



Australian Government
Department of Foreign Affairs and Trade



DFAT Country Information Report

Malaysia

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Acronyms

1MDB	1 Malaysia Development Berhad (government investment fund)
BN	Barisan Nasional (English: National Front)
BSM	Bible Society in Malaysia
DAP	Democratic Action Party
FGM	Female Genital Mutilation
ICRC	International Committee of the Red Cross and Red Crescent
IOM	International Organization for Migration
ISA	Internal Security Act
JAIS	Religious Affairs Organisation of Selangor
JAKIM	National Department of Islamic Development
LGBTI	lesbian, gay, bisexual, transgender or intersex
MACC	Malaysian Anti-Corruption Commission
MCA	Malaysian Chinese Association
MCMC	Malaysian Communication and Multimedia Commission
OSCC	One Stop Crisis Centres
PAA	Peaceful Assembly Act
PAS	Pan-Malaysian Islamic Party
PH	Pakatan Harapan (English: Coalition of Hope)
PKR	People's Justice Party
PR	Pakatan Rakyat (English: People's Pact alliance)
RELA	People's Volunteer Corps
RM	Malaysian Ringgit
RMP	Royal Malaysian Police
SOSMA	Security Offenses (Special Measures) Act 2012
SSPI	Travel Status Inquiry System
UMNO	United Malays National Organisation
UNHCR	United Nations High Commissioner for Refugees

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 is based 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 by the 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 updated Country Information Report replaces the previous DFAT Country Information Report on Malaysia published on 3 December 2014.

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 subsequently left the Federation in August 1965.

2.2 The United Malays National Organisation (UMNO), the largest and most dominant party of the Barisan Nasional coalition (BN, English: National Front) has ruled Malaysia since independence. BN, currently led by Prime Minister Najib Razak, was returned to power on 5 May 2013 for the thirteenth time, 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 Chinese and ethnic Malays took place in Kuala Lumpur, resulted in 600 deaths. 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, education and the civil service. Elements of these affirmative action programs continue today.

Demography

2.4 Malaysia is approximately 329,847 square kilometres in area and has a population of 30.5 million. The majority of the population (approximately 73 per cent) live in urban centres. Malaysia's ethnic groups include Malay and indigenous, collectively known as *bumiputera*, (68.1 per cent), ethnic Chinese (24.8 per cent), ethnic Indians (7.1 per cent) and others (less than 1 per cent). It is estimated that 80 per cent of the Indian population are Tamil. The official language in Malaysia is Bahasa Malaysia (Malay) however English is widely used, as is Mandarin (and other Chinese languages and dialects), Tamil and, to a lesser degree, indigenous languages.

2.5 Malaysia's Constitution makes Islam the "religion of the Federation" but also notes that Malaysia is a secular country. According to the most recent census in 2010, Muslims represent 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.

2.6 Individuals born in Malaysia of Malay ethnicity are automatically classed as Muslim. The majority of Chinese Malaysians are Buddhists, Taoists or practitioners of Chinese folk religion and ancestor worship. Approximately 11 per cent of ethnic Chinese identify as Christian. The majority of the ethnic Indian population practise Hinduism.

Economic Overview

2.7 Malaysia is classified by the World Bank as an upper middle-income, export-oriented economy. In 2015 its GDP growth was five per cent and per capita GDP was over USD11, 000. Since independence, Malaysia has transformed from a commodity-based economy, focused on rubber and tin, to a leading producer of electronic parts and electrical products and exporter of palm oil, oil and gas. Manufactured goods made up 76 per cent of Malaysia's exports in 2012. Malaysia is ASEAN's largest energy exporter and the government's largest revenue source comes from the state-owned oil company Petronas. The 2015-2016 drop in oil price has negatively affected government revenues. Economic growth in 2016 is predicted to be 4 to 5 per cent.

2.8 *Vision 2020* is Malaysia's plan to reach developed-economy status by 2020. Despite the introduction of a number of reforms aimed at liberalising the economy, particularly in the services sector, Malaysia continues to prioritise the economic advancement of the *bumiputera*.

2.9 Malaysia's economic growth 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 0.28 per cent in 2016. Poverty rates were 0.8 per cent for ethnic Malay, 0.1 per cent for ethnic Chinese and 0.6 per cent for ethnic Indians, based on the most recent available statistics per ethnic background, collected in 2014. The rural poverty rate of 1.6 per cent in 2014 was higher than that of urban areas (0.3 per cent in 2014). The UNDP's Human Development Index ranked Malaysia 62 out of 188 countries in 2015, placing it in the 'high human development' category.

2.10 Malaysia was ranked 54 out of 168 countries and territories in Transparency International's 2015 Corruption Perception Index. However, during 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. Malaysia's Attorney-General cleared Najib of any criminal liability but international investigations into the corruption claims are still underway.

Health

2.11 Malaysia spends approximately 4 per cent of GDP per annum on health and has experienced significant improvements in health standards in recent decades. Life expectancy in Malaysia is 75 years and the infant mortality rate is approximately 13 per 1,000 births. Malaysia has well-established and extensive health care services that include 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

2.12 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. Non-adherence can result in parents being punished with 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.

2.13 As of March 2016, there were 8,340 National Schools, 1,284 public Chinese Schools and 524 public Tamil Schools. All national schools use Bahasa Malaysia as the language of instruction. However, the *Education Act 1996* allows Chinese and Tamil schools the freedom to use their mother-tongue as the main medium of instruction. There are a high number of Chinese independent schools, and a smaller number of independent Tamil schools. Each state in Malaysia also has a number of Islamic religious schools or *sekolah agama rakyat*.

2.14 Malaysia has 20 state-funded universities, 37 private universities, 20 private university colleges and seven foreign university branch campuses. In 2002 the government officially removed ethnic quotas for state-funded universities, which had been designed to ensure *bumiputeras* had access to higher education. In practice, Malaysia's ethnic minorities continue to be underrepresented in public universities, with the majority of university places being awarded to *bumiputera*.

Employment

2.15 In December 2015, the Malaysian Department of Statistics reported a labour force participation rate of 67.8 per cent and an unemployment rate of 3.3 per cent. The most recent national survey (2014) reported that the male labour force participation rate was 80.4 per cent and the female participation rate was 53.6 per cent. Malaysia's female participation rate was the lowest in Southeast Asia. Urban-based females in Malaysia had a higher rate of participation (48.5 per cent), compared to their counterparts in the rural areas (41.2 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. 58 per cent of the Malaysian labour force has secondary level education, 13.2 per cent has primary level education and 2.6 per cent have no formal education, based on the most recent available statistics published in 2010.

Political System

2.16 Malaysia is a federal constitutional monarchy. It has a Westminster 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 is the Head of State and serves a largely ceremonial role. A two-thirds majority is needed in Parliament to amend the Constitution.

2.17 Malaysia has 13 states and 3 federal territories. Legislative power is divided between federal (bicameral) and state (unicameral) legislatures. The Federal Parliament is comprised of the House of Representatives and the Senate. The House of Representatives has 222 members elected for five-year terms in single-seat constituencies. The Senate 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.

2.18 Each state has a Chief Minister. The three federal territories (Kuala Lumpur, Putrajaya and Labuan) are governed at the federal level. Nine of the 13 states have hereditary rulers (eight Sultans and one Rajah) who share the position of 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.

2.19 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 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 and the BN won 133 seats, down from the 140 seats at the 2008 election. Prime Minister Najib Razak has been leader of BN since 3 April 2009. The Opposition Pakatan Rakyat (PR, English: People's Pact) alliance, led by Anwar Ibrahim's party (People's Justice Party), won 89 seats at the 2013 election. PR was dissolved in June 2015 and re-configured as Pakatan Harapan (PH, English: Coalition of Hope) in September 2015.

2.20 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 as the rural vote was overrepresented.

Human Rights Framework

2.21 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 has taken a decision not to accede to many international human rights instruments including 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 on the basis of gender, religion, and race; however it accords a 'special position' for *bumiputera*, permitting affirmative action policies that favour ethnic Malays.

2.22 The Constitution allows restrictions on freedom of speech 'in the interest of the security of the Federation... [or] public order.' The time, place and manner of public gatherings require police approval under the *Peaceful Assembly Act 2012*. The *Election Offences Act 1954* makes it an offence for a candidate to 'promote feelings of ill will, discontent, or hostility' to induce voters to vote or refrain from voting at an election. The *Sedition Act 1948*, the *Official Secrets Act 1972*, the *Printing Presses and Publications Act 1984*, the *Communications and Multimedia Act 1998* and criminal defamation laws have been used in Malaysia to restrict political speech (see 'Political Opinion' and 'Groups of Interest', below). The *Prevention of Crime Act Amendments 2013* reintroduced preventive detention, previously abolished by the repeal of the *Internal Security Act* (ISA) and the *Emergency Ordinances*. The *Security Offences (Special Measures) Act 2012* (SOSMA) also allows for preventive detention of up to 28 days with no judicial review and was used in late 2015 to detain two people who filed police reports in foreign countries alleging government corruption related to 1MDB. SOSMA prescribes procedures for arrests and detentions but does not provide or predicate offences so individuals could be arrested or detained under SOSMA, but then prosecuted under the *Penal Code*.

2.23 In April 2015, the government passed the *Prevention of Terrorism Act*, 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. The *Sedition Act* was amended in April 2015 to include provisions that further restrict freedom of expression but the offence of criticising the government was removed (amendments are yet to take effect). In addition, the *National Security Council Act* passed in

December 2015 allows the Prime Minister to declare security areas in which arrests, searches or seizures can be conducted without a warrant.

2.24 The Human Rights Commission of Malaysia (Suhakam) was created in 1999. It is headed by a Chairman and Commissioners appointed by the King, on the recommendation of the Prime Minister. Suhakam is considered to be compliant with the Paris Principles and was granted an 'A status' by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in January 2014. This 'A status' was reconfirmed in early 2016. Suhakam has limited investigative powers and is unable to refer matters to the Attorney-General for prosecution.

2.25 Credible local human rights organisations advise that Suhakam is a credible monitor of the human rights situation in Malaysia but that it lacks sufficient resources and enforcement authority. In November 2015, the Malaysian government reduced funding to Suhakam by 50 per cent. The Government is not required to table Suhakam's reports in Parliament and Suhakam does not have the authority to refer a matter for prosecution. Suhakam has released a number of reports over recent years that are critical of the Government, which some suggest may be the reason for the government's funding cuts. The term of Suhakam's Chair and all commissioners ended in April 2016. At the time of reporting there was no indication of when the new Chair or commissioners would be appointed.

2.26 There is a small human rights unit located in the Prime Minister's Department that deals with domestic human rights issues but has few bureaucratic resources.

2.27 DFAT assesses that, while committed to effectiveness, Suhakam continues to operate with significant limitations, including financial constraints and no senior leadership structure, and has no power to enforce its recommendations.

Security Situation

2.28 Malaysia's overall security situation is generally stable. Petty crime is common (bag snatching, pickpocketing, residential burglaries) but violent crime is relatively uncommon. Eastern Sabah is a designated security zone and the *Eastern Sabah Security Command* coordinates the Malaysian government's response to terrorist threats, such as kidnapping for ransom, in this region. Threats in Eastern Sabah, especially its coastal regions, generally originate from the southern Philippines, mainly from the Abu Sayyaf Group.

2.29 Based on 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 however the Islamic State in Iraq and the Levant was able to carry out a grenade attack in Kuala Lumpur on 28 June 2016.

2.30 Protests and demonstrations occur from time to time, including the peaceful 'Bersih 4' (Coalition for Clean and Fair Election) rallies in August 2015. The pro-government 'red shirt' rally held in response to Bersih 4 was aggressive but police quelled the protest with water cannons before it became violent. The Royal Malaysia Police Special Branch Counter-Terrorism Division has disrupted several domestic terror plots. Malaysia's law-enforcement and counter-terrorism agencies are willing and capable of acting against extremist and terrorist suspects.

3. Refugee Convention Claims

Ethnicity

Ethnic Malays and indigenous groups—*Bumiputera*

3.1 A Malay person is defined under the Constitution as being an individual with characteristics that include professing the religion of Islam, 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 meet a quota of 70 per cent *bumiputera* students before admitting students of other ethnicities. *Bumiputera* make up 85 per cent of the civil service. 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 includes various entrepreneurship programs, educational placements and scholarships and equity ownership schemes that are separate and more extensive than those assigned to the Chinese Malaysian or Indian Malaysian communities. The budget also increased public sector salaries, which mostly employs *bumiputeras*. Affirmative action policies for *bumiputera* economic inclusion are contained in the Eleventh Malaysia Plan 2016-2020. Such positive discrimination policies have succeeded in creating a significant urban Malay middle class. However, some Malays still face relatively high rates of poverty, particularly in rural communities.

3.3 Given their preferential treatment, DFAT assesses *bumiputeras* would very rarely face discrimination or violence on the basis of their ethnicity.

Chinese Malaysians

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

3.5 Chinese Malaysians make up a high percentage of the professional and educated class, dominate business and commerce sectors and have high relative wealth compared to other ethnic groups in Malaysia. The majority of ethnic Chinese are concentrated in the west coast states of Peninsular Malaysia with significant percentages (30 per cent and above) living in the large urban centres, including Kuala Lumpur, Penang, Johor, Perak and Selangor. Credible Chinese Malaysian community contacts have told DFAT that young Chinese Malaysians increasingly seek economic migration opportunities abroad.

3.6 Chinese Malaysians freely participate in political life, represented by ministers in the current cabinet and participation in opposition parties. The largest Chinese party was traditionally the Malaysian Chinese Association (MCA), a component of the Barisan Nasional (BN) coalition. The MCA won seven seats at the 2013 election, down from 15 in 2008. An increasing number of Chinese support the Democratic Action Party (DAP), one of three opposition parties of the Pakatan Harapan coalition. The DAP won 38 seats at the 2013 election, a significant increase from 28 seats in 2008. The DAP is often portrayed in pro-government media as 'anti-Malay'. Chinese Malaysian community members told DFAT that, while they believed this was mostly a political tactic, it did contribute to a sense of ethnic division and isolation from mainstream Malaysian society. They also commented that the 1MDB corruption scandal had galvanised anti-government support amongst Chinese Malaysians and had led to greater political engagement. For example, Chinese Malaysians were prominent in and helped contribute to the higher overall turnout at the 2015 Bersih 4 rallies

throughout Malaysia compared to earlier protests in 2007, 2011 and 2012. All four Bersih protests have called for transparent government and strengthened parliamentary democracy in Malaysia.

3.7 There are comparatively fewer ethnic Chinese in the Malaysian civil service. The predominant use of the Malay language is a major barrier to Chinese employment in the civil service. On the other hand, contacts told DFAT that Chinese employees are preferred in the private sector, mostly because many business owners are Malaysian Chinese.

3.8 Chinese Malaysians are able to access public primary or high school education but increasingly choose to attend one of the 1,284 Chinese primary schools and 61 Chinese secondary schools. This is due to concerns about the quality of public education and their perception that the public curriculum is influenced by Islam. Despite the removal of government-sanctioned ethnic quotas for public universities in 2002, admission decisions remain heavily biased towards ethnic Malays. Malaysia's matriculation programs favour *bumiputera* students applying for entrance to state universities. Some ethnic Chinese are not awarded a place in public universities despite having high matriculation scores. Since the formation of private universities in Malaysia, ethnic Chinese have consistently formed the bulk of the students within Malaysia's non-government universities. An increasing number are choosing to complete their tertiary studies abroad.

3.9 On 12 to 13 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. Credible contacts told DFAT that the incident was not indicative of a broader trend of societal violence against Chinese Malaysians.

3.10 DFAT assesses that Chinese Malaysians generally do not experience discrimination or violence 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.

Indian Malaysians

3.11 Indian Malaysians constitute the third largest ethnic group in Malaysia. There are no laws or constitutional provisions that directly discriminate against Indian Malaysians.

3.12 Indian Malaysians predominantly live in major urban centres, including Kuala Lumpur, Penang, Negeri Sembilan, Selangor and Perak on Peninsular Malaysia. Most Indian Malaysians form part of the working classes but according to 2010 official figures they also represent a high proportion of professionals (15.5 per cent) 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 major barrier to Indian employment in the civil service. However, in 2015 an Indian Malaysian was appointed as Chief of Police in Kuala Lumpur, the first non-Malay to hold this position.

3.13 While some belong to the upper-middle class, many Indian Malaysians remain poor, in contrast to increased prosperity in the Malay and Chinese communities. Gangs comprised of Indians make up the majority of street-level criminal gangs and 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.

3.14 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 Malaysian Indian community, with many voting for the opposition in the 2013 elections. There are several members of parliament of ethnic Indian origin and three serving ministers within the current government as well as the current President of the Senate, appointed in April 2016.

3.15 DFAT assesses that while Indian Malaysians generally have a lower socio-economic position than *bumiputera* or Chinese Malaysians, they generally do not experience discrimination or violence 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

3.16 As at March 2016, the Office of the UN High Commissioner for Refugees (UNHCR) in Malaysia monitored 155,730 persons; 94,443 were deemed refugees. Rohingya were approximately 58,000 of the total number of people monitored by UNHCR.

3.17 Malaysia is not a party to the *1951 Refugee Convention* and does not have any legislation in place for dealing with asylum-seekers or refugees. The Malaysian government classes all undocumented migrants, including refugees and asylum seekers, to be 'illegal immigrants'. Undocumented migrants can access public health services, but are unable to legally work or to access public education. All undocumented migrants are subject to the *Immigration Act*, which enables the police to arrest and detain them at any time. There is no indication that the status of Rohingya people will be formalised and as such they will continue to be undocumented and will not have access to formal employment or citizenship. Malaysia 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.

3.18 UNHCR identification cards allow the holder to: reside within communities rather than detention centres; access discounted hospital treatment; and access education. 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 2015 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. Credible contacts have told DFAT that issues of fraud amongst UNHCR staff have been resolved but that 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). This new card will be provided to individuals registered with UNHCR from the 22 June 2016.

Religion

3.19 While the Constitution guarantees freedom of religion, the practice of religions other than the state religion of Sunni Islam is subject to some constraints. The propagation of other religions, including non-Sunni versions of Islam, is controlled and restricted by laws such as Selangor state's *Non-Islamic Religions (Control of Propagation amongst Muslims) Enactment 1988*. Several organisations advocate the rights of minority religions, including the *Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism*, which is an inter-faith committee established in 1983, and continues to have an active relationship with the Malaysian Government.

3.20 Individuals born in Malaysia of Malay ethnicity are automatically classed 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 Shia Muslims. Muslims are identified on the card's surface but for members of other religions, it is encrypted in the card's smartchip. Married Muslims must carry a special photo identification of themselves with their spouse as proof of marriage.

3.21 Malaysia has a two-track legal system comprising civil law, based on English common law at federal level, and *sharia*-based law, which is administered at state level and varies state by state. 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, broadly, the 'deterioration 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.

3.22 *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 law.

3.23 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 will focus on eight areas of government policy; law, politics, the economy, education, health, culture, infrastructure and environment and social issues. On 27 March 2016 the Malaysian government announced it had obtained a score of 75 per cent on the index, categorised as 'very good', but would aim for 80 per cent for 2016. At the time of reporting, it was unclear how this would be achieved.

Islam

3.24 Political parties in Malaysia have placed greater emphasis on Islam in order to attract the majority (Malay-Muslim) vote in recent years and particularly during the last two 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' sects, including Shia Islam, Ahmadiyya and Al-Arqam. The government can detain Muslims who deviate from accepted Sunni principles and subject them to mandatory religious rehabilitation. The US Department of State reported that, in 2014, the widow of the founder of a banned Islamic sect and 18 followers were sentenced 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 centres.

3.25 The Pan-Malaysian Islamic Party (PAS) has sought to apply *hudud* in Malaysia, a hard-line interpretation of the ancient Islamic penal code that prescribes corporal and capital punishment for 'moral' crimes, including amputating the hands of thieves, lashing fornicators and applying capital punishment for apostasy. After a long campaign by PAS, the Kelantan state assembly passed a bill on 19 March 2015 which would, subject to changes in the Federal Constitution, see the implementation of *hudud* in the state. Non-UMNO parties in the ruling Federal coalition have expressed vehement opposition to *hudud*. The Federal Parliament would need to approve legislative changes and changes to the Constitution via a two-thirds majority in order to implement *hudud*. On 26 May 2016, PAS, aided by UMNO, tabled a Private Members Bill in Federal Parliament to amend federal laws to enable Kelantan to implement its *hudud* law, but debate was postponed until October 2016.

3.26 In light of the increasing influence of conservative Islam over recent years, attitudes toward religious piety have created a level of societal discrimination within Malaysia's Muslim community. DFAT is aware of reports of individuals notifying religious enforcement officers (see 'State Islamic Religious Departments below at 5.9) if community members are not attending mosque. It is not clear what the repercussions would be for not actively worshipping.

Shia Muslims

3.27 Shia Muslims form a small proportion of Malaysia's overall Muslim population. Estimates vary greatly from 2,500 to 250,000 people. Shia Muslims predominantly originate from Iran. Shia 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 them as Shia Muslims. There are no restrictions on the movement of Shia Muslims within Malaysia.

3.28 Muslims in Malaysia are required to follow the Sunni Islam doctrine, laws and morals. All other Muslim doctrine is prohibited, as is the publication, broadcast or distribution of resources related to their teachings. Shia Islam is considered to be a 'deviant' form of Islam. Eleven out of 14 states in Malaysia ban Shia Islam in accordance with a *fatwa* issued in 1996 by the National Fatwa Council (all states except Kelantan, Sabah and Sarawak). A Shiite found to be proselytising could expect to be detained and prosecuted by Malaysian authorities.

3.29 One hundred and fourteen Shia Muslims, including women and children, were arrested on 8 March 2014 by the Perak Islamic Religious Affairs Department at a private event celebrating a Shia religious anniversary. They were released a few hours later. In October 2015, 16 people were arrested for commemorating *Ashura*, a Shia holy day and had to present themselves to the Religious Affairs Organisation of Selangor (JAIS) for questioning.

3.30 Credible local non-government and religious authorities advised DFAT that enforcement efforts generally focused on conversions (to Shia Islam) and proselytisers, not assembly or worship. DFAT was advised that Shia Muslims may face interference and difficulty practicing their religion. The overall number of Shia Muslims arrested since the introduction of the 1996 *fatwa* outlawing Shia Islam has been small. Very few arrests have resulted in charges being laid, with the majority of people released quickly without charge.

3.31 Despite legal barriers to their worship, DFAT assesses that the majority of Shia Muslims live free from discrimination or violence on a day-to-day basis. While a number of Shia Muslims have been arrested since the introduction of the 1996 *fatwa* outlawing Shia Islam, such incidents are infrequent, and rarely result in charges being laid.

Religious Conversion and Apostasy

3.32 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 which fall under the jurisdiction of Malaysia's *sharia* courts.

3.33 A range of *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. In cases of conversion by one spouse to Islam, under Malaysia's interpretation of *sharia*, non-Muslim family members lose all rights to inheritance and may be unable to prevent the Muslim parent unilaterally converting their children to Islam (see 'Unilateral child conversions' below).

3.34 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 to be 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 the punishment can extend to the death penalty, however there are no records of the death penalty being applied in relation to apostasy. Individuals who attempt to convert from Islam have been compelled to attend religious rehabilitation centres. The US Department of State reported that, in many cases, converts conceal their new beliefs and Muslim women and girls face social pressure to continue wearing a headscarf ('tudung').

3.35 Based on the most recent available figures, only 168 of over 800 Muslims who attempted to convert between 2000 and 2010 were given 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 inability to convert from Islam was proven by the landmark case of Lina Joy, who was a Muslim that converted to Christianity to marry a Christian in 1998. Her conversion was not recognised by the state so, by law, she was unable to marry a Christian. Her case culminated in a 2007 Federal Court decision which found 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'. On the other hand, 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, was granted a letter of release from Islam by the civil court on the basis that he was converted when he was a minor and had no choice in the matter. The civil court judge ruled that as he was not a Muslim from birth his case was not bound by the outcome of the 'Lina Joy' case and could not be heard in the *sharia* court.

3.36 DFAT assesses that Muslims face high levels of official discrimination under Malaysian law if they attempt to convert from Islam or marry a non-Muslim.

Unilateral child conversions

3.37 Cases of unilateral child conversion occasionally occur in Malaysia against the wishes of the non-Muslim parent. The consent of only one parent is required to convert a child to Islam under *Sharia*-based laws and it allows the Muslim parent to gain sole custody through the *Sharia* courts.

3.38 There have been some high-profile cases of unilateral child conversions, mostly concerning Hindu fathers converting to Islam and claiming custody of their children. For example, on 9 April 2014 the five year-old son of a Hindu woman, Deepa Subramaniam, was allegedly abducted by her estranged husband who had converted 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 which was 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 also found in this case that that a non-Muslim marriage did not dissolve automatically when one party converts to Islam, and therefore civil courts would continue to have jurisdiction over divorce and custody proceedings, which overruled previous cases that found to the contrary.

3.39 These cases highlight the tension between the application of *sharia* law vis-à-vis civil law in Malaysia. Despite *sharia* courts being constitutionally subordinate to civil courts, in January 2016, the Federal Court of Appeal ruled that matters of conversion to Islam were at the sole discretion of the *sharia* courts, effectively removing any recourse for the non-Muslim parent to challenge a conversion. In March 2016 a DAP MP proposed a Bill to be drafted to prevent minors being converted by one parent. The government has said consultations on this draft bill remain ongoing at the date of publication of this report.

Places of Worship

3.40 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, credible 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. A mosque can legally be built in any neighbourhood, Muslim or non-Muslim, however other non-Muslim places of worship could not be built within 100 metres of a Muslim neighbourhood and faced building restrictions, such as height limitations.

3.41 Local authorities have also on occasion prevented or delayed the construction of non-Muslim places of worship. In 2014 a Christian church in Selangor state was granted planning permission six years after submitting its proposal. State authorities prevented the construction of a church in Kelantan in September 2010 without explanation and despite more than half the village population being Christian.

Malaysian Christians

3.42 Malaysian Christians represent 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. There are Christian politicians in most political parties, although they do not exclusively represent the interests of the Christian constituency, if at all.

3.43 While Christians are generally free to practise their religion, official impediments have been placed on their use of the word “Allah” (Arabic for God). Malaysian Christians claim to have used the word ‘Allah’ for centuries to practise their religion. The Home Affairs Ministry banned the Catholic newspaper, *The Herald*, from using the word “Allah” under the *Printing Presses and Publications Act 1984* in 2008. The Malaysian Court of Appeals and Federal Court upheld the ban.

3.44 The ban has occasionally been enforced by law enforcement authorities. The President of Perkasa Malaysia (a Malay rights NGO), Ibrahim Ali, called on all Muslims to seize and burn copies of bibles that contain the word ‘Allah’ and other Arabic verses in January 2013. Soon after, two policemen and approximately 20 officers from the Religious Affairs Organisation of Selangor (JAIS) raided the offices of the Bible Society in Malaysia (BSM), seized hundreds of bibles translated into Bahasa Malaysia and Iban and arrested the President and Manager of BSM, but they were later released without charge. In response, the federal government ordered JAIS to return the bibles and to consult before carrying out any such future raids. JAIS also raided the office of the BSM in January 2014 and seized bibles. The Selangor State Government publicly criticised the raid and disallowed charges against society members.

3.45 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 cross on the church be removed as it was a religious symbol that challenged Islam. The cross was removed within hours and there were no reports of violence. The Prime Minister publically stated that the actions of the protestors were not acceptable.

3.46 Christians occasionally face societal violence in Malaysia. On 14 May 2014, two nuns, Juliana Lim Nyo Nya (69 years of age) and Marie Rose Teng (79 years of age), were attacked by unknown assailants when opening the Church of the Visitation (Catholic faction) in Seremban for morning prayers. Sister Juliana later died of her injuries. Credible local sources, including religious experts, informed DFAT that this attack was likely a criminal robbery, that this type of attack was not common and that the police were known to conduct thorough investigations in response.

3.47 DFAT assesses that Malaysian Christians are generally 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 or violence on a day-to-day basis.

Buddhists and Hindus

3.48 Buddhists represent 19.8 per cent of the total population and Hindus represent 6.3 per cent. The majority of the Buddhist community is Malaysian Chinese and the majority of the Hindu community are Malaysian Indians.

3.49 Hindus and Buddhists have 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. A mixed Buddhist/Taoist temple and a Hindu temple near Bandar Puteri Jaya were compulsorily acquired by the state government on 16 March 2013.

3.50 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 660,533) for the building of a new Hindu complex in Selangor on 7 February 2013. A new Buddhist complex was also completed in 2013 in Selangor. However, following opposition to its initial central location, the complex was built in a more remote district, with no easy public transport routes. There are a number of Hindu and Buddhist advocacy organisations in Malaysia, including the *Hindu Rights Action Force*, an umbrella organisation of NGOs focused on addressing Malaysian Indian concerns.

3.51 DFAT assesses that Buddhists and Hindus are normally able to practise their religion without interference and do not face official or societal discrimination on a day-to-day basis.

Political Opinion (Actual or Imputed)

3.52 Since 2013, the Malaysian Government has demonstrated an increasing intolerance of anti-government criticism and freedom of expression and assembly through the introduction of several legislative reforms and the application of broad interpretations of existing legislation (see also 'Human rights framework' above). In some instances, such as the filing of spurious criminal charges, this amounts to legal harassment.

Political Opposition Members

3.53 A small number of high-profile opposition leaders or organisers have faced official harassment through the application of Malaysian law, particularly the *Peaceful Assembly Act (PAA)*, *Sedition Act*, *Criminal Code* and occasionally, sodomy or corruption charges.

3.54 Since 1999, a series of legal cases have been pursued 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. Credible local and international sources have concerns about the lack of procedural fairness applied in Anwar's case. 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 that Anwar would not be released as he was convicted of a crime and his detention was not political.

3.55 The PAA was used to charge 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' below). In February 2014, Karpal Singh, Anwar's lawyer and former National Chairperson of the opposition Democratic Action Party (DAP), was convicted of sedition for a second time.

3.56 On 29 June 2016 the Chief Minister of Penang and senior Opposition figure, Lim Guan Eng, was arrested and charged with corruption. If convicted, Lim would be prevented from contesting the next general election.

3.57 Politicians who have spoken publicly about the 1MDB corruption scandal have faced repercussions. Former UMNO division leader, Khairuddin Abu Hassan, was arrested on 19 September 2015 under the SOSMA. Hassan had contributed evidence to international 1MDB investigations. The Inspector General of Police accused Hassan of sabotaging Malaysia. 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 corruption claims. Opposition Members of Parliament Nurul Izzah Anwar and Tony Pua were investigated under the *Penal Code* for their alleged role in acquiring documents related to 1MDB. Pua has been banned from undertaking international travel. If convicted and sentenced to more than one year in prison or fined more than RM2,000, Members of Parliament are disqualified from serving in parliament for five years after their release from a term of imprisonment.

3.58 Instances of interparty and societal violence were reported in the run-up to the May 2013 national elections. A female campaign member for an incumbent opposition member was threatened with a machete by a BN coalition supporter in April 2013. In Penang, two men were assaulted by five unknown individuals

when they were hanging opposition party flags. A bomb was set off at a BN rally in northern Penang in the lead up to the election. The Royal Malaysian Police investigated these events.

3.59 DFAT assesses that political opposition and dissent, particularly direct criticism of the government, can result in legal harassment, detention and even prosecution. While opposition party members are able to undertake political activities on a day-to-day basis they do report an increase in self-censorship and DFAT assesses that they face a low level risk of official discrimination. High-profile opposition leaders face a moderate level of official discrimination. While a spike in interparty and societal violence occurred in connection with the 2013 elections, such incidents are not a common occurrence and individuals with political affiliations do not live in fear of violence on a day-to-day basis.

Political Rallies

3.60 The constitution states that all citizens have ‘the right to assemble peaceably and without arms’, however, in practice the government closely administers political assemblies and rallies under the *Peaceful Assembly Act* (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.

3.61 Individuals have been arrested for organising or engaging in rallies in contradiction with the law and the Royal Malaysian Police have on occasion used excessive 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*) and 2015 (*Bersih 4*). The rallies attracted thousands of protesters and were supported by opposition parties.

3.62 The *Bersih 4* rallies on 29 to 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 light of 1MDB corruption claims. The protest was peaceful and no violence was reported, despite the government declaring the protest illegal and banning the yellow t-shirts with ‘Bersih’ print that were worn by the protestors. Smaller rallies were also held in Melacca, Penang, Kuching, Kota Kinabalu with a small number of arrests. This was an improvement on the July 2011 *Bersih 2* protest where the police used tear gas and water cannons to break up the protest and made approximately 1,500 arrests.

3.63 In response to *Bersih 4*. UMNO-linked NGOs, known as the ‘red shirts’, held a government approved rally in Kuala Lumpur on 16 September 2015. The protest messages were pro-Najib, pro-Malay and slogans and banners were ethnically charged. There were a few arrests and police used water cannons to disperse the crowd when it attempted to enter the Chinatown district.

3.64 In May 2013, the opposition PKR organised nationwide demonstrations known as the ‘Black 505’ rallies, disputing the results of the May 2013 general elections. The rallies attracted thousands of people and took place with little interference from authorities. However, police subsequently arrested and charged a number of alleged organisers under the PAA for failing to provide the required ten days’ notice for public assemblies. Reports on the number of organisers arrested range from between six to forty individuals.

3.65 DFAT assesses that protesters face a low risk of arrest when engaged in political rallies. Such individuals have commonly been released on bail shortly following their arrest. 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

Civil Society Organisations

3.66 There are a number of domestic and international civil society and human rights organisations that operate throughout Malaysia and actively comment on issues such as the legislative environment, the rights of women in Islam and the government’s human rights practices. Although these organisations are generally able to function independently, the deterioration in freedom of expression in recent years has led to an increase in self-censorship. Some organisations reported that constructive engagement between the government and civil society can be difficult and their advocacy and recommendations are largely ignored. Many civil society organisations choose to register under the Malaysian *Companies Act* as opposed to the *Societies Act* to avoid delays and restrictions on their activities. The registrar of societies has prevented

registration of organisations that they deem unfriendly to the government. Authorities regularly used registration issues as a basis for investigating NGOs.

3.67 During 2015, the government charged several civil society members under the *Sedition Act*. Some contacts described instances of police intimidation and legal harassment. Eric Paulsen, a prominent human rights lawyer and co-founder of the Malaysian NGO Lawyers for Liberty, was detained three times during 2015 for alleged acts of sedition. Paulsen had posted criticism of the Religious Affairs Department, the application of *hudud* laws and the Prime Minister on Twitter. The Inspector General of Police said that Paulsen should be careful making comments on sensitive issues. Paulsen was released 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 RM 5,000 (AUD1,600) or both.

3.68 DFAT assesses that civil society members critical of the government have a moderate risk of official discrimination and may be subjected to legal harassment or surveillance by law enforcement authorities. More often than not, when civil society members were arrested, their charges were dropped and individuals were released within short timeframes. Harassment at the individual level was commonly targeted at activists with a public profile, but not necessarily at the highest level of an organisation.

Media

Traditional Media

3.69 There is a wide variety of electronic and traditional media in Malaysia, including English, Malay, Chinese, Tamil and Arabic language sources. The Constitution provides for freedom of speech but, in practice, the government restricts freedom of expression and self-censorship is widely practised by journalists, especially in print media. DFAT understands parties from the ruling BN coalition own, control or influence the major daily newspapers (Malay, English and Chinese). The majority of radio and television networks are similarly owned by parties or individuals linked to the BN coalition. Media outlets are regularly directed by the Prime Minister's Department to cover particular stories each week. Malaysia was ranked 146 out of 180 nations by Reporters without Borders in its 2016 World Press Freedom Index and Freedom House rated Malaysia's Press Status as 'not free'. There are media outlets that are more opposition-friendly but these are generally on-line platforms.

3.70 The *Printing Presses and Publications Act* 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. 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 pressure, investigations and arrests under the *Sedition Act*. The main target of government interest were individuals or media outlets critical of the government, members of Parliament or their families, or those covering sensitive issues linked to ethnicity or Islam. In November 2015, the offices of news portal *Malaysiakini* and newspaper *The Star* were raided by police over reports that a Malaysian Anti-Corruption Commission (MACC) prosecutor was transferred out of MACC's special operations division.

3.71 The Department of Information, within the Ministry of Home Affairs, has a team of officers monitoring media on a daily basis and newspaper editors were occasionally called in to discuss specific publications. The *Printing Presses and Publications Act* was amended in 2014 to ensure media outlets only had to register for a printing permit once (previously registration had expired annually). Still, credible local sources advised that publishers were reluctant to publish criticisms 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 critical of Prime Minister Najib's involvement in the 1MDB corruption allegations. The suspension was later overturned by the High Court.

Online and Social Media

3.72 Social media is the primary outlet for free discussion in Malaysia. According to the World Bank, approximately 17 million people (67 per cent of the population) use the internet. The government generally maintains a policy of open and free access to the internet. However, since 2001 the Malaysian Communication and Multimedia Commission (MCMC) have monitored some online content, including emails and blogs. The MCMC is a small organisation with few staff. In July 2013, the MCMC reported it had blocked 6,640 websites since 2008 for pornography, malicious content, or copyright infringement. In January 2016 the MCMC established a 'Special Committee to Combat Abuse of Social Media'. The Royal Malaysian Police also have an active social media unit which monitors online forums and selectively issues warnings to individuals who are critical of the government or Malaysian royalty.

3.73 The MCMC has ordered outlets and bloggers to remove material considered to be provocative or subversive and has charged individual bloggers with sedition or defamation. The government increasingly uses the *Sedition Act* against social media users who express dissenting views online. Political cartoonist Zulkiflee Anwar Ulhaque, known as 'Zunar', was arrested in 2015 for posting nine cartoons on Twitter that criticised Najib's government, in regards to alleged corruption and the trial of Anwar Ibrahim. Zunar was charged under the *Sedition Act* and faces up to 43 years in prison. At least 15 people were charged under the *Sedition Act* in 2015. Ordinary social media users are also at risk of prosecution, for example, in August 2013 a Twitter user was fined RM10, 000 (approximately AUD3, 330) for questioning the need for a monarchy.

3.74 In February 2016, artist Fahmi Reza was issued with a warning that the police were watching his Twitter account and that 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'. The Government tends to make examples out of select individuals rather than attempt to block all critical content. The majority of political commentators are not targeted by police and it is possible to find uncensored criticism of the Government, even on Prime Minister Najib's Facebook page.

3.75 Alleged violations of freedom of expression for online publications were reported to the UN Human Rights Council in early 2016. In one example, the MCMC blocked the whistle-blowing website *Sarawak Report* on 19 July 2015 after it published an article regarding the involvement of the Prime Minister 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. Similarly, the *Malaysian Insider*, a popular online news website owned by the same media group as *The Edge* newspaper, was blocked by the government in February 2016 after it reported on the 1MDB corruption scandal. It was subsequently closed down by owners who stated it was no longer profitable.

3.76 In June 2013 Prime Minister Najib and UMNO filed a suit against popular online news website, *Malaysiakini*, and it was banned from covering major UMNO events in 2013, including the supreme council meetings and the annual general meeting. The website commonly published political commentary.

3.77 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. Notwithstanding, most Malaysians are generally free to participate in activities online without interference.

Gangs

3.78 *Al Jazeera* reported in 2014 that there were approximately 49 illegal gangs operating in Malaysia, with almost 40,000 members. The majority of street-level gang members tend to be Indian Malaysians, reflecting their relative economic vulnerability. However, high-level crime, including drug trafficking is more typically undertaken by Malaysian Chinese gangs. All gangs have the potential to engage in extortion and loan shark practices. However, obtaining details on these activities is difficult as victims of gang-related crimes do not generally report to law enforcement. Credible contacts advised that Malaysian authorities would likely view individuals who access loan shark services as having participated in an illegal practice.

Women

3.79 Women participate in all areas of Malaysian society, including government, business and civil society. However, cultural and social barriers limit their levels of participation. There are currently three female cabinet ministers (out of 36), 23 females in the lower house (out of 222) and fourteen senators (out of 60). According to the Asian Development Bank, Malaysia has the lowest rate of women's participation in the workforce in Southeast Asia. Overall, DFAT assesses that women in Malaysia face a high risk of societal and official discrimination and violence, particularly domestic or intimate partner violence.

Family Law

3.80 Different legal provisions are applied to women under federal civil law versus *sharia* law (administered differently state by state). The federal 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 a number of family matters, including succession, betrothal, marriage, divorce, adoption and guardianship. For example, non-Muslim women can lose guardianship and inheritance rights over children when their former husbands convert to Islam (see 'Religious Conversion', above). The federal *Guardianship of Infants Act* was amended in 1999 to give 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

3.81 Domestic violence against women is a serious problem in Malaysia. In 2015 there were 5,014 reported cases of domestic violence, and in 2014 there were 4,807. However, credible local sources suggested there was significant under-reporting because of traditional beliefs in the sanctity and privacy of marriage. 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.

3.82 Contradictions between federal and state *Sharia*-based law impact on the levels of state protection afforded to victims of domestic violence. Rape, including marital rape, is a criminal offense under the federal *Criminal Code* and is punishable by up to 20 years imprisonment and caning. Marital rape has a maximum penalty of five years' imprisonment. However, under *Sharia*-based law, wives are prohibited from disobeying the 'lawful orders' of their husbands which can lead to ambiguous interpretations of the law and, in many cases, it would be difficult to convict a Muslim man of domestic violence offences under *Sharia* law. The Home Ministry has reported 28,741 rape cases between 2005 and 2014, with 2,045 cases of rape reported in 2014. Police training on domestic violence is limited and the judiciary receives little to no training in the application of relevant law. However, Malaysia has taken significant steps to reduce domestic violence. Domestic violence conviction rates have increased over the past decade and police are becoming more responsive to reports of rape against women as police headquarters in each state now maintain sexual investigations units to assist victims of sexual crimes and abuse. However, NGOs report that only one in 10 reported rape cases go to court.

3.83 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 extremely successful in combining clinical therapeutic responses with secondary preventive measures.

3.84 Deaths related to domestic violence do occur in Malaysia. The government does not release statistical information beyond 'murder' so it is difficult to ascertain accurate numbers. However in 2014, at least six domestic violence-related deaths were reported in the media. DFAT cannot confirm if 'honour killings', performed to punish individuals who are perceived to have brought shame upon their family members or communities, occur. Where families are against an interfaith marriage, the couple may be at risk of violence.

3.85 DFAT assesses that while the situation is improving, confusion between federal and state laws and a lack of capacity within the police and judiciary, make it difficult for women to gain adequate state protection and to safely leave violent relationships.

Sexual Harassment

3.86 Despite increased legal protections, sexual harassment is a barrier to women's participation in the workforce. The government has taken several steps to address the issue. Malaysian law prohibits a person in authority from using their position to intimidate a subordinate into having sexual relations. Amendments were made to the *Employment Act* in 2012, making certain forms of sexual harassment in the workplace illegal. The Government introduced a voluntary code of conduct for the civil service, defining sexual harassment and raising public awareness. According to police statistics, there were 1,590 reported cases of sexual harassment in 2014.

Child Early and Forced Marriage

3.87 Official figures demonstrate an increase in the number of females aged 15 to 19 married in 2010 (82,382) as compared to 2000 (55,915). This figure is likely to be higher given the underreporting of unregistered/unofficial customary marriages and forced marriages. In 2014 the UN Population Fund reported that over 15,000 citizens were married before age 19. Marriage laws differ under civil law versus *Sharia*-based law. Under civil law the minimum age of marriage is 18 for males and 16 for females. However, Muslim females under the age of 16 may marry with the approval of a *sharia* court. In October 2014, *sharia* courts had approved 446 of 600 applications for marriage involving girls under the age of 16.

Female Genital Mutilation (FGM)

3.88 In 2009, the National Fatwa Committee decided that ‘female circumcision’ was obligatory for Muslims but could be avoided if harmful to their health. The Ministry of Health developed guidelines for female circumcision and allowed the practice to take place in health-care facilities. As a result, it has become increasingly more common and is often performed during infancy. A university study conducted in 2012 found that, out of over 1,000 women surveyed, 90 per cent of Muslim respondents had been circumcised. 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 invasive medical procedure.

Sexual Orientation and Gender Identity

3.89 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 or caning. However, the *Penal Code* offences have infrequently been applied to homosexuals except where its application has been politically motivated (see ‘Political Opinion (Actual or Imputed)’, above).

3.90 The Malaysian Government openly criticises lesbian, gay, bisexual, transgender or intersex (LGBTI) individuals. 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’. In April 2014, Deputy Prime Minister Muhyiddin Yassin said LGBTI rights advocates in Malaysia were ‘poisoning the minds of Muslims with deviant practices’.

3.91 The police and judiciary have banned public demonstrations of support for the LGBTI community. An annual sexuality rights festival known as *Seksualiti Merdeka*, which had been held in Kuala Lumpur since 2008, was banned in 2011 in response to complaints made by a number of Muslim non-governmental groups including Perkasa and the Allied Coordinating Committee of Islamic NGOs. The Royal Malaysian Police banned the festival under the *Police Act* on the grounds that it would cause public disorder. The ban was upheld by the High Court and eventually the Court of Appeals in August 2013. Since 1994, homosexual, bisexual, transsexual and transgender individuals have been banned from appearing on state-controlled media and media censorship rules ban movies or songs that promote the acceptance of same-sex relationships.

3.92 The federal government, and a few state governments, have openly run programs aimed at ‘rehabilitating’ suspected LGBTI youth. Throughout 2013, the government ran a musical called ‘Abnormal Desire’ across all Malaysian states, portraying the ‘negative lifestyle’ of LGBTI people. LGBTI individuals in the play were struck by lightning and turned straight (heterosexual). The play was supported by the Malaysian Education Department and state Islamic authorities.

3.93 Some state governments went beyond the educational measures supported by the federal government. The State Education Department in Besut was found to be running a ‘re-education boot camp’ or ‘behaviour corrective program’ for effeminate teenage males in 2011. The Department selected boys who behaved effeminately and sent them to a camp for physical training and religious and motivational classes. Sixty-six boys were sent to a camp in Besut in 2011. The federal Minister of Women, Family and Community Development spoke out against this practice and said the Government ‘viewed with alarm and great concern the act of sending schoolboys with effeminate tendencies to a camp with the aim of ‘correcting’ their behaviour’ and called for the abolition of the camps. DFAT understands that many of these camps continue to operate.

3.94 DFAT assesses that LGBTI individuals, particularly Muslims, face a moderate risk of official and societal discrimination on a day-to-day basis in Malaysia. The level and frequency of discrimination faced by the LGBTI community differs, depending on the socio-economic status, the religion and the geographic location of the individual. For instance, many middle and upper class, educated and urban Malaysians can be open about their sexuality within their family and community circles. Contacts described that, in the past, there were nominal roles carved out in Malaysian society for ‘flamboyant individuals’, such as planning weddings and events. However, they believed that this level of societal acceptance had disappeared. Many LGBTI individuals, especially Muslims, continue to hide their identity to avoid harassment.

Transgender Individuals

3.95 Cross-dressing is not technically illegal, however transgender individuals are arrested under the *Minor Offences Act* for public indecency and immorality, and, where Muslim, under *sharia*-based law for impersonating women. These laws are predominantly applied to biological men dressing as women. The

National Fatwa Council banned gender reassignment surgery in 1983 and the Registration Department stopped the practice of changing names and gender for transgender individuals on national identity cards.

3.96 Where transgender women were identifiable as Muslim, and as male, as demonstrated on their national identity card, they were occasionally arrested by state religious authorities or the Royal Malaysian Police. While the majority of arrests occurred in public places, state religious officials occasionally conducted raids on private premises. Members of the Royal Malaysian Police had on occasion accompanied such officials.

3.97 In October 2015, regarding the case of three Muslim transgender women from Negeri Sembilan, the Federal Court reversed a lower court ruling that had found Negeri Sembilan's state-level prohibition on men dressing as women to be unconstitutional. The Federal Court advised the defendants to exhaust their case in the *sharia* court, where it had originated. In June 2015, nine transgender women were convicted by a *sharia* court in Kelantan state under cross-dressing prohibitions. In 2011, a transgender woman was arrested for cross-dressing and was sexually assaulted by religious department officials in Negeri Sembilan. In 2012, religious department officials forcibly entered the home of a transgender woman in Seremban. The woman, a non-Muslim—as confirmed by a check of her national identity card—was not arrested. However, her Muslim transgender friends were arrested for cross-dressing.

3.98 State religious officials have been known to subject transgender women to physical or sexual violence and degrading treatment while in custody. Transgender women are held in male prisons and have occasionally been subjected to sexual assault by wardens or fellow detainees. Societal violence also occurs. 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 hate crime to police but no suspects have been identified.

3.99 DFAT assesses transgender individuals, especially Muslim men who either cross-dress as women or identify as transgender would face a high level of official and societal discrimination and are at moderate risk of societal violence.

4. Complementary Protection Claims

Arbitrary Deprivation of Life

Extra-Judicial Killings—Police Shootings

4.1 According to the most recent official statistics released by the Royal Malaysia Police (RMP), 394 people were shot and killed by the police between 2000 and August 2012 (96 people were shot and killed by police between 2000 and 2006, 298 people between 2007 to August 2012). The majority of individuals were involved in criminal syndicates or serious crimes, particularly drug trafficking. Fifty per cent of those shot were of Indonesian origin, 44 per cent were Malaysians. Malaysian law accommodates this level of 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 The RMP have occasionally shot citizens suspected of summary offences including theft, property damage or traffic infringements. Police shot and killed four suspected armed robbers in Bintulu, Sarawak, in December 2015 following a car chase. Police shot and killed Pua Bee Chun after she allegedly fled a crime scene as a passenger in a stolen car in January 2013.

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. The National Human Rights Commission (Suhakam) regularly receives complaints and investigates police shootings.

Enforced or Involuntary Disappearances

4.4 According to the US Department of State, there have been no recent reports of politically motivated disappearances. DFAT is not aware of any confirmed cases of enforced or involuntary disappearances in recent years.

4.5 The body of Kevin Morais, a Deputy Public Prosecutor for the Malaysian Anti-Corruption Commission (MACC), was found cemented in an oil drum on 16 September 2015. Morais had allegedly made accusations about the 1MDB corruption scandal and leaked information regarding the MACC's investigations. The MACC Chief Commissioner has confirmed that Morais had ceased employment with the MACC in July 2014, a year before 1MDB investigations began.

Detention Conditions—Deaths in Custody

4.6 Malaysia's prisons suffer from significant overcrowding. In October 2013, the Ministry of Home Affairs reported that Malaysia's 30 prisons were holding 39,740 prisoners, despite being designed to hold only 32,000. Men, women and juveniles are mostly held separately. According to the US Department of State, authorities generally do not permit NGOs or the media to monitor prison conditions. However, the International Committee of the Red Cross (ICRC) and Suhakam are allowed access to prisons on a case-by-case basis. As the government's de facto ombudsman, Suhakam is responsible for investigation of allegations of human rights abuses within the prison system. International and local observers, including Suhakam, have reported poor standards, for example in related to limited access to health care.

4.7 Official RMP statistics identified 11 deaths in police custody in 2015 and a total of 133 deaths over 2005-2015. Suhakam told DFAT that deaths in custody remain an area of concern and will be a focus of their yet to be released 2015 annual report. Government officials claimed that the majority of deaths were caused by pre-existing health problems. However, a number of deaths in custody were the result of injuries

inflicted by authorities. The US Department of State reported that six deaths occurred in police custody in early 2014, prompting calls for the establishment of a police misconduct commission. This idea was opposed by the government.

4.8 Law enforcement entities have investigated deaths in custody which, in some cases, resulted in arrests and convictions (see 'Police Integrity and Accountability' below). 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 was given a three-year sentence for causing grievous hurt to Kugan. The High Court awarded Kugan's mother RM 851,700 (approximately AUD 277,000) in damages. In January 2013, the Court of Appeal upheld a 2011 ruling to award RM 500,000 (approximately AUD 162,000) in damages to the family of an 18-year-old man, Mohd Shukri Mohamed Yusof, who had died in custody in 2004. One warden was sentenced to death for his murder.

4.9 The Enforcement Agencies Integrity Commission, established in April 2011, is a statutory body that 'enforces the law on enforcers'. It has purview over 19 agencies, including the police, immigration and customs, seven commissioners and 26 staff. In November 2015, for the first time, the commission issued a report finding that police were responsible for the death of a young man detained in Johor in November 2014.

Death Penalty

4.10 Capital punishment applies to trafficking in dangerous drugs, murder, offences against the King, discharging a firearm during an offence and acts of terrorism, including financing terrorism. In practice, the death penalty is most commonly applied in cases of drug trafficking and premeditated murder. Where an individual is sentenced to death by the High Court, 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. There are ongoing government level discussions about amending the penal code to abolish the death penalty but amendments have yet to be tabled in Parliament.

4.11 There is no evidence to suggest that a person convicted of a crime in another country would be tried on return for the same crime which may attract the death penalty in Malaysia. However, an individual could be subject to monitoring by Malaysian authorities, upon their return, to ensure they were not an ongoing, active member of a criminal syndicate—especially if they had been convicted of drug-related offences in another country. The double jeopardy principle is normally applied, but there are exceptions where new evidence arises. For example, 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 (although, this crime does not carry the death penalty in Malaysia). If however, an individual committed an offence in Malaysia prior to their departure from there, they could face trial for the offence upon return to Malaysia.

4.12 Malaysia has not traditionally released data on the application of the death penalty. Three men were executed for murder on 25 March 2016. An estimated two to three death sentences were carried out in each of 2013 and 2014. According to the Prison Department Director, as of May 2015, there were 1,043 individuals on death row. Amnesty International reported that over 39 people were sentenced to death in 2015, mostly for drug-related offences. People typically languish on death row for years and families are usually given 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

4.13 There is no law that specifically prohibits torture in Malaysia. DFAT received some reports regarding individuals being tortured in police custody and assesses that the majority of these instances relate to caning (see below) or assaults that resulted in deaths in custody (see above).

Cruel, Inhuman or Degrading Treatment or Punishment

Arbitrary Arrest and Detention

4.14 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. Decisions by the Prevention of Crime Board may be challenged in the High Court. The *Prevention of Terrorism Act* gives a government-appointed board the authority to impose detention without trial for up to two years, renewable indefinitely.

4.15 The SOSMA focuses on terrorism and national security crimes, and permits preventative detention of up to 28 days without charge. The 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. Under the *Dangerous Drugs Act*, suspected drug traffickers may be detained for up to 39 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.

4.16 DFAT assesses that the Royal Malaysian Police generally observe legal requirements attached to pre-trial detention.

Corporal Punishment—Caning

4.17 More than 60 federal offences allow caning as a punishment, including kidnapping, rape, robbery, migrant smuggling and the possession of narcotics. The judiciary routinely sentences individuals to caning. While federal law exempts men older than 50 years, unless convicted of rape, and women from caning. In 2013 8,451 prisoners; 5,968 foreigners (mostly undocumented migrant workers) and other 2,483 Malaysians were caned.

4.18 Muslims may also be subjected to caning under state *sharia*-based laws for offences related to family issues, such as adultery, and certain crimes under Islam, such as drinking in public or cross dressing. In contrast to federal law, women are not exempt from caning under *sharia*-based law. However, DFAT assesses that women are infrequently caned under *sharia*-based law. The first woman to be caned in Malaysia was Kartika Shukarno in 2010, who was convicted of drinking alcohol in public. Three women were caned after being convicted of adultery in February 2010. DFAT is not aware of any reports since then.

5. Other Considerations

State Protection

Federal and State Law Enforcement Entities

5.1 Law enforcement entities operate at both federal and state level. The Royal Malaysian Police (RMP) reports to the federal Minister for Home Affairs and is responsible for law enforcement nationwide. The National Department of Islamic Development (JAKIM) enforces *sharia* law and has jurisdiction over Muslims in Kuala Lumpur and the two other federal territories. 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. RELA membership was 2.9 million in September 2013. RELA volunteers receive limited training. RELA's engagement in law enforcement activities has significantly reduced in recent years. NGOs have reported that inadequate training has led to abuses by RELA members such as extortion and theft.

5.3 State-level Islamic religious departments enforce *sharia* through Islamic courts and have jurisdiction over Muslims in each state. *Sharia* laws and the degree of their enforcement vary from state to state, although religious enforcement officers are allowed to accompany police on raids in all states. Some penalties imposed by *sharia* courts are limited by federal civil law.

Military

5.4 The Malaysian Armed Forces has 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 1.5 per cent of GDP in 2014. The Royal Malay Regiment battalions are made up of *Bumiputera* only and are the premier unit in the Malaysian Army. The Ranger Regiments and Border Regiments are mixed race formations; the former is the second largest unit in the army with links 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.

Royal Malaysian Police (RMP)

5.5 The RMP employs approximately 102,000 officers and operates 837 police stations across Malaysia. The Inspector General of Police is responsible for the RMP and reports to the Home Affairs Minister. Credible local and international sources consider the RMP to be a professional and effective police force. However, the quality of the RMP's responses varies depending on levels of training, capacity or engagement in corruption. RMP officers receive limited training, particularly on human rights. Suhakam does conduct some human rights training and workshops for police and prison officials. Police officers are paid one of the lowest wages in the Malaysian civil service and corruption has been recognised as a concern (see 'Police Integrity and Accountability', below). The RMP is 80–85 per cent ethnic Malay. The government undertakes targeted recruitment to increase the number of women, Chinese Malaysians and Indian Malaysians in the RMP.

Police Integrity and Accountability

5.6 The *Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police* in 2005 identified a perception of widespread corruption within the RMP. In response, the Government publicly acknowledged the existence of police corruption and implemented reforms, including establishing compliance units within the RMP. Police officers were subject to trial by criminal and civil courts and disciplinary action was taken against officers found guilty, including suspension, dismissal or demotion.

5.7 There is no legal requirement for the state to investigate deaths in RMP custody. Investigations generally occurred at the request of the Attorney-General but were often instigated as a result of public pressure and were significantly delayed. 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', above).

5.8 The Inspector General of Police announced the establishment of an *Integrity and Standard Compliance Department* in July 2014 to enhance police integrity and image, however as it sits within the RMP organisational structure, it is not an independent body. Suhakam also receives complaints against the RMP and has conducted investigations into police behaviour. However, the Government is not required to formally consider Suhakam's reports or recommendations. In January 2016, Human Rights Watch reported that the government has not established an independent police complaints and misconduct commission, despite lobbying from the Malaysian Bar Council and civil society groups.

State Islamic Religious Departments

5.9 Religious enforcement officers, known locally as religious police officers, have a range of powers, depending on the particular Islamic laws that apply in each state. State religious officers are not permitted to police non-Muslims. However, non-Muslims can be directly affected (see 'Religious Conversion', above). Religious enforcement officers have the authority to detain and charge individuals to go before *sharia* courts for a range of reasons, such as indecent dress, alcohol consumption, the sale of restricted books, or close proximity to members of the opposite sex. A range of penalties can be given to an individual convicted under *sharia*-based law (see 'Sharia Courts', below).

5.10 Misconduct by religious enforcement officers can technically be investigated by relevant state religious departments or the RMP. However, the RMP is generally not willing to get involved in state religious matters. The majority of complaints made against religious enforcement officers related to mistreatment of transgender individuals, domestic violence victims and non-Muslim parents in situations of unilateral child conversion to Islam.

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. The majority of Malaysia's criminal, civil and family law matters are heard in the subordinate civil courts. Judicial appointments are made by a Judicial Appointments Commission; however the Prime Minister has final approval. The majority of the members of the Federal Court are Malay Muslims. Malaysia's highest courts are somewhat influenced by political or religious affiliation. For example, credible local and international human rights organisations considered the prosecution of Anwar Ibrahim to be politically motivated (see 'Political Opposition Members', above). In July 2015, the government removed the Attorney General, Abdul Gani, who had been leading an investigation into 1MDB.

5.12 Credible sources advised that defendants generally had adequate time to prepare a defence, particularly where they had financial means to engage private counsel. Government legal aid resources were limited and generally of poor quality. Strict rules of evidence apply in court. However, state-held evidence was not consistently made available to the defence. 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-2014 24.8 per cent of the total prison population were pre-trial detainees.

5.13 The ability for individuals to seek legal redress through Malaysian courts is mixed. Judges receive relatively low salaries, limited training, and appointments were often made directly from university. Selective prosecution and arbitrary verdicts occurred, particularly in instances involving high-profile opposition politicians and human rights defenders. However, the majority of cases in Malaysian civil courts are processed in accordance with the rule of law and legal procedure.

Sharia Courts

5.14 State-level *sharia* courts generally apply *sharia* law in accordance with their rules of procedure but also have low capacity. Due to the nature and focus of *sharia*-based law, *sharia* courts had 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, source and transit country for human trafficking. The US Trafficking in Persons Report ranks Malaysia under Tier 2 watch list, meaning that Malaysia does not fully comply with the minimum standards for the elimination of trafficking. NGOs provide the majority of victim support services with little or no financial support from the government. The government is making efforts to improve the situation. In 2015 amendments designed to strengthen the *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007*, including extension of work rights and freedom of movement for victims, were approved. Human Rights Watch has questioned the effectiveness of implementation of the law. 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 have been implicated in aiding and abetting the operation of trafficking camps.

Internal Relocation

5.16 Malaysia's Constitution provides for freedom of internal movement. However, the eastern states of Sabah and Sarawak have autonomy over their own immigration controls. Non-Sabah or Sarawak residents, whether Malaysian citizens or foreigners, are required to present national identity cards (or passports for foreigners) to gain entry. The federal government can overrule immigration decisions made by Sabah or Sarawak in limited circumstances, including for national security reasons.

5.17 A small number of individuals have been denied entry into Sabah or Sarawak in recent years. The list of individuals banned from entering is covered by the *Official Secrets Act* and is not available to the public. During the Sarawak state election in May 2016, opposition leaders including PKR 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, an ethnic Chinese 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. Two members of the Opposition Pakatan Rakyat (People's Alliance) party were denied entry into Sabah (Vice Presidents Nurul Izzah and Tian Chua) in July 2013. Chua and two other PKR leaders, Rafizi Ramli and Datuk Saifuddin Nasution Ismail, were deported from Sarawak in March 2014 for campaigning in a by-election.

5.18 High-profile political activists and politicians may be denied entry into Sabah or Sarawak where their visits related to engagement in a political process, particularly federal elections or by-elections. In practice, entry into Sabah or Sarawak is not restricted for the majority of citizens upon displaying their national identity card. DFAT is not aware of any instances of individuals being denied exit from Sabah or Sarawak.

5.19 DFAT assesses that Malaysians can and do freely relocate internally. Individuals likely to attract official attention under state *sharia*-based law, including transgender individuals, women escaping violent husbands 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 for economic reasons.

Treatment of Returnees

5.20 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 on account of their absence. Malaysians who over-stayed their work or tourist visas, or breached visa conditions in other countries are regularly returned to Malaysia with no attention paid to them by authorities. 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

Exit and Entry Procedures

5.21 There are over 130 formal entry and exit points in Malaysia. The Immigration Department is responsible for conducting exit and entry checks. Malaysia keeps records of entries and exits, but details of arrival/departure ports and destination are not always captured. In accordance with the Constitution, individuals facing serious criminal charges can be prevented from leaving Malaysia. All travellers are

checked 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 a valid visa for their destination country, where required, but this is a criterion imposed by airlines rather than Malaysian immigration. The Ministry of Home Affairs is currently designing a new Advanced Passenger Screening System, similar to Australia's system.

5.22 There have been allegations of corruption amongst border officials patrolling Malaysia's porous northern border with Thailand, an area linked with people trafficking.

5.23 On 31 May 2016, Malaysia's 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 said that disciplinary action would be taken against all culprits, regardless of rank. Fifteen immigration officers have been sacked since February 2016; 14 have been suspended from work; eight have had their salary increments frozen; 20 are under close scrutiny by the department; 63 have been transferred out of the department's headquarters; and more officers serving at international airports will be transferred. Media reports in 2015 alleged that the Royal Malaysia Police Special Branch had undertaken a 10-year investigation that found up to 80 per cent of Malaysia's security personnel and law enforcement officers at the border were corrupt.

Documentation

Birth Certificates

5.24 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 the father's information is not entered on the birth certificate. For children of other religions born out of wedlock, the father's name is only entered on birth certificates if parents make a joint application.

National Identity Cards

5.25 National identity cards are compulsory for all citizens 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.

5.26 The *MyKad* shows an individual's name, address, biometric data (including photograph and fingerprints) and their status as a Muslim (and 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, an ATM card and as a payment card for tolls and other taxes.

5.27 Malaysian children are issued with a *MyKid* card at birth, which is upgraded to a *MyKad* at 12 years of age. It is a requirement that the photograph remains valid and the *MyKad* must be updated when an individual reaches 18 years of age and periodically thereafter. The *MyKad* card must be carried at all times and a failure to do so attracts a fine of between RM 3000 (approximately AUD 990) and 20,000 (approximately AUD 6,605) or jail term of up to three years. It is also a legal requirement for the card holder to keep their residence up to date. Given 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.

5.28 It is possible for individuals to 'rent' or 'buy' another person's identity and to then utilise that person's *MyKad* card to obtain other documents fraudulently, including passports. While it would be possible to fraudulently obtain a *MyKad* card, DFAT assesses it is relatively rare given personal identity and other records are cross-checked by the Ministry for Home Affairs. Instances of fraud are investigated by the Royal Malaysian Police.

Passports

5.29 Malaysian passports are issued by the Immigration Department under the *Passport Act 1966*. Malaysia's passport application process is one of the fastest in the world. The application and renewal process is conducted at a kiosk point, known as a *KiPPas*, and takes as little as one hour. There is an issuing office in every state. Passport renewals would only take longer if the old passport had been reported lost or stolen, or if the authorities were suspicious of the passport. A Malaysian passport is valid for five years and costs RM 300 (approximately AUD 99). Under the *Guardianship (Amendment) Act 1999*, the consent of only one parent is required to obtain a child's (under 18 years) passport. The *MyKad* is used 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.

5.30 Malaysia has issued biometric passports since 1998. Thumbprint data was added to the biometric data on the passport chip in 2002. Malaysia started issuing ICAO-compliant e-Passports in February 2010. The Malaysian passport underwent further security improvements through the addition of a polycarbonate sheet that includes a hologram mini-photo of the passport holder in April 2013.

5.31 It is possible, although difficult, to obtain a genuine passport fraudulently by using another person's identity or *MyKad* card. A number of individuals had been found 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 15 immigration officials were arrested in Sabah on suspicion of passport fraud. Individuals were able to 'rent' or 'buy' another person's identity, utilising their *MyKad* card to fraudulently obtain a valid passport. It is relatively cheap, in Malaysian terms, to do so. DFAT is aware of a small number of instances where individuals had used agents to unsuccessfully seek visas to Australia. In one case an applicant paid AUD80,000 for visas for his family. An application was never lodged in this instance. The Malaysian police launched an investigation into the matter.