting, also stated:

‘The level and frequency of discrimination faced by members of the LGBTI community differs according to their socio-economic status, religion, geographic location and degree of openness. Well-educated urban LGBTI individuals of high socio-economic status are less likely to have to hide their sexuality within their family and social circles than are poorer individuals in rural areas. Sources report society is generally more permissive of people who identify as LGBTI in Kuala Lumpur than they are in East Coast peninsular Malaysia or Sarawak and Sabah.

‘DFAT assesses that LGBTI individuals face a moderate risk of... societal discrimination, which may include being subjected to exclusion from ...employment opportunities, and/or familial or societal violence.’<sup>112</sup>

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## 5.3 Societal norms – marriage

- 5.3.1 According to the OECD SIGI index ‘Both civil and Syariah laws reinforce stereotypical roles of men and women in the household. Under both legal systems, a husband is legally bound to maintain his wife, while there is no such obligation for a married woman who possesses means of her own. On

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<sup>109</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (pages 2,8 and 12), 2019, [url](#)

<sup>110</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

<sup>111</sup> The Guardian, ‘Malaysian newspaper publishes “how to spot a gay”...’, 12 February 2018, [url](#).

<sup>112</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.140 & 3.141), 13 December 2019, [url](#).

the other hand, the law expects women to be the primary carers in the household, and does not provide for the role of men in child-raising, entitling only women to parental leave for example.<sup>113</sup>

- 5.3.2 The same source noted 'Women are often expected to play a disproportionate role within the household. Even when they work full time, they take care of most of the cooking, housecleaning and childcare at home.'<sup>114</sup>
- 5.3.3 There is no legal recognition of same-sex relationships<sup>115</sup> same sex marriage is not recognised and adoption applies to married couples only<sup>116</sup>.

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## 5.4 Pro-LGBT marches/gay pride

- 5.4.1 Gay Star News reported in August 2013 that the 'Malaysian Court of Appeals has decided unanimously that the High Court of Malaysia had been right to dismiss a challenge to the 2011 police ban on the annual Seksualiti Merdeka festival' [a sexuality rights festival held in Kuala Lumpur].<sup>117</sup> Sources consulted indicated that the festival has not been held since.
- 5.4.2 In September 2017 Malay Mail reported that there was 'Muslim uproar over a "gay party" planned for September 30th in a club at the heart of the capital city prompted the Immigration Department to announce on Thursday [21 September 2017] a ban on the organisers and anyone planning to participate in the party. Immigration director-general Datuk Seri Mustafar Ali said in a press statement that the move was to preserve public order, declaring gay parties a threat to peace and security.'<sup>118</sup>

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Section 6 updated: 22 June 2020

## 6. Societal treatment and discrimination directed against LGBTI individuals

### 6.1 Overview

- 6.1.1 In a June 2019 report HRW noted that 'Multiple LGBT people and rights activists have reported a spike in anti-LGBT hate speech on the Internet since the elections [2018]. In August [2019], one trans-led group filed a police complaint about social media posts promoting anti-LGBT violence. Six months later, they had still not received a response.'<sup>119</sup>
- 6.1.2 DFAT in their December 2019 report stated that:

'There is a strong social taboo against LGBTI issues, particularly among Muslims, and online abuse is common. As noted in Media, authorities have

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<sup>113</sup> OECD, SIGI- Malaysia 2019, 2019, [url](#).

<sup>114</sup> OECD, SIGI- Malaysia 2019, 2019, [url](#).

<sup>115</sup> Stonewall Global Workplace Briefings 2018, Malaysia, (The Legal Landscape), [url](#)

<sup>116</sup> Equaldex, 'LGBT rights in Malaysia', undated, [url](#).

<sup>117</sup> Gay Star News, 'Ban on Malaysia's LGBT festival upheld by Appeals Court' 22 August 2013, [url](#).

<sup>118</sup> Malay Mail, 'Entry ban on gays tenuous, say lawyers', 24 September 2017 [url](#).

