FeAtuRes

Sexuality under Attack: The Political Discourse

By Zaitun Mohamed Kasim

Introduction

In August 2003, a milestone was reached for lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) advocacy when a group of men and women headed to the Malaysian Human Rights Commission, SUHAKAM, with a memorandum calling for ethical media reporting and the protection of LGBTIQ rights. The memorandum was in response to a local TV programme and subsequent newspaper reports that condemned "effeminate men and masculine women." In October of that year, SUHAKAM facilitated a meeting (albeit in ways that were potentially harmful to members of the group) between the group and journalists on ethical reporting.

on Sexuality

in Malaysia

The television programme itself was really just a reflection of prevalent, dominant heterosexism and LGBTIQphobia, which took its "spy and snoop" cues from a state that already regulates, monitors, controls, and moralises sexuality per se. Viewership for this programme soared, fuelled by its voyeuristic footages of couples "making out" in parks, transgendered persons being detained, gay men being tailed, and sex workers being raided and rounded up. It seemed to take great pleasure in flooding camera lights on individuals struggling to hide their identities and behaviour.

Sociopolitical context

Sexuality in Malaysia, as with most other discourses in the country, is mired within a political system that teeters on ethnic and religious faultlines. The use of Islam on the political battlefield to jockey for the Malay majority vote is hardly surprising when the definition of "Malay" is linked to "professing the Muslim religion."

Initially, the Islamic revivalism of the seventies sought to expunge traditional practices in favour of what was deemed "Islamic" or "Arabised" practices. The most visible impact can be seen in the way that women began to dress—many began to don some form of *tudung* (headcover), and today a significant number of women also wear the *jubah*. When the revivalism became politicised, however, both the Islamist party, PAS (Partai Islam Se-Malaysia), and the main Malay-based party of the ruling National Front coalition, UMNO, were set on an

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> "Islamisation race," each declaring itself the more religious, and thus more fit to "'protect" Islamic (read: Malay) interests.

> In this push for greater Islamisation, both state and non-state actors are wittingly and unwittingly calling for the implementation of rules, laws, and

policies that are deeply influenced or inspired by the ideology of Islamic conservatism (Kasim, Othman, & Anwar, 2003). This, in turn, feeds on and, at the same time reinforces, gender disparities between women and men. There is a growing obsession with segregation between men and women as well as an increasing fixation with "guarding" and policing of "morality," especially that of women and the young who are regularly blamed for indecency, promiscuity, and "aping" the West.

Legal system in Malaysia

There are two sets of laws in Malaysia: the civil system, which applies to all persons residing in Malaysia; and the state-administered Islamic or Shariah laws¹ which are ostensibly only applicable to Muslims.² The Federal Constitution delineates that "matters of Islam" will be handled under the Shariah laws. 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, divorce, custody, and maintenance to matters related to the individual's piety, practices, and preferences (such as fasting, Friday prayers, sexual orientation, and consumption of alcohol).

The PAS state governments have also used this provision to enact their own versions of *hudud* laws in two states, over and above the existing Syariah Criminal Offences Enactments (SCOE) and a civil system already enforced throughout the country. All three sets of laws contain numerous provisions that, blatantly and tacitly,

Jubah-robe Hudud in legal terms, the term is used to describe laws that define a level of crime classification. Crimes classified under hudud are the most severe of crimes, such as murder, theft, and

adultery.

disproportionately discriminate against and violate the rights of women and the lesbian, gay, bisexual, and transgender (LGBT) 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.

The ominous silence that shrouds the whole codification process of Shariah laws in the country is a major source of concern. The "Fatwa Controversy" in 1997, for example, shocked many Malaysians when three Muslim women were arrested and swiftly charged for taking part in a beauty contest. Very few Malaysians were aware that the SCOE had been quietly amended in 1995 without debate to

The most visible impact of the push for greater Islamisation can be seen in the way women dress.



create an offence out of "dressing indecently," the definition and discretion of which is left to the arresting officers.

Then came the second shock. The Shariah Enactment had also been amended to give *fatwas* the automatic force of law upon gazetting; anyone who gives, propagates, and/or disseminates any opinion contrary to any fatwa in force commits a criminal offence. Technically, every time a writer, organisation, or individual asserts the rights of the individual to freedom of expression, they breach the fatwa. But that it does not systematically get used indicates that it has been created as insurance, the quiet threat to be whipped out and selectively used when there is clear threat to the powers of the "guardians of religion."

