

Freedom of Expression and Transgender Women in Malaysia

A study on the relationship of freedom of expression and gender identity

July, 2021

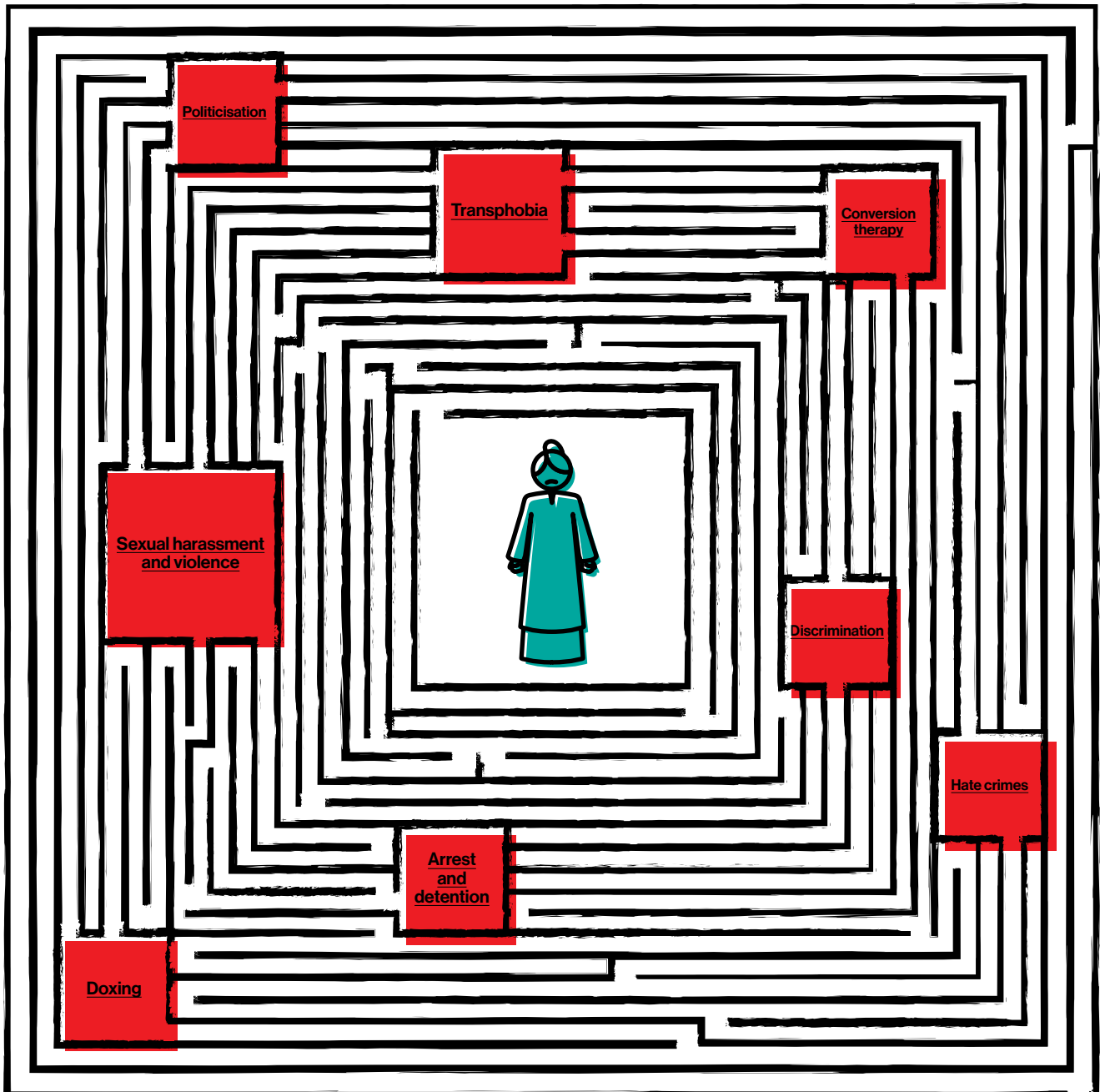


Table of contents

4	Acknowledgements
5	Acronyms and Glossary
6	Introduction
10	Methodology
12	Demographics of the respondents
14	Background
17	History of gender diversity
20	Criminalisation and non-recognition of trans women's gender identity
23	Constitutionality of State Syariah Laws that Criminalise Gender Identity and Expression
25	State policies and programmes
28	Discrimination against trans persons
28	International Human Rights Instruments
32	Findings
33	Perception of trans women in Malaysia
35	Censorship, self-censorship and shrinking spaces
40	Visibility and representation of trans women
42	The politicisation of gender in Malaysia
45	Setting a good example
49	Self-expression and pressure to change
50	Factors that enable and restrict freedom of expression
52	Legal gender recognition
55	Pressure to change
63	Case study: Under pressure
65	Education
65	Restricted from participating in extracurricular activities
66	Bullying and violence
67	Employment
68	Discrimination in the hiring process
71	Discrimination in the workplace
76	Self-employment
78	Accepting Environments in the Workplace
82	Case study: Working in the government

85	Family
86	Correlation between acceptance and expression
90	Restricted freedom of expression by family members
90	Pressure to change gender identity and expression
92	Isolation
93	Impact of family acceptance on the mental health of trans women
95	Access to gendered spaces
95	Toilets
99	Religious spaces
102	Gender-based violence (GBV)
104	Forms of GBV
104	Catcalls, name-calling, and microaggression
107	Discriminatory or transphobic messages on their social media feed
108	Doxing
110	Threats of physical violence, assault and hate crimes
112	Sexual harassment and violence
118	Access to justice
121	Reporting cases and seeking protection
128	Encounters with police during roadblocks and club raids
131	Arrest and detention
134	Statement by the Minister of Religious Affairs
139	Conclusion and Recommendations
141	Government
145	Religious Institutions
146	Employers
147	Media
147	Family Members and Individuals
148	Appendix 1
150	Appendix 2
150	Civil Law
150	State Syariah Laws
153	Appendix 3
157	References

Acknowledgements

Our heartfelt appreciation to Rania Hashim, Isz Husain, Zamanee Rahman, Angel Azurin, Puspa, Helena, Eizarra Elysana Bella, Sara Liantara, Nur Dayana, Andi Suraidah, Loshni Nair, Kia Nazary, Nurul M. Azmi, Varsha G, Nadya, and others for their contributions to the report.

We would also like to express our gratitude and appreciation to **Sisters United** in Sarawak, **SEED Malaysia** and **PT Foundation** in Kuala Lumpur, Khartini Slamah, Mischa, Minisha Deepu for their support. We also give thanks to **EMPOWER** for all their support and patience in helping ensure the research was completed within the agreed timeline.

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Acronyms and Glossary

Cis or cisgender	A person whose gender identity matches the sex or identity assigned at birth
FoE	Freedom of Expression
Hetero or heterosexual	A person who is romantically and/or sexually attracted to people who identify as the opposite gender, including a cisgender or transgender person. The relationship between a cisgender man and a trans woman is a heterosexual relationship.
HRD	Human Rights Defender
IC	Identification card
LGBTIQ	Lesbian, gay bisexual, transgender, intersex and queer
MAC	Malaysian AIDS Council
MCO	Movement Control Order
OHCHR	Office of the United Nations High Commissioner for Human Rights
SOGIESC	Sexual orientation, gender identity, gender expression and sex characteristics
TGEU	Transgender Europe
TENI	Transgender Equality Network Ireland
UDHR	Universal Declaration of Human Rights
Pondan/ Bapok	A catch-all term for trans women and queer men. The term has a pejorative connotation.

Introduction

As *mak andam*, performers, and shamans, transgender women or trans women have long been part of the Malaysian tapestry, enjoying varying levels of acceptance and inclusion in society at different points in time. However, the last 40 years have shown a regressive shift for trans women in Malaysia. The early 80s marked the beginning of state-sanctioned criminalization of trans women,¹ resulting in systemic impact on all areas of their lives.

In addition, the negative societal attitudes towards trans women—formed by gender binary ideology—stifle freedom of expression, and affect every area of trans women's daily lives. Any deviations from the perceived norm and gender binary are seen as shameful. This is, in part, reinforced by cis hetero-patriarchal religious interpretations of Islam promoted by the state. Navigating these socially accepted norms and regulations on a daily basis is akin to trying to find a way out of a rigged labyrinth, at the end of which is a life of dignity that remains out of trans women's reach.

The ease of accessing social media has led to a rise in the visibility of trans and LGBT persons, their businesses, and trans rights activism at the national and global level. This visibility is often misconstrued by the state and the public as an attempt by trans persons to 'promote an LGBT lifestyle'.

In 2018, Mujahid Rawa, the former Minister of Religious Affairs stated that, "The government does not accept any liberalist movement that seek (*sic*) to promote LGBT lifestyle and same-sex marriage while trying to abolish related provisions under the civil law or the State Syariah Criminal Procedure Enactment."² This position has continued into the

1 Luhur, W., Brown, T. N., & Goh, J. N. (2020). Public Opinion of Transgender Rights in Malaysia. *UCLA: The Williams Institute*. Page 13, Para 2.

2 Rohman, Mohd Anwar Patho. "No Place for Liberalism in the Promotion of



present day, with the Deputy Minister of Communications and Multimedia, Datuk Zahidi Zainul Abidin noting that “LGBT or trans women hide behind many guises (online). Besides promoting their LGBTness, they hide behind their certain businesses, and other activities that they do.”³ Meanwhile, conservative Members of Parliament and others have consistently raised alarms over the increasing visibility of LGBT persons, in particular on social media, and proposed harsher laws and other measures to curb it.⁴

In recent years, trans women in Malaysia have faced increased censorship,⁵ gender-based violence,⁶ investigation and prosecution for participating in beauty pageants,⁷ and boycotts of trans-women-owned businesses and products.⁸ In February 2020, Nur Sajat, a self-identified intersex woman celebrity who is widely perceived as a trans woman, faced severe backlash from online users and the state for posting photos of herself in a *telekung* (female prayer garment) while performing the *umrah* (lesser pilgrimage) in Mecca on her social media platforms.⁹

LGBT Lifestyle, Says Mujahid.” *NST Online*, 29 Nov. 2018, www.nst.com.my/news/nation/2018/11/435764/no-place-liberalism-promotion-lgbt-lifestyle-says-mujahid.

- 3 “Penyata Rasmi Parlimen Dewan Rakyat Parlimen Keempat Belas Penggal Ketiga Mesyuarat Kedua.” *Parlimen Malaysia*, vol. 13, 2020, p. 21, www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&arkib=yes.
- 4 Tan, Tarrence, et al. “More than 2,400 Porn Sites Blocked by MCMC since 2018.” *The Star Online*, 3 Aug. 2020, www.thestar.com.my/news/nation/2020/08/03/more-than-2400-porn-sites-blocked-by-mcmc-since-2018.
- 5 Su-Lyn, Boo. “LGBT Activists’ Portraits Removed from George Town Festival Exhibition.” *Malaysia | Malay Mail*, 8 Aug. 2018, www.malaymail.com/news/malaysia/2018/08/08/lgbt-activists-portraits-removed-from-george-town-festival-exhibition/1660198.
- 6 Ghoshal, Neela, and Thilaga Sulathirch. “‘The Deceased Can’t Speak for Herself’: Violence Against LGBT People in Malaysia.” *Georgetown Journal of International Affairs*, 2019, www.georgetownjournalofinternationalaffairs.org/online-edition/2019/6/23/the-deceased-cant-speak-for-herself-violence-against-lgbt-people-in-malaysia.
- 7 “Padah Berlagak Wanita [METROTV].” *HM Online*, 28 Oct. 2020, www.hmetro.com.my/mutakhir/2020/10/635430/padah-berlagak-wanita-metrotv.
- 8 Media Isma Sdb Bhd. “NGO Bantah Kehadiran Sajat, Safiey Ilias Di Program Keusahawanan.” *Ismaweb*, 29 Sept. 2018, ismaweb.net/2018/09/29/ngo-bantah-kehadiran-sajat-safiey-iliyas-di-program-keusahawanan.
- 9 Hisamudin, Hakimie Amrie. “Take Threats against Nur Sajat, Transgender Community Seriously, Say Activists.” *Free Malaysia Today (FMT)*, 5 Mar. 2021, www.freemalaysiatoday.com/category/nation/2021/03/05/take-threats-against-nur-sajat-transgender-community-seriously-say-activists.

The backlash against Sajat quickly escalated with her passport and travel documents widely disseminated on social media, exposing her sex assigned at birth on the documents.¹⁰ This was followed with the release of the details on her birth certificate on mainstream media by the Federal Territory Mufti's Office, which they obtained from the National Registration Department,¹¹ and a call to ban Sajat from social media platforms by the then-Minister of Religious Affairs as her actions "gave rise to discomfort among Muslims."¹² In January 2021, Sajat was charged with insulting Islam,¹³ followed by an arrest warrant when she failed to appear in court.

Sajat's dogged prosecution by the state exemplifies the state's zealousness in persecuting and criminalizing trans and LGBT persons. It follows a persistent trend of the state attempting to suppress and silence visible trans women.¹⁴ In line with this, in January 2021, the government recently announced its plans to amend the Syariah Court (Criminal Jurisdiction) Act 1965 to impose harsher punishments on LGBT persons¹⁵ and 'curb promotion of LGBT lifestyle on social media'.¹⁶

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- 10 H. Rodzi, Nadirah. "Minister Wants to Ban Malaysian from Social Media after Ruckus in Mecca over Gender Issue." *The Straits Times*, 4 Feb. 2020, www.straitstimes.com/asia/se-asia/minister-wants-to-ban-malaysian-from-social-media-after-ruckus-in-mecca-over-gender.
 - 11 Nawawi, Muhaamad Hafis. "It's Muhammad Sajjad" *NST Online*, 5 Feb. 2020, www.nst.com.my/news/nation/2020/02/562688/its-muhammad-sajjad.
 - 12 Malay Mail. "Mujahid Meets MCMC to Act against Nur Sajat's 'umrah' Social Media Posts." *Malay Mail*, 4 Feb. 2020. www.malaymail.com/news/malaysia/2020/02/04/mujahid-meets-mcmc-to-act-against-nur-sajats-umrah-social-media-posts/1834221.
 - 13 Choong, J. and Noorshahrizam, S.A., 'Selangor Islamic enforcers probed for violence against Nur Sajat in arrest for 'insulting Islam.'" *Malay Mail*, 13 Jan. 2021, <https://www.malaymail.com/news/malaysia/2021/01/13/selangor-islamic-enforcers-probed-for-violence-against-nur-sajat-in-arrest/1940004>.
 - 14 Leach, A. "Malaysian transgender singer fined for being 'feminine'." *GayStar News*, 25 June 2012, <https://www.gaystarnews.com/article/malaysian-transgender-singer-fined-being-%e2%80%98feminine%e2%80%99250612/>.
 - 15 Malay Mail, "Putrajaya could amend Act 355 to introduce harsher punishments against LGBT community, says deputy minister." 19 Jan 2021, <https://www.malaymail.com/news/malaysia/2021/01/19/putrajaya-could-amend-act-355-to-introduce-heavier-punishments-against-lgbt/1941893>.
 - 16 Reuters. "Malaysia Seeks Stricter Sharia Laws for 'Promoting LGBT Lifestyle.'" *Reuters*, 25 June 2021, www.reuters.com/world/asia-pacific/malaysia-seeks-stricter-sharia-laws-promoting-lgbt-lifestyle-2021-06-24.

Using Article 19 of the Universal Declaration of Human Rights (UDHR)¹⁷ and the Yogyakarta Principles¹⁸ as a framework, this research examines the enjoyment of freedom of expression (FoE) by trans women in Malaysia. In particular, this study sought to understand:

1. **The relationship between restrictions in women's freedom of expression and gender-based violence;**
2. **Availability, accessibility, and efficacy of redress and remedy mechanisms in cases of sexual and gender-based violence (SGBV) related to freedom of expression online and offline;**
3. **The factors that contribute to the enjoyment and restriction of freedom of expression by women.**

Principle 19 of the Yogyakarta Principles provides a sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) lens for freedom of expression. In addition, freedom to hold opinions without interference and to seek, receive and impart information and ideas, Principle 19 includes expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or through other means as part of the definition of FOE:

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes **the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means**, as well as the freedom to **seek, receive and impart information and ideas** of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

17 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. See Declaration of Human Rights <https://www.un.org/en/universal-declaration-human-rights/index.html>.

18 Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

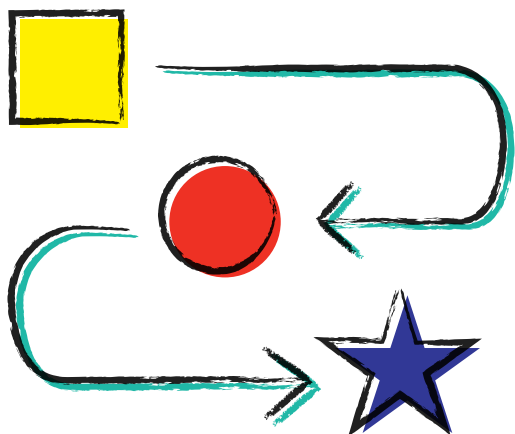
Methodology

This research interviewed 60 trans women from seven states in Malaysia—Kuala Lumpur, Selangor, Perak, Pahang, Johor, Melaka, Sabah, Sarawak—between May 2019 and September 2020. The qualitative research employed a snowball method. The authors also received the assistance of field workers and community organisers in identifying respondents for the research.

State	Number of respondents
Kuala Lumpur and Selangor	11
Perak	12
Pahang	8
Johor	8
Melaka	7
Sabah	8
Sarawak	6
Total	60

Table 1: Number of respondents based on state

The interviews were guided by a questionnaire developed jointly by the authors with EMPOWER. The respondents, however, did not answer all of the questions. As the interviews were qualitative, the interviewers provided space for the respondents to share their stories, while adhering to the general structure of the questionnaire. As a result, the research gathered rich lived experiences, but lacked quantitative data.



The research was delayed due to several unforeseen circumstances, including the Covid-19 pandemic. Nonetheless, the authors were able to capitalise on the delays and gather additional information that has now been included in the research.

The interviews were carried out in two phases. The first batch of interviews was conducted between May and September 2019. The second batch of interviews was carried out between July and September 2020—during the Covid-19 pandemic and after the lifting of several nationwide Movement Control Orders (MCO). Through the second phase of the interviews, the authors were able to gather additional information on the impact faced by the respondents during the Covid-19 pandemic.

Nonetheless, the Covid-19 pandemic made it challenging to carry out face-to-face interviews. The stark digital divide in the trans women community, in particular communities outside of Kuala Lumpur, made online interviews impossible. Thus, the interviews with respondents were only carried out after the MCO was lifted in Malaysia and at the state level.

Demographics of the respondents

The respondents came from diverse geographical, age and ethnic backgrounds. Although the significant majority of the respondents identified as Malay, some identified as Malay and Dusun, Melanau, or other ethnicities in Sabah and Sarawak. One respondent identified as mixed ethnicity.

All respondents are Malaysian except for one, who was a Permanent Resident (PR) living in Malaysia at the time of the interview.

Ethnicity	Number of respondents
Malay	47
Chinese	5
Indian	6
Others (Dusun, Permanent Resident)	2

Table 2: Ethnic breakdown of respondents

In terms of religion, some respondents, including the Malay respondents, said they were more fluid in terms of their religious beliefs and spirituality, while a small number identified as agnostic, free thinkers, and believers of all religions. A respondent who identified as an Indian Hindu shared that besides visiting temples, she also visits churches and other religious spaces frequently.

Some of the non-Malay/non-Muslim respondents noted that they live with and have close relationships with Malay-Muslim trans women. As a result, they expressed openness to different religious ideas and cultural practices and showed significant empathy for and solidarity with Muslim trans women.

Age	Number of respondents
18 – 19	1
20 – 30	26
31 – 40	20
41 – 50	9
51 – 60	4

Table 3: Age group of the respondents

77% of the respondents were between 20–40 years old. At least two respondents were students at the time of the interview. One of them had a part-time job. Meanwhile, the other student had no prior or current employment experience.

In terms of sexual orientation, many of them identified as heterosexual, except for two respondents who identified as lesbian or queer women. However, their experiences as queer women were not documented as it does not fall within the scope of this research.

Meanwhile, a respondent in her 50s noted that she is hearing impaired. The interview, however, did not explore the intersection of disability with gender identity and freedom of expression, as well as its impact on the respondent’s life.

In hindsight, the research could have included a question on the level of income to gain a better sense of the respondents’ economic background, and the impact of restriction of their freedom of expression on their livelihood and economic well-being.

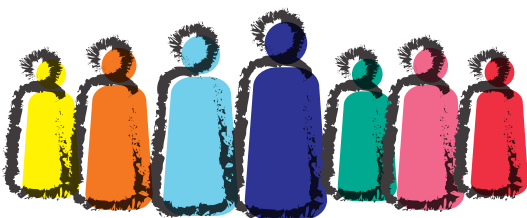
Background

Trans women in Malaysia are locally known as *mak nyah* within the Malay-speaking communities, or *thirunangai* in the Indian trans women communities. Meanwhile, Chinese-speaking communities refer to trans women as *kuà xìngbié* (跨性别) and *kuà nǚ* (跨女), refers to transgender.

Trans women introduced the term *mak nyah* into the Malaysian lexicon in the 1980s in response to the lack of specific and affirming language to express their gender identity. At that time, the term '*pondan*' was used as a catch-all term for trans women, queer men and persons assigned male at birth who express themselves in a typically feminine demeanour.

The term *mak nyah* is an amalgamation of *mak* or mother and *nyah* short for Nyonya, a Javanese loan honorific term from the Dutch word Nona (grandma) which means foreign married madam.¹⁹ As Khartini Slamah explains, the term *mak nyah* was introduced to create a distinction between trans women and queer men.

First, [as] a desire to differentiate ourselves from gay men, transvestites, crossdressers, drag queens, and other 'sexual minorities' with whom all those who are not heterosexual are automatically lumped, and second, because we also wanted to define ourselves from a vantage point of dignity rather than from the position of derogation in which Malaysian society had located us.²⁰



19 P. Wee. *A Peranakans legacy: the heritage of the Straits Chinese Marshall Cavendish*, Singapore (2009). p. 12.

20 Slamah, K., "The Struggle to Be Ourselves, Neither Men Nor Women: Mak Nyahs in Malaysia", in Misra, G. and Chandiramani, R. (eds.), *Sexuality, Gender*

While the definition of gender, girls, women and females are shifting from an essentialist and binary understanding to one that is more plural and diverse, the identity of a woman is still frequently reduced to her genitalia and presumed biological functions. Not only does this exclude trans and intersex women, it also reinforces the misconception that sex and gender are the same, which has a detrimental impact on the recognition of gender diversity.

From an essentialist standpoint, a trans woman is perceived as a male or man who dresses as a woman, instead of someone who is inherently a woman. In Malaysia, trans women are not recognized legally, and criminalized under various state and federal laws based on the basis of their gender expression.

In his report, the Independent Expert on Sexual Orientation and Gender Identity (SOGI), Victor Madrigal-Borloz, noted that the gender binary constructs in law-making will continue to fuel discrimination and violence against women and girls, including lesbian, bisexual, queer, intersex and trans women:

The notion that there is a gender norm, from which identities and expressions vary or depart, is based on a series of preconceptions that must be challenged if all humankind is to enjoy human rights. Among these misconceptions is the idea that it is a legitimate societal objective that persons adopt roles, forms of expression and behaviours that are considered entitlements or burdens according to their sex assigned at birth. Only by acknowledging the stereotypes, power asymmetries, inequality and fundamental violence that lie at the foundation of this system does the State comply with its obligation to address the violence and discrimination that it fuels, with its harrowing impact on women and girls in every corner of the world, including lesbian, bisexual and trans women; on gay, bisexual and trans persons; on other gender-diverse persons; and on intersex persons.²¹

and Rights: Exploring Theory and Practice in South and South East Asia, SAGE, 2005, p. 99

21 Madrigal-Borloz, Victor. "The Law of Inclusion." Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, 2021, undocs.org/A/HRC/47/27.

Although there is plenty of evidence that proves the existence of trans women throughout world history, their identities continue to be denied and misunderstood. Contrary to the hegemonic cis hetero-patriarchal interpretations espoused by the state, references to gender diversity can be found in religious texts such as the Qur'an. In addition, there are many references made to *mukhannath* and *khuntha* (intersex persons) in the hadith, which is one of the primary sources of religious law and moral guidance in Islam. *Mukhannath* is understood as an umbrella term for persons assigned male at birth, who embody and express themselves as women, or through feminine gender expressions.

Amidst the public backlash against Nur Sajat for wearing the female prayer garment while performing the *umrah* with her family members, Mustafa Akyol, a prominent scholar, expressed that trans people have existed throughout history and the conflation of gender identity and sex leads to discrimination of trans persons, including denial and restriction of their freedom of religion. He urged society to come to terms with the existence of transgender people:

Some people are born with a conflict with their physical *fitra* and psychological *fitra*... Such a group of people exist, not just today, but also throughout history, for reasons we don't fully know... But there should be no problem in a transgender person being a full member of society—and also a good Muslim. I think the right Islamic response to this fact is not discrimination or persecution, but rather compassion and help.²²

It is important, however, to note that a compassionate approach has frequently translated into misguided attempts to change or correct trans people, and justify corrective therapy, as evidenced from the Malaysian government's efforts to rehabilitate trans people.

In an address at the Identity Conference in Toronto, United Nations Independent Expert on SOGI Victor Madrigal-Borloz, pointed out the severe and systemic impact of preconceived notions of gender on trans and gender-diverse persons:

22 Koya, Abdar Rahman. "Leave Nur Sajat Alone, Prominent Turkish Scholar Tells Malaysian Authorities." *Free Malaysia Today*, 5 Feb. 2020, www.freemalaysiatoday.com/category/nation/2020/02/05/leave-nur-sajat-alone-prominent-turkish-scholar-tells-malaysian-authorities.

I am convinced that the cruelty and viciousness of the violence and discrimination against trans women and men derives from the fact that respecting their identity represents the most radical rupture of the systems in place, that rely so strongly on binary notions and on preconceptions of the masculine and the feminine. The lack of legal recognition of gender identity in vast regions of the world must make us think about the connections with the concept of citizenry. As one scholar, from the global north recently put it, “when [States] deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.” As we speak of proper citizenship we must also make reference to the cultural and juridical significance of criminalisation.²³

History of gender diversity

Gender diversity has been documented in Malaya, Borneo, Southeast Asia and all around the world. Michael Peletz in his book *Gender Pluralism in South East Asia* documents the existence of the *sida-sida*, gender-diverse identities similar to present-day trans persons, in the palaces of Negeri Sembilan, Kelantan, Johor, and other parts of the Peninsula Malaya and parts of Indonesia.

The *sida-sida* resided in the inner chambers of the palace, and they were “entrusted with the sacred regalia and the preservation of the ruler’s special powers.” Further references to the *sida-sida* can be found in the *Hikayat Melayu* (historical Malay Chronicles), such as *Hikayat Amer Hamzah*. Professor Datuk Dr. Shamsul Amri Baharuddin, a Malaysian anthropologist, has provided a first-hand account of seeing the *sida-sida* in a palace as a child. He described them as people who were assigned male at birth, who dressed and performed the gender roles of women.²⁴

23 “OHCHR | Identity Conference, Toronto.” OHCHR, 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23129&LangID=E.

24 Peletz, Michael G.. *Gender Pluralism: Southeast Asia Since Early Modern Times*. United States, Taylor & Francis, 2009. p 60

In Borneo, there are accounts of identities such as *manang bali*, *basir*, and *balian*, who are described as people assigned male at birth, and embodied female identity and performed the gender roles of cisgender women. *Basir*, according to Peletz, is described as someone who “dresses like a woman in private life as well, and parts their hair in the middle of their forehead just like a (cisgender) woman.” *Manang bali*, *basir* and *balian* were also ritual specialists, shamans and healers, among others.²⁵

In line with existing documentation of gender pluralism in Southeast Asia, the research found accounts of inclusive cultural practices in some communities in Malaysia. Further, included dance performances and weddings in some states in Malaysia, in particular Sabah, Johor and Negeri Sembilan. However, these practices are not well documented and are eroding due to rising conservatism.

Khartini Slamah and Isz Husain, both human rights defenders, explained that in the 1960s and 1970s, trans women were invited to participate in *joget lambak* (communal dances) at weddings or *majlis berinai* (pre-wedding parties). Traditionally, live ghazal music was played at wedding parties, where guests were entertained by trans women musicians and singers. Khartini expounded:

The dance has been practiced for generations, there are many that still practice and preserve the culture. They like to see mak nyah entertaining at the event. It has been a generational practice. So, there is no stigma when there is a wedding—*mak nyahs* are invited.²⁶

In Semporna, Sabah, the Igal-Igal dance is often performed at weddings where dancers and guests dance or *mengalai* before the bride, groom and others. Guests would slip money between the dancers’ fingers as a form of appreciation.²⁷ Trans women are not only invited to *mengalai* at wedding parties, some even hold beauty pageants as side events for trans women to participate in.

