



Malaysia: Court Ruling Sets Back Transgender Rights

Publisher [Human Rights Watch](#)

Publication Date 8 October 2015

Related Document ["I'm Scared to Be a Woman" - Human Rights Abuses Against Transgender People in Malaysia](#)

Cite as Human Rights Watch, *Malaysia: Court Ruling Sets Back Transgender Rights*, 8 October 2015, available at: <http://www.refworld.org/docid/561cced34.html> [accessed 8 March 2016]

Disclaimer This is not a UNHCR publication. UNHCR is not responsible for, nor does it necessarily endorse, its content. Any views expressed are solely those of the author or publisher and do not necessarily reflect those of UNHCR, the United Nations or its Member States.

In overturning a landmark ruling, Malaysia's highest court has undermined the rights of transgender people in the country, Human Rights Watch said today. On October 8, 2015, the Federal Court reversed a lower court ruling that a state's prohibition on "cross-dressing" was unconstitutional. On wholly procedural grounds, the Federal Court upheld Sharia laws prohibiting "a male person posing as a woman."

The judicial decision is a serious setback in a four-year struggle by transgender activists to end arbitrary arrests of transgender women on the basis of discriminatory laws, Human Rights Watch said.

"This Federal Court ruling is a major setback for transgender rights," said Neela Ghoshal, senior lesbian, gay, bisexual, and transgender (LGBT) rights researcher at Human Rights Watch. "Trans women in Malaysia, who were buoyed by the landmark lower court decision recognizing their rights to be themselves, have been let down once again."

The court found that the three respondents - transgender women in Negeri Sembilan who had all been arrested and prosecuted simply for wearing women's clothing - should have obtained judicial permission of a Federal Court judge when they commenced their constitutional challenge. Although a High Court judge had granted permission in November 2011, the Federal Court ruled that it had done so erroneously. The transgender women will now have to reinstate the case, starting at the Federal Court level.

The decision overturned a historic November 2014 ruling by the Putrajaya Court of Appeal that found that a Sharia, or Islamic law, ban on cross-dressing in the southern state of Negeri Sembilan was "degrading, oppressive, and inhuman" and that so long as it was in force, transgender people "will continue to live in uncertainty, misery, and indignity." The Court of Appeal had ruled that the law violated rights to life and personal liberty, equality, freedom from gender discrimination,

freedom of movement, and freedom of speech, assembly, and association, all of which are protected under Malaysia's constitution.

The three transgender women, who originally filed the case in 2011, had all been arrested repeatedly under section 66 of Negeri Sembilan's Syariah Penal Code. They had also been subjected to physical and sexual assault and degrading treatment by law enforcement officers from the Department of Islamic Religious Affairs.

"The Federal Court has abdicated its responsibility to ensure that transgender people have equal rights with all other Malaysians," said Aston Paiva, the lawyer representing the three transgender women. "By rejecting this case, the court has thrust trans people back into a legal limbo in which their very existence may be considered illegal."

Human Rights Watch's September 2014 report, "I'm Scared to Be a Woman: Human Rights Abuses against Transgender People in Malaysia," documents widespread government abuses against transgender people in Malaysia. In research in four Malaysian states and the federal territory of Kuala Lumpur, Human Rights Watch found that state Religious Department officials and police regularly arrest transgender women and subject them to various abuses, including assault, extortion, and violations of their privacy rights.

On September 10, 2015, two men wielding iron bars brutally beat one of Malaysia's most prominent transgender activists, Nisha Ayub, outside her apartment building, requiring her hospitalization. She reported the apparent hate crime to the police, but the police have not identified any suspects.

"Trans women in Malaysia face horrific abuses every day, and laws that criminalize their very identity constitute a barrier to justice," Ghoshal said. "The Malaysian government should take immediate action to revoke these discriminatory laws and end the climate where ugly abuses against trans people are tolerated."

Copyright notice: © Copyright, Human Rights Watch

Search Refworld

by keyword
and / or country 

[Advanced Search](#) | [Search Tips](#)

Countries

- [Malaysia](#)

Topics

- [Lesbian, gay, bisexual, transgender and intersex \(LGBTI\)](#)
- [Persecution on the basis of sexual orientation or gender identity](#)
- [State protection](#)