

MALAYSIA 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Malaysia is a federal constitutional monarchy. It has a parliamentary system of government selected through periodic, multiparty elections and headed by a prime minister. The United Malays National Organization (UMNO), together with a coalition of political parties known as the National Front (BN), has held power since independence in 1957. The most recent national elections in 2008 were conducted in a generally transparent manner and witnessed significant opposition gains. In 2009 Najib Tun Razak became prime minister. Security forces reported to civilian authorities.

The most significant human rights problems included restrictions on freedom of speech, assembly, and association; restrictions on freedom of the press, including media bias, book banning, censorship, and the denial of printing permits; and restrictions on freedom of religion.

Other human rights problems included some deaths during police apprehensions and while in police custody; caning as a form of punishment imposed by criminal and Sharia courts; the persistence of laws that allow detention without trial; restrictions on freedom of the press, including new laws to regulate Internet activity; bans on religious groups; restrictions on proselytizing and on the freedom to change one's religion; obstacles preventing opposition parties from competing on equal terms with the ruling coalition; instances and perceptions of official corruption, the allegation of which sometimes led to harassment of whistleblowers and investigators; violence and discrimination against women; non-acceptance of the lesbian, gay, bisexual, and transgender (LGBT) community; and restrictions on the rights of migrants, including migrant workers and refugees. Longstanding government policies gave preferences to ethnic Malays in many areas. There were restrictions on union and collective-bargaining activity, and various practices continued to create vulnerabilities to child labor and forced labor, especially for migrant workers.

The government prosecuted some officials engaged in corruption and human rights abuses, although some degree of impunity continued to exist.

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

a. Arbitrary or Unlawful Deprivation of Life

There were reports the government or its agents committed arbitrary or unlawful killings. One nongovernmental organization (NGO) reported 49 individuals were killed in police shootings during the year compared to 30 in 2011. State-influenced print media often used a common narrative to describe these encounters: Suspect was stopped by police, tried to attack police; police killed suspect in self-defense; evidence of criminal activity was found on suspect's body. Local human rights groups suggested this pattern was used to justify deaths, usually of ethnic minorities, in the course of arrest or in police custody.

On August 21, plainclothes police shot and killed Dinesh Darmasena Wijemanna in Ampang, Selangor. The police stated he was shot when he, along with four other men with machetes, meat cleavers, and iron rods, attacked a team of police officers. However, two witnesses claimed Dinesh was unarmed and the police shot and killed him at point-blank range. The police detained four witnesses at the scene and six more the next day as they were paying their respects to the deceased. The case was ongoing at year's end.

On December 24, K. Nagarajan was found dead on December 24 at Dang Wangi District police headquarters jail. He had been arrested on December 21 for alleged drug-related offenses. Police informed Nagarajan's family he had died from a fall while in custody. Family members claimed they were not informed of the arrest, questioned why there was a delay in the autopsy, and questioned the overall circumstances of the death. There were no further details available at year's end.

On June 11, with regard to the 2009 death in custody of Ananthan Kugan, the high court convicted police constable Vivekanandan Navindran of causing "grievous hurt" to Kugan and sentenced him to three years in prison. The court had earlier overturned Navindran's 2011 acquittal by the Selangor Sessions Court.

On June 20, the prime minister confirmed the decision of the Attorney General's Office to clear three Malaysian Anti-Corruption Commission (MACC) officers implicated in the 2009 death of Teoh Beng Hock.

On July 19, the Kuala Lumpur High Court upheld the coroner's court decision not to reach an official verdict in the death of R. Gunasegaran, who died while in police custody in 2009. However, the court noted other police districts should investigate future custodial death cases to ensure transparency, the first time a court had ever made such a recommendation. The police claimed Gunasegaran

collapsed while being fingerprinted; lawyers for his family argued he died from a kick to his chest by a police officer.

On December 5, the high court acquitted police corporal Jenain Subi of causing the death of 15-year-old Aminulrasyid Amzah in 2010. In September 2011 a sessions court found Jenain guilty of causing death by negligence and sentenced him to five years' imprisonment. Jenain, who was on patrol duty, discharged 21 gun shots purportedly in self-defense at the car driven by Aminulrasyid. The high court judge in acquitting Jenain ruled he was satisfied the police officer fired the shots merely to stop the car driven by Aminulrasyid and had no intention of killing the teenager.

b. Disappearance

There were no reports of politically motivated disappearances.

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.

On February 16, S. Mogan, a mechanic, alleged that five uniformed People's Volunteer Corps (RELA) members assaulted him while he was waiting for a customer whose car had broken down and along with three others beat him with batons and iron rods, breaking a bone in his leg. He claimed the RELA members then took him to the Taming Jaya police station where he underwent interrogation for more than three hours. In an effort to get him to confess to theft, four policemen continually beat, kicked, and stepped on him, used a rubber hose to hit his legs and feet, and pointed a gun at his head. Following his release, he claimed his car radio, speaker, mobile phone, tools, and 1,300 Malaysian Ringgit (RM) (\$425) were missing. Mogan filed a complaint against the police, but police responded that his story did not match their version of events. There were no further reports on the investigation at year's end.

The criminal case against former Air Force Sergeant N. Tharmendran for allegedly conspiring to steal two jet engines in 2007 continued at year's end. In 2010 he filed a police report alleging he was tortured into confessing to the crime.

Criminal law prescribes caning as an additional punishment to imprisonment for those convicted of some nonviolent crimes, such as narcotics possession, criminal breach of trust, and alien smuggling. The law prescribes up to six strokes of the cane for both illegal immigrants and their employers. More than 60 offenses are subject to caning, and judges routinely included caning in sentences of those convicted of such crimes as kidnapping, rape, and robbery. The caning was carried out with a half-inch-thick wooden cane that could cause welts and scarring. The law exempts men older than 50 and all women from caning. Male children between the ages of 10 and 18 may be given up to 10 strokes of a “light cane.” The government published statistics on caning sporadically, but in a March statement in parliament the government revealed that between 2005 and 2011 it had caned 79,487 prisoners, of whom 46,338 were Malaysians and 33,149 were foreigners. A 2010 Amnesty International publication, *A Blow to Humanity-- Torture by Caning in Malaysia*, estimated the government caned as many as 10,000 prisoners a year.

Some states’ Sharia laws--those governing family issues and crimes under Islam and which apply only to Muslims--also prescribe caning for certain offenses. Although federal law exempts all women from caning, there are no exemptions for women under Sharia, and the national courts have not yet resolved issues involving conflicts between the constitution, the penal code, and Sharia. Sharia caning uses a smaller cane and the caning official is not supposed to lift the cane above the shoulder, thus reducing the impact. Additionally, the cane does not touch any part of the flesh because the subject is fully covered with a robe. Local Islamic officials claimed the idea is not to injure but to make offenders ashamed of their sin so they will repent and not repeat the offense.

During the year, Minister Nazri Aziz of the Prime Minister’s Department rejected a proposal from the National Parent-Teacher Association to reintroduce caning in schools. Nazri also called for review of the law providing for caning of illegal immigrants.

Prison and Detention Center Conditions

Prison conditions were harsh with some deaths of prisoners and detainees, particularly in police holding cells.

Physical Conditions: Prison overcrowding, particularly in facilities near major cities, remained a serious problem. In mid-2011 the national prison administration reported that the country’s 29 prisons held 38,751 prisoners in facilities designed to

hold 32,000. According to the International Centre for Prison Studies, in mid-2011 women made up 6.9 percent and juveniles 2.2 percent of the total prison population. Generally, authorities held men separate from women, juveniles separate from adults, and pretrial detainees separate from convicted prisoners. Conditions for women in prison were not significantly different from those of men. Individuals detained for reasons of national security did not face significantly different conditions from those of the general population. Prisons provided potable water.

In a July 8 statement, the Ministry of Home Affairs revealed that foreigners made up approximately 27 percent of the prison population. In the state of Sabah, out of 1,300 prisoners, 1,020 were foreigners.

Local and international NGOs estimated most of the country's 16 immigration detention centers (IDCs) were at or beyond capacity, with some detainees held for a year or more. NGOs and international organizations involved with migrant workers and refugees 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 IDCs. An NGO with access to the IDCs claimed these conditions and lack of medical screening and treatment facilitated the spread of disease and contributed to continued deaths in IDCs. The government allowed local NGOs to visit IDCs from time to time. NGOs provided most of the medical care and treatment in IDCs. One prominent NGO that visited IDCs during the year noted improvements in physical facilities have been uneven (some were renovated or were under renovation during the year) and treatment of detainees remained unchanged.

On July 8, Perak State immigration officials reportedly detained and tortured 10 migrant workers. A migrant support group claimed most of the 10 had valid passports, work permits, and government registration documents. After being sent to the Langkap Detention Center because their paperwork required "verification," officials allegedly again beat the workers. The support group worried the group would be deported to cover up the abuse.

Accusations of rape of prisoners while in prison or detention occurred. On November 19, three policemen in Prai were charged with raping an Indonesian restaurant worker who allegedly could not produce her passport. The session's court set a February 2013 hearing date for the case.

Death of prisoners while in prison or detention occurred.

On August 13, Cheah Chin Lee, 36, died five hours after his arrest for theft at the Tanjung Tokong Police Headquarters in Penang. According to news reports the Penang Hospital attributed his death to “asphyxia due to hanging.” His family doubted he would commit suicide since he had a stable job “without any financial, health, or emotional problems.” Cheah’s family lodged a police report, and the police promised to investigate. At year’s end the investigation continued.

On May 29, Isparan Subramaniam died in police custody at the Sungai Siput Utara Police Station. The hospital postmortem examination reported that Isparan died of a “perforated peptic ulcer with peritonitis.” His family claimed he had no history of gastrointestinal problems prior to his arrest. The family, assisted by a prominent human rights NGO, demanded further investigation. The police station and Perak police chief had not responded to this demand at year’s end.

Administration: NGOs considered record keeping adequate. The authorities did not use alternatives to imprisonment for nonviolent offenders. The Human Rights Commission of Malaysia (SUHAKAM) serves as the government’s de facto ombudsman, investigating human rights abuses, including those alleged to have taken place within the prison system. Prisoners and detainees are allowed visitors during specified visiting hours, and, provided the religious practices were not derived from one of the sects of Islam the government considers “deviant,” there were no problems with religious observance. The Prisons Act does not provide a process for prisoners to submit complaints to judicial authorities, but it allows judges to visit prisons to examine conditions and ask prisoners and prison officials about prison conditions. According to local NGOs, because prison authorities reportedly monitored all incoming and outgoing materials, complaints normally would not be sent through prison authorities. Communications between an attorney and his or her client generally were treated as private and confidential under the attorney-client privilege.

Monitoring: The authorities generally did not permit NGOs and the media to monitor prison conditions. The government approved visits by the International Committee of the Red Cross and SUHAKAM officials on a case-by-case basis.

The UN High Commission for Refugees (UNHCR) had access to registered refugees and unregistered potential refugees and asylum seekers detained in IDCs and prisons. The UNHCR secured the release of 1,983 refugees from IDCs from January to September 30.

Although the Internal Security Act (ISA) was repealed and replaced with the Security Offenses (Special Measures) Act on July 31, the law allows existing detainees to be held at the Home Minister's discretion. On June 19, SUHAKAM began investigating information from a staff member at the Kamunting Detention Camp who claimed the 45 prisoners still in custody under the ISA had been subject to various forms of torture before arriving at the camp. A police spokesperson denied the allegations as "baseless and malicious." On June 25, a lawyer for one of the detainees claimed her client had been subject to cruel and degrading treatment such as beatings, being forced to stand naked for pictures, and the application of chili paste to his body.

On July 7, 10 ISA inmates ended a two-week hunger strike. According to the inmates, camp authorities assaulted and placed them in solitary confinement with no ventilation. On July 21, after continued protests held by NGOs and families of the ISA detainees outside the prison, Home Minister Hishammuddin stated the detainees would be released in "due time" when "all the capacity building" of the police was in place to protect the public. On August 3, authorities released from prison three of the remaining 45. The home minister ordered another 12 released on August 17, stating they had been rehabilitated following alleged involvement in human trafficking and terrorism. At year's end, 27 ISA detainees remained in custody.

d. Arbitrary Arrest or Detention

The constitution stipulates that no person may be incarcerated unless in accordance with the law. However, the law allows investigative detention to prevent a criminal suspect from fleeing or destroying evidence while police conduct an investigation. In April parliament repealed the ISA and passed the Security Offenses (Security Measures) Act (SOSMA) to replace it effective July 31, along with amendments to the Penal Code, the Criminal Procedure Code, and the Evidence Act. International observers praised repeal of the ISA. Under the SOSMA, once an arrest has been made, the next-of-kin must be notified immediately and the accused must have access to a lawyer within 24 hours. A high-ranking police officer can extend the detention period to 28 days, at which time the accused must be charged or released. The law also states that a person cannot be charged for his political beliefs or activities. The prime minister highlighted the "dynamic" nature of the law, which would be reviewed and improved periodically by a committee including representatives from SUHAKAM and the Malaysian Bar Council. NGO observers criticized what they see as vague language in the SOSMA, such as activities "detrimental to parliamentary

democracy” or “activity...that is prejudicial to the security or interest of Malaysia,” and the ability of police to extend detention within the 28-day period without judicial review. Additionally, some observers criticized provisions that allow the identity of witnesses to be kept secret, inhibiting cross-examination of witnesses, and allowing the accused to be kept in detention after an acquittal if the prosecution decides to appeal. The repeal of the ISA did not affect those still detained under the ISA absent a decision by the home minister to revoke their arrest orders; however, in practice, at year’s end, authorities had released 18 ISA detainees. Of those previously detained under the ISA, 27 remain in detention: 10 Malaysians, one Pakistani, six Sri Lankans, two Indians, two Iraqis, two Indonesians, one Bangladeshi, and three Filipinos.

Role of the Police and Security Apparatus

The approximately 102,000-member Royal Malaysia Police (RMP) force is under the command of the inspector general of police who reports to the home affairs minister. The inspector general of police is responsible for organizing and administering the police force. The Malaysia Department of Islamic Development (JAKIM) enforces Sharia law, which applies only to Muslims, in Kuala Lumpur and the federal territories. JAKIM sometimes receives assistance from the RMP when conducting raids. State-level Islamic religious enforcement officers also have the authority to accompany police on raids or conduct raids of private premises as well as public establishments to enforce Sharia law, including violations such as indecent dress, alcohol consumption, selling of banned books, or close proximity to members of the opposite sex. Religious authorities at the state level administer Sharia law through Islamic courts and have jurisdiction over all Muslims. Sharia law and the degree of its enforcement vary by state, and the penalties imposed by Sharia courts are limited under the civil law.

The RELA is a paramilitary civilian volunteer corps under the jurisdiction of the Ministry of Home Affairs. Until June RELA had government authority to check travel documents and immigration permits of foreigners, conduct raids, detain and interrogate suspects, and conduct other security activities at will. The Malaysian Volunteer Corps Act, which went into effect June 22, further defined RELA’s role and scope of work. The act describes the main duty of RELA as to “assist any security force or authority established under written law upon request of the force or authority” and stipulates that, while performing those duties, RELA members will be “under the command of an officer of the security force or authority...who is present at the place.”

The act sets the minimum enrollment age at 18 and limits members' tenure to five years, denies RELA volunteers authority to make arrests or carry firearms, adds a criminal penalty for impersonating a RELA member, and requires former members to return their uniforms. Deputy Home Minister Lee Chee Leong stated the act should curb crime cases involving impersonation of RELA members.

As of December, RELA membership exceeded three million (nearly 11 percent of the population), a five-fold increase since 2009. According to a statement by Inspector General of Police Tan Sri Ismail Omar, RELA member training is for three weeks. The government took steps to increase RELA's overall role, specifically in assisting police with criminal matters. The government implemented a "Blue Ocean Strategy" during the year, the stated purpose of which was to increase the number of law enforcement authorities on the streets by enlisting the assistance of agencies such as RELA, the Civil Defense Department, and the Police Volunteer Reserves. In July RELA Director General Mustafa Ibrahim stated there were approximately 8,000 to 9,000 RELA members on duty daily throughout the nation. Also in July according to Home Minister Hishammuddin, RELA began stationing members at shopping complexes and parking facilities to be the government's "eyes and ears." In September the police and RELA began a joint patrol program at 612 schools nationwide. NGOs remained concerned that inadequate training left RELA members ill equipped to perform their duties. Reported abuses by RELA members included extortion, theft, pilfering items from homes, and pillaging of refugee settlements. However, such reports were fewer than in previous years.

