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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
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CMA	Communications and Multimedia Act (1998)
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
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
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	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
JAKIM	National Department of Islamic Development
LGBTI	Lesbian, gay, bisexual, transgender and/or intersex
MCA	Malaysian Chinese Association
MCMC	Malaysian Communication and Multimedia Commission
MCO	Movement Control Order

MYR	Malaysian Ringgit (currency; approximate exchange rate as of June 2021: MYR1 = AUD0.32)
NGO	Non-governmental organisation
OSCC	One Stop Crisis Centre
PAA	Peaceful Assembly Act
PAS	Pan-Malaysian Islamic Party
PH	Pakatan Harapan (English: Coalition of Hope)
PN	Perikatan Nasional (English: National Alliance)
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
RMP	Royal Malaysia Police
SOSMA	Security Offences (Special Measures) Act 2012
SUARAM	Suara Rakyat Malaysia, a Malaysian human rights NGO
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (English: Human Rights Commission of Malaysia)
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>	Literally ‘original people’; Malaysian term for indigenous peoples of peninsular Malaysia
<i>Sekolah agama rakyat</i>	Islamic and religious schools
<i>Syariah</i>	Islamic law (also spelt Sharia)

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 judgement 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, issued 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; leading 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 13 December 2019.

2. BACKGROUND INFORMATION

RECENT HISTORY

2.1 The colony of Malaya achieved independence from the United Kingdom in 1957. In 1963, Malaya joined together with 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. The PH coalition was relatively short-lived, ending after 21 months in February 2020 when Dr Mahathir resigned, with the Malay nationalist Bersatu party and a number of other lower house members withdrawing from the coalition. In March 2020, Muhyiddin Yassin, also of Bersatu, was installed as the country's eighth Prime Minister, at the head of the Perikatan Nasional (PN) coalition government.

2.3 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 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](#)).

2.4 Malaysian politics entered a relatively unstable period, with an end to the long certainty of BN rule in the 2018 General Election. This ongoing uncertainty has led to greater competition for the Malay-Muslim nationalist vote, with wider implications for human rights. For example, the Chairman of the Malaysian Human Rights Commission, SUHAKAM, claimed in the foreword of its annual report published in late 2020 that 'race-baiting' by senior politicians had occurred.

DEMOGRAPHY

2.5 Malaysia covers approximately 328,550 square kilometres and has an estimated population of 32.7 million people. Between 4-6 million foreigners are present in Malaysia, both legally and illegally, with 1.5 million on Temporary Work Permits including overstayers, according to the Government of Malaysia. 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 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, as ‘illegal immigrants’. In April 2020, faced with concerns by Rohingya refugees about COVID-19, the Malaysian government reiterated that ‘Malaysia does not recognise the community as refugees but merely as ‘illegal immigrants,’ even if they hold the United Nations High Commissioner for Refugees (UNHCR) identification card.’ Undocumented migrants have no right to employment, health or education and may be arrested, detained or removed at any time (see [Detention and Prison](#)).

2.7 As at the end of March 2021, the UNHCR reported it had registered 178,920 refugees and asylum seekers in Malaysia, around a quarter of whom were children. Of this total, 154,350 were from Myanmar (including some 102,560 people identifying as Rohingya), and a further 24,570 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. While Malaysia has urged the UNHCR to facilitate settlement in third countries, regarding itself as an ‘intermediate destination’ only, this occurs infrequently. In 2018, even before the COVID-19 pandemic, only 2 per cent of the refugee population in Malaysia was resettled abroad. In-country sources suggest the Government may be less open to taking in more refugees in future, will continue to ‘turn back’ Rohingya boats at sea, and may try to ‘safely return’ Myanmar refugees from Malaysia.

2.8 On occasion, 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 Uyghurs in October 2018, who were instead allowed to travel to Turkey. The PN Government continues to honour this position, refusing to extradite Uyghurs to China and allowing them safe passage to Turkey. In February 2021, Malaysia deported 1,086 detained Myanmar nationals after the Myanmar military government, which took power in a February 1 coup, sent three navy ships to collect them. The Malaysian government claimed none were refugees and all had returned voluntarily. Refugee advocates claim asylum seekers and unaccompanied minors who were included in the deportation may be in danger of persecution upon return. The deportation remains the subject of a judicial review application being heard in the Kuala Lumpur High Court.

ECONOMIC OVERVIEW

2.9 The World Bank classifies Malaysia as an upper middle-income, export-oriented economy. In 2019 its real GDP growth was 4.3 per cent, while per capita GDP was USD11,418 (approx. AUD 15,000). 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 86.5 per cent of Malaysia’s exports in 2020. 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.

2.10 According to the World Bank, following the Asian financial crisis of 1997-98, Malaysia's economy was on an upward path (until COVID-19), averaging growth of 5.4 per cent from 2010. Malaysia's progression from an upper-middle income economy to high-income status, according to the World Bank's measure, had been anticipated to occur between 2024 and 2028. This may be delayed somewhat by the effects of COVID-19, while some commentators have suggested Malaysia cannot sustain the high levels of growth required to make this transition.

2.11 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 (MYR2,208 (AUD700) per month in 2020) falling from over 50 per cent in the 1960s to less than 1 per cent in 2021. However, persistent inequalities remain for indigenous peoples and the poorest 40 per cent of the population, the so-called 'B40' who are the recipients of government assistance. Poverty rates are higher in rural areas, especially in Kelantan, Sabah, Sarawak and Kedah states. Furthermore, the UN Special Rapporteur on Extreme Poverty gave the view in 2019 that Malaysia's official poverty line is artificially low and that a more accurate measurement results in a poverty rate of around 16-20 per cent. The UNDP's Human Development Index ranked Malaysia 62 of 189 countries in 2020, placing it in the 'very high human development' category.

2.12 In 2020, Malaysia's economy was hit with the dual shock of COVID-19 and a decline in oil prices. According to the Malaysian government, the Malaysian economy contracted by 5.6 per cent in 2020 due to COVID-19. The economy is expected to rebound in 2021, with Malaysia's central bank forecasting growth between 6 and 7.5 per cent. The Malaysian government undertook robust measures to limit the impact of the pandemic on the economy, both through the 2021 Budget and through multiple economic stimulus packages. Measures included wage subsidies for lower-paid employees, a moratorium on loans by financial institutions, special grants of MYR3,000 (AUD 950) to qualifying SMEs and direct cash grants to the poorest Malaysians, as well as investment incentives and measures to protect Malaysia's role in global supply chains.

Employment

2.13 In February 2021, the Malaysian Department of Statistics reported a labour force participation rate of 68.5 per cent and an overall unemployment rate of 4.8 per cent. Prior to the pandemic, Malaysia's unemployment rate was 3.3 per cent in 2019. 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.

2.14 The International Labour Organization estimated in 2020 that around 3 million migrants (including irregular migrants) worked in Malaysia, constituting up to 30 per cent of the country's workforce. Of the migrant worker population, 1.7 million were registered, and an estimated 1.9 million were undocumented (irregular) migrants, as at 2017. 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. In May 2020, during the COVID-19 pandemic, the government conducted mass arrests of undocumented migrants in coronavirus hotspots in order to prevent the spread of the disease to its own 'innocent citizens', according to one government minister.

2.15 Reports have documented serious labour rights abuses against migrant workers in Malaysia, including cases of forced labour and human trafficking (see [Trafficking in Persons](#)). These allegations have been corroborated by recent US Customs and Border Protection findings that indicators of forced labour and other abuses were evident in the production of rubber gloves and palm oil by two major Malaysian companies, Top Glove and Sime Darby. 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. 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.

2.16 Male 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 in recent years 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. Undocumented workers have been particularly hard hit by COVID-19, due to cramped accommodation and unsanitary conditions, poor access to healthcare, and the lack of legal protection.

Corruption

2.17 Transparency International's 2020 Corruption Perceptions Index ranked Malaysia 57th out of 180 countries and territories, a fall of six places on 2019. According to international observers, procurement is subject to corruption, and bribes and irregular payments are sometimes exchanged in return for favourable court decisions. One perceptions survey found that Malaysians regarded the police as the most corrupt institution in the country (see Royal Malaysia Police (RMP)), while another found that more than a third of Malaysians regarded Members of Parliament as corrupt, the highest level for any institution. Transparency International's Corruption Barometer survey in 2020 found that 72 per cent of Malaysians consider corruption in the government to be a big problem and that 13 per cent had paid a bribe with respect to a public service in the last year. While this represents a significant concern about corruption, these levels are lower than in neighbouring Asian countries.

2.18 The most prominent recent corruption case in Malaysia is that involving the government investment fund, 1 Malaysia Development Berhad (1MDB), implicating Najib Razak, former Prime Minister and Chairman of the 1MDB Advisory Board. In July 2020, in the first verdict of a series of trials, former Prime Minister Najib was convicted on seven charges and sentenced to twelve years in prison. In April 2021, Najib appealed these convictions. Further trials have been delayed by COVID-19. Former United Malays National Organisation (UMNO) President Seri Ahmad Zahid Hamidi's trial for 47 corruption-related charges was held in March 2021 after numerous postponements.

2.19 The Malaysian Anti-Corruption Commission (MACC) has arrested hundreds of civil servants in recent years (467 in 2020, down from 525 in 2019). These arrests came from a variety of different areas within government, for example: in January 2021, five officers from the Malaysian Quarantine and Inspection Services Department were arrested as part of an alleged meat cartel; 27 Immigration Department officers were arrested in November 2020 for their role in an alleged human trafficking syndicate; former PH government finance Minister Lim Guan Eng was charged for alleged bribery in connection with the construction of an undersea tunnel (though he contends that the charge is politically

motivated as he is now an outspoken opposition figure); and a deputy public prosecutor was arrested on suspicion of accepting bribes.

