



## **Global Network of Sex Work Projects**

Promoting Health and Human Rights

**How Sex Work Laws are Implemented on the Ground  
and their Impact on Sex Workers**

**Malaysia Case Study**

## **Participant Demographics**

13 sex workers were interviewed for this case study: one male sex worker, four female sex workers and eight transgender women sex workers. One of the participants was living with HIV and eight were people who use drugs. Most participants were Malaysian and two were migrants from Indonesia. Five participants were 26 – 30 years old, two were 31 – 35 years old, three were 36 – 40 years old, and the remaining three were over 41 years old. One of the respondents worked for an escort agency, nine were street-based, two worked in brothels and one worked from home. Eight of the respondents identified as gay, one as bisexual and four as heterosexual.

## **Overview of the Sex Work Laws**

### **Sharia Law –**

Most of the charges faced by the sex workers interviewed for this case study were under Sharia Law. Act 559, Section 28 criminalises a male person posing as a woman in a public space, and section 21(1) of the same Act criminalises solicitation for the purposes of prostitution. In Malaysia, these sections of Sharia Law apply to every state, but the penalties vary between states. Sharia Law is under the jurisdiction of each state ruler (i.e. The Sultan or The Yang Di-Pertuan Agong).

### **Civil Penal Code –**

Other than Sharia Law the most common law used to criminalise sex workers in Malaysia is section 372B of the Penal Code, which criminalises solicitation for the purposes of prostitution or “any immoral purpose”. Currently under Sharia Law and the Penal Code there is no law that explicitly described the act of purchasing sexual services as illegal. However, the Penal Code does criminalise brothel-keeping (s373), living on the earnings of prostitution (s372A) and acting as an intermediary/manager (s372A). The Penal Code defines “prostitution” in section 372(3) as: “the act of a person offering that person’s body for sexual gratification for hire whether in money or in kind”.

### **Sex Workers’ Experiences**

Most participants noted that Sharia Law on soliciting sexual activity (Act 559, Section 21(1)) and male persons posing as women (section 28) were the most actively enforced in Malaysia. Section 372 (A) and 372 (B) of the Penal Code were also identified as frequently used.

Nowadays, Muslim sex workers can be charged under Sharia Law or Civil Law depending on who is policing them, for example, policemen or Majlis Agama (State Islamic Religious council). Non-Muslims are only charged under the Penal Code. Punishment varies depending on the charges and the state the sex worker lives in. Participants noted that they could also be charged under non-sex work laws, for instance, the law on possessing and using drugs. One sex worker described their experience being charged under Sharia Law:

*“...Sharia Law, Act 559, Section 28. On the day of the incident I was approached by the policemen and I was asked to follow the policemen to “Majlis Agama” for further investigation. My statement was taken down and then I was released on “Majlis Agama” Police Supervision (PS system) whereby I need to attend a counselling session every quarter and get signatures from the department. Failing to do so will result in me being imprisoned (Transgender woman, 28 years old, street-based sex worker).*

When asked, how long the Police Supervision from *Majlis Agama* would last, she replied, “until they decided to stop.”

Most of the sex workers interviewed felt that all sex work laws in Malaysia were enforced— they were not aware of any other laws that exist in the legislation but are not enforced. Participants also reported that the police in Malaysia use condoms as evidence in charging sex workers with sex work-related crimes. One sex worker interviewed said:

*“I think sex work law that is falsely interpreted by police and other law enforcement agents is about condoms. Whenever we carried condoms, some policemen would use it against sex workers. I wonder, since when, safe sex is considered an offence? I don’t see or read any law about condoms”* (Female, 50+ years old, street-based sex worker).

A key feature of the sex work laws in Malaysia is their regional variations, as Sharia Law is under state jurisdiction. The key differences between states tend not to relate to the actual offences, but to the punishments given for sex work-related crimes. For example, the length of imprisonment, or severity of caning may differ, and fines vary. Participants said the most common punishments for sex work-related crimes were: several months’ imprisonment, caning, or the Majlis Agama PS system, which involves mandatory counselling and reporting.

The participants shared mixed views on which sex workers are the most heavily targeted by police. 55% felt that all sex workers were treated equally regardless of their gender, sexual orientation and market sector. Whereas 45% believed that transgender women sex workers were more heavily policed / targeted by law enforcement.

Sex workers are charged under sex work laws— but they are also charged with non-sex work offenses at a disproportionate rate to the general population. Laws that criminalise being transgender are often used to arrest and charge transgender women sex workers. Other key legislation used to target sex workers is the Dangerous Drugs Act 1952, which, among other things, criminalises the possession of drugs, even in small amounts. One sex worker described their experiences with this law, outlining police corruption in Malaysia:

*“It happened to me before. While talking to my friend at the roadside, I was approached by police on a motorbike and body searched [even though] I didn’t possess any illegal substance at that time. ...I was sabotaged by the policemen. The policemen intentionally placed a small amount of meth inside my pocket and persuaded me to admit it was mine.”* (Transgender woman sex worker, 40 years old, working from home).

