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The Malaysian dilemma: negotiating sexual diversity in a Muslim-majority Commonwealth state

Shanon Shah

1. Crises and competing legacies

In 1998, Malaysia became the first Asian country to host the Commonwealth Games, and was only the second developing country – after Jamaica in 1966 – to do so. This was remarkable, given prior developments when the then Prime Minister Mahathir Mohamad, demonstrably frustrated with the Commonwealth, had previously asked his advisers whether Malaysia should quit the organisation (Van der Westhuizen 2004, p. 1285). Nevertheless, once Malaysia won its bid to host the Games, the government pulled out all the stops despite the unanticipated global financial crisis of the late 1990s. This was Malaysia's chance to wrestle symbolic power back from 'Western' Commonwealth Member States (namely the UK, Canada, Australia and New Zealand), and announce to the world its arrival as a newly industrialising, sophisticated, Muslim-majority country.

But Malaysia was also to come under the international spotlight for other reasons. On the eve of the Games, then Deputy Prime Minister Anwar Ibrahim was sacked on corruption and sodomy charges. Controversy and public outcry followed. This was accompanied by increasingly lurid reports in the government-controlled media about Anwar's alleged sexual exploits with men and women (Spaeth 1998). These reports were meant to be all the more damaging because of Anwar's history as the charismatic leader of the Malaysian Muslim Youth Movement (ABIM), the nation's largest grassroots Muslim movement (Nagata 1980, p. 424). Amid further controversy, the courts found Anwar guilty of corruption and sodomy and he was jailed, only to be released in 2004 under the administration of Mahathir's successor, Abdullah Ahmad Badawi. The Federal Court overturned his sodomy conviction in a 2–1 decision; by this time, Anwar had already served his sentence for corruption (BBC News 2004).

The events of 1998 throw into sharp relief the challenges and complexities associated with discussing the criminalisation of 'same-sex sexualities' in Malaysia. Several issues became mutually entangled – authoritarianism, the politics of Islam, legacies of British colonialism, post-colonialism, gender and sexuality – and things have been messy ever since. It is important to recall the events of 1998, however, to remind ourselves of the bigger picture regarding the treatment of sexual minorities in Malaysia.

Taking into account this recent history, this chapter will reflect on the possibilities for decriminalisation of 'same-sex sexualities' in Malaysia. I will focus on how expressions of Islam in Malaysia impact on attitudes, discourses and policies towards sexual minorities. My analysis is based largely upon my experiences working on issues related to Islam, gender and sexuality, initially as an activist and subsequently as a journalist.

Moving forward to the year 2011, hardly lacking in news on gender and sexuality in Malaysia, major headline stories included panics about sexual minorities, threats against them, or both. In January, there was the intimidation – including death threats – by state and non-state actors against Azwan Ismail, a Malaysian Muslim man who came out as gay via a YouTube video (Shah 2011). The next target was Lady Gaga – in March, radio stations censored the explicitly gay-affirming sections of her hit single 'Born This Way' (Michaels 2011). In April, there was the public furore – including protest by the Women, Family and Community Development Minister – against a 'boot camp' purporting to toughen up 'soft' boys (Boo 2011). August was triply loaded. There was the outcry surrounding the High Court's rejection of transgender Muslim woman Aleesha Farhana's appeal to change her male name to a female one, and her death from health complications soon after the decision (Ibrahim 2011). Then, several Christian and Muslim leaders condemned Malaysian gay minister Rev Ou Yang Wen Feng's same-sex marriage to his African-American partner in New York (*The Star* 2011c). Finally, there was the resumption of Anwar's *new* sodomy trial (BBC News 2011), this time on charges that surfaced in 2008.

Given the cacophony of 1998, these headlines might appear to confirm an overall climate hostile towards diverse genders and sexualities. After all, it was when Anwar was first sacked that Section 377 of the Penal Code – Malaysia's sodomy laws – became embedded in popular discussion. To complicate matters, Anwar *could* have been charged under provisions in the *shariah* criminal laws because he is Muslim, but was not. The irony is that although Anwar was charged under a law inherited from the British colonial era, until now his opponents have reviled him as a 'traitor' to ethnic Malays, who are officially classified as Muslim (*The Malaysian Insider* 2009).

This does not mean, however, that Section 377 is the state's preferred method of prosecuting sexual minorities. The legal and political system is more complex than that (Brownell 2009). Regarding the enforcement of *shariah*

criminal laws around the time of Anwar's sacking, for example, 442 men were arrested between 1997 and 1999, based on public tip-offs that they had attempted to commit homosexual acts (*Time Magazine* 2000). This is why a deeper look at the discourses on Islam, especially those surrounding Anwar's trials (past and present), is needed. There seems to be an overarching political and cultural logic at work – 'same-sex sexualities' are an affront to Islam (and often other religions, too), and must be dealt with accordingly. Thus, whether 'secular' or 'Islamic' laws are applied becomes a matter of detail, depending on whether one is Muslim (and thus either the Penal Code or *shariah* laws are applicable) or not (in which case, only the Penal Code is applicable).

Between 1998 and 2011, there were numerous incidences where state and non-state actors targeted people perceived as sexual minorities. These attacks, however, were accompanied by increasingly vocal public outcry and dissent. For instance, in 2003, Malaysians of diverse ethnicities, religions and sexualities went to the Human Rights Commission (SUHAKAM), which came into existence in 1999, to protest the demonisation of 'soft' men and 'hard' women in the government-controlled Malay-language media. I, a Malaysian Muslim man, led this delegation and read out the memorandum to one of the Commissioners. While the memorandum did not succeed in repealing or halting the application of the sodomy laws, it managed to put sexual diversity explicitly on SUHAKAM's agenda.

It must be noted, however, that SUHAKAM has not taken significant steps forward. These might be related to the limits of its powers. Former vice-chairperson Simon Sipaun once lamented that SUHAKAM could only advise and make recommendations to the government and was powerless to enforce its decisions (Vengadesan 2009). Furthermore, sexual minority issues form only part of the landscape in a country where several categories of rights are infringed by state and non-state actors.

