

**STUDY ON
DISCRIMINATION
AGAINST
TRANSGENDER
PERSONS BASED IN
KUALA LUMPUR AND
SELANGOR**

**(RIGHT TO EDUCATION, EMPLOYMENT,
HEALTHCARE, HOUSING AND DIGNITY)**

by
THE HUMAN RIGHTS COMMISSION OF MALAYSIA
(SUHAKAM)

First Printing, 2019

Copyright Human Rights Commission of Malaysia (SUHAKAM), 2019

The copyright of this report belongs to SUHAKAM. This report may be reproduced with SUHAKAM's permission. SUHAKAM assumes no responsibility, warranty and liability expressed or implied by any other reproduction of this publication or any part thereof.

Published in Malaysia by

Human Rights Commission of Malaysia

11th Floor, Menara TH Perdana

Jalan Sultan Ismail

50250 Kuala Lumpur

Email : humanrights@suhakam.org.my

URL : <http://www.suhakam.org.my>

Design and Printed by

Dhom Creative

No. 18-2, Jalan Dataran Suria 15/7/3

Seksyen 15, 42300 Bandar Puncak Alam

Selangor Darul Ehsan

ISBN 978-967-2295-02-0

TABLE OF CONTENTS

Acknowledgements	1
Executive Summary	2
CHAPTER 1: INTRODUCTION	8
The LGBT Community in Malaysia and the Commission's work	8
Objectives of the Study	10
The Significance of the Study	10
The Methodology	10
Limitation	11
Background and Definition of Transgender and Related Terms	12
Researches or Studies Related to Gender Identity, Sexual Orientation and Intersex (Sex Characteristics)	15
CHAPTER 2: DOMESTIC LEGAL FRAMEWORKS AND INTERNATIONAL HUMAN RIGHTS FRAMEWORKS	18
Domestic Legal Frameworks	18
United Nations Human Rights Framework: Treaties and Charter Based	30
CHAPTER 3: FINDINGS AND ANALYSIS	38
Introduction	38
Survey Findings	38

A. Demography	38
B. Right to Education	41
C. Right to Employment	49
D. Right to Healthcare	64
E. Right to Housing	82
F. Right to Dignity	86
G. Other Matters	100
CHAPTER 4: CONCLUSION AND RECOMMENDATIONS	108
Conclusion	108
Recommendations	109
A. Awareness and Education	109
B. Continuous Dialogue and Discourse	109
C. Legal or Policy Framework Against Discrimination	110
D. Criminal Justice Process	111
E. Capacity Building and Training	111
F. Facilities Suitable to the Needs of Transgender Persons	112
References	113

ACKNOWLEDGEMENTS

This Report is made possible by the contributions and hard work of many committed individuals. The Commission gratefully acknowledges the assistance of Justice for Sisters and SEED for in making the Study on Discrimination against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity) a success. The Commission is particularly grateful to the transgender respondents who took part in the study and shared their experience that form the basis of the Report.

The Commission records its appreciation to Commissioner Prof Dato' Dr Aishah Bidin, the project leader and for overseeing the research project. The Commission also thanks our committed officers and staff especially from the policy and law division in particular, Nurul Hasanah Ahamed Hassain Malim, Lau Sor Pian, Jesrina Kaur Grewal, Siti Rahayu M. Noor and Abel Athi Kumar for the contribution to this Report.

Finally, the Commission extends its appreciation to all other stakeholders who have participated and contributed their insight and views in this Report.

Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity)

CHAPTER 1 INTRODUCTION

In Malaysia, the lesbian, gay, bisexual and transgender (LGBT) community is often regarded as a taboo. In Malaysia, strict conformity to the binary classification of gender, i.e male or female, resulted in discrimination against LGBT community that led to many violations of their human rights. This traditional classification is deeply rooted in laws, policies, culture and spiritual beliefs.

The Human Rights Commission of Malaysia (the Commission) is responsible to promote and protect human rights for all sectors of society in Malaysia as per the functions and powers enshrined under the Human Rights Commission of Malaysia Act 1999. Specifically stated under Section 4(1) and (2) of the Act, the Commission is tasked to promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops and to disseminate and distribute the results of such research.

Referring to this provision, the Commission had taken up several initial works on the LGBT community since 2010 which served as a starting point for this study. Upon considering all views and the sensitivities of discussing issues pertaining to LGBT openly, the Commission choose to adopt a step-by-step approach to engage with stakeholders in a closed-door discussions.

In 2015, the Commission met with Justice for Sister in which the latter suggested that the Commission conducted a public inquiry into the violation of human rights of the LGBT community. However, after taking into consideration its limited resources, the Commission decided to embark on a study to identify the types of discrimination faced specifically by transgender persons based in Kuala Lumpur and Selangor and understand how their basic rights have been violated.

The Commission decided to focus on transgender persons due to the visibility of their gender expression, exposing them to a greater number of discriminatory practices. The main objective of the study is to assist the Commission in identifying strategic actions to ensure respect of human rights of the transgender community. The specific objectives of the study could be summarised as below:

- i. To monitor and compile data/information on incidences of discrimination against transgender persons on the rights to employment, health care, education, housing and dignity.

- ii. To collect materials and information on the challenges of transgender person in order to promote respect of their human rights.
- iii. To utilise this materials and information as an advocacy tools to create awareness on transgender issues.

The study involved 100 transgender respondents between the age of 18-70 years old who are based in Kuala Lumpur and Selangor only. Out of the 100 respondents, 69 self-identified as trans women, trans men (28), trans masculine (1) and intersex persons (2). The limitation in number was due the Commission's budgetary and personnel resources. The method used to collect the information were in the form of questionnaires in which the respondents were required to complete detailed structured interview comprising of closed - ended questions and several open questions. The selection of the respondents was based on random sampling and the interviews session were done face to face which took place from 6 June 2016 to 27 October 2016.

CHAPTER 2 DOMESTIC LEGAL FRAMEWORKS AND INTERNATIONAL HUMAN RIGHTS FRAMEWORKS

Human rights are rights that people have by virtue of being human. Human rights are based on fundamental principles such as dignity, equality, respect and fairness and go beyond being mere legal or political commitments. All human beings have certain unalienable rights which are acknowledged by international instruments.

In this chapter, observations were made on several domestic legal frameworks including the Federal Constitution of Malaysia, Syariah laws followed by related international human rights framework namely the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of Discrimination against Women (CEDAW), Universal Periodic Review (UPR), Human Rights Council and Yogyakarta Principles.

CHAPTER 3 FINDINGS AND ANALYSIS

The findings and analysis of the study focuses on five main areas as summarised below:

a. **Right to Education**

- Majority of the respondents were either aware or were questioning about their gender identity and/or sexual orientation while they were in educational institutions.
- The hate speech and name calling were the rampant experiences shared by the respondents from peers, teachers/lecturers and administrators.

- Bullying incidences is a common experience faced by the transgender persons due to their gender identity, gender expression and/or sexual orientation.
- More than half of the respondents shared that felt uncomfortable with the binary school uniforms.
- Toilet issue facing by the respondents were raised due to their gender identity.
- Sexual violates incidences such as unwanted sexual gestures, language, image, molestation or unwanted touching, threat of rape and rape or coerced sex occurred in educational institutional. The perpetrators of the incidences were from peers and teachers or lecturers.
- The study also show that the educational system lacks any redress mechanism which transgendered children trust, to discuss the unique challenges faced by them.

b. Right to Employment

- SUHAKAM interviewed 64 respondents who were working full time, working part time (45), unemployed (10) and students (5).
- A total of 21 respondents had been working more than one part time job.
- Sex worker was the second most frequent full-time job (20/64) and part time (15/45) job for the respondents. This shows that many respondents had taken up sex work as their source of earnings, often because of denial of mainstream jobs due to their gender expression
- 35 of the respondents were not allowed to express their authentic gender identity from their employers.
- 53 respondents stated that their colleagues tend to ask inappropriate and intrusive questions to them.
- Respondents shared that when they dealt with customer at a workplace, 25 of them faced sexual harassment.
- With regard to the experiences of the respondents who were sex workers, 28 respondents stated they faced violence from clients/customers, 25 of them from authorities and 29 of them from members of public.

c. Right to Healthcare

- With regard to the level of satisfaction of medical health services, it was found that the respondents were satisfied with services provided by the community clinic runs by NGOs.
- Respondents were unconformable with the placement of the trans women were mostly in male wards and the placement of trans men were in female wards. It shows that the placements of ward were according to their sex assigned at birth.

- Out from 100 respondents, only 53 respondents comfortable to disclose their gender identity and sexual orientation to the medical health professional.
- Respondents states that most of the time health care professionals, including doctors, nurses, and staff used name as per identification card (IC) when calling their name.
- 19 percent of respondents responded that they had voluntary sought help from mental professional and 18 to religious authority, while, 15 percent of the respondents were forced to see mental health professional and 9 percent of the respondents were forced to consult religious authority.
- It was quite worrying that 17 trans women, 14 trans women and both intersex persons experienced suicidal ideation. The act of self-harm among the respondents were also evidenced, in which involved 10 trans women, 8 trans women and both intersex persons. 23 respondents shared that they had attempted suicide.
- There are only 27 of 86 respondents received medical advice from the healthcare professional at hospitals or clinics on hormone.
- Among reasons that respondents had not subscribed to insurance was because it does not cover trans specific health care needs, financial problem and concerns about disclosing their gender identity.

d. Right to Housing

- 25 respondents (23 trans women, one trans man and intersex persons respectively) shared that they had been denied room or house due to their gender identity, gender expression, and/or sexual orientation.
- 7 trans women stated that they had to pay higher rent because of their gender identity.
- 10 of the respondents shared that they had experienced difficulties to apply for public housing due to their gender identity.
- 31 respondents shared that they experienced violence from their neighbours or people in their neighbourhood because of their gender identity and gender expression.

e. Right to Dignity

- 93 respondents shared that they experienced violence because of their gender identity and gender expression. The type of violence includes physical violence, verbal violence, emotional violence and sexual violence and by different actors including authorities, family members, intimate partners and members of the public.
- Violence experienced by respondents were mostly from the members of public, often verbal.
- There were 48 respondents in the study who shared that they had been arbitrarily questioned/stopped because of their gender identity and gender expression by the authorities.

- Out of the 100 respondents, 39 trans women respondents shared that they were arrested by the authorities because of their gender identity and/or gender expression.
- Respondents further shared that during the arrest by the police, most were not informed of ground of arrest; followed by were not informed of their legal rights.
- During detention in police lock-up, majority of the trans women were detained and placed in cisgender men facilities.
- In prison, there were only 2 trans women who were detained in cisgender men facilities and placed in the same cell with cisgender men inmates. Other remaining trans women were placed in cisgender man facilities but either different block, cell or in solitary cell.
- Respondents experienced sexual violence while in detention or imprisonment by authorities and inmates.
- Only 22 respondents said that they felt safe while there were in detention or imprisoned and 16 respondents felt not safe.

CHAPTER 4 CONCLUSION AND RECOMMENDATIONS

The study revealed that all transgender respondents agreed that at some stage of their life, they have encountered some form of discrimination solely due to their gender identity and expression. They also experienced harassment, abuse, and violence by the general public, the state authorities as well as non-state agents. It was also evident that the transgender people do not only face challenges to have their identity recognised but also had issues in assessing basic public services such as healthcare and education.

The Commission notes the difficulty to address any issues with regard with the transgender community, owing to the religious and cultural sensitives in the country. On this, the Commission believes that it is the role of government, NGOs and itself to educate the public and advocate for the respect of the rights and dignity of the transgender community. The Commission's stand is clear that steps must be taken to uphold their rights as human beings and protect them against any discrimination, harm and violence. The Commission would like to reiterate that all human beings, regardless of their sexual orientation, shall enjoy a full range of human rights.

Based on the study, the Commission recommends for the protection and promotion of transgender person rights in conformity with international human rights standards and norms through:

a. **Awareness and Education**

Stakeholders: Ministry of Education, Ministry of Higher Education, Ministry of Health, public and private universities

b. Continuous Dialogues and Discourses

Stakeholder: Ministry of Women, Community and Family Development; Ministry of Education, Ministry of Health, Ministry of Urban Wellbeing, Housing and Local Authorities; Ministry of Human Resources; Ministry of Home Affairs; Police; Prison Department; Media; CSOs and SUHAKAM

c. Legal or Policy Framework Against Discrimination

Stakeholder: Ministry of Women, Community and Family Development; Ministry of Education, Ministry of Health, Ministry of Urban Wellbeing, Housing and Local Authorities; Ministry of Human Resources; Ministry of Home Affairs; Police; Prison Department; Media; CSOs and SUHAKAM

d. Criminal Justice Process

Stakeholders: Ministry of Home Affairs; Police; Prison Department; the Bar Council; CSOs and SUHAKAM

e. Capacity Building and Trainings

Stakeholders: Ministry of Human Resources; Ministry of Health; Ministry of Education; Ministry of Higher Education; Ministry of Home Affairs; Business associations; Trade Unions; CSOs and SUHAKAM

f. Facilities Suitable to the Needs of Transgender Persons

Stakeholders: Ministry of Health, Ministry of Home Affairs; Police; Prison Department; Judicial Services; CSOs and SUHAKAM

STUDY ON DISCRIMINATION AGAINST TRANSGENDER PERSONS BASED IN KUALA LUMPUR AND SELANGOR (RIGHT TO EMPLOYMENT, HEALTH CARE, EDUCATION, HOUSING AND DIGNITY)

CHAPTER 1 INTRODUCTION

THE LGBT COMMUNITY IN MALAYSIA AND THE COMMISSION'S WORK

1. In Malaysia, the lesbian¹, gay², bisexual³ and transgender⁴ (LGBT) community is often regarded as a taboo. In Malaysia, strict conformity to the binary classification of gender, i.e male or female, resulted in discrimination against LGBT community that led to many violations of their human rights. This traditional classification is deeply rooted in laws, policies, culture and spiritual beliefs.
2. Moreover, the culture and spiritual beliefs LGBT community calls for equal rights are often demonised in mainstream media, whom have contributed to the negative portrayal of the community. Media reports often perpetuated stereotypes, stigmatised the community, and exposed them to security risks⁵. The existence of the LGBT community itself has been sensationalised and are regarded as a “threat” to society, further alienating the group. Therefore, it could be argued that the LGBT community face lack of acceptance in mainstream Malaysia. Indeed, their life in Malaysia has become a challenge and hence it would be appropriate to classify them as a marginalised group.

1 A woman who is attracted solely to other women

2 A person who is identified as homosexual

3 A person who is attracted to other persons regardless of their sex

4 Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities—including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical. Trans women identify as women but were classified as males when they were born. Trans men identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not. (based on fact sheet- LGBT Rights: Frequently asked question; accessed at http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-28-UN_Fact_Sheets_English.pdf on 13 November 2017

5 A complaint dated 2 June 2010 which was received by Complaint and Investigation Working Group (Currently known as Complaint and Monitoring Group), SUHAKAM. Complainant represented the interests of Lesbian, gays, bisexuals and transsexuals (LGBT). They highlighted discrimination against LGBT in the media and alleged that this was a violation of their human rights. They claimed that such negative publicity affirms false stereotypes, stigmatises them and exposed them to security risks. They seek SUHAKAM help to: 1. Protect their right as equal human being to live a life of dignity as enshrined under the UDHR; 2. Recommend the government to repeal/ review laws that criminalise consensual sexual behaviour between adult; 3. Educate the public on non-discrimination and the Yogyakarta Principles on the basic rights of sexual minorities; and 4. Recommend the government to repeal/ review laws which restrict freedom of expression and information

3. The Human Rights Commission of Malaysia (referred to as “the Commission” is responsible to promote and protect human rights for all sectors of society in Malaysia as per the functions and powers enshrined under the Human Rights Commission of Malaysia Act 1999. Specifically stated under Section 4(1) and (2) of the Act, the Commission is tasked to promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops and to disseminate and distribute the results of such research.
4. Referring to this provision, the Commission had taken up several initial works on the LGBT community since 2010 which served as a starting point for this study. Upon considering all views and the sensitivities of discussing issues pertaining to LGBT openly, the Commission choose to adopt a step-by-step approach to engage with stakeholders in a closed-door discussions. These activities included:
 - a. Meeting with various Islamic groups, LGBT groups as well as individuals working and advocating for LGBT rights. This was followed by a meeting with representatives of non-Muslim groups in February 2011.
 - b. The Commission also co-organised a RTD on Gender Equality: unaddressed women’s right issues with Selangor Community Awareness Organisation (EMPOWER) in 2011.
 - c. Aside from that, in 2014 the Commission met with Human Rights Watch (Asia Division) to discuss the findings of their report on the alleged human rights abuses against transgender groups in Malaysia.
 - d. In January 2015, the Commission met Justice for Sisters to discuss the trial involving Muslim transgender women related to Section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992.
 - e. In July 2018, the Commission organised a workshop on Human Rights and Justice where gender issues was one of the issues discussed in the panel discussions.
5. During the 2015 meeting with Justice for Sister, the activist group suggested that the Commission conducted a public inquiry into the violation of human rights of the LGBT community. However, after taking into consideration the Commission’s limited resources, the Commission had instead decided to embark on a study to identify the types of discrimination faced specifically by transgender persons based in Kuala Lumpur and Selangor and understand how their basic rights have been violated. The Commission decided to focus on transgender persons due to the visibility of their gender expression, exposing them to a greater number of discriminatory practices.

OBJECTIVES OF THE STUDY

6. The main objective of the study is to assist the Commission in identifying strategic actions to ensure respect of human rights of the transgender community. The specific objectives of the study could be summarised as below:
 - i. To monitor and compile data/information on incidences of discrimination against transgender persons on the rights to employment, health care, education, housing and dignity.
 - ii. To collect materials and information on the challenges of transgender person in order to promote respect of their human rights.
 - iii. To utilise this materials and information as an advocacy tools to create awareness on transgender issues.

THE SIGNIFICANCE OF THE STUDY

7. This report is an initial study conducted by the Commission on transgender person subsequently addressing issues of gender identity which is intersect with gender expression and sexual orientation. There were 4 cases relating to LGBT, reported to the Commission between June 2010 and 2 March 2017. The nature of the complaints could be categorised into discrimination, hate speech and challenges with the criminal justice system. Since, the number of complaints received by the Commission is relatively low, the data collected during the study will also be very important to establish the types and number of violation and discrimination faces by the affected individual for the Commission's record.
8. This study can be used as an advocacy tool to facilitate discussion and dialogue with the relevant authorities including the enforcement authorities, and state religious authorities as well as other stakeholders to highlight human rights discrimination against transgender persons focusing on right to employment, health care, education, housing and dignity.

THE METHODOLOGY

9. The study involved 100 transgender respondents who are based in Kuala Lumpur and Selangor only. The limitation in number was due the Commission's budgetary and personnel resources.
10. The method used to collect the information were in the form of questionnaires in which the respondents were required to complete detailed structured interview comprising of closed - ended questions and several open questions. The selection of the respondents was based on random sampling and the interviews session were done face to face. The focus of the questionnaire was to identify the demography, and discrimination faced in employment, health care, education,

housing and dignity. For the dignity section, the questions included abuse or violence during the criminal justice process such as arrest and detention by authorities. Violence and abuse from inmates during their detention by the authorities were also recorded. The experiences of violence were also recorded from family members, intimate partner and the society at large.

11. The context of “violence” in this study is not limited to physical abuse but also includes other types of harassment (verbal, psychological) experienced by the respondents. The respondents were given the liberty to define, based on their own experiences and interpretation whether a certain act is regarded as violent or otherwise.
12. The respondents aged between 18 to 70 years old. The interviews took place from 6 June 2016 to 27 October 2016. Out of the 100 respondents, 69 self-identified as trans women⁶, 28 self-identified as trans men⁷, one self-identified as trans masculine and the remaining 2 self-identified as intersex persons. It should be noted here that even though the study were intended to only focus on transgender persons, unexpectedly there were two respondents that had self-identified themselves as intersex⁸ persons. Furthermore, the Commission agreed to include the experience of the trans masculine under the trans men’s statistic based on two reasons. Firstly, trans masculine is defined as someone assigned a female sex at birth who identifies with a masculine identity and spectrum⁹. Secondly, the experience that the trans-masculine respondent shared during the interview were similar to a trans man’s experience.
13. In the report, the study is divided into four main sections which includes:
 - a. Introduction
 - b. Domestic Legal Framework and International Human Rights Framework
 - c. Findings and Analysis
 - d. Conclusion and Recommendations

LIMITATION

14. The estimation population of Malaysia recorded by the Department of Statistic is 31.66 million in 2016.¹⁰ In Kuala Lumpur and Selangor’s the estimated population is 1.79 million and 6.03 million respectively¹¹. The sampling of the respondents is only limited to 100 respondents and it is believed that the number does not even equate to 1% of the total transgender persons in Kuala Lumpur and Selangor.

6 Trans women identify as women but were classified as males when they were born.

7 Trans men identify as men but were classified female when they were born.

8 An overarching term used to describe people born with sex characteristics (including genitals, gonads and chromosome patterns) that does not fit typical binary notions of male or female bodies.

9 <http://www.dictionary.com/browse/transmasculine> (assessed on 13 January 2017)

10 http://www.dosm.gov.my/v1/index.php?r=column/cone&menu_id=dDM2enNvM09oTGtQemZ-PVzRTWENmZz09 (assessed on 2 March 2017)

11 http://www.dosm.gov.my/v1/index.php?r=column/cone&menu_id=dDM2enNvM09oTGtQemZ-PVzRTWENmZz09 (assessed on 2 March 2017)

Some of the respondents had also migrated from other states in Malaysia. Therefore, the experiences of the transgender persons recorded only represents a small group of the community.

15. Due to the sensitive nature and the lack of recognition of their identity, the absence of official data on the total number of the transgender persons in Kuala Lumpur and Selangor was expected. Therefore, it was very challenging for the Commission to ascertain the violation and discrimination of rights faced by this group and to have access to their experience. Considering this factor, the Commission had engaged with transgender non-government organisations to earn trust from the community to encourage them to come forward and participate in the study as respondents. In this context, the Commission would like to record its appreciation to Justice for Sisters and SEED for their assistance.

BACKGROUND AND DEFINITION OF TRANSGENDER AND RELATED TERMS

16. This study utilises “inclusive terminology” to avoid prejudice, discrimination and stereotypes. The transgender and trans “are umbrella terms to describe people whose gender identity does not match the sex they were assigned at birth”.¹² The most common terms for transgender person in Malaysia is, but not limited to, trans woman, trans man, mak nyah, transsexual and thirunagai. However, there are also derogatory and humiliating terms used in Malaysia by state and non-state actors describing transgender individual such as “bapak”, “pondan”, “sotong” (“squid”), “tomboy” and others. The preferred term by transgender persons shared by respondents to be used in identifying themselves will be discussed in chapter 3.
17. It is very important to understand the definitions of sex and gender in this topic since it carries different meaning. The definitions of sex and gender as provided by the American Psychology Association (APA) document are as below¹³:

“Sex refers to a person’s biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.”¹⁴

“Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person’s biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.”¹⁵

12 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 12

13 <https://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf> (accessed on 5 November 2015)

14 Based on American Psychological Association. (2012). Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients. American Psychologist, 67(1), 10–42. doi: 10.1037/a0024659. P.11

15 Ibid

18. On the definition of sexual orientation and gender identity, each are from different spectrum and it is defined in The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (refer as the Yogyakarta Principles). The Yogyakarta Principles is a set of principles that addresses a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Yogyakarta Principles was drafted, developed, discussed and refined by a group of distinguished human rights experts¹⁶. The Yogyakarta Principles, defines sexual orientation and gender identity, respectively, as below:

“Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”

“Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance - function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.”

For detail information on the Yogyakarta Principles, please refer to Chapter 2.