<sup>119</sup> HRW, "The Deceased Can't Speak for Herself:" Violence Against LGBT ..., 25 June 2019, [url](#)

undertaken efforts to restrict LGBTI activities online. Many members of the LGBTI community reportedly hide their identity to avoid harassment, familial ostracism, and/or violence. Reports of violence by family members towards LGBTI individuals are common, and society will generally place the blame for such violence on the individual for provoking it through identifying as LGBTI. Most of the recent cases of societal violence against LGBTI individuals of which DFAT is aware relate to violent attacks on transgender women, who tend to be more readily visible.<sup>120</sup>

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## 6.2 Discrimination and violence against gay men

6.2.1 Malaysia Kini, an on line news portal, provided two examples of violence against gay men in ‘recent years’ although they said they thought this might be ‘the tip of the iceberg as not all cases made it into media coverage’:

- ‘In December 2018, a viral video showed two men beaten up by several unknown assailants for allegedly having sex in a car.
- ‘In June 2017, schoolboy T Nhaveen, died after he was assaulted and raped by bullies in their effort in “reforming” him into a “macho man”.<sup>121</sup>

6.2.2 HRW, reporting in June 2019, stated: ‘Lesbian, gay, bisexual [...] people in Malaysia face violence from both state authorities and civilian actors.’<sup>122</sup>

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## 6.3 Discrimination and violence against lesbian women

6.3.1 A December 2017 research paper on ‘Social media and lesbians noted that:

‘Lesbians, as with other categories of homosexuals in Malaysia, face discrimination, stigma and abuse, not only from the community, but also from their own family. According to Low ([Malaysian youth sexuality: issues and challenges 2009](#)), lesbians are reproached extensively, ignored and discriminated in society, causing them to hide, distance themselves and pretend they do not exist. Due to the unacceptance of people around them towards their sexual orientation, this group is seen to have turned to the use of social media as a platform to communicate among their own community.’<sup>123</sup>

6.3.2 HRW, reporting in June 2019, stated: ‘Lesbian [...] people in Malaysia face violence from both state authorities and civilian actors.’<sup>124</sup>

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<sup>120</sup> DFAT – ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

<sup>121</sup> Malaysia Kini, ‘End violence based on gender and sexual orientation’, 14 March 2019, [url](#)

<sup>122</sup> HRW, 25 June 2019, [url](#)

<sup>123</sup> International Journal of Academic Research, ‘Social Media and Lesbians...’, December 2017, [url](#).

<sup>124</sup> HRW, 25 June 2019, [url](#)

## 6.4 Discrimination and violence against transgender individuals

- 6.4.1 The Guardian, reporting on an incident that took place on 16 August 2018, noted: '[A] trans woman was brutally beaten on the street in Seremban while seven others watched.'<sup>125</sup>
- 6.4.2 The Coalition for SOGIESC [Sexual orientation, gender identity and gender expression] Human Rights in Malaysia, Stakeholder Report on the Status of Human Rights of LGBTI Persons in Malaysia (2018), stated:  
'Gender based violence and hate crime towards trans women and gender nonconforming is largely unreported, and elements of hate and gender-based violence are often dismissed in reported cases. Between 2011 and 2017 three cases of hate crime towards trans women were reported in the media, including spate gang attacks, physical assault with metal rods, stabbing. Three cases of murder of trans women were reported in 2017....'<sup>126</sup>
- 6.4.3 In their 2018 Global Workplace Briefing on Malaysia, Stonewall reported that 'All of these laws make LGBT people vulnerable to blackmail and to physical and verbal abuse from family, strangers and authorities. They also make LGBT people vulnerable to losing their jobs and security and prevent them from being able to be themselves.'<sup>127</sup>
- 6.4.4 The SUHAKAM 2019 report on transgender persons, which involved 100 transgender respondents between the age of 18-70 years, noted that all transgender respondents had '[...] experienced harassment, abuse, and violence by the general public, the state authorities as well as non-state agents [...] 31 respondents shared that they experienced violence from their neighbours or people in their neighbourhood because of their gender identity and gender expression'.<sup>128</sup>
- 6.4.5 The same report further found: '93 respondents shared that they experienced violence because of their gender identity and gender expression. The type of violence includes physical violence, verbal violence, emotional violence and sexual violence and by different actors including authorities, family members, intimate partners and members of the public [...] violence experienced by respondents were mostly from the members of public, often verbal'.<sup>129</sup>
- 6.4.6 Reports of violence against transgender persons include:
- In February 2017, Sameera Krishnan, a transwoman who was due to testify in her kidnapping case which happened two years prior, was brutally murdered and mutilated<sup>130 131</sup>.

