

Strategies for Challenging Homophobia in Islamic Malaysia and Secular China¹

By Walter L. Williams

Recently I served as an expert witness for a gay Malaysian who is applying for asylum in the United States Immigration Court. There is a provision in the U.S. immigration code that offers asylum based on persecution “on the basis of membership in a particular social group” that is discriminated against. During the Clinton administration, Attorney General Janet Reno issued a declaration that LGBT people constituted “a social group” that can be considered under this provision of the law. Since that time, quite a number of immigrants have won asylum on this provision.

The first court case on which I served as an expert witness was the case of a gay man from China. In 1998 I was called as an expert witness due to work I had been doing with Dr. Wan Yan Hai, China’s leading gay activist and AIDS educator. In 1997 my longtime activist friend Lyle Henry, who has traveled widely in China, asked me to try to bring Dr. Wan to America. I was able to arrange for him to be accepted as a visiting scholar at USC so that he could continue his work under my direction. It was crucial at that time for Wan to be granted this official academic position, because he was on the verge of being arrested by police due to his AIDS-activist political activities in China. Fortunately, USC approved my request quickly, and Wan was able to receive a formal invitation as a visiting scholar at the University. With the offer of this position he was able to receive a visa from the Chinese government. In this case, the Chinese government’s desire for its scholars to receive international recognition trumped its police department, or perhaps they were just happy to see this troublesome activist leave the country.

I was also able to use my position with another organization to help Wan. Since 1989 I have been a member of the board of directors of the Institute for the Study of Human Resources (ISHR), a foundation that was established in 1964 by ONE founder W. Dorr Legg and female-to-male activist Reed Erickson, in support of the work of ONE Institute. In the decades since then ISHR has had a huge influence on reducing homophobia by awarding many fellowships and grants for research on human rights. ISHR has also been a major supporter of the INTERNATIONAL GAY AND LESBIAN REVIEW² which I founded in 1996 and served as its first editor. I am also extremely grateful to ISHR for a grant in support of my research.

In addition, the directors of ISHR have awarded fellowships to a large number of scholars who I have recommended. Quite a number of important Ph.D. dissertations, journal articles, and award-winning books have been published as a result of ISHR's support. Especially important books by Chuck Stewart, Mark Blasius, Holly Devor, Jim Kepner, Martin Dupuis, James Green, and others, have been published.³ Many dissertations were also sponsored by ISHR. It is an unsung organization that has had a tremendous influence, and one of the greatest legacies of gay rights pioneer W. Dorr Legg. Recently ISHR has merged into the Williams Institute for Sexual Orientation and the Law, as sponsor for researchers coming to its programs at the University of California, Los Angeles.⁴

Probably the most influential grant that ISHR has ever made was to Wan Yan Hai. Subsequently, a friend of mine who is very generous offered to underwrite a contribution to ISHR for another grant to be made for Wan to stay in America longer. Lyle Henry generously provided Wan a place to stay in the guest bedroom at his house. Wan has now made several research trips to America, and he is internationally known for his work in AIDS education.

When Wan first came to Los Angeles in 1997, James T. Sears and I were just publishing our book, *Overcoming Heterosexism and Homophobia: Strategies That Work* with Columbia University Press. Dr. Sears is the nation's leading expert in challenging homophobia in schools, and at that time he was Professor of Education at the University of South Carolina. He had been subjected to intense criticism from fundamentalist Christians in South Carolina, so even though I had never met him I offered him a free room to live in my house for a year. I wanted to give a worthy scholar a respite from the torment he had undergone, and I considered my offer as a sort of in-kind "Walter Williams Fellowship" that I did again later with Sabina Lang from Germany and several other researchers who wanted to come to Los Angeles to do research at ONE Institute.

Professor Sears was able to take a leave from his university and he was happy to come to gay-friendly Los Angeles and work at ONE. My house, which is only a block from ONE, is an ideal location for visiting researchers. While he was resident in my house, Dr. Sears and I planned our book. We gathered the testimony of lesbian and gay community activists, elementary and high school teachers, college professors, religious leaders, and anti-homophobia education pioneers like Warren Blumenfeld and Sylvia Rhue. The purpose of this book, which received awards from the Gay and Lesbian Support Education Network (GLSEN) and the Institute of Gay and Lesbian

Strategic Studies (IGLSS), was to figure out which techniques are most effective in reducing homophobic prejudice.

Wan Yan Hai read this book when he arrived in Los Angeles, and in conversations with me he decided to apply its strategies to combat heterosexism and homophobia in China. In our conversations we decided that the main focus of this effort should be to persuade the Chinese Psychiatric Association to remove homosexuality from its list of mental disorders. Some activists in China had been trying to do this, but without success.