25 Michael G. Peletz, *Gender Pluralism: Southeast Asia Since Early Modern Times*, Routledge, 2009

26 Interview with Khartini Slamah, 9 October 2019

27 Syarifuddin, Nasrawati. “Selit Wang Di Jari Penari.” *Harian Metro* [Malaysia], 2018. <https://www.hmetro.com.my/mutakhir/2018/01/305673/selit-wang-di-jari-penari>

These spaces functioned both as a way for trans women to introduce and express themselves to the larger communities, and as a source of income for trans women. Isz added that the wedding host would sometimes invite trans women in the community to participate in the dance parties and provide them with a small token.²⁸ She noted:

It is still practiced in rural areas. The recent one was deep in the plantation, and so far. In the rural areas, or villages, there's more space, so it's easier. In urban areas, it's not as feasible to have live bands in residential areas. There are barriers there. In the villages, the neighbours are your family members, so they don't really mind it. So there are also risks of getting complained [about] to authorities.

In recent years, a number of these functions have been subjected to scrutiny. Consequently, the attendees have been vulnerable to violence, degrading and humiliating treatment, and arrest and prosecution for wearing female attire in public spaces.

In 2014, 17 trans women were arrested at a wedding party in Bahau, Negeri Sembilan. Sixteen were sentenced to a fine of RM950 (roughly USD225) per person and seven days of imprisonment under Section 66 of the Negeri Sembilan Syariah Criminal Offences Enactment, which criminalises 'male persons posing as a woman'.²⁹ They were placed in a men's prison³⁰ and their heads were shaved.³¹

28 Interview with Isz Husain, 9 October 2019

29 Iskander, Kazimir Lee. "Not a Crime: A Gorgeous, Stirring Cartoon About the Status of Trans People in Malaysia." *Slate*, 7 Aug. 2015 <https://slate.com/human-interest/2015/08/transgender-in-malaysia-cartoon-about-the-jempol-arrests.html>.

30 Bedi, Rashvinjeet S. "Transgender Women Shaved Bald after Arrest at Bahau Wedding." *The Star*, 11 June 2014, www.thestar.com.my/news/nation/2014/06/11/transgenders-shaved-bahau.

31 AR, Zurairi. "With Shaved Heads, Negri Sembilan Transgender Women Opt for Jail." *Malay Mail*, 11 June 2014, www.malaymail.com/news/malaysia/2014/06/11/with-shaved-heads-negri-sembilan-transgender-women-opt-for-jail/685521.

In July 2019, trans women in Semporna faced reprisals from state and non-state actors after photos went viral online of a trans women beauty pageant that was held at a wedding. The Sabah State Islamic Department conducted at least three operations to look for the contestants and owners of the social media posts and photos.

During this time, the trans women were subjected to sexual harassment and violence. At least three trans women quit their jobs at beauty salons due to fear of arrest. The case was only resolved after the National Human Rights Commission's (Suhakam) intervention.³²

Criminalisation and non-recognition of trans women's gender identity

The 1980s was a turning point for trans women in Malaysia. It was the beginning of a state-sanctioned clamp down and criminalisation of trans people, that began with the introduction of a *fatwa* (religious edict) in 1982 declaring trans women as '*haram*' or illegal.

This *fatwa* was followed by a series of other *fatwas* that have had an adverse impact on trans people, including the availability of trans-specific healthcare services and their ability to legally change the name and gendered details in their legal documents.

In 2012, Dr Mashitah, the then-Minister of Religious Affairs at the Prime Minister's Department, said in Parliament that trans persons, including those who have medically transitioned, would not be allowed to change the gender marker in their identification card (IC) and legal documents due to a 1983 *fatwa* that declared gender affirmation surgery for trans women as *haram* based on *syarak*:

A person born as a boy is still a boy even if they successfully change their sex through surgeries. A person born as a girl is a girl even if they successfully change their sex in this matter. The (National) Registration Department is obliged to adhere to the decision by the Muzakarah Fatwa Council that has made a decision on this matter.³³

32 Justice for Sisters' internal documentation from monitoring the case and supporting the communities in Semporna

33 "Dewan Rakyat Parlimen Kedua Belas Penggal Kelima Mesyuarat Kedua."

The 1982 fatwa³⁴ was followed by the introduction of state Syariah laws between 1985 and 2019, which criminalised non-cisnormative and heteronormative gender expression.³⁵ To date, all 13 states and the Federal Territories have laws that criminalise non-cisnormative gender identity and expression, which empower the state Islamic departments to arrest and detain trans women based on their gender identity and gender expression. There are two variations of the law:

Version	State
Any male person who, in any public place , wears a woman's attire and poses as a woman shall be guilty of an offence and shall on conviction be liable to a fine not exceeding (x) ringgit or to imprisonment for a term not exceeding (x) or to both .	<ol style="list-style-type: none"> 1. Kelantan 2. Kedah 3. Perlis 4. Sabah
Any male person who, in any public place , wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding (x) ringgit or to imprisonment for a term not exceeding (x) or to both .	<ol style="list-style-type: none"> 5. Johor 6. Melaka 7. Perak 8. Pulau Pinang 9. Sarawak 10. Selangor 11. Terengganu 12. Federal Territory 13. Pahang 14. Negeri Sembilan

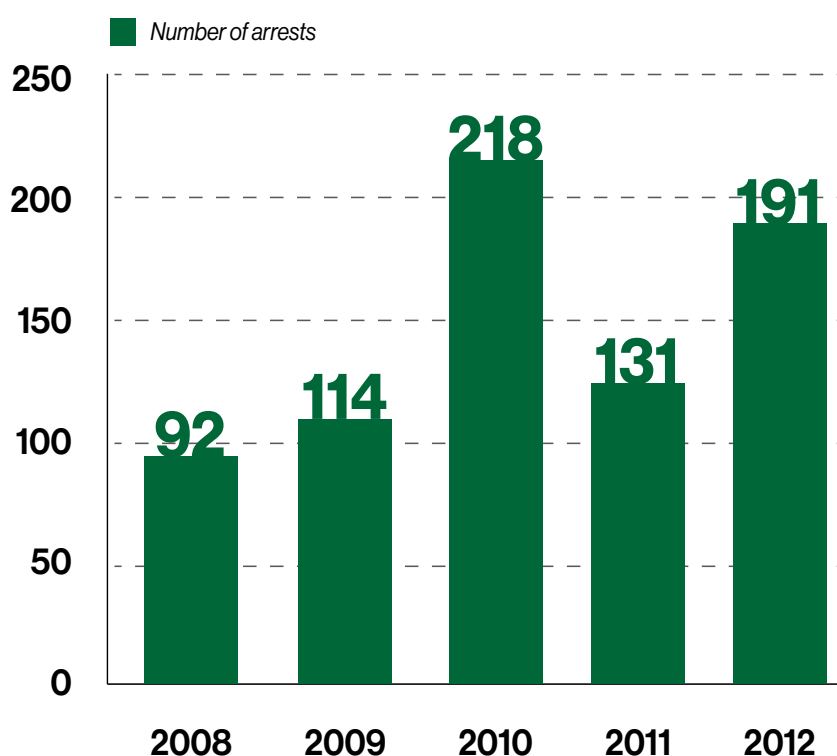
Parlimen Malaysia, Bil 28, 2012, p. 12, www.parlimen.gov.my/images/webuser/jkuasa%20lamp/DR-19062012.pdf.

34 “I’m Scared to Be a Woman.” Human Rights Watch, 16 Feb. 2018. www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia#9037. See Appendix 2

35 See Appendix 3

According to Department of Islamic Development Malaysia (Jabatan Kemajuan Islam Malaysia) statistics, a total of 746 arrests have been made under the various state Syariah laws criminalizing ‘male persons posing as a woman’ between 2008 and 2012.³⁶ The number of arrests in 2010 was significantly higher with 218 cases of arrest that year. Despite a dip in 2011, the statistics show a steady increase of arrests between 2008 and 2012. *I am Scared to be a Woman*, a 2014 report by Human Rights Watch, documents the experiences of trans women during this period.

Cases of arrest in relation to ‘posing as a woman’ between 2008 - 2012 in Malaysia



Source: Pelan Strategik JAKIM 2015-2019 & Manual Islam dan Mak Nyah

³⁶ “Infographic: Overview of Arrest and Detention of Trans Women in Malaysia.” *Justice for Sisters*, 20 Feb. 2018, justiceforsisters.wordpress.com/2018/02/20/infographic-arrest-of-trans-women-in-malaysia.

More recently, in October 2020, about 30 trans women were given notices to appear for an investigation by the Kedah Islamic Department for wearing women's attire in a raid of a birthday party in Jitra, Kedah.³⁷ The organizer, a cisgender man, was also investigated for encouraging vice.³⁸ Amidst the economic impact of the Covid-19 pandemic, the trans women raised concerns that they experienced increased stress and anxiety over the prospective additional economic burden if they are tried in court.³⁹

Constitutionality of State Syariah Laws that Criminalise Gender Identity and Expression

In 2010, a group of trans women in Negeri Sembilan filed a constitutional review of Section 66 of the Syariah Criminal Enactment 1992 (Negeri Sembilan) following a spate of arrests that resulted in physical, verbal and sexual violence during their arrest and detention by officers of the state Islamic Department.

In 2014, the Court of Appeal declared Section 66 unconstitutional, as it contravened several constitutional provisions:

- **Article 5(1)** which guarantees personal liberty, right to live with dignity, and right to livelihood/work
- **Article 8 (1)** which guarantees equality before the law and equal protection of the law
- **Article 8 (2)** which guarantees no discrimination on the grounds of gender
- **Article 9 (2)** which guarantees freedom of movement
- **Article 10 (1)(a)** which guarantees freedom of expression. A person's dress, attire and articles of clothing are a form of expression

37 Safwan. "30 Men Posing As Females Are In Trouble After JAIK Raids Birthday Party." *Hype Malaysia*, 30 Oct. 2020, hype.my/2020/201518/30-men-posing-as-females-are-in-trouble-after-jaik-raids-birthday-party.

38 Jun, Soo Wern. "Rights Groups Concerned over Probe into Kedah Event Organiser for 'Encouraging Vice' after Raid against Trans Women." *Malaysia | Malay Mail*, 30 Oct. 2020, www.malaymail.com/news/malaysia/2020/10/30/rights-groups-concerned-over-probe-into-kedah-event-organiser-for-encouragi/1917958.

39 Justice for Sisters' documentation

The Court of Appeal unanimously agreed that “the existence of a law that punishes the gender expression of transsexuals degrades and devalues persons with GID (Gender Identity Disorder) in our society. As such, section 66 directly affects the appellants’ right to live with dignity, guaranteed by Article 5(1), by depriving them of their value and worth as members of our society.”

The judgment provided an expansive reading of Article 10 of the Federal Constitution, which guarantees freedom of speech, assembly and association. Article 10(1)(a) states, ‘every citizen has the right to freedom of speech and expression’.

The Court noted that a “person’s dress, attire or articles of clothing are a form of expression guaranteed under Article 10(1)(a)” by adopting the decision of the Indian Supreme Court in *National Legal Services Authority (NALSA) v Union of India* and others.”

Additionally, the judgment reaffirmed that only Parliament may restrict freedom of expression in limited situations, as long as such restrictions are reasonable and as stated in Article 10(2)(a). The state legislative assemblies in Malaysia (which includes the State Legislature of Negeri Sembilan) have no power to restrict freedom of speech and expression. This is confirmed by the Supreme Court in *Dewan Undangan Negeri Kelantan & Anor. v Nordin Salleh & Anor.*⁴⁰

Unfortunately, in October 2015, the Federal Court set aside the decision by the Negeri Sembilan High Court and Court of Appeal on Section 66 on technical grounds.

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

40 [1992] 1 CLJ 72 (Rep) at 82

In addition to the state Syariah laws, federal agencies also attempt to regulate and restrict trans' persons visibility. For example, the Guidelines on Film Censorship now prohibit scenes that depict transgender behaviour and lifestyle.⁴¹

State policies and programmes

Other than laws, regulations and *fatwas* that prohibit trans identities, there are multiple state-initiated anti-LGBT programmes, most of which focus on rehabilitation and conversion of LGBT persons. On 23 July 2018, then-Minister of Religious Affairs Mujahid Rawa listed the government-sponsored LGBT programmes in Parliament:

- JAKIM's voluntary treatment and rehabilitation programme, '***Ilaj Wa Syifa***'
- The ***Mukhayyam program***—a 3-day camp introduced as a strategy to reduce HIV transmission among key affected populations, namely Muslim trans women. The programme, listed in the National Strategic Plan to End AIDS 2016-2030, aims to create awareness about HIV, Islam and being a good Muslim; offer job placement and financial assistance for startups; and encourage participants to abandon immoral behaviour, including one's sexual orientation and gender identity. There are also *Mukhayyam* camps for gay men and lesbian women. ()The Global AIDS Response Progress Report 2016 has noted that there is no evidence to prove the efficacy of this programme.
- **Seminars and programs** 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 workplace;

41 *Guidelines On Film Censorship*. Ministry Of Home Affairs, 2010, [lpf.moha.gov.my/lpf/images/Perundangan/Garis_panduan_penapisan_film\(1\).pdf](http://lpf.moha.gov.my/lpf/images/Perundangan/Garis_panduan_penapisan_film(1).pdf).

- **JAKIM's e-book 'Panduan Hijrah Diri'** (Guide for Self-Migration) is available on Google Play Store. Other publications, such as a compilation of hadith on 'LGBT acts' and a brochure '*Memahami LGBT dari Perspektif Seorang Muslim*' (Understanding LGBT from a Muslim's Perspective), promote conversion practices.
- **A 5-year action plan - *Pelan Tindakan Menangani Gejala Sosial Perlakuan LGBT 2017 - 2021*** (Action Plan to address the Social Ill of LGBT Behavior 2017-2021). This action plan, which aims to proactively and effectively curb LGBT behaviour, is endorsed by 22 ministries and state agencies, including the Ministry of Health; Ministry of Youth and Sports; Ministry of Women, Family Development and Community Development; several state Islamic departments and other state agencies.

According to JAKIM's data, nine activities were organised to treat and rehabilitate 'gender confusion' in 2019. Four seminars on gender confusion-related issues targeted the general public. The five intervention programmes targeting the LGBT community were:

- 2 *Mukhayyam* programmes for the lesbian and gay communities;
- 1 program appreciation of Islam (preventing wayward life) for women prisoners;
- Forum for ex-trans people;
- 1 *ibadah* (worship) national camp for the gay and transgender community.⁴²

According to JAKIM's Director-General, the 'gender confusion education, treatment, and rehabilitation' programme had reached over 1,700 LGBT persons since it began in 2011. He added that many have *berhijrah* (shifted positions) and are now assisting JAKIM and state Islamic departments as facilitators.⁴³

42 JAKIM's data published on Twitter, <https://twitter.com/MyJAKIM/status/1285795829056303104/photo/1>

43 "Program Rawatan Dan Pemulihan Komuniti LGBT." *JAKIM*, 20 July 2020, es-la.facebook.com/MyJAKIMmalaysia/posts/1700-orang-lgbt-ikuti-program-rawatan-dan-pemulihan-jakimjakim-memandang-serius-/3354099984640547.

Human rights defenders who have raised concerns over the non-compliance of these programmes with international human rights standards have been met with reprisals by state and non-state actors, including state linked ex-LGBT groups. In 2019, a human rights defender (HRD) faced backlash by conservative groups for describing the programme as amounting to ‘state sponsored violence’.⁴⁴ The HRD was called on to retract his statement and issue an apology for making allegedly baseless claims.⁴⁵

In August 2020, state and non-state actors retaliated against another HRD for publishing content on her social media accounts on conversion therapy in Malaysia, which included the Mukhayyam programme and other state-funded rehabilitation programmes. Aside from online mobbing and harassment, at least four police reports were lodged against the HRD, including by JAKIM. JAKIM claimed the content was ‘... manipulative, malicious and seen as wanting to hinder and restrict the right to freedom of religion of Muslims in the LGBT community who want to lead a better life in line with the requirements of Islamic law’.⁴⁶

Such heavy-handed responses by the state against criticism of their programmes effectively curbs any objections raised and has a chilling effect on freedom of expression.



“...we must be extra cautious **because the society does not accept us in Malaysia**”
(Mel)

44 Davasagayam, Kevin. “LGBT Activist Asked to Withdraw Statement against Mukhayyam Programme.” *Www.Thesundaily.My*, 19 Apr. 2019, www.thesundaily.my/local/lgbt-activist-asked-to-withdraw-statement-against-mukhayyam-programme-FG796007.

45 “Evidence of State-Sponsored Discrimination against LGBT Persons.” *Malaysiakini*, www.malaysiakini.com/letters/472951.

46 “Jakim Lodges Police Report against Twitter Account Owner Regarding Mukhayyam Programme.” *The Sun Daily*, 3 Aug. 2020, www.thesundaily.my/local/jakim-lodges-police-report-against-twitter-account-owner-regarding-mukhayyam-programme-BK3286715.

Discrimination against trans persons

Suhakam's annual report, which was tabled in Parliament for the first time in 2019, highlighted their findings on discrimination faced by trans people in Kuala Lumpur and Selangor. According to the report:

The study revealed that all transgender respondents agreed that at some stage of their life, they encountered some form of discrimination solely due to their gender identity and expression. In addition, they also experienced harassment, abuse, and violence by the state authorities as well as non-state agents, no less the general public. Some indicated that they were victims of bullying in schools and tertiary education by peers, teachers and lecturers.

As adults, they were further discriminated against by various policies in the workplace and faced harassment in the workplace. It is also evident that transgender people not only face challenges in having their identity recognized but also in accessing basic public services such as healthcare and education. By ignoring sensitivities linked to their identity, public institutions have become hostile against the (trans) community. Even filling up forms could be a traumatizing experience for a transgender (person).⁴⁷

International Human Rights Instruments

Malaysia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).

In 2018, Malaysia underwent two human rights reviews. In February, Malaysia participated in the CEDAW review on the status of women's human rights in Malaysia; Malaysia also underwent its third cycle of the Universal Periodic Review (UPR) in November 2018.

47 "Suhakam Annual Report 2018." *Suhakam*, 2018, pp. 135–37, www.parlimen.gov.my/ipms/eps/2019-04-11/ST.31.2019%20-%202031.2019.pdf.

a.) CEDAW

These CEDAW Concluding Observations in relation to lesbian, bisexual, trans and intersex women are as follows:

Area	Concluding Observations
Education	36. (e) Adopts anti-bullying policies based on alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for LGBTI students.
Laws and policies	48. The Committee recommends that the State party undertake awareness-raising measures to eliminate discrimination and negative stereotypes against lesbian, bisexual, transgender and intersex women. It particularly recommends that the State party: (a) Amend all laws which discriminate against LGBTI women, including the provisions of the Penal Code and Syariah laws that criminalise same-sex relations between women and cross-dressing; (b) Apply a policy of zero-tolerance with regard to discrimination and violence against LGBTI women, including by prosecuting and adequately punishing perpetrators; (c) Expedite measures to discontinue all policies and activities, which aim to “correct” or “rehabilitate” LGBTI women.

Women human rights defenders

49. The Committee is concerned that women human rights defenders, in particular those advocating for Muslim women's rights, the rights of lesbian, bisexual, transgender and intersex women, as well as for democratic reforms, have reportedly been subjected to arbitrary arrests, harassment and intimidation by State authorities as well as religious institutions, including through the adoption of *fatwas* against women's organisations working on the above-mentioned issues.

50. The Committee recommends that the State party ensure that women human rights defenders can freely undertake their important work without fear or threat of arbitrary arrests, harassment and intimidation, including the issuance of *fatwas* by religious institutions, by fully guaranteeing their rights to freedom of expression, assembly and association. It also recommends that the State party provide capacity-building on women's rights and gender equality to law enforcement officials, members of the judiciary and members of religious institutions.

b.)UPR

Meanwhile, Malaysia received 11 LGBTQ-related recommendations in its 3rd UPR cycle (see Appendix 1). Ten of them, relating to criminalisation, legal barriers and protection in relation to discrimination and violence against LGBTI persons were noted; one of them, relating to education, was partially accepted.

Action points recommended in the UPR Cycles:

Action points	UPR Cycle 1 (2009)	UPR Cycle 2 (2013)	UPR Cycle 3 (2018)
Review and repeal laws that discriminate persons on the basis of their sexual orientation and gender identity as well as consensual sexual activities	2	5	5
Legal gender recognition			1
Protection against discrimination		3	7
Anti-bullying			1

Findings

The research found that the trans women respondents faced widespread restriction of freedom of expression in public and private spaces—at home, at work, in the employment sector, in educational institutions; religious spaces—both online and offline.

Restriction of freedom of expression in the workplace and in the employment sector is the most pervasive, manifesting in denial of employment, restricted access to gendered spaces at the workplace, and restrictive work environments.

The research findings focused on freedom of expression in a few key areas:



1. Perception of trans women in Malaysia

The stereotype and negative perception of trans women in Malaysia has a profound impact on the way they express themselves, which includes their gender identity and expression, as well as their thoughts and ideas. It also correlates with the spaces and opportunities that they have to express themselves.

The respondents shared that society perceives trans women as sinful, deviants, inferiors, and weak. They are seen as sexual objects, as sex workers, spreaders of HIV, as well as people who need to be changed, corrected or rehabilitated.

Kamala, who was admitted to a hospital because of an accident in 2020, was asked unrelated and intrusive questions about her sex life by a doctor, who assumed and stereotyped her as a sex worker. Kamala shared:

I received seven stitches. The doctor came in and asked for my name. At that time I was working in a factory. The doctor asked me, 'One day, how many customers? Do you use condoms? Do you give blowjobs or have anal sex? How many times do you give blowjobs? Their semen, do you consume it?' He asked me that. That is a different issue, right. I said, 'Hello doctor, excuse me, I work at a factory, I don't do that work.' Then the doctor didn't say anything, and he left.⁴⁸



Denise, a trans woman from Sarawak, observed that religion was increasingly weaponised against trans persons in Malaysia by state and non-state actors alike. Although there are cases of discrimination against trans women in Sabah and Sarawak, Denise observed that there are differences in West and East Malaysia with regard to people's perception towards trans people :

48 Interview with Kamala, 9 September 2020

In the past four or five years, Malaysians, especially the Malays, when they see trans people, especially trans women, they have this stigma that we are full of sin, and we are people who have committed sins. And they use Islam as something to attack us with and degrade us to make the point that when someone is not good for the society, the religion will shun us.

But, in Sarawak, I think in Sarawak the pattern is less so, but in West Malaysia especially, they only see trans women as sex workers, working in Lorong Haji Taib. In their opinion, they don't see anything good in us, they see us as sinful persons because we defy religion, and our role—if you are a man, you have to dress like a man and everything.⁴⁹

At least two respondents expressed that trans women are treated as “unwanted stepchildren” in Malaysia. Mel, a trans woman in her 30s, observed that:

It's not that (society) accepts us or don't accept us; it's like, they know, they are aware of who we are, they know us. Because in Malaysia, the kind of gender [that is recognized] is only man and woman, so they look down on trans people. So far it's challenging, because they look at us as if we are sinful.⁵⁰

Many of the respondents remarked that the environment in Malaysia is socially conservative and orthodox. They were very aware of the context in Malaysia and the repercussions of upsetting conservatives. Many also noted that trans women had to be cautious about how they behaved and what they wore in public, so as not to *menonjol* (stand out).

Because some people can't accept us transgender (people), it's unpredictable. If they don't like us, they could call their friends and assault us, rob us. Because to them, in their mind, transgender are the weakest people. Because in their head, transgender people are deviants, against God's laws, so they can do whatever they want. People look down on us.⁵¹

49 Interview with Denise, 23 August 2019

50 Interview with Mel, 1 September 2020

51 Interview with Amelia, 6 September 2020

Nancy, who is in her mid-20s, also shared similar views, and cautioned against the illusion of progress in the Klang Valley, where anti-LGBT and transgender sentiments were rife:

Even [though] we like to think of ourselves in the Klang Valley as like the bastion of progressiveness in Malaysia, we still have a long way to go. Being undercover, I can still hear a lot of casual transphobic statements and I can feel animosity and hatred towards LGBT and transgender people in particular.⁵²

These observations are consistent with the findings of the *Public Opinion of Transgender Rights in Malaysia* report by the Williams Institute. The survey of 500 Malaysian respondents found that the “attitudes towards transgender persons were largely unsupportive.”⁵³ The study noted that a higher number of respondents agreed that transgender persons are committing a sin,⁵⁴ and that they were violating the traditions of the respondents’ culture.⁵⁵ Most respondents disagreed with efforts for Malaysia to do more to support and protect transgender people.⁵⁶

Censorship, self-censorship and shrinking spaces

The transphobic environment online coupled with the increased vulnerability of trans women to online gender-based violence influences the respondents’ ability to express themselves online. Some respondents shared that they preferred to post photos and not share much about themselves to avoid backlash. Maria shared:

These days, these viral things are full on. That’s why, we are LGBT, anything that we do, for example, if we want to post something in whatever application such as Facebook, WeChat or whatever, we have to think about all aspects: if I were to do this will I get viralled or not? ... What I do is before I post something, I will think of the future.

52 Interview with Nancy, 29 June 2019

53 Winston Luhur, Taylor N.T. Brown, Joseph N. Goh. *Public Opinion of Transgender Rights in Malaysia*, William Institute (September 2020) <https://williamsinstitute.law.ucla.edu/publications/opinion-trans-rights-malaysia/>

54 Ibid. pg 8

55 Ibid. pg 9

56 Ibid. pg 12

I have done live [feeds] and all that, wearing my sexy attire, but then it was only a while and I ended it because I didn't want it to go viral. If on social media, I am afraid, I am not brave. I am afraid of things being viralled, and now there are too many netizens who quickly copy and paste and lodge a report.⁵⁷

The respondents noted that they found it challenging to express themselves and their opinions on social media, especially on religion, politics and human rights. Denise shared that online users often dismissed the religious views posited by trans women using cultural and religious arguments, specifically imputing sin to the conduct and choices of LGBT individuals, and condemning and rejecting trans women. Consequently, the respondents found it difficult to advance the human rights of trans people in Malaysia. Denise expounded:

Sometimes the netizens quarrel; they use the religion thing to condemn transgender. *Niat tidak menghalalkan cara.* (One's intentions do not justify the means.) If it's a sin it will be a sin, no matter what you say, however you try to explain to them, they will still have that view and the mindset that it's something sinful, it is a sin. No matter how you try to explain and how you try to convince them that it's not, for them, it is.

Anything that has to do with LGBT we don't have space to express ourselves, in terms of wanting our rights in Malaysia like what they did in western countries, we can't do that here. We can't ask for anything. They think, the cisgender (persons) think, that we need to be thankful, grateful and lucky that we have what we have now. We don't have to ask for anything more.

Like when the Women's March happened, and then the next day there was a thunderstorm in Selangor or KL, they said that was because of the LGBT demonstration. There is a very large gap in Malaysia when it comes to us asking for rights for equality. I think we cannot achieve that in a million years. For me, there will be no equality for trans people in Malaysia.⁵⁸

57 Interview with Maria, 1 September 2020

58 Interview with Denise, 23 August 2019

Some respondents shared similar views with Denise regarding the lack of space to express their thoughts and ideas on religion and human rights. They added that online users and the state often assumed that trans women had no knowledge of religion. Suraya added:

I ... like [that] when I speak I am confident, but I am afraid people will not be able to accept. I have written posts about transgender recently. But, people, not a lot that support on social media. I wrote and then I deleted it. I wrote on Facebook, *'it's unfair when people are punished when others don't even know their lived experiences and our life journey.'* But people cannot accept.

Because I want to see whether the majority can accept it or not. Malaysia, no. For example, I said that *'I have human rights.'* They don't believe me. They think, *'Do LGBT people have human rights?'* They don't believe...most of them cannot accept. If trans women speak about religion, they cannot accept. For example, even if you understand the religion, we already understand, even if it's correct, they will still look at us as dirty. Nothing. Zero.⁵⁹

At least three trans women working in civil society organisations said that they found it challenging to impart information on human rights and sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) especially among conservative cisgender persons. Julia shared that she had received backlash from conservative cisgender persons when she gave explanations on SOGIESC in a closed Facebook group with cisgender and transgender persons.⁶⁰ At least four respondents shared that they made their posts private to avoid backlash and negative comments from online users. At times, the backlash and negative comments online are directed at, not only the author, but also their family members and loved ones. For trans women and groups of people who receive lower levels of social acceptance and have limited support systems, this can be very challenging, as they not only reinforce harmful stereotypes and notions, but can also negatively (or positively) shift the level of acceptance that the trans women receive.