19. The terminology of gender expression is also important which is defined as “a person’s ways of communicating masculinity or femininity (or both or neither) externally. This is done through physical appearance – including clothing, hair styles and the use of cosmetic – and mannerism, ways of speaking and behavioural patterns when interacting with others”.¹⁷
20. In addition to that, they were two respondents that had self-identified as intersex. The definition of intersex is as below:

“Intersex people are born with physical or biology sex characteristics including sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns that do not fit the typical definitions of female and male. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex persons may have any sexual orientation and gender identity.”¹⁸

21. As mentioned, the accurate number of transgender persons’ population in Malaysia is unknown because only binary sex is recognised by the authorities and society by large. But according to a research by Teh Yik Koon published in 2002, Pink Triangle (currently known as PT Foundation), a non-governmental organisation estimated that the total number of Mak Nyahs in Malaysia was

16 The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. P. 7

17 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 12

18 United Nations Free & Equal campaign factsheets, available from: <https://www.unfe.org/fact-sheets>

around 10,000¹⁹. Meanwhile, according to a privately-sponsored survey in 2001, there were at least 50,000 transsexuals in the country.²⁰

22. Since many researches are focused on trans women and not trans men, there is a lack of information on trans men. The discrimination against trans women and trans men is also seen to be different, since trans men have chosen to remain in hiding, there is limited record of the trans men experience in Malaysia. In contrast, trans women are more visible, organised and vocal since among them they received more peer support and advocacy groups among the trans women community which provide support to transgender individuals are more prevalent.

The relation between Transgender and Gender Dysphoria

23. The condition of transgender has always been linked with gender identity disorder. This medical condition of transgender persons was discussed in Malaysia in the case of Muhamad Juzaili Bin Mohd Khamis & Ors v State Government of Negeri Sembilan & Ors²¹ where gender identity disorders were characterized by strong and persistent cross gender identification accompanied by persistent discomfort with one's assigned sex.²² The decision of the case will be discussed later. However for the purpose of removing stigma, gender identity disorder is now reclassified as gender dysphoria. Gender dysphoria is described by the American Psychiatric Association in its 5th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as:

“People whose gender at birth is contrary to the one they identify with will be diagnosed with gender dysphoria. For a person to be diagnosed with gender dysphoria, there must be a marked difference between the individual's expressed/experienced gender and the gender others would assign him or her, and it must continue for at least six months. In children, the desire to be of the other gender must be present and verbalised. This condition causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Gender dysphoria “is manifested in a variety of ways, including strong desires to be treated as the other gender or to be rid of one's sex characteristics, or a strong conviction that one has feelings and reactions typical of the other gender.”

19 Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*. Eastern University Press, 2002. P. 53

20 Wong Ee Lynn, *Neither Here Nor There: the Legal Dilemma of the Transsexual Community in Malaysia*. Accessed via http://www.malaysianbar.org.my/gender_issues/Neither_here_nor_there_the_legal_dilemma_of_the_transsexual_community_in_malaysia.html, 1 February 2005 (accessed on 19 November 2015)

21 [2015]MLJ 65

22 Ibid

RESEARCHES OR STUDIES RELATED TO GENDER IDENTITY, SEXUAL ORIENTATION AND INTERSEX (SEX CHARACTERISTICS)

24. As mentioned earlier, transgender is not an easy topic to be discussed in Malaysia, however there are several researches that were conducted by academicians and non-governmental organisation, that shows how discriminatory practices affects transgender lives.
25. In a research entitled *The Mak Nyahs: Malaysian Male to Female Transsexuals*²³ by Teh Yik Koon, it was highlighted that “...a large number of Mak Nyah are sex workers as they have difficulty in securing a decent job²⁴; their housemates are both Mak Nyahs and non Mak Nyah and they usually have problem renting or buying houses²⁵; they are also at risk of being caught by the police and the Islamic authority for indecent behaviour and cross dressing²⁶.”
26. Irrefutably many researches on HIV/AIDS will always include transgender persons in their research’s purview. In the same research which “interviewed 15 Mak Nyahs from 5 major towns in Malaysia showed that knowledge of HIV/AIDS was poor and practice of safe sex are low among the Mak Nyahs.²⁷”
27. National human rights institutions (NHRIs) have also pursued studies relating to gender identity, sexual orientation and Intersex (sex characteristics). Some of their works include:
 - (i) The New Zealand Human Rights Commission had conducted an Inquiry into Discrimination experienced by transgender People in 2006 which focused on “*the nature and extent of discrimination experienced by transgender people; the accessibility of public health services to transgender people (incorporating the minimum core obligations of both the primary and secondary health services, including, but not limited to, gender reassignment services), and the barriers faced by transgender people when attempting to gain full legal recognition of their gender status.*²⁸” Among of the major findings of the inquiry was that “*transgender people experience discrimination that affects their lives and compromise their safety*”, and “*four out of five submissions to the inquiry described discrimination: at school, trying to find job, in the street, and in trans people’s day to day interactions with shops, government agencies and health professional*” .²⁹

23 Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*, Eastern University Press. 2002

24 Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*, Eastern University Press. 2002. P.100

25 Ibid

26 Ibid

27 Teh YK. HIV- related needs for safety among male to female transsexual (mak nyah) in Malaysia. SA-HARA J 2008; 5(4): 178-185

28 To Be Who I am”, New Zealand Transgender Inquiry report, New Zealand Human Rights Commission, 2008. P. 2

29 To Be Who I am”, New Zealand Transgender Inquiry report, New Zealand Human Rights Commission, 2008. P. 94

(ii) In East Africa - The Kenya Human Rights Commission conducted a study on LGBTI entitled "the Outlawed Amongst Us". The study highlighted the violations observed and reported to its commission between May and October of 2010. This study is a broader step taken by the Kenya Human Rights Commission on the LGBTI community's search for equality and non-discrimination.³⁰ From the study, *it was found that human rights violations against LGBTI persons in Kenya are systematic, highly prevalent and generally not redressed by the state when called to*³¹. These major findings are supported by the following issues:

- *LGBTI persons are routinely subjected to abusive speech, including hate speech and incitement to violence. They are also open to physical violence from mobs and sexually violence from police, vigilantes and organised criminals.*³²
- *Failure to offer adequate protection to LGBTI person who are discriminated against in both policy and legislations*³³ *The law only recognises the male and female gender dichotomy; intersex and transgender persons have no legal recognition due to lack of legislative architecture.*³⁴ *LGBTI persons are harassed by state official in the form of extortion of bribes, sexual favours and trumped up charges.*³⁵
- *LGBTI persons are driven underground due to fear of prosecution which leads to low access to medical care including sexual and reproductive health services and products.*³⁶
- *Service providers such as health care practitioners, education administrator, landlords and state security agents deliberately refuse to attend to LGBTI persons, schools and colleges expel students on grounds of actual or presumed sexual orientation or gender identity and the police also fails to investigate and prosecute persons who perpetrate violence or violate rights of LGBTI persons.*³⁷

(iii) The Australian Human Right Commission had produced its national consultation report 2015 titled Resilient Individual: Sexual Orientation, Gender Identity & Intersex Rights. The report shared the experiences of LGBTI Australians which detailed unjust discrimination and significant human rights challenges.³⁸ Among of the outcomes of the study are as follow:

30 Kenya Human Rights Commission. The Outlawed Amongst Us. KHRC 2011.

31 Kenya Human Rights Commission. The Outlawed Amongst Us. KHRC 2011. P.1

32 Kenya Human Rights Commission. The Outlawed Amongst Us. KHRC 2011. P. 2

33 Ibid

34 Ibid

35 Ibid

36 Ibid

37 Ibid

38 Australian Human Rights Commission. Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights. National Consultation Report 2015. P.2

- *Discrimination in the delivery of government services, particularly on healthcare and education*
- *Issues on relationship recognition, families and protecting the best interest for the child*
- *Trans and gender diverse people had faced distinct barriers*
- *Law reform needed to be undertaken to ensure protection of LGBTI rights*

28. In addition to that, the Asia Pacific Forum of National Human Rights Institution³⁹ (APF) and the United Nations Development Programme (UNDP) has published a manual for National Human Rights Institution on the promoting and protecting human rights in relation to sexual orientation, gender identity and sex characteristics⁴⁰. The manual is served as a useful resource to increase knowledge and understanding and enables national human rights commissions (NHRIs) in Asia Pacific to learn the experiences of each other.

³⁹ APF is a network of NHRIs in the Asia and Pacific region.

⁴⁰ Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions. June 2016

CHAPTER 2

DOMESTIC LEGAL FRAMEWORKS AND INTERNATIONAL HUMAN RIGHTS FRAMEWORKS

DOMESTIC LEGAL FRAMEWORKS

29. The design of laws, policies and practices of most states are often based on heteronormativity⁴¹. There are many issues that have been raised by transgender groups which relates to violation of human rights, including, among others, arbitrary and violent arrests by the enforcement authorities and denial of employment due to their gender identity and gender expression. However, in the eyes of the state and partly of society, the discrimination is insignificant since transgender persons are not recognised as a legitimate part of the society due the prevalence of heteronormativity. Moreover, the existing discriminatory laws and policies further support the act of the state to prosecute the transgender person. They are widely criticized for their experience⁴² and accused of being morally wrong in practicing unacceptable behaviour which are against the religious and cultural norms. Hence, this alienation could affect or limit their access to fundamental rights.
30. In this chapter, observations will be made on several domestic legal frameworks followed by related international human rights framework.

The Federal Constitution of Malaysia

31. The Human Rights Commission Act 1999 provides the definition of “human rights” referring to the fundamental liberties as enshrined in Part II of the Federal Constitution⁴³ and due regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution⁴⁴. Therefore, human rights are protected as intended by the Federal Constitution which could be seen in the Article 5 – 13 touching on liberty of the person, prohibition of slavery and forced labour, protection against retrospective criminal laws and repeated trials, equality, prohibition of banishment and freedom of movement, freedom of speech, assembly and association, rights in respect of education and rights to property respectively.
32. The arguments on the rights of transgender is narrated by the above-mentioned rights especially Article 5 of the Federal Constitution which provides that “no person shall be deprived of his life or personal liberty in accordance with law”.

41 <http://www.yourdictionary.com/heteronormativity> accessed on 16 November 2017, heteronormativity means: is the view that all human beings are either male or female, both in sex and in gender, and that sexual and romantic thoughts and relations are normal only when between people of different sexes.

42 Same sex intercourse, cross dressing and undergone for gender re-assignment surgeries

43 Section 2 of Human Rights Commission Act 1999

44 Section 4 (4) of Human Rights Commission Act 1999

Article 8 (1) of Federation Constitution provides that “all persons are equal before the law and entitled to the equal protection of the law” and “there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment”⁴⁵.

33. However, it is essential to note that the “gender” provided by Article 8(1) of Federal Constitution translated into national language is “jantina” (which means “sex”). The interpretation of these two words have brought different arguments to the provision.
34. Bearing in mind that although the Federal Constitution is meant to uphold the fundamental liberties of all, for a Muslim, Syariah criminal laws applies to them which also often referred to as “moral laws”. Moreover, article 8(5) (a) of the Federal Constitution states that the Article 8 “does not invalidate or prohibit any provision regulating personal law”, which relates to Islamic affairs enumerated in the state list under item 1 of List II of the Ninth Schedule to the Federal Constitution which includes ...”creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included In the Federal list...”.
35. In addition, Article 3(1) states that Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. Hence the impact on diverse gender and sexualities orientation are very significant. This coupled with the general understanding of gender identity not only have legal but also cultural and social impacts. Nevertheless, it is imperative to note that even though Islam is the religion of the Federation, article 3 (4) of the Federal Constitution stated that “*nothing in this Article derogates from any provision of this Constitution*”. It is also worth noting that article 4(1) on the supremacy of the Federal Constitution stated that any law passed which is inconsistent with Constitution shall be void to the extent of the inconsistency, and there was no mentioned that laws needed to comply with Sunnah and Quran⁴⁶. In the case of Che Omar bin Che Soh v. Public Prosecutor the Supreme Court held that the “*term “Islam” or “Islamic religion” in Article 3 of the Federal Constitution in the context means only such acts as relate to rituals and ceremonies*”.

45 Article 8(2) of Federal Constitution

46 “The meaning of ‘Islam’ in Art. 3(1) is explained by the Supreme Court in Che Omar bin Che Soh v. Public Prosecutor [1988] 2 MLJ 55 (the panel comprising Salleh Abas LP, Wan Sulaiman SCJ, Seah SCJ, Hashim Yeop A. Sani SCJ (as he then was) and Syed Agil Barakbah SCJ), as follows (at p. 56): “In our view, it is in this sense of dichotomy that the framers of the Constitution understood the meaning of the word ‘Islam’ in the context of Article 3. If it had been otherwise, there would have been another provision in the Constitution which would have the effect that any law contrary to the injunction of Islam will be void. Far from making such provision, Article 162, on the other hand, purposely preserves the continuity of secular law prior to the Constitution, unless such law is contrary to the latter.”

36. However, in the case of ZI Publications Sdn Bhd & Anor v. Kerajaan Negeri Selangor (Kerajaan Malaysia & Anor, Intervener)⁴⁷, the Federal Court in its conclusion states that

“Muslim in Malaysia is not only subjected to the general laws enacted by Parliament but also to the state laws of religious nature enacted by Legislature of the state. This is because the Federal Constitution allows the Legislature of a state to legislate and enact offences against the precepts of Islam. Taking the Federation as a whole, it is clear that it was the intention of the framers of the Constitution to allow Muslims in this country to be also governed by Islamic personal law. Thus, a Muslim in this country is therefore subjected to both the general laws enacted by Parliament and also the state laws enacted by the Legislature of a state”.

Nevertheless, the argument on the validity of laws passed at the state or federal level should be determine by the judicial pronouncement/system.

The Syariah Laws

37. As provided in the Article 74(2) of the Federal Constitution that *“without prejudice to any power conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List”*, which this include matters related to precepts of religion of Islam.

38. It is also important to highlight that Article 74(3) of the Federal Constitution provides that *“the power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this constitution”*.

39. Equally important is to note that each state in Malaysia has their own Syariah laws which penalised the behaviour of “cross dressing”, “non-binary identities and expressions” and other acts which are seen as not in line with Islamic teachings which only apply to a Muslim. These laws are listed below⁴⁸:

STATE	RELATED SECTION
<i>Enakmen 4 Tahun 1992, Enakmen Jenayah Syariah Negeri Sembilan 1992, Bahagian IV – Kesalahan</i>	<i>“Section 66 – Lelaki berlagak seperti Perempuan/ Male person posting a woman”</i>
<i>Enakmen 9 tahun 1988, Enakmen Kanun Jenayah Syariah 1988 (Negeri Kedah), Bahagian II, Kesalahan-kesalahan</i>	<i>“Section 7 – Pondan”</i>

⁴⁷ [2016] 1MLJ 153

⁴⁸ <https://justiceforsisters.wordpress.com/laws/> (accessed on 16 May 2016)

STATE	RELATED SECTION
<i>Enakmen 2 Tahun 1985, Enakmen Kanun Jenayah Syariah 1985 (Negeri Kelantan), Bahagian II, Kesalahan –kesalahan</i>	“Section 7 – Pondan”
<i>Enakmen 6 Tahun 1991, Enakmen Kesalahan Syariah (Negeri Melaka) 1991, Bahagian IV – Kesalahan – kesalahan lain</i>	“Section 72 – Lelaki berlagak seperti perempuan/ Male person posing as women”
<i>Enakmen 4 Tahun 1993, Enakmen Jenayah Dalam Syarak 1991 (Negeri Perlis), Bahagian II – Kesalahan – kesalahan</i>	“Section 7 – Pondan”
<i>Enakmen 3 Tahun 1995, Enakmen Kesalahan Jenayah Syariah 1995 (Negeri Sabah), Bahagian IV - Kesalahan</i>	“Section 92 – Lelaki berlagak seperti perempuan atau sebaliknya/male person posing as woman, or vice versa”
<i>Akta 559, Akta Kesalahan Jenayah Syariah (Wilayah-wilayah Persekutuan) 1997, Bahagian IV - Kesalahan yang berhubungan dengan kesusilaan</i>	“Section 28 – Orang lelaki berlagak seperti perempuan/ male person posing as woman”
<i>Enakmen 9 Tahun 1995, Enakmen Jenayah Syariah (Selangor) 1995, Bahagian IV – Kesalahan yang berhubungan dengan kesusilaan</i>	“Section 30 – Lelaki berlagak seperti perempuan/male person posing as woman”
<i>Enakmen 3 Tahun 1996, Enakmen Kesalahan Jenayah Syariah (Negeri Pulau Pinang) 1996, Bahagian IV – Kesalahan yang berhubungan dengan kesusilaan</i>	“Section 28 – Lelaki berlagak seperti perempuan/male person posing as woman”
<i>Enakmen 7 Tahun 2001, Enakmen Kesalahan Janayah Syariah (Takzir) (Terengganu) 2001, Bahagian IV – Kesalahan yang berhubungan dengan kesusilaan</i>	“Section 33 – Orang lelaki berlagak seperti perempuan/ male person posing as woman”
<i>Enakmen 4 Tahun 1997, Enakmen Kesalahan Jenayah Syariah 1997 (Negeri Johor), Bahagian IV – Kesalahan yang berhubungan dengan kesusilaan</i>	“Section 28 – Orang lelaki berlagak seperti perempuan/ male person posing as woman”
<i>Enakmen 3 Tahun 1992, Enakmen Jenayah (Syariah) 1992 (Negeri Perak), Bahagian VI – Kesalahan Berhubungan dengan maruah diri</i>	“Section 55 – Lelaki berlagak sebagai perempuan/male person posing as woman”

STATE	RELATED SECTION
<i>Ordinan 46, Tahun 2001, Ordinan Kesalahan Jenayah Syariah 2001 (Negeri Sarawak), Bahagian IV – Kesalahan yang berhubungan dengan kesusilaan</i>	“Section 25 – <i>Lelaki berlagak sebagai perempuan/male person posing as woman</i> ”
<i>Enakmen 11, Enakmen Kesalahan Jenayah Syariah 2013 (Negeri Pahang), Bahagian IV – Kesalahan berhubungan dengan Kesusilaan</i>	Section 33 – <i>Lelaki berlagak seperti perempuan/Male person posing as woman</i> Section 34 – <i>Perempuan berlagak seperti lelaki/ Female person posing as man</i>

40. Also important is the 1982 fatwa on the prohibition of sex reassignment surgery (SRS)⁴⁹ which was decided by the Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Hal Ehwal Agama Islam and in 2008 the same body decided an additional fatwa dealing with “female who appears like male”⁵⁰. Therefore, Muslims transgender will be more vulnerable to open arrest by Religious Department for infringement of state Islamic laws.

Related Cases to Gender Identity

41. In the case of Mohammed Juzaili bin Mohd. Khamis & 2 Others v. Kerajaan Negeri Sembilan & 4 Others⁵¹ which was mentioned earlier, it had garnered extensive public attention, where a judicial review was brought to the courts to declare a Syariah Enactment in Negeri Sembilan prohibiting crossdressing, as unconstitutional. The Court of Appeal ruled in favour of the transgender women and declared the state law discriminatory against those who were suffering from gender identity disorder (GID). The court ruled that the desire to cross-dress was a medical condition, and hence it was wrong to criminalise the behaviour. However, the State appealed to Federal Court and the case was overturned by on a technical issue that a legal challenge on constitutionality of law should be made directly to the Federal Court as the matter involved Federal Constitution.

49 *Jabatan Kemajuan Islam Malaysia. Kompilasi Pandangan Hukum, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia. 2015. P. 101 - Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-4 yang bersidang pada 13-14 April 1982 telah membincangkan Pertukaran Jantina Daripada Lelaki Kepada Perempuan. Muzakarah telah memutuskan bahawa: Pertukaran jantina dari lelaki kepada perempuan atau sebaliknya melalui pembedahan adalah haram di segi syarak*

50 *Jabatan Kemajuan Islam Malaysia. Kompilasi Pandangan Hukum, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia. 2015. P. 219 - Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-83 yang bersidang pada 22-24 Oktober 2008 telah membincangkan Hukum Wanita Menyerupai Lelaki (Pengkid). Muzakarah telah memutuskan bahawa pengkid, iaitu wanita yang berpenampilan dan mempunyai gerak laku serta naluri seksual seperti lelaki adalah haram di sisi agama. Muzakarah menggesa agar masyarakat Islam supaya memberi pendidikan dan tunjuk ajar yang sebaik-baiknya kepada anak-anak gadis khususnya dalam aspek berpakaian, perlakuan dan penampilan supaya gejala seumpama ini dapat dielakkan kerana ia adalah berlawanan dengan fitrah dan sunnatullah.*

51 [2015]MLJ 65

42. In the case of Wong Chiou Yong v. Pendaftar Besar/Ketua Pengarah Jabatan Pendaftaran Negara⁵² by High Court of Malaya, Ipoh, the learned judge in that case upheld the decision of the National Registration Department in refusing to amend or correct the birth certificate and National Registry Card of the plaintiff⁵³. The plaintiff a trans man, filed an originating summons to declare him as a man and to direct the National Registration Department to amend or correct his birth certificate and the identity card to give effect him as a male. The plaintiff had undergone gender affirmation surgeries. The presiding judge, the late VT Singham J made the following decisions⁵⁴:
- a) A person who has undergone a sex change operation cannot be regarded as belonging to the sex for which reassignment surgery was undertaken for the purpose of correcting the registration of sex of the applicant on the Register of Births and National Registration Identity Card which was already issues;
 - b) The words “male” and “female” in the documents did not include persons of reassigned sex and should not contrary to the biological characteristic when the applicant was born;
 - c) The reassignment surgery did not affect the true gender status of the applicant at the time of birth. The birth certificate and national registration identity card was issued in accordance with the original identity of the applicant at the time of birth;
 - d) The court has no power to declare the applicant who was born as female as male on the ground that there is insufficient materials to support this application;
 - e) There is no express legislation to re-register the gender of a transsexual person or under the disguise of any error or fact or substance in the register pursuant to Section 27 (3) of the Births and Deaths Registration Act 1957 and Section 6(2)(o) of the National Registration Act 1959.
43. Another similar case decided by the court on the same issue is the decision of Court of Appeal in Kristie Chan v Ketua Pengarah Jabatan Pendaftaran Negara⁵⁵. The plaintiff, a trans woman filed an originating summons at the high court to be declared as a female and to order the Director General of National Registration Department to change her identification details from “male” to “female”. She had undergone gender affirmation surgeries. However, the high court dismissed her application. She made an appeal and the Court of Appeal also dismissed the appeal based on reason that *“as there was no evidence, medical and psychiatric, from Malaysian experts as what constituted sex and gender and whether a sex reassignment surgery would warrant a change of the sex description in the applicant’s identity card”*⁵⁶.

52 [2004] 3 MLRH 127, 136

53 The Malaysian Bar - Jeffrey Jessie: Recognising Transsexuals by Honey Tan Lay Ean on 17 November 2005. Accessed via http://www.malaysianbar.org.my/gender_issues/jeffrey_jessie_recognising_transsexuals_by_honey_tan_lay_ean.html (accessed on 19 November 2015), please see also [2004] 3MLRH 127

54 [2004] 3MLRH 127, 136

55 [2013] 1 MLRA 113

56 [2013] 1 MLRA 113 at page 114

44. In the case of *Fau En ji v Ketua Pengarah Jabatan Pendaftaran Negara*⁵⁷, the High Court of Malaya, Kuala Lumpur dismissed the application made by a trans man. The applicant filed a judicial review for him to be legally declared as a male, to quash decision made by the National Registration Department, to amend his name and to amend his detail gender from female to male and to change the last digit of his identification card number to reflect a male gender. The learned judge, Zaleha Yusof J opined that *“psychological factor alone or gonadal factors were not sufficient to assess the applicant sexual condition”*⁵⁸. She was also of the opinion that *“the applicant should file an originating summons for a declaration sought before applying for the change in the identity card and the issue of the gender change was a complex issue and need to be proven by evidence of witness”*⁵⁹.
45. By and large, the courts are reluctant to allow transgender persons to change their identity card details to reflect the new gender status. There is another similar case in 2015, when a transgender woman Vasudevan Ramoo’s application (an unreported case) to change her identity details to reflect her new gender status as a woman was rejected by the High Court of Malaya, Kuala Lumpur⁶⁰.
46. But that is not always the case, as in the case of *Re JG, JG v. Pengarah Jabatan Pendaftaran Negara*⁶¹ by the High Court of Malaya, Kuala Lumpur allowing the change of the last digit of the plaintiff identification card to reflect her as a female⁶². The plaintiff, a trans woman filed an originating summons requesting the court a declaration that she to be declared as a female; and the National Registration Department to be directed to change her last digit of her identity card to a digit that reflects a female gender. The presiding judge, James Foong J opined that there were two schools of thoughts on the matter: the traditional and the progressive. The traditional thought that insisted a person must fulfil the requirements stipulated in the case of *Corbett v. Corbett* [1970] 2 ALL ER 33⁶³ or *Bellinger v. Bellinger* [2003] 2 ALL ER 593; and the progressive one which depend on medical opinion. He stated that *“when it is based on medical evidence then the courts should play its part and grant relief when justice is due”*⁶⁴. In the case, the learned judge refused to follow the traditional thought on the chromosomal requirement as a criteria for determination of gender post gender reassignment surgery, therefore the plaintiff’s application was granted.