On April 12, two RELA members pleaded not guilty at the Putrajaya Sessions Court to causing the death of a Nigerian. Two other RELA members were charged in the magistrate's court for injuring the same student.

The government did not release information on how it investigated complaints against RELA members or how it administered disciplinary action. The Public Protection Authorities Act of 1948 and a 2005 Amendment to Essential Regulations give RELA members legal immunity for official acts committed in good faith.

The government has some mechanisms to investigate and punish abuse and corruption. There were NGO and media reports security forces acted with impunity during the year.

Police officers are subject to trial by the criminal and civil courts. Police representatives reported there were disciplinary actions against police officers during the year. Punishments included suspension, dismissal, and demotion.

The government continued to focus police reform efforts on improving salaries, quarters, and general living conditions of police officers. However, the status of other reforms, including the formation of an independent police complaints and misconduct commission, remained pending at year's end.

The police training center continued to include human rights awareness training in its courses. SUHAKAM conducted human rights training and workshops for police and prison officials during the year.

On June 20, the Enforcement Agency Integrity Commission announced that since its inception in April 2011 it had received 171 complaints of abuse. Of these, 120 involved the RMP; RELA and officers of the Immigration Department were also mentioned. Kuala Lumpur and the surrounding state of Selangor originated the highest number of complaints at 50 and 34 respectively. After each complaint, the commission investigated and then referred it to other authorities such as the MACC, Attorney General's Office, and other disciplinary bodies for further action.

Arrest Procedures and Treatment While in Detention

The law permits police to arrest individuals for some offenses without a warrant and hold suspects for 24 hours without charge. After 24 hours the detainee must be brought before a magistrate. A magistrate may extend this initial detention period for up to two weeks (28 days for security offenses under the SOSMA). Although police generally observed these provisions, local NGOs reported a police practice of releasing suspects and then quickly rearresting them and holding them in investigative custody continued. Some NGOs asserted a police approach of "arrest first, investigate later" was prevalent. The law gives an arrested individual the right to be informed of the grounds for arrest by the police officer making the arrest.

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

Police must inform detainees that they are allowed to contact family members and consult a lawyer of their choice. Police often denied detainees access to legal counsel and questioned suspects without giving them access to counsel. Police justified this practice as necessary to prevent interference in ongoing investigations, and judicial decisions generally upheld the practice. On some occasions law enforcement agencies did not promptly allow access to family members.

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

Arbitrary Arrest: Two preventive detention laws permit the government to detain suspects for a limited time without normal judicial review or filing formal charges--the SOSMA, which took effect on July 31 and which replaced the repealed ISA, and the Dangerous Drugs (Special Preventive Measures) Act. The Immigration Act also allows authorities to arrest and detain noncitizens for 30 days pending a decision on deportation; deportation orders cannot be appealed. Other laws that previously allowed preventive detention were repealed in late 2011, including the Restricted Residence Act (repealed December 2011) and three emergency proclamations that were lifted (in November 2011), rendering void the Emergency (Public Order and Prevention of Crime) Ordinance 1969.

Under the ISA, police had the power to arrest without a warrant and hold for up to 60 days any person who acted “in a manner prejudicial to the national security or economic life of Malaysia.” The ISA allowed for the denial of legal representation and did not require the case be brought before a court. The home minister had the authority to authorize further detention for up to two years, with an unlimited number of two-year extensions to follow. Some of those released before the end of their detention period were subject to “imposed restricted conditions.” These conditions limited freedom of speech, association, and travel inside and outside the country. Some individuals arrested under the ISA continued to be detained even after the ISA was repealed in keeping with a provision in the SOSMA that replaced it. As of December, 27 people remained in detention under the ISA, including 17 noncitizens.

The Dangerous Drugs Act gives the government specific power to detain suspected drug traffickers without trial for up to 39 days before the home affairs minister must issue a detention order. Once the ministry issues the detention order, the detainee is entitled to a hearing before a court, which has the authority to order the detainee’s release. Authorities may hold suspects without charge for successive

two-year intervals with periodic review by an advisory board, whose opinion is binding on the minister. The review process, however, contains none of the procedural rights that a defendant would have in a court proceeding. Police frequently detained suspected narcotics traffickers under this act after courts acquitted them of formal charges. The government detained 433 persons under the preventive detention provisions as of June. According to the Anti-Drug Enforcement Agency, 61,584 people were arrested from January to June for drug related offences. The National Anti-Narcotics Agency identified 4,760 new drug addicts from January to June, compared with 11,194 in 2011 and 23,642 in 2010, of whom 3,136 were considered “youths.”

Pretrial Detention: Crowded and understaffed courts often resulted in lengthy pretrial detention, sometimes lasting several years. The International Center for Prison Studies reported that as of mid-2011, pretrial detainees made up 22.4 percent of the total prisoner population, a 5 percent decrease from 2010.

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 additional factors limited judicial independence and strengthened executive influence over the judiciary.

Members of the bar, 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.

On January 9, parliamentary opposition leader Anwar Ibrahim was acquitted on charges of having engaged in consensual sodomy in 2008. Prosecutors had charged Anwar under the penal code for “consensual carnal intercourse against the order of nature,” which carries a potential sentence of 20 years in jail. Anwar’s highly publicized trial began in February 2010 and continued for 22 months. There were no reported cases of prosecution for consensual sodomy between two adults during the year.

In acquitting Anwar, Judge Zabidin Mohamad Diah ruled that the DNA evidence submitted by the prosecution was unreliable and stated he was reluctant to rule on a sexual offense case “without corroborative evidence.” On July 9, the Attorney General’s Office filed an appeal of the acquittal.

Trial Procedures

English common law is the basis for the secular legal system. The constitution states that all persons are equal before the law and entitled to equal protection of the law. Defendants are presumed innocent until proven guilty. Trials are public, although judges may order restrictions on press coverage. Juries are not used. Defendants have the right to counsel at public expense if facing serious criminal charges. According to the Bar Council, defendants generally have adequate time and facilities to prepare a defense if they have the means to engage private counsel. Otherwise the defendants must rely on legal aid and the amount of time to prepare for the trial is at the discretion of the judge. Strict rules of evidence apply in court; however, government-held evidence was not consistently made available to the defense. Defendants confronted witnesses against them and presented witnesses and evidence on their behalf, although judges sometimes disallowed witness testimony. Defendants may make statements for the record to an investigative agency prior to trial. Limited pretrial discovery in criminal cases impeded defendants' ability to defend themselves. Attorneys must apply for a court order to obtain documents covered under the Official Secrets Act. Defendants may appeal court decisions to higher courts, but the law limits a defendant's right to appeal in some circumstances. The government stated that the limits expedite the hearing of cases in the upper courts, but the Bar Council declared that they impose excessive restrictions on appeals.

In firearm and certain national security cases, a lower standard is in effect for accepting self-incriminating statements by defendants as evidence. Regulations also allow the authorities to hold an accused for up to 28 days before making formal charges.

Sharia courts do not give equal weight to the testimony of women. Many NGOs complained that women did not receive fair treatment from Sharia courts, especially in matters of divorce and child custody.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

The government and government officials can be sued in court for alleged violations of human rights. The structure of the civil judiciary mirrors that of the criminal courts. A large case backlog often resulted in delayed provision of court-ordered relief for civil plaintiffs. The courts have increasingly encouraged the use of mediation and arbitration to speed settlements.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Various laws prohibit arbitrary interference with privacy rights; however, authorities infringed on citizens' privacy rights in some cases. Provisions in the security legislation allow police to enter and search without a warrant the homes of persons suspected of threatening national security. Police also may confiscate evidence under these provisions. Police used this legal authority to search homes and offices; seize computers, books, and papers; monitor conversations; and take persons into custody without a warrant. The government monitored e-mails sent to Internet blog sites and threatened to detain anyone sending content over the Internet that the government deemed threatening to public order or security.

JAKIM guidelines authorize JAKIM officials to enter private premises without a warrant if they deem swift action necessary to catch Muslims suspected of engaging in offenses such as gambling, consumption of alcohol, and sexual relations outside marriage.

In what has become an annual occurrence since the issuance of an anti-Valentine's Day fatwa in 2005, the Selangor Islamic Affairs Department and the Petaling Jaya City Council arrested five Muslim couples for khalwat (close proximity to a member of the opposite sex) during a Valentine's Day operation at budget hotels on February 14. In Penang, religious authorities arrested 14 Muslim couples for similar offenses.

In corruption investigations, after a senior police official involved in the investigation submits a written application, the law empowers a deputy public prosecutor to authorize interception of any messages sent or received by a suspect. Information obtained in this way is admissible as evidence in a corruption trial. Security forces have broad authority to install surveillance devices surreptitiously on private property. In addition, public prosecutors may authorize police to intercept postal and telecommunications messages if a prosecutor judges these likely to contain information regarding a terrorist offense. Intercepted communications from such efforts are admissible in court.

The government bans membership in unregistered political parties and organizations.

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, although the government restricted freedom of expression and intimidated journalists into practicing self-censorship. Government representatives cited protection of national security, public order, and friendly relations with other countries as reasons for restrictions on the media.

Freedom of Speech: The constitution provides that laws may impose restrictions on freedom of speech “in the interest of the security of the Federation... [or] public order.” The election law makes it an offense for a candidate to “promote feelings of ill will, discontent, or hostility.” Violators could be disqualified from running for office. The Sedition Act prohibits public comment on issues defined as sensitive, such as racial and religious matters or criticism of the King or ruling sultans. The government used the ISA (repealed on July 31), Sedition Act, Official Secrets Act, Universities and University Colleges Act (UUCA), Printing Presses and Publications Act (PPPA), criminal defamation laws, and other laws to restrict or intimidate political speech. Nevertheless, individuals and opposition political parties frequently criticized the government publicly or privately and in online media. However, on some occasions the government retaliated against those who criticized it.

On October 16, a five-judge Federal Court panel denied lawyer P. Uthayakumar’s bid to have the Federal Court (the highest court) review the June 25 unanimous dismissal by a separate Federal Court panel of his application to declare the Sedition Act of 1948 unconstitutional. The court stated that his application lacked merit and ruled that the constitutionality and validity of the Sedition Act 1948 cannot be challenged. The deputy public prosecutor in the case stated that the right to freedom of speech guaranteed in Article 10 of the constitution could not be an “unrestricted right.” Uthayakumar was detained from 2007 to 2009 under the ISA.

On June 21, the Kuala Lumpur High Court gave Ada Adli Abdul Halim permission to challenge the three-semester suspension order given to him by Universiti Pendidikan Sultan Idris, a public institution. In December 2011, during a rally in front of UMNO headquarters, Adam Adli had lowered a banner with the prime minister's face and raised a banner that read "liberate academic freedom". Adam Adli sought to have his suspension revoked on the basis that it violated his constitutional right to freedom of expression.

On May 31, a session's court in Seremban acquitted and discharged blogger Khairul Nizam Abd Ghani, charged with insulting the Johor royalty in 2010 in remarks on his blog. The judge ruled that the prosecution had failed to establish a prima facie case.

Freedom of Press: The government occasionally censored foreign magazines, foreign newspapers, and foreign-sourced television programming, most often for sexual content. The government exerted control over news content, both in print and broadcast media, punished publishers of "malicious news" and banned, restricted, and limited circulation of publications believed to threaten public order, morality, or national security. There was some harassment of online media.

On November 8, a team of 15 police officers visited the office of the popular online news source *Malaysiakini* to investigate a reader's letter related to a controversial statement made by People's Justice Party (PKR) vice president Nurul Izzah Anwar. Police used a search warrant issued by Petaling Jaya magistrate under the Sedition Act for the letters content. Editor in chief Steven Gan described the visit as "yet another case of intimidation and harassment." He also stated, "There is nothing considered as seditious in [the] letter. We are consulting our lawyers on the matter."

An amendment to the PPPA effective July 15 abolished the requirement for annual renewal of publishing permits. The amended law also introduced judicial review of a Home Ministry decision to grant or withhold a license. Critics called for the elimination of the requirement for a printing license altogether.

On October 1, the Kuala Lumpur High Court's Appellate and Special Powers division quashed the Home Ministry's previous decision not to grant a publishing permit to *Malaysiakini*. In its ruling, the court described the ministry's decision as "improper and irrational" and a violation of the right of freedom of expression. The government had refused for several years to grant a printing license to

Malaysiakini. On October 16, the Attorney General's Office and the Home Ministry filed a notice of appeal against the court's decision.

Parties in the ruling coalition owned or controlled a majority of shares in two of the three major English and most Malay daily newspapers. Businesspersons well connected to the government and ruling parties owned the third major English-language newspaper and all four major Chinese-language newspapers.

The broadcast media also came under attack for censoring international news reports on the April 28 Bersih 3.0 rally (see *Censorship and Content Restrictions*).

Violence and Harassment: Journalists were subject to harassment and intimidation due to their reporting. There were many reports from local and international journalists covering the rally organized by Bersih, a coalition of NGOs called the Coalition for Free and Fair Elections, that police intentionally intimidated and harassed members of the press and damaged and confiscated cameras. For example, *Al Jazeera* reporter Harry Fawcett reported that the police intentionally damaged his camera. *Merdeka Review* reporter Chen Shaua Fui told the NGO Reporters Without Borders that police attacked her while she tried to take photos of police beating two demonstrators. Although she was clearly designated as a journalist, she reported that police continued to intimidate her and attempted to take her camera and phone. The official review panel of the Bersih 3.0 rally also received reports of intimidation and harassment of journalists, but the panel acquitted those investigated for lack of proof.

On November 30, the magistrate's court acquitted police officers Corporal Mohd Khairul Asri Mohd Sobri and Constable Shahrul Niza Abdul Jalil charged with assaulting a *Guang Ming Daily* photographer during the Bersih 3.0 rally. The magistrate ruled that prosecution had failed to prove a prima facie case as the photographer Wong Onn Kin and the other witnesses who had testified were unable to identify Wong's attackers.

Censorship or Content Restrictions: The government continued to censor the media, primarily the print and broadcast media. This was done directly and indirectly by controlling news content; requiring the annual renewal of publishing permits (until the PPPA was amended on July 15) and denying permits to media organizations seen as unfriendly to the government; making publication of "malicious news" a punishable offense and empowering the home affairs minister to ban or restrict publications believed to threaten public order, morality, or national security; prosecuting bloggers and journalists for their writings; taking

little or no action against those who abused journalists; and limiting circulation of some organizations' publications to their members only. A permit is required to own a printing press. Prior to its amendment, the PPPA also prohibited court challenges to suspension or revocation of publication permits. Printers often were reluctant to print publications that were critical of the government for fear of reprisal. Such policies, together with antidefamation laws, inhibited independent or investigative journalism and resulted in extensive self-censorship.

According to the government, censorship provisions ensured that the media did not disseminate "distorted news" and were necessary to preserve harmony and promote peaceful coexistence in a multiracial country. Despite these restrictions, publications of opposition parties, social action groups, unions, Internet news sites, and other private groups actively covered opposition parties and frequently printed views critical of government policies. The English, Malay, and Chinese press sometimes provided alternative views on sensitive issues, as did online media and bloggers.

Radio and television stations were as restricted as the print media and were predominantly supportive of the government. News about the opposition was restricted and slanted. Television stations censored programming in line with government guidelines. The government maintained a "blacklist" of local and foreign performers, politicians, and religious leaders who were not allowed to appear on television or broadcast on radio.

The government generally restricted remarks or publications, including books that it judged might incite racial or religious disharmony.

A Center for Independent Journalism Malaysia study of print media coverage of the April 28 Bersih 3.0 rally concluded that the government-controlled print media gave negative coverage, and less coverage overall, compared with coverage of the July 2011 Bersih 2.0 rally. A Bersih organizer claimed this showed a government effort to minimize the impact of the event.

Astro, the country's only licensed satellite channel, censored a BBC report on the April 28 Bersih 3.0 rally shown on the BBC channel. The version shown did not contain video footage of a policeman acting violently toward demonstrators or rally participants explaining their views on election reform. Information, Communications, Arts, and Culture Minister Rais Yatim stated that the Astro clip had been edited to show only the "best parts" of the segment.

In May the Election Commission (EC) announced that political parties contesting in the next parliamentary election would not be allowed to put up any posters bearing caricatures of individuals or personalities. EC Deputy Chairman Wan Ahmad Wan Omar stated that “the election is a serious matter” and that cartoons would be inappropriate. Popular political cartoonist Zulkiflee Anawar Ulhaque announced that he would lead the Kumpulan Kartunis Independen, a leading group of cartoonists, in defiance of the EC ban.

Libel Laws/National Security: The Defamation Act governs civil defamation disputes and sections of the penal code govern criminal defamation. Criminal defamation is punishable by a maximum of two years in jail, a fine, or both. On August 10, political blogger Amizudin Ahmat was sentenced to three months’ imprisonment (later deferred pending an appeal) for contempt of court regarding a court order not to criticize Minister of Information, Communications, and Culture Rais Yatim. Amizudin posted articles during the year that were judged by the high court to be defamatory despite being ordered in July 2011 to pay RM300,000 (\$98,039) in damages, plus costs, in a defamation suit brought by Rais. Amizudin’s appeal of the order was rejected in January. Rais filed the initial defamation suit in 2011 over a blog entry that quoted a published article suggesting that Rais had committed rape.

On June 1, Chan Hon Keong was given the maximum sentence for posting online comments that insulted the Sultan of Perak. Under the Communications and Multimedia Act of 1998, Chan was charged with “improper use of network facilities or services by knowingly posting comments which insulted the sultan” and sentenced to a year in jail and a RM50,000 (\$16,340) fine. The prosecutor in the case stated that he sought the maximum sentence so Chan’s story could be a deterrent to others. At year’s end, the case was on appeal.

Publishing Restrictions: The PPPA requires domestic and foreign publishers to apply to the government for a permit and empowers the home affairs minister to ban or restrict publications believed to threaten public order, morality, or national security. Prior to the July 15 amendment, publishing permits were required to be renewed annually and judicial review was not available. Judicial review now may be sought for banned books. During the year the ministry continued to review, censor, and confiscate many foreign publications.

The Home Ministry banned five books during the year, compared with one in 2011 and 25 in 2010. On May 29, the Home Ministry banned the book *Allah, Liberty and Love*, by Irshad Manji, stating the book had elements that could mislead

Muslims. Six days before announcement of the ban and three weeks before the book's scheduled public release, the Federal Territories Islamic Affairs Department took copies of the book from a Borders bookstore in Kuala Lumpur and asked the most senior Muslim on duty, Nik Raina Abdul Aziz, to go to its offices the next day. On June 19, the Kuala Lumpur Sharia High Court charged her for distributing Manji's book, a crime that could lead to a RM3,000 (\$9,800) fine and two years in prison. Raina was specifically chosen because she was a Muslim who could be charged by the Sharia Court, while more senior staff members who were not Muslims were ignored by the authorities. Nik Raina's criminal and Sharia court proceedings continued at year's end.

The other four banned books were: *Pengantar Ilmu-ilmu Islam (Introduction to Islamic Knowledge)*, *Dialog Sunnah Syi'ah (Shia-Sunni Dialogue)*, *Tafsir Sufi Al-Fatihah Mukadimah (The Sufi Version of the Preamble to Al-Koran's Al-Fatihah)*, and *Where Did I Come From?* by Peter Mayle, a sex education book designed for parents and children originally published 40 years ago. The Home Ministry maintained a list of 1,517 titles banned since 1971.

On July 31, the Kuala Lumpur High Court ruled the 2010 arrest and detention of political cartoonist Zulkifli Anwar Ulhaque lawful under the PPPA and the Sedition Act. However, the court also ruled that the continued confiscation of his books and artwork under the Sedition Act was unwarranted.

On July 27, the Court of Appeals unanimously upheld the 2010 high court ruling that overturned the 2008 ban on the book *Muslim Women and the Challenges of Islamic Extremism*.

Internet Freedom

The government for the most part maintained a policy of open and free access to the Internet, but authorities monitored the Internet for e-mails and blog postings deemed threatening to public security or order. Approximately 17 million Malaysians (about 62 percent of the population) used the Internet.

On June 5, Information, Communications, and Culture Minister Rais Yatim expressed support for former prime minister Mahathir Mohamad's call for regulations to control Internet freedom. Rais added that the ministry was working on ways the Internet could be regulated "for the sake of goodness and for lasting peace and prosperity," but there were no indications that such proposals had been presented to the government as a whole or adopted as official policy.

A task force consisting of police, Internet regulators, the Ministry of Information, and the Attorney General's Office monitored the Internet for blog postings deemed harmful to national unity and contributing to racial tensions. The government monitored e-mails sent to Internet blog sites and threatened to detain anyone sending content over the Internet that the government deemed threatening to public order or security. A second task force existed to investigate complaints about possible specific threats to national security and unity. The government continued to warn Internet operators to avoid offensive or indecent content, or sensitive matters such as religion and race.

Criminal defamation laws led to some self-censorship by local Internet content sources such as bloggers, news providers, and NGO activists.

On July 5, the blog of opposition PKR strategist Rafizi Ramli was hacked and the contents erased.

On June 30, *Malaysiakini* announced that its Internet site was attacked for eight hours until the site's technology team was able to restore service. Simultaneous attacks were also launched on the Web sites of opposition political parties. *Malaysiakini* reported that the distributed denial of service attack was "the most sophisticated attack to date."

The Communications and Multimedia Act requires certain Internet and other network service providers to obtain a license. Previously the government stated it did not intend to impose controls on Internet use, but that it would punish the "misuse" of information technology. The act permits punishment of the owner of a Web site or blog for allowing content of a racial, religious, or political nature that a court deems offensive.

An amendment to the Evidence Act that took effect on July 3 establishes a presumption of fact that any registered user of network services is presumed to be the publisher of a publication sent from a computer linked to that network service, and it thus places the burden of proof onto the user or owner rather than the investigators. Several NGOs, the Bar Council, and members of the public criticized the amendment; the Bar Council called for its repeal, noting that it could make "even coffee shops offering free Wi-Fi services liable for any defamatory or criminal acts of customers using computers at their premises." Some activists expressed fear that the new law could greatly inhibit online activity in areas such as social media or blogs, where site administrators may censor their speech for fear

of others posting content for which they may be liable. The Prime Minister's Department responded to concerns by emphasizing that the amendment only shifts the burden of proof, but that assumptions are open to rebuttal. The prime minister asked his Cabinet to discuss the controversial section. In August Law Minister Nazri Aziz and the Attorney General's Office announced that the law would not be changed.

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 continued to require that all civil servants, university faculty, and students sign a pledge of loyalty to the king and government. Opposition leaders and human rights activists claimed that the government used the loyalty pledge to restrain political activity among civil servants, academics, and students.

Although faculty members sometimes were publicly critical of the government, self-censorship among public university academics whose career advancement and funding depended on the government was clear. Self-censorship took place among academics at private institutions as well, spurred by fears that the government might revoke the licenses of their institutions. The law also imposed limitations on student associations and on student and faculty political activity.

An August 1 amendment to the UUCA allows university students to join political parties and to engage in political activity, as long as they do not do it on campus and students at public universities are required to sign a contract including "dos and don'ts." Before this amendment students were forbidden by law from being members of a political party or taking part in political activities or rallies. The amendment followed an October 2011 court ruling declaring portions of the UUCA unconstitutional.

In the past the government censored and banned films for profanity, nudity, sex, violence, and certain political and religious content. Films in Hebrew, Yiddish, or from Israel are not allowed to be shown in cinemas. The government censored films mostly for reasons of sex, nudity, brutality, and violence. The high cost of producing an edited version of 3D movies led to some of them not being shown at all. Although the government allowed foreign films at local film festivals, sexual content was censored by blocking the screen until the concerned scene was over.

Media censorship rules forbid movies and songs that promote acceptance of gay persons.

On April 3, the Ministry of Information, Communications, and Culture denied visas to the Singapore Dance Theatre because of the “indecent” of their costumes. The company was scheduled to perform a selection of classical ballet works; all of the costumes for women had long skirts except for *The Nutcracker*, which was to be performed in the traditional ballet short classical tutu and tights.

In February the government banned singer Erykah Badu from performing in the country. A government committee made up of police, Islamic policy officials, and others canceled the concert based on a photograph of Badu that showed a temporary tattoo depicting the word “Allah” in Arabic script on her shoulders. The information minister released a statement declaring that the body art was “an insult to Islam and a very serious offense” and the photo had “triggered public criticism that could jeopardize national security and cause a negative impact to the government’s image.” In past years organizations such as the youth wing of the opposition Pan-Malaysian Islamic Party (PAS) have protested against singers and groups it considered obscene and not in accordance with Islamic values. As a result the government canceled or placed conditions on performances by some international performers.

The PAS-led Kedah State government continued its policy of issuing entertainment licenses to female artists only for concerts for female audiences. The state government also maintained a blanket ban on rock, reggae, pop, and dangdut (an Indonesian style of music) concerts that it first imposed in 2008, claiming such types of music could have a “negative impact” on youth.

Universiti Malaya authorities suspended student Haziq Abdullah Abdul Aziz for being involved in a demonstration against the National Higher Education Fund Corporation on April 14, and for allegedly insulting the sultan of Johor.

b. Freedom of Peaceful Assembly and Association

The constitution provides for freedom of assembly and association but allows restrictions deemed necessary or expedient in the interest of security, public order, or (in the case of association) morality.

Freedom of Assembly

The constitution states that all citizens have “the right to assemble peaceably and without arms”; however, the government placed significant restrictions on this right through use of the Peaceful Assembly Act, which took effect on April 23, and through the Public Order Ordinance and the Police Act. Prior to the Peaceful Assembly Act, public assemblies that could damage security and public order were restricted and police permits were required for all public assemblies (defined as a gathering of five or more persons) except for workers on picket lines. The decision to grant a permit rested with the district police chief; however, senior police officials and political leaders influenced the granting or denial of some permits. Police routinely granted permits to government and ruling coalition supporters but used a more restrictive approach with government critics, opposition parties, NGOs, and human rights activists.

The new Peaceful Assembly Act (PAA) was passed in late 2011 despite concerted opposition by the Bar Council and several NGOs. It eliminates the need to apply for police permits (although it allows the police to place conditions on the time, place, and manner of public assemblies), bans street protests altogether, disallows peaceful assembly by noncitizens and minors (under 15), and restricts where and when assemblies may be held by establishing exclusion zones within 50 yards of designated locations such as places of worship, schools and other facilities.

On December 9, University Malaysia Sabah cancelled the International Human Rights Day celebration organized by SUHAKAM and several NGOs at the campus stadium noting that the event was politically motivated and that it had received a directive from the Chief Minister’s Department to cancel. The organizers were forced to hold the celebration at another venue despite having paid the booking fee for the stadium in full and having obtained approvals from the relevant authorities.

On April 28, Bersih organized a large rally in Kuala Lumpur. A judge denied the organizers permission to use Independence Square for the rally, and the police set up barricades around the square. The event was largely peaceful, but as the rally ended, some protestors breached the police barricades. The police used tear gas and chemically enhanced water cannons against the demonstrators and allegedly pursued rally participants. Some demonstrators threw rocks, overturned police cruisers, and allegedly assaulted police. There were credible reports of heavy-handed treatment of protesters by police, including beatings and destruction of property, particularly cameras used by journalists. A report by the Bar Council concluded that there was widespread police brutality, a concerted effort by the police to prevent and stop any recording of their actions and conduct, police fired tear gas directly at the crowd and their firing pattern boxed participants in rather

than allowing them to disperse quickly. In addition, not all police personnel wore proper police identification on their uniforms. Reportedly 75 persons were injured including 20 police personnel. The police detained 512 persons, all of whom were released within 24 hours.

The police estimated approximately 25,000 attended the rally, while Bersih put the count at over 150,000. Outside observers estimated 80,000-100,000 participants. Bersih organized simultaneous smaller demonstrations in other cities throughout the country and in 35 countries and 85 cities worldwide. Throughout May and June, those supporting Bersih and those supporting the government advanced different versions of what happened on April 28. The government established an independent advisory panel to investigate what happened, chaired by Hanif Omar, the former inspector general of police. Hanif's appointment was criticized because he had stated immediately after the rally that participants were communist sympathizers and were trying to overthrow the government. The advisory panel met occasionally during the year. SUHAKAM also began its own inquiry into the rally.

On May 22 opposition leader Anwar Ibrahim and two other PKR leaders were charged with violating the PAA by taking part in a "street protest" and disobeying a magistrate's court order during the Bersih 3.0 gathering on April 28. On July 2, the trio faced an additional charge of abetment for their alleged involvement in the breaching the barricades at the Bersih 3.0 rally. If convicted, they face a fine of RM10,000 (\$3,268) for the first charge, six months in prison and/or a fine of RM2,000 (\$654) for the second charge, and a jail term of one month and/or a fine of RM2,000 (\$654) for the third charge. On September 3, Anwar filed an application with the high court to decide whether certain sections of the PAA were in accordance with the federal constitution that guarantees freedom of assembly and speech in a bid to invalidate the illegal assembly charges against him. The cases were pending at year's end.

On May 15, the federal government filed a civil suit under the PAA against Bersih co-chairperson Ambiga Sreenevasan and nine other steering committee members for RM122,000 (\$39,869) in damages that occurred during the rally. Ambiga and the other defendants then filed counter claims seeking a declaration from the high court that section six of the PAA is unconstitutional and void for violating the right to free expression and assembly. On July 23, A. Samad Said and five other Bersih steering committee members applied to be interveners in the case against their colleagues. On September 18, the court allowed the six to intervene and become parties in the government's lawsuit against their colleagues after the government

withdrew its preliminary objection. The suit and countersuit continued at year's end.

On July 18, the Court of Appeal struck down an application filed by 16 people, including two members of parliament (MPs) and the deputy chief of an opposition political party, to overturn a high court decision ordering them to defend themselves against charges of participating in an unlawful Bersih-organized assembly in 2007. A session court acquitted the respondents in 2010, but on March 1, the high court overturned this decision and ordered the group to enter its defense. The trial continued at year's end.

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. Under the Societies Act, only registered organizations of seven or more persons may function as societies. The government sometimes refused to register organizations or imposed conditions when allowing a society to register. The government continued to ban the Communist Party and its affiliated organizations because they allegedly posed a national security threat. In October the Kuala Lumpur High Court upheld a 2011 judgment that denied the registration of the Human Rights Party (HRP). The judge stated that the HRP had failed to submit a constitution that was compliant with the Registrar of Societies' requirements for registration. According to the HRP, the constitution they submitted was the same as the constitution that had been approved for the opposition Democratic Action Party. The government also has the power to revoke the registration of an existing, registered society for violations of the act. The government did not use this power of revocation against political opposition groups during the year.

Until amended, the UUCA also restricted freedom of association. It mandated university approval for student associations and prohibited student associations and faculty members from engaging in political activity (see section 2.a.). The amended UUCA provides that students who hold a political post are prohibited from conducting political party activities on campus, and universities may ban any organization deemed "unsuitable to the interests and well-being of the students or the university." Students also are enjoined from "expressing support or sympathy" for an unlawful society or organization.

Some human rights and civil society organizations had difficulty obtaining government recognition as NGOs; as a result some NGOs registered as companies,

which presented legal and bureaucratic obstacles to raising money to support their activities. Some NGOs also reported that the government monitored their activities.

In September and October, government officials and government-friendly media increasingly drew attention to foreign funding of NGOs. A front-page story in the *New Straits Times* on September 21 alleged that “investigators...have uncovered attempts by foreign hands to destabilize the government,” singling out the National Endowment for Democracy, the Open Society Institute, and the German embassy. In October some MPs announced their intention to propose laws to prevent interference in the country’s affairs. Law Minister Mohamed Nazri Aziz publicly stated that such proposals merited consideration because “the influx of foreign funds for such purposes will cause us to become agents of foreign powers....” Opponents claimed that such statements were an attempt to curb legitimate activities and underscored those government initiatives, UMNO, and government-friendly NGOs also receive foreign funds.

At year’s end human rights NGO Suara Rakyat Malaysia (SUARAM) and its corporate entity, Suara Inisiatif Sdn Bhd, remained under investigation by five government agencies for allegedly raising funds while operating as an unregistered society and for alleged violations of the Companies Act. The investigation began in earnest on July 3-4, when the Companies Commission of Malaysia (CCM) visited SUARAM’s offices. The CCM visit, which the CCM called “routine,” immediately followed allegations by progovernment Jaringan Melayu Malaysia (JMM), a Malay rights group, that SUARAM was registered as a private company rather than as a NGO under the Registrar of Societies. The JMM questioned if there were overseas funders for SUARAM and the motives of those funders. SUARAM replied that it was registered as a company because the minister in charge of the Registrar of Societies had total discretion in registering societies and that SUARAM had registered as a company to avoid this “discrimination.” SUARAM claimed that it was under investigation because of international attention it had brought to the country by being involved in a lawsuit in France alleging illegal payments and corruption in the sale of French Scorpene submarines to the country in 2002, and not for reasons of alleged violations of the Societies Act or the Companies Act. The investigation continued at year’s end.

c. Freedom of Religion

See the Department of State’s *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution provides for internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights in practice, although there were some restrictions, particularly with respect to the eastern states of Sabah and Sarawak. The government generally cooperated with the UNHCR during the year and the UNHCR reported good access to government officials. The government generally did not impede other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern, with the exception of the deportation of six Uighurs and the deportation of Hamza Kashgari (see Refoulement below).

In-country Movement: The eastern states of Sabah and Sarawak controlled immigration and required citizens from peninsular Malaysia and foreigners to present passports or national identity cards for entry, consistent with the agreement on Sabah and Sarawak becoming part of the country in 1963. Bersih co-chairperson Ambiga Sreenevasan, who was denied entry to Sarawak in April 2011 during the state election campaign, remained under a ban on travel to Sarawak. Other activists and opposition political figures were denied entry to Sarawak during the year, including Hilman Idham, an aide to the opposition PKR deputy president on September 14 and artist Mohd Fahmi Reza Mohd Zarin on September 24. In October Bersih steering committee member Ahmad Syukri Che Ab Razab was denied entry into his native state of Sabah. On March 15, authorities denied a leader of the opposition party PAS, Mazlan Aliman, entry into Sabah with no reason given. Aliman was supposed to lead a rally in the state capital to press the government to protect native land rights. On March 10, Bersih steering committee member Maria Chin Abdullah was stopped from entering Sarawak, where her intention was to meet with the local Bersih 2.0 group.

The government also regulated the internal movement of provisionally released ISA detainees.

Foreign Travel: Although the government lifted a freeze on travel to Israel in April 2011, citizens must apply for government permission to go there. According to Christian groups, this permission was increasingly difficult to obtain. Groups can now travel through their churches only and must get permission from the Ministry of Home Affairs. Authorities imposed quotas on the number allowed on

each trip (20 people) and the length (seven days). Churches also are required to prove that those going on the trip are members of the church. The government stated that because the country has no formal relations with Israel and there is a volatile security situation, the imposed conditions are fair.

Exile: The constitution provides that no citizen may be banished or excluded from the country. Nevertheless, two prominent citizens remained in exile at year-end. Chin Peng, the former leader of the communist insurgency, continued to live in Thailand because he was either unable or unwilling to satisfy a court ruling compelling him to show identification papers proving his citizenship. Dissident blogger Raja Petra Kamarudin remained in self-exile in London; he previously said he would return to the country to face sedition charges when assured he would not be detained under the ISA.

On August 1, Waytha Moorthy, head of the banned group Hindu Rights Action Force (Hindraf), returned from self-imposed exile that began in 2007 when Moorthy feared he would be detained under the ISA. On September 18, immigration officials refused to allow him to fly to the Philippines on the grounds of “national security” and informed him that there was a government prohibition against him leaving the country.

The deportation of noncitizens continued to be implemented under the Immigration Act.

Protection of Refugees

Access to Asylum: The country’s laws do not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The government did not provide legal protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. At the same time, the government generally cooperated with UNHCR and occasionally reported potential persons of concern to the UNHCR.

Because the UNHCR did not maintain a presence at the country’s border, most asylum seekers traveled to Kuala Lumpur for determinations. As of September 30, the UNHCR reported 98,620 persons as asylum seekers and refugees, approximately 92 percent of whom were Burmese citizens, with Chin and Rohingya being most numerous, and sizeable groups of Kachin, Karen, and Mon.

According to the UNHCR, in 2011 the country hosted a population of some 80,000 Filipinos in the province of Sabah, an increase from an estimate of 60,000 in 2010. The UNHCR and the government do not recognize this group as refugees.

On December 18, following consultations with the UNHCR, the authorities allowed 40 persons, believed to be Rohingya (Burmese-origin Muslims) shipwreck survivors to disembark. A Vietnamese-flagged cargo vessel, the *Nosco Victory*, rescued the survivors after their ship, believed to be carrying more than 200 persons, sank in the Bay of Bengal. The *Nosco Victory* first tried to disembark the survivors in Singapore where they were refused permission.

Refoulement: Beginning in 2009 the government recognized individuals carrying a UNHCR card. There were no reports of government deportation of refugees or asylum seekers with UNHCR refugee cards. Occasional reports by refugees of needing to pay bribes to police to avoid detention, despite carrying a UNHCR card, continued.

An international NGO reported that on December 31 the government deported six Muslim-minority Uighurs from detention in the country back to China. The six persons had registered with the UNHCR and were waiting for their claims to be processed when they were deported.

Hamza Kashgari, a Saudi citizen, left Saudi Arabia after a controversy arose about tweets he posted that allegedly insulted the Prophet Mohammad. En route to New Zealand, he was detained in the country on February 7. On February 12, he was deported to Saudi Arabia. A subsequent dispute involved whether he was deported before or after a high court injunction against his removal was issued.

Refugee Abuse: The government sometimes detained asylum seekers, either in police lockups or in immigration detention centers, until the asylum seeker's bona fides were established by the UNHCR. NGOs reported that detention facilities were overcrowded, unsanitary, and lacked adequate medical facilities (see section 1.c.).

The UNHCR reported that it was aware of at least two deaths of Burmese nationals who were suffering from HIV/AIDS at detention centers. Through the UNHCR's efforts, two NGOs were able to visit two of the 16 IDCs in the country to provide health services to the detainees.

According to local NGOs and international organizations, IDCs allowed those with UNHCR documents access to the UNHCR while in detention. Authorities occasionally detained refugees with UNHCR cards during raids conducted to arrest illegal migrants but released them after review of their documents. Authorities also continued to provide the UNHCR access to potential refugees without UNHCR registration cards, as well as to all Burmese detainees in the IDCs, to verify whether they were asylum seekers.

Employment: Although they were not legally authorized to work, the government typically did not interfere with registered refugees doing odd jobs. However, the UNHCR reported that there were a few cases where the government brought charges against employers for hiring them. During the year there were no official announcements concerning deliberations about allowing refugees to work. In 2011 the government began registering documented and undocumented foreign workers under a “6P” migrant registration exercise.

Access to Basic Services: The government provided access to health care for refugees with UNHCR cards at a discounted foreigner’s rate; however, the costs generally were beyond the means of the refugees. NGOs ran mobile clinics, but access was limited. Refugees had limited access to formal education, and although NGOs and ethnic communities ran schools, a lack of resources and qualified teachers limited opportunities for schooling. During the year UNHCR staff members conducted numerous visits to various prisons and IDCs located throughout the country to provide counseling and support and ensure legal representation for refugees.

Stateless Persons

Citizenship is derived from one’s parents. The citizenship of one or both of the parents, whether the parents are legally married, and the ability to produce valid identification and proof of citizenship are the key criteria for being able to pass citizenship to a child. The UNHCR estimated that there were 40,000 stateless individuals in peninsular Malaysia alone in 2011, in addition to approximately 85,571 refugees and 11,049 asylum seekers as of September 30. A Sabah government task force estimated that there were 30,000 children of undocumented Filipino workers in Sabah.

Foreign women often may qualify for permanent resident (PR) status after five years of marriage to a citizen (10 years for foreign men). After two years of PR status, they would be eligible to apply for citizenship. While awaiting PR status,

foreign spouses of citizens are usually granted visas to allow them an extended legal stay in the country. A local advocacy group for migrant workers reported that in the last five or six years, these processes have improved to include shorter waiting times in the processing of PR petitions and visas. Although nationality laws in the country are not overtly discriminatory because of gender, ethnicity, or religion, some unevenness was evident. Refugees were at a particular disadvantage because they often were unable to provide valid documentation to prove citizenship in their countries of origin.

Women may pass their citizenship to their children born in the country, regardless of whether the child was born in wedlock, but men may pass their citizenship to their children only if the child is born in wedlock. Children born abroad, in wedlock, to a citizen father and a foreign or citizen mother may be registered as citizens. Children born abroad in wedlock to a citizen mother and a foreign father are traditionally considered to have inherited the father's citizenship.

Authorities considered children born out of wedlock to foreign women to have inherited their mother's citizenship. Such births can be registered only upon production of valid proof of citizenship. This creates a risk of statelessness because many foreign women are unable to produce valid proof of citizenship, such as a passport. According to the UNHCR, refugees or asylum seekers often do not have valid proof of citizenship. In these cases the child's citizenship is listed as "unknown" on his or her birth certificate. The UNHCR did not have a numerical figure for the number of children affected by this issue, but viewed it a widespread problem. These undocumented children are not able to attend public schools or access other services, which require proof of identification or citizenship.

Some refugees and asylum seekers marry Malaysian men. Although their children born in the country are eligible for citizenship, the woman may have trouble registering the marriage and subsequently the child's citizenship because of inability to provide a valid passport or identification document. Some observers indicated that children born to Muslim refugees and asylum seekers often have an easier time receiving citizenship than non-Muslim refugees and asylum seekers. For Muslim marriages, a UNHCR document or other documentation may be accepted in lieu of a passport.

A number of local NGOs and SUHAKAM were active on the issue of stateless children, doing research, conducting workshops, and running public awareness campaigns.

Individuals without proof of citizenship are not able to attend schools, access government services such as reduced cost healthcare, or own property. Stateless individuals technically do not have a right to work in the country, but many were able to find odd jobs. The UNHCR may provide birth registration or other documentation in some cases.

By law anyone entering the country without appropriate documentation is considered illegal and faces mandatory imprisonment for a maximum of five years, a fine not to exceed RM10,000 (\$3,268), or both, and mandatory caning not to exceed six strokes.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the right to change their government peacefully, and citizens exercised this right through periodic elections based on universal suffrage; however, while votes generally were recorded accurately, there were some irregularities that affected the fairness of elections, and this right was abridged in practice. The sizes of electoral districts vary, with rural districts generally smaller in population than urban districts. This has the effect of over representing the rural vote, which historically has predominantly supported the ruling coalition.

Elections and Political Participation

Recent Elections: In the 2008 national elections the opposition parties won 49 percent of the popular vote, 82 of 222 parliamentary seats, 198 of 505 state assembly seats, and control of five of the 13 state governments. The opposition's electoral success for the first time since 1969 denied the ruling coalition a two-thirds majority in parliament and thereby blocked the government's ability to amend the constitution at will. These gains came despite the fact that opposition parties were unable to compete on equal terms with the governing BN coalition, led by the UMNO party, which has held power at the national level since independence in 1957, because of restrictions on campaigning, freedom of assembly and association, and access to the media. The opposition parties won eight of 16 by-elections since the 2008 general election.

The coalition of NGOs, Bersih, actively campaigned for electoral reforms. Its principal demands included review and cleanup of the electoral roll, reform of postal voting, use of indelible ink, and a longer campaign period. A parliamentary

select committee (PSC) on electoral reform was established in late 2011 including representatives of opposition parties. On April 3, the PSC's report was adopted in parliament without opportunity for debate. The report contained 22 recommendations for reform, including automatic registration of voters when they reach voting age, a longer campaign period before a general election, free and fair access to the media for all parties, establishment of an independent body to clean up the electoral roll, and establishment of a budget controlled directly by the EC. Opposition parties tried to file a minority report outlining their view that the PSC's recommendations did not do enough to clean up the electoral roll, but the leadership in parliament refused to allow this report to be filed.

The EC stated that it would implement several reforms including the use of indelible ink, allowing citizens residing overseas to cast their ballots from abroad, and introducing early voting for members of the police and military. The EC also changed the placement of voting booths so observers could have a better view of the voting process, and amended a rule to allow voters with disabilities to be assisted by any adult. Overall, observers from civil society and the opposition remained critical of the electoral reform process, as many of the PSC's recommendations were not implemented.

The EC announced that it would appoint several NGOs as accredited election observers for the upcoming general election. The EC reportedly intended to impose restrictive conditions on the observers, such as prohibiting them from watching ballot counting, taking photos of alleged fraud, talking to the polling agents and the media, and moving from one parliamentary district to another, which led some organizations to decline the commission's invitation to become accredited observers. Some civil society groups criticized the EC for its choices because none of the NGOs appointed had experience with election monitoring, while groups that specialized in monitoring were not invited. As in previous elections, candidates were able to assign agents to observe voting and the counting of ballots and to certify the results in each polling place.

Political Parties: Opposition parties were unable to compete on equal terms with the governing BN coalition, which has held power at the national level since 1957, and were subject to restrictions and outside interference. The lack of equal access to the media was one of the most serious problems for the opposition in the 2008 national elections and in the subsequent by-elections. News about the opposition was restricted and reported in a biased fashion. Opposition leaders also claimed that the EC was under government control and lacked the independence needed to carry out its duties impartially. There were numerous opposition complaints of

irregularities by election officials during the 2008 national election campaign; however, most observers concluded that they did not substantially alter the results. During the year, NGOs and opposition party leaders continued to lodge allegations of illegally registered “phantom” voters, reportedly brought in from other districts to vote in tightly contested districts, inflated voter rolls, nonregistered voters using fictitious names or the names of dead voters still listed on the voter rolls, and noncitizens registered to vote.

The constitution states that parliamentary constituencies should have approximately equal numbers of eligible voters; however, in practice the numbers varied significantly, particularly between urban and rural districts. As of October the smallest constituency outside of the federal territory of Putrajaya was Igan, in Sarawak, with approximately 17,000 voters, and the largest was Kapar, in Selangor, with approximately 130,000 voters. Each of these constituencies had one MP.

Over the years power increasingly has been concentrated in the prime minister, and parliament’s function as a deliberative body has deteriorated. Parliament rarely amended or rejected government-proposed legislation and did not give legislation proposed by the opposition serious consideration. Parliamentary procedures allow the speaker of parliament to suspend members, establish restrictions on tabling questions, edit written copies of members’ speeches before delivery, and severely restrict members’ opportunities to question and debate government policies. With the increased number of opposition MPs since 2008, government officials often faced sharp questioning in parliament, which the press reported in greater detail than in the past.

Under the Local Government Act, elections of public officials are confined to state assemblies and the federal parliament. The central government has appointed all local and city officials since the 1969 race riots. Some politicians and NGO activists advocated reintroduction of local government elections.

On January 18, the Penang State government, controlled by the federal opposition coalition, issued a notification exempting local authorities in Penang from the Local Government Act of 1960 that gave appointment power in local elections to the federal government. In May the Penang Legislative Assembly passed the Local Government Elections Enactment, which would have allowed people to elect municipal officials for the first time since the passage of the Local Government Act in 1960. On June 12, however, the federal housing and local government minister informed parliament that the Penang law was not valid as it contravened

the part of the Local Government Act that stated local government elections “shall cease to have force or effect.” Further, the minister asserted that local government elections would violate the Federal Constitution and would be a waste of financial and human resources.

In prior years opposition MPs were suspended from parliament from time to time for reasons such as making misleading statements to parliament and contempt occasioned by their opposition to another’s suspension.

Participation of Women and Minorities: Women faced no legal limits on participation in government and politics. As of October one of the 32 cabinet ministers was a woman. Women held 22 of the 222 elected seats in the lower house and 16 of the 60 seats in the appointed senate.

In practice the political dominance of the Malay majority meant that ethnic Malays held the most powerful government senior leadership positions. Non-Malays filled 12 of the 32 ministerial posts and 21 of the 40 deputy minister positions.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption; however, enforcement has generally focused on relatively small-scale, low-level crime. While the government has successfully prosecuted rising numbers of bribe-taking officials and persons paying bribes, observers have noted the relatively few senior officials prosecuted (or convicted).

The MACC is responsible for investigating and prosecuting corruption of both private and public bodies. An auditor general has the responsibility, set forth in the constitution and the Audit Act, to audit the accounts of the federal and state governments, government agencies, and other public authorities. Cabinet members must declare their assets to the prime minister. Senior civil servants are required to declare their assets to the chief secretary to the government. Junior civil servants must declare their assets to the head of their department. The assets, liabilities, and interests the public officials declare are clearly defined and do not include the assets and incomes of spouses and dependent children. Public officials declare their assets on an annual basis and not upon entry or exit of their posting. Those who refused or failed to declare their assets faced disciplinary actions and were ineligible for promotion. The information contained in the declarations is not made public.

The media reported numerous cases of alleged official corruption, and there was a broadly held perception of widespread corruption and cronyism within the governing coalition and in government institutions. The MACC reported that from January to October, 612 people, including 244 civil servants, were arrested under anticorruption laws. The MACC also reported that in 2011 it had won convictions in 75 percent of 388 corruption cases. MACC convicted 463 people in 2011, compared with 272 in 2010. From January to May, 211 people were convicted of corruption. On October 22, the MACC announced that 14 special sessions courts had been established to expedite corruption cases and clear the approximately 700-case backlog, some of which dated back to 2010. The commission also announced that from January to August, 75 whistleblowers, a majority of them policemen, were given protection while 17 witnesses received protection in corruption cases.

On October 5, counsel for Mohamed Khir Toyo, a former UMNO chief minister of Selangor who in December 2011 was convicted of graft for illegally obtaining two plots of land for himself and his wife, announced that Khir's appeal proceedings would be heard on December 7, however the case was postponed and was pending at year's end.

In September the MACC confirmed that the investigation of Sarawak Chief Minister Abdul Taib Mahmud for alleged corruption over timber concessions in Sarawak continued. MACC chief Abu Kassim Mohamed declined to comment on the progress of the investigation because MACC was "still gathering information." The probe began in June 2011. In a November 2011 letter to the Bruno Manser Fund (BMF), an NGO that works on behalf of native people in Sarawak, British Minister of State Jeremy Browne confirmed that the British government was looking into alleged money laundering by the Taib family both in the United Kingdom and in British offshore financial concerns. On February 25, the British Virgin Islands Financial Services Commission announced its investigation into allegations that a number of its registered companies allegedly linked to Taib's family were involved in money laundering. The BMF also alleged corruption involving the Taib administration and the awarding of contracts to Sarawak Energy, a company that worked on controversial dam projects and whose largest shareholder was Taib's son. The investigations were ongoing at year's end.

On August 29, Switzerland's attorney general announced the opening of a criminal investigation of the country's largest bank, UBS AG, following a criminal complaint by BMF that accused Sabah Chief Minister Musa Aman and his nominees of laundering more than RM270 million (\$88 million) of corrupt

proceeds from the tropical timber business in Sabah through a number of UBS accounts in Hong Kong and Zurich. The case is based on Switzerland's money-laundering legislation, which makes it a criminal offense for Swiss companies to be involved in laundering the proceeds of corruption and other crime in their worldwide activities. The investigation continued at year's end.

At year's end the trial of three senior MACC officers and a businessman for an alleged September 2011 RM930,000 (\$303,922) robbery at Kuala Lumpur International Airport was postponed.

A corruption case continued against former transport minister Chan Kong Choy who, as a member of former prime minister Abdullah Badawi's cabinet, was charged with deceiving Badawi into approving Kuala Dimensi Sdn Bhd as the turnkey developer for the Port Klang Free Zone mega transshipment hub project. Chan's predecessor also was charged with deception, and four other prominent figures were charged with various offenses for their involvement in the project, including criminal breach of trust and fraudulent claims. The hearing was postponed and no new court date was set. All of the cases were pending at year's end.

The 2010 Auditor General's Report, released in 2011, reported possible fraud and abuse in a range of government programs. In the highest profile finding, the report indicated that there were weaknesses and discrepancies in the National Feedlot Corporation's (NFC) use of a RM250 million (\$81.7 million) loan from the government intended to create a national feedlot center to reduce beef imports. On March 12, NFC Chairman Mohamed Salleh Ismail, husband of Shahrizat Abdul Jalil, then Minister of Women, Family and Community Development, was charged with breach of trust and violating the Companies Act. He was accused of funneling the money from the loan into real estate and other companies he and his three children owned. On April 8, Shahrizat resigned from her ministerial position but kept her office as head of UMNO's women's wing. The MACC cleared her June 1 of involvement in the awarding of the loan to the NFC. At year's end the investigation into the NFC continued.

The Whistleblower Protection Act 2010 is designed to protect individuals who disclose information on corrupt practices in both the public and private sectors. The act states that anyone who has evidence of a corrupt practice, act, or fraudulent activity can file a complaint and refer the case to court. The whistleblower would be provided immunity from civil or criminal charges. However, whistleblowers that go to the media or report information publicly do not enjoy such protections.

The Official Secrets Act prohibits dissemination of documents, information material including “Cabinet documents, records of decisions and deliberations including those of Cabinet committees” and any other official document, information, or material that may be classified by a minister in the federal government, a chief minister of a state, or similar public officers. The act goes beyond national security, and encompasses a broad range of documents and information. However, critics accused the government of using the act to prevent dissemination of materials and stifle dissent. Observers contend that the Official Secrets Act can undercut the protections in the Whistleblower Protection Act.

There is a perception that the government has at times used the MACC, as well as the Official Secrets Act and other statutes, to harass or silence opponents. The MACC investigated Rafizi Ramli, a member of the opposition PKR party, under the Official Secrets Act, the Banking and Financial Institutions Act, and for defamation due to his role in revealing information about alleged improper use of government funds by the NFC and allegations he made about the awarding of a contract to expand a light rail line. On August 1, Rafizi was charged for revealing confidential banking details in relation to the NFC scandal. The charge carries a maximum jail sentence of three years and a RM3 million (\$1 million) fine. On September 10, Rafizi filed an application to the high court to quash the charge; he claimed it was selective and politically motivated. On November 23, the high court dismissed the application as premature but allowed Rafizi’s application for a stay of proceeding pending his appeal against the dismissal. The case remained ongoing at year’s end.

MPs are allowed to obtain information protected by the Official Secrets Act on an ad hoc basis, some of which was then made available to the public.

In 2011 the states of Selangor and Penang, both controlled by the federal opposition coalition, passed freedom of information laws, the first laws of their type in the country, to allow public access to certain state documents. During the year the Selangor government began training officers on how to implement the act and created penalties for those found to be giving false information to the public.

In April the chief secretary of the government released a circular that instructed government agencies to post on the Internet for a 14-day public comment period all draft laws and subsidiary regulations. The action followed a February pledge by the prime minister to enhance public consultations on draft legislation. Implementation of the circular remains uneven. Generally, if government agencies

sought outside views, they would consult directly with selected stakeholders in a nontransparent process.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. In some cases government officials were cooperative and responsive to their views.

The government generally allowed NGOs to function independently, met with representatives from some NGOs and responded to some requests of NGOs. However, in some instances the government also, suppressed positive media coverage of NGOs that espoused views that were contrary to those of the ruling coalition and took actions against some NGO leaders. For example, on May 11, the MACC summoned NGO activist Irene Fernandez to explain her remarks about the country not being safe for foreign workers and that foreign workers were victims of corruption. Fernandez had originally made the remarks to the *Jakarta Post* on May 8. On May 16, RELA and members of two NGOs filed a complaint with the police against Fernandez for “tarnishing the good name of the country,” and police reportedly considered charging her under the Sedition Act. At year’s end, investigation into the case continued.

Various government agencies were investigating the human rights NGO SUARAM at year’s end (see section 2.b.).

The Sarawak and Sabah state governments, each of which controls its own immigration policy separate from peninsular Malaysia, prevented several domestic activists from visiting their states. For example, the Sarawak State government barred an NGO leader associated with the Bersih movement from entering Sarawak in connection with Bersih activities inside the state. The Sabah State government also blocked a leader from the opposition party PAS from entering the state to lead a rally for native land rights in the state capital (see section 2.d.).

UN and Other International Bodies: The government cooperated with some international organizations during the year including the UNHCR. In June activists from several NGOs, including SUARAM and the Bersih steering committee, visited Geneva where they met with the UN Human Rights Council. The UN special rapporteurs for freedom of assembly and association, the right to

freedom of expression, and the situation of human rights defenders issued a joint press statement requesting an invitation to conduct an independent inquiry into the human rights abuses during the April 28 Bersih 3.0 rally. The government did not respond.

Government Human Rights Bodies: SUHAKAM was created by an act of parliament and headed by a chairman and commissioners appointed by the king on the recommendation of the prime minister. SUHAKAM was generally considered a credible monitor of the human rights situation. SUHAKAM conducted training, undertook investigations, provided reports, and made recommendations to the government. SUHAKAM is not empowered to inquire into allegations relating to ongoing court cases and must cease an inquiry if an allegation under investigation becomes the subject of a court case.

SUHAKAM commissioners traveled throughout the country to educate community leaders, including police officials, on the importance of human rights. Commissioners also made several visits to prisons throughout the country to monitor conditions. As in prior years, SUHAKAM noted the slow government response to their reports that touched on fundamental liberties.

SUHAKAM conducted its own investigation into the actions taken by protesters and police in connection with the April 28 Bersih 3.0 rally. A representative from SUHAKAM noted that the police tended to respond to inquiries in a way that emphasized protester actions, such as the injuring police officers but did not make any admissions of police misconduct. SUHAKAM's report was still pending at year's end.

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

The constitution provides for equal protection under the law and prohibits discrimination against citizens based on race, sex, religion, descent, or place of birth. The law is silent on discrimination based on disabilities and sexual orientation. The constitution also provides for the "special position" of ethnic Malays and the indigenous groups of the eastern states of Sabah and Sarawak (collectively, bumiputra), and discrimination based on this provision persisted. One of the requirements for being considered an ethnic Malay is to speak the Malay language.

Women

Rape and Domestic Violence: Rape, including marital rape, is a criminal offense, as are most forms of domestic violence. The penal code states that rape is punishable by a prison term of up to 30 years, caning, and a fine. Marital rape does not have a minimum penalty, but the maximum penalty is five years' imprisonment. There is no minimum jail term for a man convicted of statutory rape of a girl age 15 years or less. The government enforced the law effectively. In 2011 rape victims lodged 3,301 police reports, compared with 3,595 in 2010. Unlike in prior years, the police did not publicly report the number charged, convicted, and punished on rape charges. A prominent women's rights NGO claimed that 3,000 cases of rape and domestic violence are reported annually, while an estimated 20,000 or more sexual crimes go unreported.

As in the case of rape, the police did not report data on charges, convictions, and punishments for domestic violence cases. Many government hospitals had crisis centers where victims of rape and domestic abuse could make reports without going to a police station. NGOs and political parties also cooperated to provide counseling for rape victims, but cultural attitudes and a perceived lack of sympathy from the largely male police force resulted in many victims not reporting rapes. Women's groups claimed that courts were inconsistent in punishing rapists.

Although the government, NGOs, and political parties maintained shelters and offered other assistance to battered spouses, activists asserted that support mechanisms for victims of domestic violence remained inadequate. There was a sexual investigations unit at each police headquarters to help victims of sexual crimes and abuse. In addition, police will sometimes assign psychologists or counselors to provide emotional support. Women's rights activists claimed that police needed additional training in handling domestic abuse and rape cases.

Some Sharia experts urged Muslim women to become more aware of the provisions of Sharia that prohibit spousal abuse and provide for divorce on grounds of physical cruelty. Provisions in state Sharia laws, however, generally prohibit wives from disobeying the "lawful orders" of their husbands and thus were an obstacle to women pursuing claims against their husbands in Sharia courts. However, Muslim women were able to file complaints in civil courts.

Reports of rape and spousal abuse drew considerable government, NGO, and press attention. Under the Domestic Violence Act, anyone who uses violence against a protected person to willfully contravene a protection order may be punished by imprisonment of up to one year and a maximum fine of RM2,000 (\$654). In extreme cases involving "grievous hurt" inflicted using a deadly weapon, the

maximum imprisonment increases to 20 years. Women's groups continued to criticize the act as inadequate and called for amendments to strengthen it. In their view the act failed to protect women in immediate danger because it requires that separate reports of abuse be filed with both the Social Welfare Department and the police, causing delay in the issuance of a restraining order. Cases also require visible evidence of physical injury.

On February 20, an amendment to the Domestic Violence Act that expands the definition of domestic violence to include mental, emotional, and psychological abuse as well as physical violence took effect. It also allows courts to issue protective orders to prevent third parties from physically abusing, or even communicating with, victims of domestic violence and allows police to arrest a perpetrator when a protective order has been violated. Activists welcomed the amendment but continued to pressure the government to amend it further to cover stalking and intimidation, relationships between unmarried persons, and make domestic violence a separate offense under the penal code. Women's rights groups most often pointed to the lack of support from the police as the main obstacle of enforcing the new law.

On April 18, the Women, Family, and Community Development Ministry announced a new training module for police on the Domestic Violence Act and related procedures. Two training sessions were held during the year involving 60 police officers in Kuala Lumpur and Selangor.

Female Genital Mutilation/Cutting (FGM/C): In 2009 the Fatwa Committee of the country's National Council of Islamic Religious Affairs ruled that "female circumcision" was obligatory for Muslims, but if found to be harmful to health must be avoided. A university study released during the year reported that of more than 1,000 women interviewed, more than 90 percent of Muslim respondents stated that they were circumcised. The Ministry of Health is reportedly now instituting the fatwa and this practice is gaining in popularity, even among adult women, converts to Islam, and in urban centers (see children below).

In May the head of the Department of Social and Preventive Medicine at Universiti Sains Malaysia concluded in her research on FGM/C in the country that the practice was "common" among Malays and those who practiced it viewed it to be a minor procedure with no adverse effects. The most common reasons cited for its practice were religious obligation, hygienic purposes, and as part of cultural practices.

Sexual Harassment: The law prohibits a person in authority from using his position to intimidate a subordinate into having sexual relations. A government voluntary code of conduct provides a detailed definition of sexual harassment intended to raise public awareness of the problem but women's groups advocated passage of a separate law on sexual harassment. In past years the Malaysian Employers Federation opposed any attempt to legislate against sexual harassment in the workplace, arguing that government-imposed policies would unduly restrict the management of labor relations. Some observers noted that the authorities take claims seriously but victims were often reluctant to report sexual harassment because of the difficulty of proving the offense, the length of the trial, and embarrassment.

On August 29, a former personal assistant won a sexual harassment case against her former country director at a multinational company. The court awarded her RM25,000 (\$8,170) in damages.

On April 1, the Employment (Amendment) Act 2012 came into force. It makes certain forms of sexual harassment in the workplace criminal offenses. Under the new regulations, sexual harassment encompasses complaints in the employer-employee relationship; this likely excludes complaints by or against independent contractors. Under the amendment, employers are obligated to inquire into most sexual harassment complaints in a prescribed manner. The penalty for noncompliance with the new requirements is a fine not exceeding RM10,000 (\$3,268). The amendment does not require employers to have a written sexual harassment policy, nor does it protect employers from possible unfair dismissal claims brought by workers terminated for misconduct.

Advocacy groups, such as the Association of Women Lawyers (AWL), said the provisions pertaining to sexual harassment under the Employment Act are not comprehensive enough to provide help to victims. The AWL continued to advocate for passage of a separate sexual harassment bill that would make it compulsory for employers to formulate sexual harassment policies.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children. Information on family planning was readily available from government and NGO sources. Contraceptives such as birth-control pills and condoms were permitted and were locally available. Estimates of contraceptive use by women remained at approximately 50 percent. Skilled medical personnel attended the great majority of births, and women generally had access to postpartum care.

Discrimination: The constitution prohibits discrimination against citizens based on sex. The law allows polygyny, which a small minority of Muslim men practiced. Islamic inheritance law generally favors male offspring and relatives. A small but steadily increasing number of women obtained divorces under the provisions of Sharia that allow for divorce without the husband's consent. Non-Muslim women are subject to civil and criminal law but not Sharia. The constitution gives men and women equal rights to inherit, acquire, own, manage, or dispose of any property, including land. Within the matriarchal Minangkabau community, women are favored in the sense that ownership of hereditary or tribal lands is restricted to women. The Guardianship of Women and Infants Act gives mothers equal parental rights. Four states extend the provisions of the act to Muslim mothers, and women's groups continued to urge the other states to do the same.

Women experienced some economic discrimination in access to employment. Approximately 47 percent of the women in the country were in the labor force. According to the UN Development Program, women make up 36.2 percent of the labor force, including 46.4 percent of women ages 15-64 who are in the workforce. Women who work receive \$0.42 for every \$1 earned by men. The law provides that women in the private sector are entitled to 60 days' maternity leave and women in civil service are entitled to 90 days' maternity leave. Men are not entitled to paternity leave. Some pregnant women experienced employment discrimination. NGOs reported continued discrimination against women in the workplace in terms of promotion and salary. During the year the Ministry of Women, Family, and Community Development released statistics showing that women occupied 31.7 percent of decision-making positions in the public sector. Employers routinely asked women their marital status during job interviews. In Kedah women entertainers perform only in front of all-female audiences, a policy that the NGO coalition Joint Action Group for Gender Equality condemned as an infringement of gender-equality rights protected by the constitution.

The 2010 Asia-Pacific Human Development Report noted that the number of women with tertiary education had increased by almost 50 percent since 1980 but over the same period, the labor force participation of women remained at an average of 45 percent.

The government undertook a number of initiatives to promote equality for women and the full and equal participation of women in education and the workforce. The Women's Ministry continued to develop programs and workshops to encourage women to enter the business community and operate small- and medium-sized

enterprises. Among the programs the ministry introduced were the Intensive Skills Training for Single Mothers that involved 2,687 women between 2008 and 2012, the Women Entrepreneur Program that trained 4,000 women entrepreneurs between 2010 and 2012, and the One Azam program that involved generating additional income for low-income households. In the 93,911 households that participated in the program between 2010 and 2012, 68.8 percent or 64,642 of the participants were women.

In 2001 after being forced to retire pursuant to a company rule stipulating a lower retirement age for female than for male employees, eight female former workers sued Guppy Plastic Industries. The Industrial Court ruled in favor of the workers in 2008, stating that the regulation was archaic. The company sought a judicial review, and in 2010 the high court ruled in its favor. On March 21, the Court of Appeals ruled in favor of the plastic company, and on August 13, the Federal Court refused the eight workers' application to appeal.

Children

Birth Registration: Citizenship is derived from one's parents (see section 2.d.). Parents must register a child within 14 days of birth. The authorities require citizens to provide their marriage certificate and both parents' government multipurpose card. Noncitizens must provide a passport or travel documents. Parents applying for late registration must prove the child was born in the country. The authorities do not enter the father's information for a child born out of wedlock unless there is a joint application by the mother and the person claiming to be the father. The authorities do not register children born to illegal immigrants or asylum seekers. The UNHCR registered children born to refugees. Marriages between Muslims and non-Muslims are officially void. Couples in such marriages had difficulty registering births that recognize the father due to the invalidity of the marriage. Children without birth certificates are stateless and denied entry into both public and private schools. Stateless children (like noncitizens) were required to pay higher medical fees, which caused hardship in many cases.

According to UNICEF's 2011 State of the World's Children Report, more than 44,000 undocumented children and adolescents lived in Sabah.

Education: Education is free, compulsory, and universal through primary school (six years). Although primary education is compulsory, there was no enforcement mechanism governing school attendance.

UNICEF's 2011 State of the World's Children Report highlighted as a cause for concern secondary school enrollment, which was 66 percent for girls and 70 percent for boys according to 2005-09 data, compared with 96 percent overall enrollment in primary school. The Malaysia Millennium Development Goals Report 2010 also noted that 85 percent of students who dropped out of school were from poor families.

Child Abuse: Child abuse took the form of neglect (failure to provide basic needs), physical abuse, sexual abuse, and abandonment of infants. Punishment for child abuse can include being fined, jailed, caned, or a combination thereof.

The government recognized that sexual exploitation of children and, particularly in rural areas, incest were problems. The law provides for from six to 20 years' imprisonment and caning for individuals convicted of incest. The testimony of children is accepted only if there is corroborating evidence. This posed special problems for molestation cases in which the child victim was the only witness.

According to the Women, Family, and Community Development Ministry, 44.3 percent of the abusers in 2011 child abuse cases were the victims' parents. Mothers made up 25.4 percent and fathers made up 18.9 percent of perpetrators. According to the ministry, these numbers have been consistent for the past three years.

In May a video of an 18-year-old woman beating her 10-month-old child was widely viewed on the Internet, prompting individuals to flood the police with calls and Facebook comments of outrage. The video was in fact from May 2011, and the woman had already been convicted and was serving an 18-month prison sentence. The case continued to receive negative attention because most viewed the mother's sentence as too lenient.

Child Marriage: The minimum age of marriage for males is 18; Muslim girls below the age of 16 may marry with the approval of a Sharia court. Although such marriages were uncommon, some statistics pointed to a rise in the incidence of child marriages. In the state of Kedah, the state Islamic Religious Department reported a 35 percent increase in marriage applications involving underage individuals between 2008 and 2010, with 90 percent of them involving girls under age 16. According to a UN report, 7,260 girls between the ages of 10 and 19 underwent premarital HIV screening in 2009.

Harmful Traditional Practices: FGM/C reportedly is common among some Muslim Malay communities, particularly in rural villages in the northern part of the country. According to the online news portal *The Malaysian Insider*, for many Muslim infants, FGM/C is “a rite of passage whereby a symbolic ritual of pricking their genitalia occurs 40 days after birth” (see Women, FGM/C above).

Sexual Exploitation of Children: Any person convicted of a trafficking-in-persons offense involving a child for the purposes of exploitation faces punishment of imprisonment of three to 20 years and a fine. Under the penal code, the minimum age for consensual sex is 16 for both boys and girls; however, homosexual acts are illegal regardless of age or consent. Under Sharia, which applies only to Muslims, sex is forbidden outside of wedlock regardless of age or consent.

The law outlaws pornography but does not address the involvement of children specifically.

Statutory rape occurred and was prosecuted. A person convicted of statutory rape may receive punishment of imprisonment up to 30 years or caning, or both. According to the Ministry of Women, Family, and Community Development, most victims were below 15 years of age. However, Islamic law provisions that consider a Muslim girl an adult after her first menstruation sometimes complicated the prosecution of statutory rape. Such a girl may in fact be charged with khalwat (close proximity between members of the opposite sex), an offense under Sharia, even if she is under the age of 18 and her partner is an adult. Sharia courts sometimes were more lenient with males charged with khalwat, although in many cases Muslim men were charged and punished for statutory rape under civil law. According to the Attorney General’s Office, as of July, 859 statutory rape cases were reported (109 involving children under 12 years old and 750 cases involving victims between 13 and 15).

On April 18, the Home Ministry informed parliament that the number of sexual crime and rape cases involving victims under age 16 rose from 1,777 cases in 2010 to 2,419 in 2011. The home minister stated, “Among the key factors leading to sexual crimes against children were that the victims were alone at home or outside. Other factors were lack of education and religious knowledge, family problems, influence of mass media and alternative media, and willingness on the part of victims and suspects.”

On August 12, women’s groups and a member of the Selangor State Parliament called on the attorney general to review the sentencing of celebrity sportsman Noor

Afzal Azizan, who after being sentenced to a five-year jail term for statutory rape, was given no jail time by the Court of Appeal, which cited his “bright future” as a reason for the change. Critics of the ruling were especially concerned over the use of Noor Afizal’s “bright future” as an athlete as reasoning for sentencing, as well as the fact that the consent of the 13-year-old victim was factored into the sentencing decision.

On August 29, electrician Chuah Guan Jiu, then 21, was found guilty of raping his 12-year-old girlfriend on two occasions in 2011, but the session’s court ordered Chuah to serve three years’ probation on a RM25,000 (\$8,170) good behavior bond. The prosecution filed an appeal, and on November 19, the High Court ordered Chuah to serve a five and one-half year jail term for raping a minor. The High Court judge ruled that consent is irrelevant in statutory rape and set aside the RM25,000 (\$8,170) good behavior bond.

Child prostitution existed, but child prostitutes often were treated as delinquents or illegal immigrants rather than victims.

On July 19, Kuala Lumpur Police Chief Mohmad Salleh stated that many cases of child abuse go unreported due to apathy by parents and society in general. Between 2009 and 2011, 114 child sexual abuse reports were lodged with the police in Kuala Lumpur. In the first six months of the year, 10 reports were filed with the police. The chief noted that he was “quite sure there are many more cases that have gone unreported due to shame and embarrassment or simply because of apathy and indifference.”

Displaced Children: Sabah had a problem with street children. Estimates ranged from a few hundred to 15,000 children born in the country to illegal immigrant parents, some of whom were deported. These children lacked citizenship and access to government-provided support and often resorted to menial labor, criminal activities, and prostitution to survive.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State’s report on compliance at http://travel.state.gov/abduction/country/country_3781.html.

Anti-Semitism

Estimates of the country's Jewish population were between 100 and 200 people. Anti-Semitism was a problem across the political spectrum and attracted wide support among segments of the population. Anti-Semitic books were displayed prominently in many bookshops. Government-owned newspapers and statements by current and former political officeholders, sometimes blamed civil society activity on "Jewish plots" or "Jewish conspiracies."

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

Neither the constitution nor other laws explicitly prohibit discrimination based on physical or mental disabilities, but the government promoted public acceptance and integration of persons with disabilities.

The government did not discriminate against persons with disabilities in employment, education, access to health care, or in the provision of other state services. The government did not mandate accessibility to transportation for persons with disabilities, and few older public facilities were adapted for such persons. A public-sector regulation reserves 1 percent of all public-sector jobs for persons with disabilities. New government buildings were generally outfitted with a full range of facilities for persons with disabilities.

A code of practice serves as a guideline for all government agencies, employers, employee associations, employees, and others to place suitable persons with disabilities in private sector jobs.

Special education schools existed but were not sufficient to meet the needs of the population with disabilities.

Recognizing that public transportation was not "disabled-friendly," the government maintained its 50 percent reduction of the excise duty on locally made cars and motorcycles adapted for persons with disabilities. The Ministry of Human Resources was responsible for safeguarding the rights of persons with disabilities.

On February 16, SUHAKAM initiated a task force to come up with a system to monitor public facilities and policies for persons with disabilities. The

SUHAKAM director stated the task force would specifically look into public transport services, facilities in buildings, health care, and education. SUHAKAM also pointed out that the Persons with Disabilities Act of 2008 is still not fully enforced; for example, persons with disabilities cannot access much of the public transportation system or navigate through cities on the sidewalk. Employers were also reluctant to hire persons with disabilities.

On June 15, individuals with disabilities at a roundtable hosted by SUHAKAM criticized the EC for not assisting persons with disabilities in voting, pointing out that many polling stations were inaccessible to those with disabilities. The roundtable proposed the possibility of electronic or postal voting for those with disabilities. The EC adopted a proposal by the PSC on electoral reform to allow such voters to be assisted by a trusted adult, not just by a family member, as was previously the case.

National/Racial/Ethnic Minorities

The constitution gives ethnic Malays and other indigenous groups, collectively known as “bumiputra,” a “special position” in the country, compared to ethnic Chinese or Indians. Government regulations and policy provide for extensive preferential programs designed to boost the economic position of ethnic Malays or bumiputra, who constitute a majority of the population. Such programs limited opportunities for nonbumiputra in higher education and government employment. Many industries were subject to race-based requirements that mandated bumiputra ownership levels and government procurement and licensing policies favor bumiputra-owned businesses. According to the government, these policies were necessary to ensure ethnic harmony and political stability.

Despite the government’s stated goal of poverty alleviation, these race-based policies are not subject to upper income limitations and contribute to a widening economic disparity within the bumiputra community. Ethnic Indian citizens, who like ethnic Chinese citizens do not receive such privileges, remained among the country’s poorest groups. Another goal of this policy is for bumiputra to hold 30 percent of the nation’s wealth. According to several studies, the program reached or exceeded this target; however, official government figures placed bumiputra equity at 18.9 percent. The government did not respond to public requests to make its methodology available.

On July 26, Prime Minister Najib announced business opportunities worth RM13 billion (\$4.25 billion) were successfully generated for the benefit of bumiputras

through various initiatives. The government has continued to favor bumiputra bidders in major infrastructure projects, such as the new Kuala Lumpur metro system.

On May 8, a minister in the Prime Minister's Department announced that the government was confident that 30 percent bumiputra equity ownership would be achieved by 2020.

Indigenous People

The constitution provides the same rights to indigenous people (the descendants of the original inhabitants of the peninsular region of the country and the Borneo states, such as the Penan) as to the rest of the population. However, in practice federal laws pertaining to indigenous people of the peninsular region, known as the Orang Asli, vested considerable authority in the non-Orang Asli minister for rural and regional development to protect, control, and otherwise decide issues concerning this group. As a result indigenous people in peninsular Malaysia had very little ability to participate in decisions that affected them. The special provision under Article 153 of the constitution only ensures "the special position of the Malays and natives of any of the States of Sabah and Sarawak" and does not refer to the Orang Asli. The government did not effectively protect indigenous persons' civil and political rights.

The Orang Asli, who numbered approximately 180,000 (0.86 percent of the population) and who were found throughout the peninsula except in Perlis and Penang, constituted the poorest group in the country. According to the 10th Economic Plan covering the years 2011-15, 50 percent of the 29,990 Orang Asli households were living below the poverty line. Of these, approximately 5,700 households (19 percent) were considered to be extremely poor. In 2010 a local NGO that focused on Orang Asli rights estimated that these numbers underreported the population living in poverty because it considered only Orang Asli living in established villages, not those living deep in the rainforest. A government-sponsored national advisory council existed to monitor the development of Orang Asli; five of the council's 17 members were Orang Asli, and a local NGO reported that the council did not meet during the year. One Orang Asli held a senior management position in the government's Department of Orang Asli Development (known by its Malay acronym, JAKOA). The director general of the socioeconomic development section of JAKOA stated that 24 percent of JAKOA's employees were Orang Asli. On April 30, the Rural and Regional Development Ministry announced that the dropout rate among Orang Asli students had decreased

to 25.9 percent this year from 29 percent in 2011. The Orang Asli Development Strategic Plan 2011-15 set as a target reducing the rate to 15 percent by 2015. The JAKOA reported in 2011 that the number of students who drop out between primary and secondary school declined from 50 percent to 30 percent from 2008 to 2011. One supporter of Orang Asli interests pointed out, however, that these statistics do not account for Orang Asli children who have never been to school at all. As of August 408 Orang Asli students were pursuing higher education. On September 28, Prime Minister Najib announced that the 2013 budget will include an allocation of RM88 million (\$28.8 million) to implement economic development programs and water supply projects for the Orang Asli community. Several local NGOs dismissed the allocation as insufficient.

Under the Aboriginal People's Act, Orang Asli are permitted to live on designated land not as owners but as at-will tenants, and they did not possess land rights. The law allows the government to seize land of indigenous peoples with the payment of compensation. Observers reported that over the years, the total area of land reserved for Orang Asli had decreased, and some land previously set aside as Orang Asli reserve was rezoned for development. Although the Orang Asli were given the authority to reside on the land, these rights were often undocumented. This led to confrontations between the Orang Asli and logging companies. While the government continued development in these areas, the Orang Asli struggled for rights to land.

On December 20, Justice Akhtar Tahir of the Temerloh High Court ordered portions of the Malay reserve land encroaching into more than 4,942 acres of Orang Asli customary land be returned to the Orang Asli and designated as strictly Orang Asli land within the year. In 2007 the head of the Orang Asli community Mohamad Nohing and five others made a claim against the Pahang state land and mines office director, the Pahang state government, the Orang Asli Development Department director general and the federal government for taking and using protected Orang Asli land for a reserve and development projects. The justice also ruled that a development project on the land was illegal and had to be removed. He dismissed the Orang Asli's claim for damages but ordered other associated costs to be borne by the defendants.

On March 30, the JAKOA deputy director announced that the agency does not promote the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in its work because the government considered Malays to be the indigenous people of the country when it adopted the convention at the UN General Assembly. When asked what the Orang Asli were if not indigenous people, he stated they were

“Orang Asli” or “aboriginals,” terms that were not inclusive of indigenous peoples. He added that JAKOA follows the rules of the UNDRIP.

In August 2011 JAKOA announced that it had concluded discussions with all state governments concerning the policy on granting land titles to the Orang Asli. SUHAKAM Chairman Hasmy Agam expressed disappointment that the government proceeded with the amendments without waiting for the completion of the government’s national inquiry into the Land Rights of Indigenous Peoples, to be published in December, and until “all efforts have been made to obtain free, prior, and informed consent from all stakeholders, especially the affected Orang Asli.”

The uncertainty surrounding Orang Asli land ownership made them vulnerable to exploitation. Logging companies continued to encroach on land traditionally held by Orang Asli as well as that of indigenous groups in the Borneo states. Indigenous people in Sabah and Sarawak continued to protest encroachment by state and private logging and plantation companies onto land that they considered theirs under native customary rights.

Laws allowing condemnation and purchase of land do not require more than perfunctory notifications in newspapers, to which indigenous persons may have no access.

On January 31, police arrested 13 Orang Asli from the Temiar tribe and a human rights lawyer in Kelantan after they attempted to prevent loggers from entering a local village by creating a wooden blockade, which the police proceeded to burn down along with an adjacent rest area. The 13 were held without legal representation (as their lawyer was also arrested) and interrogated for more than 12 hours. On April 15, 400 Orang Asli from Hulu, Kelantan held a peaceful demonstration in front of the Kelantan state secretary’s office to demand the Kelantan State government fulfill promises to halt all logging activities on their customary land and to seek compensation for crops and trees destroyed on their customary land due to alleged indiscriminate logging. At year’s end the Kelantan government had not taken any steps to address the issue.

On May 11, the Malacca High Court granted leave to an Orang Asli applicant to apply for a court order to quash the “notice of demolition” by the Alor Gajah Municipal Council to demolish a chapel built on ancestral/customary land as well as another order to direct the Malacca government to take “all necessary steps” to

declare the chapel land as part of the Kamoung Orang Asli Machap Umboo's reserve land.

On August 7, the Johor Land and Mines Department withdrew its appeal of the Johor Bahru High Court's 2010 decision that awarded compensation to 50 Orang Selat, an Orang Asli group, for the 2005 eviction from their land and demolition of their chapel. The court had ruled that demolition of the chapel was an act of trespass and the eviction was unlawful. The Orang Selat filed civil suit in 2008, and so reparations for their land and chapel would be paid more than four years after court proceedings began, and seven years after the incident.

On October 11, the Court of Appeal granted leave for a judicial review to the Jakun, an Orang Asli group, to challenge a January 17 order issued by the Mersing District land administrator for them to vacate their customary land within 24 hours without providing them an alternate place to live. The judicial review will be heard at Johor Bahru High Court. The court's decision followed its June 26 grant of an interim stay against the Mersing district land administrator, who wanted immediately to evict a group of 28 families that have lived on the contested site within the Endau-Rompin National Park for hundreds of years. The case was ongoing at year's end.

On June 13, the Court of Appeal awarded RM31,680 (\$10,353) to an Orang Asli couple whose claims for damages for the death of their adopted son in an accident were denied by a high court as they had no adoption papers. The court ruled that it would be "unrealistic, harsh, and unjust" to deny the couple damages as a majority of Orang Asli communities live in the outer fringes of mainstream society and some in the remote jungle and "as is often the case they do not have birth certificates, marriage certificates, identity cards, let alone adoption orders."

The Penan, an indigenous community of Sarawak, used native customary rights to establish land ownership and stewardship. Each group of Penan maintained its own foraging area, which is passed down from one generation to another. Customary native lands were not always well demarcated. Indigenous rights groups alleged that Abdul Taib Mahmud, the chief minister of Sarawak, leased Penan and other indigenous groups' customary land to logging companies and land developers in exchange for political favors and money. Local observers claimed that logging companies harassed and sometimes threatened vocal Penan leaders and land-rights activists. The Sarawak Penan Association continued urging the state government to delineate the Penan's native customary land boundaries, revoke timber licenses that overlapped their land, stop issuing provisional leases

for plantations, and halt all logging and plantation development activities on their land.

During the year the government of Sarawak pushed for further expansion on the Sarawak Corridor of Renewable Energy (SCORE), a project to build at least 12 hydropower dams in the state to attract energy-intensive industries. Critics claimed it would lead to forced relocation of 20,000 native people, destruction of traditional ways of life, and massive ecological consequences. On April 21, six Penan communities sent a letter to Sarawak Energy demanding a halt to the SCORE dam project. On March 24, SAVE Rivers, an NGO working for indigenous people's rights in Sarawak alleged that the Land and Survey Department had damaged and destroyed native lands, crops, and wildlife during the survey phase for the dam.

On September 25, approximately 300 Penan erected a blockade to one of the main roads to the Murum dam site in Sarawak to protest the refusal of the state government to provide monetary compensation, land, education facilities and other rights in compensation for the loss of their historic land. The dam, set to begin operation in 2013, would flood Penan ancestral land that currently hosts approximately 1,300 Penan individuals in nine settlements. The Sarawak State government reportedly has refused to negotiate, and police have warned that demonstrators could be charged with illegal assembly or taking part in a riot.

According to the State of the World's Minorities and Indigenous People 2012 Report published by Minority Rights Group International, at least 480,000 people in Sarawak (one third of the eligible voters in the state, where 50 percent of the population is indigenous) were not registered to vote, and members of the Penan community alleged that authorities frequently ignored their efforts to obtain identity cards.

On July 2, 300 indigenous persons in the northern parts of Sabah staged a rally protesting against what they alleged was prevalent "land grabs" by plantation companies backed by politicians from the ruling party of their lands over which they have native customary rights.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

Section 377 of the Penal Code states that sodomy and oral sex acts are "carnal intercourse against the order of nature" but was rarely enforced. However, this law

was the basis for the case against parliamentary opposition leader Anwar Ibrahim (see section 1.e.). Religious and cultural taboos against same-sex sexual conduct were widespread.

On October 11, the High Court in Seremban dismissed an application by four Muslim transgender individuals to declare unconstitutional a law that bans men from dressing as women. Each of them, who were born male but acted and dressed as women, had previously been arrested or fined by the Negeri Sembilan Islamic Religious Department for violating the Sharia Criminal Act, a state-level Sharia law that prohibits Muslim men from dressing and posing as women. The court ruled that the Federal Constitution's provision on freedom of expression, which bans discrimination based on gender, is not applicable to Muslims who violate the relevant portion of the Sharia Criminal Act. The four individuals were expected to appeal the decision.

The Ministry of Education endorsed a series of parenting seminars against the LGBT "lifestyle" given to more than 10,000 parent-teacher association leaders, counselors, and school administrators. At some of the seminars Deputy Education Minister Mohd Puad Zarkashi stated "LGBT ways could spread widely to the educational institutions" and that "the responsibility to contain the LGBT symptoms...has to involve all quarters."

On September 13, local media published "Guidelines to Identify Gay and Lesbian Symptoms" that were endorsed by the Ministry of Education and distributed to educators in Penang at a seminar officiated by Mohd Puad. For men and boys, the guidelines listed as symptoms having a muscular body and desiring to show one's body by wearing V-neck and sleeveless clothes; preferring tight and light-colored clothes; being attracted to men; and carrying big handbags, similar to those used by women. For women and girls, the symptoms included being attracted to women; distancing oneself from all females except their companions; hanging out, having meals, and sleeping in the company of women; and having no affection for men. The guidelines included a warning that "once the children have these symptoms, immediate attention should be given." The ministry distanced itself from the guidelines after they were widely criticized in some mainstream media.

On July 30, the Ministry of Education stated its intention to increase "moral education" for all students in addition to a new sexual education program launched earlier in July. The ministry acknowledged the aim of the effort was to combat the "dangers and threats" of the LGBT population as "many teens in the country do

not know the function and importance of healthy interaction among boys and girls.”

Also on July 30, a statement from the assistant director of Special Branch’s E2 National Social Extremist Threat Division stated that extremists threaten national security through religion, politics, and societies, and that certain groups, such as LGBT individuals, “hide behind NGOs and use religion, race, and society as their tools to influence the people.” He also stated that some of the negative cultures brought in by these “extremist” groups are street demonstrations and LGBT culture, which are spread through the excuse of upholding human rights.

On July 25, the human rights NGO SUARAM criticized both Prime Minister Najib and opposition leader Anwar Ibrahim for their remarks against the LGBT community. According to SUARAM, their statements have “sent out a clear message that approves and justifies homophobic and transphobic violence, abuse and harassment against LGBTs by society.”

On June 19, Deputy Minister Mashitah Ibrahim told parliament that the constitution did not protect LGBT individuals or their lifestyles from government control measures. Although the constitution states that “all persons are equal before the law” and “there shall be no discrimination against citizens on the ground only of...gender,” Mashitah stated that gender is defined based on whether a person is male or female and not on sexual preferences.

On June 19, the Johor State Religious Committee Chairman Datuk Zainal Abidin Osman stated that LGBT activists challenged positions of Islam in the federal constitution and insulted the head of the religion, the king, along with threatening the country’s stability and peace. The committee checked bookstores across the state to make sure there were no sales of the banned book *Allah, Liberty and Love*, by Irshad Manji, a Canadian gay rights activist, and the state government sponsored “seminars and workshops that were organized to spread the word on the dangers of the [LGBT] culture.”

Other Societal Violence or Discrimination

The government’s response to HIV/AIDS was generally nondiscriminatory, although stigmatization of AIDS sufferers was common.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutory instruments, allows 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 are severely restricted by regulations and by sector.

The law prohibits interfering with, restraining, or coercing a worker in the exercise of the right to form trade unions or participation in lawful trade union activities. Defense or police officials, or public-sector workers categorized as “confidential, managerial, and executive,” are prohibited from joining a union. Additionally, the act restricts a union to representing workers in a “particular establishment, trade, occupation, or industry or within any similar trades, occupations, or industries.” The law also prohibits employers from retribution against a worker for participating in the lawful activities of a trade union.

The director general of trade unions (DGTU) has primary responsibility for enforcement of freedom of association. The DGTU and sometimes the minister of human resources can refuse to register or withdraw registration from a union without judicial oversight in cases where the proper documents were not filed or when two different unions applied to do the same work. The DGTU has full discretion to determine whether workers are in “similar” trades, occupations, and industries in determining whether to register a union,. The Ministry of Human Resources additionally has full discretion, with the concurrence of the minister responsible for internal security and public order, to suspend trade union registration for up to six months for reasons s/he believes are prejudicial to security or public order. When registration is refused, withdrawn, or canceled, a trade union is considered an unlawful association. By law employers are prohibited from imposing conditions on union membership and activity in employment contracts.

Foreign workers can join a trade union; however, the Immigration Department bars foreign workers from holding trade union offices, as is stipulated in the Trade Union Act (TUA). According to the Malaysian Trade Union Congress (MTUC), the Immigration Department requests these following conditions to be incorporated into the contract: First, the employee shall not marry a citizen and shall not participate in any political activities or activities connected to trade unions. Second, the employee shall not change his or her employment during the contract period and shall not do any other business without the written permission of the

employer. Third, if the employee is found creating social problems and or engaging in any illegal, subversive, or criminal activities then he or she will be immediately dismissed and will be repatriated at his or her expense. Finally, the employee shall not organize, participate, or be involved in any kind of industrial action during his or her term of employment.

The Industrial Relations Act requires that an employer respond to a union's request for recognition within 21 days of application. If an employer does not respond within 21 days, the union must submit a written appeal to the DGTU within 14 days, who will then notify the minister of human resources of his findings. If the union fails to submit the appeal within the stipulated period or the minister decides that recognition is not to be accorded, the union is not recognized. Unions must also undergo a competency check by the Industrial Relations Department in order to be granted recognition. In the event the employer challenges the decision of DGTU stating that this is not a competent union then the director general of industrial relations (DGIR) performs an additional competency check. The International Labor Organization (ILO) has requested that the government indicate the requirements necessary to fulfill the competency check and the relevant applicable legislation.

While national unions are proscribed within the country, there are a number of territorial federations of unions (the three territories being Peninsula Malaysia, Sabah, and Sarawak). Trade unions were free to associate with these territorial federations, which must register separately as societies under the Societies Act and which exercised many of the responsibilities of national labor unions, although they cannot bargain on behalf of local unions. The government has prevented some trade unions, such as those in the electronics and textile sectors, from forming territorial federations. Instead of allowing a federation for all of Peninsular Malaysia, the electronics sector is limited to forming four regional federations of unions, while the textile sector is limited to state-based federations of unions, for those states that have a textile industry. National unions from the peninsula do not include local unions from Sabah and Sarawak, but the unions from these regions can form a federation. Trade unions are permitted to affiliate with international trade union organizations, subject to the approval of the DGTU.

There are two national labor organizations. The MTUC is a society of trade unions in both the private and government sectors and is registered under the Societies Act. As such, the MTUC does not have collective bargaining or industrial action rights but provides technical support for affiliated members. The other national

organization is the Congress of Unions of Employees in the Public and Civil Services, a federation of public employee unions registered under the TUA.

Charges of discrimination against employees engaged in union organizing activities may be filed with the Ministry of Human Resources or the Industrial Court. The law limits worker compensation for wrongful termination to a maximum of two years from the time the employee was laid off. However, these and other provisions preventing management from taking reprisal actions against workers for union activity were not effectively enforced. A labor group blamed delays not on lack of resources or training (there are 27 relevant courts throughout the country, many of them headed by qualified personnel from the Attorney General's Office) but on a lack of understanding of the effect of delays on the workers involved and an accompanying lack of urgency which led to a lack of enforcement.

Although private-sector strikes are legal, the right to strike is severely restricted. The law contains a list of "essential services" in which unions must give advance notice of any industrial action, including financial, transportation, utilities, communications, defense, security, and government sectors, and other industries designated by the minister of human resources as essential to the economy. The list includes sectors not normally deemed essential under ILO definitions. The permissible grounds for strike actions are extremely limited. The law denies unions and individuals the right to hold strikes protesting lack of recognition of their union. Strikes are illegal with regards to all collective agreement matters, or over certain issues not covered by collective agreements, such as transfers, layoffs, and dismissals. Hiring, firing and transfer are the prerogative of the employer and these three items may not be discussed or proposed for discussion by unions during collective bargaining. Additionally, the process for conducting a legal strike is unwieldy. In order to strike, the trade union and workers are required to organize a meeting outside of work, vote by secret ballot, and send the results of the ballot to the Ministry of Human Resources within 14 days. The workers cannot go on strike until the decision of the ministry is officially given to the union permitting them to strike. If workers strike without permission, it is considered an illegal action and participants are subject to termination without compensation. MTUC officials maintained that requirements imposed by the authorities were so stringent that it was almost impossible to strike. The minister has the right to refer the issue to the Industrial Court. Once it is referred to this court, no industrial action can be taken.

There have been no industry-wide strikes since 1962, but some small strikes took place during the year. From September 20-23, 600 Nepali migrant workers went

on strike at Maxter Glove Manufacturing Company near Kuala Lumpur to protest the quality of food provided at the company cafeteria. In August Cambodian garment workers at Honsin Apparel Sdn Bhd in the state of Johor staged a three-day strike to signal their disapproval of a proposed accommodation agreement and to demand higher salaries. Representatives of the workers said they were paid just RM21 (\$7) per day.

Private sector workers and, to a lesser extent, public sector workers, have the legal right to organize and bargain collectively, and collective bargaining was widespread in those sectors where labor was organized. In companies designated as having pioneer status, a status that precludes the company from paying taxes for 20 years, the government did not allow workers to affiliate with territorial union federations. For example, after banning national registration of an electronics union for two decades, the government in 2010 approved the formation of four regional electronics trade unions. The Electronics Industry Workers' Union (Western Region), which covers the federal territory of Kuala Lumpur and the states of Selangor and Perak, is an example of an electronics trade union that was recognized under the new policy. According to the MTUC, however, to date, none of these four government-approved regional trade unions have been recognized by their respective companies. According to the MTUC, the companies can appeal the decision of the minister and this process could take three to five years with no union dues being collected until the court makes a final decision. In some instances, companies reportedly have harassed leaders of unions seeking recognition.

The process of collectively bargaining is complex and lengthy. To commence collective bargaining, the trade union submits a proposal for a collective agreement to the employer and invites the employer to begin collective bargaining. The employer has 14 days in which to reply; if the employer accepts the invitation, collective bargaining must begin within 30 days. If the employer refuses to negotiate or fails to reply, or if there is a deadlock in the negotiations, a trade dispute is deemed to exist and the union may notify the DGTU, who will take conciliation measures, including whatever steps she/he deems necessary or expedient. If the parties are still unable to agree, the minister of human resources may refer the dispute to the Industrial Court for binding arbitration. Strikes or lockouts are prohibited while a dispute is before the Industrial Court.