These provisions had been sanctioned by the Shariah Technical Committee, State Legal Advisors, the Attorney General, the Executive Council, and the Federal Cabinet, and then passed by the Lower House without so much as a boo. This collusion is an example of the forces that women's groups and human rights groups are up against in trying to promote a human rights agenda that is based on gender equality.

Sexuality in Malaysia: A social and political overview

The TV programme that targeted the LGBTIQ community did not produce the episode in a vacuum; its production was facilitated in an environment where sexuality per se is denied, made invisible, controlled, regulated, and attacked.

Apparently, long flowing dresses and headscarves will root out rape and incest, as men will be less likely to be aroused!

Khalwat the crime of being in

close proximity to someone of the opposite sex who is neither a spouse nor a *mahram*

Mahram

an unmarriageable kin with whom sexual intercourse would be considered taboo.

Male beterosexuality

Generally, the sexuality of the male heterosexual escapes these attacks. That is not to say he is not affected at all. He still has major considerations like if the person he wants to eventually marry is a non-Muslim who is unwilling to embrace Islam. And, as is the case with other Muslims, he may be unlucky enough to be raided by the "moral police" and charged in the Shariah Court with the offence of committing *khalwat*, which carries a maximum sentence of RM5,000 (USD1,310), or three years imprisonment, or both.

By and large, however, male heterosexuality is rarely asked to take the stand. If anything, policies, practices, and social norms are designed primarily around the sexuality of the male heterosexual. His needs for sex are a "given," legitimate, and something that he cannot control; rape therefore is "lust out of control." The state affirms these privileges through personal and family laws, religious programmes on television and radio amplify these and remind women of their responsibilities to their spouses, while snake-oil sellers peddle elixirs that claim to "help the fellas last the distance."

Female sexuality

Women's sexuality, on the other hand, is bombarded with mixed messages. On the one hand, the ubiquitous "modern" messages "beyour-own-woman" exists alongside the equally strong "sculpt your sex appeal to success" messaging; on the other hand, she is told that she must guard her modesty and "chastity"; the sexuality of women and girls is held responsible for what makes or breaks the social and moral order. On the one hand, she is the *femme fatale* whose strong need to flaunt her sexuality causes men to lose self-control; on the other hand, the sexually-vulnerable being requires the protection of male members of her family and society. Her mobility and sexuality are expected to be concordant with her gender identity and traditional roles.

These views form the basis of the main target of the Islamisation project, that is, young persons and women. One of the more vivid expressions of this conservatism can be seen in the politics of PAS, although by no means limited to the examples below nor to PAS alone. There seems to be a predilection for imposing dress codes on girls and women. In October 2003, PAS announced its RM60,000 roadshow to teach Muslim women how to dress. In the run-up to the 2004 elections, PAS vowed to enforce the wearing of headscarves and to prohibit non-Muslim women from wearing miniskirts (Malaysiakini, 20 March 2004). Apparently, long flowing dresses and headscarves will root out rape and incest, as men will be less likely to be aroused!

The leadership of PAS has likewise made pronouncements that female civil servants are not to wear lipstick, that their voices are considered *aurat*, or that state jobs should be given to less attractive women as the pretty ones have fewer problems finding husbands to support them. A campaign to promote polygamy, according to a PAS state assembly member and reported in *The Star* on December 2, 2003, was a better way to help single mothers face their financial hardships than a computer literacy campaign. Various concerts and traditional performances have also been banned because they featured women performers or because they did not provide for gender segregation.

Further along the spectrum is the neotraditionalists' schizophrenia as can be seen within the politics and ideology of UMNO, Jemaah Islah Malaysia (JIM), and Angkatan Belia Islam Malaysia (ABIM or Malaysian Islamic Youth Movement). They will challenge gender stereotypes but preferably not touch the "home"; they have less of a problem with women in public spheres and, indeed, even promote it, but women should be able to balance their work and the needs of their families. The sexuality and behaviour of women are still scrutinised for responsibility where violence is perpetrated against them, but there are some voices within this group that condemn violence against women and challenge laws that are

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> discriminatory. In that respect, the positions taken by UMNO, JIM, and ABIM can sometimes appear to be consonant with that of women's rights activists who want to promote an agenda based on gender equality. Both will reject the commodification and objectification of women's bodies and sexuality. The point of departure, of course, is in how one addresses those "problems."