57 [2014] MLRHU 1

58 [2014] MLRHU 1 at page 4

59 [2014] MLRHU 1 at page 6

60 <http://www.themalaymailonline.com/malaysia/article/transgender-fails-court-bid-to-change-identity-to-woman-judge-says-hands-ti#sthash.rskf3a4I.dpuf> (accessed on 27 February 2017)

61 [2005]1 MLRH 760

62 The Malaysian Bar - Jeffrey Jessie: Recognising Transsexuals by Honey Tan Lay Ean on 17 November 2005. Accessed via http://www.malaysianbar.org.my/gender_issues/jeffrey_jessie_recognising_transsexuals_by_honey_tan_lay_ean.html (accessed on 19 November 2015)

63 Justice Omrod made the following observation: ... at the medical witnesses accept that there are, at least, four criteria for assessing the sexual condition of an individual. These are chromosomal factors, gonadal factors, genital factors and psychological factors ...

64 [2005] 1MLRH 760 at page 764

47. In a latest case *Tan Pooi Yee v Ketua Pengarah Jabatan Pendaftaran Negara*⁶⁵, in the High Court of Malaya, Kuala Lumpur which involved a plaintiff, a trans man the court ordered the plaintiff to be declared as a man and the last digit of the plaintiff's identity card to reflect the male gender. The sitting judge, S Nathan Balan J viewed the court found the application "*was a genuine application by a person who had been certified by the medical professional to be a male and the chromosomal requirement was archaic and should be discarded because it was impossible for a biology male to have female chromosomes and vice versa*"⁶⁶. He also viewed that "Plaintiff has a precious constitutional right to life under Article 5(1) of the Federal Constitutional of Malaysia and the concept of "life" under the 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."⁶⁷ Despite this, the Court of Appeal had allowed the appeal by the National Registration Department on the High Court's decision and therefore setting aside the decision. As to the date of writing, there is no written judgement on the Court of Appeal decision of the case.

Provisions related to criminal and civil laws

48. In Malaysia, there are laws which criminalised "oral and anal" sex between consenting adults as stated by section 377A of the Penal Code while the punishment is stated under section 377B of the same act. Based on the Attorney General's Chambers and Royal Malaysia Police statistics, a total of 171 cases have been charged under section 377B of Penal Code from 2010 to 2014⁶⁸. The section 377D of the same law is also provide for punishments on "acts of indecency".
49. Whereas Syariah laws apply only to Muslims, non – Muslims have also been subjected to "moral policing".⁶⁹ They are subjected to arrests during police raid in entertainment outlet and by municipal council for roaming around on the street as cross dressers which may be accused of disorderly behaviour in public places. A non-Muslim transgender could also be charged under the Section 21 of Minor Offence Act 1955 for "obscene" behaviour⁷⁰.

65 [2016] 5 MLRH 501

66 [2016] 5 MLRH 501 at page 501

67 [2016] 5 MLRH 501 at page 523

68 <http://www.agc.gov.my/agcportal/uploads/files/Publications/Press/Media%20Release%20Jabatan%20Peguam%20Negara%20120215.pdf> (accessed on 27 February 2017)

69 Shah, Shanon (2013) *The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state*. In: Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change. Institute of Commonwealth Studies, School of Advanced Study, University of London, P. 267. ISBN 978-0-9573548-8-3. Accessed via <http://sas-space.sas.ac.uk/4810/1/09Shah.pdf>

70 "Any person who is found drunk and incapable of taking care of himself, or who 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 immediate vicinity of any court or at any public office, 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 imprisonment for a term not exceeding three months or both."

50. The exact wordings of those laws could be seen below:

Penal Code	<p>Section 377A - Carnal intercourse against the order of nature <i>“Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of other person is said to commit carnal intercourse against the order of nature.”</i></p> <p>Section 377B - Punishment for committing carnal intercourse against the order of nature <i>“Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable for whipping.”</i></p> <p>Section 377D - Outrages on decency <i>“Any person who, in public or private, commits, or abets the Commission of, or procures or attempt to procures the Commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.”</i></p>
Minor Offence Act 1955	<p>Section 21 of: Drunkenness and disorderly behaviour in public places <i>“Any person who is found drunk and incapable of taking care of himself, or who 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 immediate vicinity of any court or at any public office, 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 imprisonment for a term not exceeding three months or both.”</i></p>

Legal gender recognition

51. **Change of name, gender marker and other details in legal documents, including national identification card (IC) and birth certificate**

Based on documentation, research and lived experiences of trans people, trans people were able to change the details (name, gender marker and last digit of the serial number in IC) in their legal documents, including the national identification card and birth certificate, although only postoperative trans people. However, the complex and costly process has become increasingly restrictive over the years.

In order for a trans person to change the details in the IC to reflect their identity, a trans person would have to:

- Have had undergone gender affirmation surgeries. This is an outdated practice, and medical intervention is no longer a prerequisite for gender recognition as evidenced by laws and policies in many countries, including Malta, Argentina, India and other countries.
- **Paragraph 5.71 & 5.7.2 of the Arahan Jabatan Pendaftaran Negara Bil 9/2007** state that amended of the sex or gender category in the IC is only allowed with a court declaration. (see appendices)
- Courts rely on the Corbett vs Corbett 1971 case, which is extremely outdated and problematic in terms gender and trans discourse, as it conflates sex and gender. The four criteria to determine ‘sex’ include chromosome, gonads, genital, psychological factors. These criteria need to be satisfied in order to make the changes.

Sex is a combination of chromosomes, gonads, hormones and secondary characteristics. Meanwhile, gender refers to how we see and identity ourselves. Both sex and gender are not binary, and made up of multiple and diverse identities.

All human beings have a sex and gender category. Transgender refers a person’s who’s lived experiences ‘do not match’ the assigned identity at birth, or whose sex and gender identity ‘do not match’. Meanwhile, cisgender refers to a person who’s lived experiences ‘match’ the assigned identity at birth, or whose sex and gender identity ‘match’. There are more identities that make up the sex and gender spectrum, including intersex, gender fluid, gender queer and persons of other identities.

In two cases in Malaysia, high court judges set aside the Corbett vs Corbett criteria and assessed the medical evidences presented by the applicants. Both judges also cited Article 5 of the Federal Constitution in their decisions, as all citizens have the right to live with dignity.

In 2005, Justice James Foong granted an application of a trans woman to change the details in her legal document as per her petition. In this precedent setting case, Justice James Foong set aside the criteria of Corbett vs Corbett. However, judges continued to rely on the Corbett vs Corbett in subsequent cases, and resulted in rejection of applications.

In 2016, Justice Nantha Balan granted an application of a trans man to change his details in his legal documents. Justice Nantha Balan departed from the Corbett vs Corbett criteria, and emphasized that ‘... chromosome remain static throughout the individual’s natural life’. In an appeal by the National Registration Department in 2017, the Court of Appeal overturned the High Court decision to lack of evidence of change of chromosomes.

- A few fatwas in 1980s declared trans people as haram and prohibited gender affirmation surgeries for trans people. These fatwas on trans people form a skewed and negative view of trans people and act as a barrier for trans people to change their details in legal documents. In 2012, Mashitah Ibrahim, then minister at the prime minister's department cited the 1983 fatwa in her response regarding change of gender marker in legal documents for trans people.

“Seseorang yang dilahirkan lelaki, hukumnya tetap lelaki walaupun ia berjaya menukarkan jantainya melalui pembedahan. Seseorang yang dilahirkan perempuan, hukumnya tetap perempuan walaupun ia berjaya ditukarkan jantainya melalui pembedahan. ... Jadi dalam hal ini, pihak pendaftaran terpaksa akur kepada keputusan Majlis Muzakarah Fatwa yang telah pun membuat hukum dalam masalah yang berkaitan”⁷¹

Section 27 (3) of the Registration of Births and Deaths Act 1957 if read broadly would allow for alteration and change of details in the birth certificate. However, there are no recorded or known successful cases.

The process of changing name, gender, and gendered details in legal documents in Malaysia is complex, costly and is inconsistent with the available good practices. The process should be:

- **Dejudicialized.** The process of changing details in legal documents is effectively an administrative process. In many countries, trans people are only required to go to a government agency, equivalent to the national registration department to submit their application to change the details in legal documents. The process varies according to countries, and the entire process takes between 8 days to 3 months to be completed.⁷² Personal identification documents should reflect one's actual identity. Not only will this reduce trans people's vulnerability and risks of discrimination, harassment, humiliation, and violence within the country and overseas; this also contributes to efficient data collection.
- **No medical intervention needed.** In many countries requesting for medical documents as evidence of gender identity is prohibited. Principle 3 of the Yogyakarta Principles, a set of international human rights principles in relation to sexual orientation, gender identity, and sex characteristics, explicitly states all persons are entitled to recognition equal before the law and no medical intervention should be required for legal recognition of individuals.⁷³

71 Dewan Rakyat Parlimen Kedua Belas Penggal Kelima Mesyuarat Kedua, Bil 28, 19 June 2012 <http://www.parlimen.gov.my/images/webuser/jkuasa%20lamp/DR-19062012.pdf>

72 License to Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People <https://www.opensocietyfoundations.org/reports/license-be-yourself>

73 The Right to recognition before the law. Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in

- **Quick, transparent and accessible legal gender recognition based on self-determination.** In 2015 the Parliamentary Assembly of the Council of Europe adopted a comprehensive resolution on trans persons' human rights⁷⁴, including quick, transparent and accessible legal gender recognition based on identities determined by the persons. This has set the tone for national laws and policies in European Union member countries. Many countries in Latin America and South Asia have introduced similar processes in their respective countries.
 - o Quick. The process of changing the details in legal documents should be efficient and timely. In Portugal the process only take 8 days, while in Argentina the process takes up to 2 to 3 weeks to be completed.
 - o Transparent and non discretionary. The criteria and checklist for the process is clearly presented. In Argentina, once an application is received, the Civil Register is notified “without any additional legal or administrative procedure required” (Article 6).
 - o Accessible. The process must be simple with minimal cost.

- **Confidential.** The laws must also include privacy protection for trans people, especially against disclosure of protected information of trans people. The Gender Identity Law Argentina prohibits public disclosure of their recorded sex and change in first name without consent of the applicant.

Year	Cases	Outcome
Nov 2004	Wong Chiou Yong vs NRD (trans man) <ul style="list-style-type: none"> • Case was heard before Ipoh High Court • Change name & gender on birth certificate and national identification card 	Application dismissed
Nov 2005	JG vs NRD (trans woman) <ul style="list-style-type: none"> • Case was heard in KL high court before Justice James Foong • Change name & gender on birth certificate and national identification card 	Successful. Allowed to change name, gender marker, and last digit on IC
2011	Aleesha Farhana vs NRD (trans woman) <ul style="list-style-type: none"> • Case was heard at the Terengganu High Court before Justice Datuk Mohd Yazid Mustafa 	Application dismissed

all aspects of life. **Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.** <https://yogyakartaprinciples.org/principle-3/>

74 Discrimination against transgender people in Europe <https://bit.ly/283p19I>

Year	Cases	Outcome
Jan 2011	Kristie Chan vs NRD (trans woman) <ul style="list-style-type: none"> Case was heard before Judicial Commissioner Ridwan Ibrahim in Ipoh High Court. Ruling was made in chambers. 	Dismissed with costs (high court)
Oct 2015	Kristie Chan vs NRD (trans woman) <ul style="list-style-type: none"> Case was heard before Judicial Commissioner Ridwan Ibrahim in Ipoh High Court. Ruling was made in chambers. 	Dismissed, no costs (court of appeal)
Sept 2014	Kelvin Fau vs NRD (trans man) <ul style="list-style-type: none"> Case was heard in KL high court before Justice Zaleha Yusof Change name, gender & last digit in national identification card To quash the rejected application 	Application dismissed with cost
June 2015	Maha Laksmi Rajoo vs NRD (trans woman) <ul style="list-style-type: none"> Case was heard in KL high court before Justice Asmabi Mohamad 	Application dismissed with cost
July 2016	Tan vs NRD (trans man) <ul style="list-style-type: none"> Case was heard in Kuala Lumpur High Court before Justice Nathan Balan Change of name, gender marker and last digit of the serial number in IC 	Successful. Decision was overturned in January 2017 following an appeal by the National Registration Department

UNITED NATIONS HUMAN RIGHTS FRAMEWORK: TREATIES AND CHARTER BASED

52. There are numerous international instruments that create obligations on the state to prevent violence and discrimination based on gender identity and sexual orientation. Referring to international customary human rights laws - the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) have strongly stated the non-discrimination and protection of individual rights which include all human beings. Therefore, the principle of non-discrimination is a cross cutting component in major international human rights laws. This also extend to other human rights mechanism including charter based mechanisms such as the Human Rights Council and Special Procedures.

Universal Declaration of Human Rights (UDHR)

53. The UDHR was adopted by United Nations on 10 December 1948, the UDHR since then has become a reference of human rights principles. In the article 2 of the UDHR provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
54. Article 3 provides everyone has the right to life, liberty and security of person.
55. Article 5 provides no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
56. Article 7 provides all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
57. Article 9 provides no one shall be subjected to arbitrary arrest, detention or exile.
58. Article 12 provides no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

International Covenant on Civil and Political Rights (ICCPR)

59. Article 2 of ICCPR provides each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
60. Article 6(1) provides every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
61. Article 7 provides no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

62. Article 9 (1) provides everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
63. Article 17 of ICCPR provides no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
64. Article 26 of ICCPR provides all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

65. The ICESCR in its Article 2(2) provides that the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
66. Article 3 stated that the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
67. In addition to that, sexual orientation and gender identity is a prohibited ground of discrimination is particularly important and in line with a similar conclusion by the Committee on Economic, Social and Cultural Rights in its General Comment no. 20 on non-discrimination⁷⁵.

Convention on the Elimination of Discrimination against Women (CEDAW)

68. The provision of the CEDAW and general recommendation 27⁷⁶ and 28⁷⁷ of CEDAW do also explain about non – discrimination based on the basis of sex and gender.

75 32. “Other status” as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.

76 General recommendation No. 27 on older women and protection of their human rights

77 General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

Universal Periodic Report (UPR)

69. The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States⁷⁸. The second UPR for Malaysia which was held in October 2013, Malaysia received 7 recommendations with regard to gender identity and sexual orientation and the Government did not accept any recommendations made on LGBT. The recommendations all of which touch on ensuring non-discrimination and legislative reforms as listed below⁷⁹:
- i. “Take legislative and practical steps to guarantee that LGBTI persons can enjoy all human rights without discrimination (Germany)”
 - ii. “Introduce legislation that will decriminalize sexual relations between consenting adults of the same sex (Croatia)”
 - iii. “Decriminalize homosexuality and respect the fundamental rights of LGBT persons (France)”
 - iv. “Take the necessary measures to eradicate the discrimination based on sexual orientation (Argentina)”
 - v. “Delete those provisions that could favour discriminatory practices against persons based on their sexual orientation and gender identity (Chile)”
 - vi. “Repeal sections of the Malaysian Penal Code that criminalize consensual same-sex conduct between adults (Netherlands)”
 - vii. “Enact legislation prohibiting violence based on sexual orientation, and repeal laws that directly or indirectly criminalize consensual same-sex sexual activities (Canada)”

United Nations Human Rights Council

70. Since the violations and discrimination against the LGBT groups became more visible at the international level, the United Nations Human Rights Council adopted three resolutions on sexual orientation and gender identity since 2011⁸⁰. Later, the High Commissioner for human rights had also issue a report on the discrimination and violence against individuals based on their sexual orientation and gender identity.

United Nations (UN) Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity

71. The mandate of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established by the Human Rights Council (HRC) in 2016 in its resolution 32/2.⁸¹ In his

78 <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

79 A/HRC/25/10 P. 19

80 United Nations. Living Free & Equal. What states are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people. 2016. P. 13

81 See A/HRC/29/23 for background information.

report to the HRC, the Independent Expert, Vitit Muntarbhorn observed that ‘the phenomenon of violence and discrimination based on sexual orientation and gender identity is both local and global, requiring strong national and international countermeasures to promote respect for sexual and gender diversity under the umbrella of international human rights law’.⁸²

72. It was also strongly recommended that adoption of effective anti-discrimination measures by States is critically needed which could be in forms of laws, policies or other actions that would provide access to justice and redress. These measures are necessary strategy to promote community understanding on sexual orientation and gender identity and this would further accord protection from violence and discrimination to all persons. In addition, States are also suggested to ensure that variety of stakeholders adopt educational and capacity-building measures in regard to sexual orientation and gender identity to nurture empathy towards the diversity inherent to humanity, from young age.⁸³

Others

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (refer as Yogyakarta Principles)

73. The Yogyakarta Principles is an international experts’ statement on the application of international human rights law in relation to sexual orientation and gender identities on state and non-state actors. According to the introduction of the Yogyakarta Principles that all human beings are born free and equal in dignity and rights, it further states that gender identity and sexual orientation should not be a basis for discrimination and abuse. The Yogyakarta Principles was drafted, developed, discussed and refined by a group of 29 distinguished human rights experts at Gadjah Mada University in Yogyakarta, Indonesia on 6-9 November 2006. The Yogyakarta Principles was released in Geneva on 26 March 2007.⁸⁴
74. The Yogyakarta Principles, lays out 29 principles which include rights to universal enjoyment of human rights, non-discrimination and recognition of laws (Principles 1-3); rights to human and personal security (Principles 4-11); economic, social cultural rights (Principles 12-18); rights to expression, opinion and association (Principles 19-21); freedom of movement and asylum (Principles 22-23); rights of participation in cultural and family life (Principles 24-26), rights of human rights defenders (Principle 27) and rights of redress and accountability

82 See a/72/172 for further details.

83 Ibid.

84 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 133

(Principles 28-29).⁸⁵ The Principles also detailed recommendations to the states to apply international human rights standard on the protection of all people irrespective of sexual orientation or gender identity. The Yogyakarta Principles also included 16 additional recommendations to various international, regional and national human rights actors and non-state actors.

75. Although the Yogyakarta Principles have not yet been referred to specifically in resolutions of any political forum such as the Human Rights Council or the General Assembly,⁸⁶ the Principles have been referred to by human rights mechanisms such as the Committee on Economic, Social and Cultural Rights, which in 2009 adopted the definitions of sexual orientation and gender identity based from the Yogyakarta Principles for the purposes of its General Comment 20 on non-discrimination in economic, social and cultural rights:

“32. “Other status” as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace”⁸⁷

It was also referred by the Special Rapporteur on the right to health:

“46. Certain groups deserve special consideration regarding the protection of informed consent as a result of vulnerabilities stemming from economic, social and cultural circumstances. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of and adapt to the specific needs of lesbian, gay, bisexual, transgender and intersex persons. Such elements of vulnerability significantly overlap and exacerbate inequalities; however, certain groups are addressed separately below for the purposes of this report.”⁸⁸

Special Rapporteur on the right of education:

23. In order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity.⁹ Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations. A very important contribution to thinking in this area was made by the 2006 Yogyakarta Principles on the application of international human rights law in

85 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 135-136

86 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P.142

87 E/C.12/GC/20 at page 10

88 A/64/272 at page 13

relation to sexual orientation and gender identity. The Special Rapporteur fully endorses the precepts of Principle 16, referring specifically to the right to education.⁸⁹

67. The importance of the sexual diversity approach, which is linked to the gender perspective, should be emphasized. Regrettably, few sexual education programmes and curricula include this approach. The aforementioned Yogyakarta Principles are a fundamental tool for inclusion of the diversity perspective in the public policies that have to be taken into account in education.⁹⁰

Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment:

70. The Special Rapporteur notes that while the Rules recognize and address specific needs of different categories of prisoners (such as women, juveniles, persons with disabilities and foreign nationals), it fails to require the extension of special protection measures to other disadvantaged groups of detainees or prisoners. It is essential that the Rules adopt special measures aimed at protecting the rights of other disadvantaged groups of prisoners, in accordance with well-established international standards and norms (see UNODC/CCPCJ/EG.6/2012/2, p. 21). Special care must be taken to ensure that segregating members of these groups does not further marginalize them from the rest of the community or expose them to further risk of torture or ill-treatment (see, for example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, principle 9 (a)).⁹¹

76. The Yogyakarta Principles is more than a statement, the significant of the principles in protecting and promoting the right of all people of diverse gender identity and sexual orientation had been evident through the reference made by the human rights mechanisms.⁹²

The Yogyakarta Principles Plus 10

77. Recently, a new set of principles on international human rights law relating to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) was adopted on 10 November 2017 at Geneva with 33 signatories of human rights expert called “The Yogyakarta Principles Plus 10” – which included additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles. The Yogyakarta Principles Plus 10 consist of nine additional Principles and 111 additional state obligation which include the right to state

89 A/65/162 at page 7 & 8

90 A/65/162 at page 17

91 A/68/295 at page 18

92 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 131

protection⁹³, the right to legal recognition, the right to bodily and mental integrity, the right to freedom from crimination and sanction on the basis of sexual orientation, gender identity, gender expression or sex characteristics, the right to protection from poverty, the right to sanitation, the right to the enjoyment of human rights in relation to the information and communication technologies, the right to truth, the right to practice, protect, preserve and revive cultural diversity and also additional state obligations to Principle 2, 6, 9,10,16,17,19, 20, 23,24,25, 27 as well as additional recommendations of the Yogyakarta Principles.

Sustainable Development Goals (SDGs)

78. The overarching theme for the 2030 Agenda for Sustainable Development Goals (SDGs) is inclusion with the tagline: no one should be left behind. The SDGs was adopted by world leaders including Malaysia in 2015. The SDGs outline 17 sustainable development goals and 169 related targets set to be achieved by 2030. The 17 goals of the SDGs are: no poverty; zero hunger; good health and well-being; quality education; gender equality; clean water and sanitation; affordable and clean energy; decent work and economic growth; industry, innovation and infrastructure; reduced inequalities; sustainable cities and communities; responsible consumption and production; climate action; life below water; life on land; peace, justice and strong institutions and lastly partnership for the goals. The notion of the SDGs that no one should be left behind has expressly include the most vulnerable and marginalised peoples into the sustainable development regardless of their gender identity, gender expression and sexual orientation.

