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Department of Foreign Affairs and Trade



DFAT COUNTRY INFORMATION REPORT MALAYSIA

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MAP



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ACRONYMS

1MDB	1 Malaysia Development Berhad (government investment fund)
ASEAN	Association of South East Asian Nations
AUD	Australian dollar
BN	Barisan Nasional (English: National Front)
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CMA	Communications and Multimedia Act (1998)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DAP	Democratic Action Party
EPO	Emergency Protection Order
FGM	Female Genital Mutilation
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IOM	International Organization for Migration
IPCMC	Independent Police Complaints and Misconduct Commission
IRB	Inland Revenue Board
ISIL	Islamic State in Iraq and the Levant
JAKIM	National Department of Islamic Development
LGBTI	Lesbian, gay, bisexual, transgender or intersex
MCA	Malaysian Chinese Association
MCMC	Malaysian Communication and Multimedia Commission
NGOs	Non-governmental organisations

OSCC	One Stop Crisis Centres
PAA	Peaceful Assembly Act
PAS	Pan-Malaysian Islamic Party
PH	Pakatan Harapan (English: Coalition of Hope)
POCA	Prevention of Crime Act (Amendment and Extension)
POTA	Prevention of Terrorism Act
PR	Pakatan Rakyat (English: People's Pact alliance)
RELA	People's Volunteer Corps
REMEDI	Refugee Medical Insurance Scheme
RM	Malaysian Ringgit (currency)
RMP	Royal Malaysia Police
SOSMA	Security Offences (Special Measures) Act 2012
UMNO	United Malays National Organisation
UNHCR	Office of the United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
USD	US dollar

GLOSSARY

<i>Adat</i>	Customary law
<i>Ah Long</i>	Chinese Malaysian term for unlicensed money lenders
<i>Anak Negeri</i>	Indigenous peoples of Sabah and Sarawak
<i>Bumiputera</i>	literally “sons of the soil”; Malaysian term to describe ethnic groups including Malay and indigenous peoples
<i>Dewan Rakyat</i>	lower house of parliament
<i>Dewan Negara</i>	upper house of parliament
<i>fatwa</i>	formal guidance/ruling issued by Islamic authorities to provide resolution when there is doubt whether a practice is permissible or forbidden in Islam
<i>Gila</i>	crazy, used to refer in a pejorative manner to a mentally ill person
<i>Orang Asli</i>	Indigenous peoples of peninsular Malaysia
<i>Sekolah agama rakyat</i>	Islamic and religious schools
<i>Syariah</i>	Islamic law
<i>Suhakam</i>	Human Rights Commission of Malaysia

Terms used in this report

high risk	DFAT is aware of a strong pattern of incidents
moderate risk	DFAT is aware of sufficient incidents to suggest a pattern of behaviour
low risk	DFAT is aware of incidents but has insufficient evidence to conclude they form a pattern

official discrimination

1. legal or regulatory measures applying to a particular group that impede access to state protection or services that are available to other sections of the population (examples might include but are not limited to difficulties in obtaining personal registrations or identity papers, difficulties in having papers recognised, arbitrary arrest and detention)
2. behaviour by state employees towards a particular group that impedes access to state protection or services otherwise available, including by failure to implement legislative or administrative measures

societal discrimination

1. behaviour by members of society (including family members, employers or service providers) that impedes access by a particular group to goods or services normally available to other sections of society (examples could include but are not limited to refusal to rent property, refusal to sell goods or services, or employment discrimination)
2. ostracism or exclusion by members of society (including family, acquaintances, employers, colleagues or service providers)

1. PURPOSE AND SCOPE

1.1 This Country Information Report has been prepared by the Department of Foreign Affairs and Trade (DFAT) for protection status determination purposes only. It provides DFAT's best judgment and assessment at time of writing and is distinct from Australian government policy with respect to Malaysia.

1.2 The report provides a general, rather than an exhaustive, country overview. It has been prepared with regard to the current caseload for decision makers in Australia without reference to individual applications for protection visas. The report does not contain policy guidance for decision makers.

1.3 Ministerial Direction Number 84 of 24 June 2019 under s 499 of the *Migration Act* (1958) states that:
Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.

1.4 This report is based on DFAT's on-the-ground knowledge and discussions with a range of sources in Malaysia. It also takes into account relevant information from government and non-government sources, including but not limited to: those produced by the Malaysian government and the US Department of State; relevant UN bodies and international organisations such as the Asian Development Bank, the World Bank, the International Organization for Migration, the Office of the UN High Commissioner for Refugees and the World Health Organization; recognised human rights organisations and international non-governmental organisations such as Human Rights Watch, Amnesty International, Transparency International and Freedom House; Malaysian non-governmental organisations; and reputable Malaysian and international news organisations. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source.

1.5 This updated Country Information Report replaces the previous DFAT Country Information Report on Malaysia published on 19 April 2018.

2. BACKGROUND INFORMATION

RECENT HISTORY

2.1 Malaya achieved independence from the United Kingdom in 1957. In 1963, Malaya joined Singapore, Sabah (formerly British North Borneo) and Sarawak to form the Federation of Malaysia. Singapore left the Federation in August 1965.

2.2 In May 2018, Malaysia saw its first change of government since independence. Dr Mahathir Mohamad became Prime Minister following an election victory by the Pakatan Harapan (PH) coalition over the Barisan Nasional (BN) coalition, which had ruled the country since independence. Dr Mahathir was previously Prime Minister between 1981 and 2003 for the BN coalition.

2.3 In its election manifesto, the new (PH) government outlined intentions to abolish oppressive laws, ensure accountability for police abuses, improve the situation for refugees, ratify international human rights treaties, and make Malaysia's human rights record 'respected by the world.' By the end of 2018, the new government had begun to take steps on its reform agenda. There has been limited legislative progress to date, with particular challenges experienced in reform on sensitive human rights issues that intersect with Islam and race, including in relation to racial discrimination, sexual orientation/gender identity, and women's rights (see relevant sections).

2.4 Race has historically been a prominent issue in Malaysia, and relations between Malaysia's diverse populations have been tense at times. On 13 May 1969, in the wake of the 1969 Malaysian general election, Sino-Malay sectarian violence broke out in the form of race riots between ethnic Malays and Chinese Malaysians (some Indian Malaysians were also involved) in Kuala Lumpur. Official figures indicate 196 deaths, although estimates vary, some as high as 600. This event led to the former government's application of affirmative action policies that favour ethnic Malays and indigenous groups (collectively known as *Bumiputera*, see Glossary) over other ethnicities in areas such as business, higher education, property ownership, government contracts and civil service jobs. Elements of these affirmative action programs continue today (see [Race/Nationality](#)).

DEMOGRAPHY

2.5 Malaysia covers approximately 328,550 square kilometres and has an estimated population of 32.4 million people. Between 2-4 million foreigners are present in Malaysia, both legally and illegally. Around three-quarters of the Malaysian population reside in urban centres. Malaysia's ethnic groups include the *Bumiputera* (62 per cent, includes Malays and indigenous persons of the Peninsula, Sabah and Sarawak), Chinese (20.6 per cent), Indian (6.2 per cent), non-citizens (10.3 per cent) and others (0.9 per cent) (see [Race/Nationality](#)). The official language in Malaysia is Bahasa Malaysia (Malay), but English is widely used, along with a variety of Chinese dialects, Tamil and, to a lesser degree, indigenous languages.

2.6 Malaysia is not party to the 1951 UN Refugee Convention, and does not have any legislation in place specifically dealing with asylum-seekers or refugees. The government classes all undocumented migrants, including refugees and asylum seekers, to be ‘illegal immigrants’. Undocumented migrants have no right to employment, health or education. All undocumented migrants are subject to the *Immigration Act (1959/63)*, which enables the police to arrest and detain them at any time (see [Detention and Prison](#)).

2.7 As at the end of October 2019, the Office of the United Nations High Commissioner for Refugees UNHCR reported that it had registered 177,800 refugees and asylum seekers in Malaysia, over a quarter of whom were children. Of this total, 153,200 were from Myanmar (including some 98,130 people identifying as Rohingya), and a further 24,590 people were identified as coming from a range of other source countries. UNHCR performs all activities related to the reception, registration, documentation and status determination of asylum-seekers and refugees in Malaysia. The government cooperates with UNHCR to allow the provision of humanitarian support to undocumented migrants, and UNHCR provides limited levels of support with assistance from a number of non-governmental organisations (NGOs) and foreign governments.

2.8 On a number of recent occasions, Malaysia has deported asylum seekers back to their country of origin despite concerns from human rights groups over potential refoulement. These include a human rights activist who was returned to Thailand in May 2019, and a family returned to Turkey in August 2019, the father of whom was reportedly working at a school affiliated with the Gülen movement. Malaysia did, however, reject a request from China for the return of eleven ethnic Uighurs in October 2018, who were instead allowed to travel to Turkey.

ECONOMIC OVERVIEW

2.9 The World Bank classifies Malaysia as an upper middle-income, export-oriented economy. In 2018, its real GDP growth was 4.7 per cent, while per capita GDP was USD10,942 (AUD14,630). Malaysia has transformed since independence from a commodity-based economy, focused predominantly on producing rubber and tin, to a leading producer of electronic parts and electrical products, oil and natural gas, and a variety of other manufactured products. Malaysia is the world’s second largest producer and exporter of palm oil. Manufactured goods comprised 84 per cent of Malaysia’s exports in 2018. Malaysia is the Association of South East Asian Nations’ (ASEAN’s) largest energy exporter and income from oil and gas provides the government’s largest single revenue source. The drop in oil price in 2015 and 2016 negatively affected government revenues, but the rebound in oil prices in 2017 has seen revenues pick up again. The International Monetary Fund forecast economic growth of 4.5 per cent for 2019.

2.10 Malaysia’s economic performance over several decades has led to a significant reduction in poverty, with the share of households living below the national poverty line (USD 8.50 (AUD 12.26) per day in 2012) falling from over 50 per cent in the 1960s to less than 1 per cent today. However, persistent inequalities remain for indigenous peoples and the poorest 40 per cent of the population, which predominantly consists of *Bumiputera*. Poverty rates are higher in rural areas, especially in Kelantan, Sabah, Sarawak and Kedah states. The UNDP’s Human Development Index ranked Malaysia 57 out of 189 countries in 2018, placing it in the ‘high human development’ category.

2.11 In October 2019, Prime Minister Mahathir Mohamad launched a new plan for sustainable and equitable economic growth in Malaysia called ‘Shared Prosperity Vision 2030.’ The plan is focused on providing a decent standard of living for all Malaysians, and narrowing the wealth gap and the urban-rural divide by 2030.

Employment

2.12 The Malaysian Department of Statistics reported a labour force participation rate of 68.6 per cent in June 2019, while in February 2019 the Malaysian Department of Statistics reported an overall unemployment rate of 3.3 per cent. In November 2018, media reported the average unemployment rate for Indian Malaysians was 4.7 per cent, compared to 4 per cent for *Bumiputera*, and 2.4 per cent for Chinese Malaysians. In 2018, 28.6 per cent of the Malaysian labour force had tertiary level education, 55.6 per cent had secondary level education, 13.1 per cent had primary level education and 2.7 per cent had no formal education.

2.13 The International Labour Organization estimates that three to four million migrants (including irregular migrants) currently work in Malaysia, constituting up to 30 per cent of the country's workforce. Of the migrant worker population, 1.7 million are registered, and an estimated 1.9 million are undocumented (irregular) migrants. Labour migration policy in Malaysia has tended to be formulated largely from the standpoint of controlling immigration and maintaining public safety rather than labour administration, as indicated by the authority granted to the Ministry of Home Affairs over migration issues. Recent years have witnessed a rise in increasingly virulent rhetoric against migrants within the popular media, blaming migrants for a host of social problems ranging from electoral fraud to increases in street crime. Scapegoating of migrants, regardless of realities, has contributed to an environment where exploitation and abuse are sometimes viewed as acceptable.

2.14 An increasing number of reports have documented serious labour rights abuses against migrant workers in Malaysia, including cases of forced labour and human trafficking (see [Trafficking in Persons](#)). The Global Detention Project reports that potential trafficking victims may be charged with immigration offences and detained in the criminal justice system due to the lack of formal victim identification procedures. The estimated 300,000–400,000 migrant domestic workers employed in Malaysia lack protection under labour laws. Due to the physical isolation of workplaces, restrictions on movement and inadequate mechanisms established to ensure accountability of employers, a large number of domestic workers are also exposed to abusive working conditions. Economic migrants rarely obtain permanent residence status.

2.15 Undocumented migrant workers from the Philippines and Indonesia tend to be employed in the construction, palm oil and fishing industries in Sabah and Sarawak. DFAT is aware of reports of ethnic tensions between Indonesian and Filipino migrant workers working on plantations in Sabah, which have led in some cases to fatalities. DFAT is also aware of reports of the children of undocumented migrant workers working on plantations in Sabah.

Corruption

2.16 Transparency International's 2018 Corruption Perceptions Index (published in January 2019, after the change in government) ranked Malaysia 61st out of 180 countries and territories. According to international observers, while corruption is relatively low by regional standards, procurement is subject to corruption, and bribes and irregular payments are sometimes exchanged in return for favourable court decisions. A perceptions survey taken under the previous government found that Malaysians regarded the police as the most corrupt institution in the country (see Royal Malaysia Police (RMP)).

2.17 The most prominent recent corruption case in Malaysia is that involving the government investment fund, 1 Malaysia Development Berhad (1MDB). 1MDB was at the centre of claims in 2015 that former Prime Minister Najib Razak, and Chairman of the 1MDB Advisory Board, had misappropriated significant funds

through complex financial transactions involving 1MDB and its subsidiaries. The United States Department of Justice (DOJ) has estimated that a total of USD4.5 billion (AUD6.49 billion) was misappropriated by high-level officials at 1MDB and their associates between 2009 and 2014 through complex financial transactions involving 1MDB and its subsidiaries. The DOJ alleges money passed through institutions and accounts in the Middle East, the Caribbean and the Seychelles. Authorities in the United States, Singapore and Switzerland are investigating wrongdoing related to 1MDB. Former Prime Minister Najib, who was also Minister of Finance and Chairman of the 1MDB Advisory Board, has been charged with 42 charges relating to 1MDB, and his first trial commenced in April 2019. Authorities have also charged Najib's stepson and Goldman Sachs executives. Following the 2018 election, Prime Minister Mahathir Mohamad publicised the details of a previously classified auditor-general's report into 1MDB to promote anti-corruption efforts in Malaysia, which stated senior officials had withheld information from the 1MDB board and taken some decisions without the board's approval. Sources report that authorities are handling the 1MDB scandal appropriately and in accordance with law. DFAT is not aware of any evidence of unfair treatment to date.

Health

2.18 Malaysia spends approximately 4.2 per cent of GDP per annum on health (2.2 per cent public, two per cent private), and has recorded significant improvements in health standards in recent decades. Life expectancy in Malaysia is 73 years for males and 78 years for females. The infant mortality rate is 12.1 per 1,000 births. Non-communicable diseases account for 73 per cent of deaths, including 35 per cent of deaths among people under 35.

2.19 Malaysia has a well-established universal health care system, accessed by around 78 per cent of the population, and modelled on the United Kingdom's system. Malaysia's two tiered health system consists of nation-wide public health care centres and hospitals administered by the Ministry of Health, and a growing private health sector, which predominantly offers services in urban areas. Health care is generally very accessible to all residents in urban areas in peninsular Malaysia, with health facilities generally available within five kilometres of residence. However, health services in Sabah and Sarawak are an exception, and many residents of these states are required to travel long distances to access basic health care services. Most health facilities in Sabah and Sarawak are located towards the coastline, and sources report significant overcrowding at district hospitals.

2.20 Under the public health system, Malaysian citizens are charged RM1 (AUD0.35) for outpatient care and RM5 (AUD1.73) for specialist care (known as the RM1/RM5 model), and hospital costs are generally subsidised by approximately 95 to 98 per cent. From August 2018, GP costs for locals raised from between RM10 (AUD3.50) and RM35 (AUD12.35) to between RM35 (AUD12.35) and RM125 (AUD44). Foreign nationals, stateless people, asylum seekers and refugees technically have the same access to the public health system as a Malaysian citizen, but are required to pay 'first class' treatment charges (also referred to the 'real cost' of their treatment). First class fees can range from three to 10 times more than would be paid by a Malaysian citizen, although fees can vary as medical staff and hospitals can apply discretion. According to media reporting, In April 2017, the Ministry of Health also announced a sharp increase in deposits for migrants seeking treatment at public hospitals, raising deposits by 130 to 230 per cent.

2.21 The minimum documentation required to access public health services in Malaysia is a birth certificate. If an individual seeks public services without identification, they can be investigated. As such, there are both real and perceived institutional barriers for stateless and non-identification carrying individuals to access public health services in Malaysia. The alternative is to access private health care, which

incurs out-of-pocket costs, and lacks the subsidies enjoyed under the public health system. This can be cost prohibitive for lower socioeconomic groups.

2.22 Refugees who hold UNHCR identification cards (see [UNHCR Documentation](#)), or have lodged a claim for asylum but have not yet had their status determined, are eligible to have their medical costs covered by UNHCR (UNHCR's coverage extends to treatment including anti-retroviral medication). In 2015, the Ministry of Health stated that, in accordance with its Memorandum of Understanding with UNHCR, refugees holding UNHCR cards would be eligible for a 50 per cent discount on the 'first class' foreigner treatment rates in public health facilities. However, sources report there has been variation in how this is implemented in practice, and some refugees have been denied treatment at government hospitals. Asylum seekers who have not yet submitted a claim for asylum can access public health services, but will be charged first class fees and risk being arrested under immigration enforcement policies.

2.23 In July 2014, UNHCR also launched a health insurance scheme (known as REMEDI refugee medical insurance scheme) to provide refugees with access to Malaysia's national insurance system. All UNHCR cardholders are eligible for REMEDI, but must enrol in the scheme. REMEDI covers individuals and families for a premium of USD38 to USD43 (AUD47 to AUD63) per year for treatments of up to USD3,750 (AUD5,557). However, in practice, only 12.2 per cent of UNHCR cardholders were enrolled in REMEDI in 2017. UNHCR also operates a health clinic in Kuala Lumpur, which can be accessed by UNHCR cardholders for limited medical issues.

2.24 Although there is no law requiring it, the Ministry of Health has issued a guideline whereby hospitals must report undocumented immigrants to the police. Sources report that patients without documentation receiving medical treatment are to be treated as flight risks and are required to be handcuffed. Multiple sources also report cases of pregnant refugees and undocumented migrants being handcuffed to their hospital beds while in labour, and media reporting also indicates some public hospitals report pregnant migrants with irregular status to immigration officials who arrest and detain the women after delivery.

2.25 The Ministry of Health's 2018 National Health and Morbidity Survey found that just under one in three Malaysians aged 16 years and above were living with a mental health issue, but public mental health services remain underserved. Due to a lack of mental health professionals, public mental health services are generally provided by general practitioners and non-mental health specialists under the RM1 / RM5 model. Private mental health services can cost upwards of RM300 (AUD103) per consultation. Because most private health insurance does not cover mental health services in Malaysia (as of July 2019, Malaysia AIA became the only provider), access can be cost prohibitive. There is also significant stigma attached to mental health issues in Malaysia. Supernatural spirituality can also compound mental health issues, and misdiagnosis of mental health issues reportedly occurs due to widespread belief in supernatural forces and reliance on spiritual healers and exorcisms. While spiritual healers are particularly common in Sabah and Sarawak, especially in rural areas where health services are lacking, middle class, well-educated Malaysians will also often choose spiritual remedies.

2.26 A wide range of complex environmental issues also affects the health of Malaysians, including air and water pollution and activities related to extractive industries. Persons living with disabilities, especially children, are also often hidden, portrayed negatively, excluded from society, face daily stigma and discrimination, and are prevented from accessing their rights due to gaps in legislation.

Education

2.27 Primary school education (six years of education, beginning at age seven) is free and compulsory in Malaysia. The *Education Act* (1996) requires parents to register their children at the nearest school before the child reaches the age of six, and the child must remain in school for a minimum of six years. Parents who do not comply can face a fine or imprisonment for up to six months. In 2017, the United Nations reported that national gross enrolment ratios were 103.1 for primary school, 86.16 for secondary school and 41.93 for tertiary education. In 2017, the total number of out-of-school children (11 years and below) was 41,794 and out-of-school adolescents (12 to 17 years) was 186,422. Malaysia's adult literacy rate is 94.6 per cent.