59 Interview with Suraya, 9 September 2020

60 Interview with Julia, 30 September 2020

Julia shared her experience of facing backlash from online users for sharing a post about her and religion. She shared that negative comments affected her deeply, especially when they were directed at her family members and those who supported her. Julia shared:

Because the attacks were not directed at me but at my family [members] who accept me, that makes me [feel] down. Why do they want to attack my family when the one who made the statement about religion, about myself, was me? But they attacked my family, siblings, both parents where I feel it's not fair for them. They are my strong supporters. They help me a lot, accept me, they lift me up in many things.⁶¹

Meanwhile, one respondent preferred to engage in private online spaces, where she was open about her life, politics and other issues. Her reasons for choosing to engage in private spaces had to do with a mix of external and internal factors, including her own level of comfort with engaging in public discussions, the reception and response to her opinions, and not wanting to out herself (because she was transitioning), among others. However, she saw changes in herself and recently began to engage in public discussions. Beth explains:

A few years ago, I was concerned about what would happen if I expressed my political opinions in public places. Maybe some people think of that as kind of extreme or unrealistic.

I may have some form of criticism, but now I feel okay just generally being open about who I am and what I think. I just apply myself by thinking that if people don't like it, I don't depend on their approval. In the past, a lot of the time, I did want to let people know, say something or even prior to that like, there are times when I wanted to get into a discussion about transgender people, but I didn't want to out myself, I didn't want people to think there's something going on with them.

61 Interview with Julia, 30 September 2020

When it comes to that, for a really long time, I did feel like the easiest and safest thing to do was to not even touch the topic of being trans anywhere it could be seen.⁶²

In addition, the respondents also shared that the arrests of online users for sharing posts or expressing their political views on social media acted as a barrier for them to express themselves. Other than the reported arrests in the media, a respondent shared her personal experience of witnessing her partner's sibling get arrested for criticising the state-elected representative regarding the lack of Covid-19 relief efforts. This prevented her from sharing political views on social media spaces.⁶³ Another respondent shared that she was cautious of the content that she posted on social media, as she was afraid of being sued by online users.⁶⁴

This fear is further aggravated by the harmful statements made by state actors, in particular a statement made by the Minister of Religious Affairs to arrest and educate trans women in July 2020.⁶⁵ Such statements, coupled with laws that criminalise trans women's gender identity and gender expression, as well as social stigma increase their vulnerability to state prosecution. As a result, they feel even more constrained to express themselves, let alone voice dissenting views. Eliza shared:

Expression to discuss politics, especially with the current government, I feel is restricted. Yes, definitely restricted. There was a case where a statement was made on Twitter only, but [the person was] arrested. Then, the Minister of Religion gave a statement that religious officers can arrest trans women. This is very scary not only for myself, but also to all trans women. This is the main reason I am feeling uncomfortable now.⁶⁶

62 Interview with Beth, 24 July 2019

63 Interview with Maria, 1 September 2020

64 Interview with Laila, 23 August 2019

65 Palansamy, Yiswaree. "Minister's Nod for Authorities to Go after Trans Persons Will Lead to Spike in Discrimination, Violence, Says Rights Group." *Malaysia | Malay Mail*, 12 July 2020, www.malaymail.com/news/malaysia/2020/07/12/ministers-nod-for-authorities-to-go-after-trans-persons-will-lead-to-spike/1883702.

66 Interview with Eliza, 30 September 2020

Visibility and representation of trans women

Denise also noted that the increased visibility of trans women on social media often drew more attention to trans women, and not always in positive ways. According to Denise:

This pattern (of being negatively perceived) became worse especially when Nur Sajat, Safiey Ilias, and all these social media (influencers) emerged. The bashing-through social and electronic media, like TV-against trans persons is getting worse.⁶⁷

Similar to Denise, Melur noted that the increased visibility of trans women on social media has had an impact on “the smaller ones and those at the bottom-trans women in the villages and those struggling to make ends meet.”⁶⁸

Julia recognizes that her freedom of expression has been curtailed in recent years. She has become increasingly conscious of the unintended negative impact of her self-expression on the safety of other trans women. This lends credence to the observation that a trans woman’s self-expression is influenced by a variety of factors, including public perception and the safety of the trans community as a whole.⁶⁹

The respondents’ experiences point to the complexities surrounding the visibility of trans women. Hateful remarks and reactions directed towards trans women social media influencers expose not only the influencers, but also increase trans women’s vulnerability to discrimination and state prosecution. Given the current Malaysian context, simply by existing, trans women fall outside the boundaries of what is considered permissible behaviour and are therefore seen to be flaunting themselves on social media. Concurrently, the backlash from social media impedes trans women’s freedom to express themselves safely, ultimately shrinking spaces for trans women to exist.

⁶⁷ Interview with Denise, 23 August 2019

⁶⁸ Interview with Melur, 9 October 2019

⁶⁹ Interview with Julia, 30 September 2020

In the media, respondents noted that affirming narratives about trans women are scant, as are opportunities for representation in the public sphere. For example, the lack of media coverage of Nisha Ayub receiving the International Women of Courage Award in 2016 and other international accolades for her activism in the mainstream print media. In contrast to media coverage of Ambiga Sreenevasan's receipt of the International Women of Courage in 2009,⁷⁰ Nisha Ayub hardly received any coverage in the print media despite being the first trans woman globally to receive the award. Instead, there were many comments by online users disputing her gender identity.⁷¹

In 2018, Nisha Ayub's portrait was censored in a photo exhibition in conjunction with Malaysia Day, on the basis that her portrait along with a portrait of another LGBT activist 'promote the LGBT lifestyle'.⁷² Similarly, there was a public uproar when it became known that a trans woman, Rania Medina, had been appointed as the civil society representative from the trans community for an oversight mechanism for the Global Fund. Rania Medina received threats, including death threats, her personal information and pre-transition photos were disclosed without her consent, and there were public calls to review her representation⁷³ in the oversight body.⁷⁴

70 Noordin, Zalinah. "Ambiga to receive US Award for Women." *The Star Online*, 6 Mar. 2009, www.thestar.com.my/news/nation/2009/03/07/ambiga-to-receive-us-award-for-women.

71 Jo-Lyn, New. "Why Are Msians Arguing over This Melaka Girl Winning a U.S. Award?" *CILISOS - Current Issues Tambah Pedas!*, 7 Apr. 2016, cilisos.my/why-are-msians-arguing-over-this-melaka-girl-winning-a-us-award.

72 Amran, Siti Nur Mas Erah. "Mujahid Orders Portraits Removed, LGBT Activist Asks 'What about Our Sensitivity'" *NST Online*, 8 Aug. 2018, www.nst.com.my/news/nation/2018/08/399446/mujahid-orders-portraits-removed-lgbt-activist-asks-what-about-our.

73 Online, The Star. "Health Ministry: No Need to Review Rania Zara Medina's Appointment." *The Star Online*, 11 July 2019, www.thestar.com.my/news/nation/2019/07/11/health-ministry-no-need-to-review-rania-zara-medina-appointment.

74 Interview with Rania, October 2019

While there is a push to implement a 30% quota system for representation of women in decision-making roles in all spaces,⁷⁵ this does not apply to or include trans women. The lack of representation is made more difficult by censorship laws and regulations that prohibit “scenes that depict transgender behaviour and lifestyle”⁷⁶ and prevent affirming representation of transgender people in films in Malaysia. Moreover, the media—particularly Malay language media—often depicts biased representations of trans women.⁷⁷

The politicisation of gender in Malaysia

Respondents highlighted that as a minority group, trans and LGBTQ communities are prone to political scapegoating and are frequently politicised in Malaysia.

I am also a voter in Malaysia. I voted in the previous elections. After the last election, I personally felt that because the Alliance Coalition or Barisan Nasional fell, the LGBT issue came out, Nisha’s photo was removed from (the exhibition) Penang. From there, I sensed that, “*oh that means because my community is so small, maybe this is a community that is not in the front, always at the back, so people take advantage in that sense, up (sensationalise) our stories, until today.*” We’re always used by politicians.⁷⁸

Kamala, who became unemployed during the Covid-19 pandemic, left Malaysia to find employment in neighbouring countries because of the discriminatory workplace environment and constraints imposed on trans women. She compares the situation in Malaysia with other countries:

That is why I don’t like Malaysia, I go out to find a job. Singapore respect. No problem. I am like this. I am like this everywhere.⁷⁹

75 Rashid, Hidir Reduan Abdul. “Not Mandatory to Have 30 per Cent Women Representation in Politics, Says Hannah Yeoh.” *NST Online*, 26 November 2018, www.nst.com.my/news/politics/2018/11/434660/not-mandatory-have-30-cent-women-representation-politics-says-hannah.

76 *Guidelines On Film Censorship*. Ministry Of Home Affairs, 2010, p.13 [http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM\(1\).pdf](http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM(1).pdf)

77 Cheah, E. and Justice for Sisters. *Monitoring Report: LGBTIQ+ Rights in Malaysia*. ARROW, 2021, p. 45 arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf.

78 Interview with Samantha, 6 September 2020

79 Interview with Kamala, 9 September 2020

Jo, a non-Muslim trans woman, noticed a link between politics and society's attitudes toward trans women. Moreover, she describes how the sociopolitical atmosphere has negatively impacted her mental health, safety, and ability to perform.

Like Kamala, Jo compares her life in Malaysia to her life elsewhere. They both stated that they preferred to live in other countries because the climate in Malaysia was too restrictive, citing the growing minority stress experienced by trans women in Malaysia as a result of changing social attitudes and toxic politics.

Politics is one thing, but it's what the politics of Malaysia has done to the society itself. It's changing; it's making people forget why they are Malaysians. Because we used to have a very beautiful culture, I remember. But not now. Even with the current government, I still have the inkling to go over to Thailand. I am actually mentally dysfunctional right now, soul and heart, because of the politics, and all these religious factors. It doesn't affect me (directly) anyway, because these are Islamic-based issues. [But] seeing it happen in a country that was very beautiful and well respected.

[The] fact of the matter is that I don't feel a sense of security any more here in Malaysia. And I feel it whenever I am back in Thailand, it feels like home. People are more genuine compared to Malaysia. People in Malaysia used to be genuine, but because of corruption, not money corruption, but the corruption of the mind, soul, you can't blame them *lah*.

All these laws, we are in democratic state, but we are still condoning all these discriminations, I think it's shameful. Now it seems like the discrimination is from society itself. It's in the condemning phase, like social media. *Pondan* is bad luck, *bapok* is bad luck, a tsunami is coming, an earthquake is going to attack Malaysia, Chinese go back to China, things like that *lah*.⁸⁰

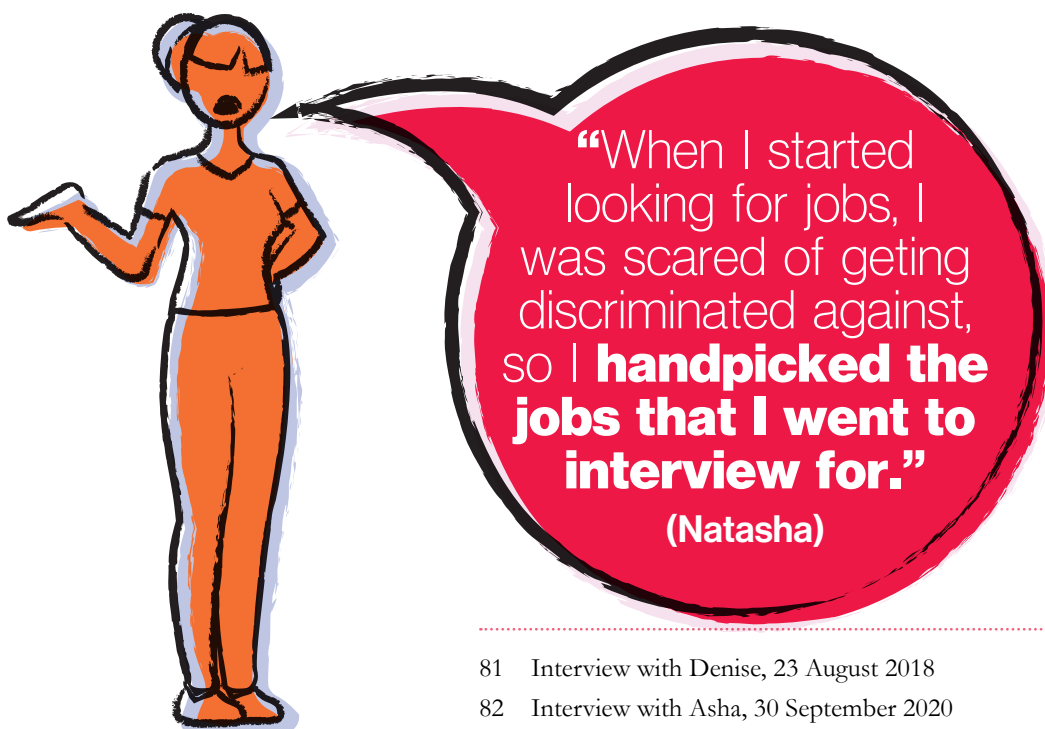
80 Interview with Jo, 22 August 2019

Similar to Jo, many respondents expressed disillusionment and frustration with Malaysian politics and noted that they had not benefited positively from participating in the electoral and democratic process. Denise explains:

I hate Malaysian politics—it's a mess, it's dirty. I don't even register myself as a voter. It's not worth it. It has nothing to do with me. Even the change of the government, or change of the Prime Minister or whatever it is, it has no impact on trans people. Since the 1970s until now, there has been no impact. The government did not help us in any way.⁸¹

Similarly, Asha noted that there was very little or no support from the Malaysian government for trans persons. Yet, the government continued to persecute and restrict trans people's freedom of expression. Although the political environment made her feel weary, it did not affect her desire to speak truth to power when given the opportunity. Asha observed:

So, our ministers in Malaysia, the Ministry does not support or come forward to support the trans community. I am fed up with politics. They say transgender is like this, transgender is like that, cannot wear women's clothes, arrest all of us. So, every time I hear things like that, I feel very fed up. If given the chance to voice out, I really want to (speak out).⁸²



81 Interview with Denise, 23 August 2018

82 Interview with Asha, 30 September 2020

Setting a good example

Rose shared that she had to prove herself to her colleagues, employers, landlord and people around her, a common feeling shared by many of the respondents. The respondents expressed that not only did they face additional pressure to exceed expectations, they also felt a need to set a good example as a way to counter the negative perception and discrimination against trans people. Rose expounded:

The first time anywhere is very difficult. If you can't face the challenge, you will lose. You must show a good example. People have the impression that we are troublemakers. For example, if you work with a couple, the woman is sometimes worried about the husband looking at the trans woman. The husband is probably looking at other women too, and that doesn't usually result in people being denied opportunities. Because the perception against transgender people is negative, we have to show a good example so that they change their minds.⁸³

This is difficult for many trans women, as Fara explained that being stealth or being able to blend into mainstream society is not an option for many trans women:

Sometimes people can't accept it. The impact is strong for transgender women because you have to prove to them and exceed their expectations. Even so, you cannot cover your identity because you're very visible. It's tough, darling.⁸⁴

83 Interview with Rose, 10 October 2020

84 Interview with Fara, 14 August 2019

Meanwhile, at least three respondents shared that they had to hide their identity to reduce their exposure to harm, including being reported to authorities, family members, and their employers. They came out to individuals whom they trusted, but that process was not always within their control. The lack of gender recognition forces trans people to reveal their identities when they share legal documents. Respondents were also acutely aware of being identified as trans if they did not 'pass' as cisgender women. Trans women who do not meet the socially-accepted cisnormative and endosexist standards of being a woman are consequently subjected to intrusive questions about their gender identity.

Nancy shared:

I've been minimising my exposure to such harms, mostly by coming out to people I know I can trust, or I know, because if I tell everyone, they might report me to the authorities. And family? Right now I am not so sure, I guess, on the one hand they seem supportive and on the other, I am not sure as I am still living with them. But yeah, I'm doing many of these tactics to minimise the harmful risks.⁸⁵

Beth, on the other hand, suppressed her gender identity, as she feared her visibility and knowledge of her gender identity would result in violence and discrimination against her:

When I was still repressing the fact that I am trans, there was a period, about a year before I started transitioning, I knew I was going to do it. Because the knowledge that it could be used to hurt me, it could be used to blackmail me and all of these things.

85 Interview with Nancy, 29 June 2018

And even [when I] started to transition, I kind of divided my life into places where I felt 100% comfortable talking about myself and what my identity is and what I think; and spaces where I felt I had to modify my appearance, the way I spoke, be careful about what I said. I had to compromise heavily in order to feel safe and visible and capable of moving around in public. Over time, I've gradually felt more comfortable about these things. There are still restrictions. I'm still very careful about how I look and sound, and what I say, and the kinds of people I allow to have more detailed knowledge about my identity.⁸⁶

Fazura's experiences speak to Nancy and Beth's concerns. Fazura shared that she experienced changes in some people's attitudes when she came out to them as a trans woman. She observed that cisgender men, in particular, tended to be lewd, perverse and sexual when she shared her gender identity with them. In some situations she managed to refuse their sexual advances, while, in other situations, she had to give in to their sexual advances to protect herself from further harm:

When we disclose or reveal our gender identity, some of them will be surprised and change their behaviour by being immoral towards us. So one of the challenges we encounter is when these people have this label where most trans women are into prostitution to satisfy their sexual desires.

So there are some situations where I expressed my gender identity when they tried to propose (court) to me, [and then] they changed their behaviour and were more straightforward about whatever had been on their minds. They start asking direct questions—'*I want you to BJ (fellatio) me*'. So there are times when I managed to step away; however there are times that I failed to step away, where I needed to entertain that kind of physical abuse in order for me to get away safely.⁸⁷

86 Interview with Beth, 24 July 2019

87 Interview with Fazura, 11 July 2019

Eliza, a Malay trans woman in her 50s, on the other hand, noted that she felt more restricted and was more afraid of her personal safety now compared to in past decades. This is a recurring sentiment expressed by many trans women in their 40s and 50s. Eliza changed her behaviour on social media and in public spaces. She became more cautious of what she posted online, so as not to trigger attacks by online users, and developed a fear of encounters with the authorities whenever she is away from home.

She shared that her fears were mostly due to the political environment and speeches by state actors in Malaysia in relation to the human rights of trans and LGBT people. Her concerns were compounded by the rising hate speeches that were increasingly made with impunity, the arbitrary application of laws in relation to trans people, and the lack of freedom of expression in general. Eliza shared:

Honestly, I feel more afraid now compared to 20 years ago or 10 years ago. The main reason is because of the current government now. Twenty years ago, I could go out without feeling scared to encounter the authorities. I do want to speak on human rights, but what is restricting me are the existing laws and the mindset of those who follow the current government's trend. Meaning, government agencies are also on Twitter, they are on Facebook, they can release laws that restrict freedoms, right?

Because they (online users) release a statement, they get arrested. So I feel the citizens now have been influenced and this has caused me to be more careful with whatever that I post on social media. And then there are statements to arrest *mak nyah*. *Mak nyah* become afraid. We feel like we are being suppressed, pushed. In this current situation, we feel like we are second-class citizens, like a stepchild.⁸⁸

These experiences show a clear causal link between the respondents' freedom of expression and the existing perception of trans women, and how this manifests in gender-based discrimination and violence in various spaces on an individual and communal level for trans women.

88 Interview with Eliza, 30 September 2020

2. Self-expression and pressure to change

While almost all of the respondents were able to express themselves as trans women, they faced varying degrees of ongoing restrictions in relation to their gender identity and gender expression in both public and private spaces, and in accessing gendered spaces (social and religious spaces, and public amenities). In online spaces, many trans women faced aggression and violence for merely being and expressing who they are.

Fazura's experiences spoke to the intersection of gender identity, freedom of speech, and all aspects of trans women's existence. Her uncertainty over how she should express herself in religious settings highlights the pervasiveness of gender binary constructs that exist in society generally. It demonstrates the lack of access and ability for trans women to exercise their freedom of religion or belief, which includes the freedom to manifest one's religion or belief in teaching, practice, worship and observance either alone or with others in private or public.⁸⁹



Being a transgender woman, we have some small worries that everywhere we go we might expect backlash from everybody. But in terms of being in religious places or being with family, we are quite worried. I can say I faced challenges when I am in religious places, like mosques. Until now, I can say that I have no idea how I should be dressing in a mosque when I want to do activities like pray or meet somebody. However, to the extent that I am able to express myself, I can say that I am able to freely express myself to the maximum limit.⁹⁰

89 "Universal Declaration of Human Rights." United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

90 Interview with Fazura, 11 July 2019

At least four respondents shared that they were in the process of transitioning and were unable to transition. The English-speaking respondents in Kuala Lumpur and urban areas mostly used the language and concept of transition. Transition as a term is not widely used or understood in some Malay-speaking communities. The Malay-speaking respondents described and broke down transitioning into several categories—wearing women’s clothes, taking hormones, undergoing surgery.

One respondent, Nancy, shared that she was unable to transition, as she lived with her parents who were not fully accepting of her gender identity. She lacked access to trans-specific healthcare in Malaysia, which in turn exacerbated her gender dysphoria. The respondent was only able to express themselves in online spaces, where she found supportive communities, despite the high levels of online gender-based violence against trans women.⁹¹

Another respondent shared that she felt more comfortable expressing herself online as opposed to offline, as it provided some level of anonymity and invisibility. This also gave her the time and space to craft her response. Beth said:

Real life I guess, being physically present in spaces, that could be more challenging because in online spaces you have kind of a veil of anonymity and invisibility, you can take the time to figure out what you’re going to say, and carefully craft how you are going to come across.⁹²

Factors that enable and restrict freedom of expression

The ability of respondents to express themselves is linked to the following factors:

- **perception and acceptance of trans women;**
- **vulnerability to violence and discrimination;**
- **impact on their business or employment;**
- **proximity and relationship with their family members, among others.**

91 Interview with Nancy, 29 June 2019

92 Interview with Beth, 24 July 2019

Trans women respondents working in the government sector enjoyed less freedom of expression, both in their workplace and outside of work, compared to other employment sectors. The respondents reported that they changed their gender expression in compliance with the workplace dress code and guidelines, and were more cautious of expressing themselves in public, even after work hours and outside of the working environment.

Ramlah, a trans woman who works in a government school, shared:

For me, there are two situations. The first one, at my workplace, I express and present myself in a way that people may perceive me as a man. Outside of my workplace, I express myself authentically as a transgender woman. But, I am also cautious of the situations, places, and who I share my experiences with, maybe because I am a government employee.

There are consequences. I am cautious because I don't want to be overexposed. I also don't go out as much. Even if I hang out, it's mostly with my trans women friends, and only with them, I express myself.⁹³

Meanwhile, Anna, a business owner, found herself restricting her self-expression on social media to avoid any negative impact on her business and unintentionally pushing away prospective customers.

At the moment I don't express myself because I am afraid of the online users on social media; not all of them can accept me being like this. So I feel it's better for me not to express my thoughts and self at the moment as many of my customers do come from social media, and those are my business clients. Not all of them can accept me. So I don't share too much about myself, just private sharing with friends.⁹⁴

93 Interview with Ramlah, 6 September 2020

94 Interview with Anna, 6 September 2020

Some respondents also stated that they did not initiate discussions on certain subjects, such as religion, gender equality and politics. They would however, respond and correct misconceptions in relation to trans persons online and offline alike.

Nancy, a trans woman in her 20s shared that she sometimes reacted to current events, for example, the Malaysian Trades Union Congress (MTUC) and the Malaysian Employers Federation's (MEF) rejection of the International Labour Organisation's (ILO) on Violence and Harassment⁹⁵ due to inclusion of protection for LGBT workers.^{96 97}

Legal gender recognition

At least four respondents talked about legal gender recognition. In Malaysia, post-operative trans people previously were allowed to change their name, gender marker, and other gendered details in their legal documents, namely, the national identification card. However, this has become increasingly challenging for post-operative trans people.

In July 2016, a trans man filed an application to change his name, gender marker and last digit of the serial number in his identification card. His request was granted by Justice S. Nantha Balan, who presided over the case at the Kuala Lumpur High Court. In his decision, Justice Nantha Balan stated that the applicant 'has a precious constitutional right to life under Article 5 (1) of the Federal Constitution of Malaysia and the concept of "life" under Article 5 (1) must necessarily encompass the plaintiff's right to live with dignity as a male and be legally accorded judicial recognition as a male.'⁹⁸ However, in January 2017, in an appeal by the National Registration Department (NRD), the Court of Appeal overturned the decision.

95 "ILO: New Treaty to Protect Workers from Violence, Harassment." Human Rights Watch, 28 Oct. 2020, www.hrw.org/news/2019/06/21/ilo-new-treaty-protect-workers-violence-harassment.

96 Timbuong, J. "Treaty Rejected over LGBT Clause." *The Star Online*, 26 June 2019, www.thestar.com.my/news/nation/2019/06/27/treaty-rejected-over-lgbt-clause.

97 Vengadesan, Martin. "Yes, It Was LGBT Factor Which Made Us Say 'No', Confirms MEF Boss." *Malaysiakini*, 27 June 2019, www.malaysiakini.com/news/481423.

98 Koshy, Shaila. "She Is a He – Even on Paper." *The Star Online*, 20 Aug. 2016, www.thestar.com.my/news/nation/2016/08/21/she-is-a-he-even-on-paper-posters-for-transgender-rights-often-read-some-men-are-born-in-their-bodi.

The decision to transition or not, and the degree of transition, are not the determining factors of a person's gender identity or trans-ness, as a person's body and genitals do not determine their gender identity. Medical intervention is no longer a prerequisite for gender recognition in many gender recognition laws and policies in many countries, including Malta, Argentina,⁹⁹ Pakistan.¹⁰⁰ Malta's Gender Identity, Gender Expression and Sex Characteristics Act 2015 specifies that persons are not required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity.¹⁰¹

Shamini, a post-operative trans woman, shared that she was unable to change the details in her identification card. She explained:

The gender on my IC has not been changed because I am Malaysian. Even If I want to change my name to a feminine name, I still have to keep a male name in front of my name. ¹⁰²

Another respondent shared that trans women had to consider multiple factors, namely state recognition, religion, family and societal acceptance before making the decision to medically transition. Her reflections suggest that the decision over one's body and whether to transition or not, does not hinge on the individual's personal autonomy, need and desire. Instead, one's decision over a trans person's body is a matter of public and state affairs. According to Fifi:

99 "Argentina Gender Identity Law." TGEU, tgeu.org/argentina-gender-identity-law.

100 *Pakistan: Transgender Persons (Protection of Rights) Act, 2018 - A Briefing Paper*. The International Commission of Jurists (ICJ), 2020, www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf. p 13

101 "Gender Identity, Gender Expression and Sex Characteristics Act, 2015." TGEU, tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf.

102 Interview with Shamini, 9 September 2020

If you undergo surgery and all that, you have to think about whether you can get your IC (changed) or not, after the surgery. And then you have to think about religion. If in religion, you have to think about, in what condition do you want to die? You have to think about it in terms of rights, religious boundaries, and then family and societal acceptance.¹⁰³

Aya explains that the non-recognition of her gender identity causes her gender dysphoria, a sense of anxiety and stress related to having to disclose one's gender identity, every time she presents her official documents. In Malaysia, official documents are used for almost everything from being able to enter a building to applying for a bank loan. She explains:

I think the biggest challenge in terms of society is because of the official documents, they obviously do not recognise transgender people, so whenever I present an official document is when I feel the most dysphoric. And I would always fear what other people would say to me or what they are thinking, or they ask a lot of questions, it's always a very traumatic event.

The only thing I would like to add is that to have legal gender recognition. That would help a lot as well. For us, we have to change our legal documents. If not, otherwise I think no matter how well we pass or whenever we go through any official positions where we have to show our official documents, we would feel dysphoria and I think none of us can escape. That would be the one thing that could help us being transgender.¹⁰⁴

Kamala's experience at the hospital illustrates the wide-ranging impact that the official documents have on a trans woman's ability to seek services with dignity. Kamala, who was admitted to a hospital because of an accident, was moved from the women's ward to the men's ward by the hospital after noticing that her IC says 'male'. Kamala shared the discrimination that she experienced:

103 Interview with Fif, 6 September 2020

104 Interview with Aya, 24 May 2019

I was recently admitted to the women's ward. At that time I met with an accident. They thought, because I was wearing women's attire, right, they put me in the women's ward. After that they saw the form, and they saw my (dead) name, and they said, 'eh, this is a man.' And then brought me to the men's ward instead. At that time, I was so humiliated. I stayed there for one day like that, I was wearing a short skirt, all the men saw.¹⁰⁵

Pressure to change

Many respondents experienced being told to change or 'return to the right path' by their family members, colleagues, intimate partners, employers, friends, and even strangers. The pressure, which manifests in the form of advice or disapproval, sometimes has religious overtones, and evokes self-guilt and self-blame within the respondents for shaming their parents or family members because of their gender identity and expression.

The respondents expressed that such situations caused them discomfort, stress and annoyance, but many respondents developed responses or strategies to deal with such situations.