As luck would have it, some of the leaders of the Chinese Psychiatric Association were visiting Los Angeles for an international meeting of psychiatrists. Wan was able to convince them to come to talk with me. I met with them at ONE National Gay and Lesbian Archives. After touring them around the building, which houses the world's largest collection of GLBT books, papers and materials, I gave them what amounted to a lecture on why homosexuality should not be considered a mental illness. At the time I was teaching a USC graduate seminar in Gay, Lesbian, Bisexual and Transgender Studies, and I considered this lecture a distillation of that entire course, plus all the two decades of research I had done on homosexuality in non-Western cultures, condensed into a two-hour talk. The Chinese visitors, who all spoke good English, took in what I had to say, and asked intelligent and pertinent questions. Wan and I had a good discussion with them. After they left I felt that this was probably the most important single lecture I had ever given.

Wan and I also organized the first conference of the Chinese Society for the Study of Sexual Minorities, which was held at USC in 1997. Chinese LGBT people came from all over the world to participate in this conference, and I was happy that I was in a position to be able to provide a free space for this conference. In many ways like this, the University of Southern California has been a major supporter of the struggle for gay and lesbian rights. Since 1956, when USC Professor Merritt Thompson was a co-founder of ONE Institute, USC has been in the forefront of development of the field of Gay and Lesbian Studies. The course that I now teach at USC on Transgender Studies, which was the first such course to be offered at a major research university, continues in this pioneering tradition.

After working with me for two years, Wan returned to China. Though I was nervous about his return, this brave man vowed that he wanted to go back to be able to have the maximum influence. Fortunately, by the time he returned the police authorities had forgotten about his earlier activities and he was not arrested. With a few other activists, Wan coordinated a brilliant campaign to

convince the leaders of the Chinese Psychiatric Association to change their attitude toward LGBT people. In 2001, the Chinese Psychiatric Association made front page headlines in newspapers around the world when they voted to remove homosexuality from their list of mental disorders. Wan and a small number of other brave activists in China had made history. Their effort is a case study in how to change governmental attitudes.

The Chinese Psychiatric Association is an official organ of the government of China, and after this vote the government made a substantial change in policy. Before this time, China considered homosexuals to be mentally ill and to come under their legal classification of “hooligans.” It was not uncommon for police to attack gays and beat them viciously. I have interviewed Chinese gay men who have had their teeth knocked out, or bones broken, in some of these police attacks. After 2001 that police behavior changed, and I no longer hear of reports of such violence. The situation is hardly perfect for Chinese LGBT people today, and there is still much social and job discrimination, but the legal situation is vastly improved. Considering that China is the world’s largest nation, containing nearly one-fifth of all humanity, this change in policy directly led to the improvement in the lives of literally millions of people.

This work also led directly to my being called upon as an expert witness in the asylum cases of several Chinese gay men and lesbians. In the first such case I did, in 1997 before the U.S. Immigration Court in Las Vegas, there were several witnesses lined up to testify. The attorney had scheduled me as the last witness, in hopes that my testimony would be foremost in the judge’s mind when he reached a verdict. But to my surprise, after hearing the testimony of the asylum applicant himself, the judge announced that he wanted to hear from “the USC professor” before any of the other witnesses. It was at that point I realized the prestige that a professorship at a major university carries with these judges. I nervously took the witness stand, having never testified in an immigration court before, and told everything I knew about the terrible situation facing gay people in China. The judge asked me several pointed questions, and after I answered he thanked me and I stepped down.

Then the judge announced to the court that after hearing my testimony he had decided to dismiss any more witnesses and he would decide the case solely on what I had said. As the applicant stood up to hear the verdict, the judge announced that on behalf of the United States of America he was granting political asylum effective immediately. The Chinese man turned to me and burst out

crying. This case was one of the precedent-setting cases, and since then many more LGBT people have been provided asylum in the USA.

I was so proud to be an American at that point, and to recognize the role that America, Sweden, the Netherlands and other European countries have played in being a refuge for those people who are persecuted for their sexual orientation. When word got out from attorneys that I am an effective and credible witness, I started receiving more phone calls and emails begging me to testify for their client. Since that time I have served as expert witness for over forty asylum seekers. I am proud to say that every single case for which I have provided testimony has resulted in the granting of U.S. residency. So far, not one of these asylum seekers has been deported to face the consequences in their home country.

In many of these cases, judges have announced that my testimony was the crucial basis on which they made their decision. In one court appearance, I knew that the applicant had won when I saw the judge's eyes filling with tears as I described the kind of persecution that gay people face in that country. For a hardened judge, who has to listen to immigrants begging for admission to the United States day in and day out, to have that kind of reaction told me that my effectiveness as an expert witness is a responsibility I have to provide to people in need. When I see the dramatic impact that my research on homosexuality in other countries can have, on the real lives of real people, suddenly academic theory takes a back seat to the life-or-death questions facing these people.