2.28 As of July 2018, there were 7,776 primary national schools, including 1,298 national-type Chinese schools and 524 national-type Tamil schools, and 2,426 secondary national schools. All national schools use Bahasa Malaysia as the language of instruction. National type Chinese and Tamil schools use their mother tongue as the main medium of instruction and teach Bahasa Malaysia as a compulsory subject. There are 60 Chinese independent secondary schools, and each state in Malaysia has a number of Islamic and religious schools (*sekolah agama rakyat*).

2.29 As of June 2019, Malaysia had 20 state-funded universities, 47 private universities, 6 branch campus universities, 5 branch campus college universities, 34 private university colleges, 10 foreign university branch campuses, 347 private colleges, 36 polytechnics and 103 community colleges. In addition, 178 private higher education institutions are licensed to enrol international students.

2.30 Public universities were historically required to enrol 70 per cent *Bumiputera* students before admitting students of other ethnicities (see [Chinese Malaysians](#) and [Indian Malaysians](#)). Despite the removal of government-sanctioned ethnic quotas in public universities in 2002, *Bumiputera* continue to secure the majority of public university places and Malaysia's ethnic minorities remain underrepresented in public universities. Many pre-university programs have *Bumiputera* quotas, and public universities must provide a certain number of university places to these programs. In May 2019, Prime Minister Mahathir Mohammad announced the government's intention to increase the number of student places drawn from these pre-university programs by 60 per cent (retaining the *Bumiputera* quota), instead of decreasing the quota as many had expected.

POLITICAL SYSTEM

2.31 Malaysia is a federal constitutional monarchy. It has a Westminster-style parliamentary system of government, and conducts periodic, multi-party elections. The Prime Minister is the Head of Government and head of the federal cabinet. The King's role is that of a constitutional monarch. A two-thirds parliamentary majority is required to amend the Constitution.

2.32 Malaysia has 13 states and three federal territories. Federal (bicameral) and state (unicameral) legislatures share legislative power. The federal parliament comprises the *Dewan Rakyat* (lower house) and the *Dewan Negara* (upper house). The lower house has 222 members elected for five-year terms in single-seat constituencies. The upper house has 26 members elected by State Legislative Assemblies, four who are appointed to represent federal territories, and 44 appointed by the King, on advice of the Prime Minister, for a maximum of two three-year terms.

2.33 Each state has a Chief Minister. The federal government directly administers the three federal territories of Kuala Lumpur, Putrajaya and Labuan. Nine of the 13 states have hereditary rulers (eight Sultans

and one Rajah) who share the position of Yang di-Pertuan Agong (King) on a five-year rotating basis. Matters pertaining to Islam, including codification of *syariah* based laws and procedures and their administration, fall under state jurisdiction, with the Sultans being the designated heads of religion in each state.

2.34 Electoral reform NGO, Bersih, published a report in March 2014 condemning the Election Commission's lack of independence. The report claimed that Malaysia's electoral system failed to meet international standards. The report led to backlash against Bersih and its followers. Following the 2018 election, the Government commenced a process of electoral system reform, with a first significant reform being to lower the voting age to 18. Many Bersih members currently hold positions in the new government or its agencies.

Civil Service

2.35 Compared to their percentage of the population, *Bumiputera* are overrepresented in the civil service compared to Chinese and Indian Malaysians. Civil society sources report that non-*Bumiputera* civil servants often progress more slowly through promotions. Academics report the civil service has historically absorbed unemployed *Bumiputera* youths and graduates from courses with low employment prospects, as these young people have a reduced chance of being employed in the private sector (see [Ethnic Malays and indigenous groups - Bumiputera](#)). This has resulted in a huge civil service of 1.6 million people (about 5 per cent of the population), with low levels of productivity. Civil servants enjoy excellent conditions: the 2018 budget allocated funds to the public sector to provide a one-off payment of RM1500 (AUD529), 365 days maternity leave, in-house Masters and PhD programs, and other benefits.

2.36 Critics have suggested that the civil service has historically behaved more like a branch of the former ruling party than a neutral group of civil servants. Since the 2018 election, Prime Minister Mahathir Mohamad has criticised the civil service for its divided loyalties. In-country sources cite similar issues, and claim it is leading to implementation challenges for the new government.

HUMAN RIGHTS FRAMEWORK

2.37 Of the nine core international human rights treaties, Malaysia is a State Party only to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Rights of the Child (CRC) and its two Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography and the Involvement of Children in Armed Conflict. Malaysia is not party to the Convention on the Elimination of all Forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CED), the International Covenant on Civil and Political Rights (CCPR), or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Although the government made a public commitment to ratify the remaining treaties during its November 2018 Universal Periodic Review (UPR), there has not been any progress on this. Malaysia also maintains reservations against treaty provisions seen to conflict with Islamic and national law.

National Human Rights Institution

2.38 The government created the Human Rights Commission of Malaysia (Suhakam) through the *Human Rights Commission of Malaysia (Suhakam) Act (1999)*. The King appoints a Chairman and Commissioners on the recommendation of the Prime Minister. Suhakam is compliant with the Paris Principles relating to the Status of National Human Rights Institutions and achieved 'A status' in October 2010, reconfirmed in November 2015. Suhakam has limited investigative powers and cannot refer matters to the Attorney-General for prosecution.

2.39 Local human rights organisations regard Suhakam as a credible monitor of the human rights situation in Malaysia, but have historically claimed it lacks sufficient resources and enforcement authority. Government funding for Suhakam was temporarily cut in 2015, which some suggest was a result of reports critical of the former government. According to in-country sources, government engagement of Suhakam has increased significantly since the 2018 election, and Suhakam will be involved in post-UPR monitoring. Suhakam comes under the Prime Minister's Department, but in October 2019, the Law Minister announced that the government intended to amend the Suhakam Act to allow parliamentary oversight (while noting that such amendments would 'take some time'). The three-year term of Suhakam's current chair and commissioners runs from 2019 to 2022. Under the present Act, the Chief Secretary to the Government chairs a selection committee that then submits a list of candidates to the Prime Minister, who will make recommendations for the King's consideration.

2.40 A human rights unit in the Prime Minister's Department Legal Affairs Division deals with domestic human rights issues, and is overseen by the Minister of Law. The unit was tasked with the formulation of the new government's National Human Rights Action Plan.

SECURITY SITUATION

2.41 Malaysia's overall security situation is generally stable. Petty crime is common: thieves snatch handbags, shoulder bags, jewellery, mobile phones and other valuables from pedestrians, and pickpocketing and residential burglaries frequently occur. There is a high threat of kidnapping in the coastal areas of eastern Sabah. Extremists based in the southern Philippines are particularly active in the area between the towns of Sandakan and Tawau in eastern Sabah.

2.42 Protests and demonstrations occur from time to time and are largely peaceful. Malaysian police reported that approximately 55,000 protestors attended a largely peaceful December 2018 anti-CERD rally. There was however violence at a separate incident at a major Hindu temple outside of Kuala Lumpur (the Seafeld Hindu Temple) in November 2018 (see [Buddhists and Hindus](#)).

2.43 Consistent with global trends, terrorism is a long-standing concern in Malaysia. Malaysian security forces are responsive and generally capable. Following a terrorist attack in Jakarta on 14 January 2016, Malaysian security forces increased their visible presence and security measures on Malaysian streets. Despite this, the Islamic State in Iraq and the Levant (ISIL) was involved in a grenade attack in Kuala Lumpur on 28 June 2016. Although Malaysia has not experienced further ISIL-related attacks, and the overall number of foreign terrorist fighters from Malaysia has reportedly decreased, the country remains a source, transit, and, to a lesser extent, a destination country for suspected ISIL supporters. This included suspected third-country ISIL supporters deported from Turkey and those planning to travel to the southern Philippines. Between January 2013 and May 2019, Malaysian authorities claim to have made 519 counter terrorism

related arrests, while the Royal Malaysia Police Special Branch Counter-Terrorism Division has reportedly disrupted several domestic terror plots.

Gang Activity

2.44 Malaysian media citing official police statistics in early 2018 reported that over 100 illegal gangs, with an estimated 9,000 members, operated in Malaysia. Of these gangs, 65 were reported to be Chinese Malaysian, 20 were Malay and 18 were Indian Malaysian-run gangs. DFAT is not able to verify these statistics. Sources report many street-level gang members are Indian Malaysians, reflecting their relative economic vulnerability. High-level crime, including drug trafficking, is more typically associated with Chinese Malaysian gangs. Gangs engage in extortion and loan shark practices. Details of gang activities are difficult to obtain, as victims of gang-related crimes do not generally report them.

Trafficking in Persons

2.45 Malaysia is a destination, source and transit country for human trafficking. The 2019 US Trafficking in Persons Report reports that men, women, and children are commonly trafficked into forced labour and women and children are subject to sex trafficking. The majority of victims of trafficking (VoT) are documented and undocumented migrant labourers. In 2018, Malaysian authorities identified 1,305 potential VoTs and confirmed 97 VoTs, a significant decrease compared to 2,224 potential and 721 confirmed VoTs in 2017, and 3,411 potential and 1,558 confirmed VoTs in 2016. Of the 97 confirmed VoTs in 2018, 63 were women, approximately the same number of women victims confirmed in 2018; however, there was a marked decrease in the number of confirmed male and child VoTs in 2018 (34) compared with 2017 (659).

2.46 The second National Action Plan Against Trafficking in Persons 2016-2020, introduced under the previous government, sets out Malaysia's national goals for preventing and combating trafficking in persons. In March 2018, the government established an anti-trafficking court in the state of Selangor, which has historically had the highest number of trafficking cases. The government also expanded the mandate of the interagency law enforcement task force in 2018. The government has expanded trafficking investigations, prosecution, and convictions for those involved in trafficking activities. The aforementioned US Trafficking in Persons report claimed that some Malaysian law enforcement officers had accepted bribes to allow undocumented border crossings, and that complicity among law enforcement officials had hampered some anti-trafficking efforts. To date, culpable officials have typically avoided prosecution and punishment.

2.47 While UNHCR and NGOs provide the majority of VoT support services, the government also provides basic VoT services, including food, shelter, medical care, social and religious activities, and security. The Ministry of Women, Family, and Community Development maintains seven facilities specifically to house VoTs (four for women, one for men, and two for children). After an initial 21-day period, during which authorities do not permit VoTs any communication with persons outside shelters, VoTs are permitted to make one phone call per month and can engage in handicrafts and other income-generating activities.

Infant-Selling Syndicates and Factories

2.48 Infant-selling syndicates and factories are reportedly active in Malaysia. International media reports the price of an infant with falsified birth documents sold in Malaysia can range from USD400 (AUD574) to USD7,500 (AUD10,760), with value determined by ethnicity, skin colour, sex, and weight. Lighter skinned

males reportedly attract a higher price than a darker skinned female. Infants are typically obtained from economically disadvantaged migrant workers, some of whom are not permitted to have children in Malaysia (and would have their visas revoked if they did so) and whose children would otherwise be considered stateless (see [Children](#)); Malaysian women, some of whom are forced to give up children born out of wedlock (see [Women](#)); and sex workers, some of whom have unplanned pregnancies, and others who are deliberately trafficked into sex work and then raped to conceive children.

2.49 Infants are listed for sale on websites and social media, with listings typically claiming an infant is in need of a loving home, and noting the infant's due date, expected medical costs and a 'consolation fee' to be paid to the birth mother. Media reports that, once contact is made with a seller, a purchaser will be sent a photo catalogue of pregnant women to choose from, listing the women's names, jobs and stages of pregnancy. Although purchasers are generally couples who are seeking a child and who have become frustrated with lengthy adoption procedures, media reports suggest some purchasers are syndicates grooming children for paedophiles. Sources report infant selling is difficult to prove, as it can appear like a surrogacy arrangement.

2.50 Authorities made arrests in several cases following a 2016 investigation by Al Jazeera into Malaysia's underground baby trafficking trade. The RMP arrested a woman and two men in Kuala Lumpur for allegedly selling babies in December 2016, while in March 2017 media reported that the RMP had arrested a further eight people involved in a baby-selling syndicate, which had been in operation since 2012. The 2016 and 2017 cases were investigated under Section 14 of the *Anti-Trafficking of Persons and the Anti-Smuggling of Migrants Act* (2007), Section 18 of the *Child Act* (2001), and Section 15 (1) (c) of the *Immigration Act* (1959/63). The Al Jazeera investigation alleged that government officials had been involved in baby trafficking, with corrupt officials in the National Registration Department reportedly helping syndicates falsify birth certificates.

3. REFUGEE CONVENTION CLAIMS

RACE/NATIONALITY

3.1 Article 8(2) of the Constitution forbids discrimination against citizens based on religion or race. Article 153(2), however, accords a 'special position' for 'the Malays and natives of any of the States of Sabah and Sarawak', thus permitting affirmative action policies.

Ethnic Malays and indigenous groups - *Bumiputera*

3.2 Under Article 160 of the Constitution, a Malay person is an individual with characteristics that include professing the religion of Islam, habitually speaking the Malay language, conforming to Malay customs, and being the child of a Malay parent. Consequently, all Malay children are automatically registered as Muslim, and this is specified on their identity card. Article 153 of the Constitution gives ethnic Malays and other indigenous groups special status (see [Demography](#)). These groups are collectively known as '*Bumiputera*', although the term is not established in the Federal Constitution or any form of statutes. According to the Minister of Law, the term is often used by the Government for policy and often used to refer to Malaysian citizens who are either Malay, '*Anak Negeri*' (Indigenous peoples of Sabah and Sarawak, including Malays of these states), or '*Orang Asli*' (Indigenous peoples of peninsular Malaysia). The Malaysian Department of Statistics estimates there were 20.07 million *Bumiputera* in Malaysia in 2018, making up over 60 per cent of the population.

3.3 Government regulations and policies have included numerous preferential programs to boost the economic position of *Bumiputera*. Such programs promote increased opportunities for *Bumiputera* to access higher education, careers within the Civil Service (see [Civil Service](#)), commercial opportunities and housing. Some industries (including tertiary education and distributive trade) maintain race-based requirements that mandate a certain level of *Bumiputera* ownership, and the government and many government-linked companies maintain procurement policies that favour *Bumiputera*-owned supplies. National budgets continue to allocate large amounts of funding intended to benefit *Bumiputera*. The 2019 Federal Budget, for example, included RM2 million (AUD705,000) for *Bumiputera* scholarships, RM17.5 million (AUD6.1 million) to produce 600 *Bumiputera* accountants, RM210 million (AUD74 million) as part of the *Bumiputera* Empowerment Agenda to strengthen education and human capital development programs, and RM1 billion (AUD352.6 million) for *Bumiputera* SMEs. Such positive discrimination policies have succeeded in creating a significant urban Malay middle class. However, Malays still constitute a relatively high percentage of individuals in poverty.

3.4 There are some signs of a change of approach under the new government. Although the previous government's proposed *Bumiputera Economic Transformation Roadmap 2.0* contained affirmative action policies for *Bumiputera* economic inclusion, the new government has instead introduced the *Shared*

Prosperity Vision 2030 (see [Economic Overview](#)). Information on the details of implementing the policy are not yet publicly available.

3.5 Control of non-native acquisition of native land has led to tension between developers and indigenous groups across the country, especially in Sabah and Sarawak. Native title cannot be sold to a non-native person; however, sources report native titles are being converted to national titles and then on-sold for development. Sources claim government and private sector joint ventures are put forward under ‘poverty eradication’ mandates, especially in poorer rural areas, after which land can be purchased from native land holders for approximately RM500 (AUD173) in preparation for development, and profit dividends are not shared. Sources report there is no legal recourse for indigenous people who have lost their native title. Sources also claim foreign citizens travel to Sabah and Sarawak to marry indigenous persons of these states for the purpose of obtaining land rights.

3.6 A 1980s project to register undocumented people, focused on voter registration, also led to many foreign nationals being registered as Malay citizens and gaining *Bumiputera* rights to native land, contributing to ethnic tensions. Sources report that, prior to the 2018 election, under the former government, ‘communal titles’ were awarded to village communities in Sabah to guarantee rights to small acreages as a temporary measure while legal cases over land rights were pending. While a communal title is in place, no one is permitted to develop or sell the land. Sources claim the current government intends to abolish communal titles as a part of its anti-corruption campaign. DFAT is not aware of any action to revoke communal titles to date. Sources also report many Orang Asli were paid approximately RM 50 (AUD 17) by the Department of Orang Asli Development to convert to Islam in the 1990s. Those Orang Asli unwilling to convert were reportedly told that if they did not do so, their native land rights would be taken away (for conversion of Orang Asli in 2018, see [State Islamic Religious Departments](#)).

3.7 Given their preferential treatment enshrined in the Constitution, DFAT assesses Malays do not face negative official discrimination on the basis of their ethnicity. Indigenous peoples of Peninsular Malaysia (who are usually included within the category of *Bumiputera*) do face some additional barriers in practice, including in relation to land ownership.

Chinese Malaysians

3.8 The Malaysian Department of Statistics estimated there were 6.69 million Chinese Malaysians in Malaysia in 2018, making up around 20 per cent of the population. Chinese Malaysians are one of the largest overseas Chinese communities in the world, and are Malaysia’s second largest ethnic group. Chinese Malaysians comprise a high proportion of the professional and educated class, are prominent in business and commerce, and tend to be wealthier than other ethnic groups in Malaysia. Chinese Malaysians are concentrated in the west coast states of peninsular Malaysia, living in large urban centres, including within Kuala Lumpur and Penang, and the populous states of Johor, Perak and Selangor, where they comprise approximately 30 per cent of the population.

3.9 There are no laws or constitutional provisions that directly discriminate against Chinese Malaysians. Chinese Malaysians freely participate in political life, including as ministers in the current cabinet and in opposition parties, but Chinese politicians have occasionally faced public criticism for interfering with ‘Malay rights’. Since the 2018 general election, the largest ethnic Chinese party is the Democratic Action Party (DAP) which currently holds 42 of the 222 federal parliamentary lower house seats. Prior to the 2018 general election, the largest Chinese party was the Malaysian Chinese Association (MCA), a member of the BN coalition. However, while the MCA won seven seats in the parliament in the 2013 election and 15 seats in

the 2008 election, it won only one seat in the 2018 election. Chinese Malaysian community members advised that the 1MDB corruption scandal had galvanised anti-government sentiment among Chinese Malaysians (as well as others) and had led to greater political engagement.

3.10 There are relatively few Chinese Malaysians in the Malaysian civil service. The predominant use of the Malay language can be a barrier to Chinese Malaysian employment in the civil service, but does not preclude it (see [Civil Service](#)). In-country sources advise Chinese Malaysians often do not apply for government positions, as they believe the positions are more likely to be awarded to *Bumiputera* and provide limited promotional opportunity. Conversely, Chinese Malaysians are well represented in the private sector and many small and medium enterprises and large corporations are Chinese Malaysian. However, Chinese Malaysians report discrimination against the community in the business sector and claim unequal access to certain industries due to *Bumiputera* ownership laws. Chinese Malaysians also claim the National Department of Islamic Development (JAKIM) commonly raids Chinese Malaysian halal businesses, particularly food and beverage outlets, in order to shut the businesses down or extort bribes (see [Federal and State Law Enforcement Entities](#)). Chinese Malaysians also report obtaining and maintaining a business license can be difficult, due to *Bumiputera* ownership quotas and pressures to pay significant bribes. Chinese Malaysians also claim Inland Revenue Board (IRB) raids of Chinese Malaysian businesses leading to fines are common. Sources claim that IRB raids for ‘verification purposes’ can close down a business for months at a time, with significant economic consequences including loss of income and frozen bank accounts.

3.11 Chinese Malaysians are eligible to access government-provided national primary or high school education, but generally choose to attend one of the 1,298 national-type Chinese primary schools that teach in Mandarin (see [Education](#)). This is reportedly usually due to concerns about the quality of public education and perceptions that the curriculum has a strong focus on Islam. Chinese Malaysians report there are insufficient national-type Chinese schools in urban areas to meet enrolment demands, and cite anecdotes of families driving their children to Singapore to access non-Islamic, Chinese schools. Chinese Malaysians report that members of the community living in rural areas have better access to national-type Chinese schools, although many families are unable to live in rural areas due to lack of economic opportunity. The 2019 Federal Budget specified funding for Chinese schools for the first time.