2.20 In 2020, several high-profile corruption trials of prominent political figures ended with Discharge Not Amounting to Acquittal (DNAA) verdicts, including one trial of former Minister Tengku Adnan Tengku Mansor in his MYR1 million corruption trial (though he was convicted of a separate offence in another trial). In this case, the order was granted after Deputy Public Prosecutor (DPP) Julia Ibrahim told the court she had received instructions from the Attorney-General's Chambers (AGC) to seek the DNAA order citing new developments in the case that warranted further investigation. While a DNAA order does not prevent the prosecution from charging the accused again based on the same facts, some commentators have suggested that ending such cases without a definitive verdict and without hearing all the evidence delivers a form of impunity to those charged.

Health

2.21 Malaysia spends approximately 3.9 per cent of GDP a year on health (roughly half public and half 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 11.4 per 1,000 births. Non-communicable diseases account for 73 per cent of deaths, including 35 per cent of deaths among people under 35.

2.22 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. Primary healthcare treatment or a first line treatment via public healthcare would incur a fee ranging from MYR1 – MYR5 (approx. AUD0.30 to AUD 1.6) per visit, and a visit to a private GP would cost MYR30-MYR125 (AUD 9.50-AUD40). Health care is generally 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 less well provisioned, 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 near the coastline, and sources report significant overcrowding at district hospitals.

2.23 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 up-front deposits for migrants seeking treatment at public hospitals, raising deposits by 130 to 230 per cent. Furthermore, undocumented people who present for health care treatment may risk arrest or deportation.

2.24 The Malaysian Government's response to COVID-19 - including a lockdown known as the Movement Control Order (MCO) - came into effect on 18 March 2020 and successfully reduced the spread of the virus in the early stages. However, large clusters linked to factories, construction sites and prisons, as well as the Sabah state election in September 2020, contributed to a rise in COVID-19 case numbers. As at 26 June 2021, there were 722,659 confirmed cases; and 4,803 deaths. At their peak in January 2021, there were more than 5,000 cases per day before falling significantly and rising again in mid-2021. New case

clusters in November 2020 were centred upon foreign workers, particularly within Top Glove factories, the world's largest manufacturers of rubber gloves.

2.25 People with disabilities were also hit hard by the economic impact of COVID-19 due to the typically more insecure and public-facing nature of their employment. UNICEF reports that people living with disabilities, especially children, are often hidden, portrayed negatively or excluded from society, face daily stigma and discrimination, and are prevented from accessing their rights due to gaps in legislation.

Mental Health

2.26 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 limited. Due to a lack of mental health professionals, public services are generally provided by general practitioners and non-mental health specialists. Private mental health services can cost upwards of MYR300 (AUD95) per consultation. Because most private health insurance does not cover mental health services in Malaysia (as of July 2019, Malaysia AIA became the only such company to provide coverage), access can be cost prohibitive. There is also significant stigma attached to mental health issues in Malaysia. The word *gila* (crazy), or the term 'gila monster' is often used in society to describe people with a mental illness. A belief in supernatural spirituality can also compound mental health issues, and misdiagnosis of mental health issues reportedly occurs due to widespread 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. It was reported that half the respondents of a survey conducted by a Malaysian thinktank experienced mental health issues, typically anxiety, during the various COVID-19 Movement Control Orders.

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. The United Nations reported that national net enrolment ratios were 99.6 per cent for primary school in 2017 and 72.2 per cent for secondary school (2018), the latest years for which data is available. In 2017, the total number of out-of-school children (11 years and below) was 10,381 and out-of-school adolescents (12 to 17 years) was 205,877. Malaysia's adult literacy rate is 93.7 per cent.

2.28 As of July 2018, there were 7,776 primary national schools, including about 1,300 national-type Chinese schools and around 700 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 around 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.

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 appointed to represent federal territories (with two for Kuala Lumpur), 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 While the King, as a constitutional monarch, has traditionally remained above politics, the relative political instability since the general election in 2018 has required him to become more involved in government affairs. Following the abrupt end of the PH government, the King met with all federal MPs and eventually ended the impasse by selecting Muhyiddin Yassin to become the next prime minister without a parliamentary vote. Given the Prime Minister's slim majority in Parliament, the King's potential role has become increasingly important. Human rights groups have expressed concern that the power of the monarchy may be growing.

2.35 On 12 January 2021, the King, following a request from the Prime Minister and other senior figures, declared a State of Emergency, the first nation-wide emergency declared since 1969. The State of Emergency will be in place until 1 August 2021 (or earlier if the COVID-19 situation is brought under control) and has as its stated purpose allowing the government to better deal with the pandemic. The declaration has resulted in the suspension of Federal and state parliaments, despite the King subsequently stating parliaments could sit. Opposition MPs questioned the need for a State of Emergency given the MCOs were perceived as effective. An election is expected in late 2021 or early 2022, to resolve the country's political instability.

Civil Service

2.36 Relative 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), reportedly with low levels of productivity. In August 2020, Prime Minister Muhyiddin promised that any increases in productivity and effectiveness that resulted from the implementation of a plan for more online government services would not be cause for any civil servant job losses. Civil servants enjoy excellent conditions: the 2021 budget allocated funds for a one-off assistance to civil servants below Grade 56—most of them—of MYR600 (AUD190) and a further MYR300 (AUD95) for civil service retirees, as well as new funds for civil servant housing.

Human Rights Framework

2.37 Of the nine core international human rights instruments, Malaysia is a State Party 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 a party to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), the International Covenant on Civil and Political Rights (ICCPR), or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Although the government made a public commitment to speed up its deliberations with regard to ratification of the remaining treaties during its November 2018 Universal Periodic Review (UPR), it had not yet done so by early 2021. Malaysia also maintains reservations against treaty provisions seen to conflict with Islamic and national law.

2.38 In November 2018, Malaysia reversed a pledge to ratify ICERD, a commitment made by the incoming PH government, following a backlash from groups who feared it could dilute the constitutionally protected privileges for majority ethnic Malays (even though Malaysia could have sought a reservation for existing protections). Malaysia does not have any anti-discrimination legislation. Malaysia is bidding for a seat on the UN Human Rights Council for the 2022-2024 term.

National Human Rights Institution

2.39 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.

2.40 Local human rights organisations regard SUHAKAM as a credible monitor of the human rights situation in Malaysia, but have historically claimed it lacked sufficient resources and enforcement authority. Government funding for SUHAKAM was temporarily cut in 2015, which Human Rights Watch suggests was a result of reports critical of the BN government. According to in-country sources, government engagement of SUHAKAM increased significantly following the 2018 election of the PH government. In 2021, SUHAKAM is active in a number of areas but its degree of influence with the PN government is difficult to determine.

2.41 SUHAKAM comes under the Prime Minister's Department, but in October 2019 the Minister for Law announced 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.

2.42 As required by statute, SUHAKAM's 2018 annual report was tabled in Parliament and, on the occasion of its 20th anniversary, the report was debated for the first time. During this debate, the LGBT section was severely criticised by PAS members, who now make up the second biggest bloc of the government. PAS Deputy President Tuan Ibrahim described the section as 'not relevant for the country' and claimed SUHAKAM did not understand that '*syariah* law had been the core of Malaysia's legal system'. However, its 2019 annual report, tabled in Parliament in November 2020, was not debated as 'there [was] not enough time' according to de facto law minister Datuk Takiyuddin Hassan.

2.43 A unit in the Prime Minister's Department's Legal Affairs Division deals with domestic human rights policy issues (as distinct from SUHAKAM's enforcement and advocacy role), 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 which was released on 1 March 2020. The Coalition of Malaysian NGOs in the UPR Process (COMANGO) described the plan as 'deeply problematic' for failing to address systemic human rights issues.

SECURITY SITUATION

2.44 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.

2.45 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-ICERD rally. However, in a protest in Kuala Lumpur in March 2020 against the circumstances that saw the end of the PH coalition, the Government was criticised for arresting and detaining pro-democracy activists. Some protests are accompanied by violence, as occurred at an incident at a major Hindu temple outside Kuala Lumpur (the Seafeld Hindu Temple) in November 2018 (see [Buddhists and Hindus](#)).

2.46 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, Da'esh (also known as the Islamic State in Iraq and the Levant or the Islamic State) sympathisers were involved in a grenade attack in Kuala Lumpur on 28 June 2016. Although Malaysia has

not experienced further Da'esh-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 Da'esh supporters. This includes suspected third-country Da'esh 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 (RMP) Special Branch Counter-Terrorism Division has reportedly disrupted several domestic terror plots. It was reported that Malaysia made seven counter-terrorism arrests in 2020, down from 72 and 119 arrests (of Da'esh suspects) in 2019 and 2018 respectively, but this was attributed chiefly to coronavirus-related movement restrictions.

Gang Activity

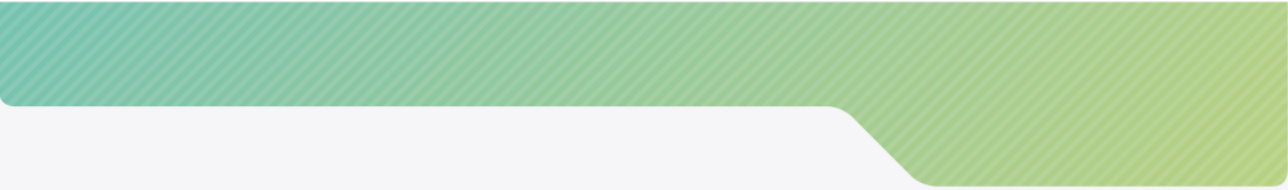
2.47 Malaysian media citing official police statistics in early 2018 reported that over 100 illegal gangs, with an estimated 9,000 members, operated in Malaysia. Of these gangs, 65 were reported to be Chinese Malaysian, 20 were Malay and 18 were Indian Malaysian-run gangs. DFAT is not able to verify 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. Some 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

2.48 Malaysia is a destination, source and transit country for human trafficking. The 2020 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 the reporting period, Malaysian authorities identified 2,229 potential VoTs and confirmed 82 VoTs, an increase on the previous year (2018-19) but fewer than in previous years, compared to 2,224 potential and 721 confirmed VoTs in 2017, and 3,411 potential and 1,558 confirmed VoTs in 2016.