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<sup>125</sup> The Guardian, 'Malaysia accused of "state-sponsored homophobia"', 22 August 2018, [url](#)

<sup>126</sup> OHCHR, 'Stakeholder Report (2018)', (Health, p12-14), [url](#)

<sup>127</sup> Stonewall, Global Workplace Briefing 2018, 'Malaysia', 2018, [url](#)

<sup>128</sup> SUHAKAM, 'Study on discrimination against transgender persons...', (page 6 and 85), 2019, [url](#)

<sup>129</sup> SUHAKAM, 'Study on discrimination against transgender persons...', (page 100), 2019, [url](#)

<sup>130</sup> Malaysia Kini, 'End violence based on gender and sexual orientation', 14 March 2019, [url](#)

<sup>131</sup> OHCHR, 'Stakeholder Report (2018)', (Health, p12-14), [url](#)

- In August 2018, a transwoman in Negeri Sembilan was hospitalised for five days after suffering a violent assault resulting in broken bones, and internal, head and back injuries. Eight men were arrested and 3 are still on the run<sup>132 133 134</sup>.
- In December 2018, the Klang Selatan police discovered a 32 year old transwoman from Sabah unconscious in front of a hotel in Bukit Tinggi. She subsequently died in hospital and the post-mortem report revealed she suffered a fractured skull and bleeding in the brain. Five people, aged 16 – 21, were charged with beating her to death. The police ruled out that the incident was a hate crime<sup>135 136 137</sup>.
- In January 2019 it was reported that a trans women died after allegedly falling from a moving vehicle and the driver of the vehicle was subsequently arrested. The police ruled out that the incident was a hate crime<sup>138 139 140</sup>.
- In October 2019 a trans woman of Thai nationality was found dead in a hotel in Langkawi- she had been dead for a few days. The status of investigation of this case is unknown<sup>141</sup>.
- In October 2019 a trans woman in Perak was reportedly murdered. According to the source the case was either unreported or misreported and was discovered through community networks<sup>142</sup>.

6.4.7 Free Malaysia Today (FMT), an independent, news portal, reported in January 2019 that:

‘A group of NGOs has called for police guidelines on handling LGBT murders and crimes, saying punishment alone will not resolve the “systemic” violence against transgenders.

‘Transgender rights group Justice for Sisters and 11 NGOs today said they were concerned over the rise in violence and crimes against transwomen here, saying 18 such cases had been reported from 2007.

‘In a statement, the NGOs added that most of these cases saw transwomen tortured, beaten to death, strangled, gagged, pushed off a building, drowned, stabbed, mutilated and physically assaulted.’<sup>143</sup>

<sup>132</sup> Malaysia Kini, ‘End violence based on gender and sexual orientation’, 14 March 2019, [url](#)

<sup>133</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

<sup>134</sup> HRW, World report 2020, 14 January 2020, [url](#).

<sup>135</sup> FMT, ‘NGOs raise alarm over yet another murder of a transgender women’, 3 January 2019, [url](#)

<sup>136</sup> Star Observer, ‘Second trans woman killed in [...] less than a month’, 4 January 2019, [url](#)

<sup>137</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

<sup>138</sup> FMT, ‘NGOs raise alarm over yet another murder of a transgender women’, 3 January 2019, [url](#)

<sup>139</sup> Star Observer, ‘Second trans woman killed in [...] less than a month’, 4 January 2019, [url](#)

<sup>140</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

<sup>141</sup> Justice for Sisters, ‘Malaysian government must take urgent and ...’, 20 November 2019, [url](#).

<sup>142</sup> Justice for Sisters, ‘Malaysian government must take urgent and ...’, 20 November 2019, [url](#).

<sup>143</sup> FMT, ‘NGOs raise alarm over yet another murder of a transgender women’, 3 January 2019, [url](#)

- 6.4.8 In a June 2019 report HRW noted that ‘[...] trans women primarily fear violence from ordinary people: clients, partners, or strangers, including vigilante groups seeking to rid the streets of trans women.’<sup>144</sup>
- 6.4.9 Justice for Sisters reported on their website that ‘While cases of hate crimes and murders [against trans people] are underreported and misreported (as victims are often misgendered), there is an upward trend of murders in the last 3 years. Between 2017 and 2019 alone, at least 9 cases of murders have been reported. This makes up 47% of the total 19 cases that have been recorded between 2007 and October 2019 (13 years).’<sup>145</sup>
- 6.4.10 The 2019 DFAT report stated: ‘[...] Most of the recent cases of societal violence against LGBTI individuals of which DFAT is aware relate to violent attacks on transgender women, who tend to be more readily visible.’<sup>146</sup>
- 6.4.11 Human Rights Watch noted in their 2020 world report that ‘Three transgender women were killed between November 2018 and January 2019. No one has been convicted in any of the killings.’<sup>147</sup>
- 6.4.12 The USSD 2019 report stated ‘A 2018 survey by a local transgender rights group reported more than two-thirds of transgender women experienced some form of physical or emotional abuse.’<sup>148</sup>

