



The *Mak Nyahs* of Malaysia: Testimony of Four Transgender Women

Mak nyah is the name given to male-to-female transgender women in Malaysia. It derives from *mak*, meaning “mother”.¹ The term arose in the late 1980s, as an attempt by male-to-female transgender women to distinguish themselves from other minorities. As Khartini Slamah explains, this arose:

“[F]irst, [as] a desire to differentiate ourselves from gay men, transvestites, cross dressers, drag queens, and other ‘sexual minorities’ with whom all those who are not heterosexual are automati-

cally lumped, and second, because we also wanted to define ourselves from a vantage point of dignity rather than from the position of derogation in which Malaysian society had located us”.²

Slamah goes onto explain that in order to be identified as a *mak nyah*, an individual does not need to have undergone gender reassignment surgery:

“[M]ak Nyahs define themselves in various ways along the continuums of gender and sexuality: as men who look like women and are soft and feminine, as the third gender, as men who dress up as women, as men who like to do women’s work, as men who like me, etc.”³

The *mak nyah* community in Malaysia faces many forms of discrimination in all areas of life, including employment, housing and health care.⁴ In 2010, both the UK and Australia recognised Malaysian transgender asylum-seekers as refugees, in response to the persecution and discrimination which they face in their country of origin.⁵ Malaysian law contains several provisions which are used to discriminate against individuals of the *mak nyah* community. In 1983, the Malaysian Conference of Rulers issued a



fatwa which prohibited sex-reassignment surgery, except for intersex people, on the basis that such surgery was against Islamic religion. Whilst sex-reassignment surgery remains legal for non-Muslims, the Malaysian courts have sent ambiguous messages as to whether an individual who has undergone such a procedure is entitled to have their acquired gender officially recognised through an amendment to their identity card (or

My Kad). In the *Wong's case*,⁶ the judge of the High Court of Ipoh upheld the refusal of the national Registration Department to amend or correct the Birth Certificate and National Registration Identity Card of the claimant who was a transsexual man. However, in *J.G.'s case*,⁷ a judge of the High Court of Kuala Lumpur, in dealing with very similar facts to those in the *Wong's case*, decided that the claimant's identity card should be amended to acknowledge her acquired gender.

Photo credit: The Equal Rights Trust



Performer at Fundraising Concert for Justice for Sisters Campaign, Kuala Lumpur, February 2011.

On 27 June 2011, ERT met with four *mak nyahs* in Seremban, Malaysia, to discuss their experiences of discrimination.

As part of its EU-funded project in Malaysia, entitled “Empowering Civil Society to Combat Discrimination through Collective Advocacy and Litigation”, ERT has been made aware of the discrimination faced by the Malaysian *mak nyah* community. ERT is currently providing international and comparative law research in support of a judicial review case in which four *mak nyahs* are challenging the constitutionality of the Syariah (Shari’a) law prohibition on cross-dressing. The claimants agreed to talk with ERT about their experiences of discrimination, particularly at the hands of the Malaysian religious authorities, and the testimony set out below is a record of the conversation.

For the individuals whose testimony is presented below, the most significant discrimination issue arises from the fact that most *mak nyahs* are Malay Muslims, and are therefore subject to the provisions of the Syariah criminal legislation. Syariah law is enacted at the state and not the federal level, and most of the state criminal law enactments contain a prohibition of “cross-dressing”. For example, Section 28 of the Syariah Criminal Offences (Federal Territories) Act 1997 prohibits any male person from wearing a woman’s attire in a public place and posing as a woman for immoral purposes. Such provisions have been used by the Malaysian religious authorities (the *Jabatan Hal Ehwal Agama Islam Negeri Sembilan*) to oppress the *mak nyah* community, through the use of raids, interrogation, violence and detention.

ERT is currently providing support to the lawyers representing the interviewees in their judicial review claim. The claim is founded on the argument that Section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992 (Enactment 4 of 1992) (Section 66), which criminalises any male person who “wears women’s attire” or “poses as a woman”, is inconsistent with various fundamental liberties guaranteed by the Federal Constitution of Malaysia, including: (i) Article 5(1) which protects the right to live with dignity, the right to work and livelihood and the right to privacy; (ii) 8(1) which guarantees the right to equal protection of the law; (iii) Article 8(2) which prohibits discrimination on a number of grounds, including “gender”; (iv) Article 9(2) which protects the right to freedom of movement; and (v) Article 10(1)(a) which protects the right to freedom of expression.