2.49 The third National Action Plan Against Trafficking in Persons 2021-2025 was launched on 1 April and sets out Malaysia's national goals for preventing and combating trafficking in persons. In March 2018, the then-government established an anti-trafficking court in the state of Selangor, which has historically had the highest number of trafficking cases. The government has not yet implemented plans to create such courts elsewhere in the country. The then government did, however, expand trafficking investigations, prosecution, and convictions for those involved in trafficking activities. The 2020 US Trafficking in Persons report stated that some Malaysian immigration officials 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, although arrests of junior syndicate members occur periodically. In January 2019, a Royal Commission of Inquiry was set up to investigate an illegal transit camp at Wang Kelian where the skeletal remains of 130 people were found. Media reports suggest official complicity in the trafficking activities and a 'massive coordinated cover-up' of the mass grave. The findings of the RCI report were submitted to the Malaysian Cabinet in February 2020 but had not yet been made public at the time of publication of this report.

2.50 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).

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. While race has always been a fault-line in Malaysian politics and society, increased political instability at the national level has led to greater competition for the Malay nationalist vote and increased sensitivity around race issues. In its 2019 Annual Report, published in late 2020, the Chair of SUHAKAM observed that recently ‘Malaysia bore witness to race-baiting statements by senior politicians’.

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 entire population and nearly 70 per cent of citizens. In the last public data available on the composition of *Bumiputera* (2015), there were over 14 million ethnic Malays (about 55 per cent of Malaysian citizens) while other *Bumiputera* constituted just over 3 million people (around 12 per cent of Malaysian citizens). While Malays, *Anak Negeri* and *Orang Asli* are all categorised as *Bumiputera*—in contrast to Chinese and Indian Malaysians who are not *Bumiputera*—they are treated quite differently from one another within Malaysia (see [Indigenous Peoples](#)).

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*. In the 2021 Federal Budget, for example, the government increased its funding for its ‘*Bumiputera agenda*’ from MYR8 billion in 2020 to MYR11.1 billion in 2021, with the largest share of that money focused on

education. 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. Despite their constitutionally privileged position, *Bumiputera* households are over-represented in the bottom 50 per cent of Malaysian households by income.

Indigenous Peoples (*Orang Asli* and *Anak Negeri*)

3.4 While they are included within the term *Bumiputera*, *Orang Asli* are marginalised within Malaysian society. For example, despite *Orang Asli* being hard-hit by the spread of COVID-19, SUHAKAM claimed many were not included in the distribution of Bantuan Prihatin Nasional (one-off cash aid given to the poorest households during the pandemic). The *Orang Asli* of Peninsular Malaysia number around 150,000 and are a minority in the States where they live; the indigenous peoples of Sabah and Sarawak constitute a majority in those states.

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 have been 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 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. However, in 2019, the Land Code was amended by the Sarawak State Assembly to make it easier for indigenous Sarawakians to claim Native Customary Rights over their traditional lands. Conflict over native land continues. In June 2020, *Orang Asli* communities near Kuala Lumpur set up blockades to prevent loggers from resuming logging activities on their traditional lands.

3.6 Sources report that, prior to the 2018 election, under the former BN 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 previous Sabah government intended to abolish communal titles as 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 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*, 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 (*Orang Asli*, who are usually included within the category of *Bumiputera*) face some additional barriers in practice, including in relation to land ownership.

Chinese Malaysians

3.8 The Malaysian Department of Statistics estimated there were 6.7 million Chinese Malaysians in Malaysia in 2020, 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 (though, by implication, as the second largest ethnic group, they are the principal group affected by the constitutional preference for *Bumiputera*). Chinese Malaysians freely participate in political life, including as ministers (one in the current cabinet, down from four in the PH government) and in opposition parties, but ethnic Chinese politicians have occasionally faced public criticism for interfering with ‘Malay rights’. The Democratic Action Party (DAP) – a predominantly ethnic Chinese party – currently holds 42 of the 222 federal parliamentary lower house seats. Chinese Malaysian community members advised that the 1MDB corruption scandal (see [Corruption](#)) 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](#)). 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-owned. However, Chinese Malaysians report discrimination against the community in the business sector and claim unequal access to certain industries due to *Bumiputera* ownership laws (see [Federal and State Law Enforcement Entities](#)). Chinese Malaysians 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 national primary or high school education, but generally choose to attend one of the nearly 1,300 national-type Chinese primary schools that teach in Mandarin (along with Bahasa Malaysia) (see [Education](#)). This is reportedly usually due to concerns about the quality of education elsewhere 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 independent Chinese schools for the first time but this was not continued in the following Budgets. The Chinese school qualification Unified Examination Certificate (UEC) is still not recognised for the purposes of Malaysian public university entry.

3.12 DFAT assesses 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

3.13 Indian Malaysians constitute the third largest ethnic group in Malaysia. The Malaysian Department of Statistics estimates there were 2.02 million Indian Malaysians in Malaysia in 2020, making up over

6 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 around 700 national-type Tamil-language primary schools across Malaysia (see [Education](#)). As with Chinese Malaysians, however, access to state-based tertiary education remains low. Approximately 6 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).

3.14 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.

3.15 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 2018, an Indian Malaysian became Attorney-General (a government-appointed official), 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. There is only one Indian minister in the current coalition (Human Resources Minister, Saravanan Murugan). The previous president of the upper house, appointed in April 2016, until his replacement in September 2020, was also an Indian Malaysian.

3.16 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*. Indian Malaysians also reportedly suffer discrimination in obtaining rental accommodation.

3.17 Indian Malaysians comprise a disproportionately high number of incarcerated persons; despite being just 7 per cent of the population, according to Malaysian human rights NGO, SUARAM, they comprised 55 per cent of prison deaths between 2010 and 2017. In June 2019, of the 47,630 Malaysians in prison, 5,429 were Indian Malaysian, close to double their proportion of the total 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.

3.18 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.

3.19 According to in-country sources, an estimated 25,000 ethnic Indians in Malaysia are either stateless or have documentation issues though there are claims that this figure is far higher. Such undocumented individuals are not able to access health or education services, or 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.

3.20 DFAT assesses Indian Malaysians face low levels of official discrimination, including being disadvantaged by quotas, 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, potentially from other gangsters and from the police, more likely due to their activities than on the basis of their ethnicity.

RELIGION

3.21 Article 3(1) of Malaysia's Constitution states 'Islam is the religion of the Federation; but 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.

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

3.23 According to Malaysia's last Population and Housing 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.

3.24 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, particularly toward Muslim minorities.

3.25 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](#)).

3.26 The religious status of Muslims is recorded on their birth certificates and on their national identification cards (MyKad), reportedly to assist with the application of *syariah* law. National identification cards do not distinguish between Sunni and Shi'a Muslims. Other religious affiliations are not reflected visibly on the surface of the card, but are encrypted on a smart chip in the card 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. In July 2019, a controversial Kedah-based anti-vice 'Badar Squad,' reportedly harassed unwed Muslim couples who did not have what the group deemed to be proper supervision.

3.27 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 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 through amendments to the existing provisions, as well as adding new provisions to the *Syariah Criminal Offences (Federal Territories) Act*.

3.28 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).

3.29 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.

3.30 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. State 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.

3.31 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. In March 2021 the Sidang Injil Borneo Church discontinued its appeal against this decision.

3.32 While the government rarely intervenes in instances of religious persecution or criticism of non-Muslims, there are reports of the harassment of non-Muslims for commenting on any matter pertaining to Islam. According to SUARAM, in 2020, there were around 10 arrests or investigations of people who made comments or allegedly derogatory remarks about Islam. JAKIM reportedly has 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 Malay-dominated parties, led by the United Malays National Organisation (UMNO, the dominant party in the previous BN 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 also occurs; 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.

3.33 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 a few reported incidents of violence against religious 'dissenters'. DFAT is also aware of reports of increasing religious segregation of school entrances, exits and canteens, and of reports of Malaysians being arrested for consuming alcohol. Under the PN government, increasing calls for a crackdown on drink driving are reportedly connected to Islamic intolerance for alcohol, with PAS calling for a ban on alcohol sales until the issue of drunk driving is 'resolved'.

3.34 The UN Special Rapporteur for cultural affairs reported in 2019 that 'Islamization' was increasingly leading to the pre-Islamic history of Malaysia, as well as non-Muslim cultural heritage, being omitted from textbooks, so the contributions of Chinese and Indian Malaysians and indigenous people were marginalised.

Places of Worship

3.35 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, 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.

3.36 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-(Sunni) Muslim places of worship. In 2014, authorities granted a Christian church in Selangor state planning permission six years after it had submitted its proposal. 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.

3.37 The government has denied official recognition to some religious groups, including Jehovah's Witnesses and Mormons. Those groups denied official status may fall foul of restrictions on assembly and may otherwise find it difficult to operate including to raise funds. 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). Many churches report difficulty in obtaining registration. Some religious organisations pursue registration as a company instead; however, this does not allow them to receive tax-exempt status or government funding.

Islam

3.38 The most recent census in 2010 found there were 17.38 million Muslims in Malaysia (including both Sunni and Shi'a branches). (A new population and housing census is underway, but results are not yet available.) 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. This competition for the Malay-Muslim vote has reportedly increased since the defeat of the BN coalition, which governed Malaysia from independence. 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 (see [Shi'a Muslims](#)). 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](#)).

3.39 There is an increasing trend towards religious conservatism in Malaysian Islam. At the same time, the growth of the country's religious bureaucracy has created a constituency with a vested interest in promoting religion. 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. According to the US Department of State in 2021, Muslim women who did not wear the headscarf or otherwise conform to conservative religious notions of modesty were often subject to shaming in public and on social media. There is also evidence of decreasing tolerance towards sexual and religious minorities on religious grounds (see [Sexual Orientation and Gender Identity](#)).