93 Principle 10 provides “everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.”

CHAPTER 3

FINDINGS AND ANALYSIS

INTRODUCTION

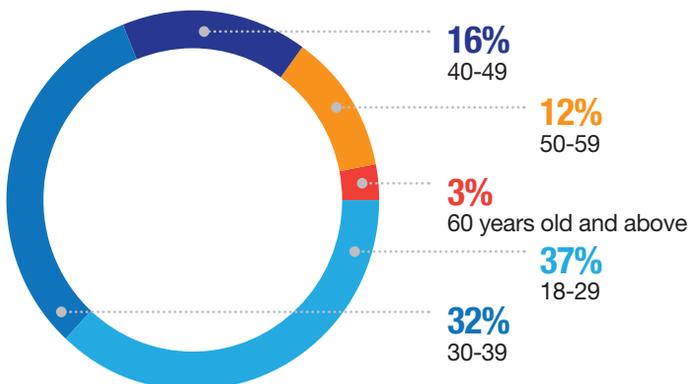
79. This chapter will discuss on the findings and analysis of the study which focus on the demography of the respondents, right to education, right to employment, right to healthcare, and right to housing and lastly right to dignity. The Commission had engaged with the advocates for transgender community in order to familiarise and understand the transgender experiences as well as to earn trust of the community.
80. A pilot test was conducted which involved five respondents to test the questionnaires and the final questionnaire had featured 106 closed ended and several open questions. The interview sessions were done face to face.

SURVEY FINDINGS

A. DEMOGRAPHY

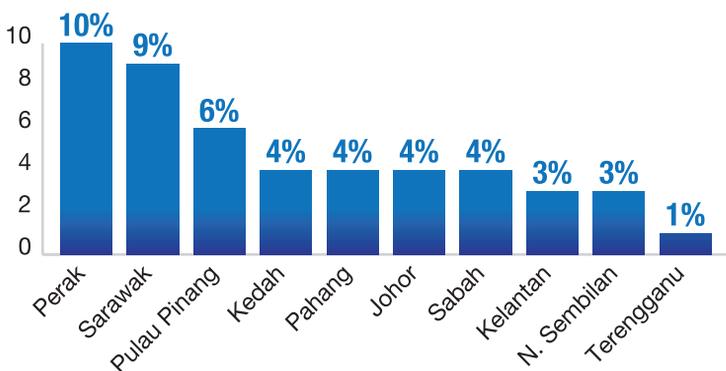
81. Involving the participation of 100 respondents based on voluntarily basis, the survey recorded the age group of the respondent, how the respondent self-identified themselves, physical ability, ethnicity, religion and faith, state of residence and whether they have migrated from other state from any part of Malaysia.
82. The 100 respondents interviewed in this study had comprised 69 trans women, 29 trans men (including of one trans masculine) and 2 intersex persons. With regard to the age group, the majority of the respondents were aged between 18-29 years which represents 37% of the total respondents. The age group of the respondents as indicated in diagram 1:

Diagram 1: Age group



83. 64 of the respondents were living in Kuala Lumpur and the remaining 36, in Selangor. Out of the 100 respondents, 51 of the respondents who resided in Kuala Lumpur or Selangor had migrated from other states in Malaysia. Majority of the migrated respondents were natives from Perak (10/51). Followed by respondents migrated from Sarawak (9/51), 6/51 respondent migrated from Pulau Pinang, 4/51 respondents migrated from Kedah, Pahang, Johor and Sabah respectively. 3/51 respondents migrated from Kelantan and Negeri Sembilan respectively and 1/51 from migrated from Terengganu. Regrettably, 3 respondents had not mentioned their origin state. The Diagram 2 below shows the states of origin of the remaining 48 respondents:

Diagram 2: States of origin



84. In the study, the reasons given by the respondents for migrating to Kuala Lumpur and Selangor were explained as below:

Table 1: Reason for migration

Item	Frequency
a) To seek employment opportunities	39/51
b) Self-autonomy/freedom	32/51
c) Ostracized by family/community	17/51
d) To enrol in higher learning institutions in Kuala Lumpur or Selangor	11/51
e) Stronger peer support	9/51

Note: Frequency means number of respondent

85. 39/51 respondents migrated from their hometown to Kuala Lumpur and Selangor to seek employment opportunities. 32/51 respondents migrated for self-autonomy/freedom. 17/51 respondents shared that they migrated due to ostracisation by family/community. The migration of 11/51 respondents also contributed by the reason that they enroll in higher learning institutions in Kuala Lumpur and Selangor.

Lumpur or Selangor. 9/51 respondents said that they migrated because they believed that they could receive stronger peer support. A trans woman also shared that she migrated from her town to avoid bringing shame to her family due to her gender identity and gender expression.

86. As for the ethnicity, Malays represented the major ethnic of respondents (40) and followed by Indian (24), and Chinese (23). Respondents from mixed-race parents comprised of 2 ethnically mixed Malay and Chinese, 1 each for ethnically mixed Indian and British, ethnically mixed Chinese and American and lastly ethnically mixed Indian and Chinese.

Table 2: Ethnicity composition of respondents

Ethnicity	Frequency
a. Malay	40
b. Indian	24
c. Chinese	23
d. Sikh (Punjabi)	2
e. Melanau	2
f. Iban	1
g. Bidayuh	1
h. Serani	1
i. Peranakan Baba & Nyonya	1
j. Mixed-race parents	5

Note: Frequency means number of respondent

87. In terms of religion and faith, the respondents were mostly Muslim (45) followed by Hindu (18), Buddhist (14), Christian (9), Taoism (1), believed in karma (1), the rest (12) were either agnostic, atheist, free thinker or refused to state his/her religion.
88. Based on the study, 13 respondents stated that they had physical disabilities which includes, 5 with visual disability (blurred vision due to refractive error or lose one eyesight), 4 each for physical disability that restricts mobility and hearing disability (lack of hearing) as shown in the table 3 below.

Table 3: Type of physical disabilities

Item	Frequency
1. Visual disability	5
2. Physical disability that restricts mobility	4
3. Hearing disability	4

Summary of demography

- a. 100 respondents, majority of whom were from 18-29 age group, followed by 30-39 age group. Most of the respondents (40) were ethnic Malay and Muslims.
- b. 69 identified themselves as trans women, 29 as trans men (including of one trans masculine) and 2 as intersex persons
- c. The respondents were mostly based in Kuala Lumpur as compared to Selangor.

B. RIGHT TO EDUCATION

89. In assessing the right to education of the transgender persons, the respondents were asked to identify their level of education, their experience in an educational institution and dealing with their peers, school administrators, teachers/lecturers, their accessibilities to school facilities and the impact of their school experience their level of education.
90. Education is a fundamental human right and the right to education is stated in article 26 of the Universal Declaration of Human Rights (UDHR)⁹⁴, article 28 of the Convention on the Rights of the Child (CRC)⁹⁵ and article 13 of the International Covenant on Economic, Social and Culture Rights (ICESCR)⁹⁶ as well as principle 16 of the Yogyakarta Principles⁹⁷.
91. At the domestic level, under section 29A of the Education Act 1996, it is compulsory for Malaysian children to receive primary education through an amendment in the Education (Amendment) Act 2002⁹⁸. In the study, there were only 3 respondents that did not receive formal education, however, their time in school were prior to the amendments to the Education Act. Among the reasons cited for not being in school was due to family's financial problems and limited access to school living in the rural areas. One of the respondent had not cited any reason.

94 Article 26(1) provides everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Article 26 (2) provides education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

95 Malaysia made a reservation to Article 28(1)(a)

96 Article 13 provides the States Parties to the present Covenant recognize the right of everyone to education.

97 Principle 16 provides that everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

98 Professional circular No. 14/2002: Implementation of Compulsory Education in Primary Level in 2003 dated 27 November 2002. Accessed via <http://www.moe.gov.my/index.php/en/sekolah/sekolah-menengah> (accessed on 3 March 2017)

92. 24 respondents were MCE/SPM holders. 21 of them were bachelor's degree holders. 16 only received primary education.
93. In total, there were only 5 respondents who were students at the time of the study, all attending tertiary level. 4 of the students were full time students and one was part time student. Below table 4 shows the level of education of the respondents.

Table 4: Level of Education

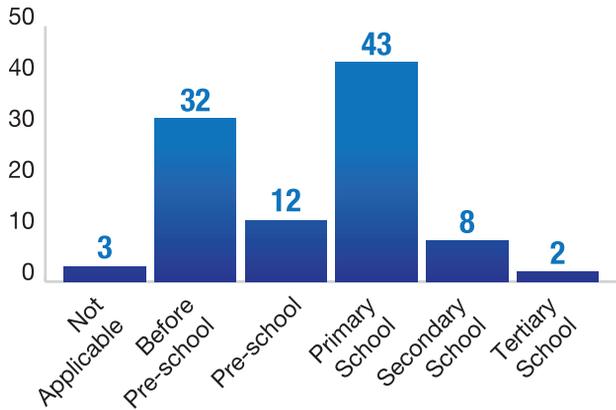
Item	TW	TM	Intersex
No Formal Education	3	0	0
Primary School	14	1	0
Lower Secondary Assessment (LCE/SRP/PMR)	12	0	0
Malaysian Certificate of Education (MCE/SPM)	20	4	0
Malaysian Higher School Certificate (STPM)	2	0	0
Certificate	2	0	0
Diploma	7	7	0
Bachelor's Degree	8	12	1
Master's Degree	1	5	0
Doctor of Philosophy (PHD)	0	0	1

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

94. From the analysis, most of the respondents had attended mixed gender educational institution. Only 33 respondents received education in all boy or girl schools (30 from government schools and 3 from private schools).
95. In the study, 97 respondents stated that they were either aware or were questioning about their gender identity and/or sexual orientation while they were in educational institutions. 43 respondents were aware or had questioned their gender identity and/or sexual orientation during their primary education, followed by 32 respondents who went through the process before pre-school and 12 respondents during pre-school. Diagram 3 shows the result of the study:

Diagram 3: Aware or had questioned about their gender identity and/or sexual orientation while in educational institutions



96. Three (3) respondents specifically shared that even though they were aware of their gender identity at a young age, they had not found language or the appropriate terms to describe their identity. They always felt that their gender identity were not conforming to their sex assigned at birth and unfortunately information pertaining to gender identity were not available to them. A trans woman informed that she was forced to participate in “tough” exercises such as push up exercise and long-distance running which cause her to change school. A trans woman said that playing soccer was a “tough sport” that she would not want to play during exercise class and hence she hid herself in a counselling room to avoid being bullied by other peers. 1 trans woman had been allowed by her teacher to “guard” the classroom to avoid joining the exercise session.
97. Due to their gender identity, gender expression and/or sexual orientation, 55 respondents felt fearful or a lack of interest in attending educational institutions. At the same time, the analysis also shows 72 respondents admitted that they were bullied while in the educational institutions due to their gender identity, gender expression and/or sexual orientation. In comparison, 76.80% of the 69 trans women were bullied, 62.10% of 29 trans men were bullied and 1 of the 2 intersex was also bullied.
98. The classic bullying incidences experienced by transgender persons from their peers were name calling, using derogatory names, physical violence such as pushing, beating, punching and kicking. Emotional bullying, includes yelling, becoming a laughing joke to peers. Please see table 5 of item 103 below for the statistics of their experience. A respondent also shared that he was called “AIDS” by his peers due to his gender identity, gender expression and sexual orientation. The bullying incidences impacted the life of transgender persons glaringly and some of them stated that these incidences caused them to lose interest in school. A respondent shared that she had attempted suicide

when she was at secondary school but was saved by her teacher. There was also a trans woman who shared that she was pressured by the surrounding circumstances to join more masculine sport or activities and then the bullying incidences subsequently faded away.

99. It was also shared by 18 respondents that sometimes, they were humiliated in the classroom by the teachers/lecturers, for instance during science class a trans woman was told by her teacher that she would not get pregnant if she was raped and that was made into a joke. A trans woman also shared that she was asked to see the school counsellor for being “different”, to correct her gender identity and she had chosen to abscond from school due to that incident.
100. Dress code and school uniforms were imposed based on gender binary in educational institutions, there were 61 respondents who felt uncomfortable with the school attire policies. In addition, there were only 25 respondents who had access to public spaces and facilities (e.g. bathrooms, prayer rooms, hostel) based on their gender identity or gender expression in educational institutions.
101. Three (3) respondents shared that they refused to wear the school uniform which was based on their sex assigned at birth. A trans man stated that when he was at kindergarten, he refused to wear pink uniform which he felt was too girly. In some other instances, 2 of the trans men wore male uniform in school with or without obtain permission from the administrator or teacher. Surprisingly, one had not received any negative reaction from his teachers and administrators on his action. But, not all were lucky as a trans man was questioned for his “unladylike” behaviour and attire from his teachers. A trans man also stated that he changed his mind from joining “*Palapis*” (university cadet) due to the compulsoriness of wearing *baju kurung* for cisgender⁹⁹ woman.
102. Using toilet is a challenge for the respondents, three (3) of the respondents related that they would refrain from using school toilets and hold it as long as they be able due to the worries of being bully and feeling uncomfortable. A trans woman shared that she secretly used female toilet because she worried that male student will laugh and bully her. A trans man experienced awkwardness when he used the female toilet which had confused and annoyed other female students. Living in hostel was also a challenge to transgender persons for instances as they had to share a hostel room and toilets/bathrooms with cisgender persons.
103. Table 5, 6, and 7 shows the experience of abuses/violence educational institutions¹⁰⁰ due to gender identity, gender expression and/or sexual orientation by peers, administrators and teachers/lecturers.

99 According to <https://en.oxforddictionaries.com/definition/cisgender>: cisgender means “denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.” (accessed on 27 November 2017)

100 Educational institutional includes the pre-school, kindergarten school, primary school, secondary school, tertiary education in private and public setting.

By peers

104. Based on the analysis, when asked on the types and frequency of abuses/ violence experienced by respondents, they experienced the most was name calling (67/97), hate speech (55/97) followed by spread of rumours of their gender identity in the educational institution, neighbourhood, online space, etc. (48/97). It was very disturbing that trans women had also experienced threat of rape (11/97) and rape or coerced sex (7/97) in educational institutions. The table 5 below shows the analysis of abuse/violence experienced by trans women, trans men and intersex in the educational institution by peers.

Table 5: Experience of abuses/violence in educational institutions due to gender identity, gender expression and/or sexual orientation by peers

Item	Frequency	TW	TM	Intersex
1. Name calling	67/97	49	17	1
2. Hate speech	55/97	42	12	1
3. Spread of rumours about your gender identity in the educational institutions, neighbourhood, online spaces, etc.	48/97	31	16	1
4. Unwanted sexual gestures, language, image	42/97	34	7	1
5. Cold shoulder	40/97	27	12	1
6. Isolated	36/97	25	10	1
7. Molestation or unwanted touching	34/97	30	3	1
8. Physical violence (e.g. beaten up, hit, kicked, physical fights, pushed etc.)	31/97	25	5	1
9. Public humiliation (publicly scolded, reprimanded or punished because of gender identity)	27/97	22	4	1
10. Threat of rape	11/97	10	0	1
11. Rape or coerced sex	7/97	7	0	0
12. Confined or locked up	7/97	4	2	1
13. Money extortion	3/97	3	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

105. In the study, 5 respondents had expressly stated their experiences of sexual violence, either raped or gang raped by peers while they were at or outside of the school compound. 3 of the respondents had not reported the sexual

violence to the school authorities or public authorities and not even to their parents. This was because of shame or ignorance. In 2 cases when the rape incidences were disclosed to parents or teachers, the respondents related that these incidences were not heeded, or they had to take the blame for being themselves.

By administrators¹⁰¹

106. Table 6 below shows the abuses/violence experienced by respondents due to gender identity, gender expression and/or sexual orientation from administrators of educational institutions. They had experienced hate speech from administrator (7/97), followed by name calling by administrator (5/97) and “cold shoulder” treatment by administrator (5/97).

Table 6: Experience of abuses/violence in educational institutions due to gender identity, gender expression and/or sexual orientation by administrators

Item	Frequency	TW	TM	Intersex
1. Hate speech	7/97	4	2	1
2. Name calling	5/97	3	1	1
3. Cold shoulder	5/97	5	0	0
4. Spread of rumours about your gender identity in the educational institutions, neighbourhood, online spaces, etc.	3/97	2	1	0
5. Physical violence (e.g. beaten up, hit, kicked, physical fights, pushed etc.)	2/97	1	0	1
6. Confined or locked up	1/97	1	0	0
7. Isolated	1/97	1	0	0
8. Public humiliation (publicly scolded, reprimanded or punished because of gender identity)	1/97	1	0	0
9. Unwanted sexual gestures, language, image	0/97	0	0	0
10. Molestation or unwanted touching	0/97	0	0	0
11. Threat of rape	0/97	0	0	0
12. Rape or coerced sex	0/97	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

¹⁰¹ Administrators is including school principal, assistant school principal, school administrators, dean, vice dean and college/university administrators.

By teachers or lecturers

107. Regarding abuses/violence from teacher or lecturer in educational institutions, respondents faced hate speech (23/97), followed by name calling (19/97) and public humiliation (18/97). Sexual violence was also documented from teachers or lecturers such as unwanted sexual gestures, language, image (8/97), molestation or unwanted touching (6/97), threat of rape (2/97) and rape and coerced sex (1/97). Table 7 below shows the experiences.

Table 7: Experience of abuses/violence in educational institutions due to gender identity, gender expression and/or sexual orientation by teachers or lecturers

Item	Frequency	TW	TM	Intersex
1. Hate speech	23/97	15	7	1
2. Name Calling	19/97	13	5	1
3. Public humiliation (publicly scolded, reprimanded or punished because of gender identity)	18/97	16	1	1
4. Cold Shoulder	12/97	9	2	1
5. Spread of rumours about your gender identity in the educational institutions, neighbourhood, online spaces, etc.	10/97	5	4	1
6. Isolated	11/97	9	1	1
7. Unwanted sexual gestures, language, image	8/97	8	0	0
8. Molestation or unwanted touching	6/97	6	0	0
9. Physical violence (e.g. beaten up, hit, kicked, physical fights, pushed etc.)	4/97	3	0	1
10. Confined or locked up	3/97	2	1	0
11. Threat of rape	2/97	2	0	0
12. Rape or coerced sex	1/97	1	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

108. 28 respondents stated that they faced disciplinary actions during their study in educational institutions because of their gender identity and/or gender expression. Among the experiences that they shared were, warnings for keeping long hair, suspended from school, absent from school due to bullying but was later penalized by teachers.

109. Furthermore, 16 respondents stated that they had stopped attending educational institutions due to discrimination and harassment based on their gender identity, gender expression and/or sexual orientation.
110. Further to that, 4 respondents stated that their scholarship application was denied or terminated due to their gender identity, gender expression and sexual orientation.
111. It was also worth to note that 3 respondents age between of 50-59 years and 60 years and above, stated that there were less bully or discrimination incidences during their schooling era. This is significant to take note of, as based on their testimonies the trend of students being bullied due to their sexual orientation and gender identity is on the rise compared to earlier year.
112. It is very important to have a safe and enabling environment for children and adults towards fulfilling their right to education. Discrimination or transphobic attitudes should not be allowed in educational institutions as it will only discourage students from attending school which will eventually affect their mental health, social wellbeing and deny them to their right to education.

Summary of right to education

- a. Majority of the respondents were either aware or were questioning about their gender identity and/or sexual orientation while they were in educational institutions.
- b. The hate speech and name calling were the rampant experiences shared by the respondents from peers, teachers/lecturers and administrators.
- c. Bullying incidences is a common experience faced by the transgender persons due to their gender identity, gender expression and/or sexual orientation.
- d. More than half of the respondents shared that felt uncomfortable with the binary school uniforms.
- e. Toilet issue facing by the respondents were raised due to their gender identity.
- f. Sexual violates incidences such as unwanted sexual gestures, language, image, molestation or unwanted touching, threat of rape and rape or coerced sex occurred in educational institutional. The perpetrators of the incidences were from peers and teachers or lecturers.
- g. The study also shows that the educational system lacks any redress mechanism which transgender children trust, to discuss the unique challenges faced by them.

C. RIGHT TO EMPLOYMENT

113. The respondents were asked about their working experiences including applying for a job in the public and private sectors. The experiences from the clients, colleagues, customers and others which include support, violence and discrimination. The respondents were also asked to share the impact of the discrimination if any and as whether their current workplace has a policy that protects the employees from any discrimination based on gender identity, gender expression and/or sexual orientation.
114. The right to employment is essential in determining the standard of living and quality of life for an individual. In this section, the Commission will explore the right to employment of the transgender persons. To begin with, the Commission will look at the related legal provisions with regard to the right to employment.
115. The right to employment is enshrined in article 23 of the UDHR declaration as shown below:

*“(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.”
“(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”*

116. In the ICESCR, the right to work is provided in Article 6(1)¹⁰² and (2)¹⁰³. Decent work sums up the aspirations of people in their working lives. According to International Labour Organisation (ILO), decent work means “it involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men”¹⁰⁴. In addition to that, it is also stated in Principle 12 of Yogyakarta Principles provides that “everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.”

102 “Article 6(1). The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

103 “Article 6(2). The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

104 <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm> accessed on 28 November 2017

117. In the study, the Commission had interviewed 64 respondents who were working full time, 45 working part time, 10 respondents who were unemployed and 5 respondents who were still students. Table 8 and 9 showed the category and type of employment of the respondents:

Table 8: Category of Employment

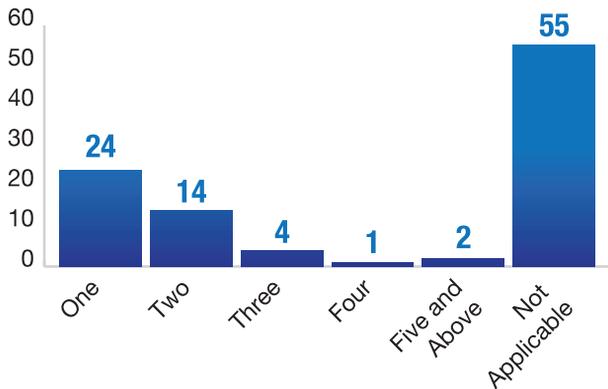
Item	Number of respondents
a. Full time	64
b. Part time	45
c. Unemployed	10
d. Student	5

Table 9: Type of employment

Full Time		Part Time	
Item	Frequency	Item	Frequency
1. Public/Government Sector	4/64	1. Public/Government Sector	2/45
2. Private Sector	25/64	2. Private Sector	10/45
3. Non-Governmental Organisation	6/64	3. Non-Government Organisation	2/45
4. Self-employed	9/64	4. Self-employed	27/45
5. Sex Worker	20/64	5. Sex Worker	15/45

118. With regard to part time employment as shown in diagram 4, a total of 21 respondents had been working more than one part-time job.

Diagram 4: Number of part time job by each respondent



119. There were 32 respondents whom had taken up part time job due to financial commitments. 24 of them were pursuing their own interest and 21 of them to support their trans specific healthcare needs as listed in table 10 below:

Table 10: Reasons of taking up part time job

Item	Number of respondents
a. Own financial commitments (e.g. car loan, study loan, rental, etc.)	32
b. Own interest (e.g. to pursue skills, talents and interest [e.g. modeling, make-up artist, bridal, etc])	24
c. To support trans specific healthcare needs (e.g. hormone replacement therapy, gender affirming procedures and surgeries, etc.)	21
d. Family commitment (to support family members)	10
e. Proximity with friend (to be closer with friend)	7

120. As mentioned in table 9, sex worker was the second most frequent full time job (20/64) and part time (15/45) job for the respondents. This shows that many respondents had taken up sex work as their source of earnings. The circumstances maybe due to the denial of employments or rejection of application of respondents based on their gender identity as shown in table 11 below.