For example, the *tudung* is still not open to debate and is seen as a paramount factor to increasing societal respect for girls and women. In this respect, the neo-traditionalists lean very closely to the ideals of the traditionalists. Headcovers used to be worn mainly by children attending religious school or elderly women, who would drape loose shawls over their heads and shoulders. Today, even national-type schools see a high percentage of Muslim children covering their heads, sometimes children as young as seven or less. While UMNO, for example, may seem less hardline on the issue of *tudung*, generally they would never go so far so as to say that it is a choice.

The youth, particularly young women, are also targeted. Through the mideighties to the mid-nineties, the mobility and sexuality of the young were vilified through the creation of concepts that quickly became part of social vocabulary and control. Concepts such as budaya lepak (loafing culture-essentially youth hanging out at department stores and video arcades) and bohsia (loosely used to refer to young girls involved, or perceived to be, in sexual activity) were hammered and hyped by the government and its machinery (including the media). Various community programmes were put in place apparently to address these "social ills" that were not part of "Malaysian culture."

There is also pressure for non-Muslims to adopt the Malay-Muslim normative. PAS's miniskirt ban is one manifestation of this, while at the International Islamic University of Malaysia, there had been heated discussions regarding the enforcement of the headscarf on non-Muslim students.

The other issue that seems closed to further discussion is the concept of what constitutes a family and the pursuant subordination of women to

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> patriarchal powers within the home, whether to father or husband. A woman can enter the public sphere and function as her male colleagues would, as long as she has the explicit permission of her husband and as long as the expression of her sexuality is within "Islamic norms," however that may be defined. On the definition of "family," the traditionalists and neo-traditionalists find comfortable allies in the Vatican and Christian fundamentalists of the Bush administration at international meets: that the "natural family" can only ever be derived from the marriage between men and women (with polygamy being the sole preserve of Muslim men).

> Women's groups and human rights groups that have been critical of any form of enforced dress codes or those that have challenged the notions of family and the subordinated positions of women within families, or who have defended the right of women to their sexuality, have themselves been

denounced as "misguided," "unIslamic," "apostates," and lackeys of "Western' feminist Ideology."

Defying socially defined masculinity and femininity

Men and women who defy traditional gender roles, although they may still draw some disapproval or ridicule, are less of a rarity today. But many more women have entered the "male domain" than the other way around.

However, it is not uncommon for men and women, whose gender and sexual identities challenge prescribed norms, to be victimised either verbally and/or physically, or treated as fair game for ridicule and harassment. Many "accept" the verbal taunts as the price they have to pay for access to the public sphere.

Women who display or sport "accentuated masculine" traits or attire (regardless of their sexual preferences) may attract some amount of comment and/or ridicule. But because pants and shirts have become a normalised part of the female attire and given that "male" attributes and jobs are seen as being more powerful than female attributes and jobs, "masculine women" form less noticeable targets.

Men who defy socialised masculinity characteristics, however, face greater difficulty. For as long as their "effeminate" characteristics and/or attire are deemed to not challenge male gender and sexual identities "too sharply," they are considered "acceptable" and many find themselves able to maneuver public spheres, although never quite escaping



Malaysian transgenders advocate for their rights through performance at the October 2005 AWID Forum in Bangkok.

verbal harassment and ridicule. In contrast, traditionally in the Malay community, and to some extent even now, transsexual men or feminised men have straddled being shunned with put-downs on the one hand; yet are also accepted as part of the community—as comic relief anomalies of the village/area. They are socialised, and therefore stereotyped as "good" with make-up, dressing, and all things "feminine." Discussions about their sexual preferences rarely feature, and many prefer not to even begin to discuss this. Television programmes that occasionally feature feminised men typecast them as the "friendly and entertaining" comic relief who is either the bridal makeup artist or fashion designer, or the "misguided" Muslim that must repent.