3.40 In April 2017, PAS leader Abdul Hadi Awang tabled a private member's bill in parliament to increase *syariah* courts' punishment powers. The Bill, to amend the Syariah Courts (Criminal Jurisdiction) Act 1965 and also known as RUU355, was yet to be tabled in Parliament at the time of publication but is still discussed in the media as an on-going matter, especially due to PAS's membership of the ruling coalition.

Shi'a Muslims

3.41 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 within Malaysia specific to Shi'a Muslims.

3.42 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 12 out of 14 states ban Shi'a Islam (the exceptions are Kelantan and Sarawak). In August 2019, the Sabah State Legislative Assembly amended the *Syariah Criminal Offences Act* to prohibit the spread of 'non-Islamic religious doctrines' and included whipping as a punishment for those found guilty of spreading and/or performing any acts that are against the 'true teachings of Islam' which reportedly includes Shi'a. Several state constitutions (Kelantan, Perlis and Kedah) recognise the state's official religion as Ahli Sunnah Wal Jamaah (Sunni Islam). These state laws enable state Islamic authorities to detain and prosecute Shi'a found to be proselytising.

3.43 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).

3.44 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.

3.45 Official public narratives about Shi'a Muslims are also framed by Friday sermons that are prepared by state religious departments and broadcast publicly. For example, in September 2019, mosques in Selangor were instructed by the Selangor Islamic Religious Department to deliver a Friday sermon attacking Shi'a and describing Shi'a Muslim beliefs and practices as 'deviant', 'heinous', 'nonsense' and 'nauseating'. Authors, such as Faisal Tehrani, have also had their books banned over allegations that they contain elements of Shi'a Islam. Faisal 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](#)).

3.46 The US Commission on International Religious Freedom kept Malaysia on its Special Watch List in 2021. Among other matters of concern, the Commission found that, in 2019, Shi'a Muslims continued to face 'state hostility and detentions, sparking fears of an escalating crackdown'.

3.47 DFAT assesses 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

3.48 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 and other barriers to their right to worship.

3.49 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 they be denied privileges afforded to Muslims in Malaysia. In 1998, the state of Selangor issued another *fatwa* 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.

3.50 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](#)).

3.51 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 May 2019, religious authorities reportedly forced entry into an Ahmadi religious building, justified on the basis that Ahmadi are officially designated as Muslims on their national identity cards (MyKad).

3.52 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

3.53 Christians accounted for close to 10 per cent of the total population in 2010, the last year for which official data is available, 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.

3.54 There are comparatively few Malays who practise Christianity in proportion to the overall population. This is because it is very difficult to convert from Islam (the religion of most Malays – see [Ethnic Malays](#)) and illegal to proselytise to Malays (see [Religious Conversion and Apostasy](#)). Christians of a Malay background, in particular, may be forced to hide their faith from family, friends and colleagues. Christianity is portrayed by some Malay/Muslim political parties such as PAS as a threat to Islam.

3.55 Although Christians claim to have used the word 'Allah' (Arabic for God) for centuries in their religious practice in Malaysia, official impediments are in place on their use of the word. 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 at the time. Religious tensions escalated in 2017-18 including attacks on churches, following an October 2017 decision by the High Court of Kuala Lumpur to reject a Sabah church's request for a judicial review of the ban on Christians' use of the word 'Allah'. However, in March 2021, the Court ruled that Christians could use 'Allah' with the judge calling the ban 'unconstitutional'. The Government announced it would appeal the decision.

3.56 Four Christian pastors suspected of proselytising disappeared between 2016 and 2017, 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 RMP.

3.57 In November 2016, Pope Francis appointed Archbishop Emeritus Anthony Soter Fernandez as Malaysia's first-ever Cardinal, serving until his death in October 2020. In June 2016, Pope Francis received Malaysia's first Resident Ambassador to the Holy See; the government announced his appointment in March 2016, with a successor commencing in June 2019.

3.58 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, in some cases, has included violence or abduction.

Buddhists and Hindus

3.59 Buddhists represented just under 20 per cent of the total population in 2010, the last year for which official data is available, 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.

3.60 Federal and state governments have supported the building of Hindu or Buddhist places of worship throughout Malaysia. Former Prime Minister Najib allocated MYR2 million (approximately AUD630,000) 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.

3.61 A pattern of destruction and/or relocation of Hindu temples in Malaysia goes back several decades and continues to the present, causing disquiet in the Indian Malaysian community (including a large demonstration in 2007). In 2020, the PAS-led government of the state of Kedah destroyed 5 Hindu shrines, claiming these had been built without appropriate permission. However, at least one such shrine had been built in Colonial times and was constructed legally at the time. It was reported in 2018 that the then-PH Government would create regulations requiring all proposed new houses of worship to register to avoid the 'land disputes' which are cited as the reason for temple destruction/relocation. At the time of publication, under the PN government, it is not known whether such regulation has progressed.

3.62 In December 2018, the government lifted a temporary suspension on the *Sedition Act* (1948) following a violent riot at the Seafeld Hindu Temple outside 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 ethnic Indians and Malays that left several people injured and one Malay firefighter dead. Although then-Prime Minister Mahathir and the police stated it was a criminal matter rather than a racial one, media largely portrayed the incident as a racial riot. In May 2019, police arrested four men from a suspected Da’esh terrorist cell for allegedly plotting attacks on houses of worship and an entertainment outlet. Police said the accused wanted to ‘avenge’ the death of the firefighter who was killed when responding to the riot at the Seafeld Hindu temple.

3.63 In January 2021, Kedah state cancelled the holiday for Thaipusam, a Tamil Hindu festival, claiming the holiday was unnecessary because major festival events had been cancelled due to the MCO. The Malaysian Interfaith council responded that this was unacceptable and showed ‘a failure to embrace religious sensitivity in a multiracial and multi-religious Malaysia’.

3.64 DFAT assesses 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

3.65 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.

3.66 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 (according to one report, 9 per cent of all marriages in 2019 were inter-ethnic and about half of those involved a Muslim spouse and thus mandatory conversion), families in some communities may view this negatively.

3.67 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. DFAT is not aware of cases in which such punishments have been applied in practice. 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.

3.68 The US Department of State has reported on a number of cases in which individuals who have attempted to convert from Islam, or have otherwise been accused of apostasy, have been compelled to

attend religious rehabilitation centres. In 2018, a woman who was suspected of atheism and ‘deviancy’ was reportedly compelled to live in an Islamic rehabilitation centre for six months. In many cases, converts concealed their new beliefs. Religious converts have also reported difficulty changing their religion on their national identification cards.

3.69 Only 168 of 863 Muslims who attempted to convert between 2000 and 2010 reportedly received permission to do so. DFAT has no more recent data on such conversion. 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.

3.70 In January 2020, the NGO G25, a group made of former top-ranking civil servants, released a report titled *Administration of Matters Pertaining to Islam*, based on research on the background and history of Islamic administration over the years. The group asserted that, as the Federal Constitution guarantees freedom of worship to each citizen of Malaysia, including Muslims, those who insist on leaving Islam (which they discouraged) ‘must not be charged with a criminal offence’. DFAT has not been able to verify whether criminal charges in such cases have been applied in practice. In February 2021, Mohd Na’im, the chief judge of the Perak Shariah court, stated that the country’s Islamic judicial system only had authority over Muslims in Malaysia and could not act on cases of apostasy outside the nation.

3.71 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. DFAT is not able to comment on the likelihood, in practice, of punishment for apostasy in states in which apostasy is criminalised.

Atheism

3.72 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.

3.73 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.

3.74 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.

3.75 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 Humanists International in October 2020, Malaysia was listed as a country where 'Government figures or state agencies openly marginalize, harass, or incite hatred or violence against the non-religious'.

3.76 DFAT assesses that atheists, especially non-Malay atheists, face a low risk of societal harassment. DFAT assesses that Muslims who attempt to renounce their faith for atheism, or who are believed to be proselytising towards atheism, face a high risk of official discrimination.

Family Law

3.77 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 national *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.

3.78 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. 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. In 2019, the state of Selangor attempted to pass legislation to permit unilateral conversion within its borders; however, this law, which might have been unconstitutional in any case, failed to pass.

3.79 With regard to adoption, 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.

3.80 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. It is technically possible, albeit rare and time consuming, for such children to be granted citizenship through a judicial review.

3.81 A non-Muslim (male or female) must convert before marrying 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)

3.82 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 section 4 of the *Sedition Act*, an individual can face up to three years in jail, be fined up to MYR5,000 (AUD1,600) or both.

3.83 The previous PH government had signalled that some of Malaysia's long-standing restrictions on political opposition and dissent would be eased. Anwar Ibrahim, the now Opposition Leader, received a full pardon from the then-King for previous/historical 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.

3.84 A number of NGOs, including Human Rights Watch, asserted that freedom of speech had generally improved following the change of government in 2018. Then-PH government statements indicated the development of a more open environment for public discussion of issues previously considered off limits, and civil society also reported increased openness, although tangible reform of civil and political rights remained slow. Media sources noted that sensitivity, and thus the need for self-censorship, persisted on issues that conflicted with conservative Islam. The then-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](#)). In July 2020, Home Minister Hamzah Zainudin claimed that due to 'fake news', the Sedition Act is 'still relevant'. Of the several hundred cases under the *Sedition Act* that were filed between 2015 and 1 July 2020, 41 cases were charged, 171 classified as no further action, and 34 were still pending as at July 2020.