All four of the claimants are *mak nyahs*, who have each been arrested, detained and charged for offences under Section 66. Due to concerns for their safety, they have assumed alternative names.

Kay: I am a 27 year old Malay Muslim. I was born in Pahang and moved to Seremban about eight years ago. When I was about 10 years old, I began to feel confused about my identity. I began to dress as a woman whilst I was at high school, when I was probably about 15 years old. I also started to take hormone pills at that same time. I would use my pocket money to buy birth control pills from the pharmacy, or otherwise I would ask my mother for her pills. My family had no problem with the decisions I made because they understood me. I currently work in various jobs. I work as an administrative assistant in a Chinese herbal tea shop. I also assist my friend in her bridal make-up shop and I work as a part-time model. I also work as a sex worker in Seremban when I need extra money.

Zura: I am a 24 year old Malay Muslim. I was born in Kelantan, but I moved to Seremban ten years ago. I moved to Seremban when I was only 14 years old because I had been orphaned when I was seven, and I was forced to remove myself from my remaining family seven years later because no-one accepted me. From the age of 12, I realised that I liked



to wear female clothes and to do the jobs which are traditionally done by women, like cooking and cleaning, and I enjoyed wearing make-up. I had been living with my foster father and my brother in Terengganu but this was no longer possible for me. I came to Seremban because this is where my mother was from, and I therefore felt a connection to this place. I wanted to start a new life here.

I felt responsible for providing financial support to my foster father and my younger brother, so I needed to earn money as soon as possible. My family was so poor, and my foster father was also sick and in need of medication which we were struggling to afford, so I was forced to finish school and start work. I tried working in other jobs first, but I faced too many problems. For example, when I worked in a restaurant, they told me that with a face like mine, I could only work at the back of the restaurant and only deserved five ringgit a day whilst the other workers were earning 50 ringgit a day. I did not want to continue living with this injustice so I decided it would be better for me to be a sex worker, and I have remained in that work since I was 15 years old.

Linda: I am a 25 year old Malay Muslim. I was born in Ipoh but I have lived in Seremban for the last seven years. Since I was 16 years old, I started to identify as a woman. I started to take hormones which I bought from the pharmacy. My siblings had no problem with me dressing as a woman, but my father did not like it. He used to scold me and beat me, so I was forced to run away on two occasions to the house of a friend. After I completed my high school education, I moved to Seremban in order to study architecture at the college here.

Fifi: I am a 25 year old Malay Muslim. I was born in Seremban and I have been working

as a sex worker for two years. I have been dressing as a woman, and taking hormones, for only three years. I have known that I was different since I was 13 or 14, and I have always been sexually attracted to men, but I did not start to identify as a woman until I was 22. I became a sex worker because I am not from a very well-off family, and I am able to make good and easy money in this job.

Kay: I have faced many problems as a result of being a transgender woman. I have found it very difficult to get jobs since I started to wear trans clothing because people have very negative perceptions. I once applied for a job in a factory in Sunway City which is not far from Kuala Lumpur. I attended an interview for a job as an Operator, but they never called me back and I am sure it was because of who I was. I know this because of the way they looked at me during the interview. I have also found it very difficult to find places to rent. When I first arrived in Seremban, I was urgently looking for a house. I picked up a flier advertising accommodation for rent. I contacted the person, but when we met up, he told me that he could not rent the place to me because he had decided to sell the house instead. I know that this was not true, as two months later I found out that someone else was renting the place. This same experience has happened to me many times. Eventually I was able to find someone who did understand me. She is happy for me to rent her property as long as I pay the rent on time.

I also experienced problems in the hospital in Seremban. I was there recently, and although I am a trans-woman, I was put into a male ward. I was unconscious for five days after a car accident in which I hurt my head very badly. When I woke up, I was surrounded by men, and I freaked out. Eventually, the doctor agreed to put me in a different room so that I had a room to myself, but I should have

been there from the beginning of my stay. I also found that many of the hospital workers shouted “*pondan*” at me, which is a very disrespectful name used interchangeably for homosexuals and transgender people.