Nevertheless, there has been growing support for sexual diversity issues from established human rights and women's non-governmental organisations (NGOs). Many of these organisations, such as SUARAM (the Malaysian People's Voice) and the Women's Aid Organisation, were signatories to the 2003 memorandum to SUHAKAM. Concurrently, within the last ten years or so, there have been growing numbers of individuals identifying as lesbian, gay, bisexual or transsexual (LGBT) or those sympathetic to these issues, supporting and working with several rights-based organisations in Malaysia. Similarly, there is a post-1998 generation of artists and journalists who are from sexually diverse backgrounds, or who are supportive of sexual diversity. This has contributed to an informal and loose network of younger, post-1998 cultural and social actors sensitive to sexual diversity. Many of these individuals do not necessarily have contact with traditionally LGBT-focused groups whose work was pioneered, pre-1998, within the HIV/AIDS framework. Thus today, groups such as SUARAM and the Malaysian Bar Council are openly supportive

of initiatives to protect and defend the rights of sexual minorities, alongside traditionally HIV-focused LGBT groups.

Apart from this, several loose collectives have emerged *specifically* addressing sexual diversity, such as katagender (katagender 2009), The KL Word (KL Word 2011), and Tilted World (Tilted World 2011). In 2008, barely weeks after the new sodomy allegations against Anwar emerged, The Annexe Gallery in Kuala Lumpur hosted Seksualiti Merdeka, a public festival of discussions, art exhibitions and performances celebrating sexual diversity. It must be noted, though, that Seksualiti Merdeka did not emerge because of the allegations against Anwar. Nevertheless, it is still interesting to observe how a festival publicly defending sexual diversity materialised within such a politically-charged environment.

From its inception, Seksualiti Merdeka sought the inclusion and participation of a broad base of organisations and individuals – HIV/AIDS activists, human rights lawyers, feminist groups, artists, politicians and concerned members of the public (Seksualiti Merdeka 2011). This partnership-building strategy was relatively easy, given the sensitisation of most 'mainstream' rights-based organisations to sexual diversity issues by this time.

Initiatives such as Seksualiti Merdeka get space in the government-controlled media as well, albeit not on the front pages. The point is that public attitudes on sexual diversity do not go in one direction only. Rather, there seems to be a simultaneous closing down and opening up of spaces to discuss and express sexual diversity. On balance though, the power and authority held by a constellation of state and non-state actors favours those hostile towards sexual diversity. A discussion on the possibilities for decriminalisation of 'same-sex sexualities' in Malaysia must therefore take into account multiple, inter-related factors.

Why focus on the impacts of the politics of Islam on sexual diversity and what does it have to do with efforts to decriminalise 'same-sex sexualities'? Firstly, the Federal Constitution (2009, p. 11) establishes Islam as 'the religion of the Federation' of Malaysia, with the proviso that other religions may be practised 'in peace and harmony'. This is significant, given Malaysia's demographics – 60.4 per cent of Malaysians are Muslim, 19.2 per cent Buddhist, 9.1 per cent Christian, 6.3 per cent Hindu, and 2.6 per cent Confucian/Taoist/traditional Chinese religion (Department of Statistics Malaysia 2001). Thus, while the Federal Constitution is meant to uphold the fundamental liberties of all Malaysians, it has also enabled a set of *shariah* civil and criminal laws to regulate Malaysian Muslims. As this chapter will show, there are now several moves to intensify particular expressions (including legislation) of Islam, and these affect diverse genders and sexualities very significantly.

So is this going to be yet another 'clash of civilisations'-type argument that 'Islam' is incompatible with 'Western', 'secular' ideals of 'gay rights'? The short answer is no. There are enough damaging stereotypes about Islam and Muslims

that hinder the emergence of sounder insights on gender and sexual diversity. Besides, the intention of this chapter is not to unpick or analyse 'Islamic' theology or doctrines. Rather, it focuses on how social and political *expressions* of Islam – discourses, everyday practices, official policies and so on in all their nuances – bear upon diverse genders and sexualities.

1.1 Some notes on terminology

Is this chapter analysing 'Muslims' or 'Islam', then? It is necessary to alternate between the two terms, especially since so many state and non-state actors claim to speak on behalf of 'Islam' in the Malaysian context, whether they are advocates or critics. The specific aim in what follows is to assess the political, social and cultural specificities of Islam in the Malaysian experience.

Just as it is problematic to talk about 'Islam' in the Malaysian context, it is also difficult to talk about 'gender' and 'sexuality'. In fact, it is difficult to find Malay-language translations that accurately reflect Anglophone understandings of these terms. Similarly, sociologist Matthew Waites (2009, p. 152) points out the Western bias in applying terms such as 'gender identity' and 'sexual orientation' to non-Western contexts. In fact (as Waites (2009) also notes on p. 139), scholar of Thailand Peter A. Jackson points out that in Thai culture even the distinction between 'gender' and 'sexuality' – taken as a given in Western activist and academic circles – is blurred (Jackson 2000, p. 414).

This is also likely to be true in Malaysia, where certain things get lost in translation. For instance, the 2003 targeting of *lelaki lembut* ('soft men') and *wanita keras* ('hard women') was construed by many Malaysians – myself included – as an attack on gays and lesbians, resulting in the SUHAKAM memorandum. Nevertheless, while it is true that there is slippage between popular usage of the terms *lelaki lembut* and 'gay' – and in fact *lembut* is sometimes used as a euphemism for 'effeminate gay' – the Malay-language terminology is actually more ambiguous than that. *Lelaki lembut* could apply to gay men, male-to-female transsexuals, and even heterosexual men who are less 'macho' but in a non-pejorative sense. The point is that *lelaki lembut,* unlike 'gay', primarily describes an expression of gender which may or may not dictate particular sexual preferences, and this is what often gets lost in translation. This is but one example of how indigenous terms do not quite coincide with LGBT typologies.