3.12 The Unified Examination Certificate is a standardised test for Chinese high schools. It is a recognised qualification for entrance into tertiary institutions around the world including Australia, the United Kingdom and the United States. The Malaysian federal government does not recognise this qualification for entry into Malaysian public universities (however, this is currently being reviewed at federal level), although the Sarawak state government does. Since the formation of private universities in Malaysia, Chinese Malaysians (as well as Indian Malaysians) have comprised the bulk of the students within non-government universities, although entry remains limited by economic opportunity. Some Chinese Malaysians do not receive a place in public universities despite having high matriculation scores. In-country sources report this is likely attributable to individual-based societal-level discrimination, rather than official discrimination, as practical application (in the form of individual admission decisions) can vary based on the processing official.

3.13 In July 2015, a disturbance referred to as the ‘Low Yat riot’ occurred at a popular retail centre in central Kuala Lumpur. More than 100 Malays shouted anti-Chinese slogans, destroyed property and attacked bystanders following social media reports that a Chinese Malaysian vendor had cheated a Malay man over a fake smart phone. Police detained 25 people for rioting, sedition and theft. Officials dismissed any fraud by the vendor, and downplayed racial elements, blaming the outburst on social media. DFAT understands this was an isolated incident, and not indicative of a broader trend of societal violence against Chinese Malaysians. DFAT is not aware of any significant recent incidents of a similar nature.

3.14 DFAT assesses that Chinese Malaysians experience low levels of official discrimination when attempting to gain entry into the state tertiary system, or the civil service, including when seeking promotion opportunities, or when opening or operating a Chinese Malaysian owned business in the private sector.

Indian Malaysians

3.15 Indian Malaysians constitute the third largest ethnic group in Malaysia. The Malaysian Department of Statistics estimates there were 2.01 million Indian Malaysians in Malaysia in 2018, making up over six per cent of the population. Indian Malaysians predominantly live in major urban centres, including within Kuala Lumpur, Penang, Negeri Sembilan, Selangor and Perak in peninsular Malaysia. While more than 50 per cent of Indian Malaysians were employed in low-income jobs as of 2015, they also represented a high proportion of professionals (15.5 per cent in 2010), including 38 per cent of the entire medical workforce. Access to primary and secondary education is high, with 524 national-type Tamil-language primary schools across Malaysia (see [Education](#)). As with Chinese Malaysians, however, access to state-based tertiary education remains low. Approximately six per cent of student places at public universities were offered to Indian Malaysian applicants in 2009, and only four per cent in 2013 (most recent statistics).

3.16 As reported in [Education](#), despite the removal of government-sanctioned ethnic quotas in public universities in 2002, admission decisions continue to favour ethnic Malays over other ethnic groups. The Education Ministry announced in May 2019 that an additional 2,200 seats for Indian Malaysian students in the matriculation programs for 2018 was a ‘one-off’ initiative. Some Indian Malaysians do not receive a place in public universities despite having high matriculation scores. Members of the Indian Malaysian community report this is likely attributable to individual-based societal-level discrimination, rather than official discrimination. Practical application (in the form of actual decisions on individual applications) can vary based on the processing official. Members of the Indian Malaysian community report they can experience discrimination when applying for government loans for higher education, although note there are no specific government policy barriers. Indian Malaysians who cannot access school can pursue education through religious institutions.

3.17 The predominant use of the Malay language can be a barrier to Indian Malaysian employment in the civil service, but does not preclude it (see [Civil Service](#)). In 2016, an Indian Malaysian became Police Commissioner for Kuala Lumpur, the first non-Malay to hold this position. Indian Malaysians have held senior military positions. Indian Malaysians also freely participate in political life. Several members of parliament are ethnic Indian, as are four serving government ministers and the current president of the upper house, appointed in April 2016.

3.18 The previous government launched a ‘Malaysian Indian Blueprint’ in April 2017, which provided targets and policies for Indian Malaysian representation in areas including education and livelihoods. The new government reportedly intends to maintain (but review) the Blueprint under its administration. Notwithstanding strong representation in the professions, many Indian Malaysians remain poor and unemployment in the Indian Malaysian community is comparatively high. In November 2018, media reported the average unemployment rate for Indian Malaysians was 4.7 per cent, compared to 4 per cent for *Bumiputera*, and 2.4 per cent for Chinese Malaysians (see [Employment, Ethnic Malays and indigenous groups – Bumiputera](#), and [Chinese Malaysians](#)). Indian Malaysians claim employment opportunities in the private sector are given to Chinese Malaysians, and opportunities in the public services are given to *Bumiputera*.

3.19 Indian Malaysians comprise a disproportionately high number of incarcerated persons, with some (dated) figures suggesting they represent up to 48 per cent of the prison population. The Indian Malaysian

community reports poverty and lack of access to tertiary education opportunities can lead to members of the community becoming involved in criminal activities, known colloquially as ‘gangsterism’ (see [Gang Activity](#)), which can expose them to violence.

3.20 Members of the community report poorer families often seek support from Hindu temples or Christian churches, while others convert to Islam to obtain financial support. Indian Malaysians report the community does not generally face issues in practising Hindu or Christian beliefs, but can face difficulties registering and building places of worship. DFAT understands the Hindu caste system is present within the Indian Malaysian community and manifests most strongly in relation to marriage. It does not affect education or employment opportunities.

3.21 According to the 2017 Malaysian India Blueprint and in-country sources, an estimated 25,000 ethnic Indians in Malaysia are either stateless or have documentation issues. Such undocumented individuals are not able to access health or education services, or access financial loans, and are not able to marry due to lack of birth certification. Many undocumented ethnic Indians reportedly work in informal labour sectors, including road works, factory work and plumbing. Members of the Indian Malaysian community report that authorities have arrested many undocumented ethnic Indians when they have tried to register at hospitals to access health services, resulting in fear within the undocumented community about doing so.

3.22 DFAT assesses that Indian Malaysians face low levels of official discrimination when attempting to gain entry into the state tertiary system or the civil service. Indian Malaysians involved in ‘gangsterism’ face a moderate risk of violence.

RELIGION

3.23 Article 3(1) of Malaysia’s Constitution states Islam is the ‘religion of the Federation; but that other religions may be practised in peace and harmony in any part of the Federation’. Article 11(1) states every person has the right to profess and practise his religion and, subject to clause (4), to propagate it.

3.24 The government automatically classes individuals born in Malaysia of Malay ethnicity as Muslim. Some indigenous persons have adopted Islam, but many choose to practice traditional spirituality or Christianity. Ethnic Chinese Malaysians are generally Buddhist, Christian, Taoist, practice traditional Chinese folk religion and ancestor worship, or do not follow a religion. The majority of the ethnic Indian Malaysian population practise Hinduism, although a significant minority practises Christianity.

3.25 According to the most recent census in 2010, Muslims comprise 61.3 per cent of the population, Buddhists 19.8 per cent, Christians 9.2 per cent, Hindus 6.3 per cent, and Confucianism, Taoism, and other traditional Chinese religions 1.3 per cent. Other minority religious groups include animists, Sikhs, and Baha’i. Rural areas, especially in the east coast of peninsular Malaysia, are predominantly Muslim, whereas the states of Sabah and Sarawak have relatively higher numbers of non-Muslims. Media estimates approximately 75 per cent of Malaysian Christians live in Sabah and Sarawak, around 65 per cent of whom are indigenous *Orang Asli*.

3.26 While the Constitution guarantees freedom of religion, the practice of religions other than Sunni Islam is subject to some constraints. Laws such as Selangor state’s *Non-Islamic Religions (Control of Propagation amongst Muslims) Enactment* (1988) control and restrict the propagation of other religions, including non-Sunni versions of Islam. The UN Special Rapporteur in the field of cultural rights raised concerns over a trend of growing religious intolerance in Malaysia in September 2017.

3.27 Several organisations advocate the rights of minority religions, including the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism, an inter-faith committee established in 1983. Although religious bodies are required to be registered under the *Societies Act* (1966; amended 2006), some religious groups report they have instead registered under the limited guarantee category under *Companies Act* (2016) (see [Human Rights and Civil Society Organisations](#)).

3.28 The religious status of Muslims is recorded on their birth certificates and on their national identification cards. National identification cards do not distinguish between Sunni and Shi'a Muslims. Cards identify Muslims by religion on their surface. Other religious affiliations are not reflected on the surface of the card, but are encrypted on a smart chip instead. Married Muslims must carry a photo identification of themselves with their spouses as proof of marriage. This requirement has reportedly been enforced in practice, particularly in the northern states. Some vigilante groups have also attempted to enforce these and similar requirements, in accordance with Islam. According to media reporting in November 2018, a controversial Kedah-based anti-vice 'Badar Squad' had pressured Malaysian authorities to impose stricter controls over budget hotels and massage parlours after the Squad conducted raids in Sungai Petani, Kedah, to capture Muslim couples believed to be 'engaged in sin.'

3.29 Malaysia has a two-track legal system: common law, administered at the federal level; and *syariah*-based law, administered at the state level, which varies by jurisdiction. In June 2019, however, the office of the Islamic Affairs Minister announced that the National Council for Islamic Affairs had agreed on a proposal to standardise *syariah* criminal laws in all states. Although the proposed changes had not yet come into effect at the time of publication, it is envisaged that a uniform set of *syariah* criminal laws would be made by making amendments to the existing provisions, as well as adding new provisions to the *Syariah Criminal Offences (Federal Territories) Act*.

3.30 Family and personal laws governing Muslims, as well as laws relating to religious offences, are promulgated at the state level (see [Family Law](#)). Parliament can only pass legislation on such matters when it comes to the Federal Territories. Customary law (*adat*) – ancient unwritten laws that are found in a particular place where no rules have ever been enacted by the legislative authority – can also apply in Malaysia. Customary laws are generally concerned with matters of personal status (for example landholding and inheritance, or marriage).

3.31 Matters considered by states under *syariah*-based law relate to succession, betrothal, marriage, divorce, adoption, guardianship, approval of mosques or any Islamic place of worship, and the 'determination of matters of Islamic law and Malay customs'. The federal government delivers national rulings and provides guidance to state religious departments through the National Department of Islamic Development (JAKIM) and the National Fatwa Council (see [Federal and State Law Enforcement Entities](#)). These bodies sit within the Prime Minister's portfolio. The PH government has indicated it has plans to reform JAKIM, although had not yet done so at the time of publication.

3.32 The manner in which Islamic affairs are organised at the state level is laid out in the Administration of Muslim Law Enactments. These state-based Enactments are generally similar in content – but not identical to one another. Religious authorities issue *fatwas* to resolve problems when there is doubt over whether a practice is permissible or forbidden in Islam. *Fatwas* have been issued on a range of topics, from 'vaping' to business dealings with non-Muslims. *Syariah*-based law applies only to 'persons professing the religion of Islam'. However, the enforcement of *syariah* sometimes affects non-Muslims, particularly on matters involving religious conversion and family.

3.33 The power to issue a *fatwa* rests with the Fatwa Committee of each state. In Selangor, for example, the Administration of the Religion of Islam (State of Selangor) Enactment 2003 provides for the creation of the Selangor Islamic Religious Council. Under the Enactment, the power to make a *fatwa* rests with the Fatwa Committee, which consists of the Mufti (who serves as the Chairman), the Deputy Mufti, the State Legal Adviser, two members of the Council, an officer of the Selangor Islamic Religious Department (appointed by the Council), between two and seven ‘fit and proper’ persons appointed by the Council, and an officer of the Mufti’s Department who serves as its Secretary. The Council will then ask the Sultan for his assent to publish the *fatwa* in the Gazette. Upon publication in the Gazette, a *fatwa* becomes binding on every Muslim in the State of Selangor.

3.34 The previous government introduced a national *syariah* index in February 2015, designed to evaluate and assess the government’s performance against the five aspects of *syariah*: protection of religion; protection of life; protection of the mind; protection of the race; and protection of property. The index focuses on eight areas of government policy: law; politics; the economy; education; health; culture; infrastructure; and environment and social issues. On 3 August 2017, the federal government announced it had obtained a score of 76.06 per cent on its own self-rated index, categorised as ‘very good’, up from 75.42 per cent in 2015. The new government is still using the *syariah* Index, and is reportedly actively implementing policies based on the higher goals of *syariah*.

3.35 The government has prohibited many publications in Malaysia based on an assessment that they contain ‘deviant’ teachings that could incite religious disharmony (see [Shi’a Muslims](#)). The use of the word ‘Allah’ by non-Muslims to refer to their god(s) was banned by the courts in 2013, on the basis that Article 10 of the Constitution on freedom of expression must be read in conjunction with other provisions, namely Article 3(1) that holds Islam as the religion of the federation (see [Islam](#) and [Malaysian Christians](#)). The Federal Court unanimously upheld this ruling in 2015.

3.36 While the government rarely intervenes in instances of religious persecution, harassment or criticism of non-Muslims, there are increasing reports of the censorship of non-Muslims for commenting on any matter pertaining to Islam. JAKIM has reportedly activated a team that monitors complaints of provocation towards Islam, and people can report complaints directly via WhatsApp. The current King, Sultan Abdullah, has reportedly warned Malaysians against making any ‘insinuating comments’ regarding Islam, and opposition parties, led by the United Malays National Organisation (UMNO; the dominant party in the BN opposition coalition) have also warned the non-Muslim community in Malaysia not to meddle in the Islamic affairs of the country. Self-censorship by non-Muslims has also increased; during 2019 Chinese New Year, which marked the Year of the Pig, many businesses refused to display images of the pig due to perceived Islamic sensitivities.

3.37 Islamic groups and leaders have criticised, and in some cases harassed, commentators and community groups for expressing concern over a perceived increase in the Islamisation of government, and over shrinking space and freedom for non-Muslims to practise their faith. In 2016, the Mufti of Pahang labelled DAP leaders as ‘Kafir Harbi’ (non-Muslims against Islam) for protesting a private member’s Bill seeking to extend and increase punishments under *syariah*-based law. DFAT is aware of few reported incidents of violence against religious ‘dissenters’. DFAT is aware of reports of increasing religious segregation of school entries, exits and canteens, and of reports of a new trend of Malaysians being arrested for consuming alcohol.

Places of Worship

3.38 Destruction or damage of any place of worship is an offence under Section 295 of the *Penal Code Act* (1997) and is subject to up to two years of imprisonment or a fine, or both. While there are many non-Muslim places of worship in Malaysia, in-country sources advised DFAT that procedures and processes for building new non-Muslim places of worship had become increasingly restrictive. DFAT notes, however, that procedures and processes differ across states.

3.39 State governments have exclusive authority over allocation of land for, and the construction of, all places of worship, as well as authority over land allocation for all cemeteries. Local authorities have, on occasion, prevented or delayed the construction of non-Muslim places of worship. In 2014, authorities granted a Christian church in Selangor state planning permission six years after it had submitted its proposal. In 2017, state authorities allocated land for an interfaith place of worship in Putrajaya. Non-Muslim groups report difficulties in obtaining permission from local authorities to build new places of worship, leading groups to use buildings zoned for residential or commercial purposes for religious services.

3.40 The government has denied legal status to some religious groups, including Jehovah's Witnesses and Mormons. While there is no legal requirement for non-Islamic organisations to register with the government, in order to become an approved non-profit charitable organisation, all groups must register with the government's Office of the Registrar of Societies (RoS) (see [Religion](#)). Many churches report difficulty in obtaining registration.

Islam

3.41 The most recent census in 2010 found there were 17.38 million Muslims in Malaysia (including both Sunni and Shi'a branches). Several political parties in Malaysia have placed greater emphasis on Islam in order to attract the majority (Malay-Muslim) vote in recent years, particularly around federal election campaigns. Malaysia restricts the rights of followers of any branches of Islam other than Sunni, with those following Shi'a or other branches subject to arrest for deviancy. Former Prime Minister Najib promoted UMNO as the defender of the 'sanctity and dignity' of Islam against 'deviant' interpretations, and the former government banned Shi'a Islam, Ahmadiyyah and other non-Sunni sects on these grounds (see [Ahmadis and Shi'a Muslims](#)). In November 2018, however, the Minister for Islamic Affairs was reported as saying that 'no one should be persecuted for their beliefs, including Muslims who follow Shi'a teachings.' In the May 2018 election, BN (in which UMNO is the dominant party) received 35-40 per cent of the vote of the Malay (i.e. Muslim) vote in peninsular Malaysia and conservative, Islamic party PAS received 30-33 per cent .

3.42 Several high profile incidents over the last few years illustrate an increasing trend towards religious conservatism in Malaysian Islam. In September 2017, state religious authorities detained a visiting Turkish academic during a speaking tour of Malaysia organised by the Islamic Renaissance Front. The government censor banned his books, along with around a dozen other titles, for challenging Malaysia's conservative Islamic approaches: according to the former Deputy Prime Minister, the books were 'against societal norms'. In 2017, two public laundries restricted their customers to 'Muslims Only', attracting significant media attention. Following a royal rebuke by the Sultan of Johor, the owner of the store in Johor apologised and re-opened his shop to all, although the royal rebuke was itself criticised by the former Minister for Islamic Affairs. The Crown Prince of Perlis, the state in which the other laundry was located, visited the laundry and convinced the owner to change the practice. At the urging of Islamic party PAS, in September 2019 the states of Terengganu and Johor both announced they would prohibit the holding of Oktoberfest and other

alcohol-themed events. There is also evidence of decreasing tolerance towards sexual and religious minorities on religious grounds (see [Sexual Orientation and Gender Identity](#)).

3.43 In April 2017, PAS leader Abdul Hadi Awang tabled a private member's bill in parliament to increase *syariah* courts' punishment powers. However, the bill has not been tabled since the change of Government in May 2018.

3.44 In light of the increasing influence of conservative Islam over recent years, pressures to display religious piety have increased within Malaysia's Muslim community. DFAT is aware of reports of individuals notifying religious enforcement officers if community members do not attend the mosque (see [State Islamic Religious Departments](#)).

Shi'a Muslims

3.45 Shi'a Muslims form a small proportion of Malaysia's overall Muslim population. While population estimates vary significantly from 2,500 to 250,000 people, a prominent Malaysian academic estimates the population at 50,000. Shi'a Muslims in Malaysia predominantly originate from Iran. Shi'a and Sunni Muslims live side by side. Some intermarry and have family members that practise either Muslim faith. National identification cards do not distinguish individuals as Shi'a Muslims. There are no restrictions on movement specific to Shi'a Muslims within Malaysia.

3.46 Both federal and Islamic laws have been applied to harass and discriminate against Shi'a Muslims. A 1996 *fatwa* issued by the Committee of the National Council for Islamic Affairs – with effect under *syariah*-based law – requires Muslims to follow the Sunni Islam doctrine (see [Islam](#)). The *fatwa* prohibits all other Muslim doctrine, along with the publication, broadcast or distribution of resources related to these teachings. State Islamic authorities, empowered by *Syariah Criminal Offences* enactments of each state, can take action against an individual acting in contempt of the *fatwa*. Under the *fatwa*, authorities consider Shi'a Islam a 'deviant' form of Islam, and 11 out of 14 states ban Shi'a Islam (the exceptions are Kelantan, Sabah and Sarawak). Several state constitutions (Kelantan, Perlis, and Kedah) recognise the state's official religion as Ahli Sunnah WanJama'ah (Sunni Islam). These state laws enable state Islamic authorities to detain and prosecute Shi'a found to be proselytising.

3.47 There have been a number of cases in recent years in which authorities have prevented or disrupted Shi'a religious events. In August 2018, 10 Shi'a men and women were detained by the Kelantan Islamic Affairs Department following a raid of a religious centre (see [State Islamic Religious Departments](#)). In September 2018, 50 Shi'a, including children, were arrested in Kelantan for practising their religion. In September 2019, the Religious Affairs Department of Selangor arrested 23 people for breaking state enactments banning Shi'a practices. Eight people, including four foreigners, were arrested in Johor in September 2019 during a raid at a private gathering of Shi'a followers. Both of the September 2019 raids were reportedly part of an annual crackdown by religious authorities against Shi'a Muslims in conjunction with the 10th day of the Remembrance of Muharram (a major Shi'a religious ritual).

3.48 Local non-government groups and religious authorities advised DFAT that enforcement efforts generally focused on conversions (to Shi'a Islam) and proselytisers, not on assembly or worship. DFAT understands Shi'a Muslims may face interference and difficulty practising their religion. The overall number of Shi'a Muslims arrested since the introduction of the 1996 *fatwa* outlawing Shi'a Islam has been limited. Very few arrests have resulted in charges laid, with the majority of people released quickly without charge.