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## 6.5 Discrimination and violence against intersex persons

- 6.5.1 CPIT could find no specific information on intersex persons in the sources consulted (see [Bibliography](#)).

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## 6.6 Family treatment

- 6.6.1 In their 2018 Global Workplace Briefing on Malaysia, Stonewall reported that ‘Young LGBT people are also particularly vulnerable, especially if they live in smaller towns. They are often rejected by their families and are on their own.’<sup>149</sup>
- 6.6.2 The DFAT report noted ‘Many members of the LGBTI community reportedly hide their identity to avoid harassment, familial ostracism, and/or violence. Reports of violence by family members towards LGBTI individuals are common, and society will generally place the blame for such violence on the individual for provoking it through identifying as LGBTI.’<sup>150</sup>

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<sup>144</sup> HRW, ‘The Deceased Can’t Speak for Herself:’ Violence Against LGBT ..., 25 June 2019, [url](#)

<sup>145</sup> Justice for Sisters, ‘Malaysian government must take urgent and ...’, 20 November 2019, [url](#).

<sup>146</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

<sup>147</sup> HRW, World report 2020, 14 January 2020, [url](#).

<sup>148</sup> USSD, ‘Country Report 2019’, 11 March 2020, [url](#).

<sup>149</sup> Stonewall, Global Workplace Briefing 2018, ‘Malaysia’, 2018, [url](#)

<sup>150</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.138), 13 December 2019, [url](#).

## 7. Access to services

### 7.1 Healthcare

7.1.1 The Coalition for SOGIESC (SOGIE and sex characteristics) Human Rights in Malaysia in their Stakeholder Report for the HRC'S Universal Periodic Review in 2018, stated: 'LGBT persons face multiple forms of barriers in terms of accessibility, availability and affordability of friendly and specific healthcare services in the national healthcare system.'<sup>151</sup>

7.1.2 Adding that:

'In 2016, the MOH released a health guideline, "Health guideline on dealing with gender health issues in health clinics". The guideline that aims to reduce discrimination in the healthcare settings has many problematic areas and includes references to the legal framework in Malaysia in relation to LGBTI persons and Islamic text that condemn LGBT persons. The guideline also provides tips for parents to correct and hinder their children from becoming LGBTI.'<sup>152</sup>

7.1.3 Erasing 76 Crimes, a blog focusing on 76+ countries' anti-LGBTI laws, reported on 19 August 2019 that:

'In Malaysia, the Ministry of Health named transgender activist and beauty queen Rania Zara Medina to represent the trans community on the board that sets policy for the fight against HIV in Malaysia, Country Coordinating Mechanism for the Global Fund.

'Backlash was swift. In response, the Minister of Health, Datuk Seri Dr. Dzulkefly Ahmad, released a statement assuring the public that the appointment of trans people, gay men, sex workers, drug users, and people living with HIV as community representatives for health matters "does not mean the government or the ministry recognises their culture or lifestyle".

'Dzulkefly said the objective "must be to make such health efforts inclusive and accessible to those in need", as reported by Malay Mail.<sup>153</sup>

7.1.4 The 2019 SUHAKAM report, 'a Study on Discrimination against Transgender Persons based in Kuala Lumpur and Selangor' which involved 100 transgender respondents aged 18-70, , noted that '[...] It was also evident that the transgender people do not only face challenges to have their identity recognised but also had issues in assessing basic public services such as healthcare and education [...] Out from 100 respondents, only 53 respondents comfortable to disclose their gender identity and sexual orientation to the medical health professional [...] There are only 27 of 86 respondents received medical advice from the healthcare professional at hospitals or clinics on hormone [...] Among reasons that respondents had not subscribed to insurance was because it does not cover trans specific health care needs, financial problem and concerns about disclosing their gender identity.'<sup>154</sup>

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<sup>151</sup> OHCHR, 'Stakeholder Report (2018)', (Health, p8), [url](#)

<sup>152</sup> OHCHR, 'Stakeholder Report (2018)', (p8), [url](#)

<sup>153</sup> Erasing 76 crimes, 'Malaysia: Complaints about trans woman on HIV board', 19 August 2019, [url](#).