At the same time, the nascent activism against decriminalisation of 'same-sex sexualities' is led by urban, middle-class, English speakers. Thus, on one hand, concepts such as 'gender identity' and 'sexual orientation' are difficult to translate across the spectrum of public imagination. On the other hand, a group such as Seksualiti Merdeka frames its approach very much within the concepts of 'gender identity' and 'sexual orientation' (Seksualiti Merdeka 2011). Meanwhile, Tilted World calls itself 'a Malaysian LGBT community project'

(Tilted World 2011), where LGBT terminology is similarly Eurocentric (Waites 2009, p. 138). This observation is not meant to discredit either collective, but rather to situate the subjective positions in their advocacy.

Given this dynamic, it is again difficult to coin unproblematic, consistent terminology. For now this chapter errs on the side of framing the discussion around 'diverse genders and sexualities' and 'sexual minorities', depending on the context.

2. Framing 'gender' and 'sexuality'

It is crucial to clarify that, as of 2009, only *seven* charges had been brought under Section 377 since 1938, and *four* of these were related to Anwar (Brownell 2009). In other words, the law is rarely invoked and its recent use is most likely politically motivated. The issue is therefore definitely not with Section 377 alone – a larger political and cultural climate makes it but one of many other laws and directives hostile towards diverse expressions of gender and sexuality. These include the Hudud legislation of Kelantan state, currently governed by the Malaysian Islamic Party, PAS, and formerly PAS-controlled Terengganu; the Syariah Criminal Offences Enactments of states controlled by the ruling party, the United Malays National Organisation (UMNO), or its federal coalition partners; the Syariah Criminal Offences Act of the federal territories; and several municipal laws (Mohamed Kasim 2004).

Therefore, as pointed out earlier, claims of state and non-state actors' targeting of sexual minorities are definitely not the stuff of urban myth. The colonial sodomy laws are still there, ready to be used, but there are provisions in the *shariah* criminal legislation (Shah 2009c) and municipal laws used to target sexual minorities. Thus, regardless of whether the charges against Anwar are politically motivated fabrications, they contribute in sum to a larger political environment hostile towards sexual diversity. After all, given Anwar's previous leadership of the morally and socially conservative ABIM, it is not hard to see why the charges have resulted in loud and often painful collisions of debates on 'Islam', 'gender' and 'sexuality'.

This begs the question of whether current state-sponsored or community-led hostility towards sexual diversity is a new phenomenon. How have attitudes towards sexual diversity changed since 1957, when Malaya (now West Malaysia) gained independence, or 1963, when Malaysia was formed? A paucity of historical research on sexuality prevents any certain conclusions being made. However, two things are clear. The first is that provisions in both the Penal Code and *shariah* laws criminalising non-normative sexualities are colonial (and in the case of *shariah*, some would argue *pre*-colonial) legacies. The second is that from the 1970s onwards, the rise of social movements related to Islam, such as ABIM, coincided with calls for stricter dress codes, gender segregation, moral values and so on. It would be safe to assume, therefore, that sexual diversity

has been a legal and political taboo since Independence. The events of 1998, however, intensified and politicised this taboo in unprecedented ways, justified primarily on 'Islamic' grounds. Cultural studies scholar Baden Offord (2011, p. 140) has also observed this intensification of 'state-sponsored homophobia', 'specifically tied to Islam' in Malaysia over the past two decades. This is why an understanding of the landscape of Islam in Malaysia is crucial for any effort seeking to decriminalise 'same-sex sexualities'.

It is also important here to understand how 'gender' and 'sexuality' are framed in relation to popular and legalist views of criminality. The targeting of sexual minorities by enforcement agencies – such as the police, Islamic Religious Affairs Departments – cannot be explained by 'homophobia' alone. Indeed apart from sexual minorities, unmarried heterosexuals – most visibly Muslim women – are also targeted by enforcement officers in what is popularly termed 'moral policing'. Again, while *shariah* laws enable Islamic Religious Affairs Department enforcers to carry out moral policing raids, based on public tip-offs, the 'secular' police force is also known to carry out such raids. And while *shariah* laws apply only to Muslims, non-Muslims have also been subjected to moral policing (Shah 2010d).

Furthermore, moral policing in Malaysia does not only target gender and sexual relations. In recent years, *shariah* legislation has been increasingly used to target Muslims who consume alcohol and non-Muslims accused of 'proselytising' Muslims (*The Star* 2011c). These phenomena have been concurrent with the emergence of several 'Islamic' NGOs calling for a return to what are perceived as 'authentic' Islamic doctrines – spanning religious belief, dietary requirements and expressions of gender and sexuality (Shah 2009a; 2009b). Subsuming the analysis under the framework of 'religious fundamentalism' or 'Islamism', however, would be inaccurate and unhelpful, because this would only ignore diverse shifts and nuances in society.

3. Framing 'Islam'

There are 12 Commonwealth Member States that are also members of the Organisation of Islamic Cooperation (OIC) – Bangladesh, Brunei Darussalam, Cameroon, Gambia, Guyana, Maldives, Mozambique, Nigeria, Pakistan, Sierra Leone, Uganda and, of course, Malaysia (Commonwealth Secretariat 2011; Organisation of Islamic Cooperation 2011). Why is this important, given the continuing buzz around 'globalisation'?

It is significant because while there is an increasing global exchange of people, capital, goods and ideas, these are still adapted and reformulated within local contexts. 'Globalisation' alone does not explain the processes through which symbolic and material relations are localised. If all things remained equal in a globalised world, for example, one might expect Malaysia to be proportionately committed to its major regional or transnational groupings

– namely in the United Nations, Commonwealth, OIC and Association of Southeast Asian Nations (ASEAN).

Why then does Malaysia not only vote alongside, but consistently *lead*, efforts to defeat United Nations resolutions or statements seeking to protect and affirm gender and sexual diversity (ARC International et al. 2011)? After all, there are several key Commonwealth Member States that are willing to sponsor such statements. Instead, Malaysia seems more comfortable standing alongside the majority of OIC members and other opposing states. This example is not meant to encapsulate this chapter's overall argument. Rather, it is meant to open up a space to discuss how the legacies of British colonialism and the politics of Islam intersect in unexpected ways in Malaysia regarding gender and sexual diversity.

