©By Wong Ee Lynn* One of the biggest problems faced by the transsexual community in Malaysia is that of exclusion. The transsexual community has frequently been overlooked and excluded from decisions that affect their welfare, livelihood and legal status. While it is true that the Women and Family Development Ministry had in 2000—2001 announced its intention to look into the problems of the transsexual community and to provide such assistance as they could, there was, prior to 2001, no ministry regarded as appropriate to hear and handle issues pertaining to the transsexual community; and transsexuals continue to be heavily marginalised, underrepresented and misunderstood.

Non-governmental organisations dedicated to helping and representing the transsexual community are few: the PTF (formerly Pink Triangle Foundation) and the Federal Territory Mak Nyah Association are two. Considering the fact that a privately-sponsored survey had in 2001 estimated there were at least 50,000 transsexuals in the country, having only two registered groups working in furtherance of the welfare of so many is disheartening. The number of transsexuals in the capital alone is today estimated to be 50,000, and there are, according to transsexual activists and outreach workers, at least 100,000 transsexuals in the country. This indicates that more than one out of every 200 individuals in Malaysia is transsexual.

For anyone concerned with justice, equality and the moral legitimacy of systemic discrimination against any group or individual, the issues of transsexuals – their legal status, their civil liberties and their fair chance at employment and making a living – is a pressing matter in urgent need of attention and continual help and support.

Transsexuality is not to be confused with transvestism. Transsexuals establish a permanent psychological identity of the sex opposite to their biological sex, as determined at birth. Transvestites derive sexual pleasure from dressing in the clothes of the opposite sex; and a transvestite is not necessarily a transsexual nor a homosexual. In ‘Boys Don’t Cry’, the award-winning movie based on the true story of murdered transsexual youth Teena Brandon, Brandon is seen in the movie to express outrage at his friend for calling him a ‘dyke’. This resentment at being misidentified as a homosexual is shared by the entire transsexual community, and it should be noted that transsexuality is not associated with, nor dependent on, sexual orientation. Lack of understanding as to the gender identity of transsexuals has been an obstacle to efforts to integrate and help the transsexual community.

Another impediment faced by the transsexual community in Malaysia is that much of society is mired in a mindset that is fixated with the causes of transsexuality rather than one that attempts to assimilate transsexuals. Many academicians and medical practitioners propose psychological and environmental causes of transsexuality. However, to assume that there are only two discrete and dichotomous genders, and to contend that as such, transsexuals are ‘abnormal’ and should somehow be ‘treated’ or ‘rehabilitated’, further contributes to the stigmatisation of and discrimination against transsexuals. There is strong scientific evidence to suggest that the ‘cause’ of transsexuality has its roots in biology. Mental gender identification is determined at birth, and it is not a ‘choice’ or a ‘preference’, nor is it a disorder in need of treatment or correction.

Due to the conflict between their gender identity and their sex at birth, many transsexuals find that their only recourse is to undergo sex reassignment surgery (SRS), or gender reassignment therapy (GRT), which may include taking hormones.

The standards of care and requirements for SRS and GRT in most countries are commendably high. In most circumstances, a minimum time period of psychiatric counselling is required, as well as a minimum time (often one year) spent living in the target gender role prior to SRS.

Although SRS and GRT are legal in Malaysia, there is no law covering gender reassignment to allow an individual who has undergone SRS to have his or her sex on his or her identification card and other legal documents changed. Also, a decision by the country’s Council of Rulers prohibits Muslims from undergoing SRS or GRT. In Islam, trans-sexuality is neither recognised nor accepted. According to the fatwa, males are not allowed to wear women’s clothing. Male-to-female transsexuals are considered male because they are biologically male, even if they have undergone SRS. However, there are a few isolated cases in which the Majlis Fatwa Kebangsaan has allowed SRS after considering the surrounding circumstances. The problem that remained was that the National Registration Department was still not empowered to change the legal status of post-SRS transsexuals.