<sup>154</sup> SUHAKAM, 'Study on discrimination against transgender persons...', (page 6 and 82), 2019, [url](#)

- 7.1.5 The 2019 DFAT report stated ‘In-country sources have reported that authorities will only permit LGBTI individuals who have HIV/AIDS to access medical treatment if they can demonstrate that they have ‘transitioned back to heterosexuality,’ through a re-education centre or otherwise. DFAT is unable to comment on the veracity of this claim’.<sup>155</sup>
- 7.1.6 The same source further noted that ‘Transgender women [...] often avoid seeking medical treatment in public hospitals due to the requirement that they be placed in male wards.’<sup>156</sup>

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## 7.2 Employment

- 7.2.1 The Constitution stipulates that all people are equal under the law and there should be no discrimination against citizens on the grounds of religion, race, descent, place of birth or gender<sup>157</sup>. However, a Human Rights Watch Report ‘“I’m Scared to Be a Woman” Human Rights Abuses Against Transgender People in Malaysia’, published in September 2014, stated:

‘Many transgender women in Malaysia face a double stigma. They are stigmatized by families, potential employers, government officials, and communities because of their gender identity and expression. And they are widely perceived to participate in sex work, which is stigmatized in Malaysia, regardless of whether sex workers are transgender or cisgender, female or male. Leela, a transgender HIV outreach worker, told Human Rights Watch, “In the media, transgenders are always portrayed as sex workers, even though we have transgender doctors and lawyers.” In fact, while a large number of transgender women do participate in sex work, others work in a wide range of professions: Human Rights Watch interviewed transgender doctors, social workers, HIV outreach workers, hairdressers, makeup artists, cleaners, receptionists, and marketing representatives, among others.’<sup>158</sup>

- 7.2.2 The 2019 SUHAKAM report, ‘a Study on Discrimination against Transgender Persons based in Kuala Lumpur and Selangor’ which involved 100 transgender respondents aged 18-70, , noted 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 [...] 35 of the respondents were not allowed to express their authentic gender identity from their employers [...] 53 respondents stated that their colleagues tend to ask inappropriate and intrusive questions to them [...] Respondents shared that when they dealt with customer at a workplace, 25 of them faced sexual harassment [...] With regard to the experiences of the respondents who were sex workers, 28 respondents stated they faced violence from clients/customers, 25 of them from authorities and 29 of them from members of public’.<sup>159</sup>

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<sup>155</sup> DFAT, ‘Country Information Report Malaysia’, (Para 3.137), 13 December 2019, [url](#)

<sup>156</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.139), 13 December 2019, [url](#).

<sup>157</sup> Stonewall, ‘Global Workplace Briefings 2018’, Malaysia, [url](#)

<sup>158</sup> HRW, report, (Sex Work and Double Stigmatization, p17), September 2014, [url](#)

<sup>159</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (page 64), 2019, [url](#)

## 7.3 Education

7.3.1 The Coalition for SOGIESC, Stakeholder Report (2018), stated ‘LGBT students face multiple barriers and discrimination in educational institutions, including penalties for homosexuality and “gender confusion” as listed in the student handbooks; binary dress code; assignment and access to facilities are based on sex assigned at birth; restrictions to participate in extracurricular activities; increased bullying, name calling, among others.’<sup>160</sup>

7.3.2 Further adding: ‘Documentation and anecdotal evidence shows that multiple cases of sexual violence by peers, teachers and others in the educational settings. This includes molestation, rape, threats of rape, sexual invitation, being disturbed and harassed in the toilet, and sexual name-calling.’<sup>161</sup>

7.3.3 The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in its concluding observations of 14 March 2018 on the combined third to fifth periodic reports, noted at para 35 that:

‘The Committee further regrets the bullying of students, including lesbian, bisexual, transgender and intersex students, and the lack of information on the policy of sending bullies to training programmes in military institutions as a corrective measure and on the impact of such a policy on the right to education of girls.

