

Implementation 2nd UPR cycle recommendations relevant to LGBTI persons:

Recommendation	Status of implementation
Criminalization of consensual same sex relation (<i>Croatia, France, Netherlands, Canada</i>)	Section 377A is still in force and actively being used In September 2018, two women were sentenced to RM3300 fine and Given the maximum sentence of six strokes of caning for attempting <i>musahaqah</i> (sexual relation between women)
Enacting law prohibiting violence based on sexual orientation (<i>Canada</i>)	LGBTQ are still being target of violence and hate crime based on their perceived or real SOGIESC or perceived SOGIESC In 2017, 3 trans women were murdered. A teenager passed away as a result of sexual assault, and torture from former schoolmates In Aug 2018, a trans woman was physically assaulted by a group of men and as a consequence she had broken ribs, ruptured spleen and head injuries
Anti-discrimination law to protect LGBTI persons (<i>Germany, Argentina, Chile</i>)	The State has not shown any interest in developing such law The lack of anti-discrimination law also resulted in LGBTQ persons experiencing workplace discrimination.

Criminalisation and legal barriers

Malaysia criminalizes consensual sexual relations between persons of the same-sex, posing as a woman, posing as a man, and consensual sexual acts between adults. Section 377A and B of the Penal Code criminalizes consensual sexual relations against the order of nature, while Section 377D criminalizes outrages decency. In an amendment in April 2017 to increase protections and penalties for sexual assault, the Penal Code 377B was also amended to carry mandatory whipping./caning.

Under the State-administered Shariah law, Liwat (sexual relations between men), musahaqah (sexual relations between women), and ‘male person posing as a woman’ and ‘female person posing as a man’ are criminalized in the state administered Shariah laws. 6 states in Malaysia impose maximum penalty of maximum fine of RM 5,000 fine, 3 years of imprisonment and 6 strokes for musahaqah.

Recommendation:

Repeal all laws that criminalize persons based on their sexual orientation, gender identity and gender expression. Including Sections 377 A, B and D, of the Penal Code: *liwat, musahaqah*, (sexual relationship between women) ‘male person posing as a woman’, ‘female person posing as a man’

State-sponsored Homophobia and Transphobia

The existing legal framework and policies are inadequate to protect the human rights of LGBT persons, and create barriers to access redress and justice. Moreover, LGBT persons and related activities are vulnerable to complaints, police reports, monitoring and surveillance.

State-sponsored anti-LGBT efforts spearheaded by the Department of Islamic Development of Malaysia(JAKIM) have intensified since 2012. This includes the introduction of publications; videos²; seminar³; an apps⁴ that provide resources and support to return to the ‘right path’ or to ‘rehabilitate oneself’; *Mukhayyam*, a 3 days rehabilitation camp for LGBT persons.⁵

¹ The coalition consists of individuals and groups working on gender, sexuality and human rights of LGBTIQ persons. This submission is endorsed by Justice for Sisters, Knowledge and Rights with Young people through Safer Spaces (KRYSS), Transmen of Malaysia, Seksualiti Merdeka, Pelangi Campaign, and Center for Independent Journalism (CIJ).

² LGBT : Apa Yang Anda Perlu Tahu(1) https://www.youtube.com/watch?v=2vfOUGW_ONA

³ <http://pupanita.selangor.gov.my/wp-content/uploads/2016/11/SURAT-JEMPUTAN-SEMINAR-PEMAHAMAN-UMMAH-LGBT.pdf>

⁴ Hijrah Diri - Homoseksualiti https://play.google.com/store/apps/details?id=com.app_hijrahhaqq.layout&hl=en

⁵ <http://www.mac.org.my/v3/partners-donors/goverment/>

In July 2016, JAKIM introduced the Pelan Tindakan Menangani Gejala Sosial (Perlakuan LGBT) 2017-2021 (Action Plan to Curb Social ills [LGBT behaviour] 2017-2021), a 5-year action plan in collaboration with 22 strategic partners, including government agencies such as the Ministry of Education, Ministry of Women, Children and Community Development, Ministry of Youth and Sports and Ministry of Health.

Recommendation:

- End all forms of government policies, activities and practices that perpetuate violence and discrimination on the basis of sexual orientation, gender identity and expression. Including those that promote rehabilitation and aim to correct sexual orientation and gender identity such as the Pelan Tindakan Menangani Gejala Sosial (Perlakuan LGBT) 2017-2021 and the Mukhayyam.
- To conduct SOGIESC and human rights awareness programmes for parliamentarians, state assemblypersons, police and other oversight bodies by NHRI and LGBT human rights groups.

Bullying based on SOGIESC or Perceived SOGIESC

LGBT students face multiple forms of violence and discrimination in educational institutions, including penalties for *homosexuality* and 'gender confusion' as listed in the student handbooks;⁶ binary dress code; assignment and access to facilities are based on sex assigned at birth; restrictions to participate in extra-curricular activities; increased bullying, name calling, among others.

In June 2017, a teenager died as a result of physical assaults and torture by former schoolmates⁷ with a history of bullying the victim based on gender expression and perceived SOGI in school.⁸

Recommendation:

- To implement anti-bullying campaigns in schools that address bullying based on actual or perceived sexual orientation, gender identity and gender expression.

Hate Crime and Murder

Gender based violence and hate crime towards trans women and gender non-conforming persons are largely unreported, and elements of hate and gender based violence are often dismissed in reported cases.

Between 2011 and 2017 three cases of hate crime towards trans women were reported in the media, including spate gang attacks, physical assault with metal rods, stabbing. Three cases of murder of trans women were reported in 2017, including a high profile case of a brutal murder of a trans woman, who was a witness in an ongoing trial of an earlier assault towards her. Progress of investigation of this case is unknown.

Just two months ago, in August 2018, a trans woman was physically assaulted by a group of men with sticks and plastic pipes, resulting in serious injuries, including broken ribs, a ruptured spleen and head injuries that required seven stitches. No official response from the government was issued despite personal reactions by members of parliament and a deputy minister.

Recommendation:

- Enact law prohibiting violence and hate crimes based including those ones based on sexual orientation, gender identity, expression and sex characteristic.
- To ensure all police investigation on cases of discrimination, violence, murder, and hate crime against LGBTQ persons are done in a timely manner

For enquiry or more information: contact declan at declan@pelangicampaign.org

⁶ Women's Aid Organisation (WAO): [CEDAW & Malaysia. Malaysian non-Government organizations' alternative report accessing the government's progress in implementing the United Nations' Convention on Elimination of all forms of discrimination against women \(CEDAW\) \(Petaling Jaya: 2012\) page 227](#)

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Teen bully victim Nhaveen dies <https://www.thestar.com.my/news/nation/2017/06/16/teen-bully-victim-nhaveen-dies-family-and-friends-fill-hospital-grounds-grieving-and-fuming-over-boy/>

⁸ Nhaveen tragedy: Health Minister calls for action against bullying, gangsterism

<https://www.nst.com.my/news/nation/2017/06/249401/nhaveen-tragedy-health-minister-calls-action-against-bullying-gangsterism>