For example, anthropologist Michael Peletz (2003, p. 3) observed the centrality of 'Asian values' in former premier Mahathir's political rhetoric. Mahathir repeatedly stressed that 'Asian' values were diametrically opposed to 'Western' or 'secular' values which embraced a litany of sins, including 'materialism', 'sensual gratification', 'homosexuality' and 'incest' (Peletz 2003, p. 3).

Yet, Mahathir did not coin his 'Asian values' rhetoric *ex nihilo*. Former Singapore Prime Minister Lee Kuan Yew also resorted to the 'Asian values' rhetoric to rebut public outcry when his government decided to flog American teenager Michael Fay for vandalism (Peletz 2003, p. 1). In turn, Lee's 'Asian values' rhetoric was not created out of thin air either – it was already a well-rehearsed explanation of the phenomenal economic success of several Asian economies prior to the financial meltdown of the 1990s (Peletz 2003, p. 2).

Furthermore, the strands in this rhetoric that are hostile to gender and sexual diversity are not unique to Malaysia. For instance, similar rhetoric is employed by Hindu nationalists in India who support traditional Indian values, and thus defend the country's sodomy laws (Waites 2010, p. 974). The irony is that, like Malaysia's, India's sodomy laws were introduced by British colonialists in 1860. A further irony is that Mahathir's 'Asian values' rhetoric is based on 19th-century Western colonial stereotypes of the 'Oriental' Other (Peletz 2003, p. 7). In other words, leaders such as Mahathir and Lee were resorting to *colonial* stereotypes of 'Asia' to promote *anti-colonial* political rhetoric.

It now appears, though, that Mahathir's 'Asian values' rhetoric has been fused or perhaps superseded by increasingly aggressive 'Islamic values' calls for more stringent application of *shariah* laws. But there is a further twist. The Malaysian *shariah* laws are also partly a legacy of British colonialism (Shah 2009c). To paraphrase the irony: the targeting of sexual minorities as a defence of 'authentic Islamic law' is based on 19th-century colonial legal constructions to regulate the 'Muslim' Other.

The point is that not all state hostility towards sexual minorities is alike. There might be a temptation to subsume the Malaysian experience under 'Islamic homophobia', in which countries such as Iran are targeted by Western LGBT activists (Long 2010, p. 120). However, there might be a temptation to assume that the contexts of other Commonwealth states with sodomy laws are neatly translatable to the Malaysian experience. The fact is that *both* Malaysia's legacies as a former British colony and a Muslim-majority state are important factors to take into account.

It is also important not to forget the continuing influence of Malaysia's culturally similar-but-different Southeast Asian neighbours. For example, anthropologist Mark Johnson (1998, p. 699) has shown how trans-border experiences between Sabah in East Malaysia and the southern Philippines redefine notions of 'gayness' among same-sex desiring Muslim men. Furthermore, while gender and sexuality are expressed in a variety of ways throughout 'Southeast Asia', scholars have noted 'recognisable patterns of ascribed and chosen social identities and status' (Johnson et al. 2000, p. 365).

Therefore on one level, this chapter aims to point out the specificities of the Malaysian experience. On another level, this analysis of Malaysia could provide vital analytical clues for the contexts of other Commonwealth countries that still criminalise 'same-sex sexualities'.

With these caveats in mind, a summary follows of some key positions held by spokespersons of 'Islam' in the social and political spectrum regarding the policing of sexual minorities. These positions are mostly sourced from media reports, and where possible from my own reporting and observations as a journalist. They are not meant to be exhaustive, but to sketch the spectrum of positions among different Muslim leaders. As previously mentioned, 'Islam' as a discourse and label is a powerful shaper of policies and public opinion in Malaysia. This is especially true in matters concerning sexual diversity. Thus, the purpose here is to put a finger on the different pulses of how discourses on Islam and sexual diversity are shaping up and what the possibilities for decriminalisation are.

3.1 The 'official' position

Malaysia is a federation consisting of 13 states and three federal territories. The administration of Islam is a state matter. It technically falls under the purview of each state's monarch or the Supreme Head of the federal state for the federal territories and non-monarchical states. An elaborate bureaucracy administers, legislates and enforces Islamic civil and criminal laws (Shah 2009d). The 'official' Islamic position is therefore that which is espoused by various state Islamic agencies and upheld by the UMNO-led ruling coalition.

Nevertheless, after the 2008 elections, an unprecedented five state governments were captured by the parties making up the federal opposition,

the Pakatan Rakyat (People's Alliance). The Malaysian Islamic Party, PAS, became the senior coalition partner in two of these state governments and a junior partner in another two coalition governments. In 2009, one of these states was wrestled back by UMNO via a series of defections in the legislature, and PAS now figures in three of the four remaining Pakatan Rakyat states. Thus, in recent years, PAS has also played an increasingly influential role in determining the 'official' Islamic position.

Having said this, it is important to note the complexities and ambiguities in the administration of Islam in all Malaysian states and territories. The monarch might be the ultimate 'head' of Islam, but does not really control the bulk of the application and legislation of Islamic laws. Also, while each state effectively has its own 'system', Islamic legislation for all states basically follows the template set by the Islamic laws of the federal territories.

On the whole, the 'official' position is hostile towards sexual diversity. For instance, in response to Azwan's coming out as a gay Muslim, de facto Minister of Religion Jamil Khir Baharom said his ministry would take 'appropriate action' to stem the promotion of 'homosexuality' in Malaysia (*The Star* 2010). The Mufti of Perak state, Dr Harussani Zakaria, echoed this sentiment and chided Azwan. So far, however, Azwan has not been subjected to legal action from any quarter. More recently, Jamil reiterated that 'LBGTs' [sic] had 'no rights' in Malaysia, given that their 'behaviour is against Islam' (Hassan 2011).

