DFAT COUNTRY INFORMATION REPORT
MALAYSIA
19 April 2018 (Version 2)*
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<td>1 Malaysia Development Berhad (government investment fund)</td>
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<td>BN</td>
<td>Barisan Nasional (English: National Front)</td>
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<td>CMA</td>
<td>Communications and Multimedia Act (1998)</td>
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<td>DAP</td>
<td>Democratic Action Party</td>
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<td>FGM</td>
<td>Female Genital Mutilation</td>
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<td>ISA</td>
<td>Internal Security Act</td>
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<td>ISIL</td>
<td>Islamic State in Iraq and the Levant</td>
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<td>JAIS</td>
<td>Religious Affairs Organisation of Selangor</td>
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<td>JAKIM</td>
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<td>LGBTI</td>
<td>lesbian, gay, bisexual, transgender or intersex</td>
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<td>MCA</td>
<td>Malaysian Chinese Association</td>
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<td>MCMC</td>
<td>Malaysian Communication and Multimedia Commission</td>
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<td>OSCC</td>
<td>One Stop Crisis Centres</td>
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<td>PAA</td>
<td>Peaceful Assembly Act</td>
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<td>PAS</td>
<td>Pan-Malaysian Islamic Party</td>
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<tr>
<td>PH</td>
<td>Pakatan Harapan (English: Coalition of Hope)</td>
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<tr>
<td>PKR</td>
<td>People’s Justice Party</td>
</tr>
<tr>
<td>PR</td>
<td>Pakatan Rakyat (English: People’s Pact alliance)</td>
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<tr>
<td>RELA</td>
<td>People’s Volunteer Corps</td>
</tr>
<tr>
<td>RM</td>
<td>Malaysian Ringgit</td>
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<td>RMP</td>
<td>Royal Malaysia Police</td>
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<td>SOSMA</td>
<td>Security Offenses (Special Measures) Act 2012</td>
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<td>Travel Status Inquiry System</td>
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<td>UMNO</td>
<td>United Malays National Organisation</td>
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GLOSSARY

*Bumiputera* literally “sons of the soil”; Malaysian term to describe ethnic groups including Malay and indigenous peoples

*Sekolah agama rakyat* Islamic and religious schools

*Syariah /Sharia* Islamic law

*Suhakam* Human Rights Commission of Malaysia

*Dewan Rakyat* lower house of parliament

*Dewan Negara* upper house of parliament

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 56 of 21 June 2013 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 processes, 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 draws on DFAT’s on-the-ground knowledge and discussions with a range of sources in Malaysia. It takes into account relevant and credible open source reports, including those produced US Department of State, the Asian Development Bank, the World Bank and the International Organization for Migration; recognised human rights organisations such as Human Rights Watch, Amnesty International and international non-governmental organisations such as Transparency International; Malaysian non-governmental organisations and reputable 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 Country Information Report replaces the previous DFAT report on Malaysia published on 19 July 2016.

1.6 Version 2*: This report updates an earlier version to correct a minor factual error. The following sentence has been removed from section 3.50: ‘In November 2016, assailants took pastor and welfare activist Amri Che Mat from his car’. The report is otherwise entirely unchanged from the previous version released on 19 April 2018.
2. BACKGROUND INFORMATION

RECENT HISTORY

2.1 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 The United Malays National Organisation (UMNO), the largest party of the Barisan Nasional coalition (BN; English: National Front, previously the Alliance) has ruled Malaysia since independence. BN, currently led by Prime Minister Najib Razak, was returned to power for the thirteenth time in the 5 May 2013 general election, albeit with a reduced parliamentary majority.

2.3 Historically, race has been a prominent issue in Malaysia and relations between Malaysia’s diverse populations have at times been tense. On 13 May 1969, race riots between ethnic Malays and Chinese and some Indian Malaysians, took place in Kuala Lumpur. Official figures indicate 196 deaths, although estimates vary up to 600. This event led to BN’s application of affirmative action policies that favour ethnic Malays and indigenous groups (bumiputera – ‘sons of the soil’) 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.

DEMOGRAPHY

2.4 Malaysia covers approximately 328,550 square kilometres and has a population of 31.6 million. The majority of the population (approximately 75 per cent) lives in urban centres. Malaysia’s ethnic groups include Malay and indigenous, collectively known as bumiputera (68.1 per cent), Chinese Malaysians (24.8 per cent), ethnic Indians (7.1 per cent) and others (less than 1 per cent). The official language in Malaysia is Bahasa Malaysia (Malay); however English is widely used, as are a variety of Chinese dialects, Tamil and, to a lesser degree, indigenous languages.

2.5 Malaysia’s Constitution makes Islam the ‘religion of the Federation’, but ‘other religions may be practised in peace and harmony in any part of the Federation’. According to the most recent census in 2010, Muslims comprise 61.3 per cent of the population, Buddhists 19.8 per cent, Christians 9.2 per cent, Hindus 6.3 per cent, and Confucianism, Taoism, 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, while the states of Sabah and Sarawak have relatively higher numbers of non-Muslims.

2.6 The government automatically classes individuals born in Malaysia of Malay ethnicity as Muslim (see Religion). Most Chinese Malaysians are Buddhists, Taoists or practitioners of Chinese folk religion and ancestor worship. Approximately 11 per cent of Chinese Malaysians identify as Christian. The majority of the ethnic Indian population practises Hinduism.
ECONOMIC OVERVIEW

2.7 The World Bank classifies Malaysia as an upper middle-income, export-oriented economy. In 2017 its real GDP growth was 5.4 per cent and per capita GDP was USD9,660. Since independence, Malaysia has transformed from a commodity-based economy, focused predominantly on rubber and tin, to a leading producer of electronic parts and electrical products, oil and natural gas, and a variety of other manufactured products. It is the world’s second largest producer and exporter of palm oil. Manufactured goods comprised 82.2 per cent of Malaysia’s exports in 2016. Malaysia is ASEAN’s largest energy exporter and income from oil and gas provides the government’s largest single revenue source. The drop in oil price in 2015 and 2016 negatively affected government revenues, but the rebound in oil price in 2017 has seen revenues pick up again. The World Bank forecasts economic growth of 5.2 per cent for 2018.

2.8 Malaysia’s economic performance over many decades has led to a significant reduction in poverty, with the share of households living below the national poverty line (USD8.50 per day in 2012) falling from over 50 per cent in the 1960s to less than 1 per cent in 2017. According to Malaysian government estimates, poverty rates were 0.5 per cent for ethnic Malay, 0.1 per cent for Chinese Malaysians and 0.1 per cent for ethnic Indians. The rural poverty rate of 1 per cent in 2016 was higher than that of urban areas (0.2 per cent in 2016). The UNDP’s Human Development Index ranked Malaysia 59 out of 188 countries in 2015, placing it in the ‘high human development’ category.

2.9 Notwithstanding the introduction of a number of reforms aimed at liberalising the economy, particularly in the services sector, the government continues to prioritise the economic advancement of the bumiputera.

2.10 National Transformation 2050 is Malaysia’s plan for the period of 2020 to 2050. The plan aims to transform Malaysia into one of the top countries in the world in economic development, citizen well-being and innovation.

2.11 Transparency International’s 2017 Corruption Perceptions Index ranks Malaysia 62 out of 180 countries and territories. In 2015, the government investment fund, 1 Malaysia Development Berhad (1MDB), was at the centre of claims that Prime Minister Najib Razak, also Chairman of the 1MDB Advisory Board, had misappropriated significant funds through complex financial transactions involving 1MDB and its subsidiaries. In July 2015, the Prime Minister removed the Attorney General, Abdul Gani, who had been leading an investigation into 1MDB. Malaysia’s current Attorney-General cleared Najib of any criminal liability but international investigations into the corruption claims are still underway.

Health

2.12 Malaysia spends approximately 4.2 per cent of GDP per annum on health and has experienced significant improvements in health standards in recent decades. Life expectancy in Malaysia is 73 years for males and 77 years for females. The infant mortality rate is approximately 13 per 1,000 births. Malaysia has well-established and extensive health care services that consist of nation-wide public health care centres administered by the Ministry of Health, hospitals and a growing number of private services predominantly in urban areas.

Education

2.13 Primary school education (six years of education, beginning at age seven) is free and compulsory in Malaysia. The Education Act (1996) requires parents to register their children at the nearest school before the child reaches the age of six and the child must remain in school for a minimum of six years. Parents who
do not comply can face a fine or imprisonment for up to six months. In 2013, national gross enrolment rates were 96.6 for primary school and 94.0 for secondary school. In 2012, secondary school participation rates were 66.1 per cent for males and 71.3 per cent for females. Malaysia’s adult literacy rate is 94.6 per cent.

2.14 As of September 2017, there were 5,952 primary national schools, 2,422 secondary national schools, 1,295 national type Chinese schools and 524 national type Tamil schools. All national schools use Bahasa Malaysian as the language of instruction. Chinese and Tamil schools use their mother tongue as the main medium of instruction and teach Bahasa Malaysia as a compulsory subject. There are 60 Chinese independent schools and each state in Malaysia has a number of Islamic and religious schools (sekolah agama rakyat).

2.15 Malaysia has 20 state-funded universities, 53 private universities, 34 private university colleges, 10 foreign university branch campuses, 398 private colleges, 36 polytechnics and 92 community colleges. Originally designed to ensure bumiputera had access to higher education, the government removed ethnic quotas for state-funded universities in 2002. Bumiputera continue to secure the majority of public university places and Malaysia’s ethnic minorities remain underrepresented in public universities.

**Employment**

2.16 In July 2017, the Malaysian Department of Statistics reported a labour force participation rate of 67.7 per cent and an unemployment rate of 3.5 per cent. In 2016, the male labour force participation rate was 80.2 per cent and the female participation rate was 54.3 per cent. In early 2014, the government introduced policies to ensure equal pay for equal work and programs to promote full and equal participation by women. Fifty-eight per cent of the Malaysian labour force has secondary level education, 13.2 per cent has primary level education and 2.6 per cent has no formal education.

**POLITICAL SYSTEM**

2.17 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.

2.18 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 and 44 appointed by the King, on advice of the Prime Minister, for a maximum of two three-year terms.

2.19 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. In Malaysia, matters pertaining to Islam, including codification of sharia based laws and procedures and their administration, fall under state jurisdiction.

2.20 The BN coalition comprises the United Malays National Organisation (UMNO), the Malaysian Chinese Association, the Malaysian Indian Congress and a number of smaller parties. The BN coalition (or formerly, the Alliance) has been in power at the federal level in one form or another since independence in 1957. At the most recent general election on 5 May 2013, voter turnout was a record 85 per cent. BN won 133 seats, down from the 140 seats at the 2008 election. The government must hold the next general election before
24 August 2018. Prime Minister Najib Razak was sworn into the position on 3 April 2009. The-then Opposition, Pakatan Rakyat (PR – ‘People’s Pact’) alliance, including Anwar Ibrahim’s party (Parti Keadlian Rakyat – ‘People’s Justice Party’), won 89 seats at the 2013 election. PR was dissolved in June 2015 and re-configured as Pakatan Harapan (PH – ‘Coalition of Hope’) in September 2015.

2.21 Electoral reform NGO, Bersih, published a report in March 2014 condemning the Election Commission’s lack of independence. The report claimed that Malaysia’s electoral system failed to meet international standards.

Human Rights Framework

2.22 Malaysia is a party to the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child (and its optional protocols) and the Convention on the Rights of Persons with Disabilities. Malaysia is not party to the Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, or the Convention Against Torture. The Malaysian Constitution forbids discrimination against citizens based on gender, religion or race, but accords a ‘special position’ for bumiputera, permitting affirmative action policies that favour this group.


2.24 The Security Offenses (Special Measures) Act (SOSMA) (2012) allows for preventive detention of up to 28 days with no judicial review. Individuals arrested or detained under SOSMA may face prosecution under the Penal Code: SOSMA prescribes procedures for arrests and detentions but does not provide or predicate offences. Between 2012 and 2016, the government reported it had detained nearly 1,000 people under SOSMA. In late 2015, authorities applied SOSMA to detain two people who filed police reports in foreign countries alleging government corruption related to 1MDB.

2.25 In April 2015, the government passed the Prevention of Terrorism Act (2015), which gives a government-appointed board the authority to impose detention without trial for up to two years, renewable indefinitely, to order electronic monitoring and to impose other restrictions on freedom of movement and freedom of association with no possibility of judicial review. Amendments to the Sedition Act introduced in April 2015 include provisions that further restrict freedom of expression, but remove the offence of criticising the government. The amendments are yet to take effect. The National Security Council Act (2016), which came into effect in August 2016, allows the Prime Minister to declare regions, including the entire country, as ‘security areas’, where the law suspends many restraints on police powers and allows authorities to conduct arrests, searches and seizures without a warrant.
National Human Rights Institutions

2.26 In 1999, the government created the Human Rights Commission of Malaysia (Suhakam). 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.

2.27 Local human rights organisations regard Suhakam as a credible monitor of the human rights situation in Malaysia, but claim it lacks sufficient resources and enforcement authority. Government funding for Suhakam was temporarily cut in 2015, which some suggest was a result of reports critical of the government. The government is not required to table Suhakam’s reports in Parliament. The three-year term of Suhakam’s current chair and commissioners commenced in April 2016.

2.28 A human rights unit in the Prime Minister’s Department deals with domestic human rights issues.

SECURITY SITUATION

2.29 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. Violent crime is relatively uncommon. 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.

2.30 Protests and demonstrations occur from time to time and are largely peaceful. The peaceful ‘Bersih 5’ rally in November 2016 built on four previous rallies over the past decade to call for anti-corruption reforms and measures to strengthen democratic institutions. A pro-government ‘red shirt’ rally held in response to Bersih 4, in August 2015, was aggressive but police quelled the protest with water cannons before it became violent.

2.31 Consistent with global trends, terrorism is a growing concern in Malaysia. Malaysian security forces are responsive and generally capable. Following the terrorist attack in Jakarta on 14 January 2016, Malaysian security forces increased their visible presence and security measures. Notwithstanding, the Islamic State in Iraq and the Levant (ISIL) was invoked in a grenade attack in Kuala Lumpur on 28 June 2016. Between January 2013 and January 2018, Malaysian authorities made 369 counter terrorism related arrests. The Royal Malaysia Police Special Branch Counter-Terrorism Division has disrupted several domestic terror plots. Malaysia’s law-enforcement and counter-terrorism agencies are capable of acting against extremist and terrorist suspects.
3. REFUGEE CONVENTION CLAIMS

RACE/NATIONALITY

Ethnic Malays and indigenous groups – *bumiputera*

3.1 Under the Constitution, a Malay person is an individual with characteristics that include professing the religion of Islam, habitually speaking the Malay language and conforming to Malay customs. The Constitution gives ethnic Malays and other indigenous groups, collectively known as *bumiputera*, special status. Government regulations and policies implement 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, commercial opportunities and housing. Some industries maintain race-based requirements that mandate a certain level of *bumiputera* ownership.

3.2 Until recently, public universities were required to enrol 70 per cent *bumiputera* students before admitting students of other ethnicities. *Bumiputera* made up 90 per cent of the civil service in 2014. The 2016 national budget allocated around 11.5 per cent of the budget, or RM30.6 billion (approximately AUD10.2 billion), to advance the *bumiputera* agenda. This included various entrepreneurship programs, educational placements and scholarships, and equity ownership schemes not available to the Chinese Malaysian or Indian Malaysian communities. The 2018 budget allocated funds to the public sector – which employs mostly *bumiputera* – to provide a one-off payment of RM1500, 365 days’ maternity leave, in-house masters and PhD programs, and other benefits to civil servants. Affirmative action policies for *bumiputera* economic inclusion are contained in the Bumiputra Economic Transformation Roadmap 2.0. Positive discrimination policies have succeeded in creating a significant urban Malay middle class. However, Malays still constitute a relatively high percentage of individuals in poverty.

3.3 Given their preferential treatment enshrined in the Constitution, DFAT assesses *bumiputera* do not face negative official discrimination on the basis of their ethnicity.

Chinese Malaysians

3.4 Chinese Malaysians are one of the largest overseas Chinese communities in the world and are the second largest ethnic group in Malaysia. No laws or constitutional provisions directly discriminate against Chinese Malaysians.

3.5 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 percent of the population.
3.6 Chinese Malaysians freely participate in political life, including as ministers in the current cabinet and in opposition parties. The largest Chinese party was traditionally the Malaysian Chinese Association (MCA), a member of the Barisan Nasional (BN) coalition. The MCA won seven seats at the 2013 election, down from 15 in 2008. The last general election in 2013 saw an increase in Chinese support for the Democratic Action Party (DAP), one of the opposition parties. The DAP won 38 seats at the 2013 election, compared with 28 seats in 2008. The DAP is often portrayed in pro-government media as ‘anti-Malay’. Chinese Malaysian community members advised that, while they believed this was mostly a political tactic, it had contributed to a sense of ethnic division and isolation from mainstream Malaysian society. They also commented that the 1MDB corruption scandal had galvanised anti-government sentiment amongst Chinese Malaysians (as well as others) and had led to greater political engagement. For example, there was increased Chinese Malaysian participation in the 2015 Bersih 4 rallies compared to previous Bersih rallies in 2007, 2011 and 2012. All Bersih protests have called for transparent government and strengthened parliamentary democracy in Malaysia.

3.7 There are relatively few Chinese Malaysians in the Malaysian civil service. Contacts advised that Chinese Malaysians often would not apply for government positions, as they believed the positions were more likely to be awarded to bumiputera, and provided limited promotional opportunities. Conversely, Chinese Malaysians are often preferred in the private sector, mostly because many business owners are Chinese Malaysian.

3.8 Chinese Malaysians are able to access public primary or high school education but increasingly choose to attend one of the 1,295 Chinese schools. This is due to concerns about the quality of public education and perceptions that the curriculum has a strong focus on Islam. Despite the removal of government-sanctioned ethnic quotas in public universities in 2002, admission decisions favour ethnic Malays. Some Chinese Malaysians do not receive a place in public universities despite having high matriculation scores. The Unified Examination Certificate is a standardised test for Chinese high schools. It is a recognised qualification for entrance into tertiary institutions around the world including Australia, United Kingdom and the United States. The Malaysian federal government does not recognise this qualification for entry into Malaysian public universities, although the Sarawak state government does. Since the formation of private universities in Malaysia, Chinese Malaysians have comprised the bulk of the students within non-government universities.

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

3.10 DFAT assesses that Chinese Malaysians do not experience official or societal discrimination on a day-to-day basis. However, they face low levels of discrimination when attempting to gain entry into the state tertiary system, or the civil service, including promotion opportunities.

Indian Malaysians

3.11 Indian Malaysians constitute the third largest ethnic group in Malaysia. No laws or constitutional provisions directly discriminate against Indian Malaysians.Indian Malaysians predominantly live in major urban centres, including within Kuala Lumpur, Penang, Negeri Sembilan, Selangor and Perak in peninsular Malaysia. In 2015, more than 50 percent of Indians were employed in low-income jobs, but they also represent a high proportion of professionals (15.5...
per cent in 2010) including 38 per cent of the entire medical workforce. Access to primary and secondary education is high, with 524 state-based Tamil-language schools across Malaysia. However, access to state-based tertiary education remains low with approximately six per cent of student places at public universities offered to Indian applicants. The predominant use of the Malay language can be a barrier to Indian employment in the civil service. In 2015, an Indian Malaysian became Chief of Police for Kuala Lumpur, the first non-Malay to hold this position. Indian Malaysians have also held senior military positions.

3.13 The government launched the Malaysian Indian Blueprint in April 2017. It provides targets and policies in areas including education and livelihoods. Notwithstanding strong representation in the professions, many Indian Malaysians remain poor. Indian Malaysians have a median monthly income of RM4,627, compared to RM4,214 for bumiputera and RM5,708 for Chinese Malaysians. The figures mask intra-ethnic inequalities within the communities’ diverse sub-groups.

3.14 Unemployment in the Indian Malaysian community is comparatively high. The average unemployment rate for Indian males is 4 per cent compared to 2.9 per cent for Malaysian males overall. The average unemployment rate for Indian females is 5.2 per cent compared to 3.2 per cent for Malaysian females overall. Among unemployed Malaysian youths, Indians make up 10 per cent of the 15-19 age group, and 9 per cent of the 20-24 age group, which are higher proportions than the Indian share of the overall population. The Malaysian government estimates that a disproportionate share of criminal gang members are ethnic Indian. Indian Malaysians comprise a disproportionately high number of incarcerated persons, with some figures suggesting they represent up to 48 per cent of the prison population. An estimated 25,000 ethnic Indians in Malaysia are either stateless or have documentation issues.

3.15 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.

3.16 Indian Malaysians freely participate in political life. The Malaysian Indian Congress is part of the ruling BN coalition, but does not necessarily receive support from the bulk of the Indian Malaysian community, with many voting for the opposition in the 2013 elections. Several members of parliament are ethnic Indian, as are three serving government ministers and the current president of the upper house, appointed in April 2016.

3.17 DFAT assesses that, while many Indian Malaysians have a lower socio-economic position and lower social status than bumiputera or Chinese Malaysians, they do not experience discrimination based on ethnicity on a day-to-day basis. However, they may face low levels of discrimination when attempting to gain entry into the state tertiary system or the civil service.

Refugees and Asylum-seekers

3.18 As at January 2018, the Office of the UN High Commissioner for Refugees (UNHCR) in Malaysia registered 153,480 persons, of whom approximately 110,000 were deemed refugees. People who identify as Rohingya comprised approximately 57,000 of the total number of people monitored by UNHCR. (See also the DFAT Country Information Report on Myanmar of 10 January 2017 and the DFAT Country Information Report on Bangladesh of 2 February 2018).

3.19 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 Malaysian government classes all undocumented migrants, including refugees and asylum seekers, to be ‘illegal immigrants’. Undocumented migrants have no right to employment, health or education. All undocumented migrants are subject to the Immigration Act (1959/63), which enables the police to arrest and detain them at any time. The Malaysian government has given no indication it intends to formalise the status of Rohingya in Malaysia and, as such, they will continue
to be undocumented and will not have access to formal employment or citizenship. The Malaysian government cooperates with UNHCR to allow the provision of humanitarian support to undocumented migrants and UNHCR provides limited levels of support with assistance from a number of NGOs. UNHCR performs all activities related to the reception, registration, documentation and status determination of asylum-seekers and refugees.

3.20 UNHCR identification cards allow the holder to reside within communities rather than detention centres; to access discounted hospital treatment; to access education and to participate in a small UNHCR pilot work program (outlined below). 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 and in 2016 there were instances of fake 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 amongst UNHCR staff have been resolved, but fraudulent activity by other individuals or groups continues to occur. In June 2016, UNHCR launched a new identity card system that includes enhanced biometric collection and security features (microtext, holograms, watermarks, barcodes, facial imagery, fingerprint and iris scans). Since June 2017, approximately 99,000 individuals registered with UNHCR have received this card. The government also plans to issue its own identity cards to registered refugees for which they will be charged a fee.

3.21 UNHCR is partnering with the government to implement a pilot program for 300 Rohingya to obtain work rights and paid employment in a limited number of industries approved by the government. To date, the pilot has not been successful due to the limited options available but UNHCR continues to work with the government to expand the pilot to include a broader range of sectors.

Irregular Migrants

3.22 The International Labour Organization estimates that 3 to 4 million migrants currently work in Malaysia, constituting 20 to 30 per cent of the country’s workforce. Of the migrant worker population, 1.7 million are registered, and an estimated 1.9 million are undocumented migrants. Malaysia is home to the fourth largest number of migrants in the East Asia Pacific region.

3.23 Malaysian law does not distinguish between irregular migrant workers (undocumented migrants) and asylum-seekers, whom it also considers ‘illegal immigrants’. Authorities frequently detain asylum-seekers, refugees and other persons of concern in immigration detention centres in Malaysia, where they face challenging physical conditions, including overcrowding. According to Suhakam, more than 100 people died in immigration detention during 2015 and 2016, due to chronic health conditions such as tuberculosis, pneumonia and septicaemia. The Malaysian government’s Enforcement Agency Integrity Commission (EAIC) reported the 13 detention centers in Malaysia held 86,795 detainees, for various periods, during 2016. Although the government does not disaggregate data by gender, many women are likely to be in immigration detention as they represent approximately 40 per cent of migrants in Malaysia.

3.24 From February to June 2017, employers of illegal foreign workers could legalise their employment under the Immigration Department’s E-Kad programme, in five sectors of employment. Economic migrants rarely obtain permanent residence (PR) status.

3.25 The Global Detention Project reports that immigration detainees spend between two months to two years in detention. Section 34(1) of the Immigration Act (1959/63) provides that persons may be detained for ‘such period as may be necessary’ pending removal. 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.
RELIGION

3.26 While the Constitution guarantees freedom of religion, the practice of religions other than Sunni Islam is subject to some constraints. Laws such as Selangor state’s *Non-Islamic Religions (Control of Propagation amongst Muslims) Enactment* (1988) control and restrict the propagation of other religions, including non-Sunni versions of Islam. 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, which continues to have an active relationship with the Malaysian government.

3.27 The government automatically classes individuals born in Malaysia of Malay ethnicity as Muslim. Their Muslim status is recorded on their birth certificate and on their national identification card. National identification cards do not distinguish between Sunni and Shi‘a Muslims. Cards identify Muslims on their surface, but record other religious affiliation in encrypted form on a smart chip. Married Muslims must carry a photo identification of themselves with their spouse as proof of marriage.

3.28 Malaysia has a two-track legal system: common law, administered at federal level; and *sharia*-based law, administered at the state level, which varies by jurisdiction. Matters considered by states under *sharia*-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. These bodies sit within the Prime Minister’s portfolio.

3.29 *Sharia*-based law applies only to ‘persons professing the religion of Islam’. However, the enforcement of *sharia* sometimes affects non-Muslims, particularly on matters involving religious conversion and family.

3.30 On 10 February 2015, Prime Minister Najib launched Malaysia’s first national *sharia* index, designed to evaluate and assess the government’s performance against the five aspects of *sharia*: the protection of religion, protection of life, protection of the mind, protection of the race and protection of property. The index focuses on eight areas of government policy: law, politics, the economy, education, health, culture, infrastructure and environment and social issues. On 3 August 2017, the federal government announced it had obtained a score of 76.06 per cent on its own self-rated index, categorised as ‘very good’, up from 75.42 per cent in 2015.

3.31 The government has prohibited many publications in Malaysia based on an assessment that they contain ‘deviant’ teachings that could incite religious disharmony. The use of the word ‘Allah’ by non-Muslims 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. The Federal Court unanimously upheld this ruling in 2015.

3.32 While the government rarely intervenes in instances of religious persecution, harassment or criticism of non-Muslims, there are increasing reports of non-Muslims being censured for commenting on any matter pertaining to Islam. 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 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 *sharia*-based law. DFAT is aware of few reported incidents of violence against religious ‘dissenters’.
Places of Worship

3.33  Destruction or damage of any place of worship is an offence under Section 295 of the Penal Code and is subject to up to two years of imprisonment or a fine, or both. While there are many non-Muslim places of worship in Malaysia, local sources advised DFAT that procedures and processes for building new non-Muslim places of worship had become increasingly restrictive. State governments have exclusive authority over allocation of land for all places of worship.

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

3.35  The government has denied legal status to some religious groups including Jehovah’s Witnesses and Mormons. Whilst 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.

Islam

3.36  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. Since the 2013 election, Prime Minister Najib has promoted UMNO as the defender of the ‘sanctity and dignity’ of Islam against ‘deviant’ interpretations. The government has banned Shi’a Islam, Ahmadiyah and Al-Arqam on these grounds.

3.37  Several high profile incidents during 2017 illustrate an increasing trend and tension in Malaysian Islam. In September 2017, state religious authorities detained a visiting academic during a speaking tour of Malaysia organised by the Islamic Renaissance Front. The government censor banned his books, along with around a dozen other titles, for challenging Malaysia’s conservative Islamic approaches: according to the Deputy Prime Minister, the books were ‘against societal norms’. Authorities banned a beer festival, despite it having run for the past few years, and a gay dance party. Two public laundries restricted their customers to ‘Muslims Only’, attracting significant media attention; following a Royal rebuke, the owner apologised and re-opened his shop to all although the Royal rebuke was itself criticised by the Minister for Islamic Affairs.

3.38  Muslims who have strayed from accepted Sunni principles— including those from so-called ‘deviant sects’ – can be prosecuted by government for apostasy under state sharia-based laws, with punishments including fines or prison terms. Those convicted can also be subject to mandatory religious rehabilitation. According to the US State Department, in 2014, authorities sentenced the widow of the founder of a banned Islamic sect and 18 followers to 500 hours of rehabilitation. Religious rehabilitation programs can last for up to six months and are designed to ensure the detainee adopts the government’s official interpretation of Islam. The government does not release statistics on the number of persons sent to religious rehabilitation.

3.39  In April 2017, the leader of the Pan-Malaysian Islamic Party (PAS) Abdul Hadi Awang tabled a private member’s bill in parliament to increase sharia courts’ punishment powers. The bill seeks to raise those limits to 30 years in prison (up from three years); RM 100,000 (approximately AUD 32,814) fines (up from RM
5,000, approximately AUD 1,640); and 100 strokes of the cane (up from six strokes). As of March 2018, the federal parliament had not debated the bill.

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

Shi’a Muslims

3.41 Shi’a Muslims form a small proportion of Malaysia’s overall Muslim population. Estimates vary from 2,500 to 250,000 people. 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. Their national identification card does not distinguish individuals as Shi’a Muslims. There are no restrictions on the movement of Shi’a Muslims within Malaysia.

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

3.43 On 8 March 2014, the Perak Islamic Religious Affairs Department arrested 114 Shi’a Muslims, including women and children, at a private event celebrating a Shi’a religious anniversary. Authorities released the individuals a few hours later. In October 2015, the Religious Affairs Organisation of Selangor (JAIS) arrested and questioned 16 people for commemorating Ashura, a Shi’a holy day. The following year JAIS detained 50 Pakistani nationals believed to be commemorating Ashura. In November 2016, the Melaka State Islamic Department arrested 15-suspected members of what authorities said was a ‘deviant’ Shi’a group.

3.44 Local non-governmental 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 Despite legal barriers to their worship, DFAT assesses that the majority of Shi’a Muslims live free from discrimination on a day-to-day basis.

Malaysian Christians

3.46 Malaysian Christians comprise close to 10 per cent of the total population and are predominantly located in the eastern states of Sabah and Sarawak. Approximately 20 per cent of the Malaysian Chinese community is Christian but a broad range of ethnicities practise Christianity. While Christian politicians are present in most political parties, they tend not to represent specifically Christian interests.

3.47 While Christians are generally free to practise their religion, official impediments are in place on their use of the word ‘Allah’ (Arabic for God). Malaysian Christians claim to have used the word ‘Allah’ for

3.48 The High Court was, as of March 2018, still considering a case brought by a Sarawak bumiputera Christian asserting the right to use ‘Allah’ as a Malay translation for ‘God’. In 2013, the federal government ordered the Religious Affairs Organisation of Selangor to return bibles seized from the Bible Society of Malaysia for containing the word ‘Allah’.

3.49 In April 2015, a protest took place outside the Community of Praise Petaling Jaya Church in Taman Medan, a mainly Muslim suburb of Kuala Lumpur. About 50 protestors demanded the removal of the cross on the church as religious symbol that challenged Islam. The church representatives removed the cross within hours and there were no reports of violence. The Prime Minister publicly stated that the actions of the protestors were not acceptable.

3.50 Christian pastors suspected of proselytising have recently been kidnapped. In February 2017, masked individuals abducted evangelical Pastor Raymond Koh in Petaling Jaya, who was suspected of converting Muslims to Christianity. As of March 2018, his whereabouts were still unknown. Pastors Joshua and Ruth Hilmy have been missing from their home on the outskirts of Kuala Lumpur since late 2016. Suhakam is conducting an enquiry into these disappearances.

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

3.52 DFAT assesses that Malaysian Christians are usually able to practise their religion without interference. Occasionally they may face a low level of official discrimination, but do not face official or societal discrimination on a day-to-day basis. However, Christians believed to be proselytising – notably church officials – may face a moderate risk of societal harassment or violence.

**Buddhists and Hindus**

3.53 Buddhists represent 19.8 per cent of the total population and Hindus represent 6.3 per cent. According to Malaysian government data, 76 per cent of the Chinese Malaysian community in 2000 was Buddhist, although local sources estimate the current proportion is around 80 per cent. Most Hindus are Indian Malaysian.

3.54 Hindus and Buddhists have, in the past, faced compulsory acquisition of places of worship and some community backlash in response to relocated temples. Fifty Muslim residents protested the relocation of a Hindu temple into their residential area by placing a severed cow’s head at the front gate of the Selangor state government office in 2009. The state government compulsorily acquired a mixed Buddhist/Taoist temple and a Hindu temple near Bandar Puteri Jaya in March 2013.

3.55 Federal and state governments have supported the building of Hindu or Buddhist places of worship throughout Malaysia. Prime Minister Najib allocated RM 2 million (approximately AUD 660,000) 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 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 Malaysian Indian concerns.
3.56 DFAT assesses that Buddhists and Hindus are usually able to practise their religion without interference and do not face official or societal discrimination on a day-to-day basis.

Religious Conversion and Apostasy

3.57 Conversion from Islam is extremely difficult. In May 2014, Prime Minister Najib said the government would ‘not tolerate any demands or right to apostasy by Muslims’. An ‘apostate’ is a person who formally attempts to renounce their Muslim status. 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 sharia courts.

3.58 Several sharia-based laws apply to Muslims at 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 converted to Islam, and subsequently claimed that non-Muslim family members lose 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 Unilateral Religious Conversion of Children). While it is relatively common for individuals to convert to Islam for marriage, families in some communities may view this negatively.

3.59 Individuals who have attempted to convert from Islam have faced long and expensive legal battles, involving both the federal civil courts and state sharia courts. An individual wishing to convert from Islam must first obtain permission from a state sharia court. The court will declare them an apostate. State sharia courts rarely grant such declarations and, in some states, including Melaka, Pahang, Perak and Sabah, apostasy is a crime punishable by fine, a jail sentence, or caning. In Kelantan and Terengganu, state laws allow the death penalty for apostasy although federal law does not allow its implementation. In 2016, the US State Department reported cases where individuals who attempted to convert from Islam were compelled to attend religious rehabilitation centres. In many cases, converts concealed their new beliefs. Muslim women and girls face social pressure to continue wearing a headscarf (‘tudung’).

3.60 Only 168 of 863 Muslims who attempted to convert between 2000 and 2010 received permission to do so. In these cases, the sharia 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.

3.61 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 sharia court had no jurisdiction and the ‘Lina Joy’ case did not apply, as he was not a Muslim from birth.

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

3.63 The legality under the Constitution of atheism has not been tested by the Malaysian courts. Muslims who leave the faith can be charged with apostasy under state sharia laws. Non-Muslims could potentially also face charges under the country’s non-propagation laws if it can be proven they sought to spread atheism to Muslims. In November 2017, Deputy Minister in the Prime Minister’s Department, Dr Asyraf said in Parliament that atheism should not be allowed and contradicted both the Malaysian Federal Constitution and the Rukunegara (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.

3.64 Malaysian lawyers have contested Dr Asyraf’s claims that atheism is unconstitutional in Malaysia, stating that being an atheist is protected under the federal Constitution, while also noting there are no constitutional provisions specifically prohibiting the spread of atheism. Media reported that some known atheists have received death threats and been forced to hide their beliefs from family.

3.65 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.

3.66 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 is investigating whether any Muslims were involved in the meeting. Deputy Minister Dr Asyraf said ‘if it’s 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. Minister Datuk Seri Shahidan Kassim, called on public support to ‘hunt them down’, claiming that atheism went against the Constitution.

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

POLITICAL OPINION (ACTUAL OR IMPUTED)

3.68 Since 2013, the Malaysian government has demonstrated an increasing intolerance of anti-government criticism and freedom of expression and assembly through new legislation and through interpretations of existing legislation (see Human rights framework). In some instances, it has filed unrelated (and critics say spurious) criminal charges against political opponents.

3.69 Malaysia does not have significant separatist sentiment. Sabah Sarawak Keluar Malaysia (SSKM), a small social media based political group campaigning for the secession of Sabah and Sarawak, arranged two forums in 2017 called ‘Sarawak for Sarawakians’, which were attended by approximately 200 people. DFAT understands that, while there is debate on the topic, it focuses on more autonomy, not independence.
Political Group

Political Opposition Members

3.70 The Peaceful Assembly Act, Sedition Act, Criminal Code and occasionally, sodomy or corruption charges, have been used against a small number of high-profile opposition leaders and organisers.

3.71 Since 1999, authorities have pursued a series of legal cases against Datuk Seri Anwar Ibrahim, the former deputy prime minister and former leader of the opposition coalition Pakatan Rakyat (People’s Alliance). He was convicted of sodomy for a second time and sentenced to five years’ imprisonment in 2015. Local and international groups have expressed concern about the standards of procedural fairness applied in Anwar’s case. Malaysian electoral law prohibits any person who has served a prison sentence of more than one year from running for office for five years after release, so the conviction prevented him from running for office until 2020. In November 2015, the UN Working Group on Arbitrary Detention found that Anwar’s imprisonment was arbitrary and called for his immediate release. The Malaysian government stated Anwar would not be released as he was convicted of a crime and his detention was not political.

3.72 Authorities used the PAA to file charges against eight individuals involved in the 28 February, 21 March and 28 March 2015 ‘#KitaLawan’ protests held in support of Anwar Ibrahim. Those arrested included members of the opposition People’s Justice Party (PKR) and organisers of the Bersih rallies (see Political Rallies).

3.73 On 29 June 2016, police arrested the Chief Minister of Penang and senior Opposition figure, Lim Guan Eng, and charged him with corruption. This may interfere with Lim’s ability to contest in the upcoming 14th general election.

3.74 Politicians who have spoken publicly about the 1MDB corruption scandal have faced repercussions. Police arrested former UMNO division leader, Khairuddin Abu Hassan, on 19 September 2015 under the SOSMA. Hassan had contributed evidence to international 1MDB investigations. The then Inspector General of Police accused Hassan of sabotaging Malaysia. The Federal Court dismissed the charges in April 2017. In October 2015, parliamentary leader of the DAP, Lim Kit Siang, was suspended from parliament for six months for refusing to retract his comment that the parliamentary speaker was intentionally delaying the Public Accounts Committee’s investigation into 1MDB investigations. Authorities investigated opposition members of parliament Nurul Izzah Anwar and Tony Pua under the Penal Code for their alleged role in acquiring documents related to 1MDB, banning Pua from international travel. Members of parliament who are sentenced to more than one year in prison or fined more than RM2,000 are disqualified from serving in parliament for five years after their release unless they receive a royal pardon. Rafizi Ramli, vice president of the opposition People’s Justice Party, was found guilty under the Official Secrets Act for possessing and disclosing part of a government audit report on 1MDB in November 2016. In August 2017, the High Court upheld his 18-month sentence, but allowed a stay of sentence pending appeal.

3.75 Reports of inter-party and societal violence emerged before and after the May 2013 national elections. In April 2013, a BN coalition supporter threatened a female opposition campaigner with a machete. In Penang, five unknown individuals assaulted two men who were hanging opposition party flags. A bomb went off at a BN rally in northern Penang before the election. The Royal Malaysia Police (RMP) investigated these events. As of March 2018, there were no specific reports of violence connected to the 2018 election.

3.76 DFAT assesses that political opposition and dissent, particularly direct criticism of the government, can result in legal harassment, detention and prosecution. While opposition party members can undertake political activities on a day-to-day basis, they report an increase in pressure to self-censor. DFAT assesses they face a low risk of official discrimination. High-profile opposition leaders face a moderate risk of official
discrimination. While inter-party and societal violence occurred in connection with the 2013 elections, such incidents are not common and individuals do not face societal violence on the grounds of their political affiliations.

Political Rallies

3.77 The Constitution states that all citizens have ‘the right to assemble peacefully and without arms’, however, in practice the government closely administers political assemblies and rallies under the PAA and the Criminal Code. Permits can be difficult to obtain and can be restrictive in their application. The PAA requires organisers to submit notice of a rally to authorities ten days in advance.

3.78 Authorities have arrested individuals for organising or engaging in rallies and the RMP has on occasion used force to control crowds. Bersih, a coalition of 62 NGOs, organised a series of rallies calling for improved government transparency, free and fair elections in 2007 (Bersih 1), 2011 (Bersih 2), 2012 (Bersih 3), 2015 (Bersih 4) and 2016 (Bersih 5). Opposition parties supported the rallies, which attracted thousands of protesters.

3.79 The Bersih 4 rallies on 29 and 30 August 2015 saw approximately 100,000 people, mostly opposition parties and their supporters, civil society activists and Chinese Malaysians, take to the streets in Kuala Lumpur to call for the resignation of Prime Minister Najib in the context of 1MDB corruption allegations. The protest was peaceful, despite the government declaring the protest illegal and banning the yellow t-shirts with ‘Bersih’ print that protestors wore. Smaller rallies were also held in Melaka, Penang, Kuching and Kota Kinabalu, with a small number of arrests. The police response was more restrained than in the July 2011 Bersih 2 protest, where police used tear gas and water cannons to break up the protest and arrested approximately 1,500 people.

3.80 The day prior to the Bersih 5 rallies in 2016, police arrested and detained ‘Bersih 2.0’ Chairman Maria Chin Abdullah and secretariat member Mandeep Singh under SOSMA. Police also raided ‘Bersih 2.0’ offices, confiscating their computers. Notwithstanding the pre-rally arrests and raids, the Bersih 5 rallies continued without any serious incident and a crowd of over 40,000 protesters gathered around Kuala Lumpur. A local human rights organisation commended police for their conduct at the rallies.

3.81 DFAT assesses that low-profile individuals involved in peaceful political rallies face a low risk of official discrimination. High-profile organisers of political rallies face a moderate risk of official discrimination and could be charged under the Peaceful Assembly Act or the Criminal Code.

GROUPS OF INTEREST

Human Rights and Civil Society Organisations

3.82 Several 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. Although these organisations are able to function independently, the deterioration in freedom of expression in recent years has led to an increase in self-censorship. Some organisations report that constructive engagement between the government and civil society can be difficult, and the government largely ignores their advocacy and recommendations.

3.83 Many civil society organisations choose to 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
prevented registration of organisations that it deems unfriendly to the government. Authorities regularly use registration issues as a basis for investigating NGOs.

3.84 Human rights organisation Suaram reported nine known cases under the Sedition Act that were still current in 2017. Authorities have made less use of the Sedition Act since 2016, with no prosecutions of individuals under the Act in 2016, and only 9 new cases in 2017, six of which related to a front page article in the Star that authorities deemed ‘insensitive’. NGOs have described instances of police intimidation and legal harassment. Authorities detained Eric Paulsen, a prominent human rights lawyer and co-founder of the Malaysian NGO Lawyers for Liberty, three times during 2015 for alleged acts of sedition. Paulsen had posted on Twitter criticism of the Religious Affairs Department, the application of sharia punishments and the Prime Minister. The then Inspector General of Police said Paulsen should be careful making comments on sensitive issues. Authorities released Paulsen on bail on all three occasions. If found guilty under the Sedition Act, an individual can face up to three years in jail, be fined up to RM5,000 (AUD1,600) or both.

3.85 DFAT assesses that civil society groups critical of the government face a low risk of official discrimination in the form of legal harassment or surveillance by law enforcement authorities. When arrests take place, police usually drop charges and release individuals within short timeframes. Harassment of individuals commonly targets activists with a public profile, not necessarily the most senior members of an organisation.

Media

Traditional Media

3.86 Malaysia has a wide variety of electronic and traditional media in English, Malay, Chinese, Tamil and Arabic. The Constitution provides for freedom of speech but, in practice, the government restricts freedom of expression. Journalists, particularly in print media, widely practise self-censorship. Political parties in the ruling BN coalition own, control or influence the major daily newspapers (Malay, English and Chinese). Parties or individuals linked to BN coalition also own the majority of radio and television networks. The Prime Minister’s Department regularly directs media outlets to cover particular stories each week. Reporters without Borders ranked Malaysia 144 out of 180 nations in its 2017 World Press Freedom Index and, in 2017, Freedom House rated Malaysia’s Press Status as ‘not free’. Independent media outlets exist, but are generally on-line platforms.

3.87 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. The government banned several books in 2017. Since 2015, the government has increasingly taken action against media outlets, senior editors and individual journalists that have pushed the boundaries of critical coverage, mostly through the use of the Communications and Multimedia Act (1998) (CMA) to pressure, investigate and arrest. The main targets of government interest have been individuals or media outlets critical of the government, members of Parliament or their families, or those covering issues linked to ethnicity or Islam. Amnesty International reported that 91 citizens were charged under the Sedition Act in 2015; human rights group Suaram reported that authorities charged only 9 people under the Sedition Act, but more than 146 people under the CMA in 2017.

3.88 A team within the Department of Information, Ministry of Home Affairs, monitors media on a daily basis and occasionally calls in newspaper editors to discuss specific publications. Parliament passed an amendment to the Publications Act in 2014 that replaced a previous requirement for annual registration with a one-off registration for a printing permit. Nonetheless, local sources claim publishers are reluctant to
publish criticism of the government for fear of losing their printing permit. In July 2015, the Ministry of Home Affairs suspended the licence of leading financial paper The Edge Daily for three months, after it published articles criticising Prime Minister Najib’s alleged involvement in the 1MDB corruption scandal. The High Court later overturned the suspension.

Online and Social Media

3.89 Social media is the primary outlet for free discussion in Malaysia. The World Bank estimated in 2016 that approximately 79 per cent of Malaysians used the internet. The government generally does not restrict access to the internet. Since 2001, however, the Malaysian Communication and Multimedia Commission (MCMC) has monitored some online content, including emails and blogs. The MCMC is a small organisation with few staff. In October 2017, the MCMC reported it had blocked 5,044 websites between 2015 and October 2016 for pornography, malicious content, or copyright infringement. In January 2016, the MCMC established a ‘Special Committee to Combat Abuse of Social Media’. The RMP also has an active social media unit that monitors online forums and selectively issues warnings to individuals who are critical of the government or Malaysian royalty.

3.90 The MCMC has ordered outlets and bloggers to remove material considered provocative or subversive and has charged individual bloggers with sedition or defamation. The government has used the Sedition Act against social media users who express dissenting views online. In 2015, authorities arrested political cartoonist Zulkiflee Anwar Ulhaque, known as ‘Zunar’, for posting nine cartoons on Twitter that criticised the Najib government for alleged corruption and the trial of Anwar Ibrahim. As of March 2018, Zunar continues to face nine charges under the Sedition Act, which could lead to up to 43 years in prison. He has been subject to a travel ban since June 2016. Ordinary social media users also risk prosecution: in August 2013, a Twitter user was fined RM10,000 (approximately AUD3,330) for questioning the need for a monarchy.

3.91 In February 2016, artist Fahmi Reza received a warning that police were watching his Twitter account and he should use it ‘prudently and in line with the law’ after he posted an image of Najib made up as a clown with the comment ‘in a country full of corruption, we are all seditious’. He was convicted under the CMA and received a one-month jail term and RM 30,000 (AUD 10,000) fine. The government appears to make examples of select individuals rather than block critical content. Police do not target the majority of political commentators and uncensored criticism of the government appears on the internet, including Prime Minister Najib’s Facebook page.

3.92 Media contacts report that, while the government has tightened control over online content, the space remains relatively free and criticism of the government does occur. As an example, an infographic created by government supporters to promote the achievements of the Prime Minister went viral on Twitter and Facebook, with people mocking it for including projects that were incomplete.

3.93 In early 2016, the UN Human Rights Council received accounts of alleged violations of freedom of expression for online publications. MCMC blocked the whistle-blowing website Sarawak Report on 19 July 2015 after it published an article on allegations of the Prime Minister’s role in the 1MDB corruption scandal. Malaysian authorities issued an arrest warrant for Clare Rewcastle-Brown, the British founder and editor of the Sarawak Report on 4 August 2015. She continues to be under investigation. In 2016, the government blocked the Malaysian Insider, a popular online news website owned by the same media group as The Edge newspaper, after it reported on the 1MDB corruption scandal. Its owners subsequently closed it down, stating it was no longer profitable, although a new site, The Malaysian Insight, has emerged with similar content.

3.94 In June 2013, Prime Minister Najib and UMNO filed a suit against popular online news website, Malaysiakini, and banned it from major UMNO events in 2013, including the supreme council meetings and
the annual general meeting. The website commonly published political commentary. Online media may soon need to register with the government.

3.95 DFAT assesses that bloggers and online media sources face a moderate risk of harassment, but a low risk of being charged with defamation or sedition, if they publish material critical of the government or cover sensitive ethnic or religious matters. Most Malaysians are free to participate in activities online without interference.

Victims of Gangs

3.96 Malaysian media reported in early 2017 that approximately 72 illegal gangs, with an estimated 20,000 members, operated in Malaysia. In 2016, the then Inspector-General of Police estimated 20 illegal gangs operated in Malaysia. Many street-level gang members are Indian Malaysians, reflecting their relative economic vulnerability. High-level crime, including drug trafficking is more typically associated with Malaysian Chinese gangs. Gangs engage in extortion and loan shark practices. Details of gang activities are difficult to obtain, as victims of gang-related crimes do not generally report them. DFAT understands that Malaysian authorities tend to view individuals who access loan shark services as having participated in an illegal practice.

Victims of Loan Sharks

3.97 Loan sharks (‘ah-Long’), or ‘pay-day-financing’, carry out money lending activities, charging high interest rates, without a licence. Loan sharks operate very publicly in Malaysia and while the practice is illegal, advertisements listing phone numbers and offers of cash loans for RM10,000 – RM20,000 (AUD3,100 – AUD6,200) appear on public property including lamp posts and utility boxes. Loans typically carry an interest rate of about 30 to 40 per cent per month, and can be as high as 15 per cent per day. The Commercial Crimes Investigation Department reported 2,273 cases involving loan sharks from 2016 to July 2017, with a total loan amount of RM68.8 million (AUD20.7 million).

3.98 In 2015, Public Services and Complaints Department of the political party, the Malaysian Chinese Association (MCA), reported over 70 per cent of borrowers in 214 cases were Chinese Malaysian. The Malaysian Muslim Consumers Association (PPIM), which provides services predominantly for the Malay community, has been involved in over 10,000 cases involving loan sharks from 2012 to 2016, of whom around 70 per cent were Malay. Sources provide vastly differing views on the reasons individuals engage illegal moneylenders. Some claim that up to 80 per cent of borrowers are supporting illegal gambling activities. Others claim most 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.

3.99 Amendments to the Moneylenders Act (1951) in 2003 and 2011 have increased police investigative powers against alleged loan sharks. Police can visit, enter, inspect or search premises without a warrant and seize moveable properties and business documents to assist with investigations against alleged loan sharks. Individuals involved in illegal moneylending activities in Malaysia can be convicted under Section 5(2) of the Moneylenders Act, which carries a fine of between RM250,000 and RM1million (AUD80,000 – AUD320,000) or, a jail term of up to five years, or both. Police made several high profile arrests and investigations of syndicates in 2017.
3.100 The MCA assists community members unable to service their loans. Very limited research is available on loan sharks and the individuals that engage these services, possibly due to their links to gangs and corruption.

3.101 An individual who is unable to service a debt from a loan shark may risk physical threats. Due to a lack of reliable information, DFAT is unable to verify what percentage of borrowers are supporting other illegal activities, their likelihood of seeking police protection, or the level protection offered by police.

Women

3.102 Women participate in all aspects of Malaysian society, including government, business and civil society. However, cultural and social barriers limit their levels of participation, in addition to a lack of resources to assist with re-entering the workforce after having children. Within government, three of 36 cabinet ministers are female, as are 24 of 222 lower house members and 12 of 62 senators. Women hold 17.9 per cent of board seats in the top 100 publicly listed companies.

3.103 According to the Asian Development Bank, Malaysia has the lowest rate of women’s participation in the workforce in Southeast Asia. However, women’s participation rates in the labour force have risen over the last decade, from 45 per cent in 2008 to an estimated 54.3 per cent in 2016, according to government statistics. The labour force participation rate for men is around 80 per cent. Malaysian women are attaining higher education degrees at increasing rates, notably in science, technology, engineering and mathematics, where 52 per cent of computer science graduates and 39 per cent of engineering graduates are female. Malaysia’s IT sector features equal numbers of women and men. However, female participation in the labour force drops off after the birth of the first child. The government provides tax incentives to companies for re-hiring women who have left the workforce, available to employers that establish nurseries and offer flexible work arrangements. No legislation protects women from discrimination in the workplace.

Family Law

3.104 While federal civil law applies to all Malaysian women, state based sharia law also applies to Muslim women. The Constitution provides men and women equal rights to inherit, acquire, own, manage, or dispose of any property, including land. However, at state level, sharia applies to Muslim women for a number of family matters, including succession, betrothal, marriage, divorce, adoption and guardianship. Amended in 1999, the federal Guardianship of Infants Act (1961) gives mothers equal parental rights, but only four states have currently extended the provisions of the Act to Muslim mothers. The government does not recognise marriages between Muslims and non-Muslims and considers children born of such marriages illegitimate.

Domestic Violence

3.105 Domestic violence against women occurs in Malaysia. In 2016, there were 5,796 reported cases of domestic violence, compared with 5,014 in 2015. Local sources believe domestic violence is under-reported because of traditional beliefs in the sanctity and privacy of marriage. They attribute the increase in reported cases to an increase in reporting, rather than an increase in actual cases. Malaysian law prohibits domestic violence, including physical injury and mental, emotional and psychological abuse. Victims can obtain protection orders which attract a prison sentence of up to one year or a fine of RM2,000 (approximately AUD660) if breached. Ambiguity between federal civil law and state sharia-based law affects the levels of state protection afforded to victims of domestic violence. Rape is a criminal offence under the federal Penal Code and is punishable by up to 30 years’ imprisonment and caning. Marital rape carries a maximum penalty of five years’ imprisonment if it is has caused ‘hurt or fear of death’. Sharia-based law in many states,
however, prohibits wives from disobeying the ‘lawful orders’ of their husbands, which can lead to ambiguous interpretations of the law.

3.106 Police training on domestic violence is limited and the judiciary receives little or no training on the application of relevant laws. However, Malaysia has taken significant steps to reduce domestic violence. Domestic violence conviction rates have increased over the past decade. The RMP Criminal Investigation Division includes a Sexual Investigation Division. Women’s groups claim that, on average, 10 women are raped each day; and that more than half of these women are younger than 16 years.

3.107 Amendments to the Domestic Violence Act (1994), passed in August 2017, strengthens protections for victims of domestic violence through enhanced procedures including Emergency Protection Orders that can be applied immediately for up to a week and prevent a perpetrator from entering a safe location. The Act expands the definition of domestic violence. Women’s groups support the amendments, but call for greater training, enforcement, resources and further improvements to the law. The amended bill does not include marital rape in the definition of domestic violence.

3.108 The RMP and Ministry of Women, Family and Community Development reported 31,097 rape cases between 2005 and 2015, with 1,698 cases of rape reported in 2016. The Home Ministry reported that, in the last decade, only 16 per cent of reported cases went to court, with 2.7 per cent of reported cases resulting in guilty verdicts.

3.109 A number of government and non-government bodies provide shelters and assistance to victims, but contacts report that these services are inadequate for demand. The government introduced One Stop Crisis Centres (OSCC) in Malaysian hospitals in 1996, which aim to provide a centralised one-stop facility to victims. The OSCC in Kuala Lumpur includes examination by female doctors, evidence management, referrals and crisis intervention, counselling, temporary shelter and legal assistance. In 2011, UN Women reported that the Malaysian OSCC model was successful in combining clinical therapeutic responses with secondary preventive measures.

3.110 Deaths related to domestic violence occur in Malaysia, but the government does not separate domestic violence deaths from other forms of unlawful killing, so it is difficult to ascertain accurate numbers. In 2014, the media reported at least six domestic violence-related deaths. No statistics nor government reports identify whether ‘honour killings’, to punish individuals perceived to have brought shame upon their family or community, occur. An interfaith couple whose families oppose their marriage may face family or social pressure or ostracism, but is unlikely to face violence. The Law Reform (marriage and divorce) Act (1976) makes it illegal to compel a person 21 years or older from marrying against their will, or not prevent such a person from marrying.

3.111 DFAT assesses that, while the situation is improving, ambiguity between federal and state laws, lack of application and capacity within the police and judiciary, and lack of awareness of their rights create difficulties for women to gain adequate state protection and to safely leave violent relationships.

**Female-headed households**

3.112 The most recent Malaysian census (2010) indicates 235,000 female-headed households in Malaysia. The Department of Women’s Development, established an online database for single mothers to register, ‘MyWanita’ to help address issues and better understand their needs. As of March 2016, 83,775 individuals had registered. The government has launched other initiatives in recent years with the intention of assisting single mothers, with a particular focus on those living in rural areas. In October 2015, the government launched the Action Plan to Empower Single Mothers 2015-2020. The action plan (involving 27 government agencies, higher learning institutions, NGOs and private sector organisations) emphasises three core areas: economic empowerment, enhancing social wellbeing and stepping up implementation of research and
development coordination of single mothers. In 2016, the government ran a series of nationwide roadshows to inform single mothers of the Action Plan and the MCA established a body in 2018 to investigate welfare claims by single mothers.

3.113 Government assistance is available to low income families. Single mothers in Malaysia may be unable to work due to costs associated with childcare, or the additional burden of caring for extended family members, and thus rely on modest government assistance to support their families. Financial assistance from the Department of Social Welfare, Ministry of Women, Family and Community Development is available to households whose income is below the income poverty line (RM720 per month in peninsular Malaysia, RM830 in Sarawak and RM960 in Sabah).

Female Genital Mutilation (FGM)

3.114 In 2009, the National Fatwa Committee decided that ‘female circumcision’ was obligatory for Muslims unless harmful to their health. The Ministry of Health developed guidelines for the procedure and allowed it to take place in health-care facilities. As a result, it has become increasingly common and is often performed during infancy. A university study conducted in 2012 found that, of over 1,000 women surveyed, 90 per cent of Muslim respondents had undergone FGM. DFAT has received mixed reports as to the extent of the medical procedure, with some contacts describing the procedure as symbolic, while others describe a more damaging medical procedure. The Minister for Health declared that FGM does not occur in Malaysia, but maintains a distinction between circumcision and mutilation. Public hospitals reportedly do not undertake the procedure, but private hospitals do.

Sexual Orientation and Gender Identity

3.115 Malaysia has retained the colonial-era article 377 of the Penal Code, which provides that anal or oral sex is illegal in Malaysia, as is ‘carnal intercourse against the order of nature’. Such activities attract a prison sentence of up to 20 years and/or caning. Authorities infrequently apply the Penal Code offences to homosexuals, although they are sometimes selectively applied (see Political Opinion (Actual or imputed)).

3.116 The Malaysian government has in the past openly criticised lesbian, gay, bisexual, transgender or intersex (LGBTI) people. In August 2015, Prime Minister Najib claimed that ‘groups like the Islamic State and lesbians, gay, bisexuals, and transgender both target the younger generation and seem successful in influencing certain groups in society’. In May 2014, Prime Minister Najib said the government would ‘not allow Muslims to engage in LGBTI activities’. The National Department for Islamic Development (JAKIM) claimed it opposed discrimination against LGBTI people, but also produced a video claiming homosexuality could be ‘cured’.

3.117 The police and judiciary have banned public demonstrations of support for the LGBTI community. In 2017, authorities initially banned Walt Disney Studio’s live action version of ‘Beauty and the Beast’ for an alleged ‘gay scene’, but backed down when Disney refused to censor the scene. In September 2017, the Malaysian immigration department declared that foreign organisers or participants in ‘gay parties’ would be denied entry into Malaysia. In 2013, the Malaysian Court of Appeals upheld a ban on a sexuality rights festival that had run annually between 2008 and 2010. The grounds for the ban in 2011 were ‘public disorder’. Since 1994, authorities have banned homosexual, bisexual, transsexual and transgender individuals appearing on state-controlled media and media censorship rules ban movies or songs that promote the acceptance of same-sex relationships.

3.118 The federal government, and a few state governments, have openly run programs aimed at ‘rehabilitating’ suspected LGBTI youth. In 2017, the Ministry of Health ran a video competition on ‘Adolescent Sexual and Reproductive Health’ and sought entries on ‘gender confusion’, including the
Transgender Individuals

3.121 Cross-dressing is not technically illegal, but police are known to arrest transgender men under the Minor Offenses Act (1955) for public indecency and immorality and, where Muslim, under sharia-based law for impersonating women. The National Fatwa Council banned gender reassignment surgery in 1983 and the National Registration Department does not allow transgender people (Muslim or non-Muslim) to change the sex marker on their national identity cards to match their gender.

3.122 State religious authorities or the RMP have arrested transgender women identifiable as Muslim whose national identity cards identify them as male. NGO reports identified 746 arrests of transgender women between 2008 and 2012. The Malaysian Bar Council noted that where such cases were overturned, this indicated more progressive judges, rather than an increasingly progressive society. While the majority of arrests occur in public places, state religious officials occasionally conduct raids on private premises, sometimes accompanied by members of the RMP.

3.123 In October 2015, the federal court reversed a lower court ruling that Negeri Sembilan’s state-level prohibition on men dressing as women to be unconstitutional. The federal court advised the defendants, three Muslim transgender women, to exhaust their case in the sharia court, where it had originated. In June 2015, a sharia court in Kelantan convicted nine transgender women for cross-dressing.

3.124 DFAT is aware of past allegations of state religious officials subjecting transgender women to physical or sexual violence and degrading treatment while in custody. Authorities hold transgender women in male prisons where corrections officers or fellow detainees have sexually assaulted them. Societal violence also occurs. In February 2017, Sameera Krishnan, a transgender woman, was murdered in Pahang state. Police arrested five men in April, and released them on bail. The case had not come to trial by the end of 2017. On 10 September 2015, Malaysia’s most prominent transgender activist, Nisha Ayub, was brutally beaten by two Indian Malaysian men with iron bars outside her apartment building. She reported the crime to police, who failed to identify any suspects. NGO reports have identified 11 cases of murder of transgender women between 2007 and 2017.
3.125 DFAT assesses transgender individuals, especially biologically male Muslims who either cross-dress or identify as transgender, face a high risk of official and societal discrimination and a moderate risk of societal violence.

Children

3.126 Malaysia has recently improved measures for the care and protection of children. In May 2017, parliament passed the Sexual Offences against Children Act (2017). The Act improves Malaysia’s implementation of obligations under the UN Conventions on the Rights of the Child and fills significant gaps in legislation. It omits provisions on child pornography, paedophilia and child marriage. The government amended the Child Act (2001) 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. Activists have raised concerns around the effectiveness of implementation, due to conservative attitudes and the limited capacity of law enforcement agencies. Some within the medical community estimate one in ten children are, or have been, sexually abused.

Unilateral Religious Conversion of Children

3.127 Cases of unilateral conversion of children to Islam against the wishes of a non-Muslim parent have occurred in Malaysia. Under sharia-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 sharia courts. A non-Muslim is not able to visit a sharia court. This has created cases where sharia 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, declared in a landmark decision that the consent of both parents is required to issue a certificate of religious conversion for a child (see Religious Conversion and Apostasy).

3.128 Some high-profile cases of unilateral child conversion have involved Hindu fathers converting to Islam and claiming custody of their children. In April 2014, the estranged husband of a Hindu woman, Deepa Subramaniam, allegedly abducted their five year-old son, after converting himself and their son and daughter from Hinduism to Islam in 2012 without Deepa’s consent. A sharia court had granted him custody of both children in 2012, a decision overturned by the High Court in 2014. In February 2016, the federal Court of Appeal divided custody, giving the son to his father and the daughter to Deepa. The federal court found in this case that a non-Muslim marriage did not dissolve automatically when one party converts to Islam, and therefore civil courts retained jurisdiction over divorce and custody proceedings, overruling previous cases that found to the contrary.

3.129 These cases highlight the tension between the sharia-based law and civil law in Malaysia. An initial draft of the Law Reform (Marriage and Divorce) (Amendment) Act 2017 included a clause preventing one parent from converting minors without the consent of the other parent, but this clause was removed before the proposed amendments were tabled in parliament.

Early and Forced Child Marriage

3.130 Under civil law, non-Muslims may marry from the age of 18, but girls can be married as early as 16 provided the permission of the State Chief Minister has been given. The minimum age for Muslim females to marry is 16 years, however sharia courts can provide permission for females under 16 years to marry. The lower house of parliament blocked a 2016 effort to raise the age of marriage to 18. In 2017, Teo Nie Cheng of the opposition Democratic Action Party unsuccessfully proposed an amendment to the Sexual Offences Against Children bill to include a ban on child marriage.
3.131 Latest census figures (2010) show a significant rise in the number of females aged 15 to 19 married in 2010 (82,382) compared to 2000 (55,915). Actual figures are likely to be higher due to under-reporting of customary marriages and forced marriages. In 2014, the UN Population Fund reported that over 15,000 citizens were married before age 19. While statistics are limited on the rates of child marriage, in May 2016 the Women, Family and Community Development Ministry reported 6,286 Muslim youth (below 18 for males, and 16 for females) and 2,755 non-Muslim youth (under 18) were married between 2010 and 2015.

Welfare Recipients

3.132 The Department of Social Welfare, Ministry of Women, Family and Community Development, provides financial support to the elderly that are aged 60 years and above. Cash payments of approximately RM300 (approximately AUD 100) a month are available to individuals who have no other income and have no means of receiving support from their family. The elderly are also entitled to apply for government aid fund, which pays up to RM1250 (approximately AUD400) annually.

3.133 Malaysia does not have government-funded unemployment insurance. However, Malaysians have some options to seek limited financial support. Some individuals may seek support from political parties. Food kitchens are available within large cities to alleviate urban poverty and homelessness. Government-provided shelters are also available. Businesses and NGOs have various programs to support the poor. Malaysian culture places significant emphasis on family support.
4. COMPLEMENTARY PROTECTION CLAIMS

ARBITRARY DEPRIVATION OF LIFE

Extra-Judicial Killings

4.1 According to the most recent official statistics released by the RMP, police shot and killed 394 people between 2000 and August 2012 (96 between 2000 and 2006, and 298 between 2007 and August 2012). Most were involved in criminal syndicates or serious crimes, particularly drug trafficking. Of those shot 50 per cent were of Indonesian origin, 44 per cent were Malaysians. Malaysian law permits lethal force and the government openly justifies its use, particularly against criminal gangs, and routinely describes police shootings as acts of self-defence. Investigation into the use of deadly force by a police officer only occurs if the Attorney General initiates or approves the investigation.

4.2 RMP officers may shoot people suspected of offences including theft, property damage or traffic infringements. Police shot and killed two suspected armed robbers in Rawang, Selangor, in March 2018. Police shot and killed a suspected bank robber in Johor Baru in February 2018.

4.3 In September 2014 the High Court awarded a compensation payment of RM300,000 (approximately AUD97,000) to a victim of a 2009 police shooting which the court deemed ‘unlawful and unjustified’, though the police officers involved were never charged. Suhakam regularly receives complaints and investigates police shootings.

Enforced or Involuntary Disappearances

4.4 The US State Department’s 2016 Human Rights report found no recent reports of politically motivated disappearances. DFAT is not aware of any confirmed cases of enforced or involuntary disappearances in recent years.

Detention and Prison - Deaths in Custody

4.5 Malaysia’s prisons suffer from significant overcrowding. In October 2017, the Ministry of Home Affairs reported that Malaysia’s 36 prisons were holding 54,715 prisoners, despite being designed to hold only 45,360 prisoners. The Deputy Prime Minister Zahid Hamidi told parliament in March 2017 that 1,654 people had died in custody in Malaysia between 2010 and February 2017. Authorities mostly hold men, women and juveniles separately. According to the US State Department, authorities generally do not permit NGOs or the media to monitor prison conditions. The International Committee of the Red Cross (ICRC) and Suhakam access prisons on a case-by-case basis. Suhakam is responsible for investigating allegations of human rights abuses within the prison system. Suhakam reported 252 deaths in prisons in 2015, and 269 deaths in prisons in 2016. The causes of death were reportedly mostly disease-related. However,
international and local observers, including Suhakam, have repeatedly reported poor standards, for example in relation to limited access to health care.

4.6 Suhakam continues to regard deaths in custody as an area of concern. In June 2017, the government disclosed there were 50 deaths in police custody from the beginning of 2013 through April, with only one death allegedly caused by the police. Civil society activists disputed this, claiming police were responsible for more of the deaths in custody. In April 2017, a government commission found police culpable for the 2013 death of N. Dharmendran, and detailed efforts by police to cover up the case and alter evidence. In June 2017, a court acquitted the four police officers charged with the murder. Human rights organizations criticized the decision, and noted the rarity of successful prosecutions in cases of death in custody. The government has rejected calls to establish a police misconduct commission.

4.7 Law enforcement entities have investigated deaths in custody which, in some cases, resulted in arrests and convictions (see Police Integrity and Accountability). In September 2014, the Court of Appeal upheld the ruling that the January 2009 death of Kugan Ananthan was caused by injuries sustained while in police custody. A police constable received a three-year sentence for causing grievous hurt to Kugan. The High Court awarded Kugan’s mother RM851,700 (approximately AUD277,000) in damages. In January 2013, the Court of Appeal upheld a 2011 ruling to award RM500,000 (approximately AUD162,000) in damages to the family of an 18-year-old man, Mohd Shukri Mohamed Yusof, who died in custody in 2004. One warden received a death sentence for his murder.

4.8 The Enforcement Agencies Integrity Commission, established in April 2011, is a statutory body that ‘enforces the law on enforcers’. Its seven commissioners and 26 staff supervise over 19 agencies, including the police, immigration and customs. In 2018, the Commission recommended criminal charges against police officers for the 2017 death in custody of S Balamurugan. No murder charges have been laid in this case, although a police inspector has been charged 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 whilst committing another offence. In practice, courts apply the death penalty most commonly in cases of drug trafficking and premeditated murder. In December 2017, the Malaysian parliament passed an amendment 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. As of March 2018, the amendments had come into force. The law will not apply retrospectively.

4.10 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 state level, or from the King if the crime is committed in a federal territory.

4.11 Malaysia does not consistently release data on the application of the death penalty. The government reported that fifteen people were executed between 2014 and 2016. The government reported there were 1,195 individuals on death row in Malaysia as of November 2017. Amnesty International reported over 36 people were sentenced to death in 2016, mostly for drug-related offences, and Malaysia was the tenth biggest user of the death penalty in 2016. 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.
TORTURE

4.12 Malaysia is not a party to the United Nations’ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. No law specifically prohibits torture, although laws that prohibit ‘committing grievous hurt’ encompass torture.

4.13 Human Rights Watch claims that police torture of suspects in custody, sometimes resulting in death, remains a serious problem. In January 2016, a Malaysian human rights NGO released letters from six detainees held without trial under SOSMA detailing the alleged ill-treatment they received in custody, including forced confessions, beatings and sexual humiliation. Separately, the US State Department reported in July 2016 that R Sri Sanjeevan, an activist working on police corruption, said police blindfolded and beat him while denying him medical treatment.

4.14 DFAT is aware of reports regarding individuals being tortured in police custody and assesses that the majority of these instances relate to caning (see Corporal Punishment) or assaults that resulted in deaths in custody (see Detention and Prison - Deaths in Custody).

CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Arbitrary Arrest and Detention

4.15 The Prevention of Crime Act permits detention without trial for up to two years. Such detention requires extensions and approvals from the Minister for Home Affairs and, if over 72 days, from a five-person board known as the Prevention of Crime Board. Detainees may challenge decisions by the Prevention of Crime Board in the High Court. The Prevention of Terrorism Act allows a government-appointed board to impose detention without trial for up to two years, renewable indefinitely.

4.16 SOSMA focuses on terrorism and national security crimes, and permits preventative detention of up to 28 days without charge. SOSMA stipulates that an individual’s next of kin must be notified immediately following arrest and the accused must have access to a lawyer within 24 hours. The Minister of Home Affairs, Zahid Hamidi, reported to parliament that 1,048 individuals had been arrested under SOSMA between June 2012 and July 2017. Under the Dangerous Drugs Act (1952), authorities may detain suspected drug traffickers for up to 60 days, without trial, by order of the Minister for Home Affairs. At the conclusion of this period, a detainee is entitled to a court hearing, which may order his or her release.

4.17 DFAT assesses that the RMP usually observe legal requirements attached to pre-trial detention.

Corporal Punishment

4.18 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) and women from caning. In 2013, 8,451 prisoners were caned, of whom 5,968 were foreigners (mostly undocumented migrant workers) and 2,483 were Malaysians. Male children between 10 and 18 years may receive a maximum of 10 strokes of a ‘light cane’ in a public courtroom. Malaysian schools permit corporal punishment of male students, with a light rattan cane.
4.19 Muslims may be caned under state *sharia*-based laws for offences such as adultery, and certain crimes under Islam, including drinking alcohol in public or cross-dressing. In contrast to federal law, women are not exempt from caning under *sharia*-based law. However, DFAT understands women are rarely caned under *sharia*-based law. The first woman caned in Malaysia was Kartika Shukarno in 2010, for drinking alcohol in public. Three women were caned for adultery in February 2010. DFAT is not aware of any reports since then. *Sharia* caning is less severe than judicial caning, and is designed to humiliate rather than inflict physical pain.
5. OTHER CONSIDERATIONS

STATE PROTECTION

Federal and State Law Enforcement Entities

5.1 Law enforcement entities operate at both federal and state level. The RMP reports to the federal Minister for Home Affairs and is responsible for law enforcement nationwide. The National Department of Islamic Development (JAKIM) standardises sharia-based law and regulates halal certification for food. The Federal Territories Islamic Affairs Department enforces sharia law over Muslims in the three federal territories of Kuala Lumpur, Putrajaya and Labuan. State Islamic bodies enforce sharia law at state level. The RMP and JAKIM operate independently and only occasionally work together.

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, and volunteers receive limited training. Their engagement in law enforcement activities has significantly reduced in recent years. NGOs have reported that inadequate training has left RELA members poorly equipped to perform their duties.

5.3 State-level Islamic religious departments enforce sharia through Islamic courts and have jurisdiction over Muslims in each state. Sharia-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 sharia 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. The minimum age for voluntary service is 17 years and 6 months. There is no conscription. Military expenditure was 1.4 per cent of GDP in 2016. The Royal Malay Regiment comprises bumiputera only and is the premier unit in the Malaysian Army. The Ranger Regiments and Border Regiments are not restricted to bumiputera: the former is the second largest unit in the army and dates back to 1862; the latter was established in 2006 with a specific mandate of border control. The Malaysian Army is not heavily engaged in domestic activities, apart from some anti-terrorism campaigns and security-related work in Eastern Sabah.

Royal Malaysia Police (RMP)

5.5 The RMP employs approximately 115,000 officers and operates 837 police stations across Malaysia. The Inspector General of Police is responsible for the RMP and reports to the Minister for Home Affairs.
Local and international sources consider the RMP to be a professional and effective police force, although the quality of its members’ responses varies depending on levels of training, capacity and engagement in corruption. RMP officers receive limited training, particularly on human rights. Suhakam conducts some human rights training and workshops for police and prison officials. Police officers are among the lowest paid members of the Malaysian civil service. According to Transparency International, Malaysians perceive the police as one of the most corrupt institutions in the country (see Police Integrity and Accountability). The RMP is 80 – 85 per cent Malay. The government undertakes targeted recruitment to increase the number of women, Chinese Malaysians and Indian Malaysians.

State Islamic Religious Departments

5.6 Religious enforcement officers, known locally as religious police, have a range of powers that vary depending on the particular sharia-based laws that apply in each state. State religious officers have no jurisdiction over non-Muslims, however their actions can directly affect non-Muslims (see Religious Conversion). Religious enforcement officers can detain and charge individuals to go before sharia courts for a range of reasons, including indecent dress, alcohol consumption, the sale of restricted books, or close proximity to members of the opposite sex. State-level sharia-based law imposes a range of penalties (see Sharia Courts).

5.7 Relevant state religious departments or the RMP can investigate misconduct by religious enforcement officers; however, the RMP is generally unwilling to involve itself in state religious matters. Most complaints against religious enforcement officers relate to mistreatment of transgender individuals, domestic violence victims and non-Muslim parents in situations of unilateral child conversion to Islam.

Police Integrity and Accountability

5.8 The 2005 Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police identified a perception of widespread corruption within the RMP. In response, the government publicly acknowledged the existence of police corruption and implemented reforms including establishing compliance units within RMP. Police officers were subject to trial by criminal and civil courts. Disciplinary action included suspension, dismissal or demotion.

5.9 There is no legal requirement for the state to investigate deaths in RMP custody. Investigations generally occur at the request of the Attorney General, are often driven by public pressure, and often face significant delays. Low levels of success in criminal prosecution have led to an increase in the number of victims’ families seeking compensation through civil courts (see Detention Conditions – Deaths in Custody).

5.10 The then Inspector General of Police announced the establishment of an Integrity and Standard 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. The government has not established an independent police complaints and misconduct commission, despite calls from the Malaysian Bar Council and civil society groups.

Judiciary

5.11 The Federal Court is the highest judicial authority in Malaysia, followed by the Court of Appeal, High Courts at state level, and subordinate courts. Sharia 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. Most members of the Federal Court are Malay Muslims. Malaysia’s highest courts are somewhat influenced by political or religious affiliation: local and international human rights organisations considered the various prosecutions of Anwar Ibrahim to be politically motivated (see Political Opposition Members). Judges receive relatively low salaries, limited training, and many are new graduates.

5.12 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. Strict rules of evidence apply in court, however, defence counsel does not consistently receive state-held evidence. The slow movement of cases through the under-resourced court system can lead to lengthy pre-trial detention periods: the International Center for Prison Studies reported that in mid-2015, 25.8 per cent of the total prison population comprised pre-trial detainees.

5.13 In 2017, the government appointed Chief Justice Md Raus Sharif and Court of Appeal President Tan Sri Zulkefli Makinudin as additional judges, having the effect of keeping them in judicial office beyond the age limit of 66 years and 6 months prescribed in the Constitution. The Bar Council attempted to challenge this in court on the grounds it was ‘unconstitutional’. Courts have issued contentious verdicts, particularly in instances involving high-profile opposition politicians and human rights defenders; however most cases in Malaysian civil courts comply with the rule of law and legal procedure.

**Sharia Courts**

5.14 State-level sharia courts apply sharia-based law in accordance with their rules of procedure. Sharia court outcomes have a disproportionately negative impact on transgender individuals, domestic violence victims and women in child custody cases.

**Trafficking in Persons**

5.15 Malaysia is a destination and transit country for human trafficking. The 2017 US Trafficking in Persons Report ranks Malaysia under Tier 2, elevated from Tier 2 watch list, meaning Malaysia does not fully comply with the minimum standards for the elimination of trafficking. UNHCR and NGOs provide the majority of victim support services. The government is attempting to improve the situation by expanding trafficking investigations, prosecution and convictions. The second National Action Plan Against Trafficking in Persons 2016-2020 sets out Malaysia’s whole-of-government national goals for preventing and combating trafficking in persons, including its goal of being upgraded to Tier 1 in the US Trafficking in Persons Report.

5.16 In 2015, graves were discovered on the Thai-Malaysia border containing the remains of suspected victims of trafficking, many reportedly Rohingya from Myanmar. Government officials were accused of aiding and abetting the operation and, in 2016, 12 police officers were detained without charge under the Anti-trafficking in Persons and Anti-smuggling of Migrants Act (2007) and POCA. Due to insufficient evidence, authorities released the officers in March 2017. To date, no Malaysians have been charged.

5.17 The US Trafficking in Persons Report claims law enforcement officers have accepted bribes to allow undocumented border crossings. In 2016, the government detained 42 immigration and police officers for trafficking crimes; authorities prosecuted five of these cases and the others are in process.
INTERNAL RELOCATION

5.18  Malaysia’s Constitution provides for freedom of internal movement, but the eastern states of 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.

5.19  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 peninsula Malaysia than in the other direction, due to better work opportunities and higher salaries.

5.20  In recent years, Sabah and Sarawak have denied entry to a small number of individuals. The Official Secrets Act contains the list of individuals banned from entering, and is not available to the public. During the Sarawak state election in May 2016, opposition leaders including PKR's Vice President Nurul Izzah Anwar, Selangor Chief Minister Azmin Ali, and DAP's Liew Chin Tong were denied entry on arrival in Sarawak. In March 2016, Tony Pua, Selangor state DAP Chief was refused entry into Sarawak. In 2015, Teresa Kok, a Chinese Malaysian and vice-Chairman of the DAP, was prevented from entering Sabah and the Hindu Rights Action Force chairman P Waythamoorthy was denied entry into Sarawak. DFAT is not aware of any instances of authorities denying an individual’s exit from Sabah or Sarawak.

5.21  DFAT assesses that, subject to the restrictions outlined above in relation to Sabah and Sarawak, Malaysians can and do freely relocate internally. Individuals likely to attract official attention under state sharia-based law, including transgender individuals, women escaping domestic violence or Muslims wishing to marry a non-Muslim, often move to large urban centres to avoid attention. People also move to different parts of Malaysia, generally larger urban areas in peninsula Malaysia, for economic reasons.

TREATMENT OF RETURNEES

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

5.23  The Constitution clearly 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 may 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 Deputy Minister for Home Affairs denied this, stressing the issue fell under UK’s jurisdiction. The Malaysian government withstood public pressure to charge another individual who returned to Malaysia after serving a prison sentence in Canada for sex offences, although Sabah and Sarawak both banned entry. If an individual committed an offence in Malaysia prior to departure, they could face trial for the offence upon return to Malaysia.
5.24 Malaysia has introduced additional legislation including the Prevention of Terrorism Act, to combat terrorism activity; Prevention of Crime (Amendment and Extension) (POCA) Act (2013); and SOSMA, to ‘protect national security’. Each of these legislative instruments provides for arrest without a warrant and for preventative detention. Suhakam has criticised the application of SOSMA legislation due to the broad definition of security offences.

Exit and Entry Procedures

5.25 Malaysia has over 130 formal entry and exit points. The Immigration Department is responsible for conducting exit and entry checks. Malaysia keeps records of entries and exits, but authorities do not always capture details of arrival/departure ports and destinations. In accordance with the Constitution, 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. When leaving Malaysia, Malaysians must present a valid passport and, where required, a valid visa for their destination country – a criterion imposed by airlines rather than Malaysian immigration. The Ministry of Home Affairs is planning to implement a new Advanced Passenger Screening System, similar to Australia’s.

5.26 Allegations of corruption have been made against border officials patrolling Malaysia’s porous northern border with Thailand, an area linked with people trafficking, but no officials have been charged (see Trafficking in Persons).

5.27 In December 2017, Malaysia’s Director-General of Immigration announced the arrest of several staff at the Kuala Lumpur International Airport on suspicion of people smuggling. In May 2016, the Director-General of Immigration revealed that over one hundred Department of Immigration personnel had been involved in actively sabotaging the Malaysian immigration system for personal financial gain, by enabling remote access and manipulation of the department’s online system and thus allowing selected travellers to pass through unchecked. The Deputy Prime Minister and Minister of Home Affairs promised disciplinary action against all culprits, regardless of rank. By June 2016 fifteen immigration officers were sacked; 14 suspended from work; eight had salary increments frozen; 20 were under scrutiny by the department; 63 transferred out of the department’s headquarters; and others serving at international airports transferred. In 2015, media reports alleged that a 10-year investigation by the Royal Malaysia Police Special Branch had found up to 80 per cent of Malaysia’s security personnel and law enforcement officers at the border were corrupt.

5.28 Whilst 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.

5.29 Single Malaysian women can travel overseas by themselves, and the number of women doing so is increasing. Travel agencies offer special programs to women to protect their safety. Some conservative Islamic families may discourage single women from travelling alone, particularly overseas, but this is not a government-sanctioned policy.
DOCUMENTATION

Birth and Death Certificates

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

5.31 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.

Marriage and Religion – Certificate of Conversion

5.32 A non-Muslim (male or female) must convert before getting married to a Malaysian Muslim. The process of conversion differs from state to state 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’. A person becomes a Muslim as soon as they finish uttering the two phases. The Islamic authority in the convert’s place of residence conducts the conversion. Some NGOs also conduct religious conversion 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 their home government of their initial religious status in order to change their religion. After a landmark federal court ruling in 2018, a person under 18 requires the consent of both parents or a legal guardian to convert to Islam (see Unilateral Religious Conversion of Children).

National Identity Cards

5.33 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.

5.34 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.

5.35 At birth, Malaysian children receive a MyKid card, which is upgraded to a MyKad at 12 years of age. It is a requirement that the photograph remains valid and the MyKad updated when an individual is between 18 to 25 years of age, and thereafter when details change. The MyKad card must be carried at all times and a failure to do so attracts a fine of between RM3000 (approximately AUD990) and RM20,000 (approximately AUD6,605) or jail term of up to three years. It is also a legal requirement for the cardholder to keep their residence up to date. As Sabah and Sarawak maintain separate immigration controls, citizens who have
permanent residency in these states are denoted by the letters “H” and “K” respectively on the bottom right corner of their card.

Passports

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

5.37 Malaysia has issued biometric passports since 1998, adding thumbprint data to the passport chip in 2002. Malaysia started issuing ICAO-compliant e-Passports in 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.

PREVALENCE OF FRAUD

5.38 It is possible, although difficult, to obtain a genuine passport fraudulently by using another person’s identity or MyKad card. Authorities have found a number of individuals in Australia with genuine passports using another person’s identity. The fraud had most likely occurred before reaching an official at the immigration department, although authorities arrested 15 immigration officials in Sabah on suspicion of passport fraud (see Exit and Entry Procedures). Individuals were able to ‘rent’ or ‘buy’ another person’s identity, utilising their MyKad card to fraudulently obtain a valid passport. There have been approximately 100 known cases since early 2016, although actual numbers may be higher. It is relatively cheap to do so. DFAT is aware of a small number of instances where individuals had unsuccessfully used agents to seek visas to Australia. In one case, an applicant paid AUD80,000 for visas for his family. The agent never lodged the application. The RMP launched an investigation into the matter.

5.39 While it would be possible to fraudulently obtain a MyKad card, DFAT assesses it would be difficult as personal identity and other records are cross-checked by the Ministry for Home Affairs. The RMP investigates instances of fraud.