

# MALAYSIA 2019 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Malaysia is a federal constitutional monarchy. It has a parliamentary system of government selected through regular, multiparty elections and is headed by a prime minister. The king is the head of state, serves a largely ceremonial role, and has a five-year term. Sultan Muhammad V resigned as king on January 6 after serving two years; Sultan Abdullah succeeded him that month. The kingship rotates among the sultans of the nine states with hereditary rulers. In 2018 parliamentary elections, the opposition Pakatan Harapan coalition defeated the ruling Barisan Nasional coalition, resulting in the first transfer of power between coalitions since independence in 1957. Before and during the campaign, then opposition politicians and civil society organizations alleged electoral irregularities and systemic disadvantages for opposition groups due to lack of media access and malapportioned districts favoring the then ruling coalition.

The Royal Malaysian Police maintain internal security and report to the Ministry of Home Affairs. State-level Islamic religious enforcement officers have authority to enforce some criminal aspects of sharia. Civilian authorities at times did not maintain effective control over security forces.

Significant human rights issues included: reports of unlawful or arbitrary killings by the government or its agents; reports of torture; arbitrary detention; harsh and life-threatening prison conditions; arbitrary or unlawful interference with privacy; reports of problems with the independence of the judiciary; restrictions on free expression, the press, and the internet, censorship, site blocking, and abuse of criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on and intolerance of religious freedom; restrictions on freedom of movement; refoulement of refugees to a country where they would face a threat to their life or freedom; acts of corruption; trafficking in persons; violence against transgender persons; criminalization of consensual adult same-sex sexual activities; and child labor.

The government arrested and prosecuted some officials engaged in corruption, malfeasance, and human rights abuses, although civil-society groups alleged continued impunity.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were scattered reports the government or its agents committed arbitrary or unlawful killings, mostly in the prison system. Authorities in Kota Kinabalu, Sabah arrested 10 prison wardens, including an officer, in connection with the October 4 death of a 36-year-old man detained at the central prison. Although initially classified as a sudden death, the case was reclassified as a murder after the postmortem revealed the man sustained serious injuries, attributed to a blunt object, to his head and body. The investigation remained ongoing as of November. In a 2018 report on custodial deaths, the nongovernmental organization (NGO) Lawyers for Liberty described a “broken system that abets the perpetrators of these crimes.”

Investigation into use of deadly force by a police officer occurs only if the attorney general initiates the investigation or approves an application for an investigation by family members of the deceased. When the attorney general orders an official inquiry, a coroner’s court convenes, and the hearing is open to the public. In such cases, courts generally issued an “open verdict,” meaning that there would be no further action against police.

In June a Royal Commission of Inquiry (RCI) concluded its investigation into the Wang Kelian mass grave site found along the Thai border in 2015, although the RCI’s findings were not made public. During testimony to the RCI in April, S. Sivanganam, who oversaw operations in Wang Kelian as an assistant commanding officer, said an informant told him in 2015 that law enforcement officials were cooperating with a human trafficking syndicate “to ensure that the syndicate’s operations went on without a hitch.” He said he submitted this information to senior police officers in Perlis and Kedah states, the Kedah-Perlis border intelligence unit, and representatives from the National Security Council. As a result of his report, Sivanganam said he was “forbidden to return for more operations.” Separately, Assistant Superintendent of Police M. Joeking, who discovered the Wang Kelian site, stated his superiors ordered him to destroy all photographs of the area except those stored on a battalion office computer.

In March Lawyers for Liberty questioned the appointment of Arifin Zakaria as the chairman of the Wang Kelian RCI, citing “valid concerns about [his] track record in human rights and constitutionalism.” The group also called on the government to “take greater care and have wider consultation in deciding upon appointments of this nature.”

A joint report by the Malaysian Human Rights Commission (SUHAKAM) and the NGO Fortify Rights, released in March, found “reasonable grounds to believe” that “crimes against humanity” were committed at Wang Kelian. The report accused a transnational crime syndicate of committing murder, extermination, enslavement, imprisonment, torture, and rape as part of a “widespread and systematic attack” against Rohingya migrants. A SUHAKAM commissioner lamented that Malaysia had not charged any law enforcement official believed to be involved in the case and questioned why the government delayed announcing the discovery of the camp and then destroyed it “too fast and too quick.”

### **b. Disappearance**

An investigatory panel from SUHAKAM announced on April 3 its “final decision” that activist Amri Che Mat and Christian Pastor Raymond Koh, who were abducted in 2016 and 2017, respectively, were victims “of forced disappearance by state agents, namely Special Branch.” Police called the decision “unjustified.” SUHAKAM also found “conduct unbecoming of police” and “shortcomings” in police investigations. SUHAKAM based its findings on similar “modus operandi” in both cases and testimony from the wife of Amri Che Mat, who said a police officer admitted to her that Special Branch was involved. The police officer, however, publicly denied making such a statement. In response to the announcement, several NGOs called for immediate action against those involved, including the resignation of Inspector General of Police (IGP) Fuzi Harun, who led Special Branch from 2015 to 2017. Prime Minister Mahathir later said the government “will let [Fuzi Harun] retire first and then we will have another IGP who will conduct an investigation” into his possible involvement. To date, the new IGP has not initiated such an investigation.

On June 26, Minister of Home Affairs Muhyiddin Yassin announced the composition of a government panel to investigate SUHAKAM’s determination that Special Branch was responsible for the enforced disappearances of Amri Che Mat and Pastor Koh; the panel, however, was not tasked with investigating the disappearances themselves. In separate statements, the wives of Amri and Pastor Koh noted the panel only included Malay (Muslim) men, one of whom represented police during SUHAKAM’s inquiry and later rejected its findings. The Home Ministry later appointed a female representative and an ethnic Chinese representative; the police officer who had been involved in the SUHAKAM investigation stepped down from the government panel. The panel’s investigation continued as of November.

Police made little progress in investigating the disappearance in 2016 of Christian Pastor Joshua Hilmy and his wife, Ruth Sitepu, reportedly due to a lack of information in the case. In July SUHAKAM Commissioner Mah Weng Kwai stated SUHAKAM had yet “to decide on the composition of the panel and the timeline” for its public inquiry into the couple’s disappearance.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

No law specifically prohibits torture; however, laws that prohibit “committing grievous hurt” encompass torture. More than 60 offenses are subject to caning, sometimes in conjunction with imprisonment, and judges routinely mandated caning as punishment for crimes, including kidnapping, rape, and robbery, and nonviolent offenses, such as narcotics possession, criminal breach of trust, migrant smuggling, immigration offenses, and others.

According to SUHAKAM, 521 persons died in prison from 2015 through 2016, while more than 100 individuals died in immigration detention centers. The government claimed that deaths in police custody, particularly those caused by police, were rare, but civil-society activists disputed this claim. In its 2018 human rights report published on May 29, the human rights NGO Suaram listed a “notably lower number” of deaths in police custody as one of several positive developments over the year.

Civil and criminal law exempt men older than 50, unless convicted of rape, and all women from caning. Male children between the ages of 10 and 18 may receive a maximum of 10 strokes of a “light cane” in a public courtroom.

Some states’ sharia provisions, which govern family issues and certain crimes under Islam and apply to all Muslims, also prescribe caning for certain offenses. Women are not exempt from caning under sharia, and national courts have not resolved conflicts between the constitution, the penal code, and sharia.

Civil laws in Kelantan and Terengganu states allow courts to sentence individuals to public caning for certain civil offenses, although there were no reports of such punishment.

At a May press conference, Suaram accused police of torturing Ahmad Haikal Anur and Muhammad Pardi while the two men were in custody following their

April 6 arrest for stealing motorcycles. Family members said police beat the two men and detained them without any evidence they had committed a crime. Klang Selatan police chief Shamsul Amar Ramli said he would investigate the matter and take appropriate action against anyone guilty of wrongdoing. Shamsul later filed a police report on Suaram's press conference and summoned a Suaram employee for questioning. In a statement, Suaram stated it "takes this [action] as a form of intimidation and denial to the revelation of wrongdoing as reported."

In August, Ali Hussein al-Rassas, a Yemeni citizen, filed suit in a Malaysian court accusing the government and police of torture and wrongful arrest. According to al-Rassas, police arrested him in 2017 and accused him of plotting to assassinate the king of Saudi Arabia during the monarch's visit to Kuala Lumpur. Al-Rassas said authorities hit him on his face, back, and head, and kicked him to force him to confess. He also said he was not allowed to contact a lawyer or family member for nearly 30 days. Al-Rassas was deported in 2017 without charge.

### **Prison and Detention Center Conditions**

Conditions in prisons and detention centers could be harsh and life-threatening.

Physical Conditions: Overcrowding in prisons and immigration detention centers, particularly in facilities near major cities, remained a serious problem. According to the Home Ministry, 20 of the country's 37 prisons were overcrowded. In Selangor, Kuala Lumpur, and Kelantan, prisons were overcrowded by 45 to 50 percent.

M. Prosothaman, a 25-year-old man, died of tuberculosis in May while in police custody, reportedly after several weeks of exhibiting symptoms without receiving medical attention. Lawyers for Liberty called on police "to launch an immediate investigation into this death," which it said had "elements of criminal negligence."

Administration: The law allows for investigations into allegations of mistreatment; however, this did not always function in practice. Officers found responsible for deaths in custody do not generally face punishment.

Authorities restricted rights to religious observance for members of Islamic sects the government banned as "deviant."

Independent Monitoring: Authorities generally did not permit NGOs and media to monitor prison conditions; the law allows judges to visit prisons to examine

conditions and ask prisoners and prison officials about conditions. The government's Enforcement Agency Integrity Commission (EAIC), the International Committee of the Red Cross, and SUHAKAM monitored prisons on a case-by-case basis.

After years of police resistance, newly appointed Inspector General of Police Hamid Bador announced on May 10 that the Royal Malaysian Police agreed to the establishment of an Independent Police Complaints and Misconduct Commission (IPCMC). Police had argued an IPCMC would undermine police authority and claimed the internal affairs office was sufficient to investigate complaints from the public. The Bar Council welcomed the decision, stating the IPCMC "will herald a new dawn of police accountability and...public confidence." Legislation to formally establish the IPCMC remained pending in parliament.

The Office of the UN High Commissioner for Refugees (UNHCR) generally had access to registered refugees and asylum seekers and to unregistered persons of concern who may have claims to asylum or refugee status and are held in immigration detention centers and prisons. This access, however, was not always timely.

#### **d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements. Police may use certain preventive detention laws to detain persons suspected of terrorism, organized crime, gang activity, and trafficking in drugs or persons without a warrant or judicial review for two-year terms, renewable indefinitely. Within seven days of the initial detention, however, police must present the case for detention to a public prosecutor. If the prosecutor agrees "sufficient evidence exists to justify" continued detention and further investigation, a fact-finding inquiry officer appointed by the minister of home affairs must report within 59 days to a detention board appointed by the king. The board may renew the detention order or impose an order to restrict, for a maximum of five years, a suspect's place of residence, travel, access to communications facilities, and use of the internet. Details on the numbers of those detained or under restriction orders were not generally available.

In January Suaram and SUHAKAM jointly called on the federal government to release the 142 children detained under Malaysia's security laws. When the previous government introduced such legislation, "it promised to use the laws only

against hardcore criminals,” the executive director of Suaram said at a press conference. “How hardcore are 16- and 17-year-olds? If they are suspected murderers, arrest them and apply the law on them in court...POCA [the Prevention of Crime Act] should not be used on children.”

In other cases the law allows investigative detention for up to 28 days to prevent a criminal suspect from fleeing or destroying evidence during an investigation.

Immigration law allows authorities to arrest and detain noncitizens for 30 days, pending a deportation decision.

### **Arrest Procedures and Treatment of Detainees**

The law permits police to arrest and detain individuals for some offenses without a warrant, even outside situations of a crime in progress or other urgent circumstances. To facilitate investigations, police can hold a suspect for 24 hours, which can be extended for a maximum of 14 days by court order under general criminal law provisions. NGOs reported a police practice of releasing suspects and then quickly rearresting them in order to continue investigative custody without seeking judicial authorization.

Some NGOs asserted that a police approach of “arrest first, investigate later” was prevalent, particularly in cases involving allegations of terrorism. By law a person must be informed of the grounds for arrest by the arresting officer.

Bail is usually available for persons accused of crimes not punishable by life imprisonment or death. The amount and availability of bail is at the judge’s discretion. Persons granted bail usually must surrender their passports to the court.

Police must inform detainees of the rights to contact family members and consult a lawyer of their choice. Nonetheless, police often denied detainees’ access to legal counsel and questioned suspects without allowing a lawyer to be present. Police justified this practice as necessary to prevent interference in investigations in progress, and the courts generally upheld the practice.

While authorities generally treated attorney-client communications as privileged, Malaysian Anticorruption Commission officials may question lawyers who accompanied their clients to commission hearings (which are nonjudicial) about their interaction with their clients and the content of their discussions.

Police sometimes did not allow detainees prompt access to family members or other visitors.

The law allows the detention of a material witness in a criminal case if that person is likely to flee.

Arbitrary Arrest: Authorities sometimes used their powers to intimidate and punish opponents of the government. Activists and government critics were often subject to late-night arrests, long hours of questioning, and lengthy remand periods, even if they were not ultimately charged with an offense.

Pretrial Detention: Crowded and understaffed courts often resulted in lengthy pretrial detention, sometimes lasting several years.

#### **e. Denial of Fair Public Trial**

Three constitutional articles provide the basis for an independent judiciary; however, other constitutional provisions, legislation restricting judicial review, and executive influence over judicial appointments limited judicial independence and strengthened executive influence over the judiciary. The judiciary frequently deferred to police or executive authority in cases those parties deemed as affecting their interests.

Members of the Malaysian Bar Council, NGO representatives, and other observers expressed serious concern about significant limitations on judicial independence, citing a number of high-profile instances of arbitrary verdicts, selective prosecution, and preferential treatment of some litigants and lawyers.

In an affidavit filed in February as part of a lawsuit against then chief justice Richard Malanjum, Hamid Sultan Abu Backer, a sitting court of appeals judge, alleged government interference in previous judicial decisions and claimed judges were complicit in sham cases designed to reward government supporters with large settlements. Hamid also said senior judges feared the new Pakatan Harapan government would investigate the judiciary upon taking power but realized it would be “business as usual” once Malanjum and other judges were promoted.

In April the Federal Court sentenced lawyer Arun Kasi to 30 days in jail and fined him 40,000 ringgit (RM) (\$9,600) after finding him guilty of contempt for criticizing a previous court ruling in an online blog post. The court said Arun’s statements criticizing court procedures “were serious and tarnished the good name

of the judiciary as a whole, undermined the public confidence in the judiciary, and ridiculed, scandalised and offended the dignity, integrity and impartiality of the court.” Eric Paulsen, Malaysia’s representative to the ASEAN Intergovernmental Commission on Human Rights, said the sentence was unnecessary, noting, “Justice is not a cloistered virtue, and everyone must be allowed to be critical, rightly, wrongly, even being rude or outspoken regarding the judiciary.”

## **Trial Procedures**

The constitution provides for a fair and public trial, and the judiciary generally enforced this right. The civil law system is based on British common law and defendants are presumed innocent until proven guilty. Defendants have the right to be informed promptly of the charges against them, to a timely trial, and to be present at their trial. Defendants have the right to communicate with an attorney of their choice or to have counsel appointed at public expense if they face charges that carry the death penalty. Defendants also may apply for a public defender in certain other cases.

According to the Malaysian Bar Council, defendants generally had adequate time and facilities to prepare a defense if they had the means to engage private counsel. Otherwise, defendants must rely on legal aid and the amount of time to prepare for trial is at the discretion of the judge. Authorities provide defendants free interpretation in Mandarin, Tamil, and some other commonly used dialects from the moment charged through all appeals. The right to confront witnesses is limited by provisions allowing the identity of prosecution witnesses to be kept secret from the defense before a trial, which inhibits cross-examination of those witnesses. Defendants may present witnesses and evidence on their behalf. Limited pretrial discovery in criminal cases also impeded the defense. Strict rules of evidence apply in court. Defendants cannot be compelled to testify or confess guilt.

Defendants may appeal court decisions to higher courts, but only if the appeal raises a question of law or if material circumstances raise a reasonable doubt regarding conviction or sentencing. The Malaysian Bar Council claimed these restrictions were excessive.

In cases related to terrorism or national security, the law allows police to hold persons, even after acquittal, against the possibility of appeal by the prosecution.

Many NGOs complained women did not receive fair treatment from sharia courts, especially in divorce and child custody cases (see section 6).

## **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

Individuals or organizations may sue the government and officials in court for alleged violations of human rights; however, a large case backlog often resulted in delays in civil actions, to the disadvantage of plaintiffs. The courts have increasingly encouraged the use of mediation and arbitration to speed settlements.

### **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

Laws prohibit such actions; nevertheless, authorities sometimes infringed on citizens' privacy. Under national security laws, police may enter and search the homes of persons suspected of threatening national security without a warrant. The government monitored the internet and threatened to detain anyone sending or posting content the government deemed a threat to public order or security (see section 2.a.).

Islamic authorities may enter private premises without a warrant to apprehend Muslims suspected of engaging in offenses such as gambling, consumption of alcohol, and sexual relations outside marriage.

The government does not recognize marriages between Muslims and non-Muslims and considers children born of such unions illegitimate.

There were no developments during the year in a pending case stemming from a 2017 court of appeal ruling that the National Registration Division was not bound by an edict issued by the National Fatwa Committee that declared children to be illegitimate, and therefore unable to take their father's name, if they were born fewer than six months after the parents' marriage. The government appealed the case in 2017 and successfully applied for a stay.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Expression, Including for the Press**

The constitution allows restrictions on the freedom of expression “in the interest of the security of the Federation...[or] public order.” The government regularly restricted freedom of expression for members of the public, media, and civil society, citing reasons such as upholding Islam and the special status of ethnic Malays, protecting national security, maintaining public order, and preserving friendly relations with other countries.

Freedom of Expression: The law prohibits sedition and public comment on issues defined as sensitive, including racial and religious matters or criticism of the king or ruling sultans.

In July a sessions court upheld the sedition conviction of Wan Ji, an Islamic preacher and former political aide, for insulting the sultan of Selangor State in 2012, and sentenced him to three months in jail in addition to the nine-month sentence a lower court imposed. Upon his release from custody pending appeal, Wan Ji said a police warden punched him three times while he was detained; he speculated that the attack was politically motivated but said he could not be sure. Following the session court’s decision, Amnesty International Malaysia stated, “The restrictions on the right to freedom of expression imposed in the Sedition Act are phrased in an excessively broad and vague manner, potentially resulting in both an overreach of the law and potential for abusive application of the law. The law should have been abolished by now, as per Pakatan Harapan’s manifesto.”

In August police banned Islamic preacher Zakir Naik from speaking in public and posting on social media after he made comments insulting ethnic Chinese and Indian minority groups. Zakir Naik was banned from preaching in several other countries under antihate laws. The Inspector General of Police said the ban “is only temporary,” adding that “if the situation doesn’t change, the order will remain.” Police said they “ordered” law enforcement officers to “advise” organizers of any events involving Naik to cancel his participation. Police justified their action citing a law authorizing them to maintain “law and order” and preserve “peace and security.” Some lawyers argued police did not have the authority to ban someone from speaking in public under such a provision. Referring to the section of law cited by police, one lawyer told media, “That section is just to identify the role of the police force. It does not give explicit power to do anything specific.”

Press and Media, Including Online Media: Political parties and individuals linked to the former Barisan Nasional ruling coalition owned or controlled a majority of shares in almost all English and Malay language print and broadcast media, many

of which were overtly pro-opposition. Online media outlets were more independent but were often the target of legal action and harassment.

Despite many restrictions and official pressure, opposition parties, social action groups, unions, internet news sites, and other private groups actively covered opposition activity and frequently printed views critical of government policies. Online media and blogs provided views and reported stories not featured in the mainstream press.

The government maintained and at times exerted control over news content, both in print and broadcast media. The government banned, restricted, or limited circulation of publications believed a threat to public order, morality, or national security. The government has the power to suspend publication for these reasons and retained effective control over the licensing process.

In October parliament repealed the law against “fake news,” which criminalized the “malicious” production or dissemination of “any news, information, data or reports, which is or are wholly or partly false.” Parliamentarians voted to repeal the law in August 2018, but the opposition-controlled Senate overturned the decision, postponing the law’s repeal.

Violence and Harassment: Journalists were subject to harassment and intimidation. In September police summoned Dennis Ignatius, a columnist and former Malaysian diplomat, as they investigated his August 16 column in *Free Malaysia Today* criticizing Zakir Naik, a controversial Islamic preacher. Referring to India’s attempt to extradite Naik, an Indian national, and Naik’s police report against him for defamation, Ignatius told reporters, “I think it’s so ironic that in this era of *Malaysia Baru* (New), I am now being summoned to the police to give a statement because of a report filed by a fugitive.” In August police detained a foreign journalist who had been taking photographs of a blockade set up by indigenous-rights activists in Perak state. The journalist was released after the intervention of the state’s chief minister.

Censorship or Content Restrictions: The government maintained the ability to censor media but did not use this power as frequently as did its predecessor. The law requires a permit to own a printing press, and printers often were reluctant to print publications critical of the government due to fear of reprisal. Such policies, together with antidefamation laws, inhibited independent or investigative journalism and resulted in self-censorship in the print and broadcast media.

According to the NGO Reporters Without Borders, “The general environment for journalists is much more relaxed, self-censorship has declined dramatically, and the print media are now offering a fuller and more balanced range of viewpoints, including support for the new ruling coalition led by Prime Minister Mahathir Mohamad, and support for the old ruling coalition, now in the opposition.” Reporters Without Borders said the lack of progress amending or annulling controversial legislation that limited freedom of expression continued to “pose a constant threat to media personnel, who still cannot express themselves with complete freedom, despite all the progress.”

The government occasionally censored foreign magazines, newspapers, and news programming, most often due to sexual content.

Government restrictions on radio and television stations mirrored those on print media, and the electronic media predominantly supported the government. Television stations censored programming to follow government guidelines.

The government generally restricted publications it judged might incite racial or religious disharmony. The Ministry of Home Affairs maintained a list of 1,715 banned publications as of November. In April the high court upheld a previous ban on three books by the Islamic Renaissance Front (IRF) because the books “are likely to be prejudicial to public order and interest and likely to alarm public opinion.” IRF’s director, Farouk Musa, said, “It seems to me the minister of home affairs has the absolute discretion in banning books that do not conform” to the version of Islam preferred by Islamic authorities. The same month, the high court lifted the previous government’s ban on the book, *Breaking Silence: Voices of Moderation--Islam in a Constitutional Democracy*, by the NGO G25.

Libel/Slander Laws: The law includes sections on civil and criminal defamation. Criminal defamation is punishable by a maximum two years’ imprisonment, a fine, or both. True statements can be considered defamatory if they contravene the “public good.” The government and its supporters used these laws, along with provisions against sedition, to punish and suppress publication of material critical of government officials and policies.

National Security: Authorities under the former government occasionally cited national security laws to restrict media distribution of material critical of government policies and public officials. The current government maintained the ability to impose these restrictions.

Nongovernmental Impact: NGOs sympathetic to the former government sought to limit freedom of expression through criminal complaints of allegedly seditious speech. Such NGOs also sometimes attempted to intimidate opposition groups through demonstrations.

### **Internet Freedom**

The government generally maintained a policy of restricted access to the internet. Authorities blocked some websites and monitored the internet for messages and blog postings deemed a threat to public security or order. Following the 2018 election, the new government restored access to several online media outlets that were previously blocked, including *Sarawak Report* and *Medium*.

Authorities restricted internet freedom to combat dissenting political views online. In March the government announced it had established a unit to monitor social media for provocative posts. The same month, a court in Kuching, Sarawak sentenced Alister Cogia, the owner of the Facebook account *Ayea Yea*, to 10 years and 10 months in prison for posting comments deemed insulting to Islam and the Prophet Mohammad.

The government warned internet users to avoid offensive or indecent content and sensitive matters such as religion and race, and aggressively pursued charges against those criticizing Islam, the country's royalty, or its political leaders. In September authorities arrested at least five individuals for separate social media posts insulting Islam and ethnic Malays. In response to one of the arrests, a former president of Transparency International Malaysia told media, "Most of the time the government's action is not consistent and is likely seen as insincere or politically motivated."

In July the court of appeal upheld artist Fahmi Reza's conviction for improper use of network facilities and knowingly creating offensive content based on a 2016 posting on Facebook of a clown-face caricature of former prime minister Najib Razak.

In August the government said it had referred to police for further investigation more than 5,000 complaints of statements insulting the prophet Mohammad.

Sedition and criminal defamation laws led to self-censorship by local internet content sources, including bloggers, news providers, and NGO activists.

The law requires internet and other network service providers to obtain a license and permits punishment of the owner of a website or blog for allowing offensive racial, religious, or political content. The government regards those who post content as publishers, thereby placing the burden of proof on the poster. NGOs and members of the public criticized the law, noting it could cause self-censorship due to liability concerns.

### **Academic Freedom and Cultural Events**

The government placed some restrictions on academic freedom, particularly the expression of unapproved political views, and enforced restrictions on teachers and students who expressed dissenting views. The government requires all civil servants, university faculty, and students to sign a pledge of loyalty to the king and government. Some politicians and human rights activists claimed the government used the loyalty pledge to restrain political activity among these groups. Although faculty members sometimes publicly criticized the government, public university academics whose career advancement and funding depended on the government practiced self-censorship. Self-censorship took place among academics at private institutions as well, spurred by fear the government might revoke the licenses of their institutions. The law imposes limitations on student associations and on student and faculty political activity. In March the government implemented amendments to the Universities and University Colleges Act permitting students to participate in some political activities, including conducting student elections, forming student unions, holding debates, organizing rallies, and participating in political fora.

Citing sedition law, police investigated participants in an April forum on Malaysia's accession to the Rome Statute and the International Criminal Court after some individuals accused panelists of offending the country's royalty. One of the organizers told media, "If people made a police report, then it is the police's duty to investigate. It doesn't necessarily mean it will lead to arrests or charges. But it's time for Pakatan Harapan to abolish the Sedition Act...Police should be going after criminals and not after people who desire to promote debate and discussion."

The government censored films for certain political and religious content, not allowing, for example, screening of films in Hebrew, Yiddish, or from Israel. Although the government allowed foreign films at local film festivals, it sometimes censored content by physically blocking screens until the objectionable scene was over. Media censorship rules forbid movies and songs that promote acceptance of

gay persons (see section 6). In July the Film Censorship Board removed some scenes from the Hollywood film *Rocketman* because of same-sex content.

## **b. Freedoms of Peaceful Assembly and Association**

The constitution provides for the freedoms of peaceful assembly and association but allows restrictions deemed necessary or expedient in the interest of security, public order, or (in the case of association) morality. Abiding by the government's restrictions did not protect some protesters from harassment or arrest.

### **Freedom of Peaceful Assembly**

The constitution provides citizens “the right to assemble peaceably and without arms;” however, several laws restricted this right. Although the law does not require groups to obtain a permit for assemblies, police frequently placed time, location, and other restrictions on the right to assemble. Authorities banned street protests, and police sometimes confronted civil society and opposition demonstrations with mass arrests.

Protests deemed acceptable by the government usually proceeded without interference.

Parliament passed several amendments to the Peaceful Assembly Act in July, including decriminalizing street protests and reducing the required period of advance notice from 10 to five days. Organizing an assembly that occurs without the proper notice will still be considered a criminal offense. Local NGOs welcomed the changes but called on the government to repeal other provisions in the act that restrict civil liberties. In a statement, Human Rights Watch observed, “While permitting street protests and shortening the notice period are steps in the right direction, the proposed revisions don’t address many fundamental problems with the law. The bill still discourages peaceful assembly rather than facilitates this basic right.”

### **Freedom of Association**

The constitution provides for the right of association; however, the government placed significant restrictions on this right, and certain statutes limit it. By law only registered organizations of seven or more persons may legally function. The government often resisted registering organizations deemed particularly unfriendly to the government or imposed strict preconditions. The government may revoke

registrations for violations of the law governing societies.

The government bans membership in unregistered political parties and organizations.

In March the government implemented amendments to the law permitting students to participate in some political activities. Students remain prohibited from “expressing support or sympathy” for an unlawful society or organization.

Many human rights and civil society organizations had difficulty obtaining government recognition as NGOs. As a result, many NGOs registered as companies, which created legal and bureaucratic obstacles to raising money to support their activities. Authorities frequently cited a lack of registration as grounds for action against organizations. Some NGOs also reported the government monitored their activities in order to intimidate them.

### **c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

### **d. Freedom of Movement**

The constitution provides for freedom of internal movement, emigration, and repatriation, but these rights were often restricted by federal and state government officials, particularly in eastern Sabah and Sarawak States.

In-country Movement: Sabah and Sarawak States controlled immigration into their areas and required citizens from peninsular Malaysia and foreigners to present passports or national identity cards for entry. State authorities continued to deny entry to certain national leaders to these states. Sarawak maintained its ban on Zakir Naik, a controversial Islamic preacher; Mandeep Karpal Singh, formerly of the fair-election NGO coalition Bersih; current Bersih chair Thomas Fann; former chairs Maria Chin and Ambiga Sreenevasan; Wong Chin Huat, an academic and Bersih resource chair; Jerald Joseph, a SUHAKAM commissioner; and activists Colin Nicholas and Jannie Lasimbang, among others. The Sabah state government lifted its ban on political activists.

Foreign Travel: Travel to Israel is subject to approval and limited to religious purposes.

In May the Immigration Department lifted travel restrictions on former attorney general Apandi Ali after Apandi challenged them, arguing that he had not been charged with any criminal offense and did not face any pending legal actions. In 2016, while attorney general with the previous government, Apandi cleared Prime Minister Najib Razak of any wrongdoing in a corruption scandal.

#### **e. Internally Displaced Persons**

Not Applicable.

#### **f. Protection of Refugees**

As of August, 177,690 refugees and asylum seekers were registered with UNHCR in Malaysia, of whom more than 153,000 were from Burma.

Abuse of Migrants, Refugees, and Stateless Persons: The government generally did not impede organizations providing protection and assistance to migrants, refugees, and stateless persons, most of whom lived intermingled with the general public. The government cooperated to a limited extent with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees and asylum seekers. As there is no legal framework for dealing with refugees and asylum seekers in the country, UNHCR conducted all activities related to protection, including registration and status determination. Most migrants, refugees, and stateless persons lived in private accommodations and survived on support from UNHCR, NGOs, or illegal casual labor. The government held thousands in immigration detention centers and other facilities. Access to those in detention centers was often significantly limited.

NGOs and international organizations involved with these populations made credible allegations of overcrowding, inadequate food and clothing, lack of regular access to clean water, poor medical care, improper sanitation, and lack of bedding in the immigration detention centers. In July the Philippine civil society organization Migrant International accused Malaysian immigration officials of keeping detained migrants in inhumane conditions, with inadequate food and water and subject to verbal abuse. The group claimed one detainee showing signs of psychosis was tied to the wall and forced to stand for long periods. NGOs provided most medical care and treatment in the detention centers.

Local and international NGOs estimated the population at most of the country's 17 immigration detention centers was at or beyond capacity, with some detainees held for a year or longer. The number detained in these centers was not publicly available.

Human rights organizations expressed serious concerns about the lack of access to fair legal process and adequate representation during immigration court hearings. The Malaysian Bar Council strongly criticized the immigration courts in detention centers as facilitating a legal process where migrant workers were not provided with a clear understanding of the charges against them in their own language and were effectively denied the right to legal counsel. At court hearings, 15 to 20 migrants were often tried together, grouped by the offense with which they were charged. If found guilty, the cost of deportation generally fell to the detainee, which led to prolonged detention for those unable to pay.

Refoulement: The government at times forcibly returned refugees to countries where their lives or freedom were at risk. In May Malaysian authorities forcibly returned Praphan Pipithnamporn, a Thai national registered as an asylum seeker with UNHCR and considered a "person of concern," to Thailand at the request of Thai authorities. According to media, the Thai government issued a warrant for her arrest in January, "accusing her of sedition and organized crime for her involvement with the Organization for Thai Federation, a peaceful antimonarchy group." In a statement, Human Rights Watch said, "Malaysia's flouting of international law has placed a Thai activist at grave risk of arbitrary detention and an unjust prosecution in Thailand."

The wife of Abdallah Mahmoud Hisham, deported to Egypt in March, said her husband had gone missing after returning to Egypt. Human Rights Watch stated that Abdallah Mahmoud Hisham, along with Abdelrahman Abdelaziz Ahmed, Mohamed Fathy Eid, and Azmy al-Sayed Mohamed, who were deported at the same time for their alleged membership in the Muslim Brotherhood, were at "serious risk of torture and ill-treatment in Egypt."

Access to Asylum: The law does not provide for granting asylum or refugee status, and the government has not established a system for providing protection to refugees.

Migrants, refugees, and stateless persons receive no government support. The government allows UNHCR and NGOs to work with these populations, but government cooperation with UNHCR was inconsistent.

As “illegal immigrants,” refugees and others are subject to deportation at any time. They also face a maximum five years’ imprisonment, a fine of RM10,000 (\$2,400), or both, and mandatory caning with a maximum six strokes if convicted of immigration-law violations.

Freedom of Movement: The government generally tolerated the presence of undocumented refugees and asylum seekers but sometimes detained them for a variety of causes in police jails or immigration detention centers until they could be deported or UNHCR established their bona fides. Some refugees holding UNHCR identification cards nonetheless reported limited ability to move throughout the country because authorities sometimes did not recognize the UNHCR card.

Employment: Although the government does not authorize UNHCR-registered refugees to work, it typically did not interfere if they performed informal work. UNHCR reported the government brought charges, in a few cases, against employers for hiring them. Refugees employed in the informal sector were paid lower wages than comparable employees and were vulnerable to exploitation.

Access to Basic Services: The government provided access to health care at a discounted foreigner’s rate of 50 percent to UNHCR-registered refugees, but not to persons without UNHCR registration cards. NGOs operated static and mobile clinics, but their number and access were limited. Refugees did not have access to the public education system. Access to education was limited to schools run by NGOs and ethnic communities, and UNHCR estimated no more than 40 percent of refugee children attended school. A lack of resources and qualified teachers limited opportunities for the majority of school-age refugee children. UNHCR staff members conducted numerous visits to prisons and immigration detention centers to provide counseling, support, and legal representation for refugees and asylum seekers.

Temporary Protection: The government provided temporary, renewable residence permits to a group of Syrian refugees. The permit allows for legal residency and conveys work rights, but must be renewed annually.

### **g. Stateless Persons**

The National Registration Department did not maintain records of stateless persons. In 2018 UNHCR estimated there were 12,350 stateless persons residing in peninsular Malaysia and 450,000 in Sabah.

Citizenship law and birth registration rules and procedures created a large class of stateless children in the migrant and refugee population. When mothers did not have valid proof of citizenship, authorities entered the child's citizenship as "unknown" on the birth certificate. UNHCR deemed this a widespread problem.

Even if the father is a citizen, the marriage may be considered invalid and the children illegitimate if the mother lacks proof of citizenship; such children were also considered stateless.

Some observers indicated that children born to Muslim refugees and asylum seekers often had an easier time obtaining citizenship than non-Muslim refugees and asylum seekers. For refugees in Muslim marriages, the observers claimed authorities often accepted a UNHCR document or other documentation in lieu of a passport as proof of citizenship.

Persons who lacked proof of citizenship were not able to access government services, such as reduced-cost health care, or own property. The federal government began, however, to permit stateless children to enroll in public schools if parents were able to prove the child's father was Malaysian. According to the Perak government, 427 stateless and undocumented children were allowed to attend schools in the state as of April.

In February the home minister granted citizenship to three stateless children whose parents had sued the federal government in court. Because the families subsequently withdrew their court cases, the judiciary did not establish a binding legal precedent in cases involving stateless children. On October 21, however, the Kuala Lumpur high court granted Wong Kueng Hui citizenship and ordered the National Registration Department to issue him an identity card, marking the first time a court has granted citizenship to a stateless person. In all previous cases, the home minister granted citizenship to individuals before a court ruled on their cases. "I'm happy to be a Malaysian but at the same time, I feel sad because the country still has no solution for stateless people. I hope my victory will pave the way for others to pursue their case," Wong said in an interview.

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage. In 2018 the opposition Pakatan Harapan coalition unseated the ruling Barisan

Nasional coalition in general elections, marking the first federal transition of power between coalitions since independence in 1957. Prior to the elections, then opposition political parties were disadvantaged due to government control over traditional media outlets and malapportionment of constituencies, among other issues.

While authorities generally recorded votes accurately, there were irregularities perpetrated by the former government that affected the fairness of elections. A special election court ruled on August 16 that there were serious breaches in the Kimanis parliamentary district in Sabah State during the May 2018 general election, including “manipulation” of ballot boxes and more than 300 “improperly cast” ballots. Former foreign minister Anifah Aman, who has held the Kimanis seat since 1999, won in 2018 by 156 votes; he appealed the court’s decision.

The constitution fixes the number of seats in parliament assigned to each state to the advantage of rural states and regardless of population shifts over time. Moreover, it does not require equal populations in electoral constituencies in any given state. Each constituency elects one member of parliament. The Electoral Commission has established constituencies with widely varying populations, further to the advantage of rural populations. For example, the rural district of Igan had 18,000 registered voters, while the urban district of Kapar had more than 144,000 registered voters. Local and municipal officials are appointed at the state or federal level.

### **Elections and Political Participation**

Recent Elections: The country’s general election was held in May 2018 amid allegations of partisanship on the part of public institutions, in particular the Election Commission and the Registrar of Societies. A consortium of NGOs released a formal report in July 2018 detailing irregularities in the election, including vote buying, the use of public funds for partisan activity, and allegations of biased behavior by public officials. According to the NGOs, none of which were formally accredited to observe the polls, federal and state governments spent over RM five billion (\$1.2 billion) on “handouts” after legislatures had been dissolved and lawmakers were ostensibly prohibited from making new financial commitments. The report also alleged one accredited election observer actively campaigned for the former government.

Despite strong objections by opposition political parties and civil society, in March 2018 the former government approved redrawn parliamentary districts that critics

said unfairly advantaged Barisan Nasional through gerrymandering and malapportionment. By law the government cannot redraw the electoral boundaries until 2026 unless members of parliament amend the federal constitution, a process which requires a two-thirds majority vote.

The king, on the advice of the federal government, appointed five new election commissioners on February 14, including a former senior civil servant, a law professor, and former civil society activists. Civil society groups largely praised the appointments; member of parliament and former Bersih chair Maria Chin Abdullah told media, “This is a good start...I believe they can bring...reform to make the electoral process a fair one.” The previous election commissioners, all retired civil servants with little election experience but strong ties to the Barisan Nasional government, resigned in 2018 amidst accusations of malfeasance.

Political Parties and Political Participation: Many opposition candidates were unable to compete on equal terms with the then ruling Barisan Nasional coalition and were subject to restrictions and outside interference during the 2018 election campaign. Registering a new political party remained difficult because of government restrictions on the process.

Members of parliament voted unanimously on July 16 in favor of a bill to lower the voting age from 21 to 18.

Participation of Women and Minorities: No laws limit participation by women or members of minorities in the political process, and they did participate. Deputy Prime Minister Wan Azizah Wan Ismail was the first woman to hold the post. In 2018 the Pakatan Harapan government appointed the first non-Malays as law minister, attorney general, and chief justice, although the latter retired during the year. In May, Tengku Maimun Tuan Mat was appointed chief justice, the first woman to hold the position.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials; prior to the 2018 change of government, however, enforcement generally focused on relatively small-scale, low-level crime. After the change, the government charged several former government officials with corruption, including the former prime minister, although there remained a broadly held perception of widespread corruption and cronyism in government institutions. Media outlets reported numerous cases of alleged official corruption.

The Malaysian Anticorruption Commission is responsible for investigating corruption in both private and public bodies but does not have prosecutorial authority. An auditor general is responsible, per the constitution, for auditing the accounts of the federal and state governments, government agencies, and other public authorities.

Responding to questions in parliament on March 28, a deputy minister confirmed that the report on governance and the economy drafted by the Council of Eminent Persons (CEP), an advisory body established by Prime Minister Mahathir, would remain classified because it contained confidential information. Civil society criticized the decision, as did some members of parliament. According to the Center for Independent Journalism, “any document can be classified secret once it has been certified as such by a public officer” and “the courts have no jurisdiction to review whether or not the document should be considered secret.”

Corruption: Corruption was a key campaign issue in the 2018 general elections.

Suits filed in 2018 against former prime minister Najib Razak and his wife, Rosmah Mansor, remained ongoing. Najib was charged with criminal breach of trust, abuse of power as a public officer, and money laundering; Rosmah was charged with 19 counts of money laundering and tax evasion.

According to the federal government, authorities arrested 418 civil servants for bribery in 2018; as of April, 140 had been charged. In January Prime Minister Mahathir said reports of alleged corruption were increasing because individuals no longer feared filing complaints with the Malaysian Anticorruption Commission, adding that most of the reports were linked to the previous government.

The federal government launched a national anticorruption plan in January. The plan is composed of 115 initiatives, including sweeping changes to how government officials are appointed and to the procurement process; requirements that legislators publicly declare their assets; and new laws regulating political financing and lobbying.

Financial Disclosure: Cabinet members must declare their assets to the prime minister. Senior civil servants are required to declare their assets to the chief secretary of the government. Junior civil servants must declare their assets to the head of their department. The assets, liabilities, and interests public officials must declare are clearly defined and do not include the assets and incomes of spouses

and dependent children, except in the case of members of parliament. Public officials must declare their assets annually, but not upon entering or leaving office. Those who refuse or fail to declare their assets face disciplinary actions and are ineligible for promotion. The government did not make public these declarations.

In a unanimous voice vote, lawmakers passed a regulation on July 1 compelling all members of parliament, their immediate family members, and trustees to declare their assets by October 1. Those who did not abide by the requirement could be held in contempt of parliamentary regulations, while those found to have provided false information could be subject to criminal proceedings. Prime Minister Mahathir said the initiative would deter members of parliament from abusing their positions. Although opposition members did not vote against it, the deputy president of the Pan-Malaysian Islamic Party claimed the measure is unnecessary and against Islam, arguing, “If God gives us wealth, you do not reveal it to the public, because it will create attention and envy.” Former prime minister Najib Razak said the decision was “unfair” because many parliamentarians derive income from sources in addition to their government salary.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

Domestic and international human rights groups operated subject to varying levels of government restriction, investigating and publishing their findings on human rights cases; however, the government was not always cooperative or responsive to their views. In October Michelle Bachelet became the first UN high commissioner for human rights to visit Malaysia, at the invitation of the Malaysian government.

In April police summoned Numan Afifi, an LGBTI activist and president of the NGO PELANGI Campaign, to question him about statements he made during Malaysia’s Universal Periodic Review (UPR) at the United Nations in Geneva in March. Numan said the police action was “designed to intimidate and harass human rights defenders.”

Outside the political and human rights fields, the government generally allowed NGOs to function independently, met with representatives from some NGOs, and responded to some NGO requests. The government, however, also took action against some NGOs. In an August 27 ruling, the high court dismissed the argument by the NGO Sisters in Islam that a 2014 Selangor state fatwa deeming the organization “deviant” represented an infringement on the group’s and members’ constitutional rights. The fatwa stated that Sisters in Islam deviated

from the teachings of Islam because it subscribed to the principles of liberalism and pluralism, ruling that its books and materials could be seized, although the court did not define “liberalism” or “pluralism.” At a press conference outside the courtroom the NGO’s executive director said she was “very disappointed” in the decision, adding, “We are looking at really dark hours ahead for Malaysia.”

Government Human Rights Bodies: Created by an act of parliament, the official human rights commission SUHAKAM is headed by a chairperson and commissioners appointed by the king on the recommendation of the prime minister. Observers generally considered SUHAKAM a credible human rights monitor. It conducted training, undertook investigations, issued reports, and made recommendations to the government. SUHAKAM may not investigate court cases in progress and must cease its inquiries if a case becomes the subject of judicial action.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

### **Women**

Rape and Domestic Violence: Rape is a criminal offense, as are most forms of domestic violence. Rape is punishable by a maximum 20 years’ imprisonment and caning. The law does not recognize marital rape as a crime.

Women’s groups asserted the courts were inconsistent in punishing rapists.

Although the government and NGOs maintained shelters and offered other assistance to victims of domestic violence, activists asserted that support mechanisms remained inadequate. Many government hospitals had crisis centers where victims of rape and domestic abuse could file reports without going to a police station. There is also a sexual investigations unit at each police headquarters to help victims of sexual crimes and abuse, and police sometimes assign psychologists or counselors to provide emotional support.

Female Genital Mutilation/Cutting (FGM/C): The law does not prohibit FGM/C and it is a common practice. While recent data was very limited, a 2012 study by a professor at the Department of Social and Preventive Medicine, University of Malaya, found that more than 93 percent of approximately 1,000 Muslim women surveyed in three of Malaysia’s 13 states had undergone the procedure. Ministry of Health guidelines allow the practice in general but only at government health-care facilities, which was not always the case. Women’s rights groups said a 2009

fatwa by the National Council of Islamic Religious Affairs declaring the practice obligatory made FGM/C more prevalent. According to an investigation published by local media in 2018, there are no standard procedures for the practice and “in some cases box cutters and stationery store blades are used.” The Ministry of Health has never released guidelines for the procedure. Government officials defended the practice during a UN review in 2018, when a Ministry of Health official stated that the practice was performed only by medical professionals and compared it to immunization programs for female babies. The UN panel urged the country to abolish the practice.

Sexual Harassment: The law prohibits a person in authority from using his or her position to intimidate a subordinate to have sexual relations. The law classifies some types of workplace sexual harassment as criminal offenses (see section 7.d.). A government voluntary code of conduct provides a detailed definition of sexual harassment intended to raise public awareness of the problem. Observers noted that authorities took claims seriously, but victims were often reluctant to report sexual harassment because of the difficulty of proving the offense and the lengthy trial process.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The constitution prohibits discrimination against citizens based on gender and gives men and women equal property rights although sharia, which deviates from these principles in some areas, was sometimes applied. For instance, Islamic inheritance law generally favors male offspring and male relatives. Sharia also generally requires a husband’s consent for divorce, but a small and steadily increasing number of women obtained divorces under sharia without their husband’s consent. Non-Muslims are not subject to sharia. Civil law gives non-Muslim mothers and fathers equal parental rights, while sharia favors fathers. Nevertheless, four states--Johor, Selangor, Negri Sembilan, and Pahang--extend equal parental rights to Muslim mothers.

The law requires equal pay for male and female workers for work of equal value. Nonetheless, NGOs reported continued discrimination against women in the workplace in terms of promotion and salary (see section 7.d.).

The law does not permit mothers to transmit citizenship automatically to children born overseas. Children born overseas can only be registered as citizens if the father of the child is a citizen.

## Children

Birth Registration: A child born in the country obtains citizenship if one parent is a citizen or permanent resident at the time of birth and the parents are married. Parents must register a child within 14 days of birth. Parents applying for late registration must provide proof the child was born in the country. According to UNHCR, children born to citizen mothers outside the country may only acquire citizenship at the discretion of the federal government through registration at an overseas Malaysian consulate or at the National Registration Department in country. Authorities do not register children born to illegal immigrants or asylum seekers. UNHCR registered children born to refugees (see section 2.d.).

Education: Education is free, compulsory, and universal through primary school (six years) for citizens and permanent residents, although there was no mechanism to enforce attendance. Public schools are not open to the children of illegal immigrants or refugees, whether registered with UNHCR or not.

Early and Forced Marriage: The minimum age of marriage is 18 for men and 16 for women. Muslim women younger than 16 may marry with the approval of a sharia court. In some cases authorities treated early marriage as a solution to statutory rape.

Sexual Exploitation of Children: The law outlaws pornography and states that a child is considered a victim of sexual abuse if he or she has taken part as a participant or an observer in any activity that is sexual in nature for the purposes of a photograph, recording, film, videotape, or performance. In 2018 federal police reported detecting approximately 20,000 internet addresses in the country uploading and downloading child pornography. Under the law the minimum age for consensual, noncommercial sex is 16 for both boys and girls. A conviction for trafficking in persons involving a child for the purposes of sexual exploitation carries a punishment of three to 20 years' imprisonment and a fine. There is a special court for sexual crimes against children, established to speed up trials which often took years to conclude. Child prostitution existed, and a local NGO estimated in 2015 that 5,000 children were involved in sex work in Kuala Lumpur and surrounding areas. Authorities, however, often treated children engaged in prostitution as offenders or undocumented immigrants rather than as victims.

The government focused on preventing sexual exploitation of children, including commercial sexual exploitation. In August the king, on the advice of the

government, appointed Noor Aziah Mohd Awal to be SUHAKAM's commissioner for children in order to resolve issues related to the protection of children.

The law provides for six to 20 years' imprisonment and caning for persons convicted of incest.

A child's testimony is acceptable only if there is corroborating evidence, which posed special problems for molestation cases in which the child victim was the only witness.

Displaced Children: Street children were most prevalent in Sabah. Estimates of the street-child population ranged from a few thousand to 15,000, many of whom were born in the country to illegal immigrant parents. Authorities deported some of these parents, leaving their children without guardians. Lacking citizenship, access to schooling, or other government-provided support, these children often resorted to menial labor, criminal activities, and prostitution to survive; those living on the streets were vulnerable to forced labor, including forced begging.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

### **Anti-Semitism**

The country's Jewish population was estimated at between 100 and 200 persons. Anti-Semitism was a serious problem across the political spectrum and attracted wide support among segments of the population. A 2015 Anti-Defamation League survey found 61 percent of citizens held anti-Jewish attitudes. Prime Minister Mahathir defended his right to be anti-Semitic in interviews. Following a speech at Columbia University in September, Mahathir said, "I am exercising my right to free speech. Why is it that I can't say something against the Jews, when a lot of people say nasty things about me, about Malaysia, and I didn't protest, I didn't demonstrate?"

The government restricted Israeli citizens from entering Malaysia to attend conferences or meetings organized by international organizations. A newspaper reported that the home minister stated in parliament on April 10 that the number of Israelis entering Malaysia for business and technology-related events dwindled

from 33 in 2016 to only three in 2019. In January the government announced it would not permit Israeli athletes to participate in the World Para Swimming Championships, scheduled for July in Sarawak state. The International Paralympic Committee said in a statement it was “bitterly disappointed at the stance of the Malaysian government” and canceled Malaysia’s hosting rights, moving the event to London. Minister of Youth and Sports Syed Saddiq told media that Malaysia would “lose its moral compass” if it allowed Israelis to compete in the event.

### **Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **Persons with Disabilities**

The law affords persons with disabilities the right to equal access and use of public facilities, amenities, services, and buildings open or provided to the public. The Ministry of Women, Family, and Community Development is responsible for safeguarding the rights of persons with disabilities.

New government buildings generally had a full range of facilities for persons with disabilities. The government, however, did not mandate accessibility to transportation for persons with disabilities, and authorities retrofitted few older public facilities to provide access to persons with disabilities. Recognizing public transportation was not “disabled friendly,” the government maintained its 50 percent reduction of excise duty on locally made cars and motorcycles adapted for persons with disabilities.

Employment discrimination occurred against persons with disabilities (see section 7.d.).

Students with disabilities attended mainstream schools, but accessibility remained a serious problem. Separate education facilities also existed but were insufficient to meet the needs of all students with disabilities.

### **National/Racial/Ethnic Minorities**

The constitution gives ethnic Malays and other indigenous groups, collectively known as *bumiputra*, a “special position” in the country. Government regulations and policies provided extensive preferential programs to boost the economic

position of bumiputra, who constituted a majority of the population. Such programs limited opportunities for nonbumiputra (primarily ethnic Chinese and Indians) in higher education and government employment. Many industries were subject to race-based requirements that mandated bumiputra ownership levels. Government procurement and licensing policies favored bumiputra-owned businesses. The government claimed these policies were necessary to attain ethnic harmony and political stability.

### **Indigenous People**

The constitution provides indigenous and nonindigenous people with the same civil and political rights, but the government did not effectively protect these rights. Indigenous people, who numbered approximately 200,000, constituted the poorest group in the country.

Indigenous people in peninsular Malaysia, known as *Orang Asli*, had very little ability to participate in decisions that affected them. A constitutional provision provides for “the special position of the Malays and natives of any of the States of Sabah and Sarawak” but does not refer specifically to the *Orang Asli*. This ambiguity over the community’s status in the constitution led to selective interpretation by different public institutions.

The courts have ruled that the *Orang Asli* have rights to their customary lands under the constitution, but NGOs said the government failed to recognize these judicial pronouncements. The government can seize this land if it provides compensation. There were confrontations between indigenous communities and logging companies over land, and uncertainty over their land tenure made indigenous persons vulnerable to exploitation. In August indigenous rights activists set up a blockade in Perak state to protest logging on land they claimed as their own. In a statement, the NGO Organization for the Preservation of Natural Heritage Malaysia (Peka Malaysia) said, “We regret that the state authorities and loggers are adamant,” continuously encroaching upon *Orang Asli* customary lands, “despite numerous police reports and complaints being lodged with the relevant authorities and ongoing investigations.” Local authorities attempted to prevent foreign media coverage of the incident. In July state authorities arrested several indigenous-rights activists for attempting to block access to the same area. The federal minister of unity and national well-being stated, “Until the legal boundary of *Orang Asli*’s land rights is determined, I am of the view it is illegal for state authorities to unilaterally grant permits for developers to encroach and exploit the rights of these defenseless people without prior informed consent.”

## **Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

Same-sex sexual conduct is illegal regardless of age or consent. The law states that sodomy and oral sex acts are “carnal intercourse against the order of nature.” In November the Selangor State sharia court sentenced five men to six to seven months in jail, six strokes of the cane, and RM4,800-4,900 (\$1,200-\$1,225) in fines for “attempting to have intercourse against the order of nature.” An LGBTI activist told media the ruling was “a gross injustice” and would cause a “culture of fear.” Religious and cultural taboos against same-sex sexual conduct were widespread (see section 2.a.).

Authorities often charged transgender persons with “indecent behavior” and “importuning for immoral purposes” in public. Those convicted of a first offense faced a maximum fine of RM25 (\$6.25) and a maximum sentence of 14 days in jail. The sentences for subsequent convictions are fines of up to RM100 (\$25) and up to three months in jail. Local advocates contended that imprisoned transgender women served their sentences in prisons designated for men and that police and inmates often abused them verbally and sexually.

The political opposition and some members of the public criticized the appointment of a transgender representative to the federal Ministry of Health’s Country Coordinating Mechanism, a committee supported by the Global Fund to Fight AIDS, Tuberculosis, and Malaria. A representative of the Pan-Malaysian Islamic Party (PAS) said the committee’s transgender representative should come “from the ex-transgender group” who had “gone through a positive phase and returned to [the original path],” adding that “promotion of gender equality is not the culture here in Malaysia. We support the stand made by deputy prime minister Datuk Seri Dr Wan Azizah, who has objected to the LGBT agenda and urged any agenda for the normalisation of LGBT to stop because it contradicts our religion and constitution.”

A 2018 survey by a local transgender rights group reported more than two-thirds of transgender women experienced some form of physical or emotional abuse. In January a 39-year-old transgender woman was found dead in Klang; she was believed to have been killed because of her gender identity.

State religious authorities reportedly forced LGBTI persons to participate in “treatment” or “rehabilitation” programs to “cure” them of their sexuality. In

February the federal minister for religious affairs said the government would implement an outreach program for LGBTI individuals that, “apart from providing assistance such as food,” would also include “religious education and counselling services so that they can return to leading normal lives.”

LGBTI persons reported discrimination in employment, housing, and access to some government services because of their sexuality.

In June the Islamic Development Department of Malaysia (Jakim) stated that a gender and sexuality conference to be held in Kuala Lumpur later in the year should be canceled because it “clearly promotes LGBT in Malaysia and is against Islam and the Federal Constitution.” In a post on social media, Jakim called on authorities to take “suitable action.”

The federal government announced in March it would investigate the organizers of an event commemorating International Women’s Day on March 9 under several Malaysian laws because the event involved and promoted the LGBTI community. The home minister also said the organizers did not notify the government of the event within the legally required timeframe, a charge the organizers denied. The federal minister of religious affairs said the march was a “misuse of democratic space” because of LGBT individuals’ participation. The Center for Independent Journalism criticized local media for “disproportionately [focusing] their reporting on the LGBT issue” and “using negative words in their headlines claiming that it was culturally inappropriate to raise the issue of fundamental human rights for the LGBTIQ-identifying community.”

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for limited freedom of association and for some categories of workers to form and join trade unions, subject to a variety of legal and practical restrictions. The law provides for the right to strike and to bargain collectively, but both were severely restricted. The law prohibits employers from interfering with trade union activities, including union formation. It prohibits employers from retaliating against workers for legal union activities and requires reinstatement of workers fired for union activity.

The law prohibits defense and police officials, retired or dismissed workers, or workers categorized as “confidential, managerial, and executive” from joining a

union. The law also restricts the formation of unions to workers in “similar” trades, occupations, or industries. Foreign workers may join a trade union but cannot hold union office unless they obtain permission from the Ministry of Human Resources. In view of the absence of a direct employment relationship with owners of a workplace, contract workers may not form a union and cannot negotiate or benefit from collective bargaining agreements.

The director general of trade unions and the minister of human resources may refuse to register or withdraw registration from some unions without judicial oversight. The time needed for a union to be recognized remained long and unpredictable. Union officials expressed frustration about delays in the settlement of union recognition disputes; such applications were often refused. If a union’s recognition request was approved, the employer sometimes challenged the decision in court, leading to multi-year delays in recognizing unions.

Most private-sector workers have the right to bargain collectively, although these negotiations cannot include issues of transfer, promotion, appointments, dismissal, or reinstatement. The law restricts collective bargaining in “pioneer” industries the government has identified as growth priorities, including various high-technology fields. Public-sector workers have some collective bargaining rights, although some could only express opinions on wages and working conditions instead of actively negotiating. Long delays continued in the treatment of union claims to obtain recognition for collective bargaining purposes. The government also had the right to compel arbitration in the case of failed collective bargaining negotiations.

Private-sector strikes are severely restricted. The law provides for penal sanctions for peaceful strikes. The law prohibits general strikes, and trade unions may not strike over disputes related to trade-union registration or illegal dismissals. Workers may not strike in a broad range of industries deemed “essential,” nor may they hold strikes when a dispute is under consideration by the Industrial Court. Union officials claimed legal requirements for strikes were almost impossible to meet; the last major strike occurred in 1962.

The government did not effectively enforce laws prohibiting employers from seeking retribution for legal union activities and requiring reinstatement of workers fired for trade union activity. Penalties included fines but were seldom assessed and generally not sufficient to deter violations. In July the Federal Court upheld a lower-court ruling that two banks had promoted clerical staff to executive positions without giving them any executive powers in order to exclude the employees from

the National Union of Bank Employees (Nube). The union's lawyer called the decision "groundbreaking."

Freedom of association and collective bargaining were not fully respected. National-level unions are prohibited; the government allows three regional territorial federations of unions--peninsular Malaysia, Sabah, and Sarawak--to operate. They exercised many of the responsibilities of national-level labor unions, although they could not bargain on behalf of local unions. The Malaysian Trade Unions Congress is a registered "society" of trade unions in both the private and government sectors that does not have the right to bargain collectively or strike but may provide technical support to affiliated members. Some workers' organizations were independent of government, political parties, and employers, but employer-dominated or "yellow" unions were reportedly a concern.

The inability of unions to provide more than limited protection for workers, particularly foreign workers who continued to face the threat of deportation, and the prevalence of antiunion discrimination created a disincentive to unionize. In some instances, companies reportedly harassed leaders of unions that sought recognition. Some trade unions reported the government detained or restricted the movement of some union members under laws allowing temporary detention without charging the detainee with a crime. Trade unions asserted some workers had wages withheld or were terminated because of union-related activity.

## **b. Prohibition of Forced or Compulsory Labor**

The law prohibits and criminalizes all forms of forced or compulsory labor. Five agencies, including the Department of Labor of the Ministry of Human Resources, have enforcement powers under the law, but their officers performed a variety of functions and did not always actively search for indications of forced labor. NGOs continued to criticize the lack of resources dedicated to enforcement of the law.

The government did not effectively enforce laws prohibiting forced labor in some cases, and large fines as penalties were not sufficient to deter violations. In July a court overruled an earlier labor department ruling that there was no remedy for undocumented domestic workers to pursue claims of unpaid wages and ordered an Indonesian domestic worker's case against her employer to receive a full hearing. The Indonesian employee, filing her case under the pseudonym "Nona," claimed her employer failed to pay her for five years. The executive director of the NGO Tenaganita stated, "with this precedent, there is hope for undocumented workers to seek redress in court."

In 2018 the government established an Independent Committee on Foreign Workers to provide comprehensive reform plans to the government regarding foreign-worker management and labor policy. The committee presented its final report to cabinet in July with recommendations on streamlining policies related to foreign workers, but the report was not made public.

A variety of sources reported occurrences of forced labor or conditions indicative of forced labor in plantation agriculture, the fishing industry, electronics factories, garment production, construction, restaurants, and domestic service among both adults and children (also see section 7.c.).

Employers, employment agents, and labor recruiters subjected some migrants to forced labor or debt bondage. Many companies hired foreign workers using recruiting or outsourcing companies, creating uncertainty about the legal relationship between the worker, the outsourcing company, and the owner of the workplace, making workers more vulnerable to exploitation and complicating dispute resolution. Labor union representatives noted that recruiting agents in the countries of origin and in Malaysia sometimes imposed high fees, making migrant workers vulnerable to debt bondage.

In August three nonprofit organizations filed a formal complaint with a foreign government urging it to ban imports of products from FGV Holdings Berhad, a Malaysian palm oil company, due to reports of forced labor at FGV plantations. Another petition filed earlier in the year accused FGV of using child labor. An FGV spokesperson told media in August, “We are committed to ensure respect for human rights. We are very serious in handling this.” The trial of former deputy prime minister Zahid Hamidi for his role in a fraudulent scheme involving hundreds of thousands of Nepali workers seeking jobs in the country continued as of November. Private companies linked to the then deputy prime minister’s brother and brother-in-law reportedly charged Nepali workers more than RM185 million (\$46.3 million) for medical tests and to submit visa applications during the prior five years. These medical and visa processing services increased the cost tenfold without offering additional protections or benefits. Zahid denied involvement in or knowledge of the scam, but the Malaysian Anticorruption Commission charged him in October 2018 with 45 counts of corruption, bribery, and money laundering, three of which concern RM3 million (\$750,000) he allegedly received in bribes from a company that ran a visa center for Nepali workers. Critics of the former government had long characterized the foreign-worker recruitment system as corrupt.

Nonpayment of wages remained a concern. Passport confiscation by employers increased migrant workers' vulnerability to forced labor; the practice was illegal but widespread and generally went unpunished. Migrant workers without access to their passports were more vulnerable to harsh working conditions, lower wages than promised, unexpected wage deductions, and poor housing. NGOs reported that agents or employers in some cases drafted contracts that included a provision for employees to sign over the right to hold their passports to the employer or an agent. Some employers and migrant workers reported that workers sometimes requested employers keep their passports, since replacing lost or stolen passports could cost several months' wages and leave foreign workers open to questions about their legal status.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits all of the worst forms of child labor. The law prohibits the employment of children younger than 14 but permits some exceptions, such as light work in a family enterprise, work in public entertainment, work performed for the government in a school or in training institutions, or work as an approved apprentice. There is no minimum age for engaging in light work. For children between the ages of 14 and 18, there was no list clarifying specific occupations or sectors considered hazardous and therefore prohibited.

The government did not effectively enforce laws prohibiting child labor. Those found contravening child labor laws faced penalties that were not sufficient to deter violations.

Child labor occurred in some family businesses. Child labor in urban areas was common in the informal economy, including family food businesses and night markets, and in small-scale industry. Child labor was also evident among migrant domestic workers.

NGOs reported that stateless children in Sabah were especially vulnerable to labor exploitation in palm oil production, forced begging, and work in service industries, including restaurants. Although the National Union of Plantation Workers reported it was rare to find children involved in plantation work in peninsular Malaysia, others reported instances of child labor on palm oil plantations across the

country. Commercial sexual exploitation of children also occurred (see section 6, Children).

Also, see the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

#### **d. Discrimination with Respect to Employment and Occupation**

The law does not prohibit discrimination with respect to hiring; the director general of labor may investigate discrimination in the terms and conditions of employment for both foreign and local employees. The director general may issue necessary directives to an employer to resolve allegations of discrimination in employment, although there were no penalties under the law for such discrimination.

Employers are obligated to inquire into most sexual harassment complaints in a prescribed manner. Advocacy groups such as the Association of Women Lawyers stated these provisions were not comprehensive enough to provide adequate help to victims.

Discrimination in employment and occupation occurred with respect to women; members of national, racial, and ethnic minorities; and persons with disabilities. A code of practice guides all government agencies, employers, employee associations, employees, and others with respect to placement of persons with disabilities in private-sector jobs. Disability-rights NGOs reported that employers were reluctant to hire persons with disabilities. A regulation reserves 1 percent of public-sector jobs for persons with disabilities.

Migrant workers must undergo mandatory testing for more than 16 illnesses as well as pregnancy. Employers may immediately deport pregnant or ill workers. Migrant workers also faced employment discrimination (see sections 7.b. and 7.e.). Employers were unilaterally able to terminate work permits, subjecting migrant workers to immediate deportation.

Women experienced some economic discrimination in access to employment. Employers routinely asked women their marital status during job interviews. The Association of Women Lawyers advocated for passage of a separate sexual harassment bill making it compulsory for employers to formulate sexual harassment policies. The law prohibits women from working underground, such as in sewers, and restricts employers from requiring female employees to work in

industrial or agricultural work between 10 p.m. and 5 a.m. or to commence work for the day without having 11 consecutive hours of rest since the end of the last work period.

The government reserved large quotas for the bumiputra majority for positions in the federal civil service as well as for vocational permits and licenses in a wide range of industries, which greatly reduced economic opportunity for minority groups (see section 6).

### **e. Acceptable Conditions of Work**

The minimum wage applied to both citizen and foreign workers in most sectors, with the exception of domestic service (see below). The minimum wage rates were less than Ministry of Finance-published poverty income levels in Sabah and Sarawak.

Working hours may not exceed eight per day or 48 per week, unless workers receive overtime pay. The law specifies limits on overtime, which vary by sector, but it allows for exceptions. The law protects foreign domestic workers only with regard to wages and contract termination. The law excludes them from provisions that would otherwise stipulate one rest day per week, an eight-hour workday, and a 48-hour workweek. Instead, bilateral agreements or memoranda of understanding between the government and some source countries for migrant workers include provisions for rest periods, compensation, and other conditions of employment for migrant domestic workers, including prohibitions on passport retention.

In January 2018 employers became responsible for paying a levy for their foreign workers, a move designed to better protect low-wage foreign workers and to encourage the hiring of local employees. Previously, employers regularly passed the costs on to employees and withheld as much as 20 percent of a worker's annual salary to cover the levy.

The Ministry of Human Resources began enforcing amendments to the Private Employment Agencies Act (PEAA) in 2018. The measure aims to make the cost of business too high for small-scale recruiting agencies that have been sources of abuses in the past. Employment agencies must now pay as much as RM250,000 (\$62,500) to operate a business that recruits foreign workers, a significant increase from the RM1,000 (\$250) required under the original PEAA. In addition, agencies must secure a guaranteed bank note for as much as RM250,000 (\$62,500) that would be liquidated (and used for victim repatriation costs) if they are found to be

in violation of the law. Under a new amendment, agencies found operating without a license face tough new penalties, including a RM200,000 (\$50,000) fine and a maximum three years in prison, an increase from the previous RM5,000 (\$1,250) fine.

Migrant workers often worked in sectors where violations were common, performed hazardous duties, and had no meaningful access to legal counsel in cases of contract violations and abuse. Some workers alleged their employers subjected them to inhuman living conditions and physically assaulted them. Employers of domestic workers sometimes failed to honor the terms of employment and subjected workers to abuse. Employers reportedly restricted workers' movement and use of mobile telephones; provided substandard food; did not provide sufficient time off; sexually assaulted workers; and harassed and threatened workers, including with deportation.

Occupational health and safety laws cover all sectors of the economy except the maritime sector and the armed forces. The law requires workers to use safety equipment and cooperate with employers to create a safe, healthy workplace, but it does not specify a right to remove oneself from a hazardous or dangerous situation without penalty. Laws on worker's compensation cover both local and migrant workers but provide no protection for migrant domestic workers.

The National Occupational Safety and Health Council--composed of workers, employers, and government representatives--creates and coordinates implementation of occupational health and safety measures. It requires employers to identify risks and take precautions, including providing safety training to workers, and compels companies with more than 40 workers to establish joint management-employee safety committees.

The Department of Labor of the Ministry of Human Resources enforces wage, working condition, and occupational safety and health standards. The government did not effectively enforce the law. The number of labor enforcement officers was insufficient to enforce compliance in businesses and households that employ domestic help. Department of Labor officials reported they sought to conduct labor inspections as frequently as possible. Nevertheless, many businesses could operate for years without an inspection.

Penalties for employers who fail to follow the law begin with a fine assessed per employee and can rise to imprisonment. Employers can be required to pay back wages plus the fine. If they refuse to comply, employers face additional fines per

day that wages are not paid. Employers or employees who violate occupational health and safety laws are subject to fines, imprisonment, or both. Penalties were not sufficient to deter violations.

Employers did not respect laws on wages and working hours. The Malaysian Trade Union Congress reported that 12-, 14-, and 18-hour days were common in food and other service industries.

According Department of Occupational Safety and Health statistics, 127 workers died, 3,491 acquired a nonpermanent disability, and 131 acquired permanent disability in work-related incidents in the first half of the year.