Women like me regularly face trouble from other people in the community. I often meet people who are not happy with the way that I live, and they choose to pick a fight with me. I have been in fist fights with people who try to cause trouble for me. Often it is women who are the worst in this respect.

Linda: I found it incredibly difficult to study at college as a trans-woman. Firstly, I had no other trans-women friends on the campus. Secondly, I was forced to share a room (as were all of the other students) with a member of the same sex as me. Because my identify card says that I am male, I was made to share a room with a guy. I asked the Principal of the college if he could make an exception for me. I felt that they should demonstrate some flexibility in my situation. I should have been allowed either to share a room with other female friends, or to rent accommodation outside of the campus. As the college rules did not permit students to rent elsewhere, I was forced to stay on campus. I also found the studying very difficult as there was a tendency to separate the college classes according to gender. This did not work out at all for me, and I found being forced to study alongside only men very uncomfortable. I also faced dilemmas every day, such as which toilet I should use on campus. Eventually, the campus environment became so uncomfortable for me that I was no longer able to continue with my studies. I had completed two years of the three year course, but I could not face it any more.

Very soon after I left college, I met new trans-friends, and became a sex worker. I have

been doing that work for four or five years now. I was very much influenced by the choices which my trans friends had made. If you look around other places of employment, like shops or restaurants, you do not see any trans-women working there. Being a sex worker is the only job which gives me freedom – I am able to wear what I like and I can do what I like. Apart from when the representatives of the Religious Department cause problems for me.

Fifi: I am treated very differently during the day time to how I am treated at night. During the day, people make fun of me. People talk down to me and ridicule me. They just do not understand what it is like to be a trans-woman. They do not understand it at all. My family seems to accept me dressing as a woman, but if they knew the line of work I am in, they would probably kill me.

Kay: The biggest challenge which we face is from the religious authorities in Malaysia. They arrested me once. On that particular night, I was not working, so I went to my friend’s bridal boutique. I was just sitting on the steps outside, waiting for my friend to come with me to get some food. A group of guys on motorbikes suddenly appeared and took me by surprise. They came up to me and grabbed me – I thought they were robbers trying to steal from me, so I tried to shut the outside gate of the shop. They stopped me, and pushed me against the wall. I asked why they were doing this, and what was happening to me. I asked them who they were and what they wanted, but they just told me to be quiet. They started to grope me, and I tried to push them away but I did not manage because they were too big. I looked across the road and saw another friend of mine being beaten up by some other guys. At that point, the men holding me identified themselves as representatives of the Religious Department.

I was then told that I must wait for a van to arrive. While I was waiting, they continued to beat up my friend. It was very bad – I saw it all. While I was sitting waiting for the van, one of the men sat next to me and started to grope me once again. The van finally arrived and took me to the Religious Department in Seremban. When we got there, I was put in a room, and they told me to take off my clothes which they wanted as “evidence”. I did not want to do this because I had nothing else to wear. Other staff from the Religious Department kept coming into the room. They touched my face and commented on my breasts. Eventually I was given the opportunity to telephone a friend to come and offer bail for me. She arrived with a spare set of clothes for me to change into. My friend gave a verbal assurance for me, and I was then allowed to leave.

Zura: Last year, I was arrested on four separate occasions by representatives from the Religious Department. On the first occasion, I was not working, but I was in AST, the area where we usually work. I was just hanging around, wearing a nightgown. I was picked up by the religious officers who charged me for wearing a nightgown. Apparently, as no man in their right mind would wear a nightgown, I was accused of impersonating a woman. I was taken to the offices of the Religious Department and forced to undress. Even though the officers were not in the room with me, I know that they were watching me through a one-way mirror. I was only just recovering from my breast augmentation surgery, so it was very embarrassing for me to have to change whilst they could see me. My friend brought spare clothes for me, as the officers wanted to keep my nightgown as evidence against me. I was kept in the office overnight, and then taken to court at 2p.m. the following day. I was fined 700 ringgit and then released.