While it is not an offence for non-Muslims to undergo SRS, their indeterminate legal gender creates many problems of its own. In November 2004, the Ipoh High Court dismissed an application by female-to-male transsexual Wong Chiou Yoong to have his sex declared as male in his identification card. The appellant underwent SRS over two years ago and produced evidence from two medical specialists affirming that he was now fully functioning as male. The National Registration Department, however, labels Wong a woman based on his sex at birth.

In his judgement, Justice Datuk VT Singham said that biological, rather than psychological tests, determine identity, and that any review of the law is the duty of Parliament. For the courts to approve any change in the legal status of transsexuals would be to assume the role of the legislature.
Because transsexuals cannot change their identification cards, they face constant harassment and persecution from the police and religious authorities, cannot undergo burial rites in accordance with their religious beliefs, are often refused employment, are deprived of the right to marry lawfully although they are fully-functioning members of their chosen sex and are exposed to other dangers such as hate crimes when their sex at birth is revealed. The transsexual community has reported harassment and discrimination even in attempting to open a bank account or applying for a passport. They also face difficulty in finding employment because employers inevitably learn that they were born in the other sex. There are no laws in Malaysia that rule that discrimination against transsexuals at work is unlawful.

It is critical that a responsive and progressive government attempt to resolve the problems faced by the transsexual community in Malaysia in an objective and dignified manner. Among the matters to be taken into account are as follows:

(1) A large majority (an estimated 80%) of the transsexuals in the country become commercial sex workers because of discrimination by prospective employers. Many are academically qualified to hold professional positions but are denied the opportunity for employment. Many end up in the sex industry as well as ‘stereotyped’ professions such as hairdressing and entertainment. One must question how genuinely free the ‘choice’ of being a sex worker can be if opportunities for other kinds of employment remain limited. One must also understand and acknowledge the way transsexuals have been socialised into seeing themselves and the insidious barriers set up by corporations and prospective employers.

(2) Transsexuals detained in police raids often end up the victims of sexual violence. Over 70% of transsexuals detained in police lock-ups have been forced to strip in front of others. Transsexuals should not be placed in the same cell as male inmates, and police procedure should incorporate guidelines to ensure that abuse does not take place. Whether a transsexual is arrested for soliciting or committing a crime or drug offence, he or she may only be tried under the due process of law. It is an affront to the country’s human rights record to condone sexual abuse and violence against transsexual detainees.

(3) Considering the preponderance of those who have committed or attempted suicide, counselling and mental health services should be provided, at little or no cost, to the transsexual community.

(4) Sensitivity training is recommended for the police force. Domestic violence, sexual harassment and sexual abuse are problems beleaguer both women and transsexuals. The right to life, to self-preservation and to seek help from the authorities or law enforcers are rights that extend to all citizens. Each time the police turns certain members of society away, confidence in the police force is undermined. Once eroded, it will be difficult for the police force to gain public trust and cooperation again.

(5) Apart from the Registration of Births and Deaths Act 1957, another piece of legislation in need of review is the Minor Offences Act 1955. Under the Act, cross-dressing is interpreted as ‘indecent behaviour’, and transsexuals have reported being arrested by religious authorities for cross-dressing while simply having a meal in a restaurant. Whether or not we believe transsexuality to be wrong, there should never be a vindication for another human being to be humiliated and deprived of his or her freedom to choose what to wear. Transsexuals dress according to their gender identity. It is proposed that ‘cross-dressing’ be decriminalised, as there is little redeeming social value in making it an offence.

The recognition of a post-SRS transsexual’s legal gender and the reflection of the same in identification cards would remove many of the barriers to their acceptance and integration, as well as be in accordance with the needs and interests of the transsexual community, whose voice has been disregarded for far too long.

It is now the moral imperative of Parliament to evaluate the merit and practicality of reforming the law or introducing new laws to accommodate transsexual and transgender individuals. In the meantime, it is also the responsibility of the courts, law enforcers and society to create a safe social environment for all, including transsexuals. To continue to deny legal recognition to a marginalized and disadvantaged group is to encourage lack of respect for their dignity, privacy and rights. A civilised society is one that extends its circle of compassion and concern to all, regardless of sexual orientation, gender identity and social status.