A respondent shared that, although her family members accepted her and had not pressured her to change or 'return to the right path', she faced such pressure from the general public, including strangers. She explained:

It's the general public—they always tell me to change and all that. My response is, 'Okay, God willing.' Sometimes they like to bring up my mother: 'Your mother is no longer alive. Don't you feel bad for your mother?' I usually tell them, 'Ha, it's okay. God willing, if there's opportunity I will change, okay. You don't have to bring in my mother, Auntie.'¹⁰⁶

105 Interview with Kamala, 9 September 2020

106 Interview with Siti, 9 September 2020

Meanwhile, some respondents were deeply affected by the social pressure to change or rehabilitate themselves. They feel conflicted about their identity, and, by extension, their existence. The research highlights a combination of factors that contributed to this:

- **Lack of access to information** about sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC). In many cases, the respondents' knowledge of gender identity and self derived solely from patriarchal and non-inclusive interpretations of religion;
- **Perception of self as sinful.** The conflation of gender identity and sex work fed into a skewed perception of self. The imputation of sin and being a sinner was a recurring theme with some respondents. While the respondents were aware that they engaged in sex work because of limited employment opportunities and employment discrimination, nonetheless they saw both their gender identity and sex work as sinful. This perception is reinforced by the general public, religious institutions, and family members.
- **Internalisation of guilt, blame, shame and violence.** The respondents believed that their mistreatment was deserved, and therefore they did not wish to hold perpetrators accountable. Instead, they accepted their mistreatment as a consequence of choosing this path (being a trans woman).

The respondents exhibited varying levels of internalised transphobia and minority stress. Internalised transphobia is defined as “discomfort with one’s own transgender identity as a result of internalising society’s normative gender expectations.”¹⁰⁷

107 Walter O. Bockting, Michael H. Miner, Rebecca E. Swinburne Romine, Curtis Dolezal, Beatrice “Bean” E. Robinson, B.R. Simon Rosser, and Eli Coleman. LGBT Health. January 2020. 15-27. <http://doi.org/10.1089/lgbt.2018.0265>

Minority stress is a theoretical framework that interrogates the “relationship between minority and dominant values and the resultant conflict with the social environment experienced by minority group members.”¹⁰⁸ The theory posits that “sexual minority health disparities can be explained in large part by stressors induced by a hostile, homophobic (and transphobic) culture, which often results in a lifetime of harassment, maltreatment, discrimination and victimisation.”¹⁰⁹

An adaptation of the minority stress model posits that “internalized transphobia is a minority stress process resulting from the internalisation of negative attitudes and prejudices from society.”¹¹⁰ The Transgender Identity Survey: A Measure of Internalized Transphobia summarises the three ways in which internalised transphobia commonly manifests among transgender and gender non-conforming persons:

- **Experience of intense shame and guilt about their identity;**
- **A desire to conform to binary ideas of gender and sex to avoid stigma related to transgender persons, non-binary and gender non-conformity in general. They may also hide or suppress their feelings about their gender and identity, by attempting to express themselves as their sex assigned at birth or appear as cisgender persons;**
- **Disassociation with other transgender persons due to internalisation of prejudice and social stigma in relation to transgender persons or avoid exposing themselves and their gender identity.**

108 Dentato, Michael P. “The Minority Stress Perspective.” American Psychological Association (APA), Apr. 2012, www.apa.org/pi/aids/resources/exchange/2012/04/minority-stress.

109 Ibid.

110 Walter O. Bockting, Michael H. Miner, Rebecca E. Swinburne Romine, Curtis Dolezal, Beatrice “Bean” E. Robinson, B.R. Simon Rosser, and Eli Coleman. LGBT Health. January 2020. 15-27. <http://doi.org/10.1089/lgbt.2018.0265>

However, the study noted that the manifestation of internalised transphobia correlates with the social context that they live in, and may change over time. For example, while a trans person may experience intense shame about themselves, they may not have negative attitudes towards other trans persons. Some also become less concerned with suppressing, changing, or hiding their identity over time, especially within the LGBT communities.¹¹¹

Based on the researchers' observations, some 'ex-trans women' or those who have changed their gender expression still interact freely in the community. This is commonly seen in the Malay-speaking trans women communities. Some still maintain their femininity and identify along the gender queer spectrum, However, it is a personal choice trans women can make whether to socially and medically transition, or not, as is their right to self-determination over their own bodies.

The interviews also demonstrate that some of these factors substantially influenced respondents' decision to 'return to the right path' or 'de-transition':

- **External pressures**
- **Personal safety**
- **Job security**

At least four respondents were conflicted about their gender identity and the notion of 'returning to the right path' or changing, although at the time of the interview, they were living as women and were in romantic relationships. They were very aware of the pressure exerted by people around them to change. All four respondents shared that they frequently experienced hostility, disapproval, and pressure to 'return to the right path' by their family members, friends, teachers, peers, colleagues, and the state because of their gender identity. This included being constantly told, among other things, that they were sinners, that the Prophet Muhammad did not acknowledge them as followers of Islam, and that they comprised the people of Lot. Most of these experiences began in their childhood, and have continued into adulthood.

111 Ibid.

A respondent who attended a religious school shared that she was isolated and segregated in school by the school administrator because of her gender expression. She was considered as a 'special case' and was assigned an *ustaz* (a religious teacher) to have one-on-one classes with her. She experienced multiple forms of humiliation, aggression, and bullying in school, including being thrown into the dumpster, having urine thrown at her, and being harassed by her peers. As an adult, she has been arrested and harassed by the state Islamic Department for "posing as a woman".¹¹²

She continued to face internal conflicts about her gender identity. At one point in her life, she changed and presented herself as a cisgender person and engaged in *dakwah* (preaching) activities, targeting trans women communities to 'change' in order to avoid arrest.

I used to meet the trans women communities. I said to them, 'I used to be a trans woman too. Do you believe me? But why can I wear a *songkok* (a cap worn by Muslim men) now? I am not forcing you to change because the heart cannot be coerced. But, change, don't be a woman. Otherwise, they will catch you and put you in prison'.

She added that she battles mental health issues, including depression and suicidal ideation. She feels a great sense of burden dealing with issues in relation to perception and acceptance of her gender identity and expression, not only when she is awake, but also when she is asleep, and in her dreams. Her mind is constantly thinking and rationalising the dissonance between her identity:

Of late, I feel there is a tiny voice that says, 'You are living a useless life. What is the purpose of you living? What for?' The voices are there every now and then, and it makes me ask myself, 'Do people like me deserve to live in this world? Should I just die?' When I think about death, I can't imagine it. I don't know what my life will be after I die. I experience depression and seek advice from my friends.

112 Interview with Sonia, 9 September 2020

They say, 'one of the causes of depression is overthinking.' That's what people say. But we do have to think of death, as it gives you *pahala* (rewards by God). Being reminded of death is a form of *pahala* for us. My friend who studies psychology tells me, '*It is okay for you to believe in doomsday as a Muslim person, but the issues that you are experiencing and that manifest in your dreams points to the problems that you are thinking about. So, don't focus all your energy on one problem only.*'¹¹³

Another respondent shared that sometimes she asks herself when will she change, and at times she discusses it with her friends. She genuinely wonders what it means to change. At the time of the interview, she was in a relationship with a cisgender man, and she often discussed the future of her relationship with her boyfriend. She told him, "I know that you will get married, and I will get married at some point. Just let me feel happy for a while." Her friends' disapproval of her gender identity and expression result in her questioning herself and her existence.¹¹⁴

At work, she was reprimanded by her then-employer every day, from when she first started working at the company. Without fail, her employer would remind her to cut her hair, pressure her to change her gender expression and identity, which caused her depression and stress. Because she performed well at work, the pressure and reprimands reduced to once a week. She eventually left the job and moved back to her hometown to care for her mother who was ill.¹¹⁵

113 Ibid.

114 Interview with Alia, July 2019

115 Ibid.

A respondent from Sarawak in her late 30s shared that she faced pressure from her intimate partner to change and present herself as a man. He did not like her wearing makeup, especially when they were out in public places, as this made him feel humiliated. Although her boyfriend was a non-Muslim man, he frequently used her religion and age to shame and guilt her into changing her gender expression. She was aware that she would not be able to change who she was inherently as a person. However, she worried about the lack of finances in her later years, and of being continuously subjected to discrimination. This led her to be masculine presenting.

He wants to change me from expressing myself as a woman to expressing myself as a man. He teaches me to wear men's clothes. He said, *'How long do you want to wear women's clothes? Even though you are soft, you should learn to wear men's attire. One day you will be old, and if you are wearing women's clothes, who will respect you? Don't tell me you want to dress like this till you die. Furthermore, you are a Muslim.'*

'Imagine what your nieces and nephews will feel when you are older, how will they respect you? You don't have a wife or kids. If you are simple, maybe they will accept. But, if you dress up, you will humiliate them. People will tease them, "ehhhh, your uncle is a pondan." If you are simple maybe they will be able to accept you,' he said.

I thought about it, and he was right—if I were to change my appearance a bit—but I cannot remove it, I am naturally soft. I can only change it in terms of dressing. I have friends who ask me to wear women's clothes, but I don't want to. I do (wear them sometimes) but I don't want to be like before because I am already 37 years old. I can pass away anytime. That's why I said earlier, how will people respect me? Even though I express myself like this, people still know that I am *pondan*. It's really based on your own comfort level.¹¹⁶

116 Interview, 23 August 2019

In addition, she was also convinced to change her gender expression because of her job and restrictions imposed by her employers in expressing her gender identity. Her employers do not allow her to wear makeup or wear women's attire as they claim it makes the customers feel uncomfortable. She feels that her gender identity and expression make her vulnerable to bullying by customers. Moreover, she believes that if she were to express herself as a woman, the jewelry shop would be at risk of theft, because robbers may operate under the assumption that women, particularly trans women, are weak and easy targets. By presenting herself as a man, she assumes she would be able to circumvent such unwanted incidents, and keep her job—which is an important consideration given the lack of employment opportunities in Sarawak.

If gangsters or bad people come to the gold shop, they can bully me. If I am soft, the jewelry could be stolen. I have to dress like that so that people are afraid, like there is a man here. Because the things that I sell are not cheap. But I feel secure with this job now.¹¹⁷

The media representation and coverage of trans people is linked to the pressure respondents experienced from their family members to change their gender identity and gender expression. A respondent shared that she received frequent reminders from her family members to change herself. Sometimes these reminders are triggered by media coverage of trans issues, ostensibly Malay language mainstream media. She shared:

There are times when they (family members) read the papers, and when it comes to issues about *mak nyah*, they will call me and ask me to take care of myself, and not do unnecessary things. Family will remind me, they will say, 'How long are you going to be like this?' But I am firm with myself; this is who I am. These pressures are normal, but I understand that I cannot be like this forever. At some point I will change, but it will take time.¹¹⁸

117 Interview, 23 August 2019

118 Interview, 6 September 2020

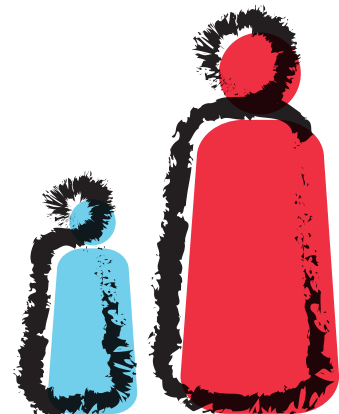
Case study: Under pressure

Natasha is in her late 20s. She lives on her own in the city, but frequently visits her family members. She does not have fond memories of her childhood, though recalling her parents doing “plenty of things to her” because of her gender identity. Moreover, Natasha’s father left both her and her mother when she was a child, and divorced soon after.

Her mother remarried years later. Similar to father, her stepdad could not accept her as a trans girl: “Sometimes my mother is caught in the middle between her husband and I. Although I am a trans woman, I love my mother. If our mothers don’t pray for us, don’t bless us, how will the child change? To go towards good without their prayer and blessing (is challenging). This makes me stressed.”

“I present myself as who I am—I wear makeup, contact lens, my long hair—the usual. I just don’t wear clothes that are too feminine in front of him. With my mother, it’s okay. He can’t scold me because I am much older now. No, it’s just that he is tired of talking.”

When Natasha goes back to visit her family members, she tends to distance herself from her stepdad if he is home. Likewise, he tends to distance himself from her too, “As a child, you want to communicate with your dad, but till today he does not speak to me. He has never spoken to me, he finds it difficult. If he comes home he will quickly go to his room, to avoid me.”



Her only opportunity to talk to her mother is when her stepdad is not at home. When he is around, her communication with her mother is limited to exchanging glances and eye contact.

Natasha has many relatives, who are a source of her stress. The questions and comments that her parents receive from her relatives, neighbours and her parents' friends about her gender identity shock and stress her stepdad in particular. The stress is then transferred onto her and manifests in the form of pressure for her to change or 'return to the right path'.

Although her mother does not pressure her, she understands that her mother has a husband who pressures her mother. She does not blame her stepdad, and she understands his situation.

Natasha *redha* (accepts), and rationalises her situation, as she feels she chose this path and views her situation as a test by Allah, as much as it has a negative impact on her, which she feels is normal, as it is part of the life journey of a trans woman, "Whether you like it or not, you have to accept it."

In order to avoid conflict and hostility, she prefers to withdraw from the situation and isolate herself. She feels that is the only solution.



3. Education

At least nine respondents between the ages of 18 and 45 shared their experiences in educational institutions, mostly in secondary schools and higher learning institutions. The respondents experienced:

- Restrictions in participating in extracurricular activities;
- bullying;
- multiple forms of violence;
- microaggression;
- segregated from other students, among others, by their peers and teachers.

One respondent shared that she dropped out as a result of bullying. Meanwhile, another respondent shared that her experiences in school left a long lasting impact on her mental health, and resulted in depression.

Restricted from participating in extracurricular activities

Tina, an 18-year-old trans woman, shared that some teachers were not able to accept her and restricted her from participating in dance performances:

When I was in school, half of the teachers were not able to accept, half could accept. One of those who couldn't accept were the ustaz, ustazah and others. When it comes to performances, events, these teachers will be the first to speak out. Like, 'No need lah, to take this student; this student is effeminate, it's shameful.' Like that.¹¹⁹



119 Interview with Tina, 1 September 2020

Bullying and violence

At least four respondents between 27 and 45 years old said that they were bullied by their classmates, which included:

- **name-calling;**
- **teased for the way the respondents walked;**
- **had rubbish, urine and other things thrown at them, among other things;**
- **sexual harassment.**

A respondent shared that students who bullied her also made sexual advances towards her.

Mas shared that she had nowhere to seek support or lodge a complaint against the bullying that she experienced in school as a young person. She shared it was challenging, and that she faced depression and stress as a result of the bullying. She shared:

When I was in school then it was very difficult. Very difficult when I was in school. Always bullied, teased, but I was not assaulted, always bullied. Bullied in terms of psychology to the point that it made me stressed. Depression is normal, you will surely get depressed. Sometimes, we are unaware of it; we don't see friends. I had nowhere I could complain or anyone to talk to about these problems.¹²⁰

Suhakam's 2019 study reported similar trends of discrimination experienced by trans persons in educational institutions. The report noted that the respondents experienced high levels of incidences of bullying and sexual violence in school, and the educational system lacked redress mechanism that transgender children trusted to discuss the unique challenges faced by them.¹²¹

120 Interview with Mas, 9 September 2020

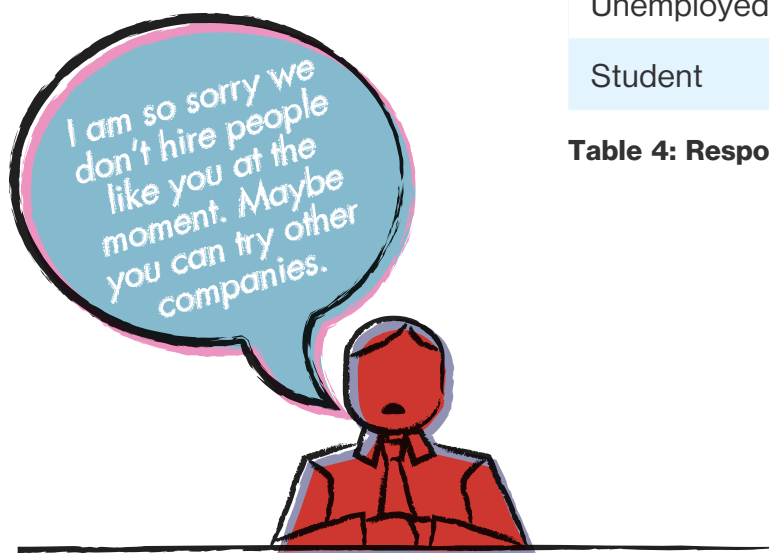
121 *Study on Discrimination against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity)*. Suhakam, 2019, www.ohchr.org/Documents/Issues/SexualOrientation/SocioCultural/NHRI/Malaysia%20Human%20Rights%20Commission.pdf. p .48

4. Employment

Almost all respondents (56 out of 60) experienced employment discrimination, either during the hiring process or in the workplace because of their gender identity and expression. About 48% of the respondents are self-employed (online business entrepreneurs, sex workers). Meanwhile, 40% of the respondents were employed in the formal sector (government sector, private sector, non-profit sector). Two respondents did not have any formal work experience, as they were students at the time. Three respondents, who previously worked in the private sector, became unemployed due to the Covid-19 pandemic.

Sector or type of employment	Number of respondents
Government sector	4
Private sector	13
NGO	7
Self-employed, including sex work	29
Unemployed	5
Student	2

Table 4: Respondents' type of employment



Discrimination in the hiring process

Almost all respondents experienced discrimination during the hiring process. This included:

- denial of job opportunities because of their gender identity and gender expression;
- being questioned about their capability to carry out the job based on preconceived ideas of trans women and gender binary stereotypes;
- imposition of a gendered dress code and gender expression based on sex and gender binaries, including hair length and styles; and
- restricted access to and use of gendered spaces at the workplace based on the gender marker on their identification card.

The respondents also pointed out that even when they “passed” as cisgender women (and as a result managed to evade some of the discrimination based on their gender expression), they were often out-ed by the gender marker in their identification card. Denise shared:

I went to a bank in Kuching for an interview in 2011. The interviewer just said straight to my face: *‘I am so sorry we don’t hire people like you at the moment. Maybe you can try other companies.’* They didn’t use any degrading terms, they just used ‘people like you’—me. I did go for other interviews where they did not know that I am a trans woman, and thought that I am (cis) woman. At first, you think that, *‘ah okay I can get this job’*. They said they would call me later, but I think when they saw my IC and saw ‘male’, they didn’t call me back.¹²²

122 Interview with Denise, 23 August 2019

In some instances, the employment discrimination faced by respondents intersected with religion and race. A respondent shared that she was denied a job at a beauty salon on the grounds of religious beliefs. The saloon had no visible markers identifying the establishment as Islamic and allowed interactions between genders. However, the prospective employer rejected her job application on the grounds that the salon is a Muslimah salon.

There are several inferences that can be drawn from the employer's response as reasons for not hiring a trans woman. The presence of a trans woman employee could be perceived as bad for business, as it might make customers—specifically Muslim cisgender women who wear the headscarf—uncomfortable and reluctant to expose their hair. Women's hair is considered by some as *aurat* (modesty) and should be kept covered in the presence of members of the opposite sex. It is common for Muslim business-owners to express reluctance in hiring trans women, as this might be seen as supporting and encouraging trans women.¹²³

The respondents shared common stories of being rejected for employment, where prospective employers would tell the trans women that they would receive a call back in three days, but they never did. Sonia shared:

When we go for job interviews we know our intention is to work, so I wear according to the protocol *lah*. I cannot be going for an interview in a dress. I follow their protocol when I go for interviews. But then they ask me, 'are you a man or a woman?' and 'why are you like a woman? Can you do the job?' They think, 'If I were to hire them and ask them to lift heavy things, they won't be able to do it, because they are soft.' I have experienced this before. After the interview, they say, 'Okay, I will call you.' That's it. Not only in one place, but many, many places.¹²⁴

123 Ahmad, I. "Cukup Anggap Dosa dengan Allah sahaja?" *Harakah Daily.net*, 6 July 2018, <https://harakahdaily.net/index.php/2018/07/06/cukup-anggap-dosa-dengan-allah-sahaja/>

124 Interview with Sonia, 9 September 2020

The lack of legal recognition of trans people has a causal link with employment discrimination. Many respondents shared that employers frequently required trans women to present themselves based on the identity on their identification card. Some respondents shared that they gave into the pressure in order to secure a job. In addition, some respondents shared that they attempted to be masculine presenting while they were working to avoid harassment. However, their efforts fell short and they continued to be subjected to gender-based discrimination. Natasha, who has applied for six government positions, shared:

I have applied for a job at a university. It was the same. I applied for jobs at the café, the library, and it's the same. I went in men's attire and all that. But yeah, the hair is ours, and we can't change that. At that time, my eyebrows... my intention was to get a job, I didn't wear makeup and all that. But they knew. They saw my name—it is a man's name—and they saw my face—it is a female face. They asked me, 'Are you a trans woman?' I said 'No, sister'. They said, 'It's okay, fill up the form first, and we'll confirm in three days.' I waited for three days and nothing happened.¹²⁵

Kamala, who lost her job as a result of the pandemic, shared that she approached at least seven companies for employment. Five companies rejected her application because of her gender identity. Meanwhile, two others were willing to hire her on the condition that she used the male toilet because her identification card said 'male'.

Aya, a trans woman in her 30s, shared that although she had not experienced discrimination during the hiring process, the experiences of other trans women made her afraid of being discriminated against. She shared that she would assess the friendliness of her prospective employers before attending job interviews:

125 Interview with Natasha, 6 September 2020

When I started looking for jobs, I was scared of getting discriminated against, so I handpicked a lot of the jobs that I went to interview for. I had friends who were there or just [through] referrals—people who had worked there before confirmed that the employer is actually very accepting—otherwise I would not go for the interviews. For that reason, I was kind of hidden away from a lot of the discrimination that a lot of my other friends faced.

I think it (discrimination) is out there for sure, which was the reason why I was afraid in the first place. My friends had told me stories before about their first-hand experiences. Yes, to know that I am working in the corporate sector, and they are accepting and that it is possible in Malaysia to be respected...it makes me very grateful. It does make me more resilient in a way. I want to make sure that everyone else gets to feel what I feel. More companies should follow suit in what this company is doing; more people should be as open.¹²⁶

Discrimination in the workplace

Respondents employed in the private sector shared that they experienced:

- **Misgendering at the workplace;**
- **Restricted access to gendered facilities, including toilets and lockers;**
- **Assigned uniforms based on sex assigned at birth;**
- **Instructed or pressured to change their gender expression, for example by suggesting a haircut;**
- **Name-calling and taunting, including being asked when will they change;**
- **Misogynistic jokes.**

126 Interview with Aya, 24 May 2019

At least two respondents shared that they were terminated because of their gender identity and gender expression. Aishah's contract was terminated after a string of complaints, allegedly from customers and colleagues, for using the female toilet at her workplace:

Two years ago, I worked at a car dealership for three months, and then I was terminated because of gender issues. I used the female toilet, and they said that they received a complaint from a customer. I don't believe that it's from a customer. I don't mind if it's from a customer, but I don't think it is true. My contract was discontinued because there's a transgender here (at the workplace). Transgender cannot be here, so they terminated me. I think this came from the management.¹²⁷

Asha experienced frequent name-calling and violence at her previous workplace, a textile company. She was undermined by her colleagues and lacked support from the management. In one incident, a colleague used racial slurs against her and spat at her. Although she complained to the management numerous times about her colleague's behaviour, no actions were taken.

Instead, management took the side of the perpetrators and advised Asha to change her gender identity and gender expression. A management staff taught her how to walk so that she would be less susceptible to taunts and harassment by her colleagues. She was also reprimanded, scolded and given warnings for being herself and expressing her gender identity. After two years, she finally left her job. Asha's experience is another instance of employment discrimination intersecting with religion and race.¹²⁸

Siti, a trans woman in her late 20s, shared that she had transitioned on the job. While her employers did not restrict her from transitioning, they did not take measures to respect her identity, for example, by allowing her to use facilities that reflected her gender identity.

127 Interview with Aishah, 10 June 2019

128 Interview with Asha, 30 September 2020

This suggests that employers may not have inclusive standards or procedures in place in the event that an employee transitions or discloses that they are transgender, nonbinary, or intersex. Siti shared:

They (employers) tell me that I have to use the men's toilet. I just go with the flow because when I started working with the company at 18, I had not transitioned, and used the men's toilet. After transitioning, I did ask them about the toilet, but they said they will discuss it. I don't want to debate them so much. *It's okay, I said. I will continue.*¹²⁹

Pervasive job discrimination has resulted in limiting the respondents employment options and missing opportunities for self-development and growth. Two respondents shared that they were unable to apply for jobs in their areas of interest, and had to resort to any job that was willing to hire them. Some engaged in sex work as a result of the lack of employment opportunities. The respondents were also aware of the fact that other than their gender identity, their age, religion and other intersecting identities also factored into their employability. Rose shared:

I wanted to work in human resource (HR) but because of my age, it's very difficult to get jobs. So I can't find a job that will suit my qualifications and skills. My friends say that I should just accept whatever jobs I get. Because of the discrimination it's difficult for people to accept me, in hotels, HR.¹³⁰

Sonia said that she could not afford to be picky when it came to jobs, as she had to prioritise her family, her needs, and survival.

I have applied for jobs based on my interest. I have applied for a job as a beauty expert or beautician. For example, at a salon that needs a makeup artist. But when we go there, they say, *'No we can't hire you because this is a Muslimah salon'*.

129 Interview with Siti, 1 September 2020

130 Interview with Rose, 10 October 2019

Because now, what I need is a job to help myself and my family. So, for example, *'oh this job is not suitable for me. I cannot be a cleaner,'* or whatever. We cannot say things like that because I don't want to let go of the opportunities.¹³¹

Some respondents compartmentalised their lives and gender identity to avoid harm. Some did not see the situation that they were in as a form of discrimination, but rather as a result of a choice that they had made in order to get what they needed—a job.

Respondents working in the government sector generally experienced more restrictions in expressing themselves in comparison to respondents working in non-government sectors. At work, they presented themselves through masculine or androgynous gender expressions and were forced to conceal their identities to avoid discrimination at the workplace.

This combination of self-censorship and policing extended beyond the workplace. Respondents avoided attending public events that might result in chance encounters with their colleagues or supervisors. They expressed concern and anxiety over being outed and reprimanded for their gender identity and expression.

Lulu, who previously worked as a dance instructor in a public school, left her job because of gender-based discrimination. Her colleagues consistently gave her the cold shoulder, making it challenging to carry out her work. This uncondusive environment made her worry about her gender identity. She recalled:

It's all at the workplace. Because we go to formal places, right, so when we meet with people, people are always negative. That's what I used to experience, and things like that demotivated me to continue to work. Because when I used to work in the public sector like schools, they know that we are trans, but when we teach, there are boundaries that we need to adhere to, and we cannot go beyond that.

131 Interview with Sonia, 9 September 2020

Like when we engage with the government departments for donation, it's challenging. When they see us managing the project, they will not entertain us. So many times, I have gone up and down to their offices, and many times, I don't get the financial support. When it comes to official matters, it's very challenging because the staff in the government sectors discriminate against trans (people).¹³²

She added that working in schools made her vulnerable to complaints, not only from her colleagues, but also parents. In order to avoid being outed, including on social media, and having actions taken against her, she decided to leave her job. Similar to other respondents working in the government sector, she was also subjected to humiliation, gossip, and accusations of having sexual relationships with students by her unsupportive colleagues. This resulted in her being blacklisted by the school. While she had colleagues who supported her, the religious teachers in the schools were against her. Lulu recounted:

When I worked as the dance instructor, I was a bit worried about gender-related issues. Because I worked in the public sector, what more in government schools, that was a concern to me, to the point that I decided to quit. Because I have heard of many cases that have happened because of gender issues like this. When we go to the schools to teach, people see us, they see our identity.

That's my concern. The school did not have a problem, but I was worried about the parents. Because these days viral issues are popular, I was afraid of people making an issue of why there is a trans (woman) teaching in government schools. I was worried about any actions being taken. I was afraid...

132 Interview with Lulu, 14 August 2019

My colleagues have accused me of things that I didn't do. When I teach, they humiliate me, and spread rumours that I was doing terrible things with the students. As a result, I was blacklisted by the school. The teachers, when they see things that they don't like, they accuse people of things. Because I didn't want this issue to become big, I left the school.¹³³

These experiences expose gaps in protection of workers' rights with regard to pre-employment discrimination and discrimination at the workplace, both in government and private sectors. Without any protection and access to recourse, the respondents were left with limited options for employment and were vulnerable to falling into poverty.