Table 11: Denial or rejection of employment

Item	TW	TM	Intersex
1-5 times	36	4	1
	52.2%	13.8%	50.0%
6-10 times	4	3	0
	5.8%	10.3%	0.0%
11-15 times	2	1	0
	2.9%	3.4%	0.0%
16 - 20 times	1	0	0
	1.4%	0.0%	0.0%
More than 20 times	6	0	0
	8.7%	0.0%	0.0%
Not applicable	20	21	1
	29.0%	72.4%	50.0%

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

121. From the study, 58 respondents shared that they were denied employment, or their applications were rejected because of their gender identity and/or gender expression. Table 11 shows that compared with trans men, trans women faced more denial or rejection of employment applications at 49 for trans women, 8 for trans men. Out of the 2 intersex persons, only 1 faced discrimination.
122. With regard to the application of work, 95 respondents had applied to work in the private sector, 17 respondents had applied to work both in government sector and non-government organisation respectively.
123. When asked whether if the job interviewers questioned or made comments regarding their gender identity and/or gender expression during job interviews, 57 respondents (46 trans women and 11 trans men) stated that among the comments they received were as below:
- a. To cut their hair short.
 - b. Inquiry on their toilet preference if they were hired.
 - c. Made a comparison between their identical cards with their current physical features.
 - d. Their gender identity were questioned.
 - e. Comment made on their attire (gender expression).
 - f. Comments made on their soft/ feminine character.
 - g. Comment made on their appearance whether as women or men.
 - h. Asked about the genital organ as whether respondent undergone for gender affirmation surgeries.
 - i. That respondents were incapable to take up the job.
124. A trans man stated that he experienced rejection in the broadcasting industry when he revealed his gender identity even though he was successful in the interview. He was told that the organisation cannot put someone who was “half-half” in the industry.
125. A trans woman who had previously worked in a tuition centre received complaints by parents of students and she was asked to change her appearance to be more masculine which contributed to her resigning from her job.
126. It was revealed that 3 of the respondents had specifically mentioned the reason that they chosen self-employment to avoid all the discrimination that they might face during interview sessions and the working environment.
127. With regard to income, the study shows that 30 of the respondents had received income between RM1,501-RM3,000 and 10 of the respondents did not have income, 2 were students, 2 with visual disability and 1 with hearing disability.

Table 12: Average of total income

Item	TW	TM	Intersex
Below RM900	7	2	0
RM901 – RM1,500	23	2	0
RM1,501 – RM3,000	20	8	2
RM3,001 – RM4,000	9	6	0
RM 4,001 – RM5,000	2	3	0
Above RM5,000	1	4	0
Above RM10,000	0	1	0
No income	7	3	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

Table 13: Category of employment and average total income

Item	Below RM900	RM901 – RM1,500	RM1,501 – RM3,000	RM3,001 – RM4,000	RM 4,001 – RM5,000	Above RM5,000	Above RM10,000	No income
1. Full time	0	13	14	7	4	3	1	0
2. Part Time	7	8	5	1	1	1	0	0
3. Student	0	0	0	0	0	0	0	2
4. Full time and Part time	1	4	8	6	0	1	0	0
5. Full time and Student	0	0	1	0	0	0	0	0
6. Part time and Student	0	0	0	1	0	0	0	0
7. Full time, Part time and Student	0	0	1	0	0	0	0	0
8. Unemployed	1	0	1	0	0	0	0	8

Table 14: Disability and average income

Item	Below RM900	RM901 – RM1,500	RM1,501 – RM3,000	RM3,001 – RM4,000	RM 4,001 – RM5,000	Above RM5,000	Above RM10,000	No income
1. Visual disability	0	1	1	1	0	0	0	2
2. Hearing disability	0	1	1	1	0	0	0	1
3. Physical disability that restricts mobility	0	1	1	1	0	1	0	0

128. The respondents that had no income were from different age group, 3 respondents between 18-29 years old, 2 between 40-49 years old, 4 between 50-59 years old and 1 for 60 years old and above. Two of the respondents who were unemployed but had incomes, stated their source of incomes were from collection house rental inherited from family and another received income from modelling company which was on an ad hoc basis.

Table 15: Age and average income

Item	Below RM900	RM901 – RM1,500	RM1,501 – RM3,000	RM3,001 – RM4,000	RM 4,001 – RM5,000	Above RM5,000	Above RM10,000	No income
18 – 29 years old	4	5	16	6	2	1	0	3
30 – years old	0	10	8	8	3	3	0	0
40 – 49 years old	3	6	2	1	0	1	1	2
50 – 59 years old	1	4	3	0	0	0	0	4
60 years and above	1	0	1	0	0	0	0	1

129. One respondent who was a trans woman in the age group of 50-59 years old, revealed that she did not receive any formal education, was unemployed, homeless, had visual disability and had no source of income. She shared that she had applied for government aid but was instead asked to find a job.

130. There were 28 respondents stated that their employers and colleagues had supported their transition¹⁰⁵ on the job which involved either change of their gender pronounces, on hormone replacement therapy and change of their gender expression. Among of the support that respondents received including their employers allowed flexibility in their daily working attire and hairstyles, the employers accepted their change of gender and colleagues provided moral support to them. 23 respondents stated that their employers and colleagues did not support their transition. The balance 49; respondents opined that the question was not relevant to them, some of the reason was they had fully transitioned before started working or choose not to disclose their gender identity and kept it as a private matter.
131. The table below 16, 17, and 18 shows what respondents experienced because of their gender identity, gender expression and/or sexual orientation at any point of time during their employment from employer, colleagues and customer.
132. In table 16, 35 of the respondents were not allowed to express their authentic gender identity from their employers. 25 respondents stated unequal policies or lack of transgender friendly or sensitive policy towards them. 21 of the respondents shared that inappropriate and intrusive questions were asked to them.

Table 16: Previous and current experiences in workplaces from employers

Item	Frequency	TW	TM	Intersex
1. Disallowed to express my authentic gender identity (e.g. hair, attire, name and etc.)	35/100	31	4	0
2. Unequal policies or lack of transgender friendly or sensitive policies (e.g. spousal benefit, healthcare, etc.)	25/100	20	5	0
3. Inappropriate and intrusive questions (e.g. when are you going to change, when you are getting married and etc.)	21/100	15	5	1
4. No or lack or barriers in accessing gender specific facilities (e.g. toilets, locker rooms, etc.)	19/100	16	3	0

¹⁰⁵ Period of time when individuals change from the gender role associated with their sex assigned at birth to a different gender role. For many people, this involves learning how to live socially in the “the other” gender role; for others this means finding a gender role and expression that is most comfortable for them. Transition may or may not include feminization or masculinization of the body through hormones or other medical procedures. The nature and duration of transition is variable and individualized. (based on 7th Revision of Standards of Care for the Health of Transsexual, Transgender and Gender Nonconforming People by the World Professional Association for Transgender Health)

Item	Frequency	TW	TM	Intersex
5. Denial of promotion	13/100	11	2	0
6. Creating unfriendly environment to encourage you to resign	13/100	9	3	1
7. Name calling, hate speech, hateful jokes about gender identity, gender expression and/or sexual orientation	12/100	11	1	0
8. Disclosure of your gender identity and/or sexual orientation without your consent	11/100	7	4	0
9. Termination of employment or fired	10/100	9	1	0
10. Spread of gossip and rumors (e.g. sharing details about your personal life and gender identity, or creating false stories regarding you and your gender identity)	8/100	6	2	0
11. Lack of freedom to participate in transgender events or warned from participating in transgender events	8/100	6	1	1
12. Transferred to other departments	7/100	7	0	0
13. Assigned excessive tasks because of gender identity	7/100	6	1	0
14. Excessive overtime because of gender identity	6/100	6	0	0
15. Blackmail and threats to disclose gender identity and details regarding personal life	6/100	6	0	0
16. Hostile interaction or refusal to interact or communicate because of gender identity, gender expression and/or sexual orientation	5/100	5	0	0
17. Sexual harassment (e.g. unwanted sexual gestures, comments and jokes, unwanted touching, rape threats, unwanted sexual invitations)	5/100	3	1	1
18. Demotion	4/100	4	0	0
19. Physical violence (e.g. pushed, hit, physical confrontation, etc.)	1/100	1	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

133. With regard to the experiences shared by the respondents, 53 respondents stated that their colleagues tend to ask inappropriate and intrusive questions to them. 51 respondents informed that their colleagues also spread of gossip and rumors against them and 49 of them shared that their colleagues had disclosed of their gender identity and/or sexual orientation without their consent.

Table 17: Previous and current experiences in workplaces from the colleagues

Item	Frequency	TW	TM	Intersex
Inappropriate and intrusive questions (e.g. when are you going to change, when you are getting married and etc.)	53/100	41	11	1
Spread of gossip and rumors (e.g. sharing details about your personal life and gender identity, or creating false stories regarding you and your gender identity)	51/100	39	11	1
Disclosure of your gender identity and/or sexual orientation without your consent	49/100	37	11	1
Name calling, hate speech, hateful jokes about gender identity, gender expression and/or sexual orientation	48/100	42	6	0
Hostile interaction or refusal to interact or communicate because of gender identity, gender expression and/or sexual orientation	28/100	24	4	0
Sexual harassment (e.g. unwanted sexual gestures, comments and jokes, unwanted touching, rape threats, unwanted sexual invitations)	27/100	24	2	1
No or lack of barriers in accessing gender specific facilities (e.g. toilets, locker rooms, etc.)	20/100	16	4	0
Creating unfriendly environment to encourage you to resign	18/100	15	2	1
Disallowed to express my authentic gender identity (e.g. hair, attire, name and etc.)	16/100	14	2	0
Physical violence (e.g. pushed, hit, physical confrontation, etc.)	13/100	12	1	0
Blackmail and threats to disclose gender identity and details regarding personal life	11/100	9	2	0

Item	Frequency	TW	TM	Intersex
Assigned excessive tasks because of gender identity	9/100	9	0	0
Excessive overtime because of gender identity	5/100	4	1	0
Denial of promotion	5/100	4	1	0
Lack of freedom to participate in transgender events or warned from participating in transgender events	4/100	4	0	0
Unequal policies or lack of transgender friendly or sensitive policies (e.g. spousal benefit, healthcare, etc.)	1/100	1	0	0
Demotion	1/100	1	0	0
Transferred to other departments	1/100	1	0	0
Termination of employment or fired	1/100	1	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

134. Respondents shared that when they dealt with customer at a workplace, 25 of them faced sexual harassment, 23 received inappropriate and intrusive question and 18 of them experienced name calling, hate speech, hateful jokes about gender identity, gender expression and/or sexual orientation from the customers.

Table 18: Previous and current experiences in workplaces from customers

Item	Frequency	TW	TM	Intersex
Sexual harassment (e.g. unwanted sexual gestures, comments and jokes, unwanted touching, rape threats, unwanted sexual invitations)	25/100	24	0	1
Inappropriate and intrusive questions (e.g. when are you going to change, when are you getting married and etc.)	23/100	20	2	1
Name calling, hate speech, hateful jokes about gender identity, gender expression and/or sexual orientation	18/100	16	1	1

Item	Frequency	TW	TM	Intersex
Physical violence (e.g. pushed, hit, physical confrontation, etc.)	12/100	12	0	0
Hostile interaction or refusal to interact or communicate because of gender identity, gender expression and/or sexual orientation	10/100	7	2	1
Disallowed to express my authentic gender identity (e.g. hair, attire, name and etc.)	11/100	8	2	1
Spread of gossip and rumours (e.g. sharing details about your personal life and gender identity, or creating false stories regarding you and your gender identity)	8/100	7	0	1
Disclosure of your gender identity and/or sexual orientation without your consent	4/100	4	0	0
Blackmail and threats to disclose gender identity and details regarding personal life	3/100	3	0	0
No or lack or barriers in accessing gender specific facilities (e.g. toilets, locker rooms, etc.)	3/100	3	0	0
Creating unfriendly environment to encourage you to resign	3/100	2	1	0
Unequal policies or lack of transgender friendly or sensitive policies (e.g. spousal benefit, healthcare, etc.)	0/100	0	0	0
Denial of promotion	0/100	0	0	0
Demotion	0/100	0	0	0
Transferred to other departments	0/100	0	0	0
Termination of employment or fired	0/100	0	0	0
Excessive overtime because of gender identity	0/100	0	0	0
Assigned excessive tasks because of gender identity	0/100	0	0	0
Lack of freedom to participate in transgender events or warned from participating in transgender events	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

135. There were 46 respondents that stated they still experienced the aforementioned experiences. The table 19 below shows the relevant experience that they were still experiencing in their work place:

Table19: Current experiences at workplace

Item	Frequency	TW	TM	Intersex
1. Name calling, hate speech, and hate jokes about gender identity, gender expression and/or sexual orientation	25/100	21	3	1
2. Inappropriate and intrusive questions by employers and/or colleagues (e.g. when are you going to change, are you married and etc.)	23/100	15	7	1
3. Sexual harassment (e.g. unwanted sexual gestures, comments and jokes, unwanted touching, rape threats, unwanted sexual invitations)	21/100	18	2	1
4. Physical violence (e.g. pushed, hit, physical confrontation, etc.)	16/100	16	0	0
5. Disallowed to express my authentic gender identity (e.g. hair, attire, name and etc.)	15/100	12	2	1
6. Spread of gossip and rumours (e.g. sharing details about your personal life and gender identity, or creating false stories regarding you and your gender identity)	15/100	9	5	1
7. Disclosure of your gender identity and/or sexual orientation without your consent	14/100	8	5	1
8. Hostile interaction or refusal to interact or communicate because of gender identity, gender expression and/or sexual orientation	11/100	9	1	1
9. No or lack or barriers in accessing public facilities (e.g. toilets, locker rooms, etc.)	11/100	8	2	1
10. Unequal policies or lack of transgender friendly or sensitive policies (e.g. spousal benefit, healthcare, etc)	6/100	3	3	0
11. Blackmail and threats to disclose gender identity and details regarding personal life	6/100	5	1	0
12. Excessive overtime because of gender identity	3/100	3	0	0
13. Lack of freedom to participate in transgender events or warned from participating in transgender events	3/100	3	0	0

Item	Frequency	TW	TM	Intersex
14. Creating an unfriendly environment to encourage you to resign	2/100	2	0	0
15. Assigned excessive tasks because of gender identity	2/100	1	1	0
16. Denial of promotion	2/100	1	1	0
17. Unable to mix freely with colleague	1/100	1	0	0
18. Not allowed to mix around with customers at the workplace	1/100	1	0	0
19. Transferred to other departments	1/100	1	0	0
20. Termination of employment or fired	1/100	1	0	0
21. Demotion	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

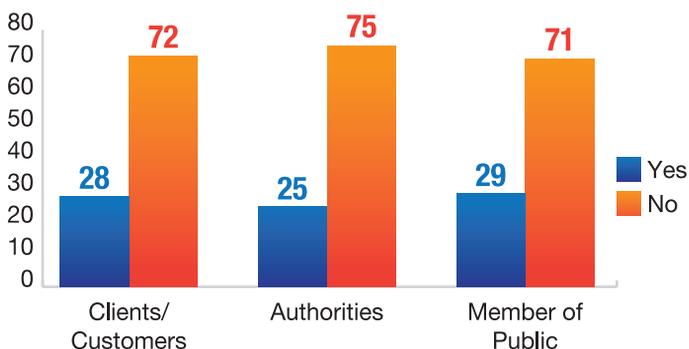
136. A respondent also shared how she was terminated by an employer. Firstly, she was asked to change her feminine appearance and mannerism, followed by receiving multiple warnings due to her gender identity and gender appearance, and subsequently she was fired by her employer. Another trans woman shared that she was advised by her human resource department to see a counsellor if she failed to change her gender identity.

Experiences of respondents who were sex workers

137. Based on National Strategic Plan for Ending AIDS 2016-2030, estimation the sex worker population size in Malaysia which is based on its last consensus dialogue in 2014 was about 45,000. 21,000 were female sex workers and 24,000 were transgender sex workers.¹⁰⁶
138. With regard to the experiences of the respondents who were sex workers, 28 respondents stated they faced violence from clients/customers, 25 of them from authorities and 29 of them from members of public as shown in diagram 5.

¹⁰⁶ Ministry of Health. Malaysia National Strategic Plan for Ending AIDS 2016-2030. P. 16

Diagram 5: Sex workers experienced violence while they were working



139. From the study, among the violence faced by respondents who were sex workers includes the following:

- a. Forced to have sex without payment by police and customer.
- b. Customers paid less than the actual fee.
- c. Robbed by customer.
- d. Beaten by the customers and members of public.
- e. Threw with eggs by members of public.
- f. Stripped in the police lock-up.
- g. Scolded and assaulted by customer and members of public.
- h. Customers refused to wear condom.
- i. Customers, polices and members of public used harsh words towards them.
- j. Police extorted money from them.

140. Four trans women specifically mentioned that they had turned to sex work because were unable to find a proper job.

141. The study also shows that the impact of the discrimination at the workplace towards the respondents were significant and had taken a toll on the respondents as stated in the table 20 below.

Table 20: Impact of discrimination at the workplace

Item	Frequency	TW	TM	Intersex
1. Stress, anxiety, isolation	61/100	49	11	1
2. Anger	55/100	45	9	1
3. Demotivated	45/100	35	10	0
4. Depression	43/100	33	9	1

Item	Frequency	TW	TM	Intersex
5. Sought new employment	37/100	35	2	0
6. Resignation	37/100	31	6	0
7. Suicidal thoughts	15/100	11	4	0
8. Self harm	9/100	6	3	0
9. Suicidal attempts	8/100	7	1	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

142. In term of searching employment opportunities outside of Malaysia, 30 respondents stated that they had sought employment opportunities outside of Malaysia. They had given the following factors:
- a. Better remuneration
 - b. To obtain work experience
 - c. Searching for better life
 - d. To enable gender reassignment surgery process
 - e. Had contact from oversea
 - f. Foreign country and society more open to gender fluid
 - g. Malaysia society own stigma against transgender persons
 - h. Difficult to obtain job in Malaysia
143. On the other hand, 8 respondents stated that their organisations have policies that protect employees from any form of discrimination based on gender identity, gender expression and/or sexual orientation such as employee handbook, memo on non-discrimination policy to all staff, and had protect the secrecy of identity.
144. When respondents facing difficulty in obtaining employment due to the difference between their legal documents and gender identity, it will affect their livelihood.

Summary of right to employment

- a. The Commission had interviewed 64 respondents who were working full time, 45 working part time, 10 respondents who were unemployed and 5 respondents who were still students.
- b. A total of 21 respondents had been working more than one part time job
- c. sex worker was the second most frequent full time job (20/64) and part time (15/45) job for the respondents. This shows that many respondents had taken up sex work as their source of earnings, often because of denial of mainstream jobs due to their gender expression
- d. 35 of the respondents were not allowed to express their authentic gender identity from their employers.
- e. 53 respondents stated that their colleagues tend to ask inappropriate and intrusive questions to them.
- f. Respondents shared that when they dealt with customer at a workplace, 25 of them faced sexual harassment.
- g. With regard to the experiences of the respondents who were sex workers, 28 respondents stated they faced violence from clients/customers, 25 of them from authorities and 29 of them from members of public.

D. RIGHT TO HEALTHCARE

145. This section covers the right to healthcare of the transgender persons, the respondents were asked on the types of healthcare services that they seek for, what type of healthcare needs and any specific healthcare needs that they were required and their experience when seeking for healthcare services.
146. According to World Health Organisation (WHO), the right to health “includes access to timely, acceptable, and affordable health care of appropriate quality”¹⁰⁷ and the right to the highest attainable standard of health “requires a set of social criteria that is conducive to the health of all people, including the availability of health services, safe working conditions, adequate housing and nutritious foods”¹⁰⁸. The transgender persons are not exclusion from the right to healthcare.
147. Besides from the general common health needs such as treatment for physical and mental illness, pain and disease, the transgender person may require other specific healthcare needs due to their gender dysphoria. The gender affirming health services for transgender persons covers all the medical supports needed for their medical transition process which include hormone replacement therapy, gender affirmation surgery, access to counselling and etc. According to the 7th version of the Standards of Care for the Health of Transsexual, Transgender, and gender Non-conforming People published

107 <http://www.who.int/mediacentre/factsheets/fs323/en/> accessed in 5 December 2017

108 Ibid

by the World Professional Association for Transgender Health (WPATH)¹⁰⁹ explained that treatment for people with gender dysphoria has now become more individualised¹¹⁰. The excerpt from the 7th revision of the Standards of care mentioned the following:

“... Health professionals recognised that while many individual need both hormone replacement therapy and surgery to alleviate their gender dysphoria, others need one only of these treatment options and some need neither. Often with the help of psychotherapy, some individuals integrate their trans or cross gender feelings into the gender role they were assigned at birth and do not feel the need to feminise or masculinise their body. For others, changes in gender role and expression are sufficient to alleviate dysphoria. Some patients may need hormones, a possible change in gender role, but not surgery; others may need a change in gender role along with surgery, but not hormones. In other words, treatment for gender dysphoria has become more individualised.”¹¹¹

148. In the ICESCR, Article 12 provides that everyone is entitled to the enjoyment of the higher attainable standard of physical and mental health as well as Principle 17 of the Yogyakarta Principles. This section seeks to relate the experience of discrimination that has affected the right to healthcare of transgender persons. The inclusion of the transgender healthcare needs in mainstream healthcare development is rare, save for disease prevention and accessibility of services particular to sexual transmitted diseases such as human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS) and etc. The World Health Organisation’s (WHO) constitution also states that “...the highest attainable standard of health is a fundamental right of every human being...”. This means that universal health coverage should be extended to all including transgender persons.
149. Health care professionals around the world including mental health professionals are guided by the International Statistical Classification of Diseases and related health problems (ICD)¹¹² and the American Psychological Association’s (APA) Diagnostic and Statistical Manual of Mental Disorder (DSM)¹¹³ to code and thus fund, health services¹¹⁴. DSM is the manual used by clinicians and researchers to diagnose and classify mental disorders. The

109 WPATH “is an international, multidisciplinary, professional association who mission is to promote evidence-based care, education, research, advocacy, public policy and respect for transgender health”.

110 7th version of the Standards of Care for the Health of Transsexual, Transgender. P. 9

111 7th version of the Standards of Care for the Health of Transsexual, Transgender. P. 8-9

112 “ICD is the foundation for the identification of health trends and statistics globally, and the international standard for reporting diseases and health conditions. It is the diagnostic classification standard for all clinical and research purposes”. Accessed via <http://www.who.int/classifications/icd/en/> (accessed on 7 April 2017)

113 “The *Diagnostic and Statistical Manual of Mental Disorders (DSM)* is the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders”. Accessed via <https://www.psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions> (accessed on 7 April 2017)

114 Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities*. Washington, DC: Future Group Health Policy Project. P. 32

medical evidence by the medical practitioners on the gender identity disorder (currently has been reclassified as gender dysphoria) was referred in the case of Muhammad Juzaili Bin Mohd Khamis & Ors v State of Government of Negeri Sembilan [2015] MLJ 65. The excerpts on gender identity disorders in the 4th edition of the DSM was exhibited in the case which explained that gender identity disorders “are characterized by strong and persistent cross-gender identification accompanied by persistent discomfort with one’s assigned sex”.

150. Currently, health care professionals were guided by the 10th revision of the ICD¹¹⁵ and 5th edition of the DSM. In the 5th edition of the DSM, gender identity itself is not a disorder that requires treatment. It is the dysphoria that comes with learning that one’s assigned birth sex is not aligned with their expressed gender that requires treatment. Therefore, the DSM had removed the term ‘gender identity disorder’ and replaced it with “gender dysphoria”. However, the DSM and ICD is perceived by certain sectors of the society as adopting western and secular values abandoning local norms and culture.
151. In 2017, the Ministry of Health through its Family Health Development Division issued a Guideline on Handling of Gender related Health Issues in Healthcare Clinic¹¹⁶. The guideline, which is expected to be a reference for procedure and handling steps on gender related health issues. It served to identify gender related issues for baby, children, adolescent and elderly. The guideline also includes the usage of hormone and its side effect towards the users. The introduction of the guideline had involved local university academicians, government officials among other from Ministry of Education, Department of Registration, National Population and Family Development Board, Islamic State Authorities save for LGBT advocates or community. Moreover, the guideline has highlighted the stand of the government in prohibiting gender reassignment surgery, laws’ provisions with regard to carnal intercourse against the order of nature and the discussion on the case of Muhammad Juzaili Bin Mohd Khamis & Ors. It should be highlighted that If more aspects of healthcare concerns are dictated by religious sensitivity, this would negatively affect the health system in reaching out to marginalised individual which include transgender persons.
152. In addition, the classification of gender diversity as a mental illness contributes to the stigma experienced by transgender persons.¹¹⁷ However, in the Malay mail online reported that a research published in a journal entitled *The Lancet Psychiatry* found that violence and social rejection are the cause of mental distress and impairment among transgender people, not their gender identity.¹¹⁸

115 “ICD-10 was endorsed in May 1990 by the Forty-third World Health Assembly. It is cited in more than 20,000 scientific articles and used by more than 100 countries around the world”. Accessed via <http://www.who.int/classifications/icd/en/> (accessed on 7 April 2017)

116 *Garis panduan Pengendalian Masalah Kesihatan Gender di Klinik Kesihatan* (translated from Malay into English).