3.49 Official public narratives about Shi'a Muslims are also framed by Friday sermons that are prepared by state religious departments and broadcast publicly. These sermons have titles such as 'The Shi'ite Virus' (November 2013, Selangor Department of Islamic Development), 'The Shi'a Deception' (June 2014, Selangor Islamic Religious Department), and 'Together we avoid the Shi'ite heresy' (September 2011, Islamic Department of Terengganu) (see [State Islamic Religious Departments](#)). Authors, such as Faizal Tehrani, have also had their books banned over allegations that they contain elements of Shi'a Islam. Faizal Tehrani and his extended family have been harassed by religious authorities, including unwanted visitation in the middle of the night, harassment at places of work, and death threats (see [Federal and State Law Enforcement Entities](#) and [State Islamic Religious Departments](#)). Sources report harassment of Faizal Tehrani and his family continues to occur under the new government.

3.50 DFAT assesses that most Shi'a generally live free from societal discrimination on a day-to-day basis. They face a low level of official discrimination, however, in that religious authorities may prevent them from being able to worship freely. Proselytising or promoting Shi'a Islam can result in a higher risk of official discrimination, and may include arrest or other forms of harassment by state authorities.

Ahmadis

3.51 The Ahmadiyyah (Ahmadis) form a small proportion of Malaysia's overall population. While population estimates vary from 5,000 to 10,000, no official figures are available. Ahmadis are an Islamic group from Punjab, founded by Mirza Ghulam Ahmad, who they recognise as a prophet. As with Shi'a Muslims, Ahmadis in Malaysia have faced discrimination, arrest, persecution and other barriers to their right to worship.

3.52 Ahmadis in Malaysia have been the subject of several *fatwa*, beginning with a 1975 *fatwa* by the Selangor Fatwa Council that declared Ahmadis 'not Muslims' and recommended that Ahmadis be denied privileges afforded to Muslims in Malaysia. In 1998, the state of Selangor issued another *fatwa*, under the *Administration of Islamic Law Enactment* 1989, declaring the group to be 'Kafir' (infidels) and banning four books concerning the Ahmadi faith. The *fatwa* also proclaimed the state had a duty to ensure their conversion to Sunni Islam. These *fatwa* by Malaysian religious authorities have been the basis for arrests, detention and blocking of access to religious sites of members of the Ahmadi community. In July 2018, the Shah Alam High Court ruled that the Religious Affairs Department of Selangor had no authority over Ahmadi Muslims, and Ahmadis were not covered under Syariah jurisdiction, because the 1975 and 1998 *fatwas* had ruled that Ahmadis were 'not Muslims' in Malaysia.

3.53 Although welcomed by Ahmadis, this civil court decision reinforced perceptions held by religious authorities and the public that Ahmadis are 'not Muslim'. The UN Special Rapporteur on freedom of religion or belief recognised this in his 2017 interim report, and noted minority communities, such as the Ahmadis, are 'particularly vulnerable to allegations of blasphemy and apostasy, (see [Religious Conversion and Apostasy](#)), which can result in further persecution.

3.54 The federal and state governments continue to forbid religious assembly and worship for 'deviant groups,' including Ahmadis. In 2017, while the Ahmadi community reported they were generally able to maintain a worship centre, religious authorities did not allow them to hold Friday prayers, as prayers could only be performed in an officially registered mosque. In 2017, the Muslim Consumer Association of Malaysia (PPIM), a government-supported group, held a press conference denouncing the Ahmadis, and implied PPIM could take violent measures against them. Police intervened to prevent a PPIM protest outside Ahmadi headquarters near Kuala Lumpur, although PPIM remained vocal in its call for the government to close down

the organisation and its mosque. Local authorities have also permitted billboards proclaiming 'Ahmadis are not Muslims' to be placed in front of PPIM's headquarters for several years.

3.55 DFAT assesses that most Ahmadis generally live free from societal discrimination on a day-to-day basis. They face a low level of official discrimination, however, in that religious authorities may prevent them from being able to worship freely. Proselytising or promoting Ahmadi Islam can result in a higher risk of official discrimination, and may include arrest or other forms of harassment by state authorities.

Christians

3.56 Christians reportedly accounted for close to 10 per cent of the total population in 2017, and are predominantly located in Sabah and Sarawak. While a broad range of ethnicities practises Christianity, approximately 20 per cent of the Chinese Malaysian community is Christian, and reports indicate a growing number of converts to Christianity are ethnic Chinese middle-class individuals who were originally Buddhists or Confucianists. While Christian politicians are present in most political parties, they tend not to represent specifically Christian interests.

3.57 Although Christians claim to have used the word 'Allah' for centuries in their religious practice in Malaysia, official impediments are in place on their use of the word 'Allah' (Arabic for God). The Home Affairs Ministry banned the Catholic newspaper, *The Herald*, from using the word 'Allah' under the *Printing Presses and Publications Act* (1984) in 2008. The Malaysian Court of Appeals and Federal Court upheld the ban.

3.58 In 2013, the federal government ordered the Religious Affairs Organisation of Selangor to return bibles seized from the Bible Society of Malaysia for containing the word 'Allah'. In October 2017, the High Court of Kuala Lumpur rejected a Sabah church's request for judicial review of the ban on the use of the word 'Allah' in its education material for Christian children, and rejected the church's request for disclosure of: documents containing reasons for the government's ban; documents showing confusion among Malaysians or misunderstanding between Muslims and Christians over the use of the word 'Allah' in Malay language Christian publications; and documents showing threats to public order due to non-Muslims' use of the term. The court reasoned that disclosure was not permitted as such information was classified in accordance with the Official Secrets Act. Following the High Court's decision, religious tensions escalated, resulting in attacks on churches. According to media reporting in November 2018, the High Court postponed a case brought by a Sarawak *Bumiputera* Christian asserting the right to use 'Allah' as a Malay translation for 'God'. The case remained postponed as at the time of publication.

3.59 In April 2015, around 50 protestors demanded the removal of the cross on a church in a predominantly Muslim suburb of Kuala Lumpur, describing it as a religious symbol that challenged Islam. The church representatives removed the cross within hours and there were no reports of violence. The then-Prime Minister publicly stated that the actions of the protestors were not acceptable. While DFAT is not aware of any similar incidents in recent times, members of the Christian community have reported that 'structural crosses' (the use of structural beams in buildings that coincidentally form the shape of a cross) have been banned in Sabah as they have been interpreted to be against Islam.

3.60 There have been a number of abduction cases in recent years involving Christian pastors suspected of proselytising, including with probable state involvement (see [Enforced or Involuntary Disappearances](#)). Church leaders have called on the government to take steps to clarify and separate the jurisdictions of the religious authorities and the Royal Malaysia Police.

3.61 In November 2016, Pope Francis appointed Archbishop Emeritus Anthony Soter Fernandez as Malaysia's first-ever Cardinal. In June 2016, Pope Francis received Malaysia's first Resident Ambassador to the Holy See; the government announced his appointment in March 2016.

3.62 DFAT assesses that Christians generally live free from societal discrimination on a day-to-day basis. They are usually able to worship freely without significant official interference. Those proselytising or promoting Christianity to Muslims face a moderate risk of harassment by state authorities that may include violence or abduction.

Buddhists and Hindus

3.63 Buddhists reportedly represented just under 20 per cent of the total population in 2017, while Hindus made up 6.3 per cent. Local sources estimate the current proportion of Chinese Malaysians who are Buddhist is around 80 per cent. Most Hindus are Indian Malaysian.

3.64 Federal and state governments have supported the building of Hindu or Buddhist places of worship throughout Malaysia. Former Prime Minister Najib allocated RM2 million (approximately AUD660,000) to build a new Hindu complex in Selangor on 7 February 2013 and allocated land in 2017 for a mixed-denominational religious centre in Putrajaya. A new Buddhist complex was completed in 2013 in Selangor. However, following opposition to its initial central location, the complex was re-built in a remote district, without easy public transport routes. Several Hindu and Buddhist advocacy organisations are active in Malaysia, including the Hindu Rights Action Force, an umbrella organisation of NGOs focused on addressing Indian Malaysian concerns. There have been cases in which Hindus and Buddhists have faced compulsory acquisition of places of worship and some community backlash in response to relocated temples.

3.65 In December 2018, the government lifted a temporary suspension on the *Sedition Act* (1948) following a violent riot at the Seafeld Hindu Temple outside of Kuala Lumpur on 26 and 27 November over the proposed relocation of the temple (see also [Security situation](#)). A group of 50 Malays – allegedly paid by the would-be developer – broke into the temple, sparking a localised riot between Indians and Malays that left several people injured and one Malay firefighter dead. Although Prime Minister Mahathir and the police stated that it was a criminal matter rather than a racial one, media largely portrayed the incident as a racial riot. DFAT assesses that this particular incident was localised and not indicative of any broader trend.

3.66 DFAT assesses that Buddhists and Hindus are usually able to live free from societal discrimination on a day-to-day basis. They are usually able to worship freely without significant official interference. On rare occasions, they may face societal difficulties in cases where compulsory acquisition leads to their places of worship being relocated into inhospitable locations.

Religious Conversion and Apostasy

3.67 Formally, leaving or converting from Islam – apostasy – is extremely difficult. Despite the guarantee of freedom of religion under Article 11 of the Constitution, the civil courts have ruled that they have no power to intervene in apostasy cases that fall under the jurisdiction of Malaysia's *syariah* courts.

3.68 Several *syariah*-based laws apply to Muslims at the state level. State governments do not recognise marriages between Muslims and non-Muslims and children born of such marriages are considered illegitimate. DFAT is aware of cases where one spouse has (after marriage) converted to Islam, and

subsequently claimed that non-Muslim family members have lost all rights to inheritance and custody of children. In January 2018, the Federal Court ruled that both parents had to consent to change a child's religion (see [Family Law](#)). While it is relatively common for individuals to convert to Islam in order to marry a Muslim, families in some communities may view this negatively.

3.69 Individuals who have attempted to convert from Islam have faced long and expensive legal battles, involving both the federal civil courts and state *syariah* courts. An individual wishing to convert from Islam must first obtain permission from a state *syariah* court. The court will declare them an apostate. State *syariah* courts rarely grant such declarations and, in some states, including Melaka, Pahang, Perak and Sabah, apostasy is a crime punishable by fine, a jail sentence, or caning. In Kelantan and Terengganu, state laws allow the death penalty for apostasy, although federal law does not allow its implementation. In February 2018, the High Court ruled that only *syariah* courts could hear cases on conversion from Islam.

3.70 The US State Department has reported on a number of cases in which individuals who have attempted to convert from Islam have been compelled to attend religious rehabilitation centres. In many cases, converts concealed their new beliefs. Religious converts have also reported difficulty changing their religion on their national identification cards.

3.71 Only 168 of 863 Muslims who attempted to convert between 2000 and 2010 received permission to do so. In these cases, the *syariah* courts determined that all 168 applicants had not been Muslim to begin with, which thereby prevented any legal precedent supporting conversion from Islam. The landmark case of Lina Joy, a Muslim who converted to Christianity to marry a Christian in 1998, demonstrated the impediments to conversion from Islam. The federal court found in 2007 that she was legally a Muslim and her religious status could not be removed from her national identity card, as 'a person cannot, at one's whim and fancies renounce or embrace a religion'. She was thus unable to marry her Christian partner. Conversely, in December 2015, a 40 year-old man in Sarawak, who had been a Christian until his parents converted to Islam when he was eight years old, received a letter of release from Islam by the civil court on the basis that his conversion occurred when he was a minor, and had no choice in the matter. The civil court judge ruled that the *syariah* court had no jurisdiction and the 'Lina Joy' case did not apply, as he was not a Muslim from birth.

3.72 DFAT assesses that Muslims who attempt to convert from Islam or marry a non-Muslim face a high risk of official discrimination under Malaysian law in the form of refusal of official permission to convert and potential punishment for apostasy in some states.

Atheism

3.73 Malaysian courts have not tested the constitutional legality of atheism. As outlined in the previous section, Muslims who leave the faith can be charged with apostasy under state *syariah* laws. Non-Muslims could potentially also face charges under the country's non-propagation laws if it could be proven they sought to spread atheism to Muslims. In November 2017, a former deputy minister in the Prime Minister's Department, Dr Asyraf, said in Parliament, that atheism should not be allowed and that it contradicted both the Constitution and Malaysia's National Principles. Referencing the Constitution, he said 'Freedom of religion is not freedom from religion', and asserted the government could draft legal provisions necessary to prevent such beliefs and doctrines.

3.74 Malaysian lawyers have contested Dr Asyraf's claims that atheism is unconstitutional in Malaysia, stating that being an atheist is protected under the Constitution, while also noting there are no

constitutional provisions specifically prohibiting the spread of atheism. Media has reported that some known atheists have received death threats and been forced to hide their beliefs from family.

3.75 With limited data available, the 2010 census estimates approximately 300,000 individuals could be considered atheists; professing to belong to what may be described as non-religious belief systems or belief systems that do not include a deity. This represents less than 1 per cent of the Malaysian population.

3.76 In August 2017, the Malaysian government commenced investigating the Kuala Lumpur branch of the international organisation, Atheist Republic, after a photo of their annual general meeting went viral. The Religious Department investigated whether any Muslims were involved in the meeting, and Dr Asyraf claimed if it was 'proven that Muslims are involved in atheist activities that could affect their faith, the state Islamic religious department could take action'. Dr Asyraf said ex-Muslims found to be part of the atheist gathering would be counselled, while anyone found spreading atheist ideas could be prosecuted. Former minister Datuk Seri Shahidan Kassim called for public support to 'hunt them down', claiming that atheism went against the Constitution. There has not been subsequent media reporting on the incident. In a global index released by the International Humanist and Ethical Union in December 2017, Malaysia was listed as a country that practises 'active persecution' of the non-religious.

3.77 DFAT assesses that Muslims face a high risk of official discrimination should they attempt to renounce their faith for atheism, or if they are believed to be proselytising, and may face a low risk of societal harassment.

Family Law

3.78 The Constitution provides men and women equal rights to inherit, acquire, own, manage, or dispose of any property, including land. While federal civil law applies to all Malaysian women, *syariah* applies to Muslim women at the state level, for a number of family matters, including succession, betrothal, marriage, divorce, adoption and guardianship. The federal *Guardianship of Infants Act* (1961) was amended in 1999 to give mothers equal parental rights to fathers, but only four states to date have extended the provisions of the Act to Muslim mothers. At the federal level, a cabinet directive was issued in September 2000 to allow mothers to sign all documents related to their children, to ensure all Malaysian women, irrespective of race and religion, are conferred the right of equal guardianship. The government does not recognise marriages between Muslims and non-Muslims and considers children born of such marriages illegitimate.

3.79 Under *syariah*-based laws, the consent of only one parent is required to convert a child to Islam, allowing the Muslim parent to gain sole custody through the *syariah* courts (which do not permit the participation of non-Muslims). This has created cases where *syariah* court rulings have affected non-Muslims who have no ability to defend their position or appeal the court's decision. An initial draft of the *Law Reform (Marriage and Divorce) (Amendment) Act* (2017) included a clause preventing one parent from converting minors without the consent of the other parent, but this clause was removed before the proposed amendments were tabled in parliament. In January 2018, Malaysia's highest court, the Federal Court (see [Judiciary](#)), declared in a landmark decision that the consent of both parents was required to issue a certificate of religious conversion for a child. The court's decision has not yet been reflected in legislation.

3.80 In accordance with Section 8 of the Adoption Act (1952), an adoption application can be made at any National Registration Department office after caring for a child for two years. Adoption through the Registration of Adoptions Act (Act 253) is open to all eligible persons whether Muslim or not. Adoption by means of a court order (Act 257), however, is applicable only for non-Muslim applicants. Section 4(4) (a)

notes that for a court-ordered adoption with consenting birth parents (court discretion exists with regard to exceptions); the child must have lived with the adoptive parents for at least three consecutive months before the order will be granted. Section 17(1) notes that, upon application for adoption, the court may make an interim order giving custody of the child to the applicant for a period of no less than six months and no more than two years (the application process normally takes six to nine months). Under Section 25(A)(1)(a) and Section 25(A) (5) and (6), once approved for adoption, an order for adoption will be sealed and a copy will be sent to the National Registration Department for registration in the Adopted Children Register. The National Registration Department is required to cancel the original birth certificate and re-issue a certificate for the adopted child. The new certificate will carry the name of the adoptive parents and the child as if the child was born to the adoptive parents, and will not have any reference to the adoption or to the child's birth parents. The Adoption Act 1952 stipulates that while a Muslim child cannot be adopted by non-Muslim parents, a non-Muslim child can be adopted by Muslim parents.

3.81 In practice, however, the National Registration Department does not automatically recognise adopted children as Malaysian when the identity and citizenship of their biological parents is unknown. Sources report that if an individual wishes to adopt an unregistered, stateless child, they can enter into a court-ordered guardianship arrangement until the child reaches the age of 18, while awaiting approval for formal adoption. Sources also report that two years after adoption is formalised, the guardian can provide the court-ordered guardianship documentation and the child's birth certificate to obtain a certificate of adoption.

3.82 Citizenship requirements are not clearly defined by statute. Both the *Adoption Act* and the *Registration of Adoptions Act* are silent on the issue of citizenship for adopted children, and Sabah and Sarawak have separate laws governing the issue. Sources report a certificate of adoption does not necessarily give a child the right to citizenship, and such children remain unable to access services. Where a child's original immigration status is uncertain or unknown, the National Registration Department will declare the child as a 'permanent resident' or 'non-citizen' on the re-issued birth certificate or the certificate of adoption, and disregard the fact that the adoptive parents may be Malaysian citizens. According to media reporting, the government has been known to refuse citizenship to those with unknown birth parents, despite having been legally adopted by Malaysian parents, or because they were born out of wedlock to a Malaysian father and non-Malaysian mother. The government has announced intentions to provide schooling to stateless children; however, implementation was yet to take place as at the time of publication. It is technically possible, albeit rare and time consuming, for such children to be granted citizenship through a judicial review.

3.83 A non-Muslim (male or female) must convert before getting married to a Malaysian Muslim. The process of conversion differs from state to state as determined by the relevant religious authorities. The Federal Territories require an individual to 'utter in reasonably intelligible Arabic' the two clauses of the 'Affirmation of Faith', after which the individual is adjudged to have become a Muslim. The Islamic authority in the convert's place of residence conducts the conversion. Some NGOs also conduct religious conversions in Malaysia. The local Islamic authority issues a certificate of conversion, which updates the religious status on the national identity card. A foreigner must present a declaration from the home government of their initial religious status in order to change their religion.

POLITICAL OPINION (ACTUAL OR IMPUTED)

3.84 Article 10 of the Constitution guarantees citizens the right to freedom of speech, freedom of assembly, and freedom of expression, but allows these rights to be restricted by law in the interest of security. A number of longstanding laws restrict freedom of speech, including the *Sedition Act* (1948), the *Official Secrets Act* (1972), the *Printing Presses and Publications Act* (1984), the *Communications and Multimedia Act* (1998), and criminal defamation laws. If found guilty under the *Sedition Act*, an individual can face up to three years in jail, be fined up to RM5,000 (AUD1,600) or both.

3.85 Under the former government, political opposition and dissent, particularly direct criticism of the government, often resulted in legal harassment, detention and prosecution. Upon coming to power in May 2018, the new government dropped a number of sedition cases (which were widely perceived to be politically motivated) against a number of activists and prominent politicians, and ended government appeals of adverse rulings in a number of other expression-related cases. In addition, Anwar Ibrahim, the former deputy Prime Minister and one-time leader of a now-defunct opposition alliance, received a full pardon from the then King for sodomy convictions and was released from prison in May 2018. The then King did not provide a reason for the pardon, but human rights groups claimed the convictions were politically motivated and the trial lacked procedural fairness (see also [Sexual Orientation and Gender Identity](#)). Authorities also dropped charges brought against a number of Anwar's supporters who had organised protest rallies following his sentencing.

3.86 According to Human Rights Watch, freedom of speech has generally improved following the change of government in 2018. Government statements have generally indicated the development of a more open environment for public discussion of issues previously considered off limits, and civil society also reports increased openness, although tangible reform of civil and political rights remains slow. Media sources also note that sensitivity, and thus the need for self-censorship, persists on issues that conflict with conservative Islam.

3.87 The government temporarily suspended the *Sedition Act* between October and November 2018, reinstating it following the violence surrounding the Seafeld Hindu Temple dispute (see [Buddhists and Hindus](#)). While sources report that no new charges under the *Sedition Act* have been laid since the change of government, some investigations have been done under the *Sedition Act* and some cases that commenced under the previous government have continued to proceed through the court system. For example, in July 2019, Muslim preacher Wan Ji Wan Hussin's cross-appeal in a sedition case was upheld by the High Court and his sentence enhanced. The Attorney General reportedly claimed he was not aware of the case until it was reported in the media.