3.85 With the end of the PH coalition and the installation of Muhyiddin's PN government, sources report the space available for freedom of expression, dissent and political opposition has tightened once more. The COVID-19 pandemic and the lockdown in Malaysia, the MCO, had further contributed to this tightening, reducing the capacity of government to engage with NGOs on human rights issues. COVID-19 may also be used as an 'excuse' to limit freedom of expression; for example, in June 2020 the government used the *Prevention and Control of Infectious Diseases Act 1988* and the Criminal Procedure Code (CPC) against five union workers who held a peaceful protest against the exploitation of hospital cleaners. In March 2021, a strict new ordinance came into effect which gives authorities the power to crack down on 'fake news' related to COVID-19 or the state of emergency. The powers are intentionally broad and can override existing evidentiary requirements. There is a risk they could be used to target critics and may have a restrictive effect on freedom of expression.

3.86 In 2020, the government commenced police investigations into a number of high profile opposition critics including: former Minister for Water, Land and Natural Resources and opposition MP, Xavier Jayakumar, for criticising the one-day sitting of Parliament on 18 May 2020 and for saying Prime Minister Muhyiddin's government was afraid of the no-confidence motion tabled by former Prime Minister Mahathir; former Deputy Minister of Women, Family and Community Development and DAP MP, Hannah Yeoh, for a tweet questioning whether efforts to address child marriage would continue under her successor, PAS MP Siti Zailah Mohd Yusoff; and, former Minister for Youth and Sport and Bersatu MP (Mahathir's faction), Syed Saddiq, for sedition over an Al Jazeera interview on 6 March where he expressed disappointment in Prime Minister Muhyiddin for joining the Perikatan Nasional pact.

3.87 Although the Constitution states 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 can be difficult to obtain and can be restrictive in their application. Authorities may arrest individuals for organising or engaging in rallies, such as the arrest in early 2020 of protest organiser Fadiah Nadwa Fikri and others in protests against the end of the PH government. Authorities have occasionally used force to control crowds.

3.88 There were signs of change under the PH government. For example, in December 2018 the PH government allowed a peaceful rally protesting its policy position on ICERD (see [Human Rights Framework](#)), while in July 2019 the House of Representatives passed an amendment to the PAA, which came into force in November 2019. The amendments decreased the number of days' notice organisers are required to provide ahead of a rally (from 7 to 5 days), gazetted two locations in Kuala Lumpur as being designated for peaceful assemblies, and set the maximum penalty for breaching the PAA to MYR5,000 (AUD1,600), while no longer recording it as a criminal offence.

3.89 Under the PN government, police have redefined 'public gathering' to call in for questioning those who have gathered in small groups outside police stations in solidarity with people being detained or questioned within. Sources advise this is a new practice and of concern to human rights groups. In 2020, under the new PN government, rallies were curtailed by COVID-19 and the government's lockdown, the MCO.

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 oil-rich 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. There is reportedly a movement in Sarawak called SAREXIT (Sarawak exit) that holds regular demonstrations in Kuching. However, the movement is regarded as being in its 'infancy' and not of significant size. In April 2019, the then-PH government failed to pass a bill to reinstate certain aspects of the 1963 Malaysia Agreement (known as MA63), designed to restore the original wording of the Malaysian constitution regarding the status of Sabah and Sarawak. The PN government convened a Special Council on MA63, to consider the implications of more autonomous status for Sabah and Sarawak, meeting for the first time in December 2020. However, the government reportedly plans to keep the final report of this committee secret. Advocates for independence are focussed on the MA63 process, which is likely to be an election issue at state or Federal level. In 2020, the relatively new Sarawakian political party Parti Bumi Kenyalang (PBK), with its slogan of 'In Quest of Independence', announced its intention to contest all 82 seats in the Sarawak state election, ordinarily due in June 2021 but likely to be delayed until the end of the State of Emergency.

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 2018 elections were peaceful. While the next election would not ordinarily occur until 2023, the political instability in the current Parliament means an early election is likely, with the Prime Minister promising an election when the COVID-19 crisis is 'over'. The change to electoral law under the PH government, to lower the voting age from 21 to 18, is yet to be implemented, a fact which troubles some domestic observers in the lead-up to a likely early general election.

3.92 DFAT assesses that space for political opposition and dissent has decreased since early 2020. The option of using what have been referred to by some opposition members as 'oppressive laws' remains and there are increasing signs they are being used. DFAT assesses the political instability may create a less open environment for dissent. DFAT assesses political party members can currently undertake political activities on a day-to-day basis without significant interference but face a low risk of official discrimination, including from politically motivated police investigations. 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. In January 2021, it was reported that the Registrar of Societies rejected applications from Parti Pejuang Tanah Air, former Prime Minister Mahathir's party, and

the Malaysian United Democratic Alliance (Muda), the new youth-oriented party, to be officially registered as political parties, with apparently no reasons given.

3.94 Although civil society and human rights organisations are able to function independently, the deterioration in freedom of expression under the former BN government led to an increase in self-censorship. Some organisations reported that constructive engagement between the government and civil society has historically been difficult. The Coalition of Malaysian NGOs in the UPR process (COMANGO) noted that the former PH government proactively engaged civil society in Malaysia's 2018 Universal Periodic Review (UPR) process while noting that a significant challenge remained in implementation of accepted recommendations. Human rights NGOs report the level of engagement with political and rights issues has decreased under the current PN government.

3.95 Civil society and human rights organisations have regularly reported instances of police intimidation and legal harassment under successive Malaysian governments, including under the PN government. These include the questioning of Cynthia Gabriel, the founding director of the Center to Combat Corruption and Cronyism (C4 Center), in June 2020, about a letter calling for an investigation into allegations the government was trading favours for political support; and the ongoing investigation of Bersih 2.0 chair Thomas Fann under the Peaceful Assembly Act for a social media post in February 2020 calling for people to protest the change in government. However, even with its chair facing investigation, Bersih is otherwise active and able to operate relatively unhindered, most recently suing the government over the declared State of Emergency, together with a number of other human rights NGOs.

3.96 Human rights defenders continue to experience harassment from RMP Special Branch, including online harassment. For example, in April 2019, police summoned Numan Afifi, an LGBTI activist and president of the NGO PELANGI Campaign, to question him about statements he made during Malaysia's UPR at the United Nations in Geneva. Numan reportedly said the police action was 'designed to intimidate and harass human rights defenders'. Sources claim harassment includes, but is not limited to, harassment on social media platforms, threatening calls and dropped calls at night. DFAT is not aware of any cases of physical abuse of human rights defenders under the current PN or previous PH governments. However, civil society and human rights organisations working on issues considered sensitive to conservative Islam report continued harassment by religious affairs authorities. In August 2019, the High Court upheld a *fatwa* issued by the Selangor Fatwa Committee against a women's rights NGO, the Sisters in Islam (SIS), which the committee had issued because it felt SIS's work to progress women's rights was being conducted in a manner contrary to Islam. In September 2020, SIS continued its constitutional challenge against this ruling, with a judicial decision to grant SIS leave to appeal to the Federal Court, seeking invalidation of a Selangor state law.

3.97 DFAT assesses 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 with a degree of independence under existing laws and procedures) and the stated policy approach of the 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.

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 has been limited in practice

under successive governments and journalists, particularly in print media, reportedly widely practise self-censorship. Prior to the 2018 change of government, most private news print publications and television stations were controlled by political parties or businesses allied with the former BN government, and, state news outlets similarly reflected government views. Independent media outlets exist, but are generally online 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 Since 2015, and under successive governments, there was an increase in legal action using the *Communications and Multimedia Act* (1998) (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 BN government, members of parliament or their families, or those covering issues linked to ethnicity or Islam. While media sources reported a significant increase in space for freedom of expression in print and electronic media following the 2018 election, this has receded since the formation of the PN government in February 2020. In December 2019, the then-PH government was eventually able, after several attempts, to repeal the *Anti-Fake News Act* (2018), a law which prescribed large fines and up to six years' imprisonment for the publication of wholly or partly fake news; however, there are discussions under the current government of reviving this Act. Furthermore, in early 2021, the Malaysian government enacted emergency ordinances on fake news, making even 'partly false' news about COVID and the nation-wide emergency, subject to criminal penalties. Other laws the PH government had labelled as 'oppressive' prior to the 2018 election remain in place, including the *Sedition Act*, the *Evidence Act*, the *Official Secrets Act* and the *Communications and Multimedia Act*.

3.100 In 2021, Reporters Without Borders (RSF) ranked Malaysia 119 out of 180 nations in its World Press Freedom Index, a significant drop of 18 from the previous year. This represents a reversal of the more open environment that had existed under the former PH government, and a return to self-censorship by many journalists. In 2021, Freedom House rated Malaysia's Press Status as 'partly free,' compared to 2017, when it was ranked 'not free,' and noted escalating concerns about narrowing freedoms. Harassment of journalists has occurred under the current government, including a raid on the Kuala Lumpur bureau of the Qatari TV news broadcaster Al Jazeera on 4 August 2020 and a decision to expel two Australian journalists employed by the bureau two days later.

Online and Social Media

3.101 The World Bank estimated in 2019 that approximately 84 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. During the 2018 election, the MCMC censored several sites providing 'live' updates and results for the polls, fearing it may affect 'national stability, public order and harmony, and economic stability.' In August 2019, the MCMC opened a channel to receive complaints from the public regarding social media posts considered 'insensitive' relating to 'race, religion and royalty'. According to SUARAM, the MCMC received more than 20,000 complaints in the first six weeks of operation with actions

taken against 259 complaints received and 80 per cent of the complaints concerning racism. The complaints mechanism is still operating at <https://sebenarnya.my/salur/>.

3.103 According to Amnesty International Malaysia, the RMP has been active in curtailing freedom of expression online through the nature of its investigations. For example, investigations into students of the University of Malaya Association of New Youth (UMANY) for social media posts questioning the powers of the King involved multiple students being called in for questioning in 2020. In addition, the students had faced personal attacks – with their private details leaked in seemingly coordinated efforts to intimidate them – at which point they reportedly felt unable to turn to the police for protection.