‘Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party:

[...] Adopt anti-bullying policies based on alternative strategies, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for lesbian, bisexual, transgender and intersex students.’<sup>162</sup>

7.3.4 The 2019 SUHAKAM report, ‘a Study on Discrimination against Transgender Persons based in Kuala Lumpur and Selangor’ which involved 100 transgender respondents aged 18-70, noted that:

‘[...] It was also evident that the transgender people do not only face challenges to have their identity recognised but also had issues in assessing basic public services such as healthcare and education [...] The hate speech and name calling were the rampant experiences shared by the respondents from peers, teachers/lecturers and administrators [...] Bullying incidences is a common experience faced by the transgender persons due to their gender identity, gender expression and/or sexual orientation [...] Sexual violates incidences such as unwanted sexual gestures, language, image, molestation or unwanted touching, threat of rape and rape or coerced sex occurred in educational institutional. The perpetrators of the incidences were from peers and teachers or 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.’<sup>163</sup>

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<sup>160</sup> OHCHR, ‘Stakeholder Report (2018)’, (Education, p9), [url](#)

<sup>161</sup> OHCHR, ‘Stakeholder Report (2018)’, (Education, p9), [url](#)

<sup>162</sup> CEDAW, ‘Concluding observations’, (para 35), 14 March 2018, [url](#).

<sup>163</sup> SUHAKAM, ‘Study on discrimination against transgender persons...’, (page 6 and 48), 2019, [url](#)

- 7.3.5 The DFAT December 2019 report noted ‘Transgender women are also reportedly denied access to public education upon transitioning [...]’.<sup>164</sup>

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## 8. LGBT groups, civil society and human rights NGOs

### 8.1 Government recognition of LGBT NGO

#### 8.1.1 The 2019 DFAT report stated that:

‘Many civil society organisations register under the Malaysian Companies Act (1973), rather than the Societies Act (1966), to avoid delays and restrictions on their activities. The Registrar of Societies has previously prevented registration of organisations that it deems unfriendly to the government. Authorities have regularly used registration issues as a basis for investigating NGOs, although DFAT is not aware of any such investigations under the new government to date.’<sup>165</sup>

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### 8.2 The situation and treatment of civil society and NGOs

#### 8.2.1 The Stonewall Global Workplace Briefings 2018, Malaysia, stated:

‘It’s difficult for organisations and individuals to work towards positive change. The concern is mostly one of security. People fear they will be arrested or fired from their jobs and often have to cancel awareness-raising events. However, the different parts of the social movement in Malaysia are very collaborative.

‘Often LGBT rights advocates are able to exercise influence through other human rights groups focusing on multi-layered issues, such as health and education. LGBT artists have also used art as a tool of expression to work towards change for LGBT people.’<sup>166</sup>

#### 8.2.2 The Coalition for SOGIESC [Sexual orientation, gender identity and gender expression] Human Rights in Malaysia, Stakeholder Report on the Status of Human Rights of LGBTI Persons in Malaysia (2018), stated:

‘LGBT human rights defenders and persons or groups that defend the human rights of LGBT persons face multiple forms of reprisals, discrimination and violence from various actors including loss of job promotions or termination; lost program funding or donations; verbally attacked due to their visible support.’<sup>167</sup>

#### 8.2.3 In March 2019 Pink News reported that Asian human rights leaders had voiced their concern over ‘an “insidious” government crackdown on LGBT+ people in Malaysia’. The article reported:

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<sup>164</sup> DFAT, ‘Country Information Report -Malaysia’ (para 3.139), 13 December 2019, [url](#).

<sup>165</sup> DFAT, ‘Country Information Report Malaysia’, (Para 3.93), 13 December 2019, [url](#)

<sup>166</sup> Stonewall, ‘Global Workplace Briefings 2018’, Malaysia, [url](#)

<sup>167</sup> OHCHR, ‘Stakeholder Report (2018)’, (Health, p12-14), [url](#)

‘Experts voiced concern over a reported police probe into an International Women’s Day protest that included LGBT+ rights protesters. Government minister Dr Mujahid Yusof Rawa had called for “firm action” against the March 9 protest, adding that “LGBT practice will not be accepted at all in this country.” His comments were condemned by Malaysian human rights groups Pusat Komnas and Suara Rakyat Malaysia, as well as the Asian Forum for Human Rights and Development and the pro-LGBT ASEAN SOGIE Caucus.