That said, increasingly today men who do not subscribe to masculine traits are very much considered and spoken of as a "problem" that requires fixing. The Minister of Social Unity and National Development opined in 2003 that steps needed to be taken to stem the "rise in soft male students" at universities. This particular problem was traced to a rather remarkable causal link-that men were becoming increasingly "effeminate" because female students outnumbered male students at university. There are also anecdotal reports of university students being sent out of classes because they were "too soft" and told to come back when they become "real men."

With the growing conservatism and the sharper they defy gender and sexual identity norms, the more that transgendered and transsexual persons, particularly male-to-female transsexuals, 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. Sexreassignment surgery for Muslim transsexuals is prohibited, through a fatwa by the Conference of Rulers in 1983 (Teh, 2001). These factors reinforce the internalised beliefs of Muslim transsexuals that they are nonentities who are sinners in the eyes of the religion. The fear of not being given a "proper" burial (since their sex becomes unclear) forces many Muslim transsexuals to be content with not having the option for sexreassignment surgery. For the same reason, many older transsexuals revert back to male clothing (Teh, 2001).

Diversity in sexual preference

What is deemed even more unacceptable than the defying of gender norms is sexual preferences other than heterosexuality. Laws, both civil and Shariah, have over the years criminalised certain sexual practices, some of which explicitly target same-sex couples. Same-sex sexual relations, particularly between men, is often demonised as "un-Islamic," "unnatural," "disgusting," and, according to the head of Education and Research at Malaysia's Islamic Affairs Department, when interviewed, "a crime worse than murder" (Ramakrishnan, 2000).

It is this "ick factor" that ex-Prime Minister (PM) of Malaysia Mahathir Mohamed, had hoped to ride on when charges of sodomy were brought Most discussions on LGBTIQ issues have been within the rubric of HIV/AIDS, which has invariably made the LGBTIQ community seem inextricably linked and responsible for the spread of the virus, further adding to the stigmatisation of both the community and the discourse on HIV/AIDS.

> against his Deputy PM (DPM) Anwar Ibrahim. In spite of the spectacular court trials that saw, amongst others, a mattress being dragged in and out of court and the "Anwar-sodomy" mantra that was being repeated by the media, the public did not seem to buy the supposed sexual proclivities of the ex-DPM-but only because he was supposedly such a religious figure. Very little was said about the charges until a group that called itself the People's Anti-Homosexual Volunteer Movement (PASRAH) was formed a few weeks later after the charges were made, apparently with the intention of "assisting the Government wipe out homosexuality" ("Combating the Gay Threat," 1998). The Malaysian AIDS Council and SUARAM, a human rights organisation, came out to condemn the hate-group. However, apart from urging the public not to support the group, nothing further developed on the issue of sexual diversity itself.

> Four years after the sacking of Anwar Ibrahim, it was the turn of the woman leader of Puteri UMNO. She was reported to have bought her female

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lover an expensive car, which cast aspersions about her sexuality. While several groups, websites, and discussion lists found this fodder for an attack on the moral uprightness of UMNO for "harbouring a lesbian" in its folds, it never quite got to the remarkable heights that the Anwar Ibrhaim trial got to. The accusations of misappropriation of funds were never investigated and, in fact, both that and the charges of sexual misconduct were dismissed by then Prime Minister Mahathir Mohamed, "as the work of idle minds seeking publicity."

Discussions on LGBTIQ issues have yet to find any dedicated space in the discourse on sexuality in Malaysia, where discussions about sex and sexual rights itself are very cloistered. Most discussions on LGBTIQ issues have been within the rubric of HIV/AIDS, which has invariably made the LGBTIQ community seem inextricably linked and responsible for the spread of the virus, further adding to the stigmatisation of both the community and the discourse on HIV/AIDS.

The controls, regulations, and attacks on expressions of sexuality

The provisions of many Shariah and Shariah-inspired laws are constructed around a growing perceived need for the state to control "moral conduct and sinful behaviour," turning what are otherwise personal obligations into legal obligations, replacing personal values with "state values" that have the force of law. Records of prosecutions of Muslims under such religious offences indicate that there is a bias against working class men and women, students, and young Muslim women, especially for "offences" such as close proximity, indecent dressing, and indecent behaviour (Kasim, Othman, & Anwar, 2003).