3.104 On 19 February 2021, *Malaysiakini* was fined MYR500,000 (AUD 158,000) for contempt of court over five comments posted by readers on its website that the prosecution said undermined public confidence in the judiciary. This was considered to be a very large fine for a small publication, particularly given the fact that user comments were deleted as soon as the publication was contacted by police. Editor Steven Gan himself was found not guilty, though he potentially faced a jail sentence; the last time a journalist was jailed in Malaysia was 1999. Fortunately for *Malaysiakini*, the entire sum of the fine was crowdfunded within five hours. A number of commentators expressed the view that the precedent set by this case would ‘kill freedom of speech’. A number of websites have closed their user comments section to avoid being charged with similar offences.

3.105 The *Communications and Multimedia Act* (CMA) has continued to be used, with increasing regularity, under successive governments, to limit online freedom of expression, with charges laid against a number of individuals for online posts considered offensive to Islam. The CMA has also been used to restrict political speech: on 8 May 2020, a businessman was charged with violating section 233 of the CMA and section 505(b) of the Penal Code for social media comments criticising the government for prosecuting individuals who violated the COVID-19 movement restrictions; while a 73-year old man was charged and detained for five days in 2020 for social media comments allegedly insulting to the Crown Prince of Johor.

3.106 The MCMC monitors websites and can order the removal of material considered provocative or subversive. The *Sedition Act* has also been used against social media users who expressed dissenting views online. While the PH coalition promised to repeal the *Sedition Act*, it used section 8 of the Act to crack down on ‘hate speech’. This use of British colonial era legislation to police online speech has continued under the present administration. In October 2020, a Twitter user was arrested for questioning the content, source, and institutional backing of a tweet by the National Security Council concerning the ‘Seven Wills of the Malay Rulers’, a document attributed to the Malay royalty.

3.107 The space for online expression has shrunk for lesbian, gay, bisexual, transgender, and/or intersex (LGBTI) individuals in recent years (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 ‘LGBT activity’ online. Although no official reports can confirm the establishment of such a regulatory body as at the time of publication, DFAT understands 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.

3.108 DFAT assesses that bloggers and online media sources can face a moderate risk of both societal and official discrimination by enforcement authorities (see [Federal and State Law Enforcement Entities and State Islamic Religious Departments](#)) if they publish material regarding sensitive issues that conflict with conservative Islam. Given the uncertainty of the current political environment with the prospect of an early election being called in 2021, the various measures that have been used to selectively police online communications are likely to have a restrictive effect upon freedom of expression. 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

3.109 Loan sharks or 'pay-day-financiers' (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 appear on public property, including lamp posts and utility boxes. Media report loans carry an annual interest rate of 24 to 60 per cent; others report rates of 30 to 40 per cent per month; or up to 15 per cent per day. In-country sources advise that loan sharks in Malaysia do not seek 'protection money'.

3.110 Sources report loan sharks enter 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 MYR 1 million (AUD 320,000) being used as collateral for a loan of MYR100,000 (AUD32,000). 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.

3.111 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 MYR200,000 to MYR300,000 (AUD63,000 to AUD95,000) 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.

3.112 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. In February 2021, police arrested three people, believed to be involved in illegal money lending, after they threatened to torch and throw paint on the home of a woman who had allegedly refused to settle a debt of MYR11,000 (AUD 3,500). Sources claim that loan sharks engage gangsters to collect debts and harass and threaten borrowers and their family members, and that borrowers and their family members have been shot 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 some 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.

3.113 DFAT understands 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 Crime 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 MYR36 million (AUD11.4 million). Local media also report loan sharks have become more publicly visible and more ‘corporate’, in recent years, and have increased promotion of their services on social media platforms such as Facebook and WeChat. In October 2019, media reported that the RMP planned to embark on a ‘major war’ against loan sharks, following reports that Ah Long syndicates were becoming more aggressive. DFAT is not aware of any significant enforcement action in this area.

3.114 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 MYR2.11 million (AUD670,000) had arisen in the first 19 days of January 2019 alone. Local media also reported that, in 2020, the PSCD received 140 complaints from victims who said illegal money lenders went after their families to try and extort them for payment. In 2015, the PSCD reported over 70 per cent of borrowers were Chinese Malaysian. Sources report the MCA can negotiate loan repayment settlements with repayment rates negotiated down to match the government rate.

3.115 The Malaysian Muslim Consumers Association (PPIM), which provides services predominantly for the Malay community has an established call centre that helps to educate (chiefly Malay) people on the dangers of borrowing from loan sharks and suggests alternatives, as well as helping victims to settle their debts. The PPIM maintains a Malay language website (ahlong.ppim.org.my) where people can report loan shark cases, and which also 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 MYR250,000 and MYR1 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 June 2020, police in Selangor arrested 18 people believed to be involved in loan shark activities. The arrests were part of a larger operation by police, tagged ‘Ops Vulture,’ which involved raids in five locations, culminating in 29 arrests between January and June 2020. 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 MYR10.35 million (AUD3.28 million).

3.117 The general dampening of the economy during the COVID-19 pandemic may have impacted upon loan sharks. PSCD chief Datuk Seri Michael Chong reportedly said that ‘even illegal money lenders have

stopped advertising their services since the start of the MCO because of the uncertainty in getting their money back.'

3.118 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

3.119 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 two deputy cabinet ministers are female, as are 33 of 222 lower house members and 13 of 67 senators. In March 2020, a survey found that Malaysian women make up 33 per cent of positions in senior management teams within companies in the country, higher than the global average of 29 per cent. 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.

3.120 Women's participation rates in the labour force have risen considerably over the last decade, from 45 per cent in 2008 to an estimated 55.1 per cent in 2021 (compared to a participation rate for men of 81 per cent in 2021). 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. 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.

3.121 In-country sources report that child bearing and care remain the main reasons for the relatively 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 MYR500 (AUD160) wage incentive per month for two years for returning women workers, and MYR300 (AUD95) 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. A Sexual Harassment Bill has been drafted and was still waiting to be tabled at the end of 2020.

3.122 Single mothers in Malaysia may not be able 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 is available to households whose income is below the income poverty line, but differs across states. 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 involved 27 government agencies, higher-learning institutions, NGOs and private sector organisations, emphasised economic empowerment, enhancing social wellbeing, and stepping up research and development and coordination in areas pertaining to women's development.

3.123 During the COVID-19 pandemic, when non-essential services and schools have been temporarily shut under the government's movement control order (MCO), women have faced the double burden of caring for their families while working, with single mothers particularly hard hit. Media reported women made up nearly two-thirds of the total employment declines in the second quarter of 2020. Younger women were especially vulnerable, experiencing an average rate of employment decline about 5.6 times higher than the overall decline in employment. Structural inequities were a driving factor in this decline in employment as the industries worst-hit by the coronavirus, such as food services and accommodation, had a high concentration of female workers.

Violence Against Women

3.124 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 aged 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 years' 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.

3.125 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 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 MYR2,000 (AUD630), while multiple violations can result in the offender being jailed for between 72 hours and up to two years and fined up to MYR5,000 (AUD1,600). If a perpetrator of domestic violence commits acts of violence when violating a protection order they can be fined up to MYR 4,000 (AUD 1,260) and/or receive a prison sentence of up to one year.

3.126 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 (the latest year for which data is available). These numbers are likely to understate considerably the actual number, however, with in-country sources suggesting 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 it is more likely to occur in rural and remote areas due to smaller population density, lower educational levels, and a higher prevalence of mental health and disability issues.

3.127 Despite the enhanced legal protections available to victims, NGOs report 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. A study conducted in 2020 which compared five domestic violence surveys found that the prevalence of intimate partner violence against women ranged between 5 and 36 per cent, with the wide range partly attributed to the difficulty in measuring this form of violence. 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.

3.128 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. The Ministry of Home Affairs 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.

3.129 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 (OSCCs) 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 reported in 2019 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 significant barriers keep 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 access 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.

3.130 Malaysia saw a significant spike in violence against women in 2020 during the COVID-19 pandemic lockdown. The Women's Aid Organisation reported a 150 per cent increase in calls to its hotline and an 80 per cent increase in messages to its WhatsApp distress channel compared to the same period in the previous year. The situation was particularly bad for domestic workers, who are predominantly migrant women. Due to the travel and mobility restrictions, live-in domestic workers were reportedly faced with increased workloads while having to stay indoors throughout the day with their employers, some of whom were already abusive before the lockdown. Malaysia's Ministry for Women, Family and Community Development issued a series of online posters on Facebook and Instagram with the hashtag #WomenPreventCOVID19, and advised the nation's women to help with the country's partial lockdown by not 'nagging' their husbands. The ministry also advised women to refrain from being 'sarcastic' if they asked for help with household chores. The Malaysian government later apologised for its advice.

3.131 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. In its last Universal Periodic Review in 2018, Malaysia claimed that female circumcision was a 'cultural obligation' though there are different interpretations of what constitutes female circumcision in the Malaysian context. 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 which includes a symbolic pricking or nicking of the genitals. An academic study conducted in 2020 found that the prevalence of doctors performing FGM might be as high as 20 per cent, and that such doctors were increasingly performing Type I rather than the Type IV that midwives traditionally performed. The procedure is often performed during infancy. In-country sources report that, while public hospitals do not conduct the procedure, private hospitals do.

3.132 There are no recent verifiable statistics available in relation to the prevalence of 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 sought to draw a distinction between FGM and 'female circumcision'.

3.133 DFAT assesses that, while the situation is generally improving, a range of factors continue to create difficulties for women subjected to violence to report it, gain adequate state protection, and/or leave family settings safely. These factors include: ambiguity between federal and state laws, lack of application of laws, limited capacity within the police and judiciary, familial shame, lack of awareness of rights, and, in 2020-21, the economic and social impacts of the COVID-19 lockdown. 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

3.134 Malaysia is a conservative Islamic nation and there is widespread official and societal disapproval of LGBTI identities and behaviours. 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. In February 2021, a

nine-judge panel of the Federal Court unanimously declared that a Selangor *syariah* law criminalising ‘unnatural sex’ was unconstitutional, with the power to make laws with respect to such offences being reserved to the Malaysian Parliament.