‘In a joint statement, the groups said: “The recent Women’s March was a peaceful rally, during which one of the main demands were to end all forms of violence and discrimination [for all]. “The march itself and all the demands made during the gathering fall fully within the freedom of expression and peaceful assembly, as guaranteed for all Malaysian citizens. However, the response to the march has not done so.” The groups accused the government of attempting to “further polarise public views on LGBTIQ rights by leaning on conservative sentiments,” adding: “It is an insidious attempt to weaken the existing solidarity between LGBTIQ activists and the feminist movement.”<sup>168</sup>

8.2.4 Further adding: ‘The statement also [...] linked a rise in anti-LGBT sentiment to a surge in anti-LGBT hate crimes. The statement adds: “We call on the Government of Malaysia to put a halt to the persecution of the LGBTIQ community, and to take immediate steps to improve the human rights protection of all people in the country.”

8.2.5 In April 2019 a prominent Malaysian LGBT activist accused the authorities of intimidation following a statement he read to the UN Human Rights Council, which later led to him being questioned by police. Malaysia Kini, reporting on the story, noted:

‘The 27-year-old was questioned by police for an hour in Kuala Lumpur last Friday [26 April 2019], after an online backlash against statements given at the Council, which reviews the human rights record of each United Nations member state every five years. “It was typical by the police,” he told the Thomson Reuters Foundation. “They tend to intimidate human rights defenders - we’ve seen that with organisers of other causes too. “This is a pattern by authorities... it is their tactics,” said Numan, president of the Pelangi Campaign group, which seeks to raise awareness and advocate for LGBT rights in Malaysia. “I will keep speaking out because this is about our lives in this country - we need to speak out against discrimination.”<sup>169</sup>

8.2.6 The article further added:

‘In the statement he read to the UN, Numan [...] complimented the Malaysian government for backing recommendations on combating bullying in schools, a move LGBT campaigners believe could help protect the community. But he expressed concern that it had not backed other anti-sexual discrimination recommendations that emerged from the review. He also criticised government rhetoric over LGBT people’s involvement in a march to celebrate International Women’s Day. Malaysia’s minister in charge

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<sup>168</sup> Pink News, 13 March 2019, [url](#)

<sup>169</sup> Malaysia Kini, ‘Malaysian LGBT activist accuses authorities of intimidation’, 30 April 2019, [url](#)

of religious affairs decried the presence of LGBT groups at the march, calling it “an abuse of democracy”.<sup>170</sup>

8.2.7 Nikkei Asian Review, November 2019 noted that:

‘Prominent Malaysian Muslim activists have also spoken out against the persecution of the LGBT community, including Marina Mahathir, the prime minister's daughter.

‘Majidah Hashim of the women's rights group Sisters in Islam, itself branded "deviant" in a fatwa, said plainly: "Islam is a religion of peace, compassion, kindness and justice. Islam tells us that every person has been created with dignity and should be treated as such. Thus is our position on people who identify as LGBT.”<sup>171</sup>

8.2.8 The Kuala Lumpur based ‘Pelangi Campaign for Equality and Human Rights Initiative’ envision a Malaysia where ‘LGBTIQ people are ensured equality at home, at work and in every community.’ Their twitter page noted that ‘Since [founded in 2016] ...we have helped dozens of homeless LGBTQ youth, organised advocacy campaigns, trained community leaders and provided support for legal challenges.’<sup>172</sup>

8.2.9 The 2019 DFAT report stated ‘Malaysia does not have a national organisation committed to progressing LGBTI rights, but a loose coalition of NGOs and individuals reportedly works to advocate such rights within the framework of broader human rights advocacy. Longstanding official opposition towards the promotion of LGBTI issues in public spaces, which has continued under the new government, has hampered the effectiveness of such advocacy.’<sup>173</sup>

8.2.10 A list of LGBT groups and communities are listed below;

- Justice for Sisters – an organisation aiming to end violence and discrimination against trans women through providing resources, legal advice and raising funds to support trans women who face prosecution in Islamic law courts. [www.justiceforsisters.wordpress.com](http://www.justiceforsisters.wordpress.com)
- Leadership Program for Gays – a Kuala Lumpur-based network group for LGBT business people. [www.groups.yahoo.com/neo/groups/LPG-community/info](http://www.groups.yahoo.com/neo/groups/LPG-community/info)
- Pink Triangle Foundation Malaysia – an organisation working on HIV/AIDS and sexuality issues by offering support, group seminars, care services related to HIV and sexuality, as well as operating a telephone counselling line. [www.ptfmalaysia.org](http://www.ptfmalaysia.org)
- PLUPenang – a support and community group for LGBT people in Penang State, providing a safe space and organising recreational events. [www.plupenang.crystaldzi.com](http://www.plupenang.crystaldzi.com)
- Seksualiti Merdeka – a group providing a platform for LGBT human rights issues, working to empower Malaysians who have been marginalised for