Self-employment

Trans women have been commonly associated with and known as *mak andam*, who are “ritual practitioners whose roles include planning weddings and beautifying brides.”¹³⁴ The role of *mak andam* can be played by a cisgender or trans woman, and sometimes even cisgender men.¹³⁵ As *mak andam*, they are involved in many aspects of the wedding, from constructing the *pelamin* or wedding dais, recommending wedding outfits, performing rituals to enhance the beauty of the bride,¹³⁶ and in ensuring “adherence to the Malay wedding customs and rituals”.¹³⁷

However, these cultural practices are eroding due to a combination of factors—growing conservatism, enforcement of discriminatory laws, reinforcement of the gender binary constructs, and competition by new and upcoming wedding planners. Consequently, trans women are at risk of further economic deprivation by losing their livelihood in an environment where they already face discrimination.

133 Ibid.

134 Michael G. Peletz, *Gender Pluralism: Southeast Asia Since Early Modern Times*, Routledge, 2009, p 188-189.

135 Michael G. Peletz. *Reason and Passion: Representations of Gender in a Malay Society*, Berkeley: University of California Press, 1996. p. 127.

136 Ibid.

137 Balqis, Iza. “Mak Andam - Can You Go Without One?” *Kahwin.Sg*, 9 Mar. 2018, kahwin.sg/mak-andam-can-you-go-without-one.

Two trans women who worked as *mak andam* had to find other employment as a result of a decrease in business. Melur, a *mak andam* from Johor, explained:

There is increased competition now, and some offer really low prices. There are more cisgender women who are now doing bridal make up. I have heard some incidents of cisgender women wedding planners who tell people not to engage us because we are transgender women. We are unable to compete.

A few years ago, the Mufti or Jabatan Agama (religious department) said not to engage *mak nyah* wedding planners. That did have an impact on us as they [clients] will look for cisgender women instead of trans women for wedding planners. Two years ago, I could get five to six jobs per week; now, I can't even get a job. I had to get another job.¹³⁸

Meanwhile, Kalsom shared:

I only started working at this current place for a year. Previously, I worked as a wedding planner. Makeup [work] has reduced. The customers prefer cisgender women makeup artists. It's a trend in Johor, where people want to engage cisgender women makeup artists. I think stigma by society attributes to this too. And, it's *rezeki*. Previously, I could get at least one or two jobs per month, but this year, I have only had four jobs. It's a stark drop. So I have to find another job, and cannot wait on this.

If I were to go makeup brides, the Islamic Department officers will ask who did the makeup. There were a few brides who shared this with us. They sometimes advise the brides not to engage trans women *mak andam*. I heard it two years ago.¹³⁹

138 Interview with Melur, 9 October 2019

139 Interview with Kalsom, 9 October 2019

Social media has also created new avenues for trans women to create alternative employment for themselves. While this led to new livelihood opportunities, it concurrently raised the visibility of trans women entrepreneurs on social media platforms, which exposed them to gender-based violence, including sexual harassment. Cassie, a trans woman in her 20s, was sexually harassed through her Instagram account for her bridal business:

My Instagram is to promote my other work—I do bridal makeup. There are people who inbox you weird things. I block them. It happens all the time, but with different people.¹⁴⁰

While Denise owned her own business, she said the employment discrimination and the lack of employment opportunities caused her stress. Her online business did not provide a stable income for her:

Now that I am 37 years old and I don't have a permanent job, that really makes me stressed. It's very hard to find a job in Kuching. It really troubles my mind because I have no income every month.¹⁴¹

Accepting Environments in the Workplace

Seven of the 60 respondents working in the private sector feel accepted at their workplace, and they were able to express themselves as who they are.

Some of the workplaces have adopted good practices to respect and support their trans employees and colleagues. In Fazura's case, her employer had briefed the other employees regarding her appointment and reiterated the company's policy against discrimination:

Even before I was hired by this current company, the person who hired me reminded everyone in the office that he will be hiring a trans woman. He said that he reminded the other employees to not discriminate, and to treat me equally as a woman.

140 Interview with Cassie, 23 August 2019

141 Interview with Denise, 23 August 2019

When I came in, there were some people who maybe didn't pay too much attention as to whether I am a trans woman or not. Some of them knew about who I am, and reacted very naturally, like 'oh really,' and like, 'we have one in the office'. There were some people who were terribly surprised, like, 'What?! Really?!' and 'you look so good in terms of your looks and your voice and personality and so on, cannot tell that you are a trans woman'—something like that.

Maybe they had certain preconceived ideas about trans women, like when they (trans women) show a good personality as a woman, they cannot detect. Some even congratulated me that I am in the office. They also said that I am not like the other people working in prostitution.¹⁴²

While she feels the environment gave her the opportunity to change her colleagues' perceptions and stereotypes of trans women, she still faced resistance from them.

Even in environments that are perceived as friendly, trans women employees may not feel confident or comfortable in expressing their gender identity. They worry that doing so might attract too much attention to themselves, and are reluctant to risk losing their jobs.

Sabrina, a trans woman in her mid-20s from Sarawak, shared that while her superior had no issues with her gender identity and gender expression, she was usually masculine-presenting at work out of respect for her superior. Her job required her to attend meetings with people of diverse backgrounds and to make presentations. She felt a sense of responsibility to uphold the company's reputation and feared that people might not accept her. She was previously confronted by an intern at her workplace, who questioned her for wearing women's attire to work. Nonetheless, she admitted that she desired to express herself for who she was at work:

142 Interview with Fazura, 11 July 2019

If I was really given a choice, I would want to wear office attire for women. But, as long as I have respect there, my boss is good to me, there is no discrimination at all, I respect them back, I dress as properly as I can. For me, it's good for me to be on my boss' good side even though my boss doesn't care... I don't like when my boss asks me to attend meetings because I will meet many people.

I am afraid that people will not accept me. I will have to make a presentation and carry the reputation of the company. So I am afraid people will not accept me, and it will affect the company's reputation. So far there are no issues, because my boss is always with me.¹⁴³

Denise recounted her experience seeking employment as a fresh graduate. As a young trans woman, she felt insecure about expressing her gender identity due to fears of being denied employment opportunities. In the first few months of seeking employment, she wore a short-hair wig, wore men's attire and presented herself through masculine expressions. Denise recalled:

When I graduated in 2007, I first applied for a job in customer service with a telecommunication company in Malaysia. I had to wear a short wig and men's clothing when I started working there because of my own insecurities as a new graduate. So I was afraid that if I were to express myself—my identity—at the interview, for such a big company back then, I didn't think they would accept someone like me.

It's a taboo for someone like me to work in a company like that. But, after six months working there, I went to see a superior, and I asked her if I can come to work without my wig and just tie my hair? She said I can be who I am, just make sure that I tie my hair. Since then, I dress freely as a woman.¹⁴⁴

143 Interview with Sabrina, 23 August 2019

144 Interview with Denise, 23 August 2019

Reena, a trans woman in her early 40s, shared that she came out to her employers and colleagues, and shared how she would like to be addressed and the toilets that she would be using at the workplace. She said:

Where I am working now, initially they thought I was a man, and then I told them that I am a trans woman, I told them that I will use the female toilets. At the beginning, they were weirded out because the factory had been open for 20 years, but they had never seen a trans woman that worked there. They don't mind me using whatever toilets. They accept it. At the factory, I also tell them to call me by my chosen name, but sometimes there are people who call me by my full name (a dead name) but most of them call me by my name.¹⁴⁵

Reena, Denise and Sabrina's experiences underscore the importance of gender diversity and inclusion trainings for employees and interns, policies against discrimination, harassment and violence, among other measures at the workplace to create a conducive work environment for trans women employees.

The respondents also shared that in some instances, supportive colleagues and management defended the rights of the respondents when complaints were lodged against them because of their gender identity and expression. A supportive environment allowed them to express themselves in accordance with their gender identity.

Nonetheless, the lack of institutional measures and policies to sensitise workplaces, and the reliance on individuals to create a supportive environment, leaves trans women vulnerable when their allies in the company leave.

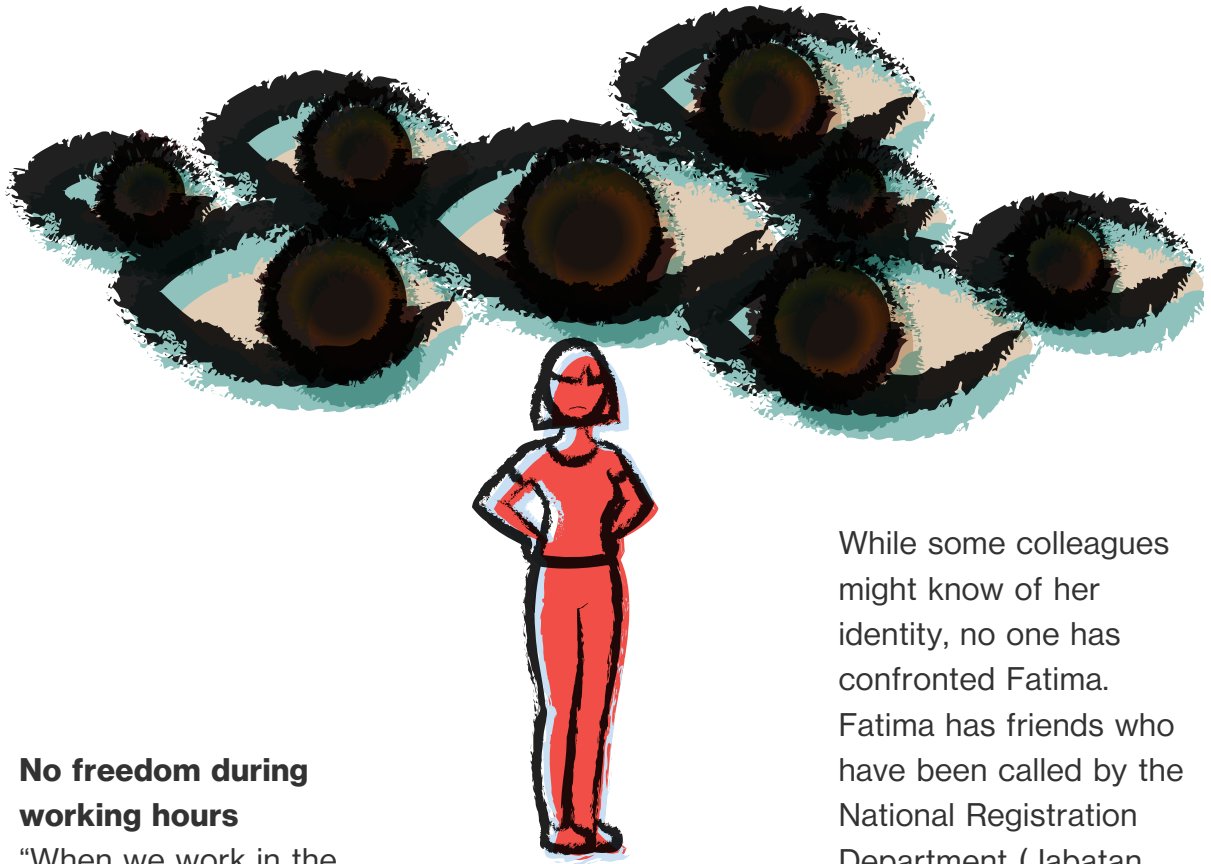
Fara, a 30 years old trans woman from Sabah, had to leave her 4-year supervisor job at a local hotel when her supportive colleagues left and a new manager was hired. The manager advised Fara to change her gender expression by cutting her hair and present herself as a male person if she intended to keep her job as a supervisor. The manager stressed that she needed to set a good example for others.¹⁴⁶

145 Interview with Reena, 9 October 2019

146 Interview with Fara, July 2019

Case study: Working in the government

Fatima and Amelia
work in the public
education sector.



No freedom during working hours

“When we work in the government and we identify and express ourselves as a woman, it is wrong in the government sector. During work time there is no freedom. After work, we are ourselves,” says Fatima.

Fatima, who works as a teacher, says that she is not comfortable accompanying students to camps, but she has to. During these outdoor camps, she has to hide her long hair under a wig and a cap.

She has transitioned, and having to share a room with another teacher who is a cisgender man makes her uncomfortable, as her colleagues are mostly unaware of her gender identity. To avoid the discomfort, she prefers to rent a hotel room. When her colleagues ask her why she does not want to share a room with them, she makes excuses, like *‘It’s nothing, I have a friend who will be visiting me later.’*

While some colleagues might know of her identity, no one has confronted Fatima. Fatima has friends who have been called by the National Registration Department (Jabatan Pendaftaran Negara) after complaints were lodged by parents who spotted them as trans women in public. One of her friends was given a warning by the district-level Education Department. Fatima fears such incidents could delay her promotion, or result in her being transferred to another school, and have a negative impact on her productivity. These incidents worry her, even though she is desperate to be herself.

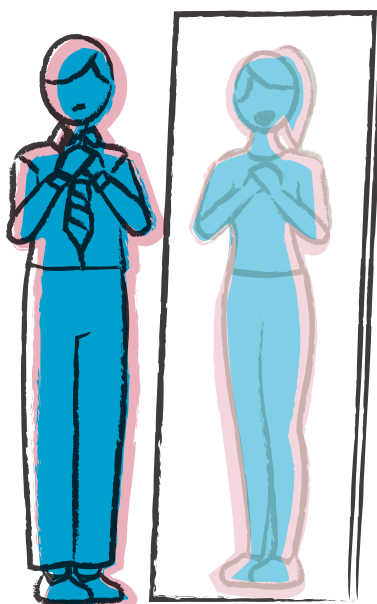
Once, Fatima was called in by the principal of her school after receiving a letter with photos of her being a trans woman. The principal did not take any action and was understanding, stating that the school was not interested in policing the staff's lives outside of work unless it is drug related. Fatima is very aware that the response is very dependent on the principal's personality.

Fatima is aware that she is *'lembut'* or soft. Her strategy is to get the people around her to respect her as a person. Sometimes the situation can be stressful, fearful and anxiety-inducing, as she has to control her self-expression all the time. She sometimes asks herself, *"Why can't I be myself?"*

When she teaches dance, she sometimes unconsciously breaks character. She then worries about the consequences, including losing her job and how this would create problems for her. At the same time, she can't help reflecting on how liberating it would be to express herself. She said, *"Oh no, why did that only happen for a split second. Why can't I just let people see who I am?"*

God is on my side

Amelia, who works as an administrative staff at a public school, says that she does not have a problem with dressing as a man based on the government requirements. She wears a wig to school. People are aware that she is *'lembut'* (effeminate), and some of her colleagues have asked about her gender identity. She ignores them and as much as possible tries to avoid such questions.



When she is at work she is forced to express herself as a man. At work, she does not think about how she looks and focuses on performing her tasks to the best of her abilities.

According to Amelia, there are many trans women who face similar issues in the government sector. If they are allowed to express themselves, she says that would be a bonus. Amelia limits her movements and participation in public activities—including going to night markets, funfairs, and carnivals in the town that she works in—as she worries about bumping into her colleagues and it becoming an issue.

When she first started working in the government sector, she was not aware of the rules and regulations. Amelia freely expressed herself in and around town. Consequently, her colleagues reported her to the Education Department, and it snowballed into her being counseled by the State Education Department. They asked her about her different gender expression in and outside of school, and recommended that she be disciplined.

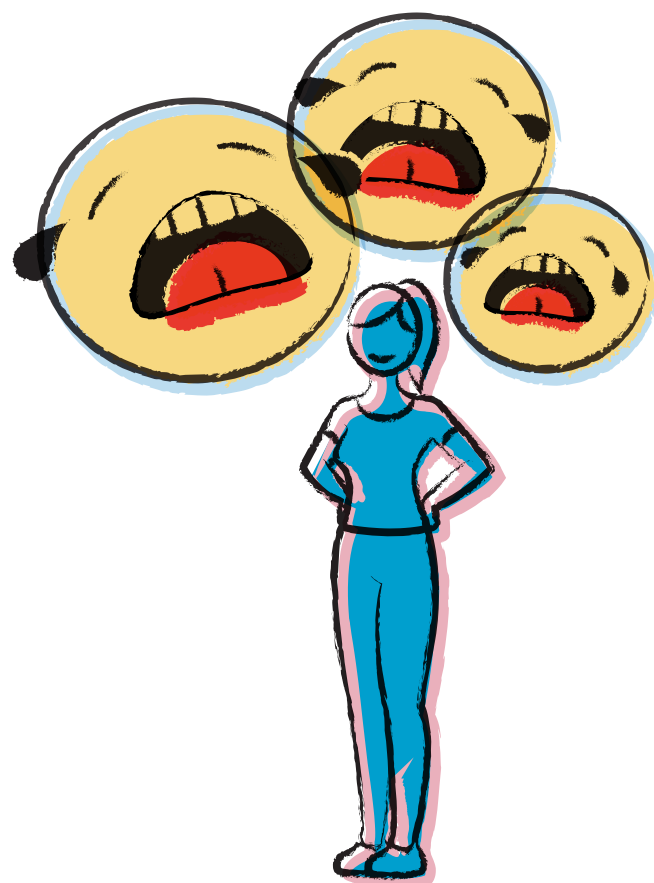
The incident affected her at the time. She was isolated by her cisgender men colleagues and was sidelined if her name was suggested as the accompanying teacher for competitions or trips—because she is a trans woman. When the issue of students having sex in the hostels emerged, Amelia was accused of teaching the students to have sex. Her colleagues said, *“The students were influenced, because there is a trans woman here. She taught them to have sex.”*

The complaint to the Education Department led to her being swapped with another staff from a different school.

Afterwards, she became more cautious of how she expressed herself. At the same time, she was worried about being terminated.

She says the experience taught her many things. She has since studied the guidelines and regulations so that she is aware of the actions that can be taken against her, and what she can do should such incidents occur again.

Amelia believes that God is on her side. A few years later, the staff that replaced her created problems in her former school, and her colleagues begged her to return to the school. Amelia refused, and filed an appeal to the Education Department to reverse the transfer decision. Her appeal was successful.



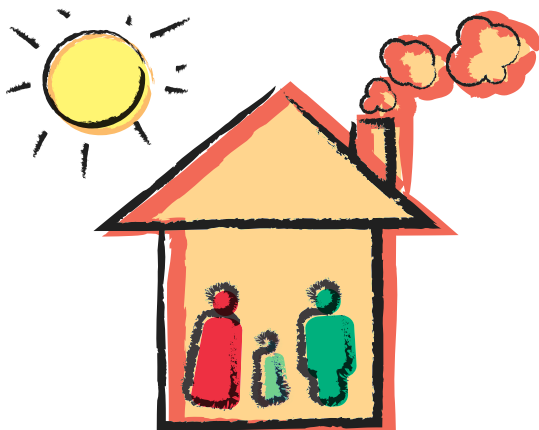
5. Family

Family and family members are a significant part of the lives of trans women. They play a considerable role in determining the extent to which trans women are able to express themselves, particularly at home. Extended family and neighbours are also important, as they influence family acceptance of trans women. The research finds a positive correlation between family acceptance, and the ability of trans women to accept and express themselves.

The experiences of the respondents suggest that family members lack understanding of trans identities and gender, and to some degree the respondents too. At least three respondents said that their family members perceived them as '*lembut*' or soft, which suggests a limited understanding of trans persons and gender identity.

The interviews revealed that respondents across different age groups, ethnicity, and religious backgrounds faced varying degrees of restrictions and acceptance from their family members. Although extended family members wielded influence over trans women's parents and other immediate family members, the respondents were able to stand up to them and in some instances, dismissed their views because they were not immediate family members. Alia shared:

If it's my own family, I am okay. It's only with others, for example, relatives, or neighbours, that sometimes I feel slighted. Because I am soft, I don't look more like transgender, I look more like [a] soft man. When I am home, they will say, '*Why do you have to be like this? Don't be so soft. Why do you need to wear lipstick? Why do you need to wear eyeshadow?*' Things like that.



Sometimes I wear makeup at home, right? They say, *'[You] don't have to do that.'* There are some who support [me]. There are some who don't. The most pressure comes from my auntie. She will poke. I have stood up for myself. I have said that this is my right (to express myself). I said that but she was like, *'Yes you are right, but as family, I have the right to advise you.'* I can't say anything beyond that. I kept quiet.¹⁴⁷

Alia revealed that her extended family members enlisted the help of a police officer they knew to monitor her movements. The acquaintance followed her and took photos of her, which were later used to stage an intervention regarding her gender identity. Her family warned her against any kind of medical transition.

Likewise, in Fara's situation, although her family members accepted her, she experienced gender policing, surveillance and threats by her extended family members for being a woman and 'being sexy'. Fara shared:

My cousin said he will tell my mom that I am being sexy and being a girl. I said it's okay I don't care because my mom knows, because this is me. Me being a soft male who has wanted to be a girl since I was a kid. People who live in my house know who I am, you don't know anything about me.¹⁴⁸

Correlation between acceptance and expression

Based on the interviews, there are several types of relationships between trans women and their family members—characterised by degrees of acceptance— that were identified through the interviews:

- **Full acceptance:** Family members accept their trans women family members without condition. However, some of the respondents choose to dress modestly or in unisex clothes in order to prevent their parents and family members from being questioned or humiliated by their neighbours;

147 Interview with Alia, 9 September 2020

148 Interview with Fara, July 2019

- **Conditional acceptance:** Trans women family members are tolerated with occasional pressure to change. Sometimes conditions are imposed on how they can express themselves;
- **Non-acceptance:** Trans women family members were not accepted.

At least 18 respondents said that their family members accepted them without condition, although some family members showed resistance in the beginning of the respondents' transition.

It is also important to note that there is a broad understanding of what is an accepting or affirming family. In some instances, while the respondents may have said that they had family members who accepted them, the description of their relationship suggests otherwise. For example, a respondent said that her family members accepted her, although she was under frequent pressure by her family members to change herself. For her, having cordial relationships with her family members and being able to be present in their lives was considered as somewhat accepting.

Meanwhile, other respondents considered being allowed to dress and express themselves as women as accepting, even though their family members may not acknowledge them as a trans person or woman. Their family members still identified them based on their sex assigned at birth and remained silent on their gender identity. It is clear that family members might be more accepting if they had access to accurate and affirming information on trans persons and gender.

Two respondents shared that their parents and family members supported them when they came out as trans girls or women. Denise came out to her parents at the age of 15, and transitioned the following year with her family's support. Mina, a 22 years old trans woman, noted that her family members accepted her when she came out to them. According to Mina:

My family supports my transition. I came out to them, and they supported me. The only thing is that they said don't dress sexily, like wear short pants. My mother helped me to buy clothes.¹⁴⁹

Asha, who is in her 40s, shared that she faced resistance from her family members when she was a teenager, but that they now accepted who she was. These days, she shared that she is able to openly discuss her romantic relationships with her family members. Asha said:

Now it's only my brother and my sister, just two of them. So, they have no problems. They are now okay. They see me as just another person. With family, they always ask, '*eh, do you have a husband now?*' I say yes. So, sometimes, I will take photos with my boyfriend and send them to them. Things like that also happen.¹⁵⁰

Similarly, Bell, a trans woman of Chinese descent, shared that her family members, who were initially not accepting of her when she was younger, have now changed their attitude towards her. She now expresses herself freely at home. She attributes the change in their attitude to her having a job. Bell explains:

My family now is okay, they understand this. At home, I am like this. They understand, and they no longer care if I wear women's clothes. They don't have the energy. Back then yes, about 10 years ago, after that slowly...slowly they got tired, and now they don't have the energy to advise me any more. The most important thing is work. At that time, they weren't angry; they just asked questions like '*Why are you like this?*'. That's all.¹⁵¹

149 Interview with Mina, 23 August 2019

150 Interview with Asha, 30 September 2020

151 Interview with Bell, 1 September 2020

Meanwhile, the remaining respondents experienced mixed tolerance, ranging from sporadic pressure and advice to change themselves to outright rejection. At least four respondents shared that their family members did not accept them because of their gender identity and expression. Despite that, the respondents still visited their family members and tried to maintain a cordial relationship with them, even if that meant ‘toning down’ their gender expression. Selvi shared:

I wear women’s attire all the time except when I go to see my family; I don’t wear women’s attire. They are okay, they know. They said that you can do whatever you want outside, but when I come home, I have to respect them. But it’s okay, it’s not a great situation, but we are like this. They are not strict. I am the eldest and my siblings want to get married, I don’t want to be a barrier. When I was younger I left home, but now it’s okay. They came looking for me. And then they weren’t upset anymore.¹⁵²

Fifi shared that she toned down her expression and opted for long pants when she visits her family members out of respect for them. She also observed a difference in terms of gender expression in the cities and rural areas, and takes that into consideration when she visits her family members. Fifi explained:

In terms of family acceptance, they accept me, although not entirely; as people say, there are boundaries that we need to understand when we go back to our hometown. Although I live in the city and we are like this, we cannot do the same when we are in our hometown—wanting to wear short skirts—cannot like that. We want to face our family, so like this, dressed like this, wearing pants.¹⁵³

152 Interview with Selvi, 9 September 2020

153 Interview with Fifi, 6 September 2020

Restricted freedom of expression by family members

The interviews show that the restriction of freedom of expression by family members manifest in multiple ways, including:

- **Pressure to change gender identity and expression**
- **Isolation**
- **Loss of status within the family**

Many forms of violence experienced by trans women are not considered as violent or harmful practices, and are viewed and justified through a religious and cultural lens. In particular, conversion therapy or 'returning to the right path', is a common practice by state and non-state actors alike, despite the documented long-term harm sustained by trans women.

In addition, protection and support services for trans women experiencing domestic violence or discrimination from their family members are unavailable. Often, the only available recourse for those facing violence and discrimination are community support and individual-level initiatives to overcome the situation. These include moving out and living on their own, getting a job, and hoping that their family members will eventually come around.

Pressure to change gender identity and expression

The pressure to change can manifest itself in many ways, ranging from microaggressions and overt comments about marriage, to violence. Sometimes, the call to change is expressed in a light-hearted, casual, and concerned manner. One of the recurring phrases that respondents cite are "*Why are you like this?*" and "*How long will you be like this?*" The important thing to note is that such remarks are made on a consistent basis to express disapproval.

Sally, a 60 years old trans woman, longed to be her true self, just like her friends. However, her fear of rejection and violent reprisals from her family members curbed her self-expression. Sally recounts:

If I go back to my hometown, I wear like normal. Like [a] man but you can see, soft lah. I don't wear women's clothes. If I don't wear normal clothes, I will get hit. Wearing women's clothes—no. But secretly yes. Like my sisters' lipstick, when they are not around. I steal their clothes, yes. I really want to be a woman but until today, I am already old, I still cannot.

You want to know what I wanted to be? I used to imagine me being a pretty woman during the day. Sometimes I see my friends, they are all successful, but I cannot. I used to follow their style (in their footsteps) but I cannot because of my family, scared I didn't tell them. They don't know. They always ask me to get married, '*why are you so weird?*'. They wanted me to quickly marry a woman, and come back to my hometown. I just want to run away, leave.¹⁵⁴

Another respondent shared that she was under additional pressure from her parents because her sister was also a trans woman. Her parents saw her as a bad example to her sibling. Her sibling, too, expressed feelings of animosity towards her because of the lack of acceptance they experienced from their parents. Sonia shared:

My sister actually, she is still ... my mother actually is still in the process of accepting her. Because my mother says, '*It is enough to have only one (trans) person in this family. Please not two.*' Because my sibling once said to me that she hates looking at me.

And she stopped talking to me for a few months. Because she knows that I am a trans woman. My youngest sibling is now a transgender woman. I always receive pressure from my family, actually. When my sibling is like that, people always blame me because I am a bad example and all that.¹⁵⁵

154 Interview with Sally, 9 September 2020

155 Interview with Sonia, 6 September 2020

In order to avoid conflict and pressure from family members, some respondents chose to live on their own. Living independently gave them more freedom to express themselves. Alia noted the difference in her gender expression when she was with her friends and family members:

Honestly, when I visit my family members, I am more masculine. But when I am outside or anything, with my friends, I am more feminine. The other day, my mom said, 'You as a man, [you] have to be a man. In the Quran that's what it says. In the Quran, man is man.' So I said to her, 'I didn't ask to be like this. I did not ask to be born like this.' I said that.¹⁵⁶

Hana, a trans woman in her late 20s, said that she felt stressed because of the lack of acceptance and conditions imposed by family members on her gender identity. Hana shared that she bottled up her feelings. She also faced physical violence from her family members.¹⁵⁷

Isolation

At least three respondents shared that they experienced isolation from their family members, including extended family members. Laila shared that her extended family members often rejected her offers to spend time with them, especially in public spaces. Their actions saddened her, but she found comfort in the trans women community. The notion of shame in being associated or seen in public spaces with the respondents is a recurring theme among the respondents. Laila shared:

Sometimes, they want to go out and if I were to tag along they don't want [that], especially my cousins. Like they don't want to be together with me. My extended family members do not want to be seen in public with me, so I just go out with my friends and community. Sometimes my big family doesn't want to be seen in public with me. I cannot force them. I understand that they are ashamed of me. I just do things with my community. Sometimes I feel disheartened when they isolate me.