3.88 Although the Constitution states that all citizens have 'the right to assemble peacefully and without arms', authorities have traditionally closely administered political assemblies and rallies under the *Peaceful Assembly Act* (2012; PAA) and the *Criminal Code*. Permits were difficult to obtain and could be restrictive in their application. Authorities arrested individuals for organising or engaging in rallies, and occasionally used force to control crowds.

3.89 There are signs of change under the new government, however. For example, in December 2018 the new government allowed a peaceful rally protesting its policy position on CERD (see [Human Rights Framework](#)), while in July 2019 the House of Representatives passed an amendment to the PAA, which is expected to come into law in late 2019. The amendments decrease the number of days' notice organisers are required to provide ahead of a rally (from 7 to 5 days), gazette two locations in Kuala Lumpur as being designated for peaceful assemblies, and set the maximum penalty for breaching the PAA to 5,000RM

(AUD1,700), while no longer recording it as a criminal offence. According to sources, while some recent police investigations have been launched under the PAA, no charges appear to have been laid.

3.90 Malaysia does not have significant separatist sentiment. Sabah Sarawak Keluar Malaysia (SSKM), a small social media-based political group campaigning for the secession of Sabah and Sarawak, arranged two forums in 2017 called 'Sarawak for Sarawakians', which were attended by approximately 200 people. DFAT understands that, while there is debate on the topic, it focuses on more autonomy, not independence. In April 2019, the government failed to pass a bill to reinstate certain aspects of the 1963 Malaysia Agreement, designed to restore the original wording of the Malaysian constitution regarding the status of Sabah and Sarawak.

3.91 The *Election Offences Act* (1954) makes it an offence for a candidate to 'promote feelings of ill will, discontent, or hostility' to induce voters to vote or refrain from voting at an election. While some inter-party and societal violence occurred in connection with the 2013 elections, the most recent 2018 elections were peaceful.

3.92 DFAT assesses that since Malaysia's first change of Government in 2018, there is increased space for political opposition and dissent. This space has not been formalised through changes in policy or legislation, however, and enforcement authorities retain the option of using what the Government previously called (when in opposition) 'oppressive laws.' Political party members can undertake political activities on a day-to-day basis and face a low risk of official discrimination. Individuals do not face societal violence on the grounds of their political affiliations.

GROUPS OF INTEREST

Human Rights and Civil Society Organisations

3.93 A number of domestic and international civil society and human rights organisations operate throughout Malaysia. They actively comment on issues such as the legislative environment, law enforcement, the rights of women in Islam and the government's human rights practices. Many civil society organisations register under the *Malaysian Companies Act* (1973), rather than the *Societies Act* (1966), to avoid delays and restrictions on their activities. The Registrar of Societies has previously prevented registration of organisations that it deems unfriendly to the government. Authorities have regularly used registration issues as a basis for investigating NGOs, although DFAT is not aware of any such investigations under the new government to date.

3.94 Although civil society and human rights organisations are able to function independently, the deterioration in freedom of expression under the former government led to an increase in self-censorship. Some organisations reported that constructive engagement between the government and civil society was difficult under the previous government, and the then-government largely ignored their advocacy and recommendations. Civil society and human rights organisations report less need for self-censorship and more space for discussion of human rights issues under the new government, but advise that self-censorship is still required on issues considered sensitive to conservative Islam. DFAT understands the new government has proactively engaged civil society on Malaysia's most recent UPR process, has involved civil society in the drafting of some legislation, and has increased government engagement with Suhakam on human rights issues (see [National Human Rights Institutions](#)).

3.95 Civil society and human rights organisations regularly reported instances of police intimidation and legal harassment under the former government. Authorities detained Eric Paulsen, a prominent human rights lawyer and co-founder of the Malaysian NGO Lawyers for Liberty, three times during 2015 for alleged acts of sedition. Paulsen, now the government-appointed Malaysian representative to the ASEAN Intergovernmental Commission on Human Rights, had posted on Twitter criticism of the Religious Affairs Department, the application of *syariah* punishments and the then-Prime Minister. The then-Inspector General of Police said Paulsen should be careful making comments on sensitive issues. Authorities released Paulsen on bail on all three occasions. While some sources generally report less police intimidation and harassment following the 2018 election, some also note police behaviour has not changed in line with the change in government (enforcement agencies are operating under pre-existing laws and following previous procedures).

3.96 Sources report human rights defenders still experience harassment from Special Branch and online, which they claim is attributable to the former government. Sources claim harassment includes, but is not limited to, harassment on social media platforms, threatening calls and dropped calls at night. However, DFAT is not aware of any cases of physical abuse of human rights defenders under the new government. Moreover, although civil society and human rights organisations working on issues considered sensitive to conservative Islam generally reported more operational space since the change of government, they also reported continued harassment by religious affairs authorities. In August 2019, the High Court upheld a *fatwa* issued by the Selangor Fatwa Committee against women's rights NGO, the Sisters of Islam, which the committee had issued because it felt that their work to progress women's rights was being conducted in a manner contrary to Islam.

3.97 DFAT assesses that civil society groups critical of the government can face a low risk of official discrimination in the form of legal harassment or surveillance by law enforcement authorities. DFAT assesses there are cases of disconnect between actions of enforcement agencies (operating under pre-existing laws and following previous procedures) and the stated policy approach of the new government. Civil society groups advocating on issues considered sensitive to conservative Islam can also face low-level official discrimination from federal and state Islamic religious affairs departments. Harassment of individuals commonly targets activists with a public profile, who are not necessarily the most senior members of an organisation.

Media

3.98 Malaysia has a wide variety of electronic and traditional media in Malay, English, Chinese, Tamil and Arabic. The Constitution provides for freedom of speech but this freedom was limited in practice under the former government and journalists, particularly in print media, reportedly widely practised self-censorship. Prior to the 2018 change of government, most private news publications and television stations were controlled by political parties or businesses allied with the former government, and, state news outlets similarly reflected government views. Independent media outlets exist, but are generally on-line platforms. The *Printing Presses and Publications Act (1984)* requires domestic and foreign publishers to obtain a permit to publish, and empowers the Ministry of Home Affairs to ban or restrict publications believed to threaten public order, morality, or national security.

3.99 Between 2015 and 2018, there was an increase in legal action using the *Communications and Multimedia Act (1988) (CMA)* to pressure, investigate and/or arrest media outlets, senior editors and individual journalists who had allegedly pushed the boundaries of critical coverage. The main targets of government interests were individuals or media outlets critical of the former government, members of

parliament or their families, or those covering issues linked to ethnicity or Islam. Media sources have reported a significant increase in space for freedom of expression in print and electronic media following the 2018 election. In October 2019, the lower house of parliament again repealed the *Anti-Fake News Act* (2018), which prescribed large fines and up to six years imprisonment for the publication of wholly or partly fake news. The opposition-dominated Senate had rejected an earlier attempt to repeal the Act in August 2018, meaning a twelve-month delay before parliament could reconsider the repeal. At the time of publication, this second repeal attempt had not yet been put before the Senate. Other laws that the government had labelled as 'oppressive' prior to the 2018 election remain in place, but are under review and appear to have been utilised less under the new government to date. DFAT understands that the government is reviewing both the *Printing Presses and Publications Act* and the *Communications and Multimedia Act*.

3.100 Reporters Without Borders (RWB) ranked Malaysia 123rd out of 180 nations in its 2019 World Press Freedom Index, a significant improvement from 145th in 2017. In commenting on the improvement, RWB reported a significant post-election relaxation and decline in self-censorship in the media, as well as more balanced viewpoints both for and against the government and the opposition in print media in 2019. In 2019, Freedom House rated Malaysia's Press Status as 'partly free,' compared to 2017, when it was ranked 'not free,' and emphasised increased production of more neutral coverage post-election. Media sources have, however, noted that sensitivity, and thus the need for self-censorship, persists post-election on issues that conflict with conservative Islam.

Online and Social Media

3.101 The World Bank estimated in 2017 that approximately 80 per cent of Malaysians used the internet. The government generally does not restrict access to the internet; however, a 2012 amendment to the *Evidence Act* (1950; amended 2012) holds owners and editors of websites, providers of web-hosting services, and owners of computers or mobile devices accountable for information published through their services or property.

3.102 The RMP has an active social media unit that monitors online forums for content of interest; for example, content critical of the government or Malaysian royalty. The Malaysian Communication and Multimedia Commission (MCMC) also monitors websites and can order removal of material deemed provocative or subversive. The MCMC blocked more than 400 websites containing child sexual abuse content between 2015 and 2018. In October 2017, the MCMC reported it had blocked 5,044 websites between 2015 and October 2016 for pornography, malicious content, or copyright infringement. In January 2016, the MCMC established a 'Special Committee to Combat Abuse of Social Media'; however, this has since been combined with the Special Committee on Cybercrime due to overlap of jurisdiction. The *Communications and Multimedia Act* has continued to be used since the change in government, with charges laid against a number of individuals for online posts considered offensive to Islam.

3.103 While there were no major reforms to the legal framework for online media in 2018 or 2019, the MCMC unblocked a series of websites in May 2018, including the whistle-blowing website *Sarawak Report* and a blogging site 'Medium.' MCMC had blocked the *Sarawak Report* on 19 July 2015 after it published an article on allegations of the then-Prime Minister's role in the 1MDB corruption scandal. Malaysian authorities issued an arrest warrant for Clare Rewcastle-Brown, the British founder and editor of the *Sarawak Report*, on 4 August 2015. Following the 2018 election, authorities withdrew Ms Rewcastle-Brown's arrest warrant and she was permitted access to peninsular Malaysia in May 2018. As at the time of publication, however, Sarawak continued to maintain an immigration ban against her. In 2016, the former government also blocked the *Malaysian Insider*, a popular online news website, after it reported on the 1MDB corruption

scandal. Its owners subsequently closed it down, stating it was no longer profitable, although a new site, *The Malaysian Insight*, emerged in March 2017 with similar content.

3.104 The MCMC monitors websites and can order the removal of material considered provocative or subversive. The former government used the *Sedition Act* against social media users who expressed dissenting views online. Under the new government, the *Sedition Act* has been used for investigations of social media users who allegedly criticised the monarchy, but no charges had been laid at the time of publication. In 2015, authorities arrested political cartoonist Zulkiflee Anwar Ulhaque, known as 'Zunar', for posting nine cartoons on Twitter that criticised the Najib government for alleged corruption and the trial of Anwar Ibrahim. The new government dropped charges against Zunar, as well as other prominent critics of the former government, following the 2018 election.

3.105 Ordinary social media users also risked prosecution under the CMA under the previous government. In 2016, for example, a prominent artist was convicted and received a one-month jail term and RM30,000 (AUD10,000) fine after he posted an image of Najib made up as a clown with the comment 'in a country full of corruption, we are all seditious'. The artist had previously received a warning that police were watching his Twitter account and he should use it 'prudently and in line with the law'. DFAT is not aware of the new government charging social media users with sedition since the 2018 election. Police do not target the majority of political commentators and uncensored criticism of the government appears on the internet. In February 2019, however, authorities charged a 68-year-old man under the Communications and Media Commissions Act for posting an offensive caricature, allegedly of the Prophet Mohammad, on Facebook.

3.106 Contrary to the general trend of increasing online freedom, media and in-country sources reported a shrinking of space for lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals online (and offline) in 2018 under the new government (see [Sexual Orientation and Gender Identity](#)). Media reports indicate that in August 2018, the minister for religious affairs announced a regulator would be established to monitor 'LGBTI activity' online. Although no official reports can confirm the establishment of such a regulatory body as at the time of publication, the following international websites with LGBTI related content are blocked by the MCMC: Planet Romeo (online dating platform), Gay Star News (LGBTI news platform), and Utopia (LGBTI Asia travel and Community Guide). However, local websites with LGBTI content are currently freely available to Malaysians. According to media reporting in March 2019, a BN lawmaker also expressed concerns over sex scenes and LGBTI representation appearing on online media service provider Netflix; however, Malaysia's Film Censorship Act 2002, which censors 'obscene content' according to guidelines on security and public order, religion, socio-culture, decorum, and morality, does not apply to the Netflix online streaming service.

3.107 DFAT assesses that bloggers and online media sources can face a low risk of both societal and official discrimination by enforcement authorities (see [Federal and State Law Enforcement Entities State Islamic Religious Departments](#)) if they publish material regarding sensitive issues that conflict with conservative Islam. While most Malaysians are free to participate in activities online without interference, DFAT assesses there is an increased trend towards online monitoring and harassment of members of the LGBTI community (see also [Sexual Orientation and Gender Identity](#)).

Victims of Loan Sharks

3.108 Loan sharks or ‘pay-day-financers’ (unlicensed lenders, referred to as ‘Ah Long’ by the Chinese Malaysian community, ‘Chettiar’ by the Indian Malaysian community, and ‘Ceti’ in Malay), carry out money lending activities without a licence, charging high interest rates to do so. Loan sharks operate very publicly in Malaysia and, while the practice is illegal, advertisements listing phone numbers and offers of cash loans for RM10,000 – RM20,000 (AUD3,100 – AUD6,200) appear on public property, including lamp posts and utility boxes. Loans typically carry an interest rate of about 30 to 40 per cent per month, and can be as high as 15 per cent per day. In-country sources advise that loan sharks in Malaysia do not seek protection money.

3.109 Sources report loan sharks are entering into ‘sell and purchase agreements’ in Sabah, whereby the borrower’s house is used as collateral for the loan. DFAT is aware of reports of houses valued up to RM 1 million (AUD 345,311) being used as collateral for a loan of RM100,000 (AUD34,500). If the borrower defaults on their loan, the loan shark exercises the sell and purchase agreement to transfer the house into their name. Sources report lawyers are facilitating the sell and purchase agreements, described as a house sale agreement disguised as a loan agreement, in return for a cut of the house sale profits. Sources claim borrowers agreeing to sign their house over as collateral are under significant duress, or lack sufficient education to understand the agreement they have signed.

3.110 DFAT is aware of a case of an individual in peninsular Malaysia who engaged a loan shark to obtain a loan to repay their mortgage, signing the house over as collateral under a ‘sell and purchase agreement,’ after becoming involved in gambling following the death of their spouse. When unable to repay the loan shark, the individual’s family supported them to engage a formal credit agency to obtain a loan to repay the loan shark. DFAT understands loans ranging from RM200,000 to RM300,000 (AUD69,385 to AUD104,077) accompanied by payment plans have been arranged by formal credit agencies to repay loan shark debts. However, not all debtors may be aware of the availability of such services.

3.111 Sources report that an individual who is unable to service a debt from a loan shark risks threats or actual physical violence, having their home splashed with red paint (culturally understood as a symbol that an individual has defaulted on a loan shark and brought shame to their family), and/or having their families’ physical safety threatened. Sources claim that loan sharks engage gangsters to collect debts and harass and threaten borrowers and their family members, and those borrowers and their family members have been shot at gunpoint and had fingers cut off. Due to the illegal/underground nature of loan shark activity, DFAT is not able to verify these claims. There is significant societal shame associated with not being able to repay a loan shark. Sources report many people see suicide as the only honourable way out of being unable to repay a loan shark debt. DFAT is aware that those in debt to loan sharks have been counselled by intermediaries to place their family in a safe location and travel overseas to earn a foreign income to repay their debt faster, and to reduce risks and shame to their family.

3.112 DFAT understands that authorities tend to be unsympathetic towards individuals who have accessed loan shark services, regarding them as having participated in an illegal practice. According to local media, the Commercial Crimes Investigation Department reported 3,903 cases and arrested 2,698 people in relation to loan scams between January and November 2018, with total case related losses estimated at RM36 million (approximately AUD12.4 million). Local media also reports loan sharks have become more publicly visible and more ‘corporate,’ and have increased promotion of their services on social media platforms such as Facebook and WeChat in 2019. In October 2019, media reported that the RMP planned to embark on a ‘major war’ against loan sharks, following reports that Ah Long syndicates are becoming more aggressive.

3.113 The MCA's Public Services and Complaints Department (PSCD) plays an intermediary role between loan sharks and Chinese Malaysian victims of loan sharks who are unable to repay their loans, and reportedly receives an average of 500 to 600 complaints regarding loan sharks each year. According to local media, the MCA reported that 16 cases of people owing loan sharks over RM2.11 million (AUD745,000) had arisen in the first 19 days of January 2019 alone. Local media also reported that in 2018, the PSCD of the MCA received reports of 364 loan shark cases with total loan claims amounting to RM25 million (AUD8.81 million), and that 80 per cent of the loan shark borrowers were members of the Chinese Malaysian community who were involved in illegal online gambling. In 2015, the PSCD of the MCA also reported over 70 per cent of borrowers in 214 cases were Chinese Malaysian. Sources report the MCA can negotiate loan repayment settlements with repayment rates negotiated down to match the one per cent government rate.

3.114 The PSCD of the MCA held a press conference in July 2019 regarding the case of a 28-year-old woman who had enquired about a RM5,000 (AUD1,760) loan advertisement she had seen on Facebook. The woman had reportedly shared some personal information, including bank details, but had allegedly rejected the offer of a loan due to the high interest rate payable. Nonetheless, funds were banked into her account, and she was later threatened by loan sharks to either pay up or be forced into prostitution. The PSCD of the MCA also cited the case of a 91-year-old woman, who was reportedly threatened by loan sharks in relation to her estranged son's failure to pay back money he allegedly owed.

3.115 The Malaysian Muslim Consumers Association (PPIM), which provides services predominantly for the Malay community, was also involved in over 10,000 cases involving loan sharks from 2012 to 2016, in which around 70 per cent of borrowers were Malay. The PPIM maintains a Malay language website (ahlong.ppim.org.my) where people can report loan shark cases and which lists details of prior cases. Sources provide vastly differing views on the reasons individuals engage illegal moneylenders. Some claim that up to 80 per cent of borrowers are supporting gambling activities and other debts. Others claim borrowers are public servants trying to cover daily expenses such as children's education, or businesses excluded from mainstream finance due to insufficient documentation, bankruptcy or a poor credit history.

3.116 The *Moneylenders Act* (1951; amended 2003 and 2011) gives police considerable investigative powers against alleged loan sharks. Police can visit, enter, inspect or search premises without a warrant, and seize moveable properties and business documents to assist with investigations against alleged loan sharks. Individuals involved in illegal moneylending activities in Malaysia can be convicted under Section 5(2) of the *Moneylenders Act*, which carries a fine of between RM250,000 and RM1 million (AUD80,000 – AUD320,000) or, a jail term of up to five years, or both. Police have made several recent high profile arrests and investigations of syndicates. In September 2019, the RMP arrested 21 people in Johor allegedly involved in syndicates illegally loaning money. In January 2019, the RMP arrested 13 suspects allegedly involved in a syndicate providing fraudulent loan applications resulting in total bank losses of RM10.35 million (AUD3.65 million); district police also arrested 11 members of a nationwide syndicate that had fraudulently taken funds from borrowers totalling RM1.3 million (AUD458,161). In November 2018, RMP arrested 21 people allegedly involved in a loan scam syndicate.

3.117 Very limited research is available on loan sharks and the individuals that engage these services, possibly due to their links to gangs and corruption. DFAT is unable to verify what percentage of borrowers are supporting other illegal activities, their likelihood of seeking police protection, or the level of protection offered by police. DFAT assesses those who are unable to service debts to loan sharks, and their family members, can face societal discrimination due to familial shame, and may also face a real or perceived risk of harassment and violence from loan sharks and/or gangsters. However, DFAT notes formal credit agencies are able to consolidate loan shark debts and provide payment plans, and therefore engaging such agencies is an option to mitigate against potential risks posed to those in debt.

Women

3.118 Women participate in all aspects of Malaysian society, including government, business and civil society. However, cultural and social barriers limit their levels of participation, as does a lack of resources to assist with re-entering the workforce after having children. Within government, five cabinet ministers and four deputy cabinet ministers are female, as are 32 of 222 lower house members and 11 of 68 senators. As at December 2018, local media reported women held 23.2 per cent of board seats in the top 100 publicly listed companies. Educational levels among Malaysian women have improved, with the tertiary level enrolment rate of women being 49.85 per cent in 2018. Women's enrolment in higher education is also now on par with the mean for Organisation for Economic Cooperation and Development countries, and women are attaining higher education degrees at increasing rates, notably in science, technology, engineering and mathematics, where the number of female researchers is close to parity and half of engineering graduates are female. Malaysia's IT sector features equal numbers of women and men.