<sup>170</sup> Malaysia Kini, ‘Malaysian LGBT activist accuses authorities of intimidation’, 30 April 2019, [url](#)

<sup>171</sup> Nikkei Asian Review, ‘Malaysia's LGBT community under siege as...’, 20 November 2019, [url](#).

<sup>172</sup> Pelangi Campaign, ‘tweet’, 9 December 2019, [url](#).

<sup>173</sup> DFAT, ‘Country Information Report Malaysia’, (Para 3.132), 13 December 2019, [url](#)

their sexual orientation and gender identity.

[www.facebook.com/Seksualiti-Merdeka-229317507083197/](http://www.facebook.com/Seksualiti-Merdeka-229317507083197/)

- Queer Lapis – an online community group for queer people and their allies. [www.queerlapis.com](http://www.queerlapis.com)

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### 8.3 Gay ‘scene’ or ‘community’

#### 8.3.1 According to travel website Travel Gay Asia, aimed at gay travellers:

‘There has been an increasing number of gay venues in KL [Kuala Lumpur] as a result of the city’s internationalisation. The scene is discreet, and venues changes quite often because homosexuality is still illegal.

‘In addition to a handful of gay businesses, there are some “straight” Bars & Clubs that host “gay-friendly nights”. These venues would not identify themselves as being “gay” but offer nights (usually Friday or Saturday) that attract a large number of gay customers.’<sup>174</sup>

#### 8.3.2 Gay Star News interviewed young gay Malaysian pop star Alextbh in October 2018. He was asked about the his experience of being gay in Malaysia he said:

“It’s great! We’re a tight-knitted community, we pretty much go to the same events and shows, simply because there aren’t many to begin with. So it’s very easy to warm up to the scene. I’m just really thankful that the queer scene in KL is thriving, knowing that I wouldn’t have the opportunity to experience this back in my hometown in Sarawak (a state in East Malaysia). It was pretty different back then, I always felt like I was an outcast and I have to be (I really hate this word but there’s no other way to describe it) straight-acting to fit in. It wasn’t until I started performing on stage that I started becoming more comfortable of my sexuality, all thanks to the people that go to my shows. Queer music scene over here is thriving as well, and they just so happen to be my friends. Viktoria makes great deep house/electronic beat and Darren Luke makes trap-infused pop music, to name a couple.”<sup>175</sup>

#### 8.3.3 In the same article when asked what the current situation is like for everyday LGBTI Malaysians Alextbh stated that:

‘It’s regressing, which is a shame because a lot of queer people voted the new government in. I’m just appalled that politicians that I thought will back us up — ended up favouring the masses for their own political gains. But as with any kind of oppression and tyranny — the more the government subjects that on us, the angrier people will become. We’re a pressure cooker. We’re anticipating a revolution.’<sup>176</sup>

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<sup>174</sup> Travel Gay Asia, ‘Kuala Lumpur • City Guide’, undated, [url](#)

<sup>175</sup> Gay Star News, ‘How a ‘heartbroken twink’ became Malaysia’s new queer...’, 9 October 2018, [url](#).

<sup>176</sup> Gay Star News, ‘How a ‘heartbroken twink’ became Malaysia’s new queer...’, 9 October 2018, [url](#).

# Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
  - Constitution
  - Penal Code
  - Sharia law
  - Film Censorship Act (2002)
  - Same-sex partnerships
- State attitudes and treatment
  - Treatment
  - Arrests and detention
  - Rehabilitation
  - Public statements by government officials
  - Censorship
  - Transgender persons
  - Ombudsman/complaints mechanism(s)
- Societal attitudes and treatment
  - Societal norms
  - Men who have sex with men (MSM)
  - Public and religious views
  - Violence and discrimination
  - Rights activists
  - Gay 'scene' or 'community'
  - LGBT websites
- Access to services
  - Healthcare
  - Employment
  - Education

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **30 June 2020**

## Changes from last version of this note

New CPIN on this topic

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