¹⁵⁶ Interview with Alia, 9 September 2020

¹⁵⁷ Interview with Hana, 9 September 2020

*'Do you want to go for a movie?' my cousin would suggest. When I say that I want to follow, they will say, 'you don't have to come along lah'. I will say okay, that's fine. That's how they isolate me. It's my big family only.*¹⁵⁸

Typically, in a hierarchical family structure, the eldest child is given the authority or role to lead or facilitate decision-making, or make decisions on family-related matters. Fara shared that although she is the eldest child in her family, her gender identity was frequently used as a reason to dismiss her views, substantiate inter-family disagreements, and win arguments. While she countered their arguments, her long-term strategy was to present herself as a good example to change their perception and stereotypes about her and trans women in general. She shared:

Whenever there are situations where I need to express my opinion which differs from the rest of my family, they always try to relate who I am to the decision that I am about to make. They disagree with the excuse that 'look at who you are, you are not on the right path in this world', 'who do you think you are to make this decision?' So with regard to family discussions, some of them always relate my gender identity with whatever they disagree with.

*They will use my gender identity to make them win arguments or make their decisions happen. We talk, and they will say 'you do not have full rights', 'you are not qualified to make that decision,' 'look at who you are—who are you to advise me?' That's one of the challenges.*¹⁵⁹

Impact of family acceptance on the mental health of trans women

At least two respondents in their early 30s shared that they had run away from home and attempted suicide due to lack of family acceptance. For one, the passing of her brother, who was her only ally in her family, left her with no support system. Laila shared:

158 Interview with Laila, 23 August 2019

159 Interview with Fazura, 11 July 2019

For example, my mum. If you want me to be a man again, if you want to change my personality, you want to change my inside, you want me to do everything inside out, better I die. If you don't want to accept the way I am, better I die. I called my brother and I said that. Give me time to change a bit. I cannot change 100%. This has to do with our soul. Maybe outside I can change, but inside cannot. How to change inside? You want to be a hypocrite?

I have tried to commit suicide because my parents don't accept who I am. I also ran away from home. I went to KL when I was 18 years old. After two years, I went back. I faced a lot of rejection because I am a trans woman; people don't want to take me for work. I worked at a store, I performed my tasks well, but the boss didn't like me. I didn't do anything. He said, today is your last day, and then you get out. And then I worked at the salon. They accepted me. I felt very comfortable working there. They treat me like a family. And then I quit because my grandfather passed away.¹⁶⁰

Other than Laila, one other respondent shared that the loss of her support systems and allies in the family as a result of death had impacted her deeply.

At least three respondents shared that they had left home because they felt ashamed of themselves and wanted to avoid bringing shame to their family members because of their gender identity and expression. The shame that they experienced can also be linked to their jobs as sex workers and their inability to get a job.

160 Interview with Laila, 23 August 2019

6. Access to gendered spaces

The research found that the respondents faced challenges in accessing gendered spaces, in particular, toilets and religious spaces.

Toilets

The 2019 study by Suhakam showed that at least 65 out of 100 respondents shared that they experienced challenges in accessing public facilities, including toilets, changing rooms, prayer rooms, gymnasiums, among others.¹⁶¹ It also showed that 20 respondents faced barriers and were barred from gender-specific spaces by the colleagues, including toilets and locker rooms. Meanwhile, 19 respondents faced similar restrictions by their employers.¹⁶²

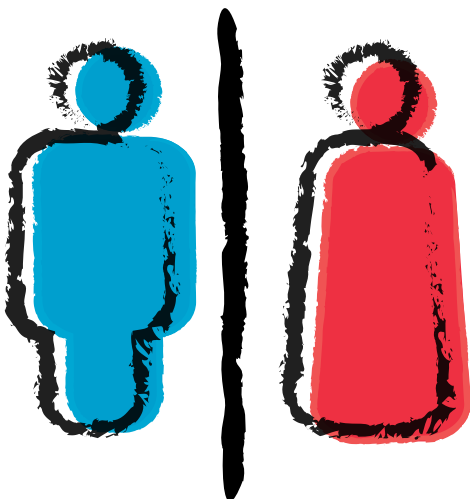
An online survey on trans people's access to toilets by Justice for Sisters in 2017 found that 15 out of 97 transgender respondents were forced to use toilets based on their sex assigned at birth. Meanwhile, 40 respondents faced discrimination when using public toilets. The survey also illustrated the impact of a lack of access to toilets, including emotional stress and self-esteem issues.¹⁶³

The UN Special Rapporteur on Water and Sanitation Mr. Pedro Arrojo-Agudo noted that water and sanitation facilities must be safe, available, accessible, affordable, socially and culturally acceptable, provide privacy and ensure dignity for all individuals, including for trans and gender non-conforming persons. In his report, he underscored how laws and policies

161 *Study on Discrimination against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity)*. Suhakam, 2019, www.ohchr.org/Documents/Issues/SexualOrientation/SocioCultural/NHRI/Malaysia%20Human%20Rights%20Commission.pdf. p.107

162 Ibid. pp. 55 & 57

163 "Gender Identity and the Human Rights to Water and Sanitation. A Compilation by the Special Rapporteur on the Rights to Water and Sanitation, Leo Heller." OHCHR, www.ohchr.org/Documents/Issues/Water/10anniversary/GenderIdentity.pdf.



contribute to, rather than redress, the inequalities between genders and in accessing water and sanitation.¹⁶⁴ He further recommended that the Malaysian government monitor how gender inequalities, including among lesbian, gay, bisexual, transgender, intersex and gender non-conforming persons, manifest themselves in extra-household settings.¹⁶⁵

The respondents had varying degrees of access to gendered spaces, in particular toilets in public or private spaces. At least 15 respondents shared that they faced challenges in accessing toilets based on their gender identity, and experienced multiple forms of aggression when using the women's toilet. Some avoided using public toilets altogether. For example, one respondent said that she did not use public toilets in the town that she lives in. She would only use the toilet when she returned home. If she was in other states in Malaysia, however, she would use the women's toilet.

At least six respondents said that they used public toilets for persons with disabilities. Fifi, who is in her 30s, said:

I use the toilet for people with disabilities. If there are no toilets for persons with disabilities, I will enter the women's toilet. But if there are three toilets, I will use the one for persons with disabilities.¹⁶⁶

Two respondents shared that they experienced being stared at and were confronted by other users of the public facilities. Siti shared her experience being confronted by a cisgender woman in the public toilet in 2019:

164 *ibid.*

165 "ACNUDH | Statement at the Conclusion of the Official Visit to Malaysia by the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Mr. Léo Heller." OHCHR, 2018, www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23928.

166 Interview with Fifi, 6 September 2020

I went to a recreation park near here with my friend last year, I think. I entered the toilet, and a cisgender woman said, *'This is a woman's toilet. Use the toilet for persons with disabilities.'* She said that to me. My friend said to me, *'Please, we should not get into a fight with people. Let's just leave.'* I disagreed with her, as there is no reason for us to leave.

I said to the cisgender woman, *'Why are you making noise and all that. I am wearing women's attire. I am not naked or flashing you. No.'* She kept quiet and left. My friend advised me to not pick fights again. But I said to her, *'I am not picking a fight. We don't disturb them. We enter the toilet, and then leave, done. That's all.'*¹⁶⁷

Fearing being confronted or outed by other users of the facilities, the respondents tended to be cautious. Three respondents said they went in and out of the toilet as quietly and quickly as possible, and hoped not to be noticed. Mel said:

It's about how we present ourselves. Not to make too much noise or create chaos in the toilet whether we are in the toilet or public spaces, we must be extra cautious because the society does not accept us in Malaysia. I don't want there to be an issue. So it's best for me to be cautious. Because I know I can lose my temper and in order to avoid conflicts, I take measures to control and prevent such situations from happening.¹⁶⁸

The respondents also exercised caution when accessing public gendered spaces, especially when there was heightened visibility of trans issues in the public sphere. A respondent shared that she experienced increased anxiety when using the women's toilet when there was a backlash following a press conference by the then-Minister at the Prime Minister's Department, after his meeting with Nisha Ayub, a human rights defender. Samantha recalled:

167 Interview with Siti, 9 September 2020

168 Interview with Mel, 1 September 2020

It happened once after the toilet issue related to Nisha Ayub. I was hesitant to go into the women's toilet. I used the toilet for people with disabilities instead. Nobody stopped me from entering the toilet, but I was afraid. Trauma. I didn't want it to be an issue. Before it becomes an issue, oh my, better use the toilets for the persons with disability, that's the safest. At that time, I was at a toll station on the way to KL, and I went to the toilet for persons with disabilities. That was the only time. After that, no more. Things subsided.¹⁶⁹

Asha shared an experience of being restricted from using the women's toilet by a doctor during a meeting at a government department in 2017 or 2018. When she asked where the toilet was, the doctor pointed her to the men's toilet, and said, *'Oh, here you cannot do that. You cannot enter (the women's toilet)'* in front of the other meeting attendees. Her cisgender woman colleagues protested, however, the doctor insisted that she follow the rules and used the male toilet. The doctor followed Asha out of the meeting room and waited outside the room to make sure that she used the men's toilet.

Although Asha was angry and uncomfortable, she relented. She told her friend, *'It's okay, let's find a toilet somewhere outside. Later they will make an issue or something.'* She was afraid that the doctor would lodge a police report against her, and was certain that the police would take his side. Asha was also disappointed in the doctor, as he had just offered support for trans women communities during the meeting. Dissatisfied, her friend asked the doctor, *'If she enters the female toilet, what will you do?'* to which he did not respond.

Asha's experience reveals that discrimination experienced by trans women can come from people who have closer interactions with trans people, and even those who seemingly support trans people.

169 Interview with Samantha, 6 September 2020

Trans women often face difficulties when dealing with government departments and actors. The Suhakam study noted that these included unsolicited opinions about their gender, being told to change their gender expression in order to take photographs for legal, travel and other documents, being taunted, stared at and other forms of microaggressions, being outed and humiliated in front of others, and being told God only created females and males.¹⁷⁰

Access to toilets is a long-standing issue for trans girls and women, and has a significant impact on many areas, including education and employment. Michelle, a 44-year-old trans woman, who was in secondary school in the late 80s and early 90s, shared that she was bullied in her secondary school toilets, and would wait until after recess to use the toilets when the other students were in class.¹⁷¹

Julia, on the other hand, was not allowed to use the women's toilet at her workplace in the early 90s following a complaint. As the workplace was affirming of her identity, they defended her, and she was allowed to use the women's toilet again.¹⁷² Their experiences illustrate the importance of inclusive environments to ensure that trans girls and women are able to study, work, play and live with dignity.

Religious spaces

Other than toilets, the respondents also faced different levels of access to social and religious spaces. Three Muslim respondents said that they found it difficult to express themselves at mosques and preferred not to go to the mosque to avoid problems. Laila shared:

It's challenging to express myself among religious people. I find it challenging to express myself in religious spaces. I prefer to pray at home. I don't go to the surau or mosque. I feel comfortable alone.¹⁷³

170 *Study on Discrimination against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity)*. Suhakam, 2019, www.ohchr.org/Documents/Issues/SexualOrientation/SocioCultural/NHRI/Malaysia%20Human%20Rights%20Commission.pdf. pp. 102 and 103.

171 Interview with Michelle, 2020

172 Interview with Julia, 30 September 2020

173 Interview with Laila, 23 August 2019

One respondent, on the other hand, shared that she wore a headscarf when she went to the mosque to make a donation or attend communal events.

Religion is a recurring theme throughout the interviews with many Muslim respondents. Religion was not as dominant in the lives of respondents of other faiths, although some respondents identified with and practiced a religion.

Rose, a Hindu trans woman, shared that she frequently went to temples. On several occasions, couples and other devotees gave her alms and sought blessings from her both inside and outside temples, as they believed blessings from a trans person were powerful.

They know that I am a trans woman, and sometimes they want to get blessings from me. Sometimes they want to touch my feet and be blessed. There was a woman who wanted to give me a saree and get a blessing from me, and I said, please don't do this. Indian people think that blessing from a trans person is very powerful.

To me, no. I see couples that are engaged who seek my blessings. Sometimes I just bless them, but I don't encourage it. This is pretty common and happens outside of the temple too. People seek blessings from people like us to make their lives better. That is their belief. This is practised in India and Malaysia.¹⁷⁴

The notion of blessing and curses can be found in the Mahabharata and other religio-historical and cultural references. In one story, Lord Vishnu, as they gave up their female avatar Mohini, said, "*There will be more like me, neither man nor woman, and whatever words come from the mouths of these people, whether good (blessing) or bad (curse) will come true.*"¹⁷⁵

174 Interview with Rose, 10 October 2020

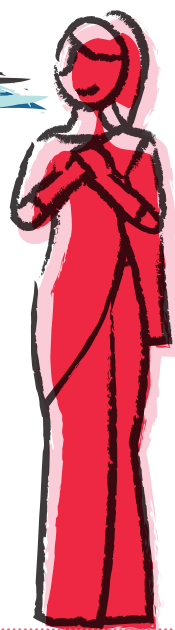
175 Aneja, A. (Ed.). (2019). *Women's and Gender Studies in India: Crossings* (1st ed.). Routledge. <https://doi.org/10.4324/9780429025167>

In another story, Brihannala, Arjuna's trans woman avatar, worked in the lady's chamber as a teacher of dance, song, music and hairdressing for a year. She also performed all the common duties performed by the *shandha*, a catch-all term used for trans women, intersex and gender-diverse persons, including dancing and offering blessings at wedding and birth ceremonies.¹⁷⁶ Further documentation shows the *hijra* communities were employed as royal guards during the Mughal Empire, and performed *badhai* or blessings at weddings and birth ceremonies.¹⁷⁷

Many references of inclusion and diversity can be found in Hindu and Indian practices and cultures. In December every year, the Indian trans women communities in Malaysia celebrate a five-day festival to seek blessings from Bahuchara Mataji, a deity for the trans women communities in Klang. The festival has received positive coverage in English language media.¹⁷⁸

The experiences documented through this study demonstrate the importance of communal religious spaces, and of being seen to be part of a religious community. Visibility is an important aspect of being accepted and seen as part of a religious community, which is, by virtue of not being accepted, denied to trans women.

“They know that I am a transgender woman **and sometimes they want to get blessing from me...**”
(Rose)



176 Jayanthi, E. (2019). *Transgender Welfare And Society*. MJP Publishers.

177 Giri D. (2019). *Transgender in Indian Context: Rights and Activism*. AABS Publishing House

178 Muthiah, Wani. “Transsexuals Gather for Annual Religious Festival.” *The Star Online*, 31 July 2008, www.thestar.com.my/news/community/2008/08/01/transsexuals-gather-for-annual-religious-festival.

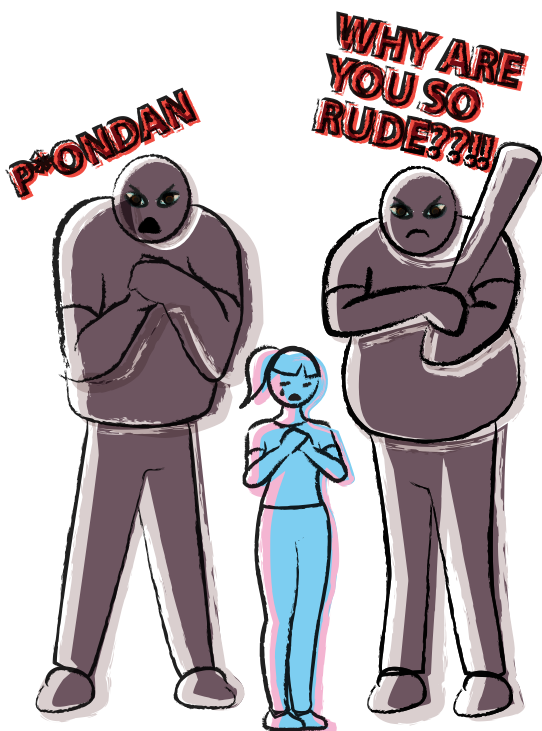
7. Gender-based violence (GBV)

The respondents reported multiple forms of gender-based aggression and violence online and offline, including doxing, physical violence, sexual violence, and break-ins. In some cases, an escalation of violence from online to offline can be seen. However, it is important to view these online and offline spaces not as siloed and separate spaces, but as a continuum that overlaps with each other.

Almost all respondents, except for two, were on social media platforms. One respondent found it challenging to use smartphones. At least 11 respondents are online entrepreneurs or managed online businesses at some point in their lives.

The respondents noted that online spaces allowed them to find supportive communities and affirming content. Two respondents shared that they received compliments and positive responses from online users when they shared photos of themselves on their social media platforms. The respondents also used social media to raise awareness regarding transgender-related issues within trans women communities, their circle of followers and the general public.

At the same time, the respondents also agreed that social media spaces were transphobic. The respondents shared that on several occasions, online users celebrated crimes as a result of transphobia or tragic news in relation to trans people. When a trans woman's boyfriend in the United States committed suicide, Mina recalled reading transphobic comments by online users saying that he deserved it for dating a trans woman.



The cases in this chapter illustrate a few key emerging themes:

- 1. Lack of reporting:** Many do not report incidents of violence because of, among other factors including: victim blaming, a lack of trust in the police influenced by personal, vicarious, or communal experiences with the police, and an assumption of lack of proof by the responders. These experiences make them feel unequal, inferior, marginalised and disrespected in society. At least three respondents stated that past unpleasant encounters with the police when seeking assistance following accidents, violence, and other incidents had discouraged them from filing police complaints when confronted with violence;
- 2. Increased vulnerability:** The sexualised stereotype of trans women makes them vulnerable to sexual harassment with impunity;
- 3. Impunity of perpetrators and inadequate state protection:** The criminalisation of and social stigma against trans women create a high level of impunity and result in inadequate protection;
- 4. High costs:** These cases have severe, long term and costly impact, including stress, depression, and trauma that is often not adequately addressed. In addition, the respondents also bear financial costs when relocating to a new place as a means to increase personal security measures.

Forms of GBV

The research documented the following forms of gender-based violence, including:

- **Catcalls, name-calling, and microaggression;**
- **Discriminatory or transphobic messages on their social media feed or via private or direct messages;**
- **Doxing;**
- **Threats of physical violence;**
- **Sexual harassment and violence.**

Catcalls, name-calling, and microaggression

At least 16 respondents shared that they experienced multiple forms of gender-based microaggression and verbal violence, including catcalls and name-calling. These occurred at community events, in their residential areas and in public spaces by strangers across genders, ethnicities, and age groups. A respondent noted that the perpetrators were sometimes children or young people. She said:

That one (name-calling) is common, like at *kenduri-kenduri kampung* (communal events in the villages). If it's older aunties, you know I will not hold back, but these are kids. When they ask, we have to play a role (in educating them), we cannot be forceful with children. They will respect us over time.¹⁷⁹

179 Interview with Maria, 1 September 2020

The respondents' testimonies show that their experiences of verbal violence coincide with various forms of microaggression, harassment, or intrusion of privacy. They noted that the verbal violence typically came in the form of pejorative name-calling, for example, *bapok*, *pondan*, *au*¹⁸⁰, *ombote*¹⁸¹, or disrespectful comments. Some of the more common comments include, '*Nabi tak mengaku umat*' (the Prophet Muhammad does not acknowledge them as his followers), '*Dah lelaki nak jadi perempuan*' (a man who wants to become a woman), among others.

Bell, who is in her 30s, was verbally accosted by strangers in public places multiple times:

Sometimes when I am walking at the supermarket, or night market, there are some people who look at me like, '*Wah, look at that kind! What is that?*' I just keep walking, I ignore them. There are some who call out *bapok*, but not as much as catcalls. I ignore them. Also, I don't like going to places like that. People do harass me.¹⁸²

Other than Bell, six other respondents said they faced harassment, invasion of privacy, and microaggressions from members of the public. These included being stared at, whispered about and laughed at, and also being recorded, presumably for sharing on social media or online communication platforms because of their gender identity and expression. Siti recounted an experience of strangers attempting to record her while she was at a restaurant:

I experienced that the other day when I was at the *mamak* (restaurant). I went to him and said, '*Hey! Idiot!*' because I saw one of them raising their camera. So I went to them and said, '*What do you think I am? A monkey in front of you for you to laugh at?*' They immediately kept quiet. I added, '*If I see it again, you are done.*' At that time I was at the restaurant near here. Being taunted happens a lot.¹⁸³

180 A pejorative expression for trans women.

181 A catch-all pejorative term in Tamil language for effeminate men and trans women.

182 Interview with Bell, 1 September 2020

183 Interview with Eliza, 30 September 2020

As a result of these experiences, three respondents said that they preferred not to be in crowded spaces or in public places for too long, or attend community events such as weddings, to avoid verbal violence and harassment. Fifi added that she conducted herself 'professionally' in public places and tried not to draw attention to herself:

I interact with the public as an individual. When we are out with friends, sometimes our friends are loud. I don't like that, and I am not comfortable in those situations. We have to be professional in public places, outside. You know, society looks down on us trans women, everything is negative, everything is terrible, so we have to deal with all those things, especially the young ones.¹⁸⁴

Eliza shared that she experienced verbal violence from a group of teenagers in her residential area, referring to her as 'Geng Sajat' (Sajat's gang) and calling for her arrest. Sajat is a celebrity, and her name has become a moniker to describe or refer to trans women. Eliza shared:

I was leaving my home when a group of teenagers on motorcycles rode by and said, 'Ah, this is 'Geng Sajat'. Arrest! Arrest!' they said that. And of course I knew why it was happening. I don't know *lah* but when they said that and there were four of them, I cannot confront them on my own. It's best for me to save myself. Because of the incident, I was late for work. I had to go back home, and call a car service.¹⁸⁵

She noted that as she got older, she became less bothered by the name-calling and transphobic comments. Age and time are factors in relation to trans women's reactions and how they cope with the violence.

184 Interview with Fifi, 6 September 2020

185 Interview with Eliza, 30 September 2020

Discriminatory or transphobic messages on their social media feed

At least 14 respondents shared that they received transphobic comments when they shared a post, did live videos, posted a TikTok video, rebutted or clarified misconceptions online. *'When will you change?'*, *'What is happening to the world?'*, and *'What have we come to?'* are some of the common transphobic comments that respondents have received.

Izzah shared the challenges she faced when engaging online users to clarify misconceptions regarding trans people and religion. At the end of conversations, online users often dismissed her views, saying that *'She is also the same'* and *'Okay lah ustazah'* to discredit her.

Five respondents shared that they were told to end their live sessions or TikTok videos, and were called derogatory names, taunted, preached at, even if the live sessions were about their business. One of them shared that they usually ended the live session when they saw transphobic comments. Others ignored and deleted the transphobic comments, or blocked the individuals who made transphobic comments.

Alia, a trans woman in her mid 20s, observed that when online users bashed trans women, it created discord among citizens, and reinforced the perception that trans women are bad people. She added that online users could easily talk to trans women to understand who they are. Sonia shared how the bashing of trans women online caused her depression:

Actually, I am in a state of depression at times, you know. It's like, why is this happening? Am I such a terrible being that people want to oppress me like this? To insult me like this? And when you can't insult me, you insult my mother and father. What is my parent's fault in this? Why? If I have sinned, the sin is between God and me. InsyaAllah God is merciful. They will forgive all our sins. But, from what I have learned, if your sin is with people, as long as you don't apologize to the person that you have wronged, the sin will remain.¹⁸⁶

186 Interview with Sonia, 9 September 2020

Nancy added that when she responded to transphobic comments, she was trolled and mobbed by popular online users with high follower counts. After documenting and posting about misogynistic, racists, homophobic, transphobic and other discriminatory comments by Redditors on r/ShitRedditSays, she often received transphobic and violent messages via private message. The private messages included, *'Oh, you're just mentally ill,'* or *'I don't like you, transgender should die,'* and *'You're so awful.'* She recalled receiving unsolicited images of genitals by cisgender men through private messages after making a comment on posts about 'dick pics'. As a result, she left Reddit for her own mental health and well-being.

Doxing

At least six respondents shared that they experienced doxing across various social media platforms multiple times. In all six cases, the respondents' photos or videos were taken and disseminated without their consent on dating sites, communication platforms, and social media platforms by strangers and sometimes by people who knew them, including relatives and former schoolmates.

Some of the experiences included:

- The respondents' photos were taken by online users to catfish or scam other online users. As a result, online users confronted the respondents via chat or direct message accusing them of cheating or scamming. Amelia shared that she had been confronted by online users for cheating them several times.¹⁸⁷

187 Interview with Amelia, 6 September 2020

- Photos shared by the respondents on their personal pages were taken and shared on other platforms with transphobic and sexual messages. Siti was doxed more than four times. Her friends in the past shared screenshots of her doxed photos with transphobic and sexual captions that were shared on transphobic social media pages. For example, '*bapok tak sedar diri*' (this *bapok* is so full of herself) and '*pondan single*'. She noted that the photos invited high levels of vitriol and transphobic comments by mostly men of various age groups, including young people.¹⁸⁸
- Natasha's photos were doxed and shared with her father by her relatives, who were aware of her strained relationship with her father because of her gender identity. When these incidents occurred, her father would take it out on her mother, and her mother then would take it out on her. As a result, Natasha decided to move out and live on her own to avoid tension between her parents.¹⁸⁹
- Maria's photos were doxed and shared on communication platforms with the caption, '*Is this a woman or a man? Guess!*' by her neighbours. She confronted the perpetrator and made them delete the photo.¹⁹⁰
- Rania Medina's personal details—including photos in school before she transitioned, details of her parents, name of former school—were released by an acquaintance amidst public controversy and confusion surrounding her representation as a community-elected civil society representative in the Country Coordinating Mechanism, an oversight mechanism for the Global Fund, a fund to end AIDS, tuberculosis and malaria globally.¹⁹¹

The respondents did not report the cases to the police or the Malaysian Communications And Multimedia Commission (MCMC), despite feeling humiliated and threatened as a result of the doxing incidents.

188 Interview with Siti, 1 September 2020

189 Interview with Natasha, 6 September 2020

190 Interview with Maria, 1 September 2020

191 Interview with Rania, October 2019

One respondent shared that she had preemptively lodged a police report when her Instagram account was hacked, as she was afraid her photos would be misused. The police, however, were unable to trace who had hacked her account.

Threats of physical violence, assault and hate crimes

Threats of physical violence, assault, and hate crimes were documented in the past five years. At least four respondents reported threats of physical violence by online users, family members and strangers. At least three cases of hate crimes were reported in Pahang and Perak, and three cases of sexual assault in Pahang. The perpetrators were typically men of various ethnicities, age groups and nationality. Some perpetrators were strangers, while others were customers, people living in the same residential area, or family members.

Two cases of threats of physical violence were related to social media. A respondent shared that an online user threatened to physically assault her if she did not change.¹⁹² The threat echoes the state narrative that transgender and LGBTQ persons can and should return to the right path or to be rehabilitated, which has gained more traction over the last 10 years.

Another respondent shared that she had experienced physical violence in a case of mistaken identity on social media. She was physically assaulted by 10 men in a public place, as they assumed she was the *mak andam* who had cheated them. She did not lodge a police report after the men apologised. The incident left her with bruises on her body, and she was reluctant to go home for fear of upsetting her mother.¹⁹³

Similarly, a respondent shared that two men attacked and assaulted her at a low budget hotel that she stayed in for a weekend in 2019. Many trans women stayed at the hotel as the owner was friendly. However, the security at the hotel was low, and it had no CCTV. A few hours prior to the attack, the respondent said she had seen the perpetrators surveying the hotel on their motorcycles.

¹⁹² Interview, 9 September 2020

¹⁹³ Interview with Tina, 1 September 2020

Feeling suspicious and unsafe, she changed into men's clothes and went out to lock the main door. The men approached her and asked if there were trans women staying at the hotel. They became curious about her and asked her about her gender identity. She denied that she was a trans woman, and in response they grabbed her breast. Despite screaming for help, the perpetrators managed to grab and hit her. She sustained bruises, but managed to escape her assailants.

She went to the nearest police station immediately and informed them of the incident. She requested that they accompany her to the hotel to collect her personal belongings, and the police obliged. She noticed that several of her belongings were missing. As the hotel had no CCTV cameras in place, it was difficult to identify the suspects, although she was certain it was the two men who had attacked her. She lodged a police report the following day after consulting a few of her activist friends. While the police officers called after a few days for more details, she did not hear from them thereafter. The respondent also shared that she did not follow up, and presumed that the lack of evidence or CCTV footage could have led to an inconclusive investigation.¹⁹⁴

In 2018, one of the respondents was attacked at a bank while she was lining up to use the ATM by a group of unknown men whom she believed held anti-trans views. They began by taunting and insulting her. The situation escalated into physical violence when they grabbed her by her neck and dragged her outside of the bank with the intention of physically assaulting her. She was saved by some bystanders at the bank, and the men did not manage to further assault her. She did not lodge a police report, despite the availability of CCTV footage and eyewitnesses, as she felt she was not physically assaulted. Nonetheless, she was traumatised by the event.¹⁹⁵

194 Interview, 6 September 2020

195 Interview, 6 September 2020

Sexual harassment and violence

Nine respondents shared multiple experiences of sexual harassment and violence, including in their home, workplace, public places, restaurants, public transportation and online spaces by cisgender men of diverse backgrounds. The forms of harassment include unwanted sexual gestures, unwanted touching, inquiry of price for sexual services, among others

These testimonies capture the increased vulnerability to sexual violence that trans women experience and the adverse impact of the sexualised perception of trans women. Only one respondent reported incidents of harassment and violence to the police or other government bodies.