Due to the significant improvement in China, asylum is not being sought by Chinese LGBT people in the way it was before 2001. Nowadays, the most calls I receive are from asylum applicants from Islamic nations. I have not done research in the Middle East, and as such I am not able to accept solicitations to testify for immigrants from those countries. But I have testified for many asylum seekers from the Muslim nations of Indonesia and Malaysia. In 1987-88 I was Fulbright Professor at Gadjah Mada University in Indonesia, and I wrote two books on gender and sexuality in Indonesia. After leaving Indonesia, I also made a month-long trip to do research on the situation of gay people in Malaysia.

The most recent asylum case, for which I testified over the phone from my research site in Thailand today, was for a Malaysian gay man who came to the United States on a student visa to the University of Kentucky. After graduating he moved to San Francisco because of its reputation as a gay Mecca.

Except for that first asylum case in Las Vegas, and another case in Seattle, every asylum seeker with whom I have worked has ended up gravitating to either San Francisco, Los Angeles, or New York. It is these three cities that are the most heavily gay in the United States, and that is where these immigrants prefer to live. It is no surprise that, just as I and millions of other LGBT Americans have refugeed to one of these cities from more homophobic parts of the country, gay immigrants from abroad would also want to make their future there. I remain personally grateful to the city of Los Angeles for providing me with a good home for the past quarter of a century. At this point LA is one of the few places in the United States where I would even consider living. Most of America is just too prejudiced for my taste, and even liberal California pales in comparison to Thailand. But, despite its problems, LA is a great city for minorities of all kinds.

In this latest asylum case, I received a phone call that was very brief. The judge thanked me for agreeing to provide testimony from so far away, and asked if I stood behind every statement that I made in my written affidavit. I said yes. The judge then declared that on the basis of my affidavit he was granting asylum. I was very happy as I hung up the phone, and I am sure the applicant was as well. But, in truth, it is not difficult to make a case for asylum from Malaysia and many other Islamic nations today. I am happy for the asylum applicants that I have been able to help, but sad for the much larger number who will never be able even to escape from the hell in which they have to live.

The terrible situation facing LGBT people in Malaysia is a direct result of the continuation of a British colonial-era sodomy law, but that law's continued enforcement in an independent Malaysia is due to powerful political factors combined with the influence of Islamic religious beliefs. Though in the past many Islamic traditions were not as homophobic as the European Christian tradition, it is ironic that at this point in history many of the most homophobic nations on earth are Islamic. It is also important not to sweep under the rug the fact that dominant Muslim thought today is quite oppressive to gay and lesbian people.

Malaysia's sodomy law prohibits anal intercourse. This law could theoretically apply to male-female couples, but Malaysia's sodomy law is not applied equally. It has been selectively and systematically enforced to vilify and persecute homosexuals. In Malaysia's Penal Code, Section 377, the sentence for conviction of sodomy is flogging, plus up to twenty years in prison. Victims are flogged with a bamboo cane that is split into several strips. When bamboo is split it has extremely sharp edges, which slice the skin like knives. Flogging is quite bloody, and leaves

permanent scars. In addition to Section 337, just to prevent any homosexual from escaping conviction, Section 337A provides for a male to receive up to two years in prison for any act of “gross indecency with another male person.” This vague wording allows prosecution for any kind of erotic interaction between two males. This law is explicitly applied only to homosexual behavior among males, and female-female sexual behavior is not specifically mentioned in the penal code, but lesbians also suffer discrimination. There have not been prominent cases of persecution of lesbians in Malaysia, but they are oppressed by other rules which attempt to enforce dress codes and restrictions on women in general. A female who does not conform to gender expectations in Malaysia can expect harassment both from police and from the general population.⁵

The United States State Department 2006 Country Report on Malaysia concluded that these anti-gay laws “exist and were enforced. Religious and cultural taboos against homosexuality were widespread.”⁶ Although the existence of this law in and of itself should be enough to warrant a decision in favor of asylum for a homosexual from Malaysia, there is further evidence that demonstrates the particularly strong and heinous vilification, discrimination and persecution that is happening to homosexuals in Malaysia today.

Though I have not been in Malaysia recently (due to fears about my own safety if I went there), I have continued to do research on the plight of homosexuals in Malaysia. I follow the literature, including periodicals and websites that address and report on gay culture and community issues in Malaysia as well as the rest of Southeast Asia. I have interviewed many gay people from Malaysia, and others who have knowledge of the national climate today. I have a good understanding of the current situation there.