117 Asia Pacific Transgender Network, United Nations Development Programme. *Blueprint for the provision of comprehensive care for trans people and trans communities in Asia and the Pacific*. Washington, DC: Future Group, Health Policy Project. 2015. P. 19

118 <http://www.themalaysianonline.com> dated 29 July 2016 (accessed on 1 August 2016)

153. It is important for the healthcare services to be non-discriminatory towards the transgender person. In addition, health care professionals need to treat transgender persons with sensitivity and care including not to ask unnecessary questions or show biasness.
154. In the study, there were 98 respondents that had accessed healthcare services (e.g. clinic, hospital, etc.) in Malaysia. The remaining 2 respondents, one had cited that preferred not to access the service and another one had not accessed healthcare services in Malaysia.
155. The reasons and frequency of 98 respondents that seek for healthcare services in Malaysia is listed as below:

Table 21: Reason for seeking healthcare services

Item		TW	TM	Intersex
1. To seek treatment for health concerns, (e.g. flu, fever, cough, etc.)	Number	66	26	2
	Percentage	95.7%	89.7%	100.0%
2. General medical check up (e.g. employment purposes, general health)	Number	63	25	2
	Percentage	91.3%	86.2%	100.0%
3. To seek for dental care services	Number	55	21	2
	Percentage	79.7%	72.4%	100.0%
4. To get medical tests (e.g. STI, HIV, TB, etc.)	Number	58	16	0
	Percentage	84.1%	55.2%	0.0%
5. To seek trans specific healthcare needs (e.g. hormone therapy, blood check ups)	Number	28	17	1
	Percentage	40.6%	58.6%	50.0%
6. To seek treatment for on-going health conditions (e.g. heart condition, dialysis, HIV status)	Number	33	7	1
	Percentage	47.8%	24.1%	50.0%
7. To seek remedy for mental health issues (e.g. depression, anxiety, stress, etc.)	Number	12	11	1
	Percentage	17.4%	37.9%	50.0%

Item		TW	TM	Intersex
8. To seek supporting document for name and gender change in legal documents (e.g. medical report etc.)	Number	11	9	1
	Percentage	15.9%	31.0%	50.0%
9. To seek gender dysphoria or gender identity disorder (GID) diagnosis or letter	Number	8	11	1
	Percentage	11.6%	37.9%	50.0%
10. To seek treatment for sexual reproductive health needs (e.g. pap smear, breasts examination, etc.)	Number	11	6	0
	Percentage	15.9%	20.7%	0.0%

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

156. Table 22 below shows the frequency of respondents who usually receive medical health care for health or medical issues or concerns in various health care services.

Table 22: Frequency of respondent visiting health care services

Item	TW	TM	Intersex
1. Private clinic	59	26	2
2. Government hospital	58	18	2
3. Government clinic	52	15	1
4. Self-medicate (e.g. healing or treatment based on own research)	38	21	1
5. Private hospital	25	19	1
6. Community clinic (run by NGOs)	20	2	0
7. Alternative treatment (Islamic and Chinese medical treatment)	6	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

157. Table 23 below shows the level of satisfaction provided by the medical health care services (including dental and mental health care services) to the respondents. Based on the table, it was found that the respondents were satisfied with services provided by the community clinic runs by non-governmental organisations (NGOs) and rated it at 4.35 out of 5. Services provided by private clinic was the second satisfied services enjoyed by the respondents which was rated at 3.82. It was followed by private hospital rated at 3.6. The lower satisfaction among the services were from the government clinic and hospital, however, majority of the services were rated at neutral by the respondents. Alternative treatments includes traditional treatments ethnic Chinese, Malay and Indian such as Ayurveda, acupuncture, cupping therapy and others.

Table 23: Level of satisfaction provided by healthcare services

Item	Min
1. Community clinic (run by NGOs)	4.35
2. Private clinic	3.82
3. Private hospital	3.61
4. Alternative treatment	3.50
5. Government clinic	3.07
6. Government hospital	3.00

Note: 1=Very dissatisfied, 2= Dissatisfied, 3=Neutral, 4=Satisfied, 5= Very satisfied

158. In the study, 48 respondents shared that they were admitted to a hospital ward due to health issues. It is very important to highlight that some were admitted in hospital while they were minors. Out of 48, 30 were trans women and 17 were trans men and one intersex person.
159. According to the table 24 below, the placement of the trans women were mostly in male wards and the placement of trans men were in female wards. It shows that the placements of ward were according to their sex assigned at birth. But occasionally, there had been cases where respondents were placed according to their gender identity or in an isolated room.

Table 24: Gender identity and placement of ward

Frequency of placement of ward		TW	TM	Intersex
1. Female ward	One time	2	3	1
	Two times	0	1	0
	Three times	0	4	0
	Four times	0	0	0
	Five times and more	0	2	0
	Not applicable	67	19	1
2. Male ward	One time	14	4	0
	Two times	6	1	0
	Three times	1	0	1
	Four times	0	0	0
	Five times and more	2	1	0
	Not applicable	46	23	1
3. Isolation room	One time	5	5	0
	Two times	1	1	0
	Three times	0	1	0
	Four times	0	0	0
	Five times and more	1	0	0
	Not applicable	62	22	2
4. Children ward	One time	0	0	0
	Two times	1	0	0
	Three times	0	0	0
	Four times	0	0	0
	Five times	0	1	0
	Not applicable	68	28	2

Frequency of placement of ward		TW	TM	Intersex
5. Mixed ward (female and male)	One time	1	0	0
	Two times	0	0	0
	Three times	0	0	0
	Four times	0	0	0
	Five times	0	0	0
	Not applicable	68	29	2
6. Isolation ward	One time	1	0	0
	Two times	0	0	0
	Three times	0	0	0
	Four times	0	0	0
	Five times	0	0	0
	Not applicable	68	29	2

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

160. A trans woman shared that she was admitted to government hospital ward due to dengue fever. She was looked down by hospital staff, patients and also patients' visitors due to her gender identity. She had requested for an early discharge from the hospital because she felt uncomfortable. She further shared that she had become a topic of gossip among the hospital staff during the period and she overheard the hospital staff called her "pondan" instead of a woman.
161. Another trans woman who had undergone gender affirmation surgery shared that she was placed in a male ward when she was admitted to hospital and she had to prove herself a woman by disclosing her genitalia to the health care professional. She was laughed at by hospital staff when she was brought for her X-ray and ridiculed for being "in denial" over her "original" identity.
162. Out of 100 respondents, when asked whether they were comfortable disclosing their gender identity or sexual orientation to a healthcare professional, 53 respondents said that they were comfortable to disclose their gender identity and sexual orientation.
163. The respondents also shared their experiences on the forms of mistreatment directed at them at healthcare facilities because of their gender identity, gender expression and/or sexual orientation. Respondents states that most of the time

health care professionals, including doctors, nurses, and staff used name as per identification card (IC) when calling their name. The experiences shares are listed in the table 25 below:

Table 25: Form of mistreatment at health care services

Frequency of experience of mistreatment at healthcare services		TW	TM	Intersex
1. Higher or longer waiting time than other patients	One time	2	0	0
	Two times	7	0	0
	Three times	1	0	0
	Four times	1	0	0
	Five times and more	5	2	0
	Not applicable	53	27	2
2. Health care professionals, including doctors, nurses, staff use name as per IC when calling your name	One time	7	0	0
	Two times	3	1	0
	Three times	2	1	0
	Four times	0	0	0
	Five times and more	40	23	2
	Not applicable	17	4	0
3. Mocked and ridiculed by healthcare professionals	One time	3	2	0
	Two times	5	0	0
	Three times	2	0	0
	Four times	0	2	1
	Five times	14	8	0
	Not applicable	45	17	1
4. Healthcare professionals of any gender and religion refuse to examine you	One time	3	0	0
	Two times	3	1	1
	Three times	1	0	0
	Four times	1	0	0
	Five times and more	3	0	0
	Not applicable	58	28	1

Frequency of experience of mistreatment at healthcare services		TW	TM	Intersex
5. Advised by healthcare professional to stop or change your sexual behavior instead treating your illness	One time	6	4	1
	Two times	1	2	0
	Three times	0	0	0
	Four times	1	0	0
	Five times and more	2	1	0
	Not applicable	59	22	1
6. Asked probing and irrelevant questions regarding sex life by healthcare professionals	One time	6	0	0
	Two times	6	2	0
	Three times	2	0	0
	Four times	2	1	0
	Five times and more	2	0	0
	Not applicable	51	26	2
7. Healthcare professional have suggested religion or other forms of therapy to 'cure' your gender identity	One time	7	1	0
	Two times	2	0	0
	Three times	3	2	0
	Four times	0	0	0
	Five times and more	3	0	0
	Not applicable	54	26	2
8. Healthcare professional disclosed confidentiality of medical details to others	One time	3	0	1
	Two times	2	0	0
	Three times	0	0	0
	Four times	0	0	0
	Five times and more	0	2	0
	Not applicable	64	27	1

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

164. There were only 4 respondents who shared that they were examined by healthcare professional in inappropriate manner (sexual harassment). All of them were trans women. Among the sexual harassment experiences were healthcare professional queried about their genital organ, the size of their breast and some instances their breast were grabbed and molested.

165. When asked whether if they had voluntarily sought help from mental health professional or religious authority or forcibly sent to mental health professional or religious authority for their gender identity, gender expression and/or sexual orientation, 19 percent of respondents responded that they had voluntary sought help from mental professional and 18 to religious authority¹¹⁹, while, 15 percent of the respondents were forced to see mental health professional and 9 percent of the respondents were forced to consult religious authority.

Table 26: Seeking help from mental healthcare professional and religious authorities (voluntary and forcibly sent)

Item	Voluntary sought help	Forcibly sent
	Percentage	Percentage
1. Mental Health professional	19/100	15/100
2. Religious authority	18/100	9/100

166. The respondent who voluntary sought help from mental health professional and/or religious authority mentioned the following reasons as why they did so:

- i. To share personal issues
- ii. To diagnose their gender identity/ gender dysphoria
- iii. To seek help for hypertension, stress, panic and depression
- iv. To study religion and to sought advice from a religious man
- v. To inquire on their gender non-conformity
- vi. To seek treatment for being feminine
- vii. To obtain document for gender identity disorder as supporting document for gender reassignment surgery

167. For individual who were forcibly sent to mental health professional and/or religious authorities by their family member, family friend and state religious authority, some of the respondents shared that they were asked by religious man to perform religious ritual such as wearing of talisman to cure their gender identity.

168. It is worth to note that mental health issues faced by the transgender persons does not only relate to gender identity itself but arose due to the pressures of not conforming to the assigned gender role and other social expectations¹²⁰. Therefore, the mental health issues faced by trans people are symptomatic of the environment and discrimination that they face. 9 respondents including trans man and trans woman stressed that the mental health issues that they experienced mostly were due to stigma, lack of acceptance by family, discrimination against them which creates an unfriendly environment The table

119 The context of religion authorities in this question is referred to a person with religious knowledges.

120 Sood N. Transgender People's Access to Sexual Health and Rights: A Study of Law and Policy in 12 Asian Countries. Kuala Lumpur, Malaysia: The Asian-Pacific Resources and Research Centre for Women (ARROW). 2009. P. 30

below 27 shows the experience of mental health issues by the respondents:

Table 27: Mental health issues of respondents due to gender identity, gender expression and/or sexual orientation

Item		TW	TM	Intersex
1. Anxiety	Number	53	21	2
	Percentage	76.8%	72.4%	100.0%
2. Stress	Number	49	24	2
	Percentage	71.0%	82.8%	100.0%
3. Feeling depressed	Number	39	22	2
	Percentage	56.5%	75.9%	100.0%
4. Self-isolation	Number	37	18	2
	Percentage	53.6%	62.1%	100.0%
5. Suicidal ideation	Number	17	14	2
	Percentage	24.6%	48.3%	100.0%
6. Suicidal attempts	Number	13	8	2
	Percentage	18.8%	27.6%	100.0%
7. Self-harm	Number	10	8	2
	Percentage	14.5%	27.6%	100.0%
8. Anger/angry	Number	1	0	0
	Percentage	1.4%	0	0
9. Disappointed	Number	1	0	0
	Percentage	1.4%	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

169. Among of the common mental health issues experienced by the respondents were anxiety (53 trans women (76.8%), 21 trans men (72.45) and both intersex persons). It was followed with stress (49 trans women and 24 trans men and both intersex persons), feeling depressed (39 trans women, 22 trans men and both intersex persons) and self-isolation (37 trans women, 18 trans men and both intersex persons). It was quite worrying that 17 trans women, 14 trans men and both intersex persons experienced suicidal ideation. The act of self-harm among the respondents were also evident, involving 10 trans women, 8 trans men and both intersex persons.

170. In addition to that, 23 respondents shared that they had attempted suicide with 22 of them informing that they had attempted suicide between 1 to 5 times. The table 28 below shows the number of suicidal attempt by the respondents:

Table 28: Suicidal attempts by respondents

Item	Frequency	TW	TM	Intersex
One time	8	3	4	1
Two times	8	5	3	0
Three times	3	2	1	0
Four times	2	1	0	1
Five times	1	1	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

171. The gap between the number of respondents who was voluntarily seeking for mental health services with number of respondents that experienced mental health issues were very vast. Majority of the respondents had experienced one or more various mental health issues but not all seeking help from the mental health professional but then were severely affected i.e. some of them experienced suicidal ideation, self-harm and suicidal attempts – 3 respondents had shared they use drugs to cope with the mental health issues.
172. Looking at the scenario, competent mental health professionals in dealing with gender dysphoria and its related concerns is surely needed. At the same time, the access to seek for mental health services should be made available and affordable. Transgender persons would not or are unable to seek mental health services if the cost are unreasonable, if there was a lack of competent mental health professional around, if trans special health needs services are not available and medical professional are insensitive. In addition, stigma about mental health problem dissuade many from seeking medical help.
173. During an interview, a trans woman shared that she was advised by a mental health professional to experience sex with a sex worker to deal with her gender identity. The mental health professional asked her to reclaim her masculinity and told her that she had an identity crisis due to her mixed-race lineage. She further explained that the mental health professional had a stereotype against trans woman and expected her to confirm to the stereotype. It took her 8 years to find more supportive services for her needs.
174. When the respondents were asked based on their experience what are the gaps in the health care system in relation to healthcare needs of transgender

persons. The following rating was given, most of the respondents agreed that there were gaps and as shown in table 29 below:

Table 29: The gaps in the healthcare system for respondents

Item	Min
1. Lack of gender affirmation surgeries	4.70
2. Lack of information on trans specific healthcare needs	4.68
3. Lack of gender affirming therapy on gender identity and sexual orientation	4.58
4. Lack of specific clinic/department that deals with the gender identity and sexual orientation	4.57
5. Lack of knowledgeable health care professional and expert in trans-specific health care services	4.43
6. Lack of hormone replacement therapy	4.35
7. Lack of sensitive and friendly mental health professional/physician and experts	4.20

1=Strongly Disagree 2= Disagree 3= Neutral 4= Agree 5= Strongly Agree

175. A specific experience shared by a trans woman was that she had undergone a breast augmentation procedure in Thailand and afterward had experienced complications due to the procedure. She failed to obtain advice on her complications even after seeing 5 doctors in Malaysia, she was forced to seek treatment in Thailand.

Hormone replacement therapy

176. Hormone replacement therapy is a pivotal health procedure for transgender persons which could induce feminising or masculinising changes¹²¹ to the body such as the body shape and body hair. It is essential for a healthcare professional to prescribe appropriate hormones and medication for transgender persons who fit the criteria. One should bear in mind that in any medication, there are side effects. However, the side effects will be manageable if the person takes the medication according to the healthcare professional's advice and attend follow up sessions.
177. From the research, 61 respondents shared that they were currently on hormone replacement therapy, 25 respondents were stopped from hormone replacement therapy due to the following reasons:
- i. To avoid side effects of taking hormone.
 - ii. Doctor had advised to stop the hormone replacement therapy due to health concerns.

121 7th version of the Standards of Care for the Health of Transsexual, Transgender. P. 33

- iii. Facing health issues such as hypertension, heart complication, dizziness and rising body temperature (overheat).
- iv. Underwent treatment for human immunodeficiency virus (HIV) using anti-HIV drugs - highly active antiretroviral therapy (HAART) that suppress HIV replication.
- v. Had undergone gender reassignment surgery.
- vi. Could not afford to continue with the hormone replacement therapy due to financial problems.

178. When asked what types of hormone replacement therapy that they used or had used. It was revealed that trans women preferred to consume pills, while trans men preferred to use injection for their therapy. The respondents also shared that they were using more than one type of hormone replacement therapy.

Table 30: Types of hormone replacement therapy

Item	TW	TM	Intersex
1. Oral or pill	57	1	1
2. Injection	39	21	2
3. Patches	3	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

179. The respondents related to the study the source of the hormone were as follow:

Table 31: Source of hormone

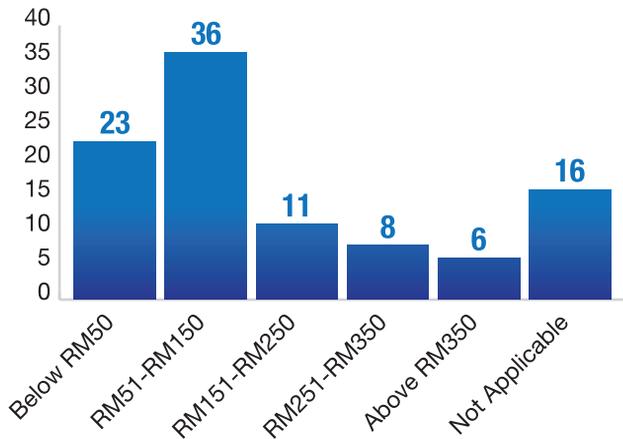
Item	TW	TM	Intersex
1. Pharmacy	54	3	2
2. Friend	33	14	1
3. Private clinic	22	9	0
4. Online or internet	12	4	0
5. Chinese medicine Store (Sinseh)	8	0	0
6. Bought from oversea (Thailand)	1	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

180. The table below shows the total amount of respondent spending on hormone replacement therapy per month. However, two of those respondents did not answer the question.

Diagram 6: Total amount of spending on hormone replacement therapy



181. Self-administered hormones with limited or no medical guidance is a common practice among transgender person. There were fewer information on the appropriate hormones, dosage and side effects available to transgender persons. The practice of self-medication of hormone is also common among trans women in Philippines, Laos, Thailand, China and Nepal¹²². Table 32 shows where the respondents obtain information regarding hormones and the source of hormone could be more than one.

Table 32: Source of hormones' information

Item	Frequency
1. Friend	70/86
2. Online or internet	49/86
3. Medical advice from healthcare professionals at hospitals or clinics	27/86
4. Reading materials such as pamphlets/ brochure	27/86
5. Pharmacy	25/86

Note: Frequency means number of respondent

182. From the table 32, it showed that only 27 of 86 respondents received medical advice from the healthcare professional at hospitals or clinics; and only 25 of 86 respondents obtained hormone information from pharmacy. This means

¹²² Asia Pacific Transgender Network, United Nations Development Programme. Blueprint for the provision of comprehensive care for trans people and trans communities in Asia and the Pacific. Washington, DC: Future Group, Health Policy Project. 2015. P.62

that the majority of respondent who are on hormone replacement therapy or had previously on hormone replacement therapy would not have prior medical advice on the doses intake and the potential side effects of it.

183. The likely increased risk and possible increased risk of hormone therapy comprised of cardiovascular, lipids, liver, hypertension, weight gain, psychiatric, breast cancer, cervical cancer and others¹²³. According to the respondents, the side effects of taking hormones to them as shows in the table 33. There were 47 respondents that experienced weight gain and followed by 43 respondents were “emotionally unstable” and the third higher side effect was high blood pressure. It was alarming to record that 8 respondents experienced cardiovascular problem as side effect of hormone taking.

Table 33: The side effects of taking hormone

Item	Frequency
1. Weight gain	47/86
2. “Emotionally unstable”	43/86
3. High blood pressure	15/86
4. Cardiovascular problem	8/86
5. Low blood pressure	3/86
6. Kidney problem	1/86
7. Headache	1/86
8. Feeling of coldness	1/86
9. Dry skin	1/86

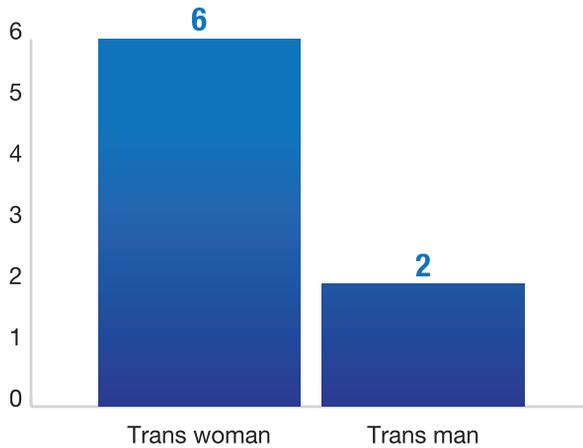
Note: Frequency means number of respondent

184. Due to the lacking of gender assignment surgery or procedures in Malaysia, respondents had opted to perform these surgery or procedures at neighbouring country – Thailand. During the interview, it was revealed that 41 respondents had undergone gender affirmation surgery or procedures which includes breasts augmentation, chondrolaryngoplasty, genitoplasty, chest reconstruction surgeries and etc. Out of 41 respondents, 33 had not experienced any complication due to the surgery and 8 (6 trans women and 2 trans men) of them experienced the following complications:

- i. Bacteria infection
- ii. Breast hardening and pain
- iii. Difficult urination
- iv. Cannot perform heavy work

123 7th version of the Standards of Care for the Health of Transsexual, Transgender. P.97-103

Diagram 7: Comparative between trans woman and trans man on complication due to gender affirmation surgery or procedures



185. When asked as whether they had subscribed to insurance, only 40 respondents said yes. Two of the respondents mentioned that their insurance policies covered trans specific health care needs, but the types of coverage were not recorded.
186. The remaining respondents chose not to subscribe to insurance schemes due to the following reasons:
- i. Do not cover trans specific health care needs
 - ii. Could not afford the monthly payment due to financial issues
 - iii. Concern about disclosing their gender identity
 - iv. Facing other health concerns
 - v. Insurance coverage was not a need for them
 - vi. Lost faith or do not trust the insurance company

Summary of right to healthcare

- a. With regard to the level of satisfaction of medical health services, it was found that the respondents were satisfied with services provided by the community clinic runs by non-governmental organisations (NGOs).
- b. Respondents were unconformable with the placement of the trans women were mostly in male wards and the placement of trans men were in female wards. It shows that the placements of ward were according to their sex assigned at birth.
- c. Out from 100 respondents, only 53 respondents comfortable to disclose their gender identity and sexual orientation to the medical health professional.
- d. Respondents states that most of the time health care professionals, including doctors, nurses, and staff used name as per identification card (IC) when calling their name.
- e. 19 percent of respondents responded that they had voluntary sought help from mental professional and 18 to religious authority¹²⁴, while, 15 percent of the respondents were forced to see mental health professional and 9 percent of the respondents were forced to consult religious authority.
- f. It was quite worrying that 17 trans women, 14 trans women and both intersex persons experienced suicidal ideation. The act of self-harm among the respondents were also evidenced, in which involved 10 trans women, 8 trans women and both intersex persons. 23 respondents shared that they had attempted suicide.
- g. There are only 27 of 86 respondents received medical advice from the healthcare professional at hospitals or clinics on hormone.
- h. Among reasons that respondents had not subscribed to insurance was because it does not cover trans specific health care needs, financial problem and concerns about disclosing their gender identity.