Meanwhile, more than half of the respondents shared that they were sexually harassed through private messages online.

Fara experienced sexual harassment on a daily basis—including being stalked by unknown men for sexual services—because she of her gender expression and identity. She observed that she was sexually harassed more in Kuala Lumpur than in her hometown, Kota Kinabalu. Fara explained:

Sexual harassment happens to me almost daily. I know I am a sexy woman, and I know people would want to flirt with me and give me compliments. They want to bring me to some place I don't know by saying sweet words to make me trust them. Like in Kuala Lumpur, it happens every day, even at the shopping mall.

People follow me back to my hotel, and they ask me *'how much is your price'* and I ask them why are you touching me, and they say *'you're so pretty'* and stuff like that. I always get sexually harassed. In KK (Kota Kinabalu) not so much because this is my place, but in KL (Kuala Lumpur) it's quite frequent.¹⁹⁶

196 Interview with Fara, July 2019

Fara shared two incidents of sexual harassment in Kuala Lumpur. In the first incident, a man followed Fara from Petaling Street to a hotel, where she had a physical confrontation with the man in the hotel lift. He was seeking sexual services from her and became aggressive when she did not entertain his offer. Fara reported the incident to the police, although the outcome of the report is unknown. She recounted:

He followed me into the lift, and then he said *'Hi, I like you, how much is your service?'* I said *'No, I am not a service girl'* and he ignored me, and then he pushed me to the corner of the lift. Then he said *'Fuck you, why are you so rude?! I am just asking how much. I can pay you!'* I told him I don't want to, and said I would make a police report because he bruised my elbow. He said go ahead. And I told him that I am not afraid, and I am a local. I can take a picture of you and send it to them, he apologized and left. So I went to the police station to lodge a report, and they accepted the report.

In the second incident, two unknown men approached her while she was waiting for her friend at a restaurant in Kuala Lumpur. They complimented her and one of them asked if he could join her. When she declined, he became aggressive, pushed her and said, *'What a rude pondan! Do you think you are so pretty?'* Luckily, there were two police officers in the vicinity who assisted her.

However, the police officers also made some sexist and victim-blaming remarks. They asked her why she was so sexy and told her being pretty would get her into trouble. She received similar remarks when she made a police report over another sexual harassment incident, although she said they were helpful and reminded her to always be prepared as sexual harassment could happen at any time.

In both incidents, the situation escalated quickly. The men became aggressive after she rejected their advances. This suggests a sense of male entitlement and an absence of awareness or willful ignorance of the consequences of harassment against trans women.

Aya also shared a similar experience of being followed by a taxi driver after being catcalled, ostensibly to seek sexual services:

Because I do have to walk to work every day, so there have been a few incidents [of catcalling]. The biggest one for me was there was this taxi driver who insisted on wanting to pick me up; he would follow me and I would just say no. Then he would u-turn to the opposite side of the road where I usually cross the road and ask me again.

He did this a few times, a few more u-turns to get me to talk, and before I knew it, I was in the building. That was the more severe one, there was some catcalling here and there but nothing other than that. It only happened one time, and he hasn't come back since. I would have reported him if he did.¹⁹⁷

Asha shared her experiences of sexual harassment on public transportation, in particular on buses and the GrabCar service. She explained that although the GrabCar drivers did not make physical contact, they often talked about sex and sexual topics, making her feel uncomfortable.

Fazura experienced multiple incidents of sexual harassment and violence by cisgender men who have tried to solicit her. On one occasion, she experienced sexual violence by a tour guide when she was on holiday with her family members in Malaysia. Upon discovering her gender identity, he proceeded to sexually assault her in his car. Fearing for her personal safety, she complied. She did not report the case, as she did not want to be bogged down by time-consuming and emotionally taxing legal actions. She did, however, get a medical test after the incident.

I don't know...somehow he knew about my gender identity, maybe I over spoke about something. All of a sudden he became silent and straight away, directly, asked me to satisfy his sexual desires. He basically asked me to BJ (fellatio) him.

197 Interview with Aya, 24 May 2019

At that time, I was in a place where I didn't know where I was. He took me to a place, there weren't a lot of cars passing by and in order for me to get home safely, I did that. I might be in danger if I refused because I was in the middle of nowhere with him in the car, and I am in a place where there are not many people there. He might take me somewhere to do bad things to me.¹⁹⁸

A respondent shared that a group of five or six men in their 20s knocked on her door and tried to break into her house to have sex with her. When she threatened to call the police, they left, but returned multiple times a few days later. They had unlocked the front gate and entered the house compound when she was not home, and had tried to break in at least four times when she was home.

The respondent did not lodge a police report, as she did not trust that the police would act on her police report. This was based on her previous experience with the police when she filed a police report against her uncle for hitting her with a helmet. She recalled the police asking her irrelevant questions and trivialising her case, and denying her protection. As a result, she lived with fear and trauma, especially at night. The only solution was for her to move to another town.¹⁹⁹

Mas, a hair salon business owner, shared that she was sexually assaulted by unknown men, salesmen and customers multiple times in her shop in the last two years. Several men walked into her shop and molested her, and tried to force themselves onto her after getting a haircut. The incidents made Mas feel disrespected and inferior.

In 2019, a salesman walked into her shop. He immediately locked the door, opened his pants and hugged her. She did not lodge a police report against any of the incidents, as she felt the police would not believe her due to a lack of evidence since her shop has no CCTV cameras. While she felt that she could handle the situation, these incidents caused her anxiety as she worked alone. She was not opposed to making a police report if the situation escalated.

198 Interview with Fazura, 11 July 2019

199 Interview with Suraya, 1 September 2020

She also shared that she was sexually assaulted, including being molested and hugged without consent, by her customers when she delivered products to them. In one incident, a customer entered her car, and proceeded to molest and force himself onto her. She pushed him away and hit him, as she felt that was the only solution at that time. These incidents caused her stress, depression and paranoia. She is more cautious of strangers, and as a precautionary measure, she now carries items with her for self-defence.²⁰⁰

Denise noted that sexual violence against trans women was been a pervasive and long-standing issue. As a young trans woman, she was violated while attending a party in a village in Sarawak. Within trans women communities, Denise observed a change in attitudes towards sexual violence among transwomen, which was previously normalised and not taken seriously. She said:

It would have turned into a gang rape. I remember this boy, who saved me from being a victim of gang rape. Last time, it's not something that we looked at seriously. If it happens now, yes, it will be looked at seriously. But back then, it's something very common—men trying to force trans women into having sex with them. Very common.

They were very aggressive, they pulled my hair, my hand and everything, they tried to slap me. That was the only time. It happened in Kuching, in a small village. We were at a party. There were lots of men. This happened when I was younger.²⁰¹

200 Interview with Mas, 6 September 2020

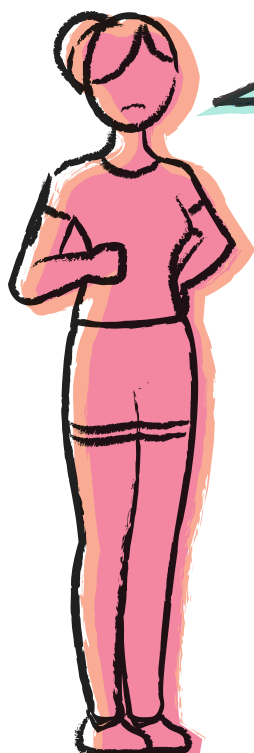
201 Interview with Denise, 23 August 2019

In the context of normalised sexual harassment, assault, and objectification of trans women, Fara shared that she has felt affirmed by her experiences of sexual harassment. This once again reflects a deeply misogynistic environment where toxic gender stereotypes and norms contribute to the misidentification of harassment with affection and affirmation of gender identity.

... I always get sexually harassed. Sometimes I'm proud about that, even though I am a trans woman, they still fall in love with me. Because they love me for who I am. I'm proud to be a pretty trans woman.²⁰²

“Even [though] we like to think of ourselves in the Klang Valley as the bastion of progressiveness in Malaysia, **we still have a long way to go**”

(Nancy)



202 Interview with Fara, July 2019

8. Access to justice

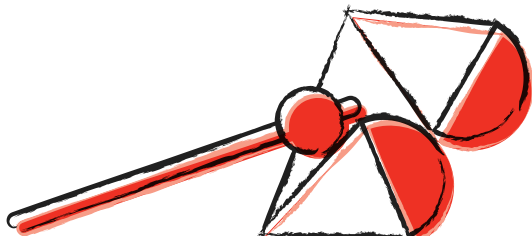
While the respondents shared multiple forms of violence they had experienced online and offline, their access to justice remained low. This was compounded by several intersecting factors, including prejudice and stereotypes against trans women, and the criminalisation of non-cisnormative gender identities and gender expressions as well as sex work. The respondents also stated that the level of service they received at police stations was substandard, unprofessional, and prejudiced, which affected their trust in state institutions and the probability of their seeking services from the police in the future.

As a result, many felt alone in solving their own issues, and that they had limited solutions available. Some respondents only sought services from the police when the situation was extremely dire.

There were two types of recourses accessed by the respondents:

- **Complaint mechanisms within a particular social media platform;**
- **Police reports.**

The respondents noted that responses from social media platforms were often limited to acknowledgment of violations of their community guidelines or terms of services. Nancy remarked:



For me, it is important that actual, concrete action is taken against those who harass and make threats. Because most of the time, it's just a temporary suspension, and they come back; even when their accounts are banned, they just create a new account. I think there should be more [content] moderation by the social media giants.²⁰³

Beth also had similar experiences using the internal complaint mechanism for social media platforms:

I have used the internal reporting functions on Facebook and Twitter and nothing has ever come of it. I have reported more than I can count. I mean on Twitter, there is a lot of straight-up hate speech on Twitter, and [I have] reported it. Sometimes you see things get done, but you'll get a notification in a couple of weeks saying that *'your report and others have been looked at, and decided that this person should be punished for hate speech.'*

Every single time that happens, I go in and look at their profile, and it's still there and still posting. Nothing seems to happen on Facebook too. Every time I report something, I get a notification back saying *'it's fine; it meets community standards, and you're wrong'*. But there is no real transparency of what the processes are and how it is determined what is actually racist and transphobic. And that leads to confusion and frustration, and I guess that that's normal.

[I feel] very resigned every time the report comes back and says *'we look into your report, and it doesn't violate anything'*.²⁰⁴

203 Interview with Nancy, 29 June 2019

204 Interview with Beth, 24 July 2019

Denise, on the other hand, had a positive experience reporting recordings uploaded by online users. These recordings were of a trans woman dancing and walking around undressed on one of Kuala Lumpur's busiest avenues,²⁰⁵ most likely due to a mental health episode. Although the videos were removed, reuploads emerged on other platforms. She explained:

I report to YouTube only one video. Do you remember the Filipino woman who went bizarre and naked in KL? There were a few people spreading the video. I reported them to YouTube. I reported many times on many videos. It was very inhumane. When you know a person is intoxicated, and they are not themselves, and you viral them, it's inhumane, it's immoral to do something like that.

You should question your sanity when you share something like that, whether it's a woman, man, a trans woman, trans man, our family members or friends. We don't want to see them being ridiculed like that. They did remove the video.

But after a few days, there were too many videos of that incident, but they blurred her parts. It wasn't only on YouTube, but on Facebook, and other social media platforms. There is nothing much that I can do, except that I have done my part in the beginning, the first two days. I was satisfied with their actions. They can do something about the video, especially in Malaysia, when they release that kind of video. Maybe they can do some filtering.²⁰⁶

205 "Dancing Transgender in Bukit Bintang Remanded for 14 Days." *TheStarTV.Com*, 14 March 2019, www.thestartv.com/v/dancing-transgender-in-bukit-bintang-remanded-for-14-days.

206 Interview with Denise, 23 August 2019

Reporting cases and seeking protection

The most common methods of dealing with transphobic comments and online users were to block the user or report them. Only one respondent lodged a police report after her social media account was hacked. None of the respondents lodged complaints to the Malaysian Communication and Multimedia Commission (MCMC). Another respondent shared that the MCMC could take more preventative and time-efficient measures to curb online violence against transgender persons, and make the reporting processes friendlier for transgender persons.²⁰⁷

The respondents' other experiences in seeking recourse were related to the police for cases of violence or crimes against the respondents.

Only four respondents reported satisfactory experiences when seeking assistance from the police. While these experiences still included some level of victim blaming by the police, they were minimal. All four cases took place in the past five years.

In one case, the respondent filed a police report in 2019 after being assaulted by two unidentified persons. Despite the fact that the police did not keep the respondent informed about the outcome of their investigation, she felt respected and that the officers were responsive when she asked them to accompany her to the hotel where the attack occurred to retrieve her personal belongings.

Another respondent lodged a police report following recurring threats from men living in her apartment complex, where she had been living for over a decade. She had not experienced prior threats in all of her years living there; however, in the past year some residents had thrown urine, grey water, and other objects at her. Two residents in particular subjected her to name-calling, and physically assaulted her at her apartment complex when the two residents were drunk.

207 Interview with Aishah, 10 June 2019

Her neighbours called the police, who arrived immediately, and the two residents were taken to the police station. Prior to that incident, the respondent lodged a police report against the residents for repeated harassment and aggression. The police advised her to call if the situation recurred. Nonetheless, the harassment traumatised her. She felt afraid at night and preferred not to be outside after 10 p.m. to avoid unwanted incidents.

In such cases, the police could take preventative de-escalation and educational measures to prevent such violence from recurring or escalating. It is unknown whether such cases are recorded as hate crimes or gender-based violence against trans women. In the past, although the police investigated crimes against trans women, they were quick to dismiss elements of hate and gender-based violence in crimes against trans women. Tracking and compiling data on gender-based violence is critical for understanding the core causes of violence, assessing trends, and developing evidence-based and rights-based remedies with sufficient resources and support.²⁰⁸

Meanwhile, 10 respondents reported multiple negative experiences when seeking services from the police. Their experiences included:

- **Their reports were not entertained with urgency.** Meanwhile, four respondents who had lodged police reports against physical assaults, intimate partner violence and hate crimes, shared that they were **not** updated of the outcomes of the investigation, their reports were not entertained with urgency. Meanwhile, four respondents who had lodged police reports against physical assaults, intimate partner violence and hate crimes, shared that they were updated of the outcomes of the investigation.

208 Muntarbhorn, Vitit. “Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity?” *Human Rights Council Thirty-Fifth Session*, 2017, <https://undocs.org/A/HRC/35/36>

- **Being subjected to name-calling and pejorative terms.** According to the respondents, the use of *pondan* was particularly pervasive among police officers as well as other government agencies.
- **Being ridiculed and experiencing other forms of microaggression through body language.** Reena, who had gone to the police station to file a report for theft, was not taken seriously and ridiculed by police officers. They told her that '*nobody would want to kidnap or rape you*', although she was there to report a theft.²⁰⁹ Another respondent who had to make a police report due to an accident shared that the police officers teased, mimicked her speech, gossiped and laughed about her with their colleagues away from her, but still within her sight. She was afraid of speaking up.²¹⁰
- **Being victim-blamed**, including being told that they had exposed themselves to danger by being in dangerous places and wearing sexy attire. Timah shared that she and her trans women friends were assaulted in her car by a group of men with a hammer while they were out looking for a hook-up in 2008. She was almost killed by the assailant, and sustained fractures to her bones. When she reported the case, the police said that she should not have gone to a dangerous place and that she brought the incident upon herself. Timah said:

In 2008, at that time, I was out looking for men. A man assaulted me using a hammer. My bone cracked as a result. I was in a *Kancil* car with 6 men, and they assaulted us. I was with another trans woman. We were both assaulted. I was almost killed. Did I make a police report? Police just ... It's a *pondan's* case. Police didn't take the case seriously.

209 Interview with Reena, 9 October 2019

210 Interview with Alia, 9 September 2020

The police said the place is dangerous. *'Why did you go there? You know the kind of people who are there – drunkards, people who take drugs. You brought this upon yourself.'* The case was thrown out. It was futile. At that time, my mother was battling cancer. If I was thinking about her, what will happen to her if I die? That's why I avoid wearing (women's clothes).²¹¹

Four respondents, on the other hand, said that they were either afraid or indifferent about lodging police reports when crimes and violence were perpetrated against them.

In particular, the trans women sex worker respondents were hesitant and afraid of making police reports because they feared incriminating themselves. Four respondents who were sex workers said they were afraid of lodging police reports despite the aggression and violence they faced from customers. A respondent said she did not want to prolong the case, and was afraid of the unintended consequences of lodging a police report.²¹² The reluctance of trans women in lodging police reports is tied to the multiple forms of criminalisation that trans women face.

Another respondent recollected an incident where her friend, a trans woman sex worker, was robbed. After robbing her, a customer left her tied up in the house. When the respondent suggested that her friend lodge a police report, other trans women in the community, especially the seniors, advised against it, fearing reprisals not only from the police, but also from the state Islamic department.²¹³

These feelings are not unfounded. In 2019, a customer physically assaulted a respondent's acquaintance at her home. After consulting with the respondent, the victim and a friend lodged a police report at a police station in Kuala Lumpur. The police visited the crime scene and deduced that the trans women engaged in sex work.²¹⁴

211 Interview with Timah, 23 August 2019

212 Interview with Bell, 1 September 2020

213 Interview, 6 September 2020

214 Interview, 30 September 2020

One of the police officers promised to help them, and in the guise of helping them, asked for information about their work, where they got their customers, and where they brought their customers to perform the services. Trusting the police officer, especially because she was a woman, they divulged details about their work.

Two days later, the police carried out a raid of the complainant's home and arrested her trans women housemates and their partners. Some of those arrested were on drugs at the time of the arrest, allegedly provided by the police. The respondent shared that sex workers in Kuala Lumpur use the phrase '*polis belanja*,' meaning drugs paid for or supplied by the police to sex workers for free or without payment.

The complainant's housemates and their partners who were arrested were detained in lockup and prison for over two months. Some of them were HIV positive, and did not have access to their medication in detention. As a result, their regime changed, and they were told by the doctors to buy new drugs that they could not afford.

The respondent offered to assist them in writing a complaint, but they did not take her up on her offer. Following the arrest, the original perpetrator of assault, who had gone into hiding, came back with his friends to harass the trans women sex workers. The perpetrators expected to be serviced without payment and threatened to assault the trans women for lodging the police report. Fearing for their personal security, they moved to a new place.²¹⁵

Another respondent explained that the stigma and criminalisation of sex workers and trans women, as well as the perception of trans women as sex workers, prevented her from lodging a police report or seeking their assistance, be it for a robbery or simply to report the loss of an IC:

215 Ibid.

Like for example us, right when we provide (sexual) service right, and then if we get robbed, can we make a police report? Because I was robbed. But won't the police say ... will they accept us because we are selling ourselves? The other day I lost my IC, but I didn't make a police report because I was scared. The police might say, 'Ha, where did you go?' I didn't...I didn't make a report. I just paid a hundred something (fine). Because I am *malas* (exasperated or tired).

I am the type—I don't like to meet the police. I don't like it. That is why I said I am scared of the police. Because I am scared they will use it against us. 'Ha, where did you go? Did you prostitute yourself? Is that how your IC is missing?' That's what makes me *malas* (exasperated or tired) as well. Then I don't have to put up with the question, I just pay to make the IC, about RM 100 in fine.²¹⁶

Meanwhile, Tina shared that she felt a sense of stress, anxiety, and fear when she had to lodge police reports. Tina explained:

For example, I have made a police report and then the police entertained the (cisgender) woman but when it came to my turn, because she sees me a transgender (woman), she acted as if she didn't care. Because of that, when lodging a police report, I get emotionally stressed a bit.

Because they think we are *songsang* (wayward) and all that, they don't care. When we need their help, for example, when we get robbed and all that, physically assaulted, when we make a police report, the police are not serious about it. Instead, they lecture us and all that. I am stressed about that.²¹⁷

216 Interview with Siti, 6 September 2020

217 Interview with Tina, 1 September 2020

Only one respondent shared that she had lodged a complaint to the police Integrity and Standards Compliance Department (JIPS)²¹⁸ following mistreatment that she and her friend experienced when lodging a police report. She observed that many trans women lacked familiarity with complaint mechanisms when it came to the police. Sabrina recalled:

I had a friend who made a police report, but then at the police station, the police harassed and discriminated against her. I was with her at that time. I asked, *'Do you want to accept (the report) or not? Do you want us to take our own action or follow the law? We came nicely. Is this 'prompt, friendly and correct' written on your wall? Is this how you treat us? We are also human. Don't bring us issues of sex and gender here.'* They kept quiet.

They took the report. At the end, they apologised. I said this is a small matter, not all LGBT or transgender are bad people. We are bad because we are perceived as bad in your mind. Someone broke into her house.

We waited for the police, but they didn't arrive. I called every two hours. Because you can't move the items because they need to take photos and take fingerprints. My friend and I had to sleep at the staircase because of the delay by the police.

I think most people don't know that you can make a report at the Integrity and Discipline Unit (*sic*). I made a report, and the following day they came to take photos of the house. A few years later, when my aunt had a break-in, the police came not even an hour after she made the report. So I think there was discrimination.²¹⁹

218 Rodzi, Farik Zolkepli And Nadirah. "Cracking the Whip on Crooked Cops." *The Star Online*, 21 Feb. 2015, www.thestar.com.my/News/Nation/2015/02/22/Cracking-the-whip-on-crooked-cops.

219 Interview with Sabrina, 23 August 2019

Encounters with police during roadblocks and club raids

At least three respondents reported negative experiences with the police at roadblocks. The police had subjected them to verbal violence, sexual harassment, unsolicited advice regarding their gender identity, and prolonged stops at the roadblocks because of their gender identity and their IC. Siti shared:

It's the same at roadblocks. They see trans women, 'Stop, stop.' When we are complete—we have our license. They just want to insult trans women. 'Let me see your IC. What's your name? Is this correct?' When we have all our documents. What else is not right?²²⁰

Another respondent shared that she experienced being stopped at the roadblocks multiple times. In some instances, she was given unsolicited advice about her gender identity, and in others, the officers made sexual advances towards her. She explained:

Roadblocks, yes. Sometimes there are a lot of roadblocks at night. They didn't insult me. They just ask me, 'Where are you going?' and then look at my IC for a long time. They hold on to it for a while, and then they ask me out.

They say, 'You don't want to hang out?' We were like, 'No, no, we are going to our friend's house,' that's what we said. This has happened many times. Sometimes, they also insult us.

Sometimes, not insults, but they say, 'Eh, what's wrong with you? Why do you become like this?' things like that, and then they allow us to go.²²¹

Izzah, who worked with a community-based organisation that provided safer sex kits and information and other HIV-related services, was stopped multiple times at roadblocks for having condoms in her car. She uses the situation as teaching moments. She said:

220 Interview with Siti, 6 September 2020

221 Interview with Alia, 9 September 2020

I was stopped at a roadblock the other day. I had condoms at the back. At that time, I had not shown them my outreach worker card. They asked, *“What are these condoms for?”* I said, *“Why? Is this wrong under the law? If so, under which act?”* He then said, *“having condoms is a crime.”* I replied, *“Mr., sorry, I am not being rude, but here’s the thing, I also work with the Ministry of Health and the Malaysian AIDS Council.”*

I showed him my outreach worker card. I said, *‘These condoms are supplied by the Ministry of Health. You as a government officer, you want to arrest me for distributing condoms? If you want to arrest, why don’t you arrest me at 7-Eleven? Where does it say that having condoms is a crime?’*

They kept quiet. I do get this a lot. Sometimes we have our licence and all, but they stop us. And we have to explain things to them. As far as I can remember, I have been stopped and questioned at least 10 times since I have started working with the NGO. Especially when I travel to distribute condoms.²²²

Aside from roadblocks, the respondents also encountered police in other situations, such as club raids. Two respondents shared that they were caught in club raids. In both incidents, the respondents were subjected to verbal abuse and humiliating and degrading treatment.

Sonia and her friends, who were rounded up in a club raid in 2019, shared that she and her friends were segregated from the rest of the detainees, insulted and called *pondan* and *bapok* by the state Islamic department officers on duty. She shared:

They said, *‘Ooo bapok have a sit over here. Cannot mix with the men and women. To say men, they are not men. To say women, they are not women.’* Do they have to say things like that? I could not say anything at that moment.²²³

222 Interview with Izzah, 6 September 2020

223 Interview with Sonia, 9 September 2020

Similarly, Alia and her friends were out-ed, insulted, and made to line up with cisgender men because of the gender marker in their ICs, during a joint raid by the Islamic Department, police, and the Immigration Department in 2019. The experience left Alia and her friends humiliated in front of other detainees and officers on duty. Alia recounted:

At that time, we thought it was just the police. If it's just the police, we can deal. But in the end, when they came in, we saw the state Islamic Department. So at that time, we were like, '*oh no, what do we do?*' After that we discussed, discussed, discussed, luckily the police handled the case.

So the Islamic Department just came to pick up those who were drunk only. At that time, I was scared. Ya, because when the Islamic Department is involved in transgender issues, it will be worse for us.

At that time, they did insult us—when it came to our turn, they turned on the lights, and we were asked to line up. Women on the right side, men on the left. We went to the women's side. And then they insulted us. They knew we were trans women, they said, '*You are a man, right? You should go over there.*' He said, '*You know that you are a man, go over there.*' We said we were wearing women's attire. They said, '*No, no, no, you are still a man.*'

So we had to go to the men's side. It was humiliating at that time because it was bright, and we were at the men's side. There were people who laughed at us, and of course, looked at us rudely. The officer yelled at us and humiliated us. If said to us face to face or said it slowly, it's okay. But he yelled and the whole room heard him. And on top of that, he was wearing a *kopiah* (skullcap). It was a ladies night. We were let go because police handled the case, and they were only checking for urine and those who consumed alcohol.²²⁴

224 Interview with Alia, 9 September 2020

Arrest and detention

Nine respondents shared they were arrested by the police and the state Islamic Department because of their gender identity or for alleged sex work. Most of the experiences took place in the last five years. Meanwhile, one respondent shared her experiences of being arrested, detained, and imprisoned between the 1970s–90s.

The findings show that the treatment of trans women by the police and the Islamic Department has not changed since the 70s. The respondent reported similar types of abuse and cruel, humiliating and degrading treatment during the arrests and detention.

Sally shared that she was arrested multiple times between the 70s and 90s under Section 21 of the Minor Offences Act for public indecency, or engaging in sex work. She was mostly fined RM25, but in two instances, she was imprisoned and served a 3-month jail sentence each time. She recalled her friends having no access to medicine when they were imprisoned in the 90s.

Furthermore, she said many of her friends died soon after being released from prison following their arrest by the state Islamic Department and police. They were 50 years old at that time.

Sally was also discriminated against and abused by the police during arrest and detention. Once, she was stripped naked by a police officer and asked to show the officer her genitals. The officer, while holding a cane, scolded her for wearing a skirt. She recalled feeling humiliated and degraded.²²⁵

Kamala shared a recent experience of being arrested in 2020 by the police for alleged sex work. Kamala was subjected to sexual harassment, insults, and humiliating treatment by the police, just as Sally had been decades earlier. She said:

225 Interview with Sally, 6 September 2020

We are only doing sex work, we don't disturb people. We are not taking anything from people. Why do they treat us like this? When police arrest us, they don't respect us. *'Pondan, eh pondan, this is the pondan's IC, pondan come here!'* The police have no respect for us. I hear it so much.

That day the police arrested three of us trans women, but they let go of us. One of them asked me, *'Down there, have you cut, do you still have it, do you masturbate?'* There were so many people there (who saw this). Then he said, *'Do you have a penis? Do you? Feels like you have a hole, right?'*²²⁶

Fifi shared that she was arrested multiple times by the state Islamic Department for wearing women's attire in a public place. She was verbally abused when she was arrested by the enforcement officer. She said:

I was arrested by the state Islamic Department. Insults are common. They said *'The Prophet doesn't acknowledge you as a follower,'* like that. The last time I was arrested was in 2014 or 2015, for wearing women's attire in a public place. In total maybe four to five times. By police one or two times only. That was long ago.²²⁷

In 2015, a respondent who formerly worked as a performer at a Kuala Lumpur nightclub was arrested during a joint operation by the Immigration Department, the Federal Territories City Council, the police, and the Federal Territories Islamic Department (JAWI). She and her trans women colleagues were instructed to report back to the Islamic Department every three months to extend their bail. The respondent went back and forth every three months for a period of three years to extend bail. The case was eventually dropped.