It is clear from the evidence that in the last decade the situation has worsened for gay men and lesbians in Malaysia. Partly this is a reflection of a recent crackdown on homosexuals in many Muslim nations. In U.S.-allied Saudi Arabia the punishment that has been meted out for “sodomites” is beheading. In what is probably the understatement of the year, even the U.S. Department of State 2007 country report for Saudi Arabia acknowledged that “sexual activity between two persons of the same gender is punishable by death or flogging. It is illegal for men ‘to behave like women’ or wear women's clothes and for women to wear men's clothes. There were reports of societal discrimination based on sexual orientation. There were reports of discrimination, physical violence, and harassment toward homosexuals. In October a court in al-Baha Province sentenced two men to 7,000 lashes each for engaging in sexual intercourse with other men.”⁷

Most people know that the Taliban in Afghanistan were infamous for forcing accused homosexuals to stand next to a tall brick wall, while a tank pushed the wall over onto them to crush them to death. But even more extreme is the Islamic republic of Iran. The exiled gay Iranian group Homan estimates that over 4,000 Iranians have been executed for sodomy during the 1980s and 1990s. These executions are often public beheadings or hangings, being stoned to death, being split in half by a sword, being burned alive at the stake, or being thrown from a tall building or mountain cliff. Homan made a statement saying “Lesbians and gay men living in countries dominated by the New Dark Ages of Islamic Fundamentalism cannot afford the liberal luxury of tolerating religious fanaticism. For them, the politically correct arguments about cultural sensitivity smack of surrender to the extremists who jeopardize their freedom and even their lives.”⁸

These mass killings of homosexuals, which have been justified in the name of Islam, constitute a major human rights violation of the 20th and early 21st centuries. Even the secular government of Egypt provoked international criticism in 2001 and 2002 due to a campaign of arrests of people who were accused of homosexuality. Many of those convicted of participating in consensual sexual acts with another person of the same sex were sentenced to prison for several years.⁹ In 2005 in northern Nigeria a man accused of homosexuality was sentenced to die under that territory’s Islamic Shariah law. The list of examples could go on. In short, for any country where fundamentalist Islamic influences are dominant, homosexuals are in grave danger of being killed or imprisoned.¹⁰

Malaysia’s government defines itself as a government based on “Islamic principles,” as a way of avoiding the limits placed on constitutional democracy. Its recently-retired Prime Minister, Mahathir Mohamad, held massive political power for 22 years. In 1998 Islamic homophobia and Malaysian politics intertwined as Malaysia’s Deputy Prime Minister Anwar Ibrahim made a major break with Mahathir due to his economic policies, and pressured him to institute democratic reforms. The Prime Minister responded by charging that Anwar had sex with two men. Anwar refused to be intimidated by what he called an untrue smear, and led protests against the dictatorial policies of the government. Mahathir then used the existence of the sodomy law to have his major political rival arrested.¹¹

While in custody, Anwar was severely beaten by the chief of police. Two men testified at his trial that Anwar had sex with them. But both of them later recanted their stories, and admitted that they had been pressured by government officials and police to make the accusation of sodomy.

Mahathir obviously believed that the charge of homosexuality would be so damning that most people in Malaysia would withdraw their support for Anwar and his call for democratic reforms would be discredited. While many Malaysians supported the Deputy Prime Minister, and joined protests on his behalf, most of them have done so only because they believe he did not really commit homosexual acts.

In reaction to the Anwar case in 2000 a report by the International Bar Association, after its on-site study of justice in Malaysia, concluded that “the extremely powerful Executive in Malaysia has not acted with due regard for the essential elements of a free and democratic society based on the rule of law.”¹²

In response to mounting international criticism, the government established a National Human Rights Commission, but the man placed in charge of this commission is a supporter of Prime Minister Mahathir. The Commission defines human rights solely as those provided for in the Malaysian Constitution, and this does not include rights for homosexuals. There is no challenge to Malaysia’s sodomy law, which criminalizes all those who engage in same-sex relationships.

Instead of retreating, Mahathir’s government justified its position on Anwar by stiffening their attacks on homosexuality. Government officials joined in a rising chorus of condemnations of homosexuality. In *Time Magazine*’s web-edition of September 26, 2000, Abdul Kadir Che Kob, a top government official at Malaysia’s Islamic Affairs Department, was interviewed. In this interview, Abdul Kadir said: “Homosexuality is forbidden in Islam. It is a crime worse than murder. Homosexuals are shameless people.” When asked by the interviewer if people should not have the right to choose who they want to be with, Abdul Kadir replied: “What right are you talking about? This is a sin, end of story. How can men have sex with men? God did not make them this way. This is all Western influence.” He explained that police use anonymous tips to trap homosexuals: “Usually people give us precise information like where these men are. We then go to the place, say, a hotel room. We knock and force them to open the door, but they are usually fully clothed by then. We still charge them for attempting to commit homosexual acts. We charge them in court, but before that we put them through what we call Islamic counseling sessions. They recite the Koran everyday and we will tell them they have committed a grave sin. We have to tell these people they are doing something very wrong in the eyes of Allah. It is a major sin.”¹³

Prime Minister Mahathir has made repeated attacks on homosexuals. These attacks are not marginal to his argument, but are a central point of his rhetoric. For example, in his speech to the