3.119 Women's participation rates in the labour force have risen considerably over the last decade, from 45 per cent in 2008 to an estimated 54.7 per cent in 2018 (compared to a participation rate for men of 80.6 per cent in 2018). This increase was aided by the 2014 introduction of policies and programs aimed at ensuring equal pay for equal work and full and equal participation by women. Despite this increase, the Asian Development Bank reports that Malaysia has the lowest rate of women's participation in the workforce in Southeast Asia. Women reportedly earn 77 per cent of what men earn for similar work, and only 44 per cent of professional and technical workers are women. In-country sources report that child bearing and care remains the main reason for the ongoing low participation rate of women in the workforce, particularly following the birth of the first child. The 2020 Budget, announced in October 2019, included incentives for women to return to work, with a RM500 (AUD174) wage incentive per month for two years for returning women workers, and RM300 (AUD104) per month for two years as a hiring incentive for employers. In addition, the income tax exemption for women returning to work after a career break was extended to four years until 2023. The budget included an extension of maternity leave for private sector workers from 60 to 90 days commencing 2021 (it is already 90 days for public sector employees). While some protections exist for pregnant women in the civil service, none are available to women employed in the private sector. No legislation protects women from sexually based discrimination in the workplace, although the government is reportedly in the process of drafting a Sexual Harassment Bill.

3.120 Single mothers in Malaysia may be unable to work due to costs associated with childcare, or the additional burden of caring for extended family members, and thus rely on modest government assistance to support their families. Financial assistance from the Department of Social Welfare, Ministry of Women, Family and Community Development is available to households whose income is below the income poverty line, but differs across states (RM 720 per month in peninsular Malaysia, RM 830 in Sarawak and RM 960 in Sabah). The Department of Women's Development also maintains an online database for single mothers, 'iWanita' (previously 'MyWanita'), to help address issues and better understand their needs. The government has also launched other initiatives in recent years with the intention of assisting single mothers, particularly those living in rural areas. In particular, the Action Plan to Empower Single Mothers 2015-2020, which involves 27 government agencies, higher-learning institutions, NGOs and private sector organisations, emphasises economic empowerment, enhancing social wellbeing, and stepping up research and development and coordination in areas pertaining to women's development.

Violence against Women

3.121 Section 375 of the Penal Code defines rape as when a man forces sexual intercourse with a woman without her consent, against her will, or if she consented out of fear for her life. Section 375(g) states it is an offence to have sexual intercourse with a girl who is below 16, with or without her consent. Section 376 provides for punishment of between 10 and 30 years' imprisonment, while whipping can also be imposed on those who commit rape in certain circumstances. Section 574 provides for a maximum penalty of five year's imprisonment for marital rape should it have caused hurt or fear of death. The application of this provision is reportedly weakened in many states due to ambiguity between it and *syariah*-based law, which prohibits wives from disobeying the 'lawful orders' of their husbands and therefore discourages them from reporting to authorities.

3.122 Amendments to the *Domestic Violence (Amendment) Act* (2017) strengthened protections for victims of domestic violence. The Act expanded the definition of domestic violence, and protects spouses, former spouses, children, family members, 'incapacitated adults' who are living as members of the family, and de facto spouses (couples who have gone through a religious or customary marriage ceremony, but have not registered their marriage). The Act still does not cover non-married couples, however, and does not include marital rape in the definition of domestic violence. The amendments also introduced enhanced procedures, including Emergency Protection Orders (EPOs) that can be applied immediately for up to a week and prevent a perpetrator from entering a safe location. In addition to EPOs, victims of domestic violence can also obtain interim protection orders (IPOs) and standard protection orders (POs). Violations of any of the protection orders can result in a prison sentence of up to six months and/or a fine of RM2,000 (AUD705), while multiple violations can result in the offender being jailed for between 72 hours and up to two years and fined up to RM5,000 (AUD1,762). If a perpetrator of domestic violence commits acts of violence when violating a protection order they can be fined up to RM 4,000 (AUD 1,410) and/or receive a prison sentence of up to one year.

3.123 Section 376A of the Penal Code criminalises family sexual violence ('incest'); defining it as sexual intercourse with someone the perpetrator is not allowed to marry due to law, religion or custom. A person found guilty of incest may be sentenced to a maximum of 30 years in prison, and is liable to whipping. According to RMP statistics, there were 296 reported cases of incest in 2017. These numbers are likely to understate considerably the actual number; however, with in-country sources suggesting that incest is one of the most under-reported of all crimes. While family sexual violence occurs across all cultural groups and socio-economic levels, sources suggest that it is more likely to occur in rural and remote areas.

3.124 Despite the enhanced legal protections available to victims, NGOs report that violence against women in the form of rape, domestic violence, and family sexual abuse remains a significant problem. According to RMP statistics, there were almost 5,000 cases of domestic violence against women reported in 2018, and 5,513 cases of domestic violence and 1,582 cases of rape reported in 2017. Local sources believe that domestic violence, rape and family sexual abuse remain under-reported because of traditional beliefs in the sanctity and privacy of marriage, the level of shame involved, and reluctance to expose a perpetrator within the family. While there was reportedly a significant increase in reports of cases of domestic violence immediately following the passing of the amendments, reporting rates subsequently tapered off due to a perceived lack of support and resources for victims. The government does not separate domestic violence deaths from other forms of unlawful killing, so it is difficult to ascertain accurate statistics. No statistics or government reports identify whether so-called 'honour killings' (murders committed to punish individuals perceived to have brought shame upon their family or community) occur.

3.125 Women's groups report the need for increased training, enforcement, and resources for state protection bodies engaged in preventing violence against women, along with further legislative improvements. Although the RMP's Criminal Investigation Division includes a Sexual Investigation Division, overall police training on issues related to violence against women is reportedly limited. For example, sources report that police commonly return victims of domestic violence to the perpetrator, as they perceive the issues as private family matters. The judiciary also reportedly receives little or no training on the application of relevant laws. Although conviction rates in relation to violence against women have reportedly increased in recent years, this comes from a very low base. The Home Ministry reported in 2016 that only 16 per cent of reported rape cases in the preceding decade had gone to court, and that just 2.7 per cent of all reported cases had resulted in guilty verdicts.

3.126 Several government and non-government bodies provide shelters and assistance to victims, but contacts report that these services are inadequate for demand. The government introduced One Stop Crisis Centres (OSCC) in the emergency departments of Malaysian hospitals in 1996, which aim to provide a centralised one-stop facility to victims. The Women's Aid Organisation reports that there are OSCC services in 102 government hospitals nationwide, with the number of clients who access each OSCC varying from fewer than 10 to over 500 a year. The OSCC in Kuala Lumpur includes examination by female doctors, evidence management, referrals and crisis intervention, counselling, temporary shelter and legal assistance. According to the Women's Aid Organisation, the quality of OSCC services differs among hospitals in Malaysia, and that significant barriers kept OSCCs from functioning as intended. These barriers include: a lack of routinely available emergency contraception; referral for abortion for unwanted pregnancies being dependent on the views of the Head of the Obstetrics and Gynaecology Department; low levels (or lack) of follow up to identify and treat HIV and other infections; and low levels (or lack) of support for the emotional well-being of the women who accessed the centres. The Women's Aid Organisation also reported that many survivors of domestic violence and rape living in rural areas did not have access to a coordinated service.

3.127 A 2009 JAKIM *fatwa* ruled that 'female circumcision', better described as female genital mutilation (FGM), was obligatory for Muslim women and girls, unless harmful to their health. Although no Malaysian state has gazetted the 2009 *fatwa*, the Ministry of Health subsequently introduced guidelines in 2012 that reclassified FGM as a medical procedure, permitting it to occur legally in health care facilities. According to the World Health Organization, the most common form in which FGM is practiced in Malaysia is Type I, involving the partial or total removal of the clitoris, although some women undergo Type IV, a ritual form that includes a symbolic pricking or nicking of the genitals. The procedure is often performed during infancy. In-country sources report while that public hospitals do not conduct the procedure, private hospitals do.

3.128 There are no recent verifiable statistics available in relation to the prevalence of female genital mutilation (FGM), but a 2012 university study found that 93 per cent of Muslim women surveyed had undergone 'circumcision'. According to the 2012 study, more than 80 per cent of respondents said religious obligations were behind the decision to be 'circumcised', while 16 per cent said the 'circumcision' was performed 'to control sexual drives'. Although international organisations such as CEDAW have urged the government to abolish FGM, officials have defended it as 'a cultural obligation', and have sought to draw a distinction between FGM and 'female circumcision'.

3.129 DFAT assesses that, while the situation is improving, ambiguity between federal and state laws, lack of application of laws, limited capacity within the police and judiciary, familial shame, and lack of awareness of rights continue to create difficulties for women subjected to violence to report it, gain adequate state protection, and/or leave family settings safely. Young Muslim girls face a high risk of societal violence in the form of being subjected to some form of FGM.

Sexual Orientation and Gender Identity

3.130 Adult same-sex acts are illegal regardless of age and consent. Article 377A of the Penal Code defines ‘carnal intercourse against the order of nature’ as involving the introduction of the penis into another person’s anus or mouth (to the point of penetration), which Article 377B penalises with imprisonment of between five and twenty years, along with whipping. Numerous state-level *syariah*-based laws also prohibit both same-sex relations and non-normative gender expression. While cross-dressing is not technically illegal under civil law, state-level police have arrested transgender women under the *Minor Offences Act* (1955) for public indecency and immorality, or (where applicable) under *syariah*-based law for impersonating women. A case in 2005 in which a transgender individual was permitted to change their name, sex marker, and related last digit on their identity card has not acted as a precedent in subsequent cases, and the National Registration Department does not generally allow transgender people to access such changes. In 1983, the National Fatwa Council banned Muslims from undergoing sexual reassignment surgery (SRS). Neither SRS nor transition therapy are available in Malaysia.

3.131 The former government was strongly opposed to the ‘promotion’ of lesbian, gay, bisexual, transgender, and intersex (LGBTI) issues, and had committed to a five-year action plan to address ‘social ills’ that focused to a large degree on the LGBTI community. Key elements of the action plan included rehabilitation programs for LGBTI individuals (discussed in this section), prevention seminars for parents and students, and enforcement of laws and policies prohibiting the ‘public glamorisation of the LGBTI lifestyle’, including through restricting the online space for LGBTI activities and individuals (see [Media](#)). Despite the general improvement in the human rights climate resulting from the change of government in May 2018, in-country sources report that LGBTI issues remain sensitive. The new administration has been unwilling to engage with LGBTI advocacy groups or to consider any substantial changes in its approach to LGBTI issues, including through its rhetoric. In September 2018, for example, Prime Minister Mahathir stated that Malaysia ‘cannot accept LGBT culture’, while in March 2019 the Tourism Minister responded to a question about whether Malaysia would welcome gay foreign tourists by denying the existence of gay people in Malaysia. An aide reportedly later clarified that the minister was echoing the government’s stance that LGBTI individuals were not officially recognised in the country.

3.132 Malaysia does not have a national organisation committed to progressing LGBTI rights, but a loose coalition of NGOs and individuals reportedly works to advocate such rights within the framework of broader human rights advocacy. Longstanding official opposition towards the promotion of LGBTI issues in public spaces, which has continued under the new government, has hampered the effectiveness of such advocacy. Authorities have banned homosexual, bisexual, transsexual and transgender individuals appearing on state-controlled media since 1994, while media censorship rules ban movies or songs that promote the acceptance of same-sex relationships. In 2017, authorities initially banned a Disney live action production of ‘Beauty and the Beast’ for an alleged ‘gay scene’, but backed down when Disney refused to censor the scene. In August 2018, the Minister of Religious Affairs ordered the removal of photos of Malaysia’s most prominent transgender activist and another LGBTI activist from an exhibit in Penang celebrating influential Malaysians on the grounds that the exhibition was in breach of the government’s policy to not promote LGBTI activities. In March 2019, the Minister for Religious Affairs criticised the participation of LGBTI groups at an International Women’s Day march as a misuse of democratic space.

3.133 JAKIM and other state religious authorities have occasionally conducted raids on LGBTI events (similar raids reportedly target unmarried heterosexual couples and those suspected of other ‘non-Islamic behaviour’). In August 2018, for example, authorities raided a Kuala Lumpur nightclub known to be popular among the LGBTI community, detaining twenty men. JAKIM subsequently ordered the men to undergo counselling for ‘illicit behaviour,’ while a government minister released a statement hoping that, the raid

would 'mitigate the LGBTI culture from spreading in our society'. While the majority of such raids have occurred in public places, state religious officials have also reportedly conducted raids on private premises on occasion, sometimes accompanied by members of the RMP. In-country sources have suggested that authorities conduct such raids as a means of creating income through extorting or blackmailing those targeted.

3.134 The most prominent legal case in recent times involving prosecution under Article 377A was that of prominent political figure Anwar Ibrahim, who was twice convicted of sodomy in 1999 and 2015 trials widely regarded as being politically motivated. Anwar received a royal pardon and was released from prison in May 2018. Other prosecutions in relation to LGBTI activities have not been common. When they have occurred in recent times, they have been in relation to state-based *syariah* legislation rather than federal law. In September 2018, a *syariah* court in Terengganu state sentenced two women to be given six strokes of the cane and pay a fine of RM 3,300 (AUD 1,100) after convicting them of allegedly attempting to have sexual intercourse. The caning, which was carried out in a courtroom in front of 100 witnesses, was reportedly the first such sentence to be ordered in relation to an LGBTI-related case since 2010. In November 2019, the Selangor *Syariah* High Court convicted five men under *syariah*-based statutes for attempting to conduct sexual relations 'against the order of nature' in a private apartment 12 months earlier. The court sentenced four of the men to six months' imprisonment, six strokes of the cane, and a fine of RM4,800 (AUD1,700), while the fifth man received a sentence of seven months' imprisonment, six strokes of the cane, and a fine of RM4,900 (AUD1,730). Human rights observers criticised the punishments as a breach of human rights, and noted that the presiding judge had made numerous prejudiced remarks during the case that were unrelated to the facts in issue.

3.135 As earlier noted, authorities at federal and state level have promoted so-called rehabilitation or re-education programs aimed at changing sexual orientation or gender identity, also known as conversion therapy. The Minister for Religious Affairs claimed in October 2018 that 1,450 people had 'voluntarily' taken part in outreach programs organised by JAKIM since 2011. The Minister's comments came while launching a JAKIM e-book guide called 'Self Transitioning from Homosexuality', which remains available for download in the Google Play Store application. In-country sources report that the JAKIM rehabilitation programs are located in residential locations within neighbourhoods, with participants segregated by sex and subject to curfews. The programs reportedly teach participants how to pray, give them spiritual coaching, and 're-educate' them about their sexual identity. The federal government also reportedly runs seminars for non-LGBTI students, parents, and volunteers to equip them with knowledge on 'the psychosocial, psychological, and psycho-spiritual needs and health of the LGBTI community'.

3.136 A number of state governments also run re-education programs for LGBTI individuals. The Terengganu government has reportedly run a 're-education boot camp' or 'behaviour corrective program' in Besut for effeminate teenage males since 2010, to which boys selected for effeminate behaviour were sent for physical training and religious and motivational classes; while the Negeri Sembilan Religious Affairs Department reportedly held a two-day camp as part of the state's 'Action Plan Against Social Ills of LGBT 2017-2021'. The Selangor State Government also reportedly offers inducement payments to members of the LGBTI community to undergo treatment by any institution, Muslim NGO or group that can 'liberate, manage, protect, treat, and rehab [the] community'. In addition to the programs run by official bodies, a number of private centres also reportedly offer 'treatment' to LGBTI individuals through religious counselling. In-country sources report that some parents elect to send their children to official or private re-education centres for reasons other than identifying as LGBTI, including in cases involving sex before marriage or drug abuse.

3.137 In-country sources have reported that authorities will only permit LGBTI individuals who have HIV/AIDS to access medical treatment if they can demonstrate that they have ‘transitioned back to heterosexuality,’ through a re-education centre or otherwise. DFAT is unable to comment on the veracity of this claim.

3.138 There is a strong social taboo against LGBTI issues, particularly among Muslims, and online abuse is common. As noted in [Media](#), authorities have undertaken efforts to restrict LGBTI activities online. Many members of the LGBTI community reportedly hide their identity to avoid harassment, familial ostracism, and/or violence. Reports of violence by family members towards LGBTI individuals are common, and society will generally place the blame for such violence on the individual for provoking it through identifying as LGBTI. Most of the recent cases of societal violence against LGBTI individuals of which DFAT is aware relate to violent attacks on transgender women, who tend to be more readily visible. In August 2018, eight men violently abused a transgender woman in Negeri Sembilan state, resulting in broken bones, and internal, head and back injuries. In December 2018, a group of five people aged between 16 and 21 years of age violently attacked and killed a transgender woman in Klang (outside Kuala Lumpur); while in January 2019 police arrested a 55 year old man in the same location in relation to the death of a transgender woman who reportedly fell from a moving vehicle. DFAT is not aware of the status of prosecutions in either case.

3.139 In-country sources report that their increased visibility makes transgender individuals particularly vulnerable to being subjected to raids by religious authorities and subsequently placed in re-education centres. Transgender women are held in male custodial facilities, and numerous human rights organisations have reported allegations that state religious officials, corrections officers, and fellow detainees have subjected transgender women to physical or sexual violence and degrading treatment while in custody. Transgender women are also reportedly denied access to public education upon transitioning, and often avoid seeking medical treatment in public hospitals due to the requirement that they be placed in male wards. The strict segregation between sexes in mosques means transgender women who are Muslim are also often precluded from accessing places of worship.

3.140 The level and frequency of discrimination faced by members of the LGBTI community differs according to their socio-economic status, religion, geographic location and degree of openness. Well-educated urban LGBTI individuals of high socio-economic status are less likely to have to hide their sexuality within their family and social circles than are poorer individuals in rural areas. Sources report society is generally more permissive of people who identify as LGBTI in Kuala Lumpur than they are in East Coast peninsular Malaysia or Sarawak and Sabah. Most transgender individuals from Sarawak and Sabah reportedly relocate to Kuala Lumpur for employment (almost exclusively in the private sector) and to escape discrimination.

3.141 DFAT assesses that LGBTI individuals face a moderate risk of both official and societal discrimination, which may include being subjected to prosecution, ‘re-education’, exclusion from public spaces and employment opportunities, and/or familial or societal violence. Some of these risks are higher for transgender individuals, and for those located in poorer and rural areas.

Children

3.142 As noted in [Human Rights Framework](#), Malaysia is a state party to CAC and its two Optional Protocols. The majority of CRC provisions have been incorporated into domestic law, particularly via the *Child Act* (2001). The government has introduced or amended legislation in recent years in order to meet legislative obligations under CRC, including through introducing the *Sexual Offences against Children Act* (2017) and amending the Child Act in 2016 to include a registry of people convicted of crimes against children, a provision for legal representation for children, and a National Council for Children. Despite this improved legislative framework, activists have raised concerns around the effectiveness of implementation, due to conservative attitudes and the limited capacity of law enforcement agencies.

3.143 Either civil law, *syariah*, or customary law can determine the minimum age of marriage. Under civil law, non-Muslims may marry from the age of 18, but girls can be married as early as 16 provided the State Chief Minister grants permission. Under *syariah*, the minimum age for Muslim females to marry is 16 years, but *syariah* courts can provide permission for girls under this age to marry. NGOs report it is relatively easy for young people to obtain permission to marry from the *syariah* court and chief ministers. Under customary law, the minimum age for females to marry is 16 years, but parents may give written consent for underage marriages. Suhakam reported in 2018 that the government had registered approximately 15,000 marriages involving children over the last decade, 10,000 of which were underage marriages of Muslim couples, and the remainder non-Muslim couples. Actual figures are likely to be higher due to under-reporting of customary marriages and forced marriages.

3.144 Child marriage in Malaysia is driven by gender inequality, physical and sexual violence against girls, trafficking, traditional and cultural attitudes and pre-marital sex. Human rights groups report that girls are commonly forced into marrying men who have sexually assaulted them so the perpetrators can avoid criminal charges, often in return for a payment to the girls' parents. This is reportedly more common in poorer communities, where NGOs report RM5,000 (AUD1,735) is a routine price for child brides.