3.135 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 (see [Transgender People](#)).

3.136 The former BN government was strongly opposed to the ‘promotion’ of 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 LGBT lifestyles, including through restricting the online space for LGBTI activities and individuals (see [Media](#)). Despite the general improvement in the human rights climate following the change of government in May 2018, in-country sources report that LGBTI issues remain sensitive. Notwithstanding its general reformist nature, the previous PH administration was generally 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, then-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. The current PN coalition is even less well-disposed towards LGBTI activities and individuals.

3.137 While successive governments’ stances on LGBTI issues apply to all within Malaysia, including foreigners, they are especially pronounced for Malays/Muslims due to the fact that a variety of LGBTI behaviours constitute *syariah* offences as well as offences against the penal code. Human Rights Watch reported in 2019 that the increased political competition in the Malay heartland, ‘presumed to be socially and religiously conservative, [had] caused politicians from across the political spectrum to emphatically adopt anti-LGBT positions.’ In-country sources report the conditions for transgender Malaysians are worsening and that Malaysia is becoming less tolerant overall for LGBTI people, and worse than it was under the long-running BN government due to the presence of the Malaysian Islamic Party (PAS) in the Perikatan Nasional governing coalition.

3.138 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 increased under the current 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 LGBT groups at an International Women's Day march as a misuse of democratic space. In July 2020, Zulkifli Mohamad Al-Bakri, Malaysia's Minister in charge of religious affairs, announced in a social media post that he had given the Federal Territories Islamic Religious Department authorities 'full licence to carry out its enforcement actions' against transgender persons in Malaysia, not just arresting them, but also providing them 'religious education' so that they would 'return to the right path'.

3.139 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.

3.140 The most high-profile legal case in recent years 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. Prosecutions in relation to LGBTI activities have typically 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 six strokes of the cane and a fine of MYR3,300 (AUD 1,045) 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 a 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 MYR4,800 (AUD1,520), while the fifth man received a sentence of seven months' imprisonment, six strokes of the cane, and a fine of MYR4,900 (AUD1,550). 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.

3.141 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 was 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'. In August 2020, JAKIM reported a local minority rights activist, Nicole Fong, to the police over her tweets criticising the Ministry's LGBTI 'conversion' therapy.

3.142 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 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.

3.143 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.

Transgender People

3.144 In-country sources report that their increased visibility makes transgender individuals particularly vulnerable to raids by religious authorities and subsequent placement 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.

3.145 In December 2018, a group of five people aged between 16 and 21 years 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. On 27 October 2020, officers from the Kedah Islamic Religious Department (JAIK) raided a private birthday event attended by 30 transgender Malaysians. A JAIK spokesperson said all 30 attendees would be investigated under Section 36 of the *Kedah Syariah Criminal Enactment 2014* and may face fines up to MYR1,000 (AUD320) and/or jail for six months. In 2021, Nur Sajat, a high-profile cosmetics entrepreneur and transwoman, was charged in the Shah Alam Syariah High Court with dressing up as a woman at a religious event three years earlier, and bringing Islam into contempt. She pleaded not guilty to an offence that carries a penalty of up to three years’ imprisonment. She was arrested by the Selangor Islamic Religious Department (JAIS) in an allegedly violent fashion; those who arrested her have been called in to give statements following her complaint of being ‘roughed up’. In February 2021, she went into hiding following her failure to appear in court. Nur Sajat’s case has been especially prominent, due to her profile and to the particular challenge to Islam represented by her donning Islamic garb during a religious ceremony.

3.146 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. Sources told DFAT most transgender individuals from Sarawak and Sabah relocate to Kuala Lumpur for employment (almost exclusively in the private sector) and to escape discrimination.

3.147 DFAT assesses that, in general, LGBTI individuals face a moderate risk of 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. These risks are higher for Malay/Muslim LGBTI individuals, for transgender individuals, and for LGBTI individuals located in poorer and rural areas. DFAT assesses LGBTI civil society organisations are generally able to operate unhindered but high-profile work and leaders may be targeted.

Children

3.148 As noted in [Human Rights Framework](#), Malaysia is a state party to CRC 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. Local media reported the Royal Malaysia Police received a total of 1,721 reports of sexual crimes committed against children from January to 30 June 2020.

3.149 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.

3.150 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 MYR5,000 (AUD1,600) is a routine price for child brides.

3.151 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. The Deputy Prime Minister informed parliament in November 2019 that Kedah, Kelantan, Negeri Sembilan, Pahang, Sarawak and Terengganu had declined to amend their state legislation. In February 2020, the Kelantan Syariah High Court judge announced that 15 applications for marriage involving children were submitted from 2018 until January 2019, and that 10 of them had been approved. Across Malaysia in the first nine months of 2020, 543 child marriages or applications thereof were recorded.

3.152 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](#)).

3.153 UNHCR reported 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 around 2,600 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. In 2018, the government announced that, commencing from the following year, all stateless children (of whom it estimated there were nearly 30,000) would be able to attend school. At the time of publication, it is unknown if this has occurred.

3.154 In 2019, SUHAKAM expressed its concern about the plight of undocumented and stateless children in Malaysia. The organisation carried out a number of visits to immigration detention centres and found these were unsuitable and lacked facilities to cater for children's needs. SUHAKAM and various NGOs advocated to government the need for alternatives to detention of children.

3.155 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

3.156 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.

3.157 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.

3.158 The government offered various welfare measures during the COVID-19 pandemic to lessen the impact, especially upon vulnerable populations. Two rounds of welfare payments, known as Bantuan Prihatin Nasional (BPN), provided assistance to the poorest households. The second round of BPN, paid in January 2021, provided MYR2.38 billion to 11.06 million eligible recipients. The welfare measures also included wage subsidies for lower-paid employees and tax exemptions on fees for childcare, alongside eVouchers for childcare services booked online to help parents (especially women) remain in the workforce. More than 300,000 disabled persons and single mothers received one-off financial assistance worth MYR300 (AUD95).

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 alone. Examples of recent incidents include:

- 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, 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.
- Four suspected robbers shot by police after a chase in Sungai Buloh in Selangor on 26 December 2020.
- 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, Shi'a social activist 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 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. In August 2020, SUHAKAM called on the government to make public the task force's report. 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 varies considerably. According to Human Rights Watch, the government reported that 23 people, including two children, died while in immigration detention during the first six months of 2020, while three people died in police lock-ups, and 188 prison inmates died during the same period. SUARAM estimates that, between January and September 2020, there were nine deaths in police custody, with 30 custodial deaths in immigration detention and 296 deaths in the prison system. The deaths in police custody are notably lower than in previous years while the figures for immigration and prison deaths are broadly consistent with the previous few years. SUARAM contends that deaths in custody and police shootings and 'chain remand' (see [Royal Malaysia Police](#)) 'continue to happen with no accountability and oversight'.

4.5 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. Other sources report deaths in custody are largely due to refused treatment, rather than denial of access.

4.6 SUHAKAM received seven complaints regarding deaths in custody in 2019, which it investigated, with five complete at the time of publication. While it made a number of recommendations to improve care and standards, it found no evidence of criminal wrong-doing on the part of authorities. Sources report that, due to comparatively worse conditions in immigration detention, death rates in immigration detention are higher than in prison (see [Detention and Prison](#)).

4.7 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 incoming PH 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. In 2020, the current PN government re-introduced what observers considered a 'weakened' bill, proposing creation of an Independent Police Conduct Commission (IPCC). (See [Royal Malaysia Police](#)). Nevertheless, there remains no legal requirement for the state to investigate deaths in RMP custody.

4.8 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

4.9 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. In August 2020, the Federal Court, Malaysia's highest court, in an 8-1 decision, upheld the constitutionality of the death penalty.

4.10 Malaysia does not consistently release data on the application of the death penalty, but media reported that, as at 30 June 2020, there were 1,314 prisoners on death row in Malaysia, including 775 Malaysians and 559 foreigners. The last publicly reported executions in Malaysia were in 2017. 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.

4.11 In October 2018, the previous PH 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 would 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, delayed by the change of government in February 2020. Since coming to power, the PN government has remained largely silent on the issue of death penalty abolition, with no public position stated; however, DFAT assesses that there is little support for abolition within senior ranks of the government.

TORTURE

4.12 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.

4.13 Human Rights Watch and Freedom House claim police torture and abuse of suspects in custody, sometimes resulting in death, remain serious problems in Malaysia, as does the lack of accountability for such abuse. 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. In May 2019, a 30-year-old man suspected of armed robbery claimed he was assaulted, tasered, and had his genitals rubbed with chilli paste by police officers to induce a confession from him. The government did not respond to these claims. DFAT assesses such allegations as credible, but is unable to comment on how prevalent such abuse may be.

CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Arbitrary Arrest and Detention

4.14 A number of national security-oriented legal instruments introduced under the long-running BN 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 current government.

4.15 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. SUARAM estimates that 6,085 people were detained without trial since the inception of the law up until 2019, with a further 667 detained in 2020.

4.16 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. While the PH government promised to repeal POTA (along with POCA and the *Security Offences (Special Measures) Act* (SOSMA; 2012)), it later backtracked and decided to retain the laws, and continued to make use of POTA. 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.

4.17 SOSMA 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. SUARAM estimates there have been 2,155 arrests under SOSMA since its inception until the end of 2019. According to sources, a number of those arrested under SOSMA are subsequently deported, released, or have their charges downgraded.

4.18 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* (DDA), the Minister for Home Affairs can also direct that a person be detained for a period not exceeding two years. According to SUARAM, between January and September 2019, under the previous PH government, 1,405 individuals were detained under the DDA, more than in any of the five previous years. In 2020, to September, a further 897 were detained.