General Assembly of the United Malays National Organization (UMNO), on June 19, 2003, the Prime Minister ominously titled a section of his address “The Dangers We Face.” He stated that the main danger facing Malaysia’s future is a campaign by Europeans and Americans to force Malaysians to adopt Western freedoms. He said, “Our minds, our culture, our religion, and other things will become the target. In the cultural and social fields they want to see unlimited freedom for the individual.... They accept the practice of free sex, including sodomy, as a right.... The culture and values which they will force us to accept will be hedonism, unlimited quest for pleasure, the satisfaction of base desires, particularly sexual desires.”¹⁴

With this kind of rhetoric from the Prime Minister, Malaysian officials at the United Nations took a leadership role in denouncing sexual minorities. For example, during a United Nations General Assembly session on the HIV/AIDS epidemic, delegates from Malaysia were highly critical of any recognition of sexual minorities. That is, they were even prepared to prevent effective efforts to address the epidemic, if it meant recognizing gay AIDS organizations that were attempting to curtail the spread of HIV. The international watchdog group, Human Rights Watch, highlighted Malaysia in its *World Report 2002: Special Issues and Campaigns*. This report pointed out that government “inspectors have forced AIDS prevention groups in Malaysia to stop distributing condoms, at a time when HIV infections are rising.”¹⁵

A year later, Malaysia’s government took the lead in killing a resolution in the United Nations that called for the end of executions and imprisonment for homosexual behavior. According to England’s August 25, 2003 issue of *The Guardian*, “A landmark U.N. vote on homosexual human rights was on Thursday derailed at the last minute by an alliance of disapproving Muslim countries—Malaysia, Pakistan, Egypt, Libya and Saudi Arabia.... Same-sex relations are harshly repressed in Bangladesh, Egypt, Malaysia, and Pakistan.”¹⁶ When the resolution was brought up again a few months later, the Islamic website Islam Online reported on February 9, 2004: “Malaysians Protest U.N. Resolution on Sexual Orientation: Malaysians urged the United Nations not to issue a resolution recognizing the rights of gays and lesbians, saying Muslim countries should derail any vote on sexual human rights.” This Islamic website directly stated that gay and lesbian rights are “an offence to Islam and to Muslims.” This source quotes Dr. Rais Yatim, a deputy minister in the Prime Minister’s Department, saying “We must pray that the U.N. fails in its attempt to impose the acceptance of gays and lesbians.... [This resolution] is horrible.”¹⁷

Mahathir has continued his scapegoating of gay people even after his retirement. In a statement reported by the Associated Press on January 9, 2007, the former prime minister reiterated his belief that Anwar is a homosexual: "I have no doubt that he has been proved to be a homosexual." Moreover, he said that gay people should not be allowed to participate as part of the government: "Gay people should not govern mostly Muslim Malaysia.... I strongly believe we cannot have a prime minister who is homosexual. Malaysia is officially an Islamic country."¹⁸

Despite the rather obvious political nature of the government's prosecution of its leading proponent of democratic reforms, the prejudice against homosexuals is so severe that Anwar was discredited. During his trial the judge made many questionable rulings that denied Anwar a fair opportunity to defend himself. The judge even sentenced Anwar's lawyer to three months in prison for "sedition" for protesting this unfairness. In 1999 the Malaysian court convicted Anwar of sodomy, and he was sentenced to nine years in prison. Because of Anwar's poor health resulting from the police beating, he was finally released from prison after serving for six years. He felt so threatened by the stigma of being labeled as homosexual that he fled the country and was granted asylum by Germany. After Mahathir retired, Anwar came back to Malaysia to try to clear his name, but he has been muted in his criticism of the current government.

While many have complained that Prime Minister Mahathir made his accusations of sodomy in a cynical attempt to rid himself of a political rival, it was an effective ploy. In order to justify this prosecution, the government responded with a general campaign about the evils of homosexuality, and by a crackdown against homosexuals. In 1998 the supporters of Mahathir organized "Pasrah," a new political group called "The People's Voluntary Anti-Homosexual Movement." Pasrah's goal is to "wipe out" homosexuality in Malaysia by calling for severe legal penalties against same-sex behavior. The Malaysian human rights group Suaram has protested against this government-supported organization, saying Pasrah's attempt to incite discrimination and condemnation of gay men and lesbians is a misguided form of political support for the Prime Minister. Suaram has concluded, in my opinion quite accurately, that homosexuals have been made the scapegoat in the government's attempt to keep itself in power.