E. RIGHT TO HOUSING

187. The objectives of this section is to determine their basic of right to housing such as type of accommodation that they were living in and were there any discrimination practice and policies that affected their ability to rent or own an accommodation. In addition, the respondents were also requested to share their experience living in their neighbourhood due to their gender identity and/or gender expression.
188. The right to housing is a basic right and also refers to the right to adequate housing for everyone. The right is explicitly stated in human rights instruments such as Article 25(1)¹²⁵ of Universal Declaration of Human Rights (UDHR), Article 11(1)¹²⁶

124 The context of religion authorities in this question is referred to a person with religious knowledges.

125 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

126 The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure

of International Covenant on Economic, Social and Cultural Rights (ICESCR). It is also could be found in Article 15 of The Yogyakarta Principles which states “that everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity”.

189. The affordability of housing in Malaysia affects everyone since house prices have been rapidly increasing in the recent years. Stagnant of income facing by middle Malaysia has impacted house ownership. Alternatively, many people opt to rent a property instead of buying.
190. There are several government-assisted housing schemes and programmes offered to medium and low income earners such as Perumahan Rakyat 1Malaysia (PRIMA), Rumah Mesra Rakyat 1Malaysia, 1Malaysia Civil Servants Housing (PPA1M) and etc. In addition, the 11th Malaysia Plan 2016-2020 has included affordable housing as a development objective and the strategies are to increase affordable and quality housing as well as accessible for the targeted segments of the society.¹²⁷
191. In the study, most of the respondents were renting a room in Kuala Lumpur and Selangor which included 30 trans women, 3 trans men and 2 intersex persons. For trans man, most of them (12) were living with family and 9 of them were renting a house. Comparing between the age group and type of accommodation of the respondents living in, there were 3 respondents who were 60 years and above, 2 were still renting a room and one was homeless. In total 6 trans women were homeless with four of them unemployed. Please see table 34 and 35 for further details.

Table 34: Type of accommodation of the respondents

Item	TW	TM	Intersex
1. Renting a room	30	3	2
2. Renting a house	14	9	0
3. Living with family	12	12	0
4. Own house	2	4	0
5. Homeless	6	0	0
6. Living rent free with a friend or relative	5	1	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

127 Eleventh Malaysia Plan. Chapter 1: Anchoring growth on people 1-16

Table 35: Age group and type of accommodation of the respondents

Item	18 – 29 years old	30 – 39 years old	40 – 49 years old	50 – 59 years old	60 years old and above
1. Own house	1	4	0	1	0
2. Renting a house	4	7	8	4	0
3. Renting a room	11	14	5	3	2
4. Homeless	1	1	1	2	1
5. Living rent free with a friend or relative	0	3	2	1	0
6. Living with family	20	3	0	1	0

192. 25 respondents (23 trans women, one trans man and intersex persons respectively) shared that they had been denied room or house due to their gender identity, gender expression, and/or sexual orientation. Besides that, another reason was based on stigmatization that the property could be used for promiscuous activities by the transgender persons. Several respondents shared that discrimination happened immediately after face to face meeting, whereas before a physical meet up, house owners did not express any problems. Some house owners refused to rent the properties because they were transgender persons.
193. At the same time, 7 respondents who were trans women stated that they had to pay higher rent because of their gender identity. In one instances, a trans woman was told by a house owner that she will need to pay higher rent since she alleged that the property would be used for “sex trade activities”.
194. 10 of the respondents shared that they had experienced difficulties to apply for public housing due to their gender identity. A trans man shared that he felt uncomfortable in filling up the house application forms, which will lead to exposing his gender identity. Therefore, he withdrew the house application.
195. Another trans man also shared that he experienced difficulty to purchase joint property with his partner due to the stricter lending guidelines, as the financial institution preferred married couple instead of people living in partnership.
196. 31 respondents shared that they experienced violence from their neighbours or people in their neighbourhood because of their gender identity and gender expression including the following:

- i. Teased, humiliated and name calling by their neighbours
 - ii. Questioned their gender identities to their parents
 - iii. Criticised by neighbours for their gender expression including the way of their walking manner, the hair and attire.
 - iv. The neighbour showed their distasteful look and regard them as a criminal.
 - v. Demanded sexual from people in neighbourhood
 - vi. Warned by neighbour for bringing customers/client to their house
 - vii. Refused to share elevator with them
197. 3 respondents expressly mentioned that they preferred to stay in certain areas or certain neighbourhood to avoid unnecessary gossiping by neighbours which is an infringement of their right to privacy.
198. Transgender persons face harassment and/or violence from their community and family members, therefore they will either choose to leave or for worst being thrown out from the family or villages. It was clearly mentioned in earlier section that 17 respondents were chose to migrate to Kuala Lumpur or Selangor because been ostracised by the family/community¹²⁸ in which 2 of them became homeless. With lack of no financial support or skills, they would be living in poverty. This could be seen that there were 8 respondents had no income and 9 respondents earned less than RM900 per month¹²⁹.

Summary right to housing

- a. 25 respondents (23 trans women, one trans man and intersex persons respectively) shared that they had been denied room or house due to their gender identity, gender expression, and/or sexual orientation.
- b. 7 trans women stated that they had to pay higher rent because of their gender identity.
- c. 10 of the respondents shared that they had experienced difficulties to apply for public housing due to their gender identity.
- d. 31 respondents shared that they experienced violence from their neighbours or people in their neighbourhood because of their gender identity and gender expression

128 Please look at Item 83 & 84 of chapter 3, demography section

129 Please look at table 13 of chapter 3, right to employment section

F. RIGHT TO DIGNITY

199. The word of “dignity” is mentioned in the preamble of the UDHR and also in Article 1 of the UDHR. The article 1 of the UDHR states that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.
200. The right to dignity in this section will be focusing on the abuse or violence experience mainly in dealing with the criminal justice process such as, arrest and detention by authorities, violence from the family members, intimate partner and society at large.
201. In article 3 of the UDHR, it is stated that “everyone has the right to life, liberty and security of person”. In addition to that, the UDHR also entails the significant principle on the administration of justice such as article 5¹³⁰, 7¹³¹, 9¹³², 10¹³³ and 11¹³⁴ of UDHR. The other related provisions, but not limited to, are article 7¹³⁵ of ICCPR and Article 2¹³⁶ of CAT.
202. In addition to that, the rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provides that “all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times”. Therefore, it is a duty of the state to provide a safe penal institution system for those who are being detained. Besides, rule 7(a) of the Nelson Mandela Rules states that the prisoners’ identity and self-perceived gender should be respected¹³⁷.

130 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

131 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

132 “No one shall be subjected to arbitrary arrest, detention or exile.

133 Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

134 Article 11(1). Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

135 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

136 Article 2(1). Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Article 2(2). No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Article 2(3). An order from a superior officer or a public authority may not be invoked as a justification of torture.

137 No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner: (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender...

203. Moreover, principle 9 of the Yogyakarta Principles provides that “everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person’s dignity”. Hence, the security of the detainees or prisoners in detention centre should not be compromised and they should be free from harm. In addition to that, The principle 30 of Yogyakarta Principles Plus 10 provides that “everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group” and the principle 33 of the same Principles provides that “everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person’s actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.”

Experience of violence due to gender identity and gender expression

204. In the study, 93 respondents shared that they experienced violence because of their gender identity and gender expression. The type of violence includes physical violence, verbal violence, emotional violence and sexual violence and by different actors including authorities, family members, intimate partners and members of the public.

205. The study shows that violence experienced by respondents were mostly from the members of public, often verbal. This is followed by family members. The table 36 below shows the experience of violence by the various actors towards the respondents.

Table 36: Experience of violence by different actors

Item	Physical violence	Verbal violence ¹³⁸	Emotional violence ¹³⁹	Sexual violence
1. Members of the public	26	65	54	24
2. Family members	27	56	52	12
3. The Authorities (e.g. police, religious authorities)	24	47	43	23
4. Intimate partner	19	20	21	2

138 Verbal violence refers to violence in the form of speech. For example, insults, taunts, hate speech.

139 Emotional violence refers to violence that can manifest in the form of isolation, withdrawal of financial and emotional support, cold shoulders, etc. that affect people emotionally and psychologically.

206. There were 48 respondents in the study who shared that they had been arbitrarily questioned/stopped because of their gender identity and gender expression by the authorities. Out of the 48, 38 were trans women, 8 were trans men and both of the intersex persons. Among of the experience that the respondents shared, but not limited to, were as below:

- i. Several times, the respondents were stopped at the road blocks by the authorities to verify their identities. A trans woman shared that she was asked to do a urine test. There was also a very disturbing experience shared by a trans woman that she was stopped at a roadblock, the car that she rode with her friend was searched and condoms were found, then the authorities had allegedly requested sex from them. In some instances, the trans women were asked to provide their contact numbers to the authorities without any real reason. A few trans women also shared that they experienced sexual harassment and were laughed at due to their gender identity at the roadblock by the authorities. Separately, a trans man shared that he was stopped at roadblock and the authority had insulted him. A number of trans men had resorted to said that they were intersex persons to authorities to avoid prolonged queries made by the authorities while being stopped.
- ii. They were also stopped by authorities on their way to office or at public premises and asked to show their identification cards. Some authorities will question where they were going and a trans woman shared that the authority checked her handbag for several times without giving concrete reasons. In several occasions, the authorities will humiliate them by asking whether they were a male or female at the public space even after checking their identification cards. Other includes conducting body searches and some trans women claimed that authority took their money and they had to pay bribes to the authority for their own safety.
- iii. A trans woman shared that she was arbitrary questioned and subsequently arrested while she was having her lunch at a restaurant by the state religious authority.
- iv. They were arrested on the suspicion of being sex workers. Some shared that they were stopped and questioned by authority and were later arrested because of merely being in possession of condoms. But then, not all trans women were sex workers but they were profiled due to stigma.

207. These types of treatment from authorities would create anxiety and curtail them from their right to freedom of movement and expression.

Experiences of arrest due to gender identity and/or gender expression

208. Out of the 100 respondents, 39 trans women respondents shared that they were arrested by the authorities because of their gender identity and/or gender expression. Most of the arrest occurred during the police raid or operation and

followed by arrested on the street while working. The result shows in the table 37 below. It is to note that none of the trans man was arrested by authority due to their gender identity and/or gender expression.

Table 37: The situation and frequency of arrests

Item	One time	Two times	Three times	Four times	Five times and more	Not applicable
1. During a police raid or operation	6	7	4	6	9	68
2. Arrested on the streets while working	4	3	5	3	15	70
3. Arrested at public premises	9	4	2	1	1	83
4. Road block	2	3	2	0	0	93
5. At beauty pageant	1	0	0	0	1	98
6. At public space	2	0	0	0	0	98
7. At home	1	0	0	0	0	99

209. Most of the arrest were carried out by the police as shown in the table 38 below. The second higher arrest experienced by the respondents were from state religious authorities. Some of the respondents shared that they experienced arrest more than one time, some of them experienced five times and more.

Table 38: The number of arrests by the related authorities

Item	One time	Two times	Three times	Four times	Five times and more	Not applicable
1. Police	9	1	7	1	19	63
2. State religious authorities	11	3	5	1	3	77
3. State religious department and police (joint operations)	5	2	2	0	3	88
4. Municipal Council/City Council	2	0	0	0	2	96
5. Ikatan relawan rakyat Malaysia (RELA)	0	1	0	0	0	99
6. National Anti-Drugs Agency of Malaysia (AADK)	0	0	0	0	1	99

Note: 39 trans women

210. During the arrest, the respondents indicated the following violence as shown in table 39 below. Some of the respondents also shared that they experienced violence more than one time.

Table 39: Experience of violence during the arrest

Item	One time	Two times	Three times	Four times	Five times and more	Not applicable
1. Handcuffed	8	1	6	2	15	68
2. Name calling	8	2	4	0	17	69
3. Chased	5	2	3	1	15	74
4. Humiliated/Insulted	5	4	1	1	15	74
5. Body shaming	2	6	4	1	11	76
6. Religious or moral condemnation	6	1	6	1	6	80
7. Stripped	8	3	1	1	5	82
8. Asked for bribe	2	3	3	2	5	85
9. Kicked	7	2	0	1	2	88
10. Chained	3	2	2	0	4	89
11. Pushed or shoved	4	0	3	1	3	89
12. Violation of privacy (e.g. photos taken with mobile devices)	5	2	2	0	2	89
13. Unwanted sexual gestures and language	4	2	2	1	1	90
14. Hair pulled	2	1	3	1	3	90
15. Hit	7	1	0	0	2	90
16. Slapped	5	1	0	0	4	90
17. Paraded in front of media	5	1	1	0	2	91
18. Molested	4	0	3	0	1	92
19. Coerced sex and sexual favour	4	0	2	1	1	92

211. Respondents further shared that during the arrest by the police, most were not informed of ground of arrest (25/39); were not informed of their legal rights (20/39); convinced, encouraged or threatened by the authorities to plead guilty (15/39); recorded statement was not read or confirmed before it was signed

(13/39) and lastly personal belongings confiscated without been recorded (11/39). The state religious authorities was the second entity that committed the similar actions as above mentioned. Table 40 shows the experiences:

Table 40: Experience of deprivation of legal rights during arrest

Item	State religious authorities	Police	Municipal council /city council	State religious authorities and police (Joint operation)	RELA
1. Was not informed of your legal rights	7/39	20/39	0/39	1/39	0/39
2. Was not informed of grounds of arrest	8/39	25/39	0/39	2/39	0/39
3. Personal belongings confiscated without been recorded	2/39	11/39	0/39	0/39	0/39
4. Convinced, encouraged or threatened by the authorities to plead guilty	6/39	15/39	0/39	0/39	0/39
5. Recorded statement was not read or confirmed before it was signed	3/39	13/39	0/39	1/39	0/39

Note: 39 trans women

212. In addition to that, some of the respondents disclosed that they had allegedly bribed the authorities to be released from the arrest, in which 17 respondents bribed the police and 1 respondent bribed the state religious authority as shown in below table 41. The other consequence of the arrest is also show in the same table.

Table 41: The outcomes of the arrest

Item	State religious authorities	Police	Municipal council /city council	State religious authorities and police (Joint operation)	RELA
1. Released without conditions	6/39	25/39	0/39	2/39	0/39
2. Released with warning	5/39	20/39	1/39	2/39	0/39
3. Remanded	5/39	25/39	0/39	1/39	0/39
4. Report back at the police station or state religious authorities	10/39	6/39	0/39	0/39	0/39
5. Counselling	17/39	1/39	0/39	0/39	0/39
6. Charged in court	7/39	20/39	0/39	0/39	0/39
7. Fined	6/39	18/39	0/39	1/39	0/39
8. Imprisoned	2/39	17/39	0/39	0/39	0/39
9. Bribed the authorities to be released	1/39	17/39	0/39	0/39	0/39
10. Provided sexual favours to be released	1/39	6/39	0/39	0/39	0/39
11. Sent to Juvenile school (Sekolah Tunas Bakti Sungai Besi)	0/39	1/39	0/39	0/39	0/39

Note: 39 trans women

213. In the study, not all the respondents shared what laws that they were charged in court since some of them do not know or could not recall. Nevertheless, 7 of them shared that they were charged for posing as a woman under the state syariah enactment, 14 respondents were charged under section 21 of the Minor Offences Act and 10 respondents were charged under the Section 372B¹⁴⁰ of the penal code.

¹⁴⁰ Section 372B provides whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both.

Arrested or detained by authorities for other reason aside from gender identity

214. There were also 18 respondents, which were 16 trans women and 2 trans men who were arrested and/or detained by the authorities for other offences as listed below:

- i. Section 323¹⁴¹ of the penal code – hit someone due to harassment
- ii. Drug offences – offences under Dangerous Drugs Act and Drug Dependants Act (Treatment and Rehabilitation) 1983
- iii. Arrested by city council due to homeless
- iv. House break - in attempt
- v. Section 372B of the Penal Code¹⁴² – soliciting for purpose of prostitution
- vi. Failed to produce identification card when requested by the authority – National Registration Act 1959

However, not all respondents could spell out the related specific offences under the relevant laws which committed by them.

Placement of respondents in detention centre

215. The placement of the respondents during the detention in police lock-up and imprisonment in prison is shown in table 42 and table 43 respectively.

216. During detention in the police lock up as shown in table 42, majority of the trans women were detained and placed in cisgender men facilities. 21 had experienced being placed in the same cell with cisgender men inmates. In the same time, there were also 4 trans women who were placed in cisgender women facilities and in the same cell with cisgender women inmates. Only one trans man shared that he was placed in the cisgender women facilities and placed in the same cell with cisgender women inmates.

Table 42: Placement of respondents in police lock-up

Item	Frequency	TW	TM	Intersex
1. Cisgender men facilities, and placed in the same cell with cisgender men inmates	21/100	21	0	0
2. Cisgender men facilities, but placed in separate cell with other transgender persons	14/100	14	0	0

141 Section 323 provides whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand ringgit or with both

142 Whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both.

Item	Frequency	TW	TM	Intersex
3. Cisgender men facilities, but placed in a solitary cell	6/100	6	0	0
4. Cisgender women facilities, and placed in the same cell with cisgender women inmates	5/100	4	1	0
5. Cisgender men facilities, but placed in different block with other transgender persons	1/100	1	0	0
6. Cisgender women facilities, but placed in separate cell with other transgender persons	1/100	1	0	0
7. Cisgender women facilities, but placed in solitary cell	1/100	1	0	0
8. Cisgender women facilities, but placed in different block with other transgender persons	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

217. In prison, there were only 2 trans women who were detained in cisgender men facilities and placed in the same cell with cisgender men inmates. On the other hand, 3 trans women shared that they were placed in women facilities and placed in the same cell with cisgender women inmates. For the 2 trans men, they were placed in cisgender women facilities and placed in the same cell with cisgender women inmates. The table 43 below shows the placement of respondents in the prison.

Table 43: Placement of respondents in prison

Item	Frequency	TW	TM	Intersex
1. Cisgender men facilities, but placed in separate cell with other transgender persons	11/100	11	0	0
2. Cisgender men facilities, but placed in different block with other transgender persons	5/100	5	0	0
3. Cisgender women facilities, and placed in the same cell with cisgender women inmates	5/100	3	2	0
4. Cisgender men facilities, and placed in the same cell with cisgender men inmates	2/100	2	0	0

Item	Frequency	TW	TM	Intersex
5. Cisgender men facilities, but placed in a solitary cell	1/100	1	0	0
6. Cisgender women facilities, but placed in solitary cell	0/100	0	0	0
7. Cisgender women facilities, but placed in separate cell with other transgender persons	0/100	0	0	0
8. Cisgender women facilities, but placed in different block with other transgender persons	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

218. A trans man in the study shared that he was placed in cisgender women facilities, and placed in the same cell with cisgender women inmates during his detention period in the drug rehabilitation centre.

Experienced violence during the detention/imprisonment

219. In the study, when the respondents were in detention or imprisoned, they stated that they faced violence from the prison warden, police, inmates and state religious authorities as shown in table 44, 45, 46 and table 47.
220. At least 60 instances of violence while in police detention, on the other hand, 54 instances violence from prison warden while in imprisonment and 36 instances of violence from other inmates.
221. 4 trans women also shared that they were forced to provide sexual favours to the prison warden and 3 trans women experienced from the police during the detention or imprisonment and there was even allegation of rape by police. This heinous behaviour would be punished in the penal law if proven, a person that is being detained should not be subject to this violence regardless of their gender identity and what is worst the alleged perpetrators were government officials. Besides that, 5 respondents also shared that they were forced to provide sexual favours to inmates.

Table 44: Experience violence (by prison warden)

Item	Frequency	TW	TM	Intersex
1. Unwanted sexual invitations, language and gestures	9/100	9	0	0
2. Verbal violence (e.g. name calling, insults, taunts etc.)	7/100	6	1	0
3. Stripped	6/100	6	0	0
4. Physical violence (e.g. hit, kicked, punched, beaten up, etc.)	5/100	4	1	0
5. Solitary confinement	5/100	4	1	0
6. Molested	5/100	5	0	0
7. Public humiliation (e.g. forced to perform or entertain others)	5/100	5	0	0
8. Forced to provide sexual favours	4/100	4	0	0
9. Bullied/Targeted	4/100	3	1	0
10. Threats of rape	2/100	2	0	0
11. Threatened	1/100	1	0	0
12. Asked for bribes	1/100	1	0	0
13. Rape	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

Table 45: Experience violence (by Inmate)

Item	Frequency	TW	TM	Intersex
1. Verbal violence (e.g. name calling, insults, taunts etc.)	9/100	9	0	0
2. Unwanted sexual invitations, language and gestures	7/100	7	0	0
3. Molested	7/100	7	0	0
4. Forced to provide sexual favours	5/100	5	0	0
5. Bullied/Targeted	3/100	3	0	0
6. Stripped	2/100	2	0	0

Item	Frequency	TW	TM	Intersex
7. Threats of rape	1/100	1	0	0
8. Rape	1/100	1	0	0
9. Public humiliation (e.g. forced to perform or entertain others)	1/100	1	0	0
10. Solitary confinement	0/100	0	0	0
11. Physical violence (e.g. hit, kicked, punched, beaten up, etc.)	0/100	0	0	0
12. Threatened	0/100	0	0	0
13. Asked for bribes	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

Table 46: Experience violence (Police)

Item	Frequency	TW	TM	Intersex
1. Verbal violence (e.g. name calling, insults, taunts etc.)	9/100	9	0	0
2. Stripped	9/100	9	0	0
3. Asked for bribes	9/100	9	0	0
4. Unwanted sexual invitations, language and gestures	8/100	8	0	0
5. Public humiliation (e.g. forced to perform or entertain others)	5/100	5	0	0
6. Molested	4/100	4	0	0
7. Physical violence (e.g. hit, kicked, punched, beaten up, etc.)	3/100	3	0	0
8. Threatened	3/100	3	0	0
9. Bullied/Targeted	3/100	3	0	0
10. Forced to provide sexual favours	3/100	3	0	0
11. Solitary confinement	1/100	1	0	0
12. Threats of rape	1/100	1	0	0
13. Rape	1/100	1	0	0

Item	Frequency	TW	TM	Intersex
14. Paraded in front of policewomen	1/100	1	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

Table 47: Experienced violence (State religious authority)

Item	Frequency	TW	TM	Intersex
1. Verbal violence (e.g. name calling, insults, taunts etc.)	1/100	1	0	0
2. Solitary confinement	1/100	1	0	0
3. Unwanted sexual invitations, language and gestures	1/100	1	0	0
4. Molested	1/100	1	0	0
5. Physical violence (e.g. hit, kicked, punched, beaten up, etc.)	0/100	0	0	0
6. Threatened	0/100	0	0	0
7. Bullied/Targeted	0/100	0	0	0
8. Forced to provide sexual favours	0/100	0	0	0
9. Threats of rape	0/100	0	0	0
10. Rape	0/100	0	0	0
11. Stripped	0/100	0	0	0
12. Public humiliation (e.g. forced to perform or entertain others)	0/100	0	0	0
13. Asked for bribes	0/100	0	0	0

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

222. With regard to sexual violence, it was also revealed that besides the allegations made by the respondents that they were forced to provide sexual favours by the authorities and fellow inmates, other sexual violence experienced by respondents from authorities include unwanted sexual invitations, language and gestures; stripped (respondents believed it was done to humiliate them); molested and threats of rape showed in the table 44, 45, 46 and 47.