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.

Laws and policing of clothing, mobility, and morality

As previously mentioned, the Shariah Enactments of most states in Malaysia make "indecent dressing" ("indecent," of course, being left completely in the eye of the beholder and enforcer) and the violation of a fatwa, criminal offences. This provision is used during regular raids on nightspots. Arrest records, however, show that the provision is used selectively against Muslim women. For example, in 2004, a Muslim woman guest relations officer was the only person out of a group of people who had been arrested during a raid to be charged under the SCOE for "abetting another to commit the offence of drinking and selling alcohol, and committing vice (maksiat)."

Over and above these, the municipal laws in the capital city of Kelantan also authorise municipal officers to fine women workers for not wearing the headscarf. In the first five months of 2002, 120 Muslim women were fined between RM20 (USD5) and RM50 (USD13) for not wearing headscarves at work, reported by the *Asian Political News* on June 17, 2002. The Syariah Criminal Offences (Takzir) of the state of Terengganu hold women responsible for any possible arousal— Section 35 states that "any woman who in any public place exposes any part of her body which arouses passion" can be fined RM1,000 (approximately USD250) or jailed for up to six months.

Men who cross-dress, or transsexuals who wear women's clothing, are frequently arrested and charged under various offences ranging from soliciting, drug use, "loitering," and, under Section 21 of the Minor Offences Act 1955, for "indecent behaviour," which includes crossdressing [(fine of between RM25 to RM50 (USD7 to USD14)]. Muslims are sometimes sent to the Shariah department to be charged at the Shariah Court for Shariah offences. More than the penalty they have to pay, the humiliation they are forced to endure at the hands of the authorities is simply deplorable, primarily, the attacks on their identity: being stripped of their clothing, having their hair cut short and being forced to wear men's clothes. Some are sexually violated (asked for sexual favours, told to show their breasts and private parts), while verbal harassment is sadly par for the course (Teh, 2001).

Policing and control of sexual relations

Sexual relations and pregnancies outside of a "legitimate" heterosexual marriage are generally deemed socially unacceptable. That said, however, a man who engages in pre-marital or extra-marital sexual relations is often rescued and excused by the "insatiable male sexual needs" myth, while a woman is chastised and demonised, particularly if she becomes pregnant as a result. There seems to be a "womb to tomb" obsession with policing her chastity before marriage, and demanding her sexual and reproductive obedience after marriage. State services and structures amplify this. Sexually active single women, whether Muslim or non-Muslim, for example, will find it nearly impossible to access state health services that have been organised primarily around the "married woman's reproductive role."

There seems to be a "womb to tomb" obsession with policing [a woman's] chastity before marriage, and demanding her sexual and reproductive obedience after marriage.



For Muslims, however, there is an added legal dimension. The State justifies its proprietorship over and policing of personal sexual relations of Muslims in carrying out its duty to "uphold Islamic values." In matters of marriage and divorce, too, women are constantly reminded *ad nanseam*, through religious programmes on TV and cheap and plentiful booklets, of their subordinated positions in the home and warned of the dire consequences of challenging this.

As for same-sex sexual relations, there are several laws that criminalise these acts:

a. Section 377B of the Penal Code criminalises specific acts, such as

anal sex or fellatio, as "unnatural offences against the order of nature," regardless of who is involved and whether it is consensual.

- b. What is more often used to target gay men, particularly, are Shariah laws that criminalise sexual "offences" including prostitution, heterosexual adultery, lesbianism, and sodomy that carry a RM5,000 (USD1,700) fine, and six strokes of the cane and/or three years in jail. In 1999, Ramakrishnan reported that 111 men were arrested in Kuala Lumpur on public tip-offs for "attempting to commit homosexual acts" (165 in 1998, 166 in 1997). The head of education and research at Malaysia's Islamic Affairs Department reported said that before being charged in court though, the men are put through "what we call Islamic counseling sessions....They recite the Qur'an everyday, and we will tell them they have committed a grave sin." To date, no lesbians have been arrested because "maybe it is hard to gauge who is a lesbian" (Ramakrishnan, 2000).
- c. The *hudud* laws of Kelantan and Terengganu prescribe the punishment of stoning to death for married persons caught for the crime of *liwat*, and 100 lashes "if unmarried."