Ibrahim Ali, the chairman of Pasrah, is a member of the Supreme Council of the United Malays National Organization Party. This is the party that is in control of the government, even after Mahathir's retirement. The new Prime Minister Abdullah Ahmad Badawi is the handpicked successor of Mahathir, and continues to follow his policies. Pasrah's stated goal is to "educate the

public” about the “moral danger of homosexuality.”¹⁹ The leaders of Pasrah have stated that Malaysia’s current sodomy law, with its punishment of flogging and imprisonment for twenty years, is too lenient. The main opposition party is supported by fundamentalist Muslims, who are even more inclined to support executions for homosexuals. In this context, Mahathir’s party takes a “moderate” position by only favoring imprisonment for those accused of homosexuality.²⁰

In addition to all this that is happening on the national level, Malaysian women’s rights activist Zaltun Mohamad Kasim points out that local laws are becoming even more repressive. She has been speaking out publicly about the dangers of increasingly strident attacks on sexuality by Muslim leaders. She gave a speech at an international human rights conference in 2004 in which she stated that in Malaysia, “Sexuality [is] Under attack....Inspired by the ideology of Islamic conservatism, there is a growing obsession with... guarding and policing morality.” One of the most insidious new laws, that was passed with hardly any objection, provides that “anyone who gives, propagates, and/or disseminates any opinion contrary to any fatwa [Islamic directive] in force commits a criminal offense.” Since a fatwa issued by Muslim leaders states that homosexuality is a sin, anyone in Malaysia who tries to suggest otherwise is subject to arrest merely for stating their opinion.²¹ Zaltun also points out that:

The state-administered Islamic or Shariah laws are ostensibly only applicable to Muslims. However, what has been happening in effect is a quiet redefinition of what is considered ‘matters related to Islam.’ The scope of Shariah laws in the country has slowly widened, from personal status laws on marriage, [to] divorce [and] sexual orientation.... State governments have also used this provision to enact their own versions over and above the existing [national laws]. [These local and national] laws contain numerous provisions that blatantly and facially disproportionately discriminate against and violate the rights of women and the lesbian, gay, bisexual and transgender community. The Shariah laws have also found their way into municipal laws, subsidiary legislation, regulations and policy directives that affect both Muslims and Malaysians of other faiths.²²

Gay people, she points out, are often falsely charged with violations of prostitution laws, and other laws that are deemed to protect public morality, simply because homosexuality “is demonized as unIslamic, unnatural, disgusting, and a crime worse than murder.... They become vulnerable to legal prosecution under both the civil and Shariah legal systems as well as being easy targets for public persecution, sexual and physical violence, and harassment.... The growing conservatism in the country has also given rise to self-appointed vigilante Islamist groups or individuals in the universities, the workplace, and also in public spaces, who have taken it upon

themselves to harass and police other individuals and groups.”²³ Some non-masculine males who are suspected of being homosexual have been expelled from Malaysian universities “and told to come back when they become ‘real men.’”²⁴

Gay people have no one to speak up for them in Malaysia. Even academic researchers are intimidated by being dependent upon government appointments and funding. Faculty at Malaysian universities are prohibited from engaging in political debates. For example, several teachers were dismissed by the government’s Teaching Service Commission just for assigning students to debate political policies in a debate competition. Without any public discourse on the subject of equal rights for homosexuals, there is little opportunity for changing the attitudes of the public or government authorities.

In this context of rising intolerance, Malaysia’s Information Minister Datuk Mohamed Rahmat announced a policy that the government will not allow any known gay man, lesbian, or transvestite to appear on television programs. He stated: “Any artist who is proven to be a gay will come under the ban. We do not want to encourage any form of homosexuality in our society.”²⁵ This policy is frighteningly similar to laws passed by the Nazis in 1930s Germany, prohibiting Jews from appearing in any of the mass media. These laws proved to be a prelude to the concentration camp policies that followed.

The chances of these policies being changed due to pressure from the media is very slim, because publishers must apply annually to the government for a permit to publish their newspapers, books, or magazines. The fact that most of the major media in Malaysia are owned by top government officials means that the media do not challenge any government policy. In addition, the government censorship board prevents publication of “malicious news,” and censors discussion of any kind of sexual matters in the press. *The Sun*, a leading newspaper in Malaysia, even went so far as to say on August 13, 2007 that “The government should strip the citizenship of Malaysians who betray the country by making comments that humiliate Islam.”