Regarding transsexual expressions, Harussani's position is that they are forbidden and he favours stricter 'Islamic' policing. In fact, according to one report, he was one of the architects of the 1983 official fatwa banning sex-reassignment surgery (*The Jakarta Globe* 2009). The former Mufti of Perlis state, Mohamad Asri Zainul Abidin, considered a 'moderate', also held that transsexuals should be fined or jailed if counselling was ineffective (Reuters 2007).

These articulations of the 'official' position are in line with the substance of Malaysian Islamic criminal laws, to which all Malaysian Muslims are subject. For instance, the Syariah Criminal Offences (Federal Territories) Act 1997, in Part IV: Offences Relating to Decency, criminalises *liwat* (loosely translated as sodomy) and *musahaqah* (loosely translated as lesbian sex). Both carry the same penalty: 'a fine not exceeding 5,000 ringgit [where GBP1 = MYR4.80 approx] or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof'. Also in Part IV is the criminalisation of a 'male person posing as a woman … for immoral purposes', which carries 'a fine not exceeding 1,000 ringgit or to imprisonment for a term not exceeding one year or to both' (Syariah Criminal Offences Act 1997).

It should be noted is that these *shariah*-designated crimes fall under the rubric of 'offences relating to decency'. Thus, punishments for same-sex behaviour carry penalties equivalent to those for heterosexual behaviours. 'Sexual intercourse out of wedlock', 'incest', 'prostitution' and pimping all

carry fines not exceeding MYR5,000, three years in prison and six strokes of the cane (Syariah Criminal Offences Act 1997).

Elsewhere, the Act lists offences 'relating to the sanctity of the religion of Islam' (such as 'failure to perform Friday prayers' and 'intoxicating drinks') and those 'relating to "aqidah" (loosely translated as "right doctrine")' (Syariah Criminal Offences Act 1997).

These provisions enable enforcers from Islamic Religious Affairs Departments to routinely police the behaviours of Malaysian Muslims. In relation to this, there has been just as much controversy over *shariah*-driven punishment of alcohol-drinking Muslims (Loh 2009) and heterosexual Muslim women who engage in sex out of wedlock (Shah 2010a). Nevertheless, there are legal limits to dissent, especially among Muslims, as the Act also criminalises 'insulting, or bringing into contempt, *etc.*, the religion of Islam', which carries 'a fine not exceeding 3,000 ringgit or to imprisonment for a term not exceeding two years or both' (Syariah Criminal Offences Act 1997).

That said, not all government and state-appointed Islamic officials are unshakeable in their positions. For instance, the Women, Family and Community Development Ministry is more conciliatory and engaging on issues affecting transsexuals. In the deceased Aleesha Farhana's case, Minister Shahrizat Abdul Jalil released statements calling for compassionate outreach and counselling (*The Star* 2011b). Nevertheless, her ministry continued to use the male pronoun to refer to Aleesha Farhana, perhaps indicating ambivalence on the matter with respect to the provisions of Malaysian *shariah* legislation.

3.2 The 'opposition' position

Political scientist Ahmad Fauzi Abdul Hamid (2009, p. 152) and other scholars have observed the competition between UMNO and the PAS – the country's two biggest political parties – to represent a more 'authentic' Islam. Since 2008, PAS has been in a coalition of three federal opposition parties, the others being the secular-left Democratic Action Party (DAP) and the centrist, mixed-ideology People's Justice Party (PKR). Anwar is PKR's designated advisor and is often referred to as its de facto leader, while the party is officially led by his wife, Dr Wan Azizah Wan Ismail. DAP and PKR have diverse memberships, although DAP is dominated by non-Muslim Chinese Malaysians. PKR has a more balanced membership and leadership composition, and also has an influential faction of leaders from various 'Islamic' movements.

The contest between Muslim leaders in federal government and Muslims in opposition (from PAS and to a lesser extent PKR) is overwhelmingly framed as a 'who-is-more-Islamic' battle. Thus, in response to the government's promise to take action against those promoting 'homosexuality' for example, PAS's youth wing called for increased policing of 'all forms of entertainment' promoting 'gay culture' (*The Star* 2010). In fact, in October 2010, PAS Youth

held a demonstration in protest at a concert by openly-gay entertainer Adam Lambert in Malaysia. PAS Youth also called on the government to take stern action against openly-gay Malaysian pastor Rev Ou Yang (Samsudeen 2011), seeing 'homosexuality' as not merely a Christian, but a Malaysian 'problem'.

Nevertheless, there are nuances to this view across the party. A senior PAS leader, Dzulkefly Ahmad, upholds moral policing but cautions against intruding on 'personal life' (Sta Maria 2011).

This is where the nuances within the Malaysian 'Islamic' opposition get interesting. One example is the 'Islamic' activism of former PKR MP Zulkifli Noordin, who was sacked from the party in early 2010 and is now an Independent. While he was in PKR, Zulkifli made several statements calling for a more stringent application of Islam in Malaysia. He stoked controversy when he disrupted a forum on religious freedom, organised by the Malaysian Bar Council, calling it an insult to Islam (Shah 2008a). Zulkifli also supports Section 377, saying it is consistent with Islamic values (Brownell 2009).

However, when I interviewed Zulkifli in 2008, like PAS's Dzulkefly, he was ambivalent about intruding on personal privacy in the name of moral policing (Shah 2008a). In fact, Zulkifli's response to a 2009 case involving a Malaysian Muslim transsexual woman was surprising. Several Malaysian Muslim leaders were calling for Fatine Min Baharin to be charged under Malaysian *shariah* law because she contracted a civil partnership with an English man in the UK. Zulkifli's was one of the few 'Islamic' voices that defended Fatine's personal security and said that she should not be victimised (mStar 2009).

Thus, the political opposition's discourse on Islam mirrors the official, government-sanctioned position. In both government and opposition, normative views on Islam are hostile towards sexual minorities. But voices exist in both camps that are more ambivalent about 'Islamic moral policing', including towards sexual minorities.