Responses to the monitoring, policing, and attacks on sexuality

The policing of sexuality takes on a variety of forms. So, too, do the acts of resistance. Some are personal acts



of resistance-the *tudung*, for example. Many women resist and refuse the pressure to wear *tudung* as a political statement, and they will stand their ground or accept the verbal harassment or remarks as par for the course. Others who wear it under pressure to conform assert their stamp of personal autonomy either by letting a bit of fringe show, or couple it with close-fitting jeans and short sleeve Tshirts. Some capitulate where it is required as part of a uniform or where it helps them gain legitimacy-at work, school, university, and official functions-but may take it off afterwards, much to the chagrin of groups working on getting women to wear the headcover "properly."

Women's groups and human rights groups have been, to some extent, vocal in resisting attempts to control the freedom of choice and expression. This includes press statements, public awareness sessions, and mobilising public support. The increasing awareness has seen more and more people speaking up about the issues. Where Islam is concerned, however, the support comes in hushed tones. Muslim women, in particular, will offer support but are reluctant to publicly declare their support for fear of being labeled.

For as long as civil society groups are seen to be providing community services, the government appears quite content to let them function problemfree. Questioning policies and structure, however, is a little dicier and comes at a cost. In 2003, when the Coalition on Women's Rights in Islam launched the "Monogamy Campaign," the Muftis of the various states came out in full force to denounce the campaign as "opposing *hukum syarak*" (codified laws). The women's groups were dressed down and told to call off the campaign. Press statements by Sisters in Islam, particularly on the issues of dress and polygamy, are often attacked as being "un-Islamic" and "misguided."

Organising and mobilising public support comes at an even greater cost. The range of oppressive legislation in the country, which violates freedoms of expression and assembly as well as state apparatus, is often used against groups that try to organise. There is also a large Special Branch Police force (undercover police) that gathers information on activities, especially if there is even a hint of mobilising the public to attend an event. For example, a march organised by the All Women's Action Society to highlight rising reports of rape was stopped by the police, and a riot squad, fully equipped with tear gas, was sent to the venue to make sure it did not take place.

The transsexual community has over the years organised itself to meet with the Religious Departments and Ministers, and to have their needs and realities heard. There has been some progress on that front, albeit slow and small.

However, while there is some organising and advocacy around issues of women's sexuality, to date there has been little response and advocacy on LGBTIQ rights. Apart from the response by the Malaysian AIDS Council and SUARAM to the PASRAH (the anti-homosexual group), there has been little else. For some groups, discussions around the issue have not even begun nor do they feel any urgency to do so. While it is becoming very obvious that the (male)men-(female)women binary which the gender discourse has traditionally used in Malaysia and elsewhere can no longer avoid sexuality and sexual diversity as part of that discourse, so potent is the stigma of LGBTIQ issues that even those who have begun to discuss the issue cannot fathom it in terms of advocacy. Women's groups wonder if taking on the issue will somehow undo and/or "de-legitimise" the gains that have been made on women's issues. And groups that have organised to provide services to the

LGBTIQ community seem reluctant to take the issue to a different level, that is, from service provision to advocacy, fearing the repercussions that it may have on the community.

It was against this political and social climate that that small group of people, none of whom would particularly identify themselves as seasoned activists, came together to draft the memorandum, mobilised endorsements from over 130 individuals and nine local organisations, organised to meet with SUHAKAM in August 2003, answered questions from the press. Against that landscape, it was a remarkable step.)

This paper was presented at the Sexuality And Human Rights In Muslim Societies in South/Southeast Asia, conference organised by Women for Women's Human Rights (WWHR)-New Ways and Women's Health Foundation, 23–26 September 2004, Jakarta.

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Endnotes

1 Primarily Shafie school with some aspects of customary laws.

2 In 1996, the Penang State Assembly amended their laws to include all Muslims, regardless of citizenship. Penang amends Syariah laws with stiffer penalties. The Straits Times. Singapore, 6 December 1996.

3 In legal terms, the term is used to describe laws that define a level of crime classification. Crimes classified under hudud are the most severe of crimes, such as murder, theft, and adultery.

4 Authoritative religious decree of Islamic law.