226 Interview with Kamala, 9 September 2020

227 Interview with Fifi, 6 September 2020

The club owners were allegedly warned and restricted by the authorities from allowing performances at the club. As a result, the respondent and fellow trans women performers lost their source of income. Although it has been years since the ordeal, the respondent still experienced trauma as a result of the arrest and the events that followed. She felt anxious whenever she encountered the authorities. She deleted all of her photos and videos as a performer on social media. She shared that, during the arrest, officers from the Islamic Department were disrespectful, unprofessional, asked intrusive questions and subjected them to verbal abuse. She shared:

What I feel was unnecessary where the JAWI enforcement officers who arrested us. They provoked us. They called us *pondan*. They asked us why we needed to have breast surgery. Questions that were not relevant, that have nothing to do with their work. If they want to arrest us for drinking alcohol, yes, of course we can accept that. This is because of [us being] *pondan*. What's that? And their language is very crass.²²⁸

Alia noted that she felt anxious when she was out with her friends, especially when she saw white vans drive by. Her anxiety is also linked to the laws criminalising non-cisnormative gender identity and gender expression, and illustrates the impact discriminatory laws have not only on freedom of expression but also on freedom of movement. Alia explained:

Sometimes, when I am hanging out at the square, sometimes I think about it, sometimes when a white van drives by, I will be '*Eh, the Islamic Department!*'. So there's anxiety there. Because there were people who said that they have the right to arrest us. But then when I discussed it with my friends, they said they have no right to arrest us for no reason. Because we are not doing sex work there. We are just hanging out. But I'm still worried.²²⁹

228 Interview, September 2020

229 Interview with Alia, 9 September 2020

Statement by the Minister of Religious Affairs

The Minister of Religious Affairs issued a statement in 2020 announcing that the Federal Territories Islamic Religious Department had complete authority to arrest and educate trans individuals.²³⁰ The statement followed a backlash against a Muslim intersex woman celebrity, who is widely perceived as a trans woman, for posting photos and videos of herself in a bikini on her social media platforms.

The Minister's statement further showed the wide-ranging impact of laws criminalising trans women and state policies that promote rehabilitation of transgender and LGBT persons, in creating an environment that allows arbitrariness and impunity to persist and fester.

At least seven respondents discussed the statement by the Minister of Religious Affairs. Although the Minister's statement was directed to the Islamic Department in the Federal Territories, the shockwaves transcended geographical and religious boundaries.

One respondent recalled that the articles and social media posts related to the statement were shared numerous times and repeatedly within trans women social groups, causing her fear and anxiety. She highlighted concerns and speculations about what could happen—which included being fined or arrested, and having their heads shaved—which heightened her anxiety.²³¹

Mas shared that she was depressed and felt stressed after reading the Minister's statement. Although her family members did not accept her, Mas' parents advised her to be careful and not to be too sexy.

The respondents shared that they experienced a mix of feelings: anxiety, stress, and that they were being unfairly treated. Five out of seven respondents shared that they were initially worried by the Minister's statement. Meanwhile, three respondents said that the statement was arbitrary and unfair. Fifi said:

230 "Minister gives 'full licence' for authorities to act against transgenders," *Malaysiakini*, 20 July 2020, <https://www.malaysiakini.com/news/533801>.

231 Interview with Jamilah, 6 September 2020

The feeling of worry was there, but why do they want to arrest people like that? This is who we are. We are not doing anything wrong; we are not killing, raping anyone, no. We are just wearing (women's) clothes. Our dressing, as what people would say, is within [the] boundaries [of modesty], but I don't like what was said. I was worried, but yes we are not murderers, or engaging in criminal activities. No need to arrest us.²³²

One respondent was worried that her workplace would enforce a stricter dress code policy following the statement. She became even more stressed as she did not own any male attire other than T-shirts.²³³

At least four respondents shared that they were worried of being in public places and of arbitrary arrest, by not just the Islamic Department but also by the police. A respondent from Melaka shared her concerns of wider persecution as a result of the statement by the Minister:

Not to say afraid, but even to go to the shop, I felt *dup-dap-dup-dap* (heart palpitations). Although I am wearing a t-shirt and not wearing a bra, when I see the police, I get so anxious. Sometimes we are arrested because the issue is hot. So we are scared. Sometimes people don't understand. We are not afraid of our money flying away. We are afraid because our name and reputation is at stake. Yes, having our hair cut and all that. We are treated as second class citizens, not Malaysians. By right, Islam protects us, right?²³⁴

The respondents also raised the wider impact of the statement on their privacy and safety. Another respondent, Kamala who was also from Melaka, shared she was concerned that the statement would trigger violence and discrimination against and arrests of trans women under various state Syariah laws, in particular the section on 'male person posing as a woman':

232 Interview with Fifi, 6 September 2020

233 Interview with Jamilah, 6 September 2020

234 Interview, 6 September 2020

When the statement was first released, I was worried. Scared. Unimaginable fear, you know. Actually, the state enactment in Melaka says male persons posing as a woman in public space, full stop. So those who are working, running errands during the day in women's clothes are wrong. There was one time, there was a signboard here on "male persons wearing women's attire", and they even put it up.

It was only that the Islamic department did not take action. The law is already broad. When the statement was released, I thought of so many things. The statement doesn't only affect my life. I live in a village. What about the perception of the people in the village? Not everyone likes me here. Who likes trans women? What more with me living with my husband. But, I am on standby, just in case anything happens. The Minister should not have released the statement. Although he is speaking in terms of Islam, but the impact of his speech is on all trans women communities including Chinese, Indian, Malay and all ethnicities.²³⁵

Kamala's concerns speak to the wide-reaching impact of the statement affecting not only Muslim trans women but non-Muslim trans women as well. Kamala also spoke about the lack of freedoms that trans persons were able to enjoy in Malaysia despite being voting citizens:

Yes, afraid too. They (the government) said they want to arrest everyone—Indian, Malay—if they are transgender they will arrest. That's what they said, right, so I also feel scared. If we ask them why you want to arrest us? [They say] because transgender (people) are useless.

235 Interview with Samantha, 6 September 2020

But when election time comes, you want our vote. You want us to vote you in, but we are not free. We also want to be free, right? Why can't you let us be free? If the government wants our vote, you must accept, if we need help, if we need support, the government must accept that. But when it comes to transgender, there is no acceptance by the government. How can?²³⁶

At least two respondents noted that the statement was inconsistent with the spirit of Islam, which protects marginalised groups. One respondent believed Islam did not encourage arbitrary and punitive actions based on stereotypes. She cited the hadith which told of a sex worker who, contrary to the perception of sex workers as sinners, entered heaven because of her compassion for animals and offering water to dogs.

Asha expressed her concerns over freedom of expression as a result of the strict control and restrictions by the government using religion. She said:

I don't like what the Minister of Religion said but when I look at my community who are Muslims, I am worried for them, and the religion is too controlling. This cannot, that cannot. I pity them. We are all humans. They wear women's clothes; all this is between us and God.

The Minister and all interfere in our personal issues. I don't know why this is happening. I saw the community crying when they said they would arrest us. I cannot put up with this. Why is this happening to them, why are they not accepted? It's not a transgender person's fault that we are born this way, it's not our fault.²³⁷

236 Interview with Kamala, 9 September 2020

237 Interview with Asha, 30 September 2020

Linked to the prosecution of Muslim trans women, a respondent shared her hesitation of converting to Islam as it would subject her to scrutiny, policing, and prosecution. Jo explains:

My heart is close to Islam, because I was taught that at a certain level, the Islamic views in our community itself, by which I mean by our *mak ayam* (senior trans women)...I had very good mentors. I had great people who brought me up to where I am now. For me, I know a constraint is that by converting [to Islam], they will have their eyes on me. I am not giving them a chance to do that. I don't think it happens in other places.²³⁸

“The Minister and all are interfere in our personal issues. **I don't know why this is happening. I saw the community crying when they said they would arrest us.**”

(Asha)



238 Interview with Jo, 22 September 2019

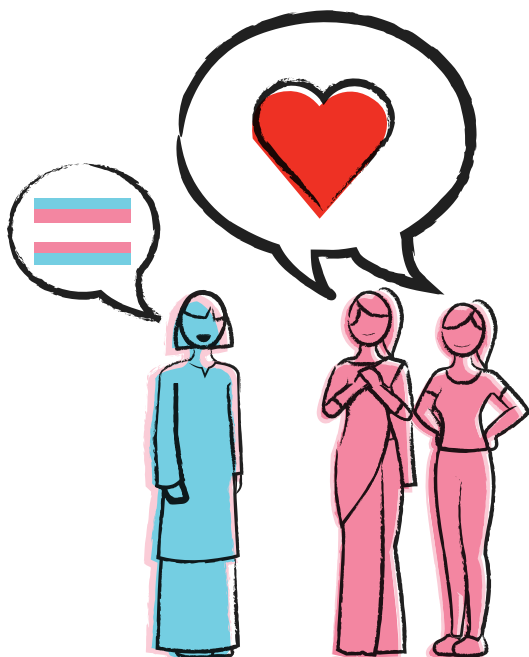
Conclusion and Recommendations

The research clearly shows that the respondents have faced since their childhoods widespread restrictions of freedom of expression because of their gender identity and gender expression—from their family members, society, employers, religious institutions, and other actors. This, in turn, has subjected the respondents to multiple forms of discrimination, violence, self-harm, and self-censorship.

At the same time, central to the lack of enjoyment of freedom of expression is the criminalisation of non-cisnormative gender identity and expression under the law and non-recognition of trans and gender-diverse persons by state and other institutions as well as society. The chilling effect of the structural and cultural criminalisation of trans women on their lives is evident given the challenges, barriers, and consequences that trans women face to express themselves in all spaces.

The experiences and findings also show that the violation of freedom of expression often intersects with their right to self-determination, right to employment, freedom of religion and belief, freedom of movement, right to privacy, right to education, and right to found a family.²³⁹

The correlation between the respondents' freedom of expression and their livelihood and economic well-being is well documented and worrying. For many respondents, their likelihood of securing formal employment hinges on their willingness to change their gender expression. As a result, many live in precarious conditions.



239 “Relating to the Right to Found a Family (Principle 24) – Yogyakartaprinciples.Org.” *Yogyakarta Principles*, yogyakartapinciples.org/relating-to-the-right-to-found-a-family-principle-24.

The findings also show that the trends of discrimination and violence against trans women in Malaysia have not changed much over the past several decades. The increased visibility of trans women on social media, partly due to the increase of trans women-owned businesses online and trans women social media influencers, are often met with backlash and heavy-handed state response. The online gender-based violence experienced by trans women is visible, yet completely unaddressed.

The role of religion and its correlation with the respondents' freedom of expression is glaring and cannot be overstated. From toxic religious narratives to gender policing and restrictions of freedom of religion from the state, institutions, and society, religion has an overwhelming influence in the lives of trans women, in particular Muslim trans women. The contribution of the Ministers of Religious Affairs to the negative perception of trans people, reprisals against trans women, and restriction of their freedom of expression is consistent, and must be addressed.

As stated, the denial of and barriers and restrictions to trans women's freedom of expression are placed by a diverse set of actors, not just the state. As such, below are some key recommendations for government, religious institutions, employers, media institutions, and family members and individuals.

Government

There are a number of key areas where the government could focus to increase representation, opportunities, protection, and information in relation to gender identity and gender expression.

1. Create access to adequate, accessible, and survivor-centred protection against discrimination and violence towards trans women

This includes:

- Development and introduction of Standard Operating Procedures (SOP) and guidelines on inclusion and gender diversity in all sectors. Below are some documented good practices that may be referenced in the development of such guidelines:
 - The Ontario Human Rights Commission has a policy on preventing discrimination because of gender identity and gender expression, which includes measures that can be adopted to prevent and respond to discrimination based on gender identity and gender expression and a best practice checklist.²⁴⁰
 - In 2019, the Australian Human Rights Commission introduced a guideline for the inclusion of transgender and gender-diverse people in sports.²⁴¹

240 “Policy on Preventing Discrimination Because of Gender Identity and Gender Expression.” Ontario Human Rights Commission, 2014, www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression.

241 “Guidelines for the Inclusion of Transgender and Gender Diverse People in Sport.” Australian Human Rights Commission, 2019, humanrights.gov.au/sites/default/files/document/publication/ahrc_transgender_and_gender_diverse_guidelines_2019.pdf.

- *Guidelines to Human Rights-based Trans-specific Healthcare* by Transgender Europe (TGEU) provides an overview of what trans healthcare should look like and makes recommendations for the creation of protocols and legislations to ensure access to healthcare for trans and gender-diverse persons.²⁴²
 - In 2020, the European Union (EU) released a 5-year *LGBTIQ Equality Strategy 2020–2025*, which aims to tackle discrimination and ensure safety, equality, and inclusivity for LGBTIQ persons in the EU.²⁴³
- Training and capacity building with government staff on gender, diversity and inclusion, and human rights.
 - Proactive measures by government agencies, including the police, the Malaysian Communications and Multimedia Commission, and Suhakam, in addressing access to justice and gender-based violence against trans women.
 - Ensure the collection of gender-disaggregated data and tracking of crimes and violence against transgender persons.
 - Revise government forms to improve data collection and analyses by including gender categories and adding additional columns for gender pronouns and name (if different from name in legal documents, in the absence of legal gender recognition).

242 “Guidelines to Human Rights-Based Trans-Specific Healthcare.” TGEU, tgeu.org/guidelines-to-human-rights-based-trans-specific-healthcare.

243 *Union of Equality: LGBTIQ Equality Strategy 2020-2025*. European Commission, 2020, ec.europa.eu/info/sites/info/files/lgbtiq_strategy_2020-2025_en.pdf.

The *Data collection in relation to LGBTI People* report by the European Commission highlights key issues in relation to data collection and measures to enhance data collection. The report also highlights that the Equality Authority in Cyprus, a body that receives employment complaints, disaggregates complaints based on gender identity.²⁴⁴ Meanwhile, Statistics New Zealand released the Statistical Standard for Gender Identity in 2015, which introduces ‘gender diverse’ as an additional gender category to ‘male’ and ‘female’. In Nepal, trans and gender-diverse individuals can register as ‘third gender’ in their citizenship document and in the national census. Similarly, in Uruguay, a national census for transgender persons was introduced in 2016 and led by the Ministry of Social Development.²⁴⁵ Other notable data collection efforts include a survey by the European Union Agency for Fundamental Rights participated by 140,000 LGBTI persons in the European Union, Macedonia and Serbia.²⁴⁶

- Repeal all laws that criminalise non-cisnormative gender identity and gender expression (see appendix 2).
- Introduce a Gender Affirming Act to allow legal recognition of transgender and gender-diverse persons in Malaysia based on self-determination. Malta,²⁴⁷ Pakistan,²⁴⁸ and Argentina²⁴⁹ are some examples of countries with affirming gender identity laws.

244 Bell and European Commission. Directorate-General for Justice and Consumers. *Analysis and Comparative Review of Equality Data Collection Practices in the European Union*. Stuttgart-Germany, Germany, UTB, 2017.

245 Brown, Taylor, et al. *Exploring International Priorities and Best Practices for the Collection of Data about Gender Minorities, Report of Meeting*. Los Angeles, California, The Williams Institute, 2017, williamsinstitute.law.ucla.edu/wp-content/uploads/Intl-Data-Collection-Gender-Minorities-Mar-2017.pdf.

246 Lukas. “Human Rights Day: Trans People in the EU.” *TGEU*, 10 Dec. 2020, tgeu.org/trans-people-in-the-eu.

247 “Gender Identity, Gender Expression and Sex Characteristics Act, 2015.” *TGEU*, tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf.

248 *Pakistan: Transgender Persons (Protection of Rights) Act, 2018 - A Briefing Paper*. The International Commission of Jurists (ICJ), 2020, www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf. p 13

249 “Argentina Gender Identity Law.” *TGEU*, tgeu.org/argentina-gender-identity-law.

- Introduce comprehensive anti-discrimination laws or a Gender Equality Act to eliminate gender-based violence, ensure access to justice, and uplift trans women from marginalisation.

2. Increase representation of and opportunities for trans women in all spaces

Similar calls to the 30% of women in decision-making positions are needed for trans women in order to bridge disparities in relation to accessibility, participation, and representation in the employment, education, and other sectors in Malaysia. It is also imperative and urgent for the government to address the employment discrimination faced by trans people, by introducing laws and guidelines that protect trans people against hiring discrimination based on gender identity and expression.

3. Increase access to information in relation to transgender persons, gender identity, and human rights

Some of the discrimination and violence experienced by trans women are a result of the lack of accurate and affirming information regarding gender identity and gender expression, transgender persons, and human rights. It is critical to undertake public awareness campaigns and efforts to dismantle the stigma and misconceptions, especially among government staff, employers, parents and family members, and religious groups and communities, among others. The introduction of comprehensive sexual and reproductive education in schools that includes SOGIESC would contribute to reduction of stigma and discrimination against trans people.

4. Review existing laws, policies, and practices in relation to transgender persons in Malaysia

The existing laws criminalise non-cisnormative gender identity and gender expressions, and policies that promote rehabilitation have systemic impact on all areas of trans people's lives. Given the widespread and long-term harm against trans people, these laws and policies must be reviewed.

Religious Institutions

1. Adopt an evidence- and rights-based approach in addressing issues in relation to trans people, instead of the current rescue and rehabilitate approach.
2. Review the definition and understanding of *fitrah* and gender by shifting from a binary and essentialist lens guided by the lived experiences of trans and gender-diverse people, science, and history.
3. Engage queer and feminist affirming religious scholars in understanding sex, gender, sexual orientation and plurality in religion.
4. End all forms of rehabilitation and punishment of trans and gender-diverse persons because of their identities and the expression of their identities.

Employers

1. Guided by the UN Guiding Principles on Business and Human Rights, the private sector should take measures to protect, respect, remedy²⁵⁰ and promote the human rights of trans and gender-diverse persons. In particular, employers should ensure:
 - a. Comprehensive non-discrimination and inclusion policies are in place to ensure trans and gender-diverse workers are protected against discrimination and violence;
 - b. Gender, inclusion and diversity, and human rights trainings are provided at the workplace to dismantle prejudice among co-workers and create a welcoming environment;
 - c. Adoption of trans- and gender-diverse-affirming workplace guidelines. Guidelines developed by civil society—for example, the Transgender Equality Network Ireland (TENI)'s *Guidelines for Employers and Employees*²⁵¹ and TGEU's *Trans-Inclusive Workplaces – A Guide for Employers and Businesses*²⁵²—provide tools and resources for employers to implement the inclusion of trans and gender-diverse persons in the workplace.

250 “UNGPs Guidance & Implementation - Business & Human Rights Resource Centre.” *UN Guiding Principles*, www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/guidance-implementation.

251 *Supporting Transgender Inclusion In The Workplace Guidelines for Employers and Employees*. Transgender Equality Network Ireland (TENI), 2017, www.teni.ie/wp-content/uploads/2019/11/Supporting-Transgender-Inclusion-in-the-Workplace-Guidelines-for-Employers.pdf.


252 “Trans-Inclusive Workplaces Guide.” *TGEU*, tgeu.org/inclusiveworkplaces.

Media

Members and institutions of the media need to increase affirming representations of trans and gender-diverse people in the media and adopt higher media standards when reporting trans-related news. The media should engage trans and LGBTIQ groups to develop media guidelines or refer to existing media guidelines in English and Malay languages.

Family Members and Individuals

Family members and individuals are encouraged to seek information and support by connecting with trans and LGBTIQ human rights groups.



“When we disclose or reveal our gender identity, some of them **will be surprised and change their behaviour by being immoral to us**”
(Fazura)

Appendix 1

LGBTQ-related recommendations in UPR Cycle 3

No.	Recommendations	Country	Status
151.55	Approve a broad antidiscrimination law that includes the protection of all rights for all people without discrimination	Uruguay	Noted
151.77	Take the necessary measures to establish in its national legislation a comprehensive legal framework for effective protection against discrimination and violence against LGBTI people	Argentina	Noted
151.78	Take necessary measures to protect LGBTI persons, in law and in practice, against any form of violence, harassment or discrimination and ensure the full enjoyment of all their fundamental human rights and freedoms	Austria	Noted
151.79	Review and repeal laws that directly or indirectly criminalise consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity	Canada	Noted
151.80	Decriminalise consensual sexual relations between adults of the same sex	Chile	Noted
151.81	Ensure respect for the fundamental rights of all, without discrimination, including in relation to LGBTI persons by decriminalising homosexuality	France	Noted
151.82	Repeal all legislation that discriminates on the basis of sexual orientation or gender identity to guarantee that LGBTI persons can enjoy all human rights without facing discrimination with regard to work, health, education, housing and other policy	Germany	Noted
151.83	Repeal all laws that criminalize persons based on their sexual orientation and gender identity	Iceland	Noted

151.84	Undertake efforts to guarantee and protect the human rights of LGBTI persons in line with international obligations	Ireland	Noted
151.85	Take concrete steps to protect LGBTI persons from discrimination and violence, including through enactment of explicit nondiscrimination provisions in law, development of public awareness programs and to allow for recognition of the gender of transsexual persons	Netherlands	Noted
151.224	Implement anti-bullying campaigns in schools addressing all forms of bullying, including based on actual or perceived sexual orientation, gender identity or gender expression	Portugal	Partially accepted

Appendix 2

Laws that criminalize non-cisnormative gender identity and expression

Civil Law

Minor Offences Act 1955, Section 21 - Drunkenness and disorderly behaviour in public places

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

State Syariah Laws

State	Laws
Kelantan	Section 7. Pondan Any male person who, in any public place, wears woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding four months or to both.
Kedah	Section 7. Pondan. Any male person who, in any public place, wears woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding four months or to both.

<p>Perlis</p>	<p>Section 7. Pondan.</p> <p>(1) Any male person who poses (<i>tasyubbah</i>) as a woman in any public place shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.</p> <p>(2) Any female person who poses (<i>tasyabbah</i>) as a man in any public place shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.</p>
<p>Terengganu</p>	<p>Section 33. Male person posing as woman.</p> <p>Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>
<p>Perak</p>	<p>Section 55: Man posing as a woman</p> <p>A man who wears a woman's attire and in any public place poses as a woman for immoral purposes is guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.</p>
<p>Johor</p>	<p>Section 28. Male person posing as woman.</p> <p>Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>
<p>Federal Territories</p>	<p>Section 28. Male person posing as woman.</p> <p>Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>
<p>Selangor</p>	<p>Section 30. Male person posing as a woman.</p> <p>Any male person who, in any public place, wears a woman's attire or poses as a woman for immoral purposes shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.</p>
<p>Melaka</p>	<p>Section 72. Male person posing as woman.</p> <p>Men posing as women. Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>

Pulau Pinang	<p>Section 28. Male person posing as woman. Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>
Sabah	<p>Section 92. Male posing as woman or vice versa. Any male person who, in any public place, wears a woman's attire and poses as a woman or vice versa shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.</p>
Sarawak	<p>Section 25: Man posing as woman Any man who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>
Pahang	<p>Section 33. Man posing as woman Any man who, in any public place, wears a woman's attire and poses as a woman for immoral purposes commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p> <p>Section 34. Woman posing as man Any woman who, in any public place, wears a man's attire and poses as a man for immoral purposes commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>
Negeri Sembilan	<p>Section 66. Male person posing as a woman. Any male person who, in any public place wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.¹</p> <p>Section 66a. Male person posing as a woman. Updated version is unavailable</p>

Source: E-Syariah official portal²⁵³ and Human Rights Watch²⁵⁴

253 "Syariah Law." *Jabatan Kebajikan Syariah Malaysia*, www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BI/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang.

254 "I'm Scared to Be a Woman." *Human Rights Watch*, 16 Feb. 2018, www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia#9037.

Appendix 3

Fatwas in relation to gender identity

Date	Fatwa	Notes
13 April 1982	Sexual Transplant From Male To Female/ <i>Pertukaran Jantina Daripada Lelaki Kepada Perempuan</i>	The National <i>Fatwa</i> Committee of the National Council of Islamic Religious Affairs Malaysia decided that a person who is born as a “khunsa musykil”– who has both male and female genitals–is permitted to undergo surgery “to retain the most functional private part according to the suitability”. It was also decided that a person, even if she or he has successfully undergone sex reassignment surgery would still remain a male or a female.
24 February 1983	The Status Of Transvestite In Islam/ <i>Kedudukan Mak Nyah Dalam Islam</i>	Sex change is forbidden in Islam for male and female persons.
13 December 1989	The Status Of Transvestite In Islam/ <i>Kedudukan Mak Nyah Dalam Islam</i>	Sex change from man to woman and vice versa through operation is prohibited according to Syariah law.
16 March 1993	Sex Change from Male to Female/ <i>Pertukaran Jantina Daripada Lelaki Kepada Perempuan</i>	This discussion was prompted by a successful application by a post-operative trans woman to change her name in her identification card. It was held at the state level in Selangor, but the fatwa was not gazetted.
15 June 1993	Ruling on Change of Gender for Mak Nyah/ <i>Hukum Menukar Jantina Mak Nyah</i>	This discussion was held at the state level in Selangor, but the fatwa was not gazetted.

15 June 1993	Marriage between Mak Nyah and Men	This discussion was prompted by a wedding between a trans woman and a cisgender man (Noranizah bte Mohd Yusuf and Richard bin Badry). This issue was discussed at the state level in Selangor, but it was not gazetted.
14 April 2005	The Ruling on Changing the Gender Status In Mykad (ID)	The 68th Muzakarah (Conference) of the National Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia held on 14th April 2005 discussed the ruling on changing gender status in Mykad (ID). The Committee has decided that: <ol style="list-style-type: none"> 1. Changing gender status in the ID for the owner who has undergone sex change operation which is permitted by Islamic law is permissible 2. Changing gender status in the ID for the owner who had undergone sex change operation which is prohibited by Islamic law is forbidden.
21 November 2006	The Issue of Gender Disorder; Congenital Adrenal Hyperplasia and Testicular Feminization Syndrome	
25 May 2006	The Ruling Of Changing The Gender Status In Mykad (ID)/ <i>Hukum Menukar Status Jantina Di Mykad</i>	The <i>fatwa</i> only authorized change of gender in MyKad for those who are permitted to change their sex according to Islamic law. This <i>fatwa</i> was gazetted on 25 May 2006 in Selangor.
25 October 2007	The Issue of Gender Disorder; Congenital Adrenal Hyperplasia and Testicular Feminization Syndrome/ <i>Isu Kekeliruan Jantina Congenital Adrenal Hyperplasia Dan Testicular Feminization Syndrome</i>	The <i>fatwa</i> was gazetted in Selangor on 25 October 2007.

22 - 24 October 2008	Ruling on Women Imitating Men (Tomboy)/ <i>Hukum Wanita Menyerupai Lelaki (Pengkid)</i>	Tomboy or pengkid is defined as “women whose appearance, behaviour and sexual inclination are like men”. This matter was discussed at the national level.
27 November 2008	Ruling on Women Imitating Men (Tomboy)/ <i>Hukum Wanita Menyerupai Lelaki (Pengkid)</i>	Was discussed at the state level in Sarawak, but was not gazetted.
3 December 2008	<i>Fatwa</i> Ruling on Women Imitating Men (Tomboy)/ <i>Fatwa Hukum Wanita Menyerupai Lelaki (Pengkid)</i>	The <i>fatwa</i> has been gazetted in Johor.
14 December 2008	<i>Fatwa</i> on Pengkid	Was discussed at the state level in Kelantan on 14 December 2008, but was not gazetted.
18 December 2008	Banning of Women Imitating Men/ <i>Pengharaman Wanita Menyerupai Lelaki (Pengkid)</i>	The <i>fatwa</i> was gazetted in Malacca on 19 November 2009.
18 December 2008	Ruling on Women Imitating Men (Tomboy) and Ruling on Men Imitating Women (Pondan and Mak Nyah)/ <i>Hukum Wanita Menyerupai Lelaki (Pengkid) Dan Hukum Lelaki Menyerupai Perempuan (Pondan Dan Mak Nyah)</i>	Was discussed at the state level in Perak on 18 December 2008, but was not gazetted.
29 December 2008	Ruling on Women Imitating Men (Tomboy)/ <i>Hukum Wanita Menyerupai Lelaki (Pengkid)</i>	Was discussed at the state level in Pahang on 29 December 2008, but has not been gazetted.

18 March 2009	<i>Fatwa Ruling on Women Imitating Men (Tomboy)/ Fatwa Hukum Wanita Menyerupai Lelaki (Pengkid)</i>	The <i>fatwa</i> was gazetted in Wilayah Persekutuan Kuala Lumpur on 2 April 2009.
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Source: e-Fatwa, Portal Rasmi Fatwa Malaysia (Fatwa Malaysia's official website), 2012

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