This said, the government and its supporting 'Islamic' advocates are now trying to discredit opposition-party Muslims by a series of discursive moves. Most importantly, the UMNO-led federal government has asked Muslims to reject the ethic of religious pluralism, which is defined as seeing other religions as 'equal' to Islam (Zalkapli 2011). Thus, UMNO and its supporters now attempt to discredit opposition-party Muslims as 'religious pluralists'. Similar discursive moves have been made with other terms such as 'liberal' and 'human rights', and there are frequent attempts to discredit Anwar in this way (Zalkapli 2010). In fact, the UMNO-owned Malay-language daily *Utusan Malaysia* (2011) claimed that Rev Ou Yang's same-sex marriage was 'proof' that 'pluralism' and 'liberalism' were undermining Malaysian nationhood.

However, such dynamics occur even *among* opposition Muslims. For instance, PKR's Zulkifli and PAS have tried to discredit Muslim feminist organisation Sisters in Islam several times for very similar reasons (Loh and Shah 2009).

3.3 The 'Islamic civil society' position

Attention also needs to be paid to numerous 'Islamic' NGOs and movements. These organisations act on a variety of issues, many of them exerting considerable pressure on public policies and directives (Shah 2009a, 2009b). It would be a mistake to subsume them under the label 'Islamist', however, as they hold distinct ideologies and goals and considerable intra-movement tensions exist among them.

Conventional 'liberal'/'fundamentalist' typologies can be divided up as follows: in terms of ideology, it is easy to pick out the more 'liberal' or 'reformist' groups, such as Sisters in Islam and the Islamic Renaissance Front (IRF), while their 'opposites' are the more morally and socially 'conservative' groups such as ABIM, the Malaysian Reform Movement (JIM) and the Muslim Organisations in Defence of Islam (PEMBELA).

Two immediate clarifications must be made, however. Firstly, while it may appear that the 'Islamic' NGO landscape is cleaved along 'liberal'/'fundamentalist' lines, the truth is that there is actually a constant (albeit small and unnoticed) flow of people and ideas between the two poles. Secondly, it should also be noted that even among the 'conservative Islamic' groups there are intra-movement tensions, which can get quite severe (Shah 2010b).

Given these clarifications, it is more helpful to abandon the 'liberal'/'fundamentalist' labels and map out how the discourse relating to sexual diversity is evolving among these Muslim groups, and how these in turn relate to shifts in public opinion.

In this sense, developments in the IRF deserve scrutiny. When I interviewed IRF founder and president Dr Ahmad Farouk Musa in 2010, he was clear about what he called his 'Islamist' origins. Dr Ahmad Farouk had initially co-founded the Muslim Professionals Forum but left because he disagreed with its position that the law should forbid Muslims from converting out of Islam (Shah 2010c). His defence of freedom of religion, however, is not based primarily on 'secular' human rights ideas – he locates the principle *within* the Islamic tradition. Under his leadership, the IRF promotes expressions of Islam that are opposed to the policing of people's moralities. Furthermore, Dr Ahmad Farouk says that the IRF is committed to building dialogue with different groups to 'revitalise intellectual dynamism in Muslim societies'.

The IRF, founded in 2009, is an interesting development as far as Malaysian 'Islamic' activism is concerned. Prior to the emergence of the IRF, many saw Sisters in Islam as the sole 'liberal/reformist' organisation, and it was marginalised, dismissed or even threatened with legal action by UMNO, PAS, and several Muslim NGOs (Ding 2009). Prior to the emergence of the IRF, it would have appeared that the Malaysian discourse on Islam was polarised and intolerant of non-conformist articulations. What the IRF and Dr Ahmad

Farouk's experiences prove, however, is that while the discourse is highly regulated, there are spaces for Malaysians to articulate Islam in fresh ways.

3.4 New indicators

In October and November 2010, the independent polling house Merdeka Center for Opinion Research carried out a survey of Muslim youth attitudes. 1,060 people aged 15 to 25 were polled in Malaysia, 1,496 in Indonesia. Such comprehensive surveys being rare in Malaysia, it was a historic initiative and crucially important, given that more than half the population of the two countries is under 30 years old (Chiam et al. 2011, p. 2).

One section of the survey asked, 'Do you agree or disagree with the following statements? ... It's ok to be gay or lesbian', to which 99.4 per cent disagreed, and 0.5 per cent agreed. The other statements were, 'it's ok to have sex before marriage' (98.4 per cent disagreed) and 'it's ok to watch pornographic movies' (97.6 per cent disagreed) (Chiam et al. 2011, p. 20).

The findings might alarm sexual diversity advocates. Nevertheless, deeper analysis is called for. For one thing, the survey question lacks nuance. It is framed as a 'yes' or 'no' question, which limits the articulation of potential responses. Thus, it must be borne in mind that these questions were answered by young Muslims in an environment where state and non-state actors exercise immense authority to interpret and implement 'Islam' on wide-ranging issues.

The survey questions are nevertheless valuable departure points for analysis. In other parts of the survey, there are similarly flawed but valuable questions, such as one asking respondents if they were concerned about human rights violations (81 per cent said yes) (Chiam et al. 2011, p. 24). Eighty-three per cent were concerned about 'Islamic radicalism in politics' and 78.4 per cent about lack of freedom of expression (Chiam et al. 2011, p. 23).

How should these different positions be interpreted? Hard conclusions cannot be drawn in the absence of qualitative follow-up studies. It could be that, when asked to clarify these apparent contradictions, some respondents might resort to creative hermeneutics. This is merely a suggestion, but one based on existing currents in global discourses on Islam.

For instance, the renowned European Muslim scholar Tariq Ramadan maintains that same-sex behaviour is not permissible within the Islamic tradition. He also says he does not support the 'promotion' of same-sex sexual expressions. However, he goes on to argue that it is not for the state to persecute and discriminate against sexual minorities (anas112 2010).

Ramadan's position might still offend secular liberal and/or Western advocates of LGBT human rights for not being affirming enough. It is, though, crucial to note the significance of his position. Firstly, he is a scholar respected by a wide cross-section of Muslims in the West and in Muslim-majority countries. Ramadan lectures regularly in Malaysia, appeals to many young

Malaysian Muslims and has close links with Dr Ahmad Farouk's IRF (Shah 2010c).