223. Only 22 respondents said that they felt safe while there were in detention or imprisoned and 16 respondents felt not safe. The remaining respondents were either not sure or the question was not applicable to them.
224. The respondents also shared the impact of the experience being arbitrarily stopped, questioned, arrested and detained on them as shows in table 48 below. The impact on respondent was mostly caused them living in anxiety, trauma, anger and depression.

Table 48: Impact on their experience being arbitrarily stopped, questioned, arrested and detained

Item	Number of respondents
1. Anxiety	51
2. Trauma	44
3. Anger	43
4. Depression	33
5. Disempowered	25
6. Demotivated	23
7. Empowered	17
8. Self-Isolation	15
9. I did not feel anything	6
10. Suicidal thoughts or ideation	4
11. Suicide attempts	1
12. Self-harm	1

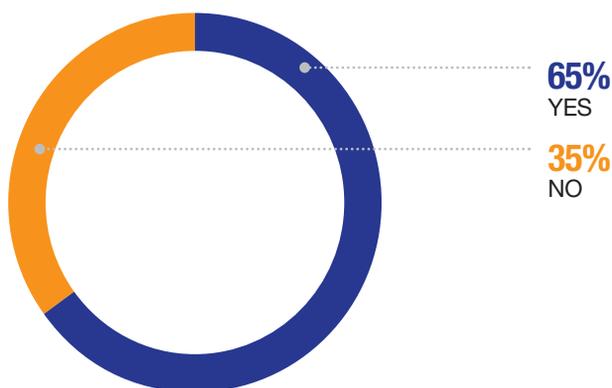
Summary right to dignity

- a. 93 respondents shared that they experienced violence because of their gender identity and gender expression. The type of violence includes physical violence, verbal violence, emotional violence and sexual violence and by different actors including authorities, family members, intimate partners and members of the public.
- b. violence experienced by respondents were mostly from the members of public, often verbal.
- c. There were 48 respondents in the study who shared that they had been arbitrarily questioned/stopped because of their gender identity and gender expression by the authorities.
- d. Out of the 100 respondents, 39 transwomen respondents shared that they were arrested by the authorities because of their gender identity and/or gender expression.
- e. Respondents further shared that during the arrest by the police, most were not informed of ground of arrest (25/39); were not informed of their legal rights (20/39); convinced, encouraged or threatened by the authorities to plead guilty (15/39); recorded statement was not read or confirmed before it was signed (13/39) and lastly personal belongings confiscated without been recorded (11/39).
- f. During detention in police lock-up, majority of the transwomen were detained and placed in cisgender men facilities.
- g. In prison, there were only 2 transwomen who were detained in cisgender men facilities and placed in the same cell with cisgender men inmates. Other remaining transwomen were placed in cisgender man facilities but either different block, cell or in solitary cell.
- h. Respondents experienced sexual violence while in detention or imprisonment by authorities and inmates.
- i. Only 22 respondents said that they felt safe while there were in detention or imprisoned and 16 respondents felt not safe.

G. OTHER MATTERS

225. Besides the right to employment, health care, education, housing and dignity, there were also other experiences that were shared by respondents in the study. This includes challenges or difficulties in accessing public facilities, dealing with financial institutions, dealing with government actors/departments and support system from the government, safety concerns and lastly the terminologies that the respondents would prefer to be identified with.
226. Diagram 8 below shows that there were 65 respondents that indicated they were facing challenges or difficulties in accessing public facilities (e.g. toilet, changing room, prayer room, gymnasium, etc.) according to their gender identity in public places

Diagram 8: challenges or difficulties in accessing public facilities



227. When the respondents were asked to rate their difficulties in using public facilities, the table 49 below shows the result. In general, the trans women felt in between very easy to somewhat easy in using the public facilities. For the trans men, they were in between somewhat easy to neutral in using public facilities. It is also worth noting the frequency when the respondents had opted to use the disabled toilet due to their gender identity.

Table 49: Comparison between Gender Identity and Challenges or Difficulties in accessing Public Facilities

Item		Public toilet	Changing room	Gymnasium	Prayer room	Swimming pool
Trans woman	Min	2.755	2.804	2.130	1.961	2.416
Trans man		3.700	2.888	3.250	2.333	2.600
Intersex		3.500	3.000	4.500	0.000	3.500

1= Very easy, 2= Somewhat easy, 3=Neutral, 4= Somewhat difficult, 5=Very difficult

228. With regard to as whether the respondents have been denied of any form of loan from any commercial banks or any authorised money lenders due to their gender identity, only 3 respondents out of 44¹⁴³ had experienced the situation.

229. 57 respondents shared that they had experienced difficulties when dealing with government actors/department due to their gender identity, gender expression and/or sexual orientation. Among the experiences shared by the respondents had involved the National Registration Department (NRD), Road

143 Only 44 respondents had applied bank loans from commercial banks or authorized money lenders

Transport Department (RTD), Social Welfare Department (SWD), government hospital, university, Royal Malaysia Police (RMP), Social Security Organization (SOCSO), Employees Provident Funds (EPF) and Immigration Department as mentioned below:

- (i) National Registration Department (NRD)
 - To tie hair
 - To cut short hair
 - To take off jewellery including take off nose ring and earring
 - To wear songkok (a malay traditional hat)
 - To wear male attire
 - To clean up makeup and rudely told that the Malaysia laws did not allow for gender change in the identification card
 - To act as a man and not to be a “pondan”
 - Was asked to go home and change clothes before taking photo
 - Questioned about name as per identification card and compared with respondent appearance
 - Facial recognition and finger print verification due to the appearance did not reflect photo and details as shown in the identification card
- (ii) Road Transport Department (RTD)
 - Facial recognition and finger print verification due to the appearance did not reflect photo and details as shown in the identification card
 - Inquired on gender status due to confusion
 - Inquired about their sexual orientation and type of genital
- (iii) Social Welfare Department (SWD)
 - Inquired about gender status
- (iv) Office of government hospital
 - Inappropriate staring
 - Called name as per Identification card instead of using numbering system which was not available
- (v) Office of public university
 - Inappropriate staring
- (vi) Royal Malaysia Police
 - Questioned about name as per identification card and compared with respondent appearance
- (vii) Social Security Organisation and Employee Provident Fund
 - Facial recognition and finger print verification due to the appearance did not reflect photo and details as shown in the identification card

- (viii) Immigration Department
 - Was told that god creates female and male only
 - Was laughed and teased for being transgender and turned the respondent to other counter
 - Was asked to go home and change hair colour to black before taking photo
 - Questioned about gender identity loudly and rude which embarrassed respondent in the public
 - To tie hair
 - To take off jewellery
 - To put off make up
 - Verified the respondent's gender at national registration department and the respondent was asked to be under oath to support the authenticity of the identification card

230. Besides that, the respondents also faced difficulties and challenges with private entities such as dealing with financial institutions. Many of respondents shared that they were called based on their name on the identification card while dealing with customer service counters and two also shared that they were unable to verify their identity through phone banking service. A trans man shared his experience when his online banking password was blocked. The phone operator of the bank refused to verify he was the person as per the identification card due to his masculine voice as he was on hormone replacement therapy. He was asked to go to the nearest bank branch to do the physical verification through finger print. He shared that the respective bank manager had made him felt uneasy by asking “uncomfortable questions”. Another trans man also cited that due to his gender identity, he had also faced a lot of questions for verification which caused him to become stress. He also faced the same situation when he was advised to go to the nearest bank for him to solve his bank account issues.

231. From the study, there were only 5 respondents that had received support or assistance from below agencies. However, only 1 respondent who had no income received assistance which is from baitulmal.

Table 50: Support and assistance from the Government

Item	Yes	No
1. Department of Social Welfare	1	99
2. Baitulmal	4	96
3. Pusat Zakat	0	100

232. It was really concerning that there were only 68 respondents that had retirement plan or savings for their emergency days which include trust unit, contributions to employees' provident fund, fixed deposit and personal saving in financial institution, gold investment and pension.

233. Based on the study, when the respondents were asked as whether they felt safe living in the country, the results were split in the middle as shown in table 51.

Table 51: Whether felt safe living in Malaysia

Item		TW	TM	Intersex
Yes	Number	39	14	1
	Percentage	56.5%	48.3%	50.0%
No	Number	30	15	1
	Percentage	43.5%	51.7%	50.0%

Note:

TW: Trans women (69 persons), TM: Trans men (29 persons), Intersex: 2 persons

234. For the respondents that felt unsafe living in Malaysia, they stated their reasons as below:

- i. The reluctant of society to accept transgender identity
- ii. Due to religion which relate to gender expression, respondent was subjected to arrest.
- iii. Discriminating laws on transgender persons and non-recognition of them
- iv. Transgender rights and welfare are not protected or take care of
- v. Barrier in expressing their gender identity
- vi. Concern on the lacking of freedom
- vii. Gender discrimination against transgender
- viii. Unable to feel safe being in certain parts of Malaysia
- ix. Afraid that they could be arrested at any time under the Syariah law
- x. Transgender persons were not recognised in Malaysia due to the religion of Islam
- xi. Subject to frequent arrest by state authorities
- xii. Transgender rights are not recognised
- xiii. Experienced occasionally verbal violence and emotional discrimination
- xiv. Threat and physical violence by the society
- xv. No freedom, no equal rights, stigma, discrimination, violence, inaction or lack of action by authorities
- xvi. Lack of acceptance of transgender persons
- xvii. No life security
- xviii. Could not change their gender marker in the identification card

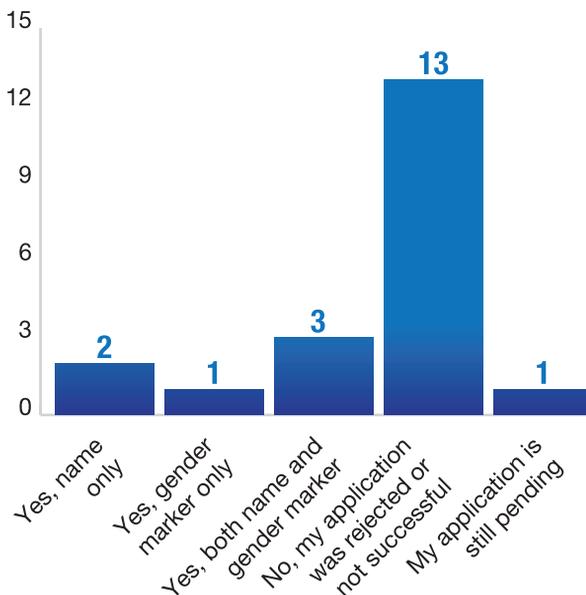
235. The study also recorded that there were 72 respondents that thought of migrating to other countries due to the following factors:

- i. The openness and existence of legal framework to protect transgender persons in other countries.

- ii. Free to choose their gender identity
- iii. More accepting and ability to change the gender marker
- iv. Freedom to expand, not be judged or discrimination and more open minded
- v. Self-freedom and equal rights
- vi. Moving with their partner to other country to settle down
- vii. To access to trans related healthcare which available in other countries
- viii. Able to express themselves without any hesitating
- ix. To get a better life, good opportunity
- x. To get safety guarantee and freedom of movement
- xi. To get recognition and non-discrimination from the society
- xii. To obtain transgender rights
- xiii. The transgender rights were not protected or taken care of and Malaysia was not a safe place for transgender persons since the government reluctant in recognising the transgender identity and no gender change is allowed
- xiv. To obtain higher salary
- xv. Stigmatisation of transgender persons in Malaysia society is too high
- xvi. Better employment for transgender persons at other countries

236. 20 respondents shared that they had tried to change their name and/or gender marker in their identification card. Out of the 20, there were only 6 respondents that was successful in their applications. Two of the respondents succeeded changed their name, one respondent managed to change the gender marker, 3 respondents succeeded changed name and their gender markers.

Diagram 9: Application for change of name and/or gender marker in identification card



237. 86 respondents stated that they would prefer to change their gender marker in their identification cards if allowed by authorities to do so based on the following reasons:

- i. Their physical features had conformed to male or female but did not reflect in their identification card
- ii. To be recognised as woman or man
- iii. To avoid discrimination based on gender
- iv. To ease daily affairs such as movement, access to education and religion
- v. To reflect current identity in their Identification card
- vi. Will give benefits, advantages, comfortable, more confident and bold to them.
- vii. Easier to obtain job
- viii. To avoid confusion on their gender

238. Below are the terminologies that the respondents were comfortable to be identified with. From the table 52(a) and (b) below, it shows that most of the trans women would like to be identified as woman and trans men as man.

Table 52(a) and (b): Preferred terminologies for transgender persons

(a) Trans woman

Item	Yes
i. Woman	51
ii. Trans woman	44
iii. Perempuan	44
iv. Transgender woman	38
v. Perempuan transgender	30
vi. Mak nyah	27
vii. Thirunangai	19

(b) Trans man

Item	Yes
i. Man	26
ii. Trans man	14
iii. Lelaki	10
iv. Transgender man	7
v. Lelaki transgender	4
vi. Pengkid	1
vii. Transgender	1

Summary of dignity

- a. 65 respondents that indicated they were facing challenges or difficulties in accessing public facilities (e.g. toilet, changing room, prayer room, gymnasium, etc.) according to their gender identity in public places.
- b. 57 respondents shared that they had experienced difficulties when dealing with government actors/department due to their gender identity, gender expression and/or sexual orientation.
- c. Respondents also faced difficulties and challenges with private entities such as dealing with financial institutions i.e. that they were called based on their name on the identification card while dealing at customer service counters and two also shared that they were unable to verify their identity through phone banking service due to their voice change as they were on hormone replacement therapy.
- d. Only 68 respondents that had retirement plan or savings for their emergency days which include trust unit, contributions to employees' provident fund, fixed deposit and personal saving in financial institution, gold investment and pension

Conclusion

239. The study revealed that all transgender respondents agreed that at some stage of their life, they have 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 the peers, teachers and lecturers. As adults they are further discriminated by various policies in the workplace and faced harassment in the workplace.
240. It was also evident that the transgender people does not only face challenges to have their identity recognised but also to have access to basic public services such as healthcare and education. By ignoring sensitivities linked to their identity, public institutions have become hostile against the community. Even filling up forms could become a traumatising experience for a transgender.
241. Discriminatory practices in government institutions could largely be overcome by maintaining a certain level of professionalism. For example, the Ministry of Health (MOH) this year had engaged with the LGBT community following criticism over a video contest that had used discriminatory terminologies¹⁴⁴. After the consultation, MOH had changed the terminologies. A senior ministry official, Datuk Dr Lokman Hakim Sulaiman, reiterated that the Ministry had organised the competition in “good faith” and that the competition was not meant “to single out or to discriminate the LGBT community”. This was a good example of government institutions taking lead to understand issues faced by the community and taking positive steps to maintain the trust of the community.
242. The Commission notes the difficulty to address any issues regarding the transgender community, owing to the religious and cultural sensitives in the country. On this, the Commission believes that it is the role of government, NGOs and itself to educate the public and advocate for the respect of the rights and dignity of the transgender community. The Commission’s stand is clear that steps must be taken to uphold their rights as human beings and protect them against any discrimination, harm and violence, in line with the Commission’s motto of Human Rights for All.

¹⁴⁴ <http://www.themalaymailonline.com/malaysia/article/health-ministry-renames-video-contest-category-from-gender-confusion#XOli07DP13xJ8aqF97>

Recommendations

243. This chapter offers recommendations on the protection and promotion of transgender person rights in conformity with international human rights standards and norms. The recommendations are derived from the result of the study and experiences shared by the respondents.

A. AWARENESS AND EDUCATION

244. Lack of education and/or awareness and lack of understanding on issues of sexual orientation and gender identity (SOGIE) as well as human rights may resulted in biasness and prejudices from a young age, which underlie the discrimination and violence against people of different SOGIE including the transgender. The Commission stresses firmly the importance to integrate human rights issues into the curriculum at all level of study starting from the primary level. Human rights education will instil understanding on rights of all and diverse people which is an important approach to tackle bullying in schools and across education system
245. Systemic bullying in the form of name callings, hate speech and sexual violence have also been cited as one of the issues throughout the education system, from primary to tertiary level. The claims are not limited to their own peers but also from the education administrators. These issues will create psychological pressures, which can lead to truancy and absenteeism, and in extreme situation, suicidal.
246. Further, as a state party to the CRC, Malaysia is obliged to create a safe and conducive environment for all children attending educational institutions. Hence, it is recommended that the MOE work with educators, school administrators and civil society organisations (CSOs) to end bullying and discrimination against those with different gender identities/expression.

Relevant Stakeholders – Ministry of Education, Ministry of Higher Education, Ministry of Health, public and private universities.

B. CONTINUOUS DIALOGUE AND DISCOURSE

247. While acknowledging the complexity and sensitivity of this issue in Malaysia, the Commission underscore that the integral and the fundamentals of Malaysia is built on dignity and respect towards one another. In this regard, continuous multi-stakeholders dialogue and discussion involving the Government, CSOs, media, business players, and other professionals, are necessary to not only highlight the discriminatory practices experienced by the transgender people,

but also as a solution-based platform where measures to address these issues are identified and adopted.

248. Further, such a dialogue is also useful to create mutual understanding and respect between the stakeholders and the transgender community which can go a long way in bringing change to the issues in hand.

Stakeholder: Ministry of Women, Community and Family Development; Ministry of Education, Ministry of Health, Ministry of Urban Wellbeing, Housing and Local Authorities; Ministry of Human Resources; Ministry of Home Affairs; Police; Prison Department; Media; CSOs and SUHAKAM

C. LEGAL OR POLICY FRAMEWORK AGAINST DISCRIMINATION

249. Based on the survey, discrimination against transgender persons in education, health, employment and housing is prevalent and widespread. A comprehensive legislation and/or policy on equality and non-discrimination is needed to provide legal protection to all persons including LGBT, against discriminatory practices. Such legal framework will ensure that no one is treated as second class citizens by the society.
250. In absence of a legislation on equality and non-discrimination, authorities should be proactive to develop an interim policy to bridge the gap. For example, in respect of employment, an equal opportunity employment policy can be introduced to eliminate discriminatory practices on stated grounds which should include a ground on gender identity and expression. This policy must be applicable at all stages of employment, recruitment and promotion prospects inclusive.
251. The non-state actors, such as businesses should also be required to adopt inclusive policies on discrimination and bullying at workplace on stated grounds which must include a ground on LGBT. Adoption of such policy is in line with their duty to respect human rights as affirmed by the United Nations Guiding Principles on Business and Human Rights.
252. Likewise, policy on equality and non-discrimination can also be the interim measure to address unfavourable practices against transgender in housing-related issues. Based on the survey, transgender person faces unique challenges such as discrimination on rental rates, due to their gender identity/ expression. Some transgender also felt uncomfortable applying for housing benefits due to bureaucracies that do not recognise their gender. Hence it is recommended that the Ministry improve legislation/policies in ensuring transgender persons have access to affordable housing and security of tenure.

Stakeholder: Ministry of Women, Community and Family Development; Ministry of Education, Ministry of Health, Ministry of Urban Wellbeing, Housing and Local Authorities; Ministry of Human Resources; Ministry of Home Affairs; Police; Prison Department; Media; CSOs and SUHAKAM

D. CRIMINAL JUSTICE PROCESS

253. Everyone including transgender person should be treated equally before the law. This principle should not only be limited to access to justice but also treatment received in the criminal justice process. In the study, it was found that transgender persons were vulnerable to violence and abuse in the criminal justice system. The government has to develop standard operating procedures (SOPs) that minimize arbitrary arrest, questioning and stops of LGBT persons. Trainings should be held for enforcement agencies to discourage stereotyping, profiling and abuse.

Stakeholders: Ministry of Home Affairs; Police; Prison Department; the Bar Council; CSOs and SUHAKAM

E. CAPACITY BUILDING AND TRAINING

254. Often discrimination occurs unintentionally. Often, there is a lack of awareness that these acts are discriminatory. At the same time, it also important to note that discrimination against trans people is normalized. Name calling or derogatory remarks may not be meant to intimidate a LGBT person or make them feel oppressed. Sometime the lack of access to information of gender diversity, including affirming and respectful terms causes the discrimination. Training is key to address unprofessionalism, abuse, bullying and other negative behaviour against LGBT persons. Training would increase ones understanding and empathy. For example, an activity that examines common stereotypes provides an awareness of misconceptions about the LGBT community and how misguided remarks can poison a working and learning environment.
255. Transgender persons find themselves in a bind when seeking / securing government services including medical advice regarding their situation and police protection when they are crime victims. With regard to medical treatment, in the survey transgender persons often seek treatment, including hormone therapy, based on personal/internet research. It is therefore, recommended that the government work with relevant actors to develop capacity in dealing with LGBTI persons, in a neutral, non-judgemental manner.

Stakeholders: Ministry of Human Resources; Ministry of Health; Ministry of Education; Ministry of Higher Education; Ministry of Home Affairs; Business associations; Trade Unions; CSOs and SUHAKAM.

F. FACILITIES SUITABLE TO THE NEEDS OF TRANSGENDER PERSONS

256. Gender binary facilities in public hospitals have made transgender persons uncomfortable in accessing healthcare. Wards that are separated according to gender prescribed in the identity documents, can cause more stress to transgender persons.
257. Likewise, for transgender persons who are in conflict with laws, placing them in cells that do not confirm to their gender expression and identity could lead to many abuses including physical and sexual abuse. Detention authorities should also be exposed to trainings on abuse and torture to curb such practices in detention and regular monitoring mechanism needs to be established to avoid cases of physical torture in general and against the LGBT specifically.

Stakeholders: Ministry of Health, Ministry of Home Affairs; Police; Prison Department; Judicial Services; CSOs and SUHAKAM

REFERENCES

1. Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 12
2. American Psychological Association. (2012). Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients. *American Psychologist*, 67(1), 10–42. doi: 10.1037/a0024659. P.11
3. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. P. 7
4. Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. (June 2016). Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender identity and Sex Characteristics: A Manual for National Human Rights Institution. P. 12
5. Teh Yik Koon, *The Mak Nyahs: Malaysian Male to Female Transsexuals*. Eastern University Press, 2002.
6. Teh YK. HIV- related needs for safety among male to female transsexual (mak nyah) in Malaysia. *SAHARA J* 2008; 5(4): 178-185
7. Wong Ee Lynn, *Neither Here Nor There: the Legal Dilemma of the Transsexual Community in Malaysia*.
8. *To Be Who I am*”, New Zealand Transgender Inquiry report, New Zealand Human Rights Commission, 2008.
9. Kenya Human Rights Commission. *The Outlawed Amongst Us*. KHRC 2011.
10. Australian Human Rights Commission. *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights*. National Consultation Report 2015. P.2
11. Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions*. June 2016
12. Jabatan Kemajuan Islam Malaysia. *Kompilasi Pandangan Hukum, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia*. 2015.
13. *The Malaysian Bar - Jeffrey Jessie: Recognising Transsexuals by Honey Tan Lay Ean on 17 November 2005*.
14. Shah, Shanon (2013) *The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state*. In: *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*. Institute of Commonwealth Studies, School of Advanced Study, University of London, P. 267.

15. Dewan Rakyat Parlimen Kedua Belas Penggal Kelima Mesyuarat Kedua, Bil 28, 19 June 2012
16. License to Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People
17. United Nations. Living Free & Equal. What states are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people. 2016. P. 13
18. Ministry of Health. Malaysia National Strategic Plan for Ending AIDS 2016-2030. P. 16
19. 7th version of the Standards of Care for the Health of Transsexual, Transgender. P. 8-9
20. Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities. Washington, DC: Future Group Health Policy Project. P. 32
21. Asia Pacific Transgender Network, United Nations Development Programme. Blueprint for the provision of comprehensive care for trans people and trans communities in Asia and the Pacific. Washington, DC: Future Group, Health Policy Project. 2015. P.62
22. Sood N. Transgender People's Access to Sexual Health and Rights: A Study of Law and Policy in 12 Asian Countries. Kuala Lumpur, Malaysia: The Asian-Pacific Resources and Research Centre for Women (ARROW). 2009. P. 30
23. Eleventh Malaysia Plan. Chapter 1: Anchoring growth on people 1-16