3.145 The government reportedly issued a directive to all states in October 2018 instructing them to raise the age of marriage for both parties to 18 years. The directive came after widespread protests over a 41-year-old man marrying an 11-year-old Thai girl in Kelantan state, and followed several earlier unsuccessful attempts to raise the marriage age. The Selangor Legislative Assembly passed an amendment in September 2019 revising the minimum legal marriage age for Muslims to 18 years. Sabah, Penang, Johor, Perak, Melaka and the Federal Territories have consented to increase the minimum legal marriage age to 18, but had not legislated this at the time of publication. The Deputy Prime Minister informed parliament in November 2019 that Kedah, Kelantan, Negeri Sembilan, Pahang, Sarawak and Terengganu have declined to amend their state legislation.

3.146 According to Article 14 of the Constitution, a child born in Malaysia after Merdeka Day (Independence Day) 1957 becomes a citizen by operation of law if one parent is a citizen or permanent resident in Malaysia at the time of the child's birth (see [Birth and Death Certificates](#)). However, in accordance with the Second Schedule of the Constitution (Part III, Section 17), if a child is born out of wedlock, or the parents failed to register their marriage, the child is considered illegitimate and will follow his/her mother's citizenship. Therefore, a child is considered stateless if he/she was born to a Malaysian father and a non-Malaysian mother who were not officially married or had failed to register their marriage. A child born outside of Malaysia to a Malaysian mother and a non-Malaysian father is not guaranteed Malaysian citizenship. Stateless indigenous children can sometimes access late birth registration through the mobile court system, although access to the mobile court or successful registration are not guaranteed (see [Mobile Courts](#)). *Syariah* and native laws also govern issues of adoption (see [Religion](#) and [Judiciary](#)).

3.147 UNHCR reports the number of recorded stateless people in peninsular Malaysia had reduced from an estimated high of 40,000 people in 2009, to 12,400 in December 2017. The exact number of individuals or groups who may be affected by statelessness outside of peninsular Malaysia is unknown. Suhakam estimates 2,599 of these stateless people are children, although notes the number of stateless children is likely much higher due to an influx of foreign migrants in Sabah who have had children in Malaysia. Due to lack of documentation, stateless children do not have access to state education or healthcare services and risk immigration detention and deportation.

3.148 In March 2019, local media reported the government reaffirmed that parents of stateless children under 21 years born in Malaysia could apply for citizenship for their children using a special pathway under Article 15A of the Constitution. However, in practice, parents are required to apply to the National Registration Department to seek official recognition of their children's citizenship status and, according to local media, it can take over two years for an application to be processed, at which point, many applications are rejected without reason. According to local media, 15,394 children born in Malaysia were denied citizenship between 2012 and January 2017, despite having fathers who were Malaysian citizens.

Welfare Recipients

3.149 The Department of Social Welfare, Ministry of Women, Family and Community Development, provides financial support to the elderly (aged 60 years and above), the economically disadvantaged, children, people living with a disability, those affected by natural disasters, victims of domestic violence, victims of trafficking, and the otherwise vulnerable. The elderly are also entitled to apply for a government aid fund, which pays up to RM1250 (approximately AUD400) annually.

3.150 According to media reporting, the government approved the introduction of unemployment benefits including allowances and support for training in October 2017. Businesses and NGOs also have various programs to support the poor; the 'Mykasih program,' a private sector program which is assisted by the government, also provides a platform to give food aid to the poor through a centralised system (the platform allows people to use their *MyKad* for payment at selected supermarkets). Malaysian culture places significant emphasis on family support. Food kitchens are available within large cities to alleviate urban poverty and homelessness. Government-provided shelters are also available.

4. COMPLEMENTARY PROTECTION CLAIMS

ARBITRARY DEPRIVATION OF LIFE

Extra-Judicial Killings

4.1 Authorities have defended the use of lethal force by the RMP and other security authorities in some cases as being acts of self-defence, particularly when the victims have been members of criminal gangs or alleged terrorists. Investigation into the use of deadly force by a police officer only occurs if the Attorney General initiates or approves the investigation. Such investigations are uncommon.

4.2 Both Suhakam and human rights NGOs have reported regularly receiving complaints and conducting investigations into police shootings. According to a leading human rights NGO, 40 deaths were attributable to police shootouts or police chases in 2018. Such incidents included:

- The fatal shooting of a suspected bank robber in Johor Baru in February 2018;
- The fatal shooting of two suspected armed robbers in Rawang, Selangor, in March 2018;
- The fatal shooting a man who 'ran amok' after being unable to withdraw cash from an ATM in Bandar Bukit Tinggi, Klang, and Selangor in April 2019. The police officer, who claimed to have shot the man in self-defence, was put in remand for seven days for investigation under section 307 of the Penal Code for attempted murder.
- In-country sources have also reported cases in Eastern Sabah in which police have shot on sight individuals who were fleeing roadblock and kidnap-for-ransom situations, claiming the individuals were terrorists. Sources claim the police were not held to account.

Enforced or Involuntary Disappearances

4.3 In April 2019, Suhakam issued a finding that, on the balance of probabilities, social activist and Shi'a Amri Che Mat, and Christian Pastor Raymond Koh, who disappeared in 2016 and 2017 respectively, were both victims of enforced disappearances carried out by a sub-unit of the RMP Special Branch. Amri vanished without trace while driving in Perlis in November 2016, with witnesses reporting that his car was forced to stop close to his home after being surrounded by three vehicles. Security guards at a nearby construction site later reported finding his car abandoned and stripped of identification. Koh was reportedly similarly abducted while driving on a public road in Selangor in February 2017. In July 2019, the government established a task force headed by a former High Court Judge to investigate the two disappearances, but it is

yet to announce any findings. DFAT is not aware of any allegations of state sponsored enforced or involuntary disappearances that have occurred since the 2018 election.

Deaths in Custody

4.4 Suhakam is responsible for investigating allegations of human rights abuses within the prison system and continues to regard deaths in custody as an area of concern. The number of reported deaths in custody vary considerably. According to media reporting, 143 people died in police custody between 2008 and 2018. However, in June 2017, the government disclosed there were 50 deaths in police custody from the beginning of 2013 through April 2017, with only one death allegedly caused by the police. Civil society activists disputed this, claiming police were responsible for more of the deaths in custody. Former Deputy Prime Minister Zahid Hamidi later told parliament in March 2017 that 1,654 people had died in custody in Malaysia between 2010 and February 2017. Suhakam reported 252 deaths in prisons in 2015, and 269 deaths in prisons in 2016. Most causes of death were reportedly disease-related. However, international and local observers, including Suhakam, have repeatedly reported poor standards, for example in relation to limited access to health care. Others sources report deaths in custody are largely due to refused treatment, rather than denial of access.

4.5 Amnesty International reported a further five deaths in custody in 2017, including the death of a prisoner who cellmates allege was beaten by police during interrogation. According to media reporting, an Inspector was charged with intentionally causing hurt to the prisoner, but was later acquitted. Suhakam received four complaints regarding deaths in custody in 2018, for which investigations are in progress. Sources report that due to comparably worse conditions in immigration detention, death rates in immigration detention are higher than in prison (see [Detention and Prison](#)).

4.6 In 2005, a Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police recommended the establishment of an Independent Police Complaints and Misconduct Commission (IPCMC). Due to the high number of deaths in police custody and impunity in detention centres, the new government pledged to establish an IPCMC during the 2018 election campaign. In May 2019, the police gave their consent for the formation of the IPCMC. A bill proposing the creation of an IPCMC was submitted to Parliament in July 2019, and was referred to a Parliamentary Select Committee for consideration in October 2019. Nevertheless, there remains no legal requirement for the state to investigate deaths in RMP custody.

4.7 Law enforcement entities have investigated deaths in custody, which, in some cases, resulted in arrests and convictions. In 2018, the statutory Enforcement Agencies Integrity Commission recommended criminal charges against police officers in relation to a 2017 custodial death. A police inspector was charged in this case for 'voluntarily causing hurt to extort a confession'.

DEATH PENALTY

4.8 Capital punishment applies to drug trafficking, murder, acts of terrorism (including financing terrorism), offences against the King and discharging a firearm while committing another offence. In March 2018, an amendment was brought into force to remove the mandatory death sentence for drug trafficking in certain circumstances, providing a sentencing option of life imprisonment and a whipping of no less than 15 strokes. Where the High Court sentences an individual to death, judicial review by the Court of Appeal and the Federal Court is automatic. If such appeals are unsuccessful, the accused may plead for clemency from the relevant ruler or governor at the state level, or from the King if the crime is committed in a federal territory. People typically remain on death row for years, and families receive only one or two days' notice of execution dates. The method of execution is by hanging. Pregnant women and children cannot be sentenced to death.

4.9 Malaysia does not consistently release data on the application of the death penalty, but Amnesty International Malaysia reported that, as at November 2019, there were 1,294 prisoners on death row in Malaysia. Although courts reportedly impose the death penalty most commonly in cases of drug trafficking and premeditated murder, DFAT understands that most actual executions are carried out in relation to cases involving murder.

4.10 In October 2018, the government announced its intention to fully abolish the death penalty and placed a moratorium on executions pending action. In March 2019, however, the government declared it would not abolish the death penalty completely, but that the death penalty would no longer be mandatory for 11 selected offences, for which courts would be given discretion to impose sentences as appropriate. According to international media, the 11 criminal offences that could invoke an optional death penalty will include committing acts of terrorism, murder and hostage taking. DFAT understands the moratorium remains in place until legislative amendments to the death penalty have been considered by parliament. At the time of publication, this Bill was yet to be submitted to parliament.

TORTURE

4.11 Malaysia is not a party to the CAT or its Optional Protocol (see [Human Rights Framework](#)). No law specifically prohibits torture, although laws that prohibit 'committing grievous hurt' encompass torture. According to Suhakam, Malaysia has inadequate legal safeguards against torture in custodial settings.

4.12 Human Rights Watch and Freedom House claim police torture and abuse of suspects in custody, sometimes resulting in death, remain serious problems in Malaysia. Human rights NGOs have reported allegations of detainees being beaten on the soles of their feet with rubber garden hoses, being sexually assaulted by investigating officers, and/or forced to stand in uncomfortable positions for prolonged periods. DFAT assesses that such allegations are credible, but is unable to comment on how prevalent such abuse may be.

CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Arbitrary Arrest and Detention

4.13 A number of national security-oriented legal instruments introduced under the previous government allow for preventive detention and/or lengthy periods of detention without trial. In-country sources report that authorities continue to use these instruments under the new government.

4.14 The *Prevention of Crime Act (Amendment and Extension)* (POCA; 2013) reintroduced preventive detention, previously abolished by the 2012 repeal of the *Internal Security Act* (1960) and the *Emergency (Public Order and Crime Prevention) Ordinance* (1969). POCA permits detention without trial for up to two years, although extensions require approvals from the Minister for Home Affairs and the Prevention of Crime Board (if over 60 days). A detention order can be renewed once every two years if the Prevention of Crime Board deems it is necessary for the person to remain incarcerated. Detainees may challenge decisions by the Prevention of Crime Board in the High Court. In 2017, a total of 142 minors were reported by the Ministry of Home Affairs to be under POCA detention.

4.15 The *Prevention of Terrorism Act* (POTA; 2015) gives a government-appointed board the authority to: impose detention without trial for up to two years (renewable indefinitely); order electronic monitoring; and impose other restrictions on freedom of movement and freedom of association with no possibility of judicial review. Media reports that POTA continues to be used under the new government. The police can detain and remand an individual for 60 days before the person is sentenced to a two-year detention order or house arrest by the Prevention of Terrorism Board.

4.16 The *Security Offenses (Special Measures) Act* (SOSMA; 2012) allows for preventive detention of up to 28 days with no judicial review. It does, however stipulate that an individual's next of kin must be notified immediately following arrest, and that the accused must have access to a lawyer within 48 hours. In-country sources report that detainees are by default denied bail, with no discretion afforded to the trial judge, and can potentially be incarcerated until the conclusion of all trial proceedings (including appeals, unless below 18 years, female, sick or infirm). Detainees have claimed they were abused during their 28-day detention, and that interviews were conducted under conditions designed to humiliate them. Individuals arrested or detained under SOSMA may face prosecution under the Penal Code. Sources report that authorities conducted 40 arrests between January and September 2019. According to sources, a number of those arrested under SOSMA are subsequently deported, released, or have their charges downgraded.

4.17 Under the *Dangerous Drugs Act* (1952), authorities may detain suspected drug traffickers for up to 60 days, without trial. At the conclusion of this period, a detainee is entitled to a court hearing, which may order his or her release. According to Article 6(1)(b) of the Dangerous Drugs Act, the Minister for Home Affairs can also direct that a person be detained for a period not exceeding two years.

4.18 The *National Security Council Act* (2016) allows the Prime Minister to declare specific regions or the entire country 'security areas'. Once an area is so declared, the law suspends many restraints on police powers and allows authorities to conduct arrests, searches and seizures without a warrant.

Corporal Punishment

4.19 More than 60 federal offences allow caning as a punishment, including kidnapping, rape, robbery, people smuggling and the possession of narcotics. The judiciary routinely sentences individuals to caning. Federal law exempts men older than 50 years (unless convicted of rape), men sentenced to death, and women from caning. Male children under 18 years may receive a maximum of 10 strokes of a 'light cane' in a public courtroom and, if the child desires, in the presence of a parent or guardian. Malaysian schools permit corporal punishment of male students, with a light rattan cane. It is also common practice to use corporal punishment in family settings in Malaysia, and such punishment is socially acceptable.

4.20 Muslims may be caned under state *syariah*-based laws for offences such as adultery, and certain offences under Islam, including drinking alcohol in public or cross-dressing. In contrast to federal law, women are not exempt from caning under *syariah*-based law. *Syariah* caning is reportedly less severe than judicial caning, and is designed to humiliate rather than inflict physical pain. The Kelantan state assembly passed amendments to the *Syariah Criminal Procedure Enactment* (2002) to allow caning of criminals to be carried out in public. In September 2018, a *syariah* court in Terengganu state ordered two women to be given six strokes of the cane for alleged same sex conduct, and their sentence was carried out in a courtroom in front of 100 witnesses (see [Sexual Orientation and Gender Identity](#)). DFAT is not aware of any reports involving the caning of women other than this incident.

4.21 The alleged abuse of schoolchildren by teaching staff in Malaysia has reportedly ranged from verbal and physical abuse to degrading treatment and public humiliation. There have been a number of cases in recent years in which corporal punishment has resulted in serious injury to a student. According to NGOs, an 11-year-old male Islamic religious student died in April 2017 of injuries received from a beating carried out by an assistant hostel warden. In a separate case in the same month, a teacher reportedly threw a chair at a child, with the resulting injury requiring eight stitches to the child's head. In June 2019, the National Union of the Teaching Profession issued a statement reiterating that teachers must adhere to the standard operating procedure in regard to caning as outlined in the Education Ordinance (1957) and the Education Rules (School Discipline) (1959), which stipulate that: students can only be caned on their palms and covered buttocks; girls are exempted from caning; and that caning could only be performed by the school head or principal.

5. OTHER CONSIDERATIONS

STATE PROTECTION

Federal and State Law Enforcement Entities

5.1 Law enforcement entities operate at both federal and state levels. The RMP reports to the federal Minister for Home Affairs and is responsible for law enforcement nationwide. JAKIM standardises *syariah*-based law and regulates *halal* certification for food. JAKIM played a central role in shaping and enforcing the practice of Islam in Malaysia under the former government, and the new government has signalled its intention to review and reform the department. In particular, sources report the government wishes to audit IKSIM, a religious think tank operated by JAKIM. JAKIM enforces *syariah* over Muslims in the three federal territories of Kuala Lumpur, Putrajaya and Labuan. State Islamic bodies enforce *syariah* at the state level. The RMP and JAKIM operate independently; while relevant state religious departments or the RMP can investigate misconduct by religious enforcement officers, the RMP is generally unwilling to involve itself in state religious matters.

5.2 The People's Volunteer Corps (RELA), a federal paramilitary civilian corps under the jurisdiction of the Ministry of Home Affairs, assists security forces. Private individuals can hire RELA for crowd control at events such as weddings and funerals. RELA membership totals approximately 3 million. Their engagement in law enforcement activities has significantly reduced in recent years. NGOs have reported that inadequate training has left RELA members poorly equipped to perform their duties.

5.3 State-level Islamic religious departments enforce *syariah* through Islamic courts and have jurisdiction over Muslims in each state in matters of family law and religious observances. *Syariah*-based laws and the degree of their enforcement vary from state to state, although religious enforcement officers (see [State Islamic Religious Departments](#)) can accompany police on raids in all states. The federal law limits some penalties imposed by *syariah* courts.

Military

5.4 The Malaysian Armed Forces have three branches of service: the Malaysian Army, the Royal Malaysian Navy and the Royal Malaysian Air Force, and has approximately 115,000 active military personnel and 48,297 reserve personnel. The minimum age for voluntary service is 17 years and 6 months. There is no conscription. Military expenditure was 1.11 per cent of GDP in 2017, and was 0.9 per cent in 2018. The Royal Malay Regiment comprises *Bumiputera* only and is the premier unit in the Malaysian Army. The Ranger Regiments and Border Regiments are not restricted to *Bumiputera*: the former is the second largest unit in the army and dates back to 1862; the latter was established in 2006 with a specific mandate of border

control. The Malaysian Army is not heavily engaged in domestic activities, apart from some anti-terrorism campaigns and security-related work in Eastern Sabah.

Royal Malaysia Police (RMP)

5.5 The RMP is based on the British constabulary model, and employs approximately 115,000 officers and operates 837 police stations across Malaysia. The Inspector General of Police is responsible for the RMP and reports to the Minister for Home Affairs. Local and international sources consider the RMP to be a professional and effective police force, although the quality of its members' responses varies depending on levels of training, capacity and engagement in corruption. RMP officers receive limited training, particularly on human rights. Suhakam conducts some human rights training and workshops for police and prison officials. Police officers are among the lowest paid members of the Malaysian civil service. The RMP is 80 – 85 per cent *Bumiputera*. The government undertakes targeted recruitment to increase the number of women, Chinese Malaysians and Indian Malaysians.

5.6 According to Transparency International, Malaysians perceive the police as one of the most corrupt institutions in the country (see [Corruption](#)). The 2005 Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police identified a perception of widespread corruption within the RMP. In response, the government publicly acknowledged the existence of police corruption and implemented reforms including establishing compliance units within RMP. A number of police officers were subsequently tried by criminal and civil courts, with disciplinary actions including suspension, dismissal or demotion.

5.7 External investigations into allegations of police misconduct are done by the Enforcement Agency Integrity Commission, which monitors enforcement agencies for misconduct but can only make recommendations to the disciplinary authorities of the enforcement agency in question. Low levels of success in criminal prosecution have led to an increase in the number of victims' families seeking compensation through civil courts.

5.8 The then-Inspector General of Police announced the establishment of an Integrity and Standards Compliance Department in July 2014 to enhance police integrity and image. It sits within the RMP. Suhakam also receives complaints against the RMP, and has investigated police behaviour. The government is not formally required to consider Suhakam's reports or recommendations.

State Islamic Religious Departments

5.9 Religious enforcement officers, known locally as religious police, have a range of powers that vary depending on the particular *syariah*-based laws that apply in each state. Section 72(2) of the Constitution grants states the authority to define crimes and punishments for Muslims in matters that are not covered by federal law. Religious enforcement officers can detain and charge individuals to go before *syariah* courts for a range of reasons, including indecent dress, alcohol consumption, the sale of restricted books, or close proximity to members of the opposite sex. State-level *syariah*-based law imposes a range of penalties (see [Judiciary](#)). Although state religious officers have no jurisdiction over non-Muslims, their considerable range of powers mean their actions can directly impact on non-Muslims, who may (for example) feel compelled to comply with Islamic dress codes.

5.10 Relevant state religious departments or the RMP can investigate misconduct by religious enforcement officers, but the RMP is reportedly generally unwilling to involve itself in state religious matters.

Most complaints against religious enforcement officers relate to mistreatment of people who identify as transgender, domestic violence victims and non-Muslim parents in situations of unilateral child conversion to Islam.

5.11 Sources claim Islamic religious and political NGOs financed by JAKIM (see [Federal and State Law Enforcement Entities](#)) are paying staff approximately RM750 (AUD259) to recruit people to convert to Islam in Sabah, and are able to incentivise potential converts with payments ranging between RM50 (AUD17) and RM100 (AUD34) and the potential for food and government welfare available to Muslims. Sources claim poor communities are being targeted for conversion due to potential income and support, and that many converts are not aware they have converted to Islam. Sources also claim Christians from the southern Philippines and Indonesia are being approached for conversion to Islam in return for residency in Sabah (red Identification card), with a view to applying for citizenship (blue identification card, only available to *Bumiputera*). DFAT is also aware of reports of university students doing home stays with Orang Asli to teach them about Islam and encourage them to convert, incentivising them with financial benefits, the promise of housing and welfare available to Muslims.