Therefore, since the Malaysian government considers homosexuality to be an affront to Islam, any news relating to gay and lesbian rights, especially including calls for ending discrimination against homosexuals, is suppressed. For example, on February 22, 2006, the main newspaper *The Malay Mail* in a front page story not only did not criticize the government for police raids on gay businesses, but even joined in on the raids by taking and printing photographs of the

men who were arrested. In lurid tabloid style, the article compared gays to prostitutes. On the same day, the Bangkok-based Utopia-Asia gay news website commented:

Human rights in Malaysia took another downturn today as the English-language newspaper, *The Malay Mail*, used their front page to equate homosexuals with prostitutes. Referring to recent high profile police raids on Kuala Lumpur discos, spas and saunas popular with gay men, the paper used local slang to slur the country's gay citizens: 'Round-up of the Day! Chicks [female prostitutes], Ducks [male prostitutes] and Gays.' In a full page exposé, the paper chose to display pictures of patrons shot by police inside a private men's club, unprecedented behavior from the local media. An article which appeared last week in the Malay press, luridly detailing suggestive activities inside a popular local men's spa, seems to have been the trigger for the police actions against a number of clubs, saunas, and massage businesses. Subsequent one-sided articles have appeared in the press from a Muslim group asking for harsher penalties against homosexual activities and even interviewing a Mom who was surprised to learn that her son was gay and blamed Malaysian gay Internet sites for his natural inclinations.²⁶

This kind of police raiding, aided and abetted by a scandal-hungry media, continues. For example, at 7:30pm on November 4, 2007, police raided a gay party in Penang, and brought along reporters who took pictures of the gay men at this party. The police claimed there was sex going on at this party, though all of the photos that were made as soon as the police burst into the scene showed the men all fully clothed. Participants said that it was a purely social gathering, and denied there was any sex going on.²⁷ Whether there was sexual behavior or not, what is important is that this was a private gathering of consenting adults in a closed private business.

Penang police chief Azam Abdul Kadir was quoted by the Associated Press (November 6, 2007) as saying that this raid was part of what he called "Operation Clean" that was being conducted to prevent vice activities. He proudly recounted how his department had conducted similar raids on other gay parties on April 3, and hinted that other sites were under surveillance if they did not stop hosting gay parties. Azam said the hosting of such events "is against our culture, our way of life." By defining homosexuality as "vice" this "Operation Clean" demonstrates the extreme discrimination against gay people in Malaysia. Gay Malaysians living in exile responded that Operation Clean should be used to clean up rampant government corruption, and that police would be more useful in cleaning up the dirty streets of the city than in persecuting gay people.

The fact that homosexuals are so commonly arrested is itself a sentence of punishment. A person who is arrested for a crime in Malaysia often has to wait in jail for a long time, sometimes

up to eight years, before being brought to trial. Guards regularly beat prisoners. Torture of prisoners is justified by the sentence of being flogged with a cane that is often meted out by the courts. This practice of caning is so severe that prisoners often faint from the pain, and are left with permanent scars. In the case of prisoners who are homosexual, the extensive publicity regarding government condemnation of homosexuality has sent the message to the police and others that persecution of homosexuals is acceptable.

As evidence of this, I include here an interview of an ethnic Chinese Malaysian gay man who refugeeed to Los Angeles in 2006. His story is all too common among those Malaysian gay men whom I have interviewed, in Malaysia, Thailand, and America. This is what he told me about Malaysian police:

The police have the mindset that if you are gay you deserve the death penalty. No matter who you are or how successful you are, as long you are gay you are finished. If you are gay and something happens to you, you will not get any protection from the police. I heard so much about gay people getting persecuted, beaten, harassed, and tortured. Hearing these things makes you so fearful and you live in depression.

In July 2006, one evening I was sitting in a car with another man in a public park, in a suburb of Kuala Lumpur. We were just talking, there was nothing sexual going on. This park is known among gay people as a place to hang out. We call it "lost world." Around 10pm, a police patrol car with two police officers pulled up. I still remember that moment. I thought I was going to die. The officers were both Malay Muslims. They quickly approached the car and grabbed us. One officer dragged my companion about six to eight meters away. They pushed us each to opposite sides and quickly grabbed our IDs. They tried to force us to admit that we were doing something wrong so that they would have a reason to bring us back to the police station. I only had one thing in my mind there. I was so frightened. I thought that I am not going to see the morning tomorrow.

The police officers made us stand with our backs to them facing the car and put our hands on the car. We said we did nothing wrong. They said two men inside a car in a public park was already wrong. I said again to them, "We did nothing wrong." One officer said, "Don't lie to me. We all know what people are doing in the park at this hour." I said, "Officer, I don't know what you had the occasion to catch people doing in the park at this hour but I am telling you the truth." I was afraid because I knew that if I admitted I was gay I would be in serious trouble. I tried to act regretful, hoping they would have some pity and soften up. I was praying that the officers would believe me.

The policemen searched our car. In Malaysia, it is different than in the United States. While you are in the police officers' hands, your life belongs to them. They told us, "There is no place at all in this world for people like you guys. You guys are disgusting. You're animals and do not deserve to be born to this world. The only place for you is in hell." They wanted to arrest us and bring us back to the station. I knew that if they took us to the station, they could charge us with immoral activities. It is a matter of a life

threatening situation. I had no choice. Very fast the thought came in my mind to bribe them. I gave them 200 Malaysian Ringgit. That is what saved us. But before they left, they warned us, “You guys better pray,” and they told us they better not catch us again anywhere anytime, “or else you guys are dead.”²⁸

Fearing for his life, on the following day this man went to the American embassy and was able to obtain a visa which he used to escape from Malaysia. This man’s fear of being arrested was based on a realistic fear of what happens to gay people who come under the control of the law enforcement system. In its December 24, 2004 report “Malaysia: Freedom—the Human Imperative,” Amnesty International quoted the statement of Dr. Munawar Anees, a microbiologist who was convicted under Section 337D of “unnatural offenses.” Dr. Munawar testified: “The infamous Malaysian Special Branch [secret police] taught me how it feels to be searched and seized, disallowed to make phone calls, handcuffed, blindfolded, stripped naked, driven in an animal cage, shaven bald, endlessly interrogated, humiliated, drugged, deprived of sleep, physically abused [and] barely surviving on a meager diet of rancid rice and chicken.”²⁹ While imprisoned he was kept handcuffed around the clock to his bed for nearly four months. After he was finally released, he recounted his ordeal, saying: “Slowly but painfully, the wounds of physical torture may heal. In time, the psychological anguish may subside. But the freedom that is lost is never regained.”³⁰

If even a respected scientist like Dr. Munawar was persecuted so severely, I would expect that the average person would meet an even worse fate. Given the government’s stated goal of “wiping out” homosexuality in Malaysia, and the fact that the government uses a religious justification for this persecution (keeping in mind that Islam is the official religion of Malaysia’s government), the likelihood that the police would protect an LGBT person is nonexistent.

United States immigration policy allows political asylum to be granted to an applicant based on their realistic fear of “persecution on account of membership in a particular social group.” Male and female homosexuals definitely constitute such a social group in the context of government and religious persecution in Malaysia. Even if an individual is not convicted of a specific sexual act, they can still be persecuted based upon their perceived membership in the social group of homosexuals. They do not even have the freedom of association to gather with other gay-identified persons in a social setting, without persecution. Even sitting in a car, a public park, or anywhere

that police suspect two or more people of being homosexuals, leaves one open to police harassment, arrest, and/or torture. Even if they were not engaged in sexual activity, merely being perceived as gay by itself is enough for the police to take such actions. Both males and females are persecuted on the basis of their *perceived* membership in this social group.

Even if government-sponsored persecution might abate in the future, there is still the probability that Muslim Fundamentalists will continue to try to “wipe out” homosexuals. The statement often made, that homosexuality “is worse than murder,” and “an affront to Islam,” is a real and present danger for any person who is even suspected of homosexual proclivities.

All my recent research shows that conditions for homosexuals in Malaysia are quite precarious. Things are getting worse rather than better, and there is no evidence of any turnaround potential for the foreseeable future. As Malaysian human rights activist Farish Noor sounded the alarm in 2005: “It should be painfully obvious to all by now that there are very real repressive undercurrents in Malaysian society.”³¹

The negative attitudes, discrimination and persecution being experienced by Malaysian gay people today is a direct result of the combination of religious attitudes and governmental politics. Defining homosexuality as criminal “sodomy,” imprisonment, censorship of media discussions of the issue, and police oppression, together constitute a pattern of government-sponsored persecution that is impossible to deny.

With this being the case, I call upon the initiation of a massive boycott of those nations that are actively persecuting sexual minorities. The Malaysian government is conducting a major campaign to encourage tourism in Malaysia. Gay and lesbian travel agents have to be the first to say that they will not encourage tourism to Malaysia until the government changes its homophobic policies. Don’t buy Malaysian products, and protest American corporations that do business with Malaysia. This applies to every other homophobic government in the world as well.

It is important to publicize this persecution, and not allow it to be swept under the rug because of religion. Sooner or later, homophobic governments will be forced to accommodate to the emerging global consensus that such persecution, even if religiously based, is wrong. I remain an optimist, and having seen such dramatic change in China, as well as in other countries, I feel that change is possible in the Islamic world as well. There are some Muslim nations that are not actively persecuting homosexuals, and they can be the model for change by the homophobic governments. But though I am ultimately optimistic I also know it will be a long struggle. In the meantime we

owe it to the people who are being discriminated against to do everything we can to help them escape from the oppressive conditions under which they have to live. Immigration and asylum for LGBT people today, just as it was for Jews fleeing Nazi persecution in the 1930s and 1940s, is an important moral question for our time. I am proud to have made my contribution in this area, and call upon all other rational people who oppose discrimination to do likewise.

¹ I am indebted to the valuable assistance rendered by Nellsen Jong during the revisions of this manuscript.

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⁵ Aniza Demis "Sunday Interview: Fatwa on Pengkid to Prevent Lesbianism" *New Straits Times* November 23, 2008.

http://www.nst.com.my/Current_News/NST/Sunday/Frontpage/2409163/Article/index_html last accessed February 25, 2009.

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