Secondly, Ramadan may start off from a 'conservative' position, but while his position remains at odds with Muslim scholars and leaders who affirm sexual diversity – such as openly gay American Muslim scholar Scott Siraj al-Haqq Kugle and openly gay imams Daayiee Abdullah from the US and Muhsin Hendricks from South Africa – he appears open to dialogue. It is also likely that this global circulation of ideas and experiences is yielding more nuanced positions on sexual diversity among Muslim scholars and lay believers. Although many positions appear to fall short of outright affirmation, they also do not seem to condone outright condemnation.

With reference to Malaysia, despite state and non-state actors controlling interpretations of Islam, it is not known to what extent young Muslims personally *mediate* these different interpretations. Going back to the survey, young Malaysian Muslims might not appear to be gay *affirming*, but there is a possibility that complementary interpretations of Islam and human rights could result in a minimum *acceptance* of sexual diversity. This might in turn entail fruitful discussion and action on decriminalisation of diverse expressions of gender and sexuality.

4. Further possibilities

This discussion suggests so far that the relatively new and weak movement to decriminalise diverse sexualities would benefit by building allies from *other* civil society or political movements. This section proposes some possibilities, given the current socio-political climate.

On 9 July 2011, an estimated 20,000 Malaysians of diverse ethnicities, religions and probably even gender and sexuality backgrounds took peacefully to the streets of Kuala Lumpur (Al Jazeera 2011). The movement, calling itself Bersih 2.0 (Malay for 'clean'), demanded free and fair elections, including a minimum campaigning period of 21 days, use of indelible ink, and free and fair access to the media for all political candidates (Bersih 2.0 Steering Committee 2011).

In the weeks leading up to the protest, the government and its mouthpieces tried to discredit the movement as the work of Communist infiltrators, foreign agents, Christian/Jewish plots to destroy Islam, and so on (Ding 2011). Bersih 2.0 chairperson Ambiga Sreenevasan even received a death threat (*The Star* 2011a). On the day of the protest, police fired tear gas and water cannons on protesters, and made nearly 2,000 arrests before and during the event (Welsh 2011).

A month after the protest, however, Prime Minister Najib Razak announced that his government would form a bipartisan parliamentary select committee on electoral reforms (theSun 2011). While Najib's proposal fell short of Bersih

2.0's demands – and even then he backtracked within days (*New Straits Times* 2011) – the movement's impact cannot be ignored. Meanwhile, a survey by Merdeka Center revealed that over two-thirds of Malaysians polled agreed with Bersih 2.0's demands. More significantly, 49 per cent disagreed with the government's handling of the 9 July protest (Yow 2011).

What does a mass protest demanding free and fair elections have to do with socio-political reforms regarding diverse genders and sexualities?

Firstly, the kind of government-led responses to demonise and discredit Bersih are disturbingly similar to the kind of rhetoric used to discredit any efforts to recognise sexual diversity. Thus, it is possible to analyse postcolonial, state-led hostilities towards sexual minorities as part of a larger anti-colonial rhetoric. Nevertheless, we must also note how this rhetoric is linked to authoritarianism. Many movements that question the Malaysian government's commitment to democracy and fundamental liberties (as enshrined in the Federal Constitution) are cast as 'foreign plots' and 'threats to Islam'. And these various movements are also dealt with using the same repertoire of repressive tactics – for example arrest and incarceration under draconian laws, disproportionate use of force, and demonisation in the media.

Secondly, the 9 July march is one indicator that the exact same repressive tactics might not be working anymore. In fact, political scientist Bridget Welsh (2011) says it is an example of how increasing numbers of Malaysians have 'broken down the barriers of fear'. Furthermore, as a mass movement of diverse Malaysians focused on electoral reforms, Bersih 2.0 is part of the larger reform drive that is concerned primarily with 'human rights and civil liberty' issues (Welsh 2011).

Thus, spill-over effects from movements such as Bersih 2.0 have the potential to transform the Malaysian socio-political landscape where sexual diversity is concerned. For one thing, the Bersih 2.0 Steering Committee has proportionate gender, ethnic and religious balance – the IRF's Dr Ahmad Farouk is a member. Others include advocates from the women's movement, human rights lawyers and the president of a mass Muslim movement (Bersih 2.0 Steering Committee 2011). These leaders have significant social and cultural capital in terms of ties with their grassroots constituents.

However, Bersih 2.0 also attracts leaders and supporters of opposition parties who are hostile towards the rights of sexual minorities. It would thus be a stretch to say that Bersih 2.0 supports sexual diversity, but it has the potential to attract a diverse group of Malaysians concerned about human rights and democracy, simultaneously challenging those among them who are hostile towards sexual diversity.

In addition to Bersih 2.0, other diverse collectives have also emerged, such as LoyarBurok (an interactive social justice blog); UndiMsia! (literally, 'VoteMalaysia!', a voter education campaign supported by LoyarBurok); and MyConstitution (a campaign to raise public awareness about the Federal

Constitution). Like Bersih 2.0, these movements are embedded within social media networks and encourage wide public participation especially among younger Malaysians. Furthermore, LoyarBurok and MyConstitution openly endorse sexual diversity initiatives such as Seksualiti Merdeka (Lord Bobo 2010).

This is significant because the diverse ethnic and religious makeup of these groups allows issues related to 'Islam' to be addressed meaningfully and transcended. In other words, growing interactions among politicised Malaysians – Muslims and non-Muslims – are redirecting articulations of Islam, and these could have an impact on the status of sexual minorities.

As far as institutional targets are concerned, SUHAKAM is still a viable option, notwithstanding criticisms about its lack of effectiveness – its decisions have symbolic power. In terms of sexual diversity, SUHAKAM says it is currently undertaking a consultation to understand 'the sensitivities of LGBT issue [sic] in Islam, at the same time to have an open discussion on the matter'. What is encouraging is that SUHAKAM 'maintains that human rights are for all and LGBT are not excluded. LGBT must be respected as human beings and their differences cannot be used as reasons to violate their rights' (Human Rights Commission of Malaysia 2010).