The act of *belanja* or sabotage resulted in this sex worker being detained for two days. She went to court the day after, and was sentenced to four months’ imprisonment.

Experiences of *belanja*— of being set up by the police were common among the sex workers interviewed. Another sex worker recounted a similar experience:

*“Interestingly, this happened to me recently, while going downstairs at Hotel Bee Sing, after meeting up with my friends, I was stopped by a freeman police. The freeman police asked me what am I doing at that hotel and checked my identification card for my previous record and unfortunately, I have 4 police records. After explaining to the policemen, he then asked me to show him the room of my fellow friends. Inside of the hotel room, he tried to persuade me to admit to carrying 15 grams of meth of which belongs to the policemen himself aka “belanja”... I was charged under Section 372 (B)... I was sentenced to imprisonment for 4*

*months in Kajang prison. The policemen and his counterpart used false images as evidence; the photo of me and that policeman leaving Hotel Bee Sing. His counterpart captured the photo [across the road from] Hotel Bee Sing portraying as if I am offering sex to the other policeman.” (Female, 43 years old, street-based sex worker).*

Sex workers felt that the law affected their working practices and lives to a significant degree and all of them had a negative impression of the police. One said, *“due to bad incident that I experienced myself and based on my friend’s story with the police, I feel traumatized and unsafe”* (Female sex worker, 27 years old, street-based). Another respondent said, *“I need to be aware and keep changing location and time of operation”* (Transgender woman sex worker, 32 years old, street-based), and another said, *“I don’t know what [is] going to happen next. Anything can happen”* (Transgender woman sex worker, 50 years old, street-based). Only one respondent said they were not affected by the sex work laws because they worked in a brothel: *“Since I am brothel based, I have no issues [with] sex work law because all has been taken care of by my boss”* (Transgender woman sex worker, 50 years old, brothel-based). Despite these negative feelings about the police, participants still said that they would lodge a report if they needed to.

### **The View of Others**

Four lawyers were approached with requests for interviews (two experienced in civil law and two Sharia lawyers) but only one lawyer responded. They have extensive experience, having worked in the legal field in Malaysia for over 24 years.

This lawyer said in their interview that the most actively enforced sex work laws in Malaysia were those in the Penal Code against soliciting (s 372B), living on the earnings and acting as an intermediary/manager (s372A), exploitation of people in prostitution (s372) and brothel-keeping (s373). They also noted that section 377B of the Penal Code can be used against sex workers— it criminalises anal sex and oral sex (when performed on men), which is deemed to be “against the order of nature”. They mentioned section 27(B) of the Minor Offences Act, which criminalises “every prostitute behaving in a disorderly or indecent manner in or near any public road or in any place of public resort” but said that police no longer enforce this law— they are more focused on the “more serious” offences contained in the Penal Code. The lawyer did not discuss Sharia Law in detail except to note that non-Muslims are charged under the Penal Code while Muslims are charged under the various state religious laws/Sharia Law. The Lawyer believed that female sex workers are the most heavily policed group of sex workers, describing them as disempowered compared to transgender and male sex workers.

The lawyer agreed that drug laws are often used to target sex workers. On public holidays or weekends the police, state Islamic authorities and other law enforcement agents conduct raids on budget hotels, spas and private parties as part as their vice and drug crime prevention strategy. They often take journalists and TV crews along with them to embarrass patrons. Sex workers are usually charged for drug offences rather than “vice” offences even though the advertised objective of the raids is “vice prevention”.

The most common type of punishment that sex workers face are a few months’ imprisonment or fines, however, transgender sex workers may also face rehabilitation (forced counselling) under Sharia Law. In addition, they face humiliation and harassment during arrest and may have their belongings confiscated.

The Malaysian government has implemented a scheme called the National Legal Aid Foundation (NLAC) for low/no-income Malaysians. Some sex workers benefit from this scheme and are able to seek help from lawyers. Despite this, sex workers remain largely disempowered and often do

not know how to assert their rights. The lawyer interviewed said that continuous efforts are required to teach sex workers how to assert their rights.

Ultimately, the sex work laws in Malaysia result in sex workers being frequently arrested and denied their fundamental legal rights, which are enshrined in The Federal Constitution and under human rights law. Sex workers are constantly bullied, harassed, extorted and discriminated against during arrest.

### **Conclusion**

Most of the sex workers interviewed said that sex work law reform is necessary. Instead of criminalising activities like soliciting, they believed law reform should decriminalise sex work and/or allow them to work legally in designated areas. Participants described the necessity of sex workers being given access to social benefits like the Employees' Provident Fund (EPF) and Social Security Protection (SOCSO) for their retirement and later life. Finally, they asserted that local authorities and law enforcement— be it the police, Islamic State Councils or *Majlis Agama*— should act with integrity in their jobs and treat sex workers with respect.



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