



## Malaysia

### Country Reports on Human Rights Practices - [2007](#)

Released by the Bureau of Democracy, Human Rights, and Labor  
March 11, 2008

Malaysia is a federal constitutional monarchy with a population of approximately 26.9 million. It has a parliamentary system of government headed by a prime minister selected through periodic, multiparty elections. The National Front, a coalition of political parties dominated by the United Malays National Organization (UMNO), has held power since 1957. The most recent national elections, in March 2004, were conducted in a generally transparent manner, but the opposition complained of the ruling coalition's exploitation of the powers of incumbency. The civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens; however, there were problems in some areas. The government abridged citizens' right to change their government. No independent body investigated deaths that occurred during apprehension by police or while in police custody. Other problems included police abuse of detainees, overcrowded prisons, use of four statutes to arrest and detain persons without charge or trial, and persistent questions about the impartiality and independence of the judiciary. The civil courts have allowed the Shari'a (Islamic law) courts to exercise jurisdiction in cases involving families that included non-Muslims. The government continued to restrict freedom of press, association, and assembly and placed some restrictions on freedom of speech and freedom of religion. Violence against women remained a problem. