



MALAYSIA

BASELINE ASSESSMENT OF R2P  
IMPLEMENTATION



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Responsibility to Protect

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The following Baseline Assessment Annex provides an overview of Malaysia's efforts in implementing R2P as of 2019. For a full description of the methodology used in this study, see Part II of 'Implementing the Responsibility to Protect in the Asia Pacific: An Assessment of Progress and Challenges', available [here](#).

# MALAYSIA

Malaysia's performance is well above the regional average and is close to being in the 'Strong' category overall. Its new government, elected in 2018, is likely to strengthen Malaysia's position in the coming years.

In terms of domestic implementation, the security sector – although not without its problems – is generally accountable and under civilian control, whilst the education system is one of the more inclusive in the region. In regards to international law and human rights, there are a number of constitutional provisions ensuring governmental accountability, equal access to judicial institutions, and the protection of basic human rights; although these are generally weighted only 'Fair' overall and there is room for improvement. Malaysia also scores 'Fair' in regards to promoting and protecting a robust civil society and criminalizing incitement to commit genocide, war crimes, ethnic cleansing and crimes against humanity. Malaysia's weakest indicators relate to its failure to sign, ratify and implement several relevant international treaties. As a result, protections remain arbitrary and subject to shifting political tides rather than enshrined into law.

Malaysia has been particularly active in bilateral and multilateral diplomacy to encourage States to fulfil their responsibility to protect, to date participating in five of the nine Interactive Dialogues on R2P. During its time as a non-permanent member of the Security Council (2015 – 2016), Malaysia supported all twenty-six resolutions relevant to R2P. Malaysia is also a signatory to the "Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes" and is a supporter of the "French/Mexican initiative on Veto

restraint in case of Mass atrocities." In terms of peacekeeping, Malaysia is amongst the regions strongest contributors and has participated in over 30 peacekeeping operations, several of which have had a protection of civilians mandate. Malaysia is also one of the few regional states to formally undertake atrocity prevention and human rights courses through the Malaysian Peacekeeping Centre.

Regionally, Malaysia has been among the more proactive states, though it has not specifically couched its activism in R2P terms. For example, at a 2017 ASEAN meeting of Foreign Ministers to discuss the ongoing counterinsurgency operations in Rakhine state and the persecution of Rohingya Muslims, Malaysia called for the creation of an independent ASEAN-led investigation into reports of abuses by the security forces against the Rohingya.

Like many other states, Malaysia has not adopted specific policies in relation to R2P and atrocity prevention. It has not yet appointed an R2P Focal Point, though it has expressed an interest in doing so, and is not a party to the Rome Statute. Nor is it a party to the Refugee Convention, creating a protection gap for refugees only partly filled by national and informal practice.

# MALAYSIA

Assessment	Indicator
<b>Very Strong</b>	Protection of populations from atrocity crimes
	Reduction of atrocity crime risks
	Establish and maintain National Human Rights Institutions in accordance with the Paris Principles
	Support UN Security Council veto restraint on issues relating to atrocity prevention
<b>Strong</b>	Dealing with past atrocities
	Participate in international peer review processes, including the Universal Periodic Review (UPR) of the UN Human Rights Council
	Take measures to counter and prevent violent extremism
	Ensure a legitimate, effective and civilian controlled security sector
	Ensure the education system reflects the ethnic, national and cultural diversity of society, and sets examples of inclusiveness
	Prevent nationals committing atrocity crimes overseas
	Participate in international, regional and national discussions on the further advancement of R2P
	Leverage existing mechanisms and institutions (including regional and sub-regional organisations) to encourage States to fulfil their responsibility to protect
	Contribute to United Nations peacekeeping operations (especially those with a protection of civilians mandate)
	Develop the capacities needed to support civilian protection, including through the training of military and civilian personnel for peacekeeping
<b>Fair</b>	Appoint national R2P Focal Point
	Sign, ratify and implement relevant instruments of international law
	Ensure domestic promotion and protection of human rights, focusing on the elimination of discrimination
	Cooperate fully with UN Human Rights mandate holders and those of relevant regional organisations
	Ensure equal access to justice
	Criminalise incitement to commit genocide, war crimes, ethnic cleansing and crimes against humanity
	Enact and implement laws protecting vulnerable groups, particularly in relation to sexual and gender-based violence
	Cultivate and protect an active, diverse and robust civil society
	Encourage and assist States to fulfil their R2P in situations of emerging and ongoing crisis, such as good offices and preventive diplomacy
	Strengthen regional and international networks for atrocity crime prevention
	Strengthen the role and capacity of regional organisations
	Support the development and work of regional human rights and other preventive capacities
Support the early warning and capacity building efforts of the UN Office on Genocide Prevention and R2P	

	Support the strengthening of the UN's capacity for atrocity prevention, including through the UN Human Rights system
	Support preventive actions on atrocity crimes
<b>Weak</b>	Protect individuals and groups fleeing atrocity crimes and their risk, in accordance with International Refugee Law
	Support atrocity prevention through development and assistance partnerships
	Support the Kigali Principles
<b>Very Weak</b>	Incorporate atrocity crime risks and dynamics into conflict analysis and/or development partnerships
	Establish domestic mechanisms to hold the government accountable for upholding its responsibility to protect
	Sign and ratify the Rome Statute of the International Criminal Court and cooperate fully with the Court
	Conduct a national assessment of risk and resilience

Thematic Area	Indicator	Assessment	Notes
Basic Compliance	Protection of populations from atrocity crimes.	Very Strong	The population of Malaysia is adequately protected from atrocity crimes.
	Reduction of atrocity crime risks.	Very Strong	Despite some human rights and legal issues, there is currently little risk of the population of Malaysia suffering atrocity crimes.
	Dealing with past atrocities.	Strong	Like Singapore, Malaysia suffered under occupation by the Japanese during World War II. For the most part, Japan has paid compensation <sup>1</sup> and those responsible for the massacres and atrocities that occurred were brought to justice. <sup>2</sup>  There remains some lingering contention over British and Malaysian government action during the Malayan Emergency. The Batang Kali massacre, where 24 Malaysian men were murdered by British soldiers, is little known in Malaysia and the British government is yet to provide compensation or an apology. <sup>3</sup> Resentment and accusation is also given to the current Prime Minister Tun Mahathir bin Mohamad for his perceived role in the Memali incident and the formation of a truth and reconciliation commission. <sup>4</sup> Such a commission has yet to be established.
Policy Mechanisms	Appoint national R2P Focal Point.	Fair	Malaysia does not currently have an R2P focal point. <sup>5</sup> However, it has shown a willingness to appoint one.
	Incorporate atrocity crime risks and dynamics into conflict analysis and/or development partnerships.	Very Weak	Malaysia has taken no steps to incorporate such risks into conflict analysis or development partnerships.
	Establish domestic mechanisms to hold the government accountable for upholding its responsibility to protect.	Very Weak	There are no mechanisms in place for the Malaysian government to be held accountable in upholding its responsibility to protect.
International Human Rights Obligations	Sign, ratify and implement relevant instruments of international law.	Fair	Of the twelve international human rights laws (IHRL) most relevant to R2P, Malaysia has ratified only four and signed another (the <i>Arms Trade Treaty</i> ). <sup>6</sup> The treaties ratified are:

<sup>1</sup> Cf. Arasu, K T, 1992. 'Malaysian Seeks Compensation From Japanese'. *The Los Angeles Times*, 22 November. Available at: [http://articles.latimes.com/1992-11-22/news/mn-2170\\_1\\_japanese-occupation](http://articles.latimes.com/1992-11-22/news/mn-2170_1_japanese-occupation).

<sup>2</sup> Straits Times Staff Correspondent, 1947. 'Jap General to Face a Firing Squad'. *The Straits Times*, 14 October. Available at: <http://eresources.nlb.gov.sg/newspapers/Digitised/Article/straitstimes19471014-1.2.18>.

<sup>3</sup> Chauly, Bernice, n.d. *Truth still denied: The Batang Kali Massacre*, <https://griffithreview.com/articles/truth-still-denied-batang-kali-massacre/>.

<sup>4</sup> Sue-Chern, Looi, 2014. 'Memali families still seek answers, want closure after 30 years'. *The Malaysian Insider*, 5 April. Available at: <http://blog.limkitsiang.com/2014/04/06/memali-families-still-seek-answers-want-closure-after-30-years/>; Zulkefli, Adie Suri, 2018. 'Memali tragedy: "Before I die, I wish to see justice be done for my late husband"'. *New Straits Times*, 11 January. Available at: <https://www.nst.com.my/news/nation/2018/01/323890/memali-tragedy-i-die-i-wish-see-justice-be-done-my-late-husband>.

<sup>5</sup> Global Centre for the Responsibility to Protect (GCR2P), 2017. *Global Network of R2P Focal Points*, [http://www.global2p.org/media/files/regional-breakdown\\_global-network-of-r2p-focal-points.pdf](http://www.global2p.org/media/files/regional-breakdown_global-network-of-r2p-focal-points.pdf).

<sup>6</sup> United Nations Human Rights Office of the High Commissioner (UNOHCHR), n.d. *View the ratification status by country or by treaty*, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx); United Nations Treaty Collection (UNTC), 2019. 1. *Convention on the Prevention and Punishment of the Crime of Genocide*, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-1&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=en); UNTC, 2019. 8. *Arms Trade Treaty*, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-8&chapter=26&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&clang=en); United Nations High Commissioner for Refugees (UNHCR), 2015. *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>; International Committee of the Red Cross (ICRC), n.d. *Treaties, States Parties and Commentaries: Malaysia*, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp\\_countrySelected=MY](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=MY); International Criminal Court,

- **Convention on the Prevention and Punishment of the Crime of Genocide** (Ratification/Accession: 1994)
- **Geneva Conventions** (Ratification/Accession: 1962)
- **Convention on the Elimination of All Forms of Discrimination against Women [CEDAW]** (Ratification/Accession: 1995)
- **Convention on the Rights of the Child [CRC]** (Ratification/Accession: 1995)

Malaysia has voiced reservations about some of the treaties:

- **Genocide Convention:** In reference to Article IX, the consent of Malaysia must be gained before each case is submitted to the jurisdiction of the International Court of Justice.<sup>7</sup>
- **CEDAW:** Accession is subject to provisions not conflicting with Islamic Sharia law and the constitution. Therefore, Malaysia is not bound by Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f), 16(1)(g). In relation to Article 11, Malaysia considers this "...as a reference to the prohibition of discrimination on the basis of equality between men and women only."<sup>8</sup>
- **CRC:** Articles 2, 7, 14, 28 paragraph 1(a) and 37. These provisions shall only be applicable if they conform to the constitution and the laws of Malaysia.<sup>9</sup>

Sign and ratify the Rome Statute of the International Criminal Court and cooperate fully with the Court.	Very Weak	Malaysia is not a state party to the <b>Rome Statute of the International Criminal Court</b> . <sup>10</sup>
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Establish and maintain National Human Rights Institutions in accordance with the Paris Principles.	Very Strong	Malaysia possess a Human Rights Commission, known as SUHAKAM. Its functions are: <ul style="list-style-type: none"> <li>• To promote awareness of and provide education relating to human rights.</li> <li>• To advise and assist Government in formulating legislation and procedures and recommend the necessary measures to be taken.</li> <li>• To recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights.</li> <li>• To inquire into complaints regarding infringements of human rights.<sup>11</sup></li> </ul>
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n.d. *The States Parties to the Rome Statute*, [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#M](https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#M).

<sup>7</sup> UNTC, 2019. 1. *Convention on the Prevention and Punishment of the Crime of Genocide*.

<sup>8</sup> UNTC, 2019. 8. *Convention on the Elimination of All Forms of Discrimination against Women*, [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-8&chapter=4&clang=en#EndDec](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-8&chapter=4&clang=en#EndDec).

<sup>9</sup> UNTC, 2019. 11. *Convention on the Rights of the Child*, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec).

<sup>10</sup> International Criminal Court, n.d. *The States Parties to the Rome Statute*.

<sup>11</sup> Human Rights Commission of Malaysia, 2019. *Functions & Power*, <https://www.suhakam.org.my/about-suhakam/fungsi-kuasa/>.

<p>Ensure domestic promotion and protection of human rights, focusing on the elimination of discrimination.</p>	<p>Fair</p>	<p>It maintains an ‘A’ accreditation by GANHRI.<sup>12</sup> The Federal Constitution of Malaysia provides for the protection of basic human rights. These include the liberty of the person (Article 5) and the prohibition of slavery and forced labour (Article 6).<sup>13</sup></p> <p>There is however, concern from numerous NGOs, foreign governments and multilateral bodies of gaps in Malaysia’s constitution and legal system, in both philosophy and practice.</p> <p>Key areas of concern include asylum seekers and refugees, discrimination against women, rights of children, discrimination against LGBTI peoples and freedom of expression, assembly and religion.<sup>14</sup></p>
<p>Participate in international peer review processes, including the Universal Periodic Review (UPR) of the UN Human Rights Council.</p>	<p>Strong</p>	<p>Malaysia’s has completed three cycles of the UPR. Its last report was submitted towards the end of 2018.<sup>15</sup></p> <p>Malaysia currently has four reports overdue. Two are overdue by less than five years, the other two are overdue by less than ten years.<sup>16</sup></p>
<p>Cooperate fully with UN Human Rights mandate holders and those of relevant regional organisations.</p>	<p>Fair</p>	<p>Malaysia has not extended a standing invitation to Special Procedure mandate holders. Some of the working groups and Special Rapporteurs have completed reports published on their visits, and more are forthcoming in 2019. Yet completed visits are not the majority.<sup>17</sup></p>
<p>Ensure equal access to justice.</p>	<p>Fair</p>	<p>Malaysia is a federal constitutional monarchy, with English common law the basis for the civil legal system. The Federal Constitution states all persons are equal before the law and entitled to equal protection under the law (Article 8.1). Under the constitution, Islamic law is a matter falling within the State List, that is, a matter over which the State Legislature has jurisdiction and not the Parliament (Article 76.2).<sup>18</sup> Islamic Law, in judicial terms, primarily informs issues such as marriage, divorce, inheritance and maintenance.<sup>19</sup></p> <p>Three constitutional articles provide the basis for an independent judiciary. However, other constitutional provisions, legislation restricting judicial review, and additional factors limit judicial independence and strengthened executive influence over the judiciary.<sup>20</sup></p>

<sup>12</sup> Global Alliance of National Human Rights Institutions (GANHRI), 2018. *Chart of the Status of National Institutions*, p. 2, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart.pdf>.

<sup>13</sup> Malaysia, The Commissioner of Law Revision. *Constitution of Malaysia, Part II, Article 5 and 6*. Malaysia, 2010.

<sup>14</sup> Cf. Sarawak Report (SR), 2016. *The European Parliamentary Resolution on Malaysia - In Full*, <http://www.sarawakreport.org/2015/12/the-european-parliamentary-resolution-on-malaysia-in-full/>; Human Rights Watch (HRW), 2016. *World Report, 2017: Malaysia: Events of 2016*, <https://www.hrw.org/world-report/2017/country-chapters/malaysia>.

<sup>15</sup> UNOHCHR, 2017. *Universal Periodic Review – Malaysia*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MYindex.aspx>.

<sup>16</sup> UNOHCHR, 2017. *Late and non-reporting states*, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/LateReporting.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx).

<sup>17</sup> UNOHCHR, n.d. *View Country visits of Special Procedures Internet/ViewCountryVisits.aspx?Lang=en&country=MYS*, [https://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=MYS](https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=MYS).

<sup>18</sup> Malaysia, The Commissioner of Law Revision. *Constitution of Malaysia, Part II, Article 8 and Part VI, Article 76*.

<sup>19</sup> Sharifah Suhanah Syed Ahmad, 2014, *UPDATE: Introduction to the Malaysian Legal System and Sources of Law*, [http://www.nyulawglobal.org/globalex/Sources\\_Law\\_Malaysia1.html#InternationalTreaties](http://www.nyulawglobal.org/globalex/Sources_Law_Malaysia1.html#InternationalTreaties).

<sup>20</sup> Cf. Amnesty International, 2017, *Malaysia 2018/17 Annual Report*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/malaysia/report-malaysia/>; Amnesty International, 2016. *Malaysia: National Security Council Act gives authorities unchecked and abusive powers*, <https://www.amnesty.org/en/latest/news/2016/08/malaysia-national-security-act-abusive->



	Criminalise incitement to commit genocide, war crimes, ethnic cleansing and crimes against humanity.	Fair	Malaysia enacted <i>Act 512</i> – also known as the <i>Geneva Conventions Act 1962</i> (revised. 1993) – in the Malaysia Peninsular on 16 April 1962, and in Sabah and Sarawak on 10 March, 1966. <sup>21</sup> This only criminalises war crimes (committed by nationals, or foreign nationals, both within and outside the country). <sup>22</sup>
	Take measures to counter and prevent violent extremism.	Strong	Malaysia has extensive experience in dealing with violent extremism and terrorism. Since before and after the Malayan Emergency the country has dealt with communist insurgents and, from the 1990s, Islamic fundamentalists of the organisations Jemaah Islamiyah and Kumpulan Mujahidin Malaysia. <sup>23</sup> In more recent years, Malaysia has placed an emphasis on what it terms a ‘battle of ideas’, and aims to counter terrorist ideas and recruitment through an online campaign over various platforms. They have also partnered with governments and academia to further discussion and research into countering violent extremism. <sup>24</sup>
	Enact and implement laws protecting vulnerable groups, particularly in relation to sexual and gender-based violence.	Fair	<p>Equality and non-discrimination is provided for under Article 8 of the constitution.<sup>25</sup></p> <p>Malaysia has reformed national laws to better align with its IHRL obligations. For example, in 2006, the Committee on the Elimination of Discrimination Against Women praised Malaysia’s legal reforms aimed at better addressing violence against women, such as: changes to the <i>Domestic Violence Act</i> that expanded the definition of ‘domestic violence’; advances in the educational gender parity; and, the establishment of the Cabinet Committee on Gender Equality.<sup>26</sup></p> <p>However, the Committee also expressed concerns about the domestic implementation status of CEDAW and the States noted reservations about the Covenant, the continued societal stereotyping of the roles of men and women (e.g. through school textbooks), and the presence of both a civil legal system and Syariah (Sharia) law.<sup>27</sup></p> <p>Recent reports suggest there has been some improvement in the countries domestic laws, with the national courts adopting a more liberal approach</p>

[powers/](#); HRW, 2016. *World Report, 2017: Malaysia: Events of 2016*; U.S. Department of State, 2016. *Malaysia 2016 Human Rights Report*, p. 7. Available at: <https://www.state.gov/documents/organization/265562.pdf>.

<sup>21</sup> The Commissioner of Law Revision, ‘Act 512: Geneva Conventions Act 1962’. (8 October 1993). *Attorney General’s Chamber*. <<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20512.pdf>.>

<sup>22</sup> Library of Congress, 2016. *Genocide, Crimes Against Humanity, and War Crimes Jurisdiction*, <https://www.loc.gov/law/help/genocide/chart.php#Malaysia>.

<sup>23</sup> Counter Extremism Project, 2019. *Malaysia, Extremism & Counter-Extremism*, <https://www.counterextremism.com/countries/malaysia>.

<sup>24</sup> Malaysia Permanent Mission to the United Nations, 2018. *Statement by H.E. Ambassador Muhammad Shahrul Ikram Yaakob The Permanent Representative of Malaysia at the United Nations High Level Conference of Heads of Counter-Terrorism Agencies of Member States New York, 28-29 June 2018*, <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/S3-Malaysia.pdf>; START, 2018. *START visits International Islamic University Malaysia to launch new project*, <https://www.start.umd.edu/news/start-visits-international-islamic-university-malaysia-launch-new-project>; US Embassy in Malaysia, 2014. *U.S. Embassy Partners with SEARCCT to Host Regional Workshop on Countering Online Violent Extremist Narratives*, <https://my.usembassy.gov/u-s-embassy-partners-with-searcct-to-host-regional-workshop-on-countering-online-violent-extremist-narratives/>.

<sup>25</sup> Malaysia, The Commissioner of Law Revision. *Constitution of Malaysia, Part II, Article 8*.

<sup>26</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia, 31 May 2006, CEDAW/C/MYS/CO/2.

<sup>27</sup> Ibid.

towards the interpretation of local laws, especially where such laws are found to impede a citizen's constitutional rights. In at least two cases, the courts upheld freedom of speech and redressed gender discrimination in a novel interpretation of the constitution, linking constitutional guarantees to international conventions, including the Universal Declaration of Human Rights.<sup>28</sup>

Whilst legal protection from domestic violence is provided for in the *Domestic Violence Act 1994*, there is no clear legal prohibition of the violent punishment of children.<sup>29</sup> There are also concerns regarding the dual legal system, with different definitions of 'child' extant under civil and Sharia law.<sup>30</sup>

In 2001, Malaysia implemented the *Ministry of Women, Family and Community Development*<sup>31</sup> and established the *Child Division* within the existing Department of Social Welfare.<sup>32</sup>

LGBTIQ peoples in Malaysia face various tacit and direct forms of discrimination. In 2017, the Committee on the Elimination of Discrimination against Women reported that "lesbian, bisexual and transgender women and intersex persons face multiple forms of discrimination [...] including arbitrary arrests, violence, including sexual violence, murder, harassment and torture, as well as discrimination in education, employment, health care and access to justice."<sup>33</sup>

Protect individuals and groups fleeing atrocity crimes and their risk, in accordance with International Refugee Law.

Weak

Malaysia has not signed the *1951 Refugee Convention* nor its *1967 Protocol*. This means there is no legal protection or proper processing system for refugees and asylum seekers in the country.<sup>34</sup>

Malaysia hosts many refugees (164,620 as of January 2019), 142,370 are of various ethnicities from Myanmar.<sup>35</sup> Malaysia has accommodated these numbers to some extent, but the lingering protection gap means there are many unanswered questions as to the fate of many refugees in Malaysia, despite the current government's rhetoric

<sup>28</sup> For case-law details, see: Sharifah Suhanah Syed Ahmad, 2014, *UPDATE: Introduction to the Malaysian Legal System and Sources of Law*.

<sup>29</sup> Global Initiative to End All Corporal Punishment of Children, 2017. *Ending family violence in Malaysia – challenging physical punishment of girls and boys*, p. 1,

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT\\_CEDAW\\_NGO\\_MYS\\_28055\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_NGO_MYS_28055_E.pdf).

<sup>30</sup> United Nations, Committee on the Rights of the Child (CRC), Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, 25 June 2007, CRC/C/MYS/CO/1.

<sup>31</sup> Asia-Pacific Economic Cooperation (APEC), n.d. *Ministry of Women, Family and Community Development (KPWKM)*, <http://www.we-apec.com/directory/ministry-women-family-and-community-development-kpwkm>.

<sup>32</sup> School Malaysia: Early Childhood & Pre-Tertiary Education, 2019. *Department of Social Welfare Malaysia, Ministry of Women, Family and Community Development*, [https://www.schoolmalaysia.com/resources/govn\\_social\\_welfare.php](https://www.schoolmalaysia.com/resources/govn_social_welfare.php).

<sup>33</sup> United Nations, CEDAW, List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia, 31 July 2017, CEDAW/C/MYS/Q/3-5; Cf. HRW, 2017. *Submission by Human Rights Watch to the United Nations Committee on the Elimination of Discrimination against Women 69th pre-sessional working group, May 2017*, p. 1,

[https://www.hrw.org/sites/default/files/supporting\\_resources/hrw\\_submission\\_to\\_cedaw\\_concerning\\_malaysia\\_may\\_2017.pdf](https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_to_cedaw_concerning_malaysia_may_2017.pdf); see also: HRW, 2014. *"I'm Scared to Be a Woman": Human Rights Abuses Against Transgender People in Malaysia*, p. 11, <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>.

<sup>34</sup> UNHCR, 2013. *Malaysia*, <https://www.unhcr.org/4ec23106b.pdf>.

<sup>35</sup> UNHCR, 2019. *Figures at a Glance in Malaysia*, <https://www.unhcr.org/figures-at-a-glance-in-malaysia.html>.

		<p>to do more for Myanmarese, and particularly Rohingya, refugees.<sup>36</sup></p> <p>The reluctance of the government to sign the <b>1951 Refugee Convention</b> stems from the imbalances and strain the refugees place on the local communities in which they are located. It believes if it becomes a signatory, it will then be obliged to treat refugees better than its own citizens, as well as encouraging more migration.<sup>37</sup></p> <p>Furthermore, there are, as an estimate, at least 10,000 stateless persons throughout Malaysia.<sup>38</sup></p>
Domestic Implementation	<p>Conduct a national assessment of risk and resilience. Very Weak</p> <p>Cultivate and protect an active, diverse and robust civil society. Fair</p>	<p>Malaysia has not conducted a national assessment of risk and resilience.</p> <p>Freedom of speech, assembly and association is guaranteed under Article 10 of the constitution.<sup>39</sup> However, various exceptions are allowed in the interests of security, public order or (in the case of association) morality.</p> <p>For example, whilst the constitution provides for the rights of association, in practice the government places significant restrictions on this right and certain statutes further limit it. By law, only registered organisations of seven or more persons may legally function. Some human rights and civil society organisations have had difficulty obtaining government recognition as NGOs, which presented legal and bureaucratic obstacles in raising money to support their activities. Authorities frequently cited a lack of registration as grounds to take action against key civil society organisations. Some NGOs also reported the government monitored their activity.<sup>40</sup> The November 2016 ‘Bersih’ rallies in Kuala Lumpur, in which thousands of people gathered, were deemed illegal by the police.<sup>41</sup></p> <p><i>The Sedition Act 1984</i> imposes restrictions on the press and government officials. In 2015, defamation charges were made in response to investigations into alleged government corruption.<sup>42</sup> More recently in August 2016, vice president of the Parti Amanah Negara (PAN) Youth, Mohd Fakhurulraz Mohd Mokhtar, was sentenced to eight months in prison for sedition after calling for the release of jailed opposition leader Anwar Ibrahim. A court also sentenced activist Haris Ibrahim to prison for eight months on a sedition charge for a speech he gave in 2013 challenging the results of the general</p>

<sup>36</sup> Rahman, Ziaur, 2018. ‘Malaysia, please ratify 1951 Refugee Convention’. *The Malaysian Insight*, 9 September. Available at: <https://www.themalaysianinsight.com/s/94383>.

<sup>37</sup> Palansamy, Yiswaree, 2015. ‘Malaysia will not sign UN convention on refugees, says minister’. *Malay Mail*, 12 March. Available at: <https://www.malaymail.com/news/malaysia/2015/03/12/malaysia-will-not-sign-un-convention-on-refugees-says-minister/857781>; Naidu, Sumisha, 2012. ‘Malaysia finds ‘conflict’ in UN Refugee Convention’. *ABC News*, 13 November. Available at: <https://www.abc.net.au/news/2012-11-12/an-malaysia-speaks-on-refugee-treatment/4367642>.

<sup>38</sup> United Nations High Commissioner for Refugees (UNHCR), 2019. *Ending Statelessness in Malaysia*, <https://www.unhcr.org/ending-statelessness-in-malaysia.html>.

<sup>39</sup> Malaysia, The Commissioner of Law Revision. *Constitution of Malaysia, Part II, Article 10*.

<sup>40</sup> U.S. Department of State, *Malaysia 2016 Human Rights Report*, p. 14.

<sup>41</sup> ABC News, 2016. ‘Thousands march in ‘Bersih’ protests calling for Malaysian PM Najib Razak to step down’. *ABC News*, 19 November. Available at: <https://www.abc.net.au/news/2016-11-19/thousands-march-in-kuala-lumpur-calling-for-pm-najib-to-resign/8040056>.

<sup>42</sup> Freedom House, 2016. *Malaysia*, <https://freedomhouse.org/report/freedom-press/2016/malaysia>; HRW, 2016. *World Report, 2017: Malaysia: Events of 2016*.

			election. <sup>43</sup> Due to these factors, government-controlled news outlets tend to self-censure. <sup>44</sup>
	Ensure a legitimate, effective and civilian controlled security sector.	Strong	<p>Civilian authorities generally maintain control of the armed forces.</p> <p>In 2016, there were reports the government (or its agents) had committed arbitrary or unlawful killings. In June of that year, the government disclosed there were 50 deaths in custody from the beginning of 2013 through to April 2016, with only one death allegedly caused by the police. Civil society advocates disputed these numbers.</p> <p>In April 2016 a government commission found police culpable for the 2013 death of N. Dharmendran and described police efforts to cover up the case. Two months later a court acquitted the four police officers charged with the murder. Human rights organisations criticised the decision and noted the rarity of successful prosecutions in death-in-custody cases.<sup>45</sup></p>
	Ensure the education system reflects the ethnic, national and cultural diversity of society, and sets examples of inclusiveness.	Strong	<p>Educational rights are covered under Article 12 of the constitution.<sup>46</sup> Education is free, compulsory and universal through primary school (six years).<sup>47</sup> The UN Children’s Fund’s ‘State of the World’s Children 2014’ report highlighted secondary school enrolment levels as a cause for concern. These levels were 71 percent for girls and 66 percent for boys, compared with 96 percent overall enrolment in primary school.<sup>48</sup></p>
	Prevent nationals committing atrocity crimes overseas.	Strong	<p>War crimes committed by nationals and foreign nationals, either outside or within the country can be prosecuted by Malaysian courts. Currently, this is the only atrocity crime covered by legislation in an overseas context.<sup>49</sup></p> <p>As already noted, Malaysia has yet to become a signatory of the <i>Rome Statute of the International Criminal Court</i>.</p>
Bilateral and Multilateral Relations	Participate in international, regional, and national discussions on the further advancement of R2P.	Strong	<p>Members of Malaysia’s civil society, government and journalists have attended regional and national events and workshops focused on atrocity prevention.<sup>50</sup></p> <p>Malaysia is a member of the Council for Security Cooperation in the Asia Pacific (CSCAP) and has participated in all three meetings of the CSCAP study group on R2P.<sup>51</sup></p>

<sup>43</sup> HRW, 2016. *World Report, 2017: Malaysia: Events of 2016*.

<sup>44</sup> Freedom House, 2016. *Malaysia*. See also: U.S. Department of State, *Malaysia 2016 Human Rights Report*, p. 1.

<sup>45</sup> U.S. Department of State, *Malaysia 2016 Human Rights Report*, p. 3.

<sup>46</sup> Malaysia, The Commissioner of Law Revision. *Constitution of Malaysia, Part II, Article 12*.

<sup>47</sup> United Nations Educational, Scientific and Cultural Organisation (UNESCO), 2014. *Education Systems in ASEAN+6 Countries: A Comparative Analysis of Selected Educational Issues*, <http://unesdoc.unesco.org/images/0022/002267/226757E.pdf>.

<sup>48</sup> United Nations Children’s Fund (UNICEF), 2014. *The State Of The World’s Children 2014 in Numbers*, p. 32- 33, [https://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014\\_In%20Numbers\\_28%20Jan.pdf](https://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014_In%20Numbers_28%20Jan.pdf).

<sup>49</sup> Library of Congress, 2016. *Genocide, Crimes Against Humanity, and War Crimes Jurisdiction*. <https://www.loc.gov/law/help/genocide/chart.php#Malaysia>.

<sup>50</sup> Asia Pacific Centre for the Responsibility to Protect (APR2P), 2016. *Spotlight on R2P: Malaysia: Atrocities Prevention Workshop and the HLAP Report Public Seminar*, [https://r2pasiapacific.org/files/654/spotlight\\_may2016\\_issue30\\_malaysia\\_workshop\\_hlap\\_report\\_seminar.pdf](https://r2pasiapacific.org/files/654/spotlight_may2016_issue30_malaysia_workshop_hlap_report_seminar.pdf); International Coalition for the Responsibility to Protect (ICRtoP) and APR2P, 2015. *Advancing Atrocities Prevention in Southeast Asia*, <http://responsibilitytoprotect.org/SE%20Asia%20Report%20Web%20Version.pdf>.

<sup>51</sup> See the following CSCAP meeting reports:

- <http://www.cscap.org/uploads/docs/RtoP/1RtoPReport.pdf>

Malaysia has given statements at all the UN General Assembly Informal Interactive Dialogues on R2P except in 2010, 2011, 2016 and 2017.<sup>52</sup>

Leverage existing mechanisms and institutions (including regional and sub-regional organisations) to encourage States to fulfil their responsibility to protect.

Strong

#### **Human Rights Council Resolutions**

Malaysia was a member of the Human Rights Council in 2006-2009 and again in 2010-2013.<sup>53</sup> It has generally supported any resolutions relevant to R2P.<sup>54</sup>

#### **UN Security Council Resolutions**

Malaysia served as a non-permanent member of the Security Council in 2015-2016 and supported all resolutions relevant to R2P.<sup>55</sup>

#### **UN General Assembly Resolutions<sup>56</sup>**

Malaysia has voted in favour of all resolutions relevant to R2P at the General Assembly, although it abstained from two votes.

- 2017: Situation of human rights in the Syrian Arab Republic A/RES/72/191: **yes**
- 2017: Situation of human rights in the Democratic People's Republic of Korea A/RES/72/188: **adopted without vote**
- 2016: Situation of human rights in the Syrian Arab Republic A/RES/71/203: **yes**
- 2016: The situation in the Syrian Arab Republic A/RES/71/130: **yes**
- 2015: Situation of human rights in the Syrian Arab Republic A/RES/70/234: **yes**
- 2015: Situation of human rights in the Democratic People's Republic of Korea A/RES/70/172: **abstained**
- 2014: Situation of human rights in the Syrian Arab Republic A/RES/69/189: **yes**
- 2014: Situation of human rights in the Democratic People's Republic of Korea A/RES/69/188: **abstained**
- 2013: Situation in the Syrian Arab Republic A/RES/67/262: **yes**

At an ASEAN meeting in Yangon in December 2016, Malaysia urged the creation of an independent ASEAN-led investigation into widespread reports of abuses by Myanmar's security forces against the Rohingya population. Prime Minister Najib Razak led a protest rally in Kuala Lumpur earlier that month against what he called the 'genocide' of the Rohingya minority. He

- [http://www.cscap.org/uploads/docs/RtoP/2RtoPSGMtgRpt\\_Sep\\_2010.pdf](http://www.cscap.org/uploads/docs/RtoP/2RtoPSGMtgRpt_Sep_2010.pdf)
- <http://www.cscap.org/uploads/docs/RtoP/CSCAP%20Study%20Group%20on%20RtoP%20-%20Final%20Report.pdf>

<sup>52</sup> GCR2P, 2016. *Summaries of UN General Assembly Interactive Dialogues on R2P*, <http://www.globalr2p.org/resources/897> (See individual overviews of UNGA meetings on R2P).

<sup>53</sup> UN Human Rights Council, 2019. *List of past members of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/PastMembers.aspx>.

<sup>54</sup> GCR2P, 2016. *Human Rights Council Resolutions Referencing R2P*, <http://www.globalr2p.org/resources/977>. (Voting records are listed in the resolution).

<sup>55</sup> GCR2P, 2018. *UN Security Council Resolutions and Presidential Statements Referencing R2P*, <http://www.globalr2p.org/resources/335>. (Voting records are listed in the resolution).

<sup>56</sup> GCR2P, 2017. *UN General Assembly Resolutions Referencing R2P*, <http://www.globalr2p.org/resources/1133>. (Voting records for each resolution can be accessed using the UNGA's voting records search, available at: <http://www.un.org/en/ga/documents/voting.asp>).

	Encourage and assist States to fulfil their R2P in situations of emerging and ongoing crisis, such as good offices and preventive diplomacy.	Fair	urged other Asian countries to apply pressure on the government of Myanmar to act on the matter. <sup>57</sup> Malaysia has been somewhat of an encouraging force in diplomatic fora to find a solution to the violence and displacement of thousands of people in Myanmar. They, along with Indonesia were some of the few countries in the region that have condemned the violence and have called for action to solve the crisis. <sup>58</sup>
	Strengthen regional and international networks for atrocity crime prevention.	Fair	Despite their active participation in CSCAP, little more information could be found of Malaysia promoting atrocity prevention in networks it is a part of.
	Strengthen the role and capacity of regional organisations.	Fair	Malaysia has stated at UN meetings and in its foreign policy doctrine that strengthening the capacity of regional organisations, including ASEAN, is important in the maintenance of security and stability. <sup>59</sup> The prominence of atrocity prevention in these dealings is unclear.
	Support the development and work of regional human rights and other preventive capacities.	Fair	Malaysia's SUHAKAM, as part of the Southeast Asia NHRI Forum, has worked on furthering five key goals: suppressing terrorism while respecting human rights; combating trafficking in persons; protecting migrants and migrant workers; promoting economic, social and cultural rights and enhancing human rights education. <sup>60</sup> The new government elected in 2018 also shows promise for promoting human rights, but will need to resolve outstanding issues domestically before committing to concrete measures regionally. <sup>61</sup>
	Support atrocity prevention through development and assistance partnerships.	Weak	The government assists in "... the spirit of South-South Cooperation..." through the Malaysian Technical Cooperation Programme (MTCP). <sup>62</sup> While the courses offered through this programme target potential indicators of atrocity crimes by teaching good governance and economic and social prosperity, exact details of furthering atrocity prevention was not forthcoming.
United Nations, prevention, Peacekeeping, and assistance	Support the early warning and capacity building efforts of the UN Office on Genocide Prevention and R2P.	Fair	Malaysia has demonstrated some support for early warning and capacity building, as demonstrated in its 2015 statement at the Interactive Dialogue. This included support for non-military measures to prevent or respond to atrocities, "...including mediation, monitor and observer missions, fact-finding missions, commissions of inquiry, and public advocacy by international officials." <sup>63</sup>
	Support the strengthening of the UN's capacity for atrocity	Fair	Malaysia broadly supports the concepts of R2P, yet it has voiced some concerns over the principle, and thus is reluctant in supporting it unreservedly. In a

<sup>57</sup> GCR2P, 2017, *R2P Monitor, Issue. 31, 15 January, 2017*, p. 10,

[http://www.globalr2p.org/media/files/r2p\\_monitor\\_jan2017\\_final.pdf](http://www.globalr2p.org/media/files/r2p_monitor_jan2017_final.pdf).

<sup>58</sup> Associate Professor Davies, Sara E and Associate Professor Susan Harris Rimmer, 2018. 'Justice for the Rohingya: Regional Responsibility'. *Australian Institute for International Affairs*, 4 April. Available at:

<https://www.internationalaffairs.org.au/australianoutlook/justice-rohingya-encouraging-anti-impunity-measures-myanmar/>.

<sup>59</sup> United Nations, 2016. *United Nations Committed to Cooperation with Regional Bodies, Secretary-General Affirms as Eurasian, Central Asian Entities Brief Security Council*, <https://www.un.org/press/en/2016/sc12566.doc.htm>; Ministry of Foreign Affairs Malaysia, 2018. *Malaysia's Foreign Policy*, <http://www.kln.gov.my/web/guest/foreign-policy>.

<sup>60</sup> Dr Win, Khine Khine, 2016. 'Southeast Asia National Human Rights Institution Forum (SEANF)'. *The Global New Light of Myanmar*, 9 June. Available at: <http://www.globalnewlightofmyanmar.com/southeast-asia-national-human-rights-institution-forum-seanf/>.

<sup>61</sup> HRW, 2019. *Malaysia: Human Rights Make Major Gains: New Government Faces Challenges in Carrying Out Reforms*, <https://www.hrw.org/news/2019/01/17/malaysia-human-rights-make-major-gains>.

<sup>62</sup> Malaysian Government, 2019. *Malaysian Technical Cooperation Programme (MTCP)*, <http://mtcp.kln.gov.my/about-mtcp>.

<sup>63</sup> ICRtoP, 2015. *Statement of Malaysia – Informal Interactive Dialogue on R2P, 8 September 2015*, <http://www.responsibilitytoprotect.org/malaysia-1.pdf>.

	prevention, including through the UN Human Rights system.		2014 statement, Malaysia criticised R2P and the UN for selectively applying R2P and suggesting the principle implies a free reign for intervening in a sovereign state's domestic affairs. <sup>64</sup>
	Support preventive actions on atrocity crimes.	Fair	Malaysia has been generally supportive of prevention over intervention when it comes to atrocity crimes. At a UN General Assembly debate on R2P in 2018, the Malaysian delegate reiterated their country's commitment to R2P, and stated that "... prevention must become the rule, rather than the exception." <sup>65</sup>
	Contribute to United Nations peacekeeping operations (especially those with a protection of civilians mandate).	Strong	<p>Malaysia has been a regular contributor to United Nations' peacekeeping missions, commencing in 1960 (ONUC). Since then, Malaysia has participated in over 30 peacekeeping operations with the deployment of 29,000 peacekeepers from the Malaysian Armed Forces and the Royal Malaysian Police. The deployment of Malaysia's military and police personnel in various UN Peacekeeping Operations is – according to the Government – “a manifestation of Malaysia's strong commitment to shared responsibilities towards the early and peaceful resolution of conflicts.”<sup>66</sup></p> <p>Currently, Malaysia is involved in UN Peacekeeping Operations in the Democratic Republic of Congo (MONUSCO), UN Interim Force in Lebanon (UNIFIL), UN-African Union Hybrid Mission in Darfur (UNAMID), UN Interim Security Force for Abyei (UNISFA) and Western Sahara (United Nations Mission for the Referendum in Western Sahara - MINURSO). Three of these missions have a protection of civilians mandate.<sup>67</sup></p>
Develop the capacities needed to support civilian protection, including through the training of military and civilian personnel for peacekeeping.	Strong	<p>Through the Malaysian Peacekeeping Centre (MPC), the government provides training and capacity building on multi-dimensional peacekeeping for international military, police and civilian personnel who will be embarking on UN peacekeeping missions in conflict areas around the world.</p> <p>In addition to conducting courses, MPC also organises international seminars and workshops. In 2013, it operated two courses relevant to atrocity prevention and human rights, namely: 'Training for Child Protection (2-4 Sept 2013) and 'Training Course for Protection of Civilians' (9-13 Sept 13).<sup>68</sup></p>	

<sup>64</sup> Malaysian Permanent Mission to the United Nations, 2014. *Statement by H.E. Ambassador Hussein Haniff Permanent Representative of Malaysia to the United Nations on 'Fulfilling our Responsibility: International Assistance and the Responsibility to Protect' at the Interactive Dialogue of the General Assembly of the United Nations New York, 8 September 2014*, p. 2, [https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/68th\\_session/2014-09-08\\_-\\_statement\\_r2p.pdf](https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/68th_session/2014-09-08_-_statement_r2p.pdf).

<sup>65</sup> United Nations, 2018. *No Justification for Atrocity Crimes, Prevention Less Costly than Crisis Response, Speakers Tell General Assembly at Opening of Debate on Responsibility to Protect*, <https://reliefweb.int/report/world/no-justification-atrocity-crimes-prevention-less-costly-crisis-response-speakers-tell>.

<sup>66</sup> Malaysian Government, 2015. *Malaysia at the UNSC*, <http://malaysiaunsc.kln.gov.my/index.php/malaysia-at-the-unsc/malaysia-s-commitment/strengthening-the-un-peacekeeping-operations>.

<sup>67</sup> United Nations Peacekeeping, 2019. *Summary of Contributions to UN Peacekeeping by Country, Mission and Post*, p. 29, [https://peacekeeping.un.org/sites/default/files/3\\_country\\_and\\_mission\\_12.pdf](https://peacekeeping.un.org/sites/default/files/3_country_and_mission_12.pdf).

<sup>68</sup> Malaysian Peacekeeping Centre, 2018. *Overview of Malaysian Peacekeeping Centre*, <http://www.mafhq.mil.my/mpc/index.php/en/2012-10-30-06-04-09/2014-01-20-03-36-01>.

	Support the Kigali Principles.	Weak	Malaysia has not signed the Kigali Principles on the Protection of Civilians. <sup>69</sup> It does, however, support the strengthening of peacekeeping missions and the aspect of civilian protection in such missions. <sup>70</sup>
	Support UN Security Council veto restraint on issues relating to atrocity prevention.	Very Strong	Malaysia is a signatory to the Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes, <sup>71</sup> and is also a supporter of the “French/Mexican initiative on Veto restraint in case of Mass atrocities”. <sup>72</sup>

<sup>69</sup> APR2P, 2018. *The Kigali Principles on the Protection of Civilians*, [https://r2pasiapacific.org/files/2942/2018\\_kigali\\_principles.pdf](https://r2pasiapacific.org/files/2942/2018_kigali_principles.pdf).

<sup>70</sup> For example, see: United Nations, Security Council (UNSC), 7711<sup>th</sup> Meeting, 10 June 2016, S/PV.7711, p. 27-28.

<sup>71</sup> GCR2P, 2017. *List of Supporters of the Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes, as elaborated by ACT*, <http://www.globalr2p.org/media/files/2017-01-25-coc-list-of-supporters.pdf>.

<sup>72</sup> GCR2P, 2016. *Support to the French Mexican initiative on veto restraint in case of mass atrocities*, <http://www.globalr2p.org/media/files/veto-list.pdf>.