The ILO asked the government to amend the law to remove restrictions on the scope of subjects that can be collectively bargained. The law explicitly states that issues of transfer, promotion, appointments, dismissal, and reinstatement are

internal management prerogatives; therefore, they are excluded from collective bargaining. The ILO also called on the government to limit the amount of discretionary power allotted the DGTU, DGIR, and the minister of human resources, including when to intercede in bargaining.

Generally, the minister of human resources or DGIR will order the recognition of a union if at least 50 percent of the workers in the relevant establishment are members. The DGIR may ask the assistance of the employer in verifying the membership and “competency” of the labor union for purposes of recognition. There is no law to compel the employer to give the names to the DGIR and according to the MTUC, it is a major weakness in the law. The 50 percent is often difficult to achieve because of the numbers of contract workers and workers designated as management or in official roles and who are therefore not eligible for union membership. MTUC officials continued to express frustration about delays in the settlement of union recognition disputes. In practice it was common for such applications to be refused or if approved, the decision challenged in court by the employer to delay the approval and consequently unions have gone unrecognized for one to several years if recognized at all. In September the Ministry of Human Resources released 2011 statistics regarding trade union formation. According to the statistics, in 2011 the ministry reviewed 200 applications for recognition of unions from various sectors. Of the 200, 49 were accorded recognition, 59 were rejected outright, not recognized by the Minister, not eligible, had withdrawn applications, or did not fulfill the requirements of the Trade Union Act, and 92 were still pending.

Government interference in union activities was rare; however, some trade unions reported that the government detained or restricted the movements of some union members under laws that allow temporary detention without the recipient being charged with a crime and that some foreign workers were not paid or were denied usual work because of their union activity. On February 7, members of the Malacca branch of the National Union of Bank Employees (NUBE) filed a police report on the January 31 dismissal by Maybank, the country’s largest bank, of the union’s Vice President Abdul Jamil Jalaludeen and Treasurer General Chen Ka Fatt. A NUBE representative said they had been fired for holding a banner outside a UN building in Geneva in 2011 in an attempt to raise awareness about a NUBE dispute with Maybank, and posting the picture on the union’s Web site. On February 15, 700 people including members of NUBE and other trade unions lodged a complaint with the MACC and staged a three-hour strike. NUBE alleged that Maybank’s 2011 move to establish a new in-house union (the Maybank Non-

Executive Union, or Mayneu) was a “union-busting campaign” and constituted a violation of the constitution and the Trades Union Act.

On June 9, a session’s court acquitted the employers of five Indian nationals of trafficking offenses, citing lack of evidence and contradictions in witnesses’ statements. The case began in May 2011 when the MTUC lodged a complaint on behalf of the five based in part on nonpayment of several months’ wages.

Many employment contracts for foreign workers contained provisions banning the worker from joining a trade union. NGOs alleged that, in the absence of a formal union structure, the “ring leaders” or unofficial spokespersons for groups of foreign workers were singled out by their employers for unfair treatment, such as withholding work. According to the MTUC, foreign workers, although not allowed to join unions, are counted as voting in union elections to dilute the number of votes in favor of the establishment of a union (those who do not vote are counted as voting against a union).

In April an amendment to the Employment Act of 1955 was implemented that formalized the separation of the employee from the principal employer when labor is supplied through a labor supplier, labor recruiter, or outsourcing firm except in the agricultural and plantation sectors. This amendment legally exempts the labor supplier from certain legal obligations of employers towards their employees. Companies increasingly turned to contract labor as a way to avoid paying extensive employee benefits, resulting in a class of workers often referred to as “outsourced workers” who legally are not considered employees of the principal or owner of their workplace. These contract workers are left without the ability to form a union because they are technically employed in a different industry (for example, staffing) than that in which they are actually working (such as hospitality). They may not join in-house unions or regional/national unions, nor may they benefit from collective agreements. In addition to the increasing use of outsourced workers, a growing use of short-term employment contracts also contributed to the declining number of workers involved in trade unions. The short-term nature of contract workers’ employment is a disincentive to joining and participating actively in trade unions. Trade unions hold general meetings and elect leaders only once every three years, a period that is longer than many short-term employment contracts. Similarly, observers noted that the government, by classifying workers as self-employed, further limited their ability to organize.

A terminated worker legally ceases to be a member of his trade union. Labor activists complained that the loss of membership upon termination comes at a time when trade union support and assistance is most needed.

In practice the fact that unions were only able to provide limited protection for workers, particularly foreign workers, created a disincentive to unionize.

b. Prohibition of Forced or Compulsory Labor

The constitution prohibits forced or compulsory labor. Five agencies, including the Department of Labor, have enforcement powers under the law, but their standard operating procedures did not always result in officers actively searching for indications of forced labor. A variety of sources reported occurrences of forced labor, and conditions existed that created vulnerabilities to forced labor in plantation agriculture, the fishing industry, and some factories producing electronic components, garment production, restaurants, and domestic households.

The main types of forced labor included debt bondage and involuntary domestic servitude. Conditions on some plantations created vulnerabilities to debt bondage, labor activists and human rights NGOs reported, as well as in some factories and other businesses. Labor union representatives described a typical pattern involving recruiting agents that impose high fees that sometimes made foreign workers vulnerable to debt bondage. NGOs pointed to examples where affected workers, being indebted to their employers who held their passports, were forced to accept harsh working conditions, lower wages than promised and unexpected wage deductions, and poor housing, all under threat of imprisonment or deportation.

Although the law criminalizes possession of someone else's passport "without legal authority," NGOs continued to report 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 agent. In other cases employers reportedly confiscated employees' passports without contractual authority, thereby making employees more vulnerable to forced labor. This practice effectively made some foreign workers captives of the hiring company.

On December 1, Immigration officials rescued 105 domestic workers, 95 from Indonesia, six from the Philippines, and four from Cambodia, who they believed had been subjected to forced labor at the hands of an employment agency. Authorities arrested at least 13 individuals under the Anti-Trafficking in Persons (TIP) Act in connection with this case, including the general manager of the

agency. According to press reports, an employment agency made some of these women work unusually long hours as domestic workers, restricted their movement, and withheld their salaries. When some of the women refused to work or tried to leave, female “guards” allegedly beat them; authorities subsequently arrested the guards, five Indonesians, three Cambodians, and one Filipina. The women came willingly to the country for jobs as domestic workers but many tried to leave once they realized they would be confined and not paid. An Immigration Department official told the press that he believed more arrests would be made in this case, and the human resources minister (who oversees the Labor Department) has called for maximum sentencing under the law against the agency involved.

In addition to the December 1 case, prosecutors brought charges in 19 other new cases for labor trafficking, compared to 16 new cases in 2011. The Labor Department initiated six of the 19 labor trafficking cases compared to four in 2011; the first year the Labor Department carried out anti-TIP enforcement actions. Seven of the new labor trafficking cases resulted in acquittals or dismissals, one resulted in a conviction in September, and 11 were pending at year’s end. The majority of these labor trafficking cases involved domestic workers. The labor trafficking conviction involved a Malaysian man who subjected seven Indonesian women to forced labor in his house-cleaning business. The trafficker is to serve 12 years in prison (seven 12-year sentences served concurrently).

The national Anti-TIP council reports that labor officers continued to receive specialized training including with other law enforcement agencies to help increase coordination.

Also see the Department of State’s *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the employment of children younger than age 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. In no case may a child work more than six hours per day, more than six days per week, or at night. Government officials did not deny the existence of child labor in family businesses but maintained that foreign workers had largely replaced child labor and that child labor provisions were vigorously enforced.

NGOs and trade unions reported that child labor was not a significant problem. The National Union of Plantation Workers reported that it was very rare to find children involved in plantation work in peninsula Malaysia. Child labor in urban areas was common in family food businesses, night markets, and small-scale industries. Child labor was also evident among domestic workers, especially Indonesians and Cambodians, because of document fraud (incorrect ages on travel and work documents). One NGO reported that stateless children in Sabah were especially vulnerable to labor exploitation, reportedly in the forms of forced begging and occurrences of work in service industries, including restaurants.

d. Acceptable Conditions of Work

No national minimum wage provision was in effect during the year. Prevailing market wages generally provided a decent standard of living for citizens, although not for all migrant workers. On July 31, an amendment to the Employment Act came into effect that, among other things, established a minimum wage policy for the private sector scheduled to take effect for all companies with six or more employees on January 1, 2013, and for smaller companies on July 1, 2013. Under the new policy, the minimum wage was to be RM900 (\$294) per month on the peninsula, and RM800 (\$261) per month in the states of Sabah and Sarawak. The new policy should benefit 3.2 million workers across the country, especially those working on construction sites and plantations or in factories. The new policy applies to both citizens and foreign workers, but it does not apply to workers in the domestic services sector. While some employers in manufacturing sectors reportedly were concerned about meeting the new wages, the president of the Malaysian Employers Federation (MEF) stated in October that the federation was working hard to ensure the smooth implementation of the national minimum wages by educating its members through various seminars and conferences nationwide. The aforementioned minimum wage rates fall below the Ministry of Finance published poverty income levels in Sabah and Sarawak (RM1,048 (\$342) and RM912 (\$298) respectively) and only slightly exceed the poverty income level in Peninsula Malaysia (RM763 (\$249)). Some groups called for a higher minimum wage, criticized the government for not introducing the new rates immediately, and found fault with different minimum wages for different parts of the country. The National Wages Consultative Council is responsible for recommending changes to the minimum wage and coverage for various sectors, types of employment, and regions.

Working hours may not exceed eight hours per day or 48 hours per workweek of six days. Each workweek must include a 24-hour rest period. The law also sets

overtime rates of 1.5 times the base hourly rate for regular overtime, 2 times the regular hourly rate for work on rest days, and 3 times the regular hourly rate for work on the 10 mandated public holidays. It also mandates public holidays, annual leave, sick leave, and maternity allowances. Limits on overtime vary by sector. The Labor Department of the Ministry of Human Resources is responsible for enforcing the standards, but a shortage of inspectors precluded strict enforcement.

An official at the Ministry of Human Resources reported that the Labor Department charged 506 employers in Peninsula Malaysia with various offences under the labor laws during the year and 80 percent of the offences related to salaries. The department charged employers with offenses under Section 69 of the Employment Act and “among the offences were failure to pay salary arrears, compensation, and gratuity that ordered by the Labor Court.” Additionally, it made 103 charges under the Workmen’s Compensation Act against employers who failed to insure their foreign workers or report accidents to the Ministry of Human Resources. The department charged five companies under the Private Employment Agencies Act for operating without license and issued 461 summonses to various employers, of which 67 percent were for failing to report hiring foreign workers within 14 days of employment. The department issued another 10 percent of the summonses against employers who did not pay salaries within the stipulated period, and since 2010 collected RM1.47mil (\$480,392) worth of fines.

The law requires equal pay for men and women workers for work of equal value through the ratification of the ILO Equal Remuneration Convention.

The Occupational Safety and Health Act (OSHA) covers all sectors of the economy except the maritime sector and the armed forces. The act established a national Occupational Safety and Health Council, composed of workers, employers, and government representatives, to set policy and coordinate occupational safety and health measures. It requires employers to identify risks and take precautions, including providing safety training to workers, and compels companies that have more than 40 workers to establish joint management-employee safety committees. The act requires workers to use safety equipment and cooperate with employers to create a safe, healthy workplace.

Employers or employees who violate OSHA are subject to substantial fines or imprisonment for up to five years, although the MTUC complained that some employers flouted the rules with impunity.

The Workmen's Compensation Act covers both local and foreign workers but provides no protection for foreign household workers. According to the government, the law protects foreign household workers with regard to wages and contract termination, excludes these workers from provisions that would otherwise ensure that they received one rest day per week, an eight-hour workday, and a 48-hour workweek. Bilateral agreements or memorandums of understanding (MOU) between the government and some sending states have provisions for rest periods, compensation, and/or other conditions of employment.

Mechanisms for monitoring workplace conditions were inadequate. Private, for-profit labor agencies, themselves often guilty of abuses, were often responsible for the resolution of abuse cases. A May 2011 MOU with Indonesia called for the creation of a joint task force to monitor the situation regarding Indonesian domestic workers. The amended MOU provides one rest day per week (or compensation) and rules on the repayment of recruitment fees. In December 2011 the Indonesian government nominally lifted its ban on sending domestic workers to the country, but arrivals from Indonesia were slow to materialize. A Cambodian government ban on new Cambodian domestic workers going to the country imposed in 2011 remained in effect as of October.

Like other employers, labor contractors may be prosecuted for violating the law. The government investigated complaints of abuses, attempted to inform workers of their rights, encouraged workers to come forward with their complaints, and warned employers to end abuses.

Workers have the right to take legal action against abusive employers. NGOs stated that the courts generally sided with employees and ruled that employers must pay all back salary and compensate plaintiffs for injuries, but long delays in court proceedings and rulings often posed obstacles to foreign workers' access to the system of labor adjudication, particularly if they were illegal aliens.

The law permits migrant workers to bring employment disputes to the Industrial Court. However, court policy was not to hear complaints of migrants who were undocumented. Industrial Court proceedings were time consuming, which may have prevented migrant workers from seeking redress through the court system. Once their work visas expire, migrants require "special passes" to stay in the country in which case they could follow the court case but not work. The passes are valid for one month and cost RM100 (\$33) to renew. Renewal is subject to the discretion of the director general of immigration.

Foreign migrant laborers, legal and illegal, often worked under difficult conditions, performed hazardous duties, had their pay withheld by employers, and had no meaningful access to legal counsel in cases of contract violations and abuse. Some workers alleged that their employers subjected them to inhumane living conditions, withheld their salaries, confiscated their travel documents, and physically assaulted them.

Plantation workers generally received production-related payments or daily wages. Under a “safety net” agreement, workers are bound to work for 26 days per month, unless unable due to a natural disaster such as flooding or heavy rain, and are paid a minimum of RM650 (\$212). There are three main categories of plantation workers: general field, harvest (constituting the majority), and tappers. Bonus or overtime rates depend on the productivity level. For example, tappers who bring in more than the minimum 24.2 pounds of rubber receive extra earnings, up to RM2,000 (\$654) for the most productive tappers. The Malaysian Agriculture and Plantation Association approves such agreements in line with the law. Beginning in January or July, depending on the size of the company, the new minimum wage laws will take effect, thus increasing the current minimum wage of some workers.

Employers sometimes failed to honor the terms of employment and abused their household workers. On April 13, hardware store owners Soh Chew Tong and his wife Chin Chui Lin were charged with the murder of their Cambodian maid, Mey Sichan, who was found dead by paramedics on March 31. When found, she weighed 57 pounds and had bruises on her body. Police reported she died from acute gastritis and ulcers, likely due to lack of food over a long period. On May 31, a Kuala Lumpur couple was charged with abusing their Cambodian maid, Chea Phalla, 28, who claimed that her employers abused her, including beating her with an iron rod. A Cambodian embassy official stated that Chea Phalla was among 10 such Cambodians in May alone who had received embassy assistance. On October 5, a couple was charged for causing grievous harm to their Indonesian maid, Marsini, 21, and for trafficking. The couple pleaded not guilty to the charges stemming from allegations that they used a knife, a golf club, a clothes hanger, and a belt to hit Marsini and scalded her with hot oil and water. If convicted they face up to 35 years in jail and caning. On November 28, authorities detained a mother and daughter for abusing their 21-year-old Indonesian maid Suryani. Suryani claimed that the mother and daughter repeatedly abused her and medical reports supported the claim.

In November, Human Resource Minister S. Subramaniam and Bangladesh Minister for Expatriates’ Welfare and Overseas Employment Khandker Mosharraf

Hossain signed an MOU with the government of Bangladesh. Numerous reports of abuses by labor agents resulted in a halt to recruitment from Bangladesh in 2007. Bangladeshi workers in the country welcomed the MOU. Irene Fernandez, executive director of the local NGO Tenaganita, said the government needed to come up with a comprehensive policy on recruitment, placement, and employment of migrant workers when implementing the MOU. The agreement reportedly was developed in consultation with the ILO.

Tenaganita recorded more than 1,500 cases of migrant abuse involving undocumented workers and 500 cases of employer violations of immigration law in 2011. For the most part, the workers were deported after serving a jail sentence and the employers were cleared of charges.