Apart from this, at the time of writing this chapter, transsexual women and their lawyers in Negeri Sembilan state are seeking judicial review to challenge the constitutionality of *shariah* provisions that outlaw 'cross-dressing' (Equal Rights Trust 2011). This legal challenge addresses the substance of Section 66 of Syariah Criminal (Negeri Sembilan) Enactment, widely used to target Muslim trans women. There are also, however, abuses at the procedural level of law enforcement. Muslim trans women from the state have testified that, after often violent and abusive detentions by state-appointed Islamic enforcers, they were made to appear in the *shariah* courts without adequate legal representation (Shah 2010e; 2010f). There has previously been an outcry about the heavy-handedness of state-appointed Islamic enforcers in several states, and similarly lawyers have tried previously to defend trans Muslim women in *shariah* courts. But such attempts to seek judicial review on the constitutionality of *shariah* criminal laws are rare although significant.

This strategy must, however, be assessed in the light of the larger legal and judicial system in Malaysia. There is no space here to discuss the complexities and complications of Malaysia's laws and courts, but a few points are necessary. Malaysia has had a succession of judicial crises since the 1960s which have hampered the courts' independence and left them vulnerable to interference from the executive. On top of this, there are also moves by state and non-state actors to elevate the status of 'Islamic' laws in Malaysia's legal and judicial system (Shad Saleem 2011). One way in which this is expressed is in the battle for jurisdiction between *shariah* and civil courts. For more information consult legal experts Mohammad Hashim Kamali and Shad Saleem Faruqi,

who have written extensively on conflicts in the Malaysian system with a focus on Islamic legislation. Suffice it to say here, at the risk of oversimplification, that the lack of independence, together with the growing 'Islamisation' of the Malaysian judiciary, are incredible obstacles for any legal strategy to challenge laws criminalising diverse genders and sexualities.

Besides these social movement and institutional openings, there are also bolder explorations of sexual diversity in the literary, arts and entertainment scene in Malaysia. It is beyond the scope of this chapter to run through a list of these recent works, but they exist, continue to proliferate and are produced and consumed by Malaysians of diverse ethnic and religious backgrounds. These include the 2005 film and 2006 television series *Gol and Gincu* (*'Goalpost and Lipstick'*), the 2011 film *Dalam Botol* (*'In a Bottle'*), and the 2008 play *Air Con*, significant because they presented sexual diversity issues to a mass audience in the Malay language and in a post-1998 environment. Also pioneering was the 2009 English-language anthology *Body2Body: A Malaysian Queer Anthology* (Kugan and Khee Teik 2009), and its 2010 Malay-language follow-up, *Orang Macam Kita* (*'People Like Us'*) (Ismail and Dirani 2010).

The question now is how to strategise *effective* advocacy for sexual diversity, including at the Commonwealth level. While the purpose of this chapter is not to recommend specifics, there are some frameworks that can provide a more useful basis for advocacy than others.

Most importantly, any attempt – either by governments or non-state advocates within the Commonwealth – to hold Malaysia accountable in its treatment of sexual minorities must consider cultural specificities, especially diverse expressions of Islam. Any transnational attempts to engage Malaysians in debates or discussions on sexual diversity will be seen as 'Western', neo-colonial impositions – and deservedly so – if local nuances are misunderstood or misrepresented.

Secondly, this does not mean that a human rights approach needs to be avoided. However, the approach needs to have multiple levels of critique. For example, interpretations of Islam and *shariah* that affirm the values of dialogue, freedom of expression and basic human dignity and rights should be respected *without* labelling other Muslims as 'fundamentalist', 'extremist' and so on. The use of such labels reinforces the view that 'human rights' discourses only marginalise Muslims or non-Western societies. As this chapter shows, Muslims in Malaysia are diverse and hold a spectrum of positions when it comes to Islam and civil liberties. Mapping 'liberal'/'fundamentalist' typologies on to Malaysian experiences of Islam is thus more inaccurate, even damaging, than helpful.

What does help is engaging Muslim leaders and scholars in the everyday experiences of sexual minorities. For example, through constructive engagement via its own community spokespersons and HIV/AIDS organisations, the Muslim trans women community in Kuala Lumpur now receives non-

judgemental religious instruction from the Federal Territories Islamic Affairs Department on matters related to HIV. I have observed good rapport between some religious instructors from the Department and marginalised communities, such as trans women, drug users and people with HIV. Efforts like these often hit brick walls within the Islamic bureaucracy. Nevertheless, these personal, non-threatening encounters between sexual minorities and the rank-and-file in Islamic departments are an opportunity, albeit a very slender one, for greater dialogue on sexual diversity.

Thirdly, regional and international support is necessary to ensure that reforms in Malaysia are visible and have every chance of success. For instance, the international spotlight on the government's violent handling of the Bersih 2.0 assembly has been crucial in moderating the government's subsequent actions. Take premier Najib's 'explanation' to Malaysians that he told his UK counterpart David Cameron there is room for dissent in the country but that public order had to be maintained (*The Malaysian Insider* 2011). While this is an unsatisfactory answer, it highlights the fact that the Malaysian government is still forced to respond to its Commonwealth counterparts when issues are made visible. Thus, non-interventionist, supportive but simultaneously critical gestures in favour of Malaysian social movements are key ingredients for reform.

5. Concluding thoughts

Offord has observed that the influence of sexual diversity movements on the Malaysian state 'has been negligible' (2011, p. 143). I am tempted to agree to a certain extent. However, that is why this chapter is less a recipe for advocacy on sexual diversity in Malaysia than it is a map of the terrain, choosing to lay out how complex and diverse expressions of Malaysian Islam bear upon efforts to uphold and defend sexual diversity. The chapter also uses this map to navigate through broader developments among Malaysian social movements and to identify further opportunities for advocacy and social transformation. I hope that it will help sexual diversity and human rights advocates in Malaysia and across the Commonwealth to gain helpful insights to inform their specific strategies and tactics. After all, it is by taking note of the landscape's details that new paths, or many mutually supportive paths, can be pioneered.

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