5.12 Media reporting in June 2019 quoted the Kelantan Islamic Religious and Malay Customs Council (Maik) stating that it intended to convert all Orang Asli within its state borders to Islam by 2049. Media quoted Maik's Deputy Chairman claiming that the council had over 100 preachers, including personnel from JAKIM, and was working with the Universiti Kebangsaan Malaysia on a proselytisation mission. Maik had developed a preaching plan based on three main modules, preparing a database with Orang Asli profiles and their religious identification, creating a uniform curriculum, and training preachers how to preach to Orang Asli and approximately 5,000 of the 16,000 Orang Asli living in Kelantan have already embraced Islam. In July 2019, media also reported that the Temiar Orang Asli in Gerik, Perak, had 'Islam' added to their MyKad identity cards without their consent, and that the villagers had never converted to Islam.

Judiciary

5.13 The Federal Court is the highest judicial authority in Malaysia, followed by the Court of Appeal, High Courts at state level, and subordinate courts. Syariah courts operate at state level with jurisdiction over Muslims in personal matters. The subordinate civil courts hear the majority of Malaysia's criminal, civil and family law matters for non-Muslims. A Judicial Appointments Commission makes judicial appointments, subject to the Prime Minister's final approval. Eighty-two per cent of members of the Federal Court are Malay Muslims. Judges receive relatively low salaries, limited training, and many are new graduates.

5.14 Sources report issues of judicial independence, arbitrary verdicts, selective prosecution, delays to court-ordered relief for civil plaintiffs, and preferential treatment of some litigants and lawyers persist in Malaysia. The ability of individuals to seek legal redress through Malaysian courts is variable. Sources advise that defendants generally have adequate time to prepare a defence, particularly those with the financial means to engage private counsel. Government legal aid resources are limited and generally of poor quality. Although strict rules of evidence apply in court, defence counsel reportedly does not consistently receive state-held evidence. According to a leading human rights NGO, a Court of Appeal judge claimed a senior judge had reprimanded him after writing a dissenting statement in 2018. The slow movement of cases through the under-resourced court system can lead to lengthy pre-trial detention periods: in mid-2017, 29.8 per cent of the total prison population comprised pre-trial detainees (see [Detention and Prison](#))

5.15 State-level *syariah* courts apply *syariah*-based law in accordance with their rules of procedure (see [Religion](#)). Native (Indigenous) courts operate in Sabah and Sarawak, and are mechanisms for settling

disputes regarding breach of customary law. In accordance with the Constitution, native courts and the enforcement of native customary law are considered state matters, regulated by state legislation.

5.16 Mobile courts, which sit as the Magistrates and Sessions Court and are empowered by roaming magistrates, operate in remote areas of Sabah and Sarawak. The courts operate in an effort to register undocumented people, allowing the court magistrate to capture late birth registration with government officials from the National Registration Department present to process paperwork. Prior to presenting at a mobile court, applicants are required to register their applications online, providing available documentation (if any). Online checks are performed by the National Registration Department. When applicants present at the mobile court, they require a witness to testify to the unregistered birth, often the midwife and the village head, and language checks will be performed. If an application is approved, a birth certificate can be issued on the spot while the applicant is at the mobile court. Single and unmarried mothers are permitted to register their children's births at mobile courts in Sabah.

5.17 DFAT assesses that while courts have issued contentious verdicts, particularly in instances involving high-profile politicians and human rights defenders, most cases in Malaysian civil courts comply with the rule of law and legal procedure.

Detention and Prison

5.18 Malaysia's prisons suffer from significant overcrowding. According to media reporting in March 2019, the number of prisoners in Malaysia had reached over 66,000, despite Malaysian prisons only having capacity for a maximum of 45,000 prisoners. Occupancy levels were estimated at 121.4 per cent in September 2017. In 2017, pre-trial detainees accounted for 29.8 per cent of inmates, females accounted for 7.2 per cent, and foreigners accounted for 27.8 per cent. Malaysian citizens are entitled to free legal aid; foreigners are not automatically entitled to it, but can apply and have their request considered on a case-by-case basis.

5.19 Sources report prison cells are generally five by five metres and contain an average of twenty people each. Authorities mostly hold men, women and juveniles separately. Prisons generally operate the bucket toilet system, suffer water shortages, and require prisoners to sleep on the floor with blankets. Newer prisons (Sungai Udang in Melaka, Sungai Buloh in Kuala Lumpur, and Puncak Alam in Selangor) use the flushing toilet system. Prison medical and psychosocial support services do not meet the accepted international minimum standards for the treatment of prisoners. The prison system has an arrangement with government hospitals to provide medical care; however, onsite medical supplies are insufficient to meet demand. Death row prisoners are allowed to mix with other death row prisoners for one hour a day and are allowed recreation activity over the weekend. They are permitted to attend religious activities on Sundays. They are detained in a separate block to other prisoners, and held in their own cells, which have toilet facilities. Death row prisoners' meals are served in their cells.

5.20 The International Committee of the Red Cross and Suhakam access prisons on a case-by-case basis. According to the US State Department, under the former government, authorities did not generally permit NGOs or the media to monitor prison conditions. However, DFAT understands NGO access to prisons has improved under the new government. Sources report the new government is more responsive to NGO requests for prison visits.

5.21 Malaysian law does not distinguish between irregular migrant workers (undocumented migrants) and asylum-seekers, whom it considers 'illegal immigrants'. Section 34(1) of the *Immigration Act (1959/63)*

provides that persons may be detained for ‘such period as may be necessary’ pending removal. The Global Detention Project reports that immigration detainees spend between two months and two years in detention. UNHCR has observed that, without a maximum period of detention, or formal administrative or judicial channels to challenge detention, detainees can face a risk of long-term or possible indefinite detention in one of Malaysia’s 16 immigration detention centres.

5.22 Sources report conditions in immigration detention centres are significantly worse than in prisons, but that conditions in immigration detention centres in Sabah are generally better than those in peninsular Malaysia. The UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation reported in November 2018 that Malaysia’s immigration detention centres were overcrowded, that sanitation facilities were too close to sleeping quarters, and that there was insufficient water, insufficient food, and insufficient access to daylight.

5.23 There are no family detention units within immigration detention centres, and families may be separated and detained in different locations. Adult women and men are held separately, while pregnant mothers and children are also located in separate areas to regular detainees. Children under 12 years of age will remain with their mothers if the mothers are arrested, and male children over 12 years of age will be sent to an immigration detention centre for males. There are no provisions under law for the separation of unaccompanied minors, who are placed in adult facilities according to their sex.

5.24 Although media reporting in July 2019 suggested there were 363 children under the age of 12 being held at immigration detention centres awaiting determination of their immigration status, the government has reported there are only 100 children in immigration detention. Sources report there were an estimated 1000 children in immigration detention in 2018, 400 of whom were unaccompanied minors. In July 2019, media reported that two undocumented Filipino toddlers who had been held at the Bukit Jalil Immigration Detention Centre in ‘less than hospitable conditions for...20 days’ following an immigration raid in Kajang the previous month had been released and deported. While the mothers of the toddlers had reportedly been in possession of valid visas, they had not been home at the time of the raid.

INTERNAL RELOCATION

5.25 Although the Constitution provides for freedom of internal movement, Sabah and Sarawak have autonomy over their own immigration. Non-Sabah or Sarawak residents, whether Malaysian citizens or foreigners, must present national identity cards (or passports for foreigners) to gain entry and can visit for a maximum period of three months. The federal government can overrule immigration decisions made by Sabah or Sarawak in limited circumstances, including for national security reasons.

5.26 Sabah and Sarawak both issue working visas to non-residents (including other Malaysians), but these can be difficult to obtain. Both states limit purchase of land by non-residents. Far more people migrate from Sarawak and Sabah to peninsular Malaysia than in the other direction, due to better work opportunities and higher salaries.

5.27 DFAT assesses that, subject to the restrictions outlined above in relation to Sabah and Sarawak, Malaysians can and do freely relocate internally, generally to larger urban areas in peninsular Malaysia for economic reasons. Individuals likely to attract official attention under state *syariah*-based law, including people who identify as LGBTI, women escaping domestic violence, or Muslims wishing to marry non-Muslims, may also move to large urban centres to avoid attention (for evidence, see [Women, Sexual Orientation and Gender Identity](#), [Religious Conversion and Apostasy](#) and [Atheism](#)).

TREATMENT OF RETURNEES

Exit and Entry Procedures

5.28 Sources indicate Malaysia has at least 59 sea, 25 land and 33 air-based formal entry and exit points. Not all entry points allow for visas on arrival. The Immigration Department is responsible for conducting exit and entry checks. Malaysia keeps records of entries and exits (which are not always complete); authorities do not always capture details of arrival/departure ports and destinations. Authorities may prevent the departure of individuals who are facing serious criminal charges, or who have defaulted on repayments of government tertiary education loans. Authorities check travellers against a Travel Status Inquiry (SSPI) system maintained by the Immigration Department prior to departing from an airport or port. However, DFAT understands that, despite being in place, the Interpol database may not have always been activated in the past.

5.29 When leaving Malaysia, Malaysians must present a valid passport and, where required, a valid visa for their destination country (a criterion imposed by airlines rather than Malaysian immigration). The Malaysian Government is exploring how to implement Advanced Passenger Information Systems by conducting benchmarking with other countries.

5.30 There are no laws prohibiting single women from travelling abroad by themselves, and the number of women doing so is increasing. Travel agencies offer special programs for women to protect their safety. Some conservative Islamic families may, however, discourage single women from travelling alone, particularly abroad.

5.31 While not a requirement, when travelling overseas with a child and only one legal guardian present, the Malaysian immigration department advises the parent to carry a copy of the child's birth certificate or legal guardian identification details, and a letter of consent from the absent parent. Authorities may ask to view these documents. DFAT is also aware of allegations of corruption made against border officials patrolling Malaysia's porous northern border with Thailand, an area linked with people trafficking, but is not aware of any cases in which officials have been charged (see [Trafficking in Persons](#) and [Prevalence of Fraud](#)).

5.32 In November 2018, the government commenced fingerprinting every refugee who departed Malaysia, including infants. The government also fingerprints refugees when it issues refugee exit permits.

5.33 In recent years, Sabah and Sarawak have denied entry to a small number of individuals. In September 2018, a Kuala Sepetang State Assembly member was removed from an official dinner in Sarawak by State Immigration Officials and deported to Kuala Lumpur. During the Sarawak state election in May 2016, a number of prominent opposition figures were denied entry on arrival in Sarawak. DFAT is not aware of any instances of authorities denying an individual's exit from Sabah or Sarawak.

5.34 Sources advise that there have been numerous cases in recent years in which Immigration Department officers have been arrested for immigration-related corruption. In May 2016, the then-Director-General of Immigration revealed that over one hundred Department of Immigration personnel had been involved in actively sabotaging the Malaysian immigration system for personal financial gain, by enabling remote access and manipulation of the department's online system and thus allowing selected travellers to pass through unchecked. Then-Deputy Prime Minister and Minister of Home Affairs promised disciplinary action against all culprits, regardless of rank. By June 2016, 15 immigration officers were sacked, 14 suspended from work, eight had salary increments frozen, 20 were under scrutiny by the department, 63

were transferred out of the department's headquarters, and others serving at international airports were transferred. In December 2017, Malaysia's then-Director-General of Immigration announced the arrest of several staff at the Kuala Lumpur International Airport on suspicion of people smuggling.

Conditions for Returnees

5.35 Many thousands of Malaysians enter and leave the country every day. People who return to Malaysia after several years' absence are unlikely to face adverse attention on their return because of their absence. Authorities pay little attention to Malaysians who over-stay their work or tourist visas or breach visa conditions in other countries upon their return to Malaysia. Likewise, failed asylum seekers would be unlikely to face adverse attention, as the Malaysian government would not typically know the individual was a failed asylum seeker, although it is possible that some individuals might be questioned upon entry or have their entry delayed, particularly if their passport had expired while abroad. There is widespread media reporting on the issue of Malaysian nationals travelling to other countries and applying for asylum for the purpose of obtaining work rights. The International Organization for Migration (IOM) assists voluntary returnees, and Malaysian authorities cooperate with the IOM in these arrangements.

5.36 Nevertheless, under Malaysian immigration law, Malaysians who overstay their visa or breach visa conditions in other countries (whether or not they apply for asylum) may be blacklisted and prevented from further travel, normally for a period of up to two years. Cases are unlikely to come to attention, unless the Malaysian is removed (i.e. deported) from another country or applies to renew a passport through a diplomatic mission overseas. If removed on an emergency travel document, a Malaysian national will be directed to report to Immigration in Putrajaya and may face a fine for not returning on a full passport.

5.37 If an individual has committed an offence in Malaysia prior to departure, they could face trial for the offence upon return to Malaysia. The Constitution states that an individual cannot be tried more than once for the same offence, unless there is a substantial change in evidence. In June 2016, the Deputy Inspector General of Police publicly indicated that the RMP might seek extradition of a convicted British paedophile if the 71 counts of sexual assault he was charged with in the UK did not include his Malaysian victims (this crime does not carry the death penalty in Malaysia). The following day the then-Deputy Minister for Home Affairs denied this, stressing the issue fell under the UK's jurisdiction. The Malaysian government also withstood public pressure to charge another individual who returned to Malaysia after serving a prison sentence in Canada for sex offences, although Sabah and Sarawak both banned entry.

DOCUMENTATION

Birth and Death Certificates

5.38 Children born in Malaysia are granted citizenship if one parent is a citizen or permanent resident at the time of birth (see [Children](#)). Children must be registered within 14 days of birth. Both parents must supply their national identity card and their marriage certificate in order to register the child. If a Muslim child is born out of wedlock, or if the child was born less than six months from the time of marriage, authorities enter the generic surname 'bin Abdullah' on the birth certificate, not the father's information, which leads to societal stigma due to illegitimacy. For children of other religions born out of wedlock, authorities enter the father's name only on birth certificates even if the parents make a joint application.

Birth and death certificates are generally considered reliable forms of documentation, although DFAT is aware of cases of corruption (see [Infant-Selling Syndicates and Factories](#)).

5.39 If a child is born overseas to an unwed Malaysian mother, the child receives Malaysian citizenship after registration at a Malaysian consulate, or at the National Registration Department in Malaysia.

National Identity Cards

5.40 National identity cards are compulsory for all citizens aged 12 years and above. The National Registration Department introduced the *MyKad* system in 2001, replacing an earlier identity card. At the time, Malaysia became the first country in the world to use an identification card incorporating both photo identification and fingerprint biometric data on an in-built computer chip.

5.41 The *MyKad* shows an individual's name, address, biometric data (including photograph and fingerprints) and their status as a Muslim (by omission, it signals an individual's status as a non-Muslim). The main purpose of the *MyKad* is to provide proof of identity but it can technically serve many other functions, including as an alternative driver's license, a health document storing medical records, an ATM card and a payment card for tolls and other taxes.

5.42 Children receive a *MyKid* card at birth, which is upgraded to a *MyKad* at 12 years of age. It is a requirement that the photograph remains valid and that the *MyKad* is updated when an individual is between 18 to 25 years of age, and thereafter when details change. In accordance with the National Registration Regulations (1990), the *MyKad* card must be carried at all times and a failure to do so attracts a fine of between RM3000 (AUD990) and RM20,000 (AUD6,600) or a jail term of up to three years. It is also a legal requirement for cardholders to keep their residence details up to date. As Sabah and Sarawak maintain separate immigration controls, citizens with permanent residency in these states are denoted by the letters "H" and "K" respectively on the bottom right corner of their card.

Passports

5.43 Under the *Passport Act* (1966), the immigration department issues Malaysian passports. Malaysia's passport application process is one of the fastest in the world. The application and renewal process occurs at a kiosk point, known as a KiPPas, and takes as little as one hour. Every state has an issuing office. Passport renewals take longer if the old passport is reported lost or stolen, or otherwise suspect. A Malaysian passport is valid for five years and costs RM300 (approximately AUD100). Under the *Guardianship (Amendment) Act* (1999), the consent of only one parent is required to obtain a passport for a person under 18. A person uses their *MyKad* to obtain a passport or, if a person is not in possession of *MyKad*, they must use a temporary identification certificate and their birth certificate.

5.44 Malaysia has issued biometric passports since 1998, adding thumbprint data to the passport chip in 2002. Malaysia has issued ICAO-compliant e-Passports since February 2010. The Malaysian passport underwent further security improvements in April 2013 with the addition of a polycarbonate sheet that includes a hologram mini-photo of the passport holder. Sources report, however, that passport issuance offices are prone to corruption, and DFAT is aware of a number of cases of fraudulently obtained but genuinely issued Malaysian passports (see [Prevalence of Fraud](#)).

UNHCR Documentation

5.45 UNHCR launched a new identity card system in June 2016 that includes enhanced biometric collection and security features (micro text, holograms, watermarks, barcodes, facial imagery, fingerprint and iris scans). UNHCR identification cards allow the holder to reside within communities rather than detention centres, access discounted hospital treatment, and access education provided by NGOs (not state schools). Media reports suggest, however, that due to the lack of legal protection, even cardholders may not feel safe attending government hospitals for fear of being reported as undocumented migrants and being detained. Alternatively, some may attend expensive private hospitals, treat conditions at home, or seek no treatment at all.

5.46 UNHCR cards are often the only form of personal identification that bearers have. As such, the UNHCR ID cards are considered valuable commodities within the refugee community. In 2016, there were instances of fake (non-biometric older) UNHCR ID cards being available for sale or genuine cards being provided to individuals who did not meet the registration criteria. DFAT understands issues of fraud among UNHCR staff have been resolved, but fraudulent activity by other individuals or groups continues to occur. In July 2019, media also reported that the police had identified a syndicate trafficking Rohingya into Malaysia and providing them with fake UNHCR cards. To further eliminate fraud and ensure the protection of wrongfully arrested refugees and asylum seekers, UNHCR launched a free mobile application, 'my verify,' which can be downloaded onto any phone to scan the new biometric style UNHCR ID cards to confirm the identity of the cardholders. The UNHCR 'my verify' application is being used by UNHCR and government authorities, and assists in the release of refugees and asylum seekers from immigration detention. It can be downloaded by anyone online for verification purposes. The government is reportedly considering plans to issue its own identity cards to registered refugees, for which they will be charged a fee.

PREVALENCE OF FRAUD

5.47 In-country sources report that it is more common to see genuine documents obtained through bribery or fraudulent means than counterfeit documents. DFAT is aware of reports of immigration officials being bribed to obtain genuine passports, both at border crossings and to facilitate release from immigration detention centres. In some cases, citizens from the Philippines and Indonesia have reportedly entered Sabah legally, disposed of their documentation after arrival, and bribed officials to obtain a Malaysian passport while citing a different ethnicity.

5.48 Australian authorities have reported identifying a number of individuals who have attempted to enter Australia with genuine passports obtained through using another person's identity. The passports were most likely obtained through using the other person's *MyKad* card, possibly with the collusion of immigration authorities. DFAT understands the number of fraudulently obtained genuine passports decreased in 2018 following the arrest and prosecution of immigration officials involved in corruption. A number of immigration officials involved in the fraudulent issuance of genuine passports have been convicted and imprisoned.

5.49 In-country sources advise that it would be more difficult to fraudulently obtain a *MyKad* card as the Ministry for Home Affairs crosschecks personal identity and other records. DFAT notes, however, that there have also been recent incidences of corruption involving officers from the National Registrations Department who have assisted in the corrupt issuance of *MyKad* cards to foreign nationals. In September 2019, media reported that six people, including a NRD officer in Penang, had been charged in the Sessions Court with faking and selling birth certificates and *MyKads*. In October 2019, media reported that a special task force



involving the RMP, Immigration Department and NRD had been set up to investigate the issuance and sale of *MyKads* and birth certificates to foreign nationals. Marriage certificates are generally considered reliable forms of documentation.

5.50 IOM has provided secondary verification machines to the government that can determine if documentation is fraudulent, altered, or a mismatch to the person bearing it. DFAT is unable to verify the extent to which these machines are in active use.

5.51 In-country sources have reported that organised migration crime syndicates target the Malaysian market, marketing and selling packages on commercial websites that provide advice on how to obtain a visa fraudulently and work in Australia. In addition to an airfare, some packages reportedly include scripts and real-time coaching to assist the purchaser in seeking a secondary protection visa upon arrival in Australia. DFAT is unable to provide any further detail in relation to the prevalence of such syndicates.