4.19 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

4.20 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. In June 2020, a group of 27 Rohingya men were sentenced to caning as well as jail time for the offence of arriving by boat without a valid permit. The corporal punishment was overturned upon appeal, although the jail time stood.

4.21 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.

4.22 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.

4.23 The alleged abuse of schoolchildren by teaching staff in Malaysia has reportedly ranged from verbal and physical abuse to degrading treatment and public humiliation. 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 BN government. The PH government signalled its intention to review and reform the department, though little change apparently occurred before the commencement of the PN government. 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. JAKIM saw its budget increase from MYR1.2 billion to 1.3 billion in 2020, and then again to 1.4 billion in 2021.

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. In 2020, RELA were active in imposing the MCO together with army and police.

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 – with approximately 110,000 active military personnel and 52,000 reserve personnel. The minimum age for voluntary service is 17 years and 6 months. There is no conscription. Military expenditure was 1.03 per cent of GDP in 2019. The premier unit in the Malaysian Army is the Royal Malay Regiment which is comprised of *Bumiputera* only. 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 Royal Malaysian Air Force operates a diverse fleet of aircraft from a wide range of suppliers, including a fast jet fleet consisting of 8 F/A-18Ds and 18 Sukhoi Su-30MKMs. The Royal Malaysian Navy is a modern, professional Navy and operates 52 vessels across its fleet, including two French built Submarines. The Malaysian Armed Forces are a professional military force and have increasingly been utilised by the government in domestic roles. Through 2020 the Malaysian Armed Forces were deployed to help enforce the pandemic MCO, contribute to the border operation, Operation BENTENG, and respond to a number of natural disasters.

Royal Malaysia Police (RMP)

5.5 The RMP is based on the British constabulary model, and employs approximately 115,000 officers and operates over 800 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, state Islamic religious authorities and prison officials. Police officers are among the lowest paid members of the Malaysian civil service. The RMP is around 80 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 the 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 was created in 2009 as part of the government's response to police corruption, 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. Perceptions of the EAIC's ineffectiveness contributed to calls for a new police accountability body (see IPCMC below).

5.8 In-country sources claim the RMP has engaged in the practice of 'chain of remand' whereby police arrest someone, hold them until a court will not or cannot extend their remand, and release them only for police from a different police station to re-arrest that same person. Human rights observers claim this practice occurred regularly in 2020.

5.9 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. SUHAKAM's investigation into the disappearance of Pastor Raymond Koh concluded that RMP Special Branch was

responsible for the disappearance (see [Enforced or Involuntary Disappearances](#)). With regard to police accountability, see also [Deaths in Custody](#).

State Islamic Religious Departments

5.10 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. Ministers of the then-PH government stated their intention to curtail this policing of ‘morals’. 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 means their actions can directly impact non-Muslims, who may (for example) feel compelled to comply with Islamic dress codes.

5.11 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. DFAT understands most complaints against religious enforcement officers historically related to mistreatment of people who identify as transgender, domestic violence victims and non-Muslim parents in situations of unilateral child conversion to Islam. DFAT does not have access to current information on complaints against religious enforcement officers.

5.12 Sources claim Islamic religious and political NGOs financed by JAKIM (see [Federal and State Law Enforcement Entities](#)) pay staff to recruit people to convert to Islam in Sabah, and are able to incentivise potential converts with monetary payments, and the potential for food and government welfare available to Muslims. Sources claim poor communities have been targeted for conversion due to potential income and support, and many converts are not aware they have converted to Islam. Sources also claim Christians from the southern Philippines and Indonesia have been 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.

5.13 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 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*. Approximately 5,000 of the 16,000 *Orang Asli* living in Kelantan had reportedly already embraced Islam at that time. 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

5.14 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. Seven of 11 members of the Federal Court are Malay Muslims which is roughly equivalent to their proportion of the population.

5.15 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 may be impeded by limited pretrial discovery. According to a leading human rights NGO, a Court of Appeal judge claimed he had been reprimanded by a senior judge 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-2018, 26.7 per cent of the total prison population comprised pre-trial detainees (see [Detention and Prison](#)).

5.16 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.

5.17 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, often the midwife and the village head, to testify to the unregistered birth, 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.

5.18 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

5.19 Malaysia's prisons suffer from significant overcrowding. According to World Prison Brief in August 2020, the number of prisoners in Malaysia had reached over 68,600, despite Malaysian prisons only having capacity for a maximum of 52,000 prisoners. Occupancy levels were estimated at 131.9 per cent in August 2020. In 2019 (the latest year for which data is available), females accounted for 4.5 per cent of prisoners and, in 2020, foreigners accounted for 20.5 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.

5.20 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 from other prisoners, and held in their own cells, which have toilet facilities. Death row prisoners' meals are served in their cells.

5.21 The International Committee of the Red Cross and SUHAKAM access prisons on a case-by-case basis. In 2019, SUHAKAM collaborated with the government to undertake a thorough review and reform of the prison management system, policies and practices, including compliance with minimum standards of detention following international standards such as the Nelson Mandela Rules. According to the US Department of State, authorities did not generally permit NGOs or the media to monitor prison conditions.

5.22 Malaysian law does not distinguish between irregular migrant workers (undocumented migrants) and asylum-seekers, whom it also 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. According to the Home Affairs Minister in March 2021, there are around 18,000 people held in immigration detention, to whom UNHCR has had no access since August 2019.

5.23 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.

5.24 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 from 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.

5.25 SUHAKAM carried out a number of visits in 2019 to immigration detention centres and found these were unsuitable and lacked facilities to cater for children's needs. 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 reported there were only 100 children

in immigration detention. Sources report as of 26 October 2020, 756 children were being held in immigration detention centres nationwide, 405 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

5.26 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.

5.27 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.

5.28 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 (see [Women](#), [Sexual Orientation and Gender Identity](#), [Religious Conversion and Apostasy](#) and [Atheism](#)).

TREATMENT OF RETURNEES

Exit and Entry Procedures

5.29 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.

5.30 During the COVID-19 pandemic, the Malaysian Government tightened entry and exit requirements. These requirements and procedures are subject to change to respond to the pandemic globally and within Malaysia itself. Prior approval is needed to enter Malaysia, this includes issue of Social Visit Passes (tourist visas), which have predominately been granted on compassionate grounds. Entry into Malaysia for the

purpose of social visits or holiday is not presently permitted. Applications to enter, exit or to exit and re-enter Malaysia are completed online. Mandatory quarantine, testing and registration on the MySejahtera mobile application are required on entry into Malaysia.

5.31 When leaving Malaysia, Malaysians must present a valid passport and, where required, a valid visa for their destination country (a criterion imposed by airlines' destination countries rather than Malaysian immigration). During the COVID-19 pandemic, Malaysian nationals have been required to seek permission from the Malaysian Department of Immigration to leave the country. Overseas travel for tourism purposes is not permitted.

5.32 There are no laws prohibiting single women from travelling abroad by themselves, and the number of women doing so had been increasing prior to COVID-19. 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.

5.33 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 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](#)).

5.34 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.

5.35 In recent years, Sabah and Sarawak have denied entry (or threatened to do so) to a small number of individuals. In September 2020, DAP secretary-general Lim Guan Eng, facing three corruption charges, was temporarily barred from entering Sabah, allegedly on the instruction of MACC; MACC and Sabah have claimed it was a misunderstanding. 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.

5.36 Sources advise there have been cases in which Immigration Department officers have been arrested for immigration-related corruption. In November 2020, 33 immigration officers were caught in a nationwide immigration crime ring, specialising in falsifying entry and exit stamps at Malaysia's main entry and exit points, in order to help international syndicates smuggle people from China, Vietnam, Indonesia and Bangladesh into Malaysia through the main airports in Kuala Lumpur. In April 2021, five individuals within the Immigration Department were arrested for allegedly printing hundreds of thousands of falsified work passes sold at between MYR6,000 and MYR8,000 each to undocumented migrants working illegally in Malaysia.

Conditions for Returnees

5.37 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 generally 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.

5.38 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.

5.39 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 in 2017 after serving a prison sentence in Canada for sex offences, although Sabah and Sarawak both banned entry.

DOCUMENTATION

Birth and Death Certificates

5.40 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. In February 2020, the Federal Court ruled that a Muslim child conceived out of wedlock cannot bear his/her father's name. For non-Muslims born out of wedlock, authorities enter the mother's name only on birth certificates unless 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.

5.41 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

5.42 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.

5.43 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.

5.44 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 MYR3,000 (AUD950) and MYR20,000 (AUD6,330) 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

5.45 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 MYR300 (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.

5.46 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

5.47 UNHCR launched a new identity card system in June 2016 that includes enhanced biometric collection and security features (microtext, 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.

5.48 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 were resolved, but fraudulent activity by other individuals or groups continues to occur. In July 2019, media reported that the police had identified a syndicate trafficking Rohingya into Malaysia and providing them with fake UNHCR cards. In 2020, two document forgery syndicates led by Myanmar nationals and believed to be responsible for the production of 14,000 fake documents a year, were reportedly dismantled by Malaysian authorities.

5.49 In 2016, UNHCR launched a free mobile application, 'verify-MY,' 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 'verify-MY' application is 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

5.50 In-country sources report 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, to secure passage 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.

5.51 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 were convicted and imprisoned.

5.52 In-country sources advise 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 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 National Registration Department 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. In July 2020, the government announced that foreigners in possession of fraudulent *MyKad* cards would be charged under SOSMA, possibly entailing much more severe penalties. Marriage certificates are generally considered reliable forms of documentation.

5.53 In the last few years there have been a number of media reports of Malaysian nationals who arrived under an Electronic Travel Authority (ETA) working unlawfully, either overstaying their visitor's visa



or seeking protection visas after entering Australia on a visitor's visa. In-country sources have reported that organised migration crime syndicates target the Malaysian market, selling packages on commercial websites that provide advice on how to obtain a visa fraudulently and work in Australia, or providing such advice through WhatsApp or closed Facebook groups. 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.