On the second occasion, I was subjected to severe violence during the arrest. Once again, I was in AST. I had driven there to give some make-up to a friend of mine. As I was just about to give her the make-up, a raid began during which representatives from the Religious Department were rounding people up. Everyone was running everywhere. I was very shocked so I began to run as well. I was chased into a hotel. I was wearing a nightgown again, but I had no make-up on my face. I took refuge in a small store in the hotel. It was a karaoke lounge. After I ran in, I managed to lock the door behind me and I hid behind the counter. Three men began to pound on the door. They told the bouncer that if he did not open the door, they would break it down and he would have to pay for it to be fixed. They identified themselves as representatives from the Religious Department so the bouncer immediately opened the door. They came after me. I resisted at first, but eventually surrendered. At first, they held me by my neck against the wall, and then they punched me in the nose until I was defenceless. I was slipping in and out of consciousness. They then threw me to the floor, stepped on my chest and kicked me. There was a real danger that they could have hit the silicone implants in my chest which could have been very dangerous. After being physically abused in the karaoke-lounge, I was taken to the Religious Department with a few other people. This was the most violent raid I had ever experienced. Almost all of the people who were taken there with me had been beaten. I was asked to remove my clothes as evidence, but they did not take a photo of me because I was not wearing make-up this time. The following day, I was taken to court again. I was forced to plead guilty to an offence under Section 66, saying that if I did not, I would prolong the situation and I would have to go to jail. I therefore followed their advice and also paid a 1000 ringgit fine.

On the third occasion, I was picked up once again by the same man from the Religious Department who had punched and kicked me on the previous occasion. I was just standing in AST, wearing a nightgown and waiting for friends to go for food. A man standing behind me grabbed my hair, and without showing me any form of identification, told me to follow him. I was taken to the offices of the Religious Department once again, and the following day I went to court. On this occasion, I did not plead guilty, and as a result, I was given a date for trial. There is a three strike rule, and as this was the third time I was arrested, I was forced to have a full trial. I paid a bond and was then released.

On the fourth occasion, I was arrested at the same time as Miss Kay. She was picked up in the first batch, and I was in a second batch. On that evening, I was wearing a big t-shirt and football clothes. These were not female clothes! The representatives from the Religious Department, however, said that my physical appearance was that of a woman. They lifted up my shirt without my consent, and I asked them why they had done that because I was not wearing a bra. We do not wear bras, as this would be very obvious evidence to be used against us by the Religious Department. As they did not find the evidence they were looking for, they took my flip flops and my hair band as evidence. I was taken to the office, and again in court the following day, I did not plead guilty but I was told that there would have to be a trial in relation to this incident, in addition to the trial relating to my third arrest.

By this time, I was in communication with KRYSS (an NGO working with the LGBTI community in Malaysia) having met them only a few days earlier. They found a Syariah lawyer to represent me at the trial relating to the third arrest. The Syariah lawyer con-

vinced the court to combine the trials for the third and fourth arrests, and then sought a postponement. Our strategy is to postpone my trial in the Syariah court until after the leave hearing for the judicial review case has taken place.

Linda: I have been arrested twice. The first time was in 2005. It was night-time in the AST area and I was caught by three men. I was with another friend and they started to chase both of us. I tripped, but my friend managed to run. I fell down, but instead of helping me up, they stepped on me to keep me on the ground. They acted like they are above God. In Islam, there should be no compulsion. You should only provide advice, but not force people to do things. I was taken to the office of the Religious Department. They did not take a statement from me straight away, but they kept me and another three of my friends in overnight. Only in the morning did they take our statements. It seemed that they were not carrying out the proper process, but rather they were just making fun of us and ridiculing us. They did not seem to want to teach us a lesson, but rather to mock us.

On the second occasion, I was picked up by three religious officers in a white van. They just picked me up from the street and took me on a joyride, asking me questions the whole time. They asked me to remove my clothes and they tried to grope my breasts. After some time, they dropped me off at the top of a hill and I was forced to walk home alone in the dark. The officers who picked me up were not actually on duty, which was why they did not arrest me. They just took me for a ride to mock me and to take advantage of their position of authority.

Fifi: The first time I was arrested was in 2009. I was picked up on the street and taken to the

offices of the Religious Department. I was asked to take off my clothes, which I did, and they then asked me to wash off my make-up. I was interviewed by a female religious leader, who told me that I am a very handsome boy. They did not press any charges against me. Whilst they were not violent towards me, I did feel very uncomfortable because they made me remove all of my clothes.

The second time I was arrested was in November 2010. I was on the pavement in the AST area. I was wearing leggings, a white singlet top and I was holding a clutch bag. I was wearing my hair down, and I had only eye make-up on. Two men came out of the pub near where I live, and one of them approached me and started to flirt with me. He asked my name, and seemed to want to get to know me. Things progressed quite quickly, and I was swept away by this guy. Eventually I touched him, and I thought that if he was from the Religious Department, he would not have let me do that. After I did that, however, he took my arm and told me not to resist because he was from the Religious Department. After five minutes, a van arrived and I was taken to their office. I was put into a detention room, and they told me to call someone who could provide bail on my behalf and bring some spare clothes for me. They asked me to remove my clothes, which I did. They confiscated them. They did not take a statement from me, but just took my clothes as evidence. They then told me that I would be taken to court the following morning.

The following morning, they took me to court, but then realised that they did not have a statement from me, so they had to postpone my hearing so that we could go back to the office and I could give them a statement. The hearing was delayed until after Friday prayers. The officers were scolded by the judge because my case should have

been heard between ten and eleven o'clock in the morning. I was not treated well during my time in detention at the Religious Department. I was arrested at 10p.m. in the evening, and by the time I was released after my court hearing at 3p.m., I had still not been given any food. In court, I was charged with an offence under Section 66, and I was made to pay a fine of 1,000 ringgit.

Kay: I have chosen to take the legal case against Section 66 because I do not agree with the law and I want to change the perception of transgender women in Malaysia. As it stands, the law means that I can be arrested for simply being myself in public. I want to be free to go outside during the day time without feeling scared. I am not doing all of this for a show – this is who I am for real.

Members of the Religious Department continue to hunt us down. They continue to search for trans women in Seremban. They know who we are, and they have now recruited the police officers to assist them. So we now face problems from both the Syariah authorities and the civil police as well.

I want to live a good life. I want to find a good job through legal channels. I am prevented from doing the jobs I would like to do – like being a model or a singer – because I am a trans-woman in a Muslim country where there are laws which stop me from being who I want to be.

Zura: I very much hope that as a result of our legal challenge, the situation facing trans-women in Malaysia will change. I am prepared to die for this cause, because there is such a lot of discrimination against us. I found it so difficult to find a job when I was younger. The Malaysian people do not allow trans-women to be anything other than sex workers. This really is the only work that

we can do because when we look for work elsewhere, we are ridiculed. But we also have people to feed, and responsibilities to manage. We should be able to make money safely, and take care of our people like everyone else.

Linda: I have become involved in the legal case because having been arrested on two separate occasions I believe that it is wrong that it should be a criminal offence for me to wear whatever I want to wear. I want to fight

for my rights, and the rights of my friends. These people arrest us, beat us up and break into our properties. They hunt us down as if we are the biggest murderers, when the only "offence" we are "guilty" of is wearing female attire.

Fifi: I have become involved in this legal case against Section 66 because I want to change the law. The religious authorities are the biggest problem facing trans-women like myself and I want this to stop.



¹ Tan Lay Ean, H., "Jeffrey Jessie: Recognising Transsexuals", *The Malaysian Bar*, 17 November 2005.

² Slamah, K., "The Struggle to Be Ourselves, Neither Men Nor Women: Mak Nyahs in Malaysia", in Misra, G. and Chandiramani, R. (eds.), *Sexuality, Gender and Rights: Exploring Theory and Practice in South and South East Asia*, SAGE, 2005, p. 99.

³ *Ibid.*, p. 100.

⁴ Koon, T.Y., *The Mak Nyahs: Malaysian Male to Female Transsexuals*, Eastern Universities Press, 2002, Chapter 4.

⁵ See International Lesbian, Gay, Bisexual, Trans and Intersex Association, "Trans Woman wins Asylum Claim", 27 July 2010, available at: <http://ilga.org/ilga/en/article/mxBoTUg1vy>; and Fridae, "Malaysian transsexual given refugee status in Australia", 2 May 2010, available at: <http://www.fridae.asia/newsfeatures/2010/05/04/9889.malaysian-transsexual-given-refugee-status-in-australia>.

⁶ *Wong Chiou Yong v Pendaftar Besar/Ketua Pengarah Jabata Pendaftaran Negara* [2005] 1 CLJ 622.

⁷ *J. G. v Pengarah Jabatan Pendaftaran* [2005] 4 CLJ 710.