

Criminalisation of Homosexuality

Updated 25 October 2015

 Malaysia		
<p>National Law:</p> <p><i>Penal Code Act 1936 (as amended up to 1 January 2006)</i>¹</p> <ul style="list-style-type: none"> - S377A & 377B: Unnatural Offences² - S377D: Outrages of Decency³ - Additionally, in a number of states in Malaysia, Sharia laws (applying to male and female muslims) criminalise male/male and female/female sexual acts 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Up to 20 years' imprisonment and whipping - 2 years' imprisonment - e.g. fines, up to 3 years' imprisonment and whipping⁴ 	<p><u>Treaty Ratification</u></p> <p>CEDAW CRC</p>
<p>The law is equally applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - June 2015: A Sharia Court in the north-eastern Malaysian state of Kelantan convicted nine transgender women under a law that prohibits '<i>a male person posing as a woman</i>'. All of the women received fines, while two were sentenced to jail terms of two months.⁵ - February 2015: The leader of Malaysia's opposition, Parti Keadilan Rakyat Anwar Ibrahim, was jailed for five years after losing his appeal against his conviction on sodomy charges.⁶ - 2014: According to the United States Human Rights Country Report, the law is rarely enforced.⁷ However, transgender individuals were often charged under the Minor Offences Act for '<i>indecent behavior</i>' and '<i>importuning for immoral purposes</i>' in public.⁸ Local advocates contended that those imprisoned served their time in the male prison population and were often mistreated verbally and sexually by police and other inmates. - 7 March 2014: Malaysia's former deputy Prime Minister was sentenced to 5 years' imprisonment under the country's sodomy laws.⁹ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 11 September 2015: Malaysia's Tourism Minister Datuk Seri Nazri Aziz has reportedly said that: '<i>LGBT people, I am sorry but even though you argue that it</i> 	

your human right to lead your [life] but it will not be allowed here because it is not allowed in Islam'.¹⁰

- **18 August 2015:** At a seminar in Bangi, Malaysian Prime Minister Najib Razak asserted that extremist armed groups and sexual and gender minorities both pose a threat to Malaysian society.

*Groups like the Islamic State and lesbians, gay, bisexuals, and transgenders (LGBT) both target the younger generation and seem successful in influencing certain groups in society.¹¹ At the same event, Prime Minister Razak said *although universal human rights have been defined, we still define human rights in the country in the context of Islam and the syariah (Sharia law).*¹²*

- **July 2015:** The National Muslim Youth Association (Pembina) launched a campaign in response to the United States Supreme Court's ruling on same-sex marriage, urging its supporters to change their Facebook profile picture to an image of a crossed-out rainbow flag.¹³
- **June 2015:** At an event in Pulapo, Malaysian Prime Minister Razak said *'there is no need for a gay parade [in Malaysia] whatsoever... There is a deviant teaching spreading in our society.'*¹⁴
- **25 June 2014:** Some Malaysian politicians reportedly have threatened to withdraw their support for a bill on *'National Harmony and Reconciliation'* if it recognises discrimination against a person on the basis of their sexual orientation.¹⁵
- **24 June 2014:** The deputy chairman of the National Unity Consultative Council (NUCC) law and policy committee said that the NUCC believed the section of the draft National Harmony Bill (see 'legislative news' below) prohibiting discrimination based on sexual orientation should remain. *'Some segments in Malaysian society want to demonise the community... Why is it in Malaysia, LGBT is considered a bad word? Our Penal Code criminalises sodomy but it doesn't criminalise sexual orientation'*.¹⁶
- **6 June 2014:** Former Prime Minister, Mahathir Mohamad, answering a question on the best way to prevent the spread of LGBTI rights in Malaysia, responded: *'It is good that they are having gay marriages, very soon they will disappear.'*¹⁷
- **2 May 2013:** The ruling Barisan Nasional Coalition printed and distributed anti-gay pamphlets while seeking re-election.¹⁸
- **28 March 2013:** Reportedly, a state-sponsored touring anti-gay theatre company has visited a number of schools in order *'to educate the youngsters and their parents [on] the bad things about LGBT'*.¹⁹
- **13 September 2012:** The Malaysian Ministry of Education approved a set of

	<p>guidelines to be used to help determine whether a child is gay or not. Included among the ‘symptoms’: <i>‘Hav[ing] a muscular body and lik[ing] to show their body by wearing V-neck and sleeveless clothes; Prefer[ing] tight and light-coloured clothes; and lik[ing] to bring big handbags, similar to those used by women, when hanging out.’</i>²⁰</p> <ul style="list-style-type: none"> - 27 June 2012: Malaysian Prime Minister, Mohammad Najib Abdul Razak, in a statement talked of the importance of Islam, stating: <i>‘any deviant aspects such as liberalism, pluralism and Lesbian, Gay, Bisexual and Transgender would not have a place in the country.’</i>²¹ - 20 June 2012: Malaysian deputy-minister, Dr Mashitah Ibrahim, warned that homosexuality goes against Islam and further stated that there is no constitutional freedom from discrimination for gay people living in Malaysia: <p><i>Article 8 of the Federal Constitution says there must be no discrimination of citizens in terms of religion or sex. ‘Sex’ has never been interpreted to mean sexual orientation; it has always been interpreted to mean either male or female, and they are [the only ones] protected by the constitution</i>²²</p>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 10 September 2015: Nisha Ayub, a prominent and internationally recognised transgender rights activist was assaulted in by two men with iron rods just below her house.²³ - 2014: In its 2014 World Report, Human Rights Watch commented on the persecution of trans people: <i>‘Police regularly arrest transgender persons, especially Muslims who are considered to be violating Sharia law provisions against cross-dressing, ridicule and humiliate them, and jail them in lock-ups where they are subject to physical and sexual abuse by police staff and male inmates.’</i>²⁴ - February 2013: An estimated 16,000 parents and teachers attended a seminar on how to curb LGBT behaviour that took place in Politeknik Seberang Prai. After opening the seminar, Malaysia’s Deputy Education Minister told a press conference: <i>‘It [homosexuality] is like a disease but it can be cured with early intervention.’</i>²⁵ - 2012: An Equal Rights trust report documents many instances of persecution and discrimination of Malaysian Sexual Minorities, including discriminatory police conduct and violence as well as other forms of discriminatory conduct.²⁶
<p>Legislative News</p>	<ul style="list-style-type: none"> - 8 October 2015: In November 2014 the Putrajaya Court of Appeal of Malaysia declared a provision in the state’s Sharia law which criminalised ‘cross-dressing’ unconstitutional. However, this landmark decision was recently overturned by the Federal Court on a technicality citing improper procedures used to challenge the Sharia law and without considering the substance of the constitutional

challenge.²⁷ The case began in 2011, when three Muslim transgender women challenged the provision in the state of Negeri Sembilan, claiming it violated their constitutional rights. The now overturned 2014 judgment of the Court of Appeal had noted that while states are empowered to enact laws involving matters of Islam, such laws cannot contravene the Federal Constitution.²⁸ Despite that ruling, laws against 'cross-dressing' remained in force in the rest of Malaysia's 13 states and its Federal Territories and are used against transgender people.²⁹

- **August 2015:** A representative of the Malaysian Prime Minister's Department announced that the proposed National Harmony Bill '*is expected to be tabled in Parliament in the coming session*'.³⁰ Some members of the government-appointed National Unity Consultative Council (NUCC) had originally indicated that the Bill would include a prohibition on discrimination on the grounds of 'gender, including sexual orientation and identity'.³¹ However in July 2014 a member of the NUCC's law and policy committee said the phrase 'sexual orientation' had been removed from the draft.³²

- **24 March 2015:** Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.³³

- **2013:** (UPR)

*The Government stated that matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.*³⁴

Malaysia went on to reject all recommendations calling for the decriminalisation of same-sex sexual conduct.³⁵

- **2009:** (UPR) Malaysia rejected recommendations to decriminalise consensual same-sex sexual conduct by removing the relevant provisions from its penal code.³⁶

¹ The law is : <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>

² Penal Code Act 1936, s.377: '377A Carnal intercourse against the order of nature: 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. Explanation - Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section. 377B Punishment for committing carnal intercourse against the order of nature. 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 liable to whipping.'

³ Penal Code Act 1936, s.377D: 'Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.'

⁴ The Sharia Penal law in the Malaysian state of Pulau Pinang prescribes penalties for

sodomy (Liwat) and lesbian relations (musahaqat) with fines of rm5,000.00, three years imprisonment and 6 lashes of the whip - see, Amnesty International, *Malaysia: Convictions for Sodomy Follow Unfair Trials* (8 October 1998), ASA 28/28/98

⁵ Human Rights Watch, *Malaysia: Court Convicts 9 Transgender Women*, 22 June 2015, <<https://www.hrw.org/news/2015/06/22/malaysia-court-convicts-9-transgender-women>> accessed on 9 September 2015

⁶ Leong, T., Hamzah, A.A., 'Malaysia's Anwar jailed for five years after losing appeal in sodomy trial', *Reuters*, 10 February 2015, <<http://uk.reuters.com/article/2015/02/10/uk-malaysia-anwar-ruling-idUKKBN0LE09G20150210>> accessed on 9 September 2015

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malaysia*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236454>> accessed on 10 September 2015

⁸ Those convicted of a first offense may be fined up to RM25 (\$7.65) and sentenced to as many as 14 days in jail. The sentences for subsequent convictions may be fines up to RM100 (\$30.60) and up to three months in jail – see, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malaysia* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236454>> accessed on 10 September 2015

⁹ Roberts, S., 'Malaysia: Ex-Deputy Prime Minister jailed for five years on sodomy charges', *Pink News*, 7 March 2014, <<http://www.pinknews.co.uk/2014/03/07/malaysia-ex-deputy-prime-minister-jailed-five-years-sodomy-charges/>> accessed on 19 July 2014

¹⁰ Kamal, S.M., 'LGBT community will never have equal rights in Malaysia, tourism minister says', *The Malay Online*, 11 September 2015, <<http://www.themalaymailonline.com/malaysia/article/lgbt-community-will-never-have-equal-rights-in-malaysia-tourism-minister-sa#sthash.g1zhay44.dpuf>> accessed on 23 September 2015

¹¹ Ghoshal, N., 'Love is not terrorism, Najib', *The Malaysian Insider*, 25 August 2015, <<http://www.themalaysianinsider.com/sideviews/article/love-is-not-terrorism-najib-neela-ghoshal>> accessed on 9 September 2015

¹² Lavers, M.K., 'Malaysian prime minister: Government will not defend LGBT rights', *Washington Blade*, 21 August 2015, <<http://www.washingtonblade.com/2015/08/21/malaysian-prime-minister-government-will-not-defend-lgbt-rights/>> accessed on 9 September 2015

¹³ 'Muslim group launches anti-LGBT campaign against rainbow Facebook profile photos', *Malay Mail Online*, July 2015 <<http://www.themalaymailonline.com/malaysia/article/muslim-group-launches-anti-lgbt-campaign-against-rainbow-facebook-profile-p>> accessed on 9 September 2015

¹⁴ PM says no to LGBT and terrorism, *The Rakyat Post*, 30 June 2015, <<http://www.therakyatpost.com/news/2015/06/30/pm-says-no-to-lgbt-and-terrorism/>> accessed on 9 September 2015

¹⁵ Harmony Bill May be Under Threat, *Rakyat Times*, 25 June 2014, <<http://www.rakyattimes.com/index.php/news/842-harmony-bill-may-be-under-threat>> accessed on 19 July 2014; Sivanadam, H., 'Harmony Bill to address gender bias and sexual leaning', *Malaysian Bar*, 8 July 2014, <http://www.malaysianbar.org.my/legal/general_news/harmony_bill_to_address_gender_bias_and_sexual_leaning.html> accessed on 19 July 2014

¹⁶ El Sen, T., 'NUCC: New harmony bills will fight discrimination', *Astro Awani*, 24 June 2014. <<http://english.astroawani.com/politics-news/nucc-new-harmony-bills-will-fight-discrimination-38350>> accessed on 15 September 2015

¹⁷ Ar, Z., 'Those with strong faith won't ever be gay, Dr M says', *Malay Mail Online*, 4 June 2014, <<http://www.themalaymailonline.com/malaysia/article/those-with-strong-faith-wont-ever-be-gay-dr-m-says>> accessed on 19 July 2014

¹⁸ Leach, A., 'Malaysia government will 'block LGBT' in bid to win election', *Gay Star News*, 2 May 2013, <<http://www.gaystarnews.com/article/malaysia-government-will-block-lgbt-bid-win-election020513>> accessed on 19 July 2014

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- ¹⁹ Hodal, K., 'Anti-gay musical tours Malaysian schools and universities', *The Guardian*, 28 March 2013, <<http://www.theguardian.com/world/2013/mar/28/anti-gay-lgbt-musical-malaysia>> accessed on 19 July 2014
- ²⁰ Leach, A., 'Malaysia warns parents to look out for signs that their kids are gay', *Gay Star News*, 13 September 2012, <<http://www.gaystarnews.com/article/malaysia-warns-parents-look-out-signs-their-kids-are-gay130912>> accessed on 19 July 2014
- ²¹ Leach, A., 'LGBTs are "deviant aspects" of Malaysia says Prime Minister', *Gay Star News*, 27 June 2012, <<http://www.gaystarnews.com/article/lgbts-are-%E2%80%98deviant-aspects%E2%80%99-malaysia-says-prime-minister270612>> accessed on 19 July 2014
- ²² Leach, A., 'Minister says Malaysia constitution does not protect LGBT citizens', *Gay Star News*, 20 June 2012, <<http://www.gaystarnews.com/article/minister-says-malaysia-constitution-does-not-protect-lgbt-citizens200612>> accessed on 19 July 2014
- ²³ Wee, D., 'Asia's LGBTI "hero of the year" attacked in Malaysia', *Gay Star News*, 14 September 2015, <<http://www.gaystarnews.com/article/asias-lgbti-hero-of-the-year-attacked-in-malaysia/>> accessed on 23 September 2015
- ²⁴ Human Rights Watch, *World Report 2014* <http://www.hrw.org/sites/default/files/wr2014_web_0.pdf> accessed on 19 July 2014 at 354
- ²⁵ '16,000 attend seminars on how to curb LGBT', *The Star Online*, 1 February 2013, <<http://www.thestar.com.my/News/Nation/2013/02/01/16000-attend-seminars-on-how-to-curb-LGBT/>> accessed 9 September 2015
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- ²⁷ Lin, M.M., 'Back to square one for transgenders as Federal Court overturns landmark ruling on Shariah law', *Malay Online*, 8 October 2015, <<http://www.themalaymailonline.com/malaysia/article/square-one-for-transgenders-as-federal-court-overturns-landmark-ruling-on-s#sthash.8HlhgpFM.GuaP8F7W.dpuf>> accessed 25 October 2015.
- ²⁸ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malaysia*, 2014 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236454>> accessed on 10 September 2015
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- ³¹ Human Rights Watch, *Malaysia: Transgender People Under Threat*, 24 September 2014, <<https://www.hrw.org/ms/node/262955>> accessed on 15 September 2015
- ³² Dhillon, R., "'Sex orientation" dropped from harmony bill as it can be misconstrued', *The Rakyat Post*, 13 July 2014, <<http://www.therakyatpost.com/news/2014/07/13/sex-orientation-dropped-harmony-bill-can-misconstrued/>> accessed on 15 September 2015
- ³³ Lavers, M.K., 'Bid to block spousal benefits for gay U.N. employees fails', *Washington Blade*, 24 March 2015, <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015
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- ³⁵ UNHRC, *Report of the Working Group on the Universal Periodic Review: Malaysia - Addendum*, 4 March 2014, UN Doc A/HRC/25/10/ Add.1
- ³⁶ ARC International, *Malaysia UPR*, 12 June 2009, <<http://arc-international.net/global-advocacy/universal-periodic-review/m/malaysia>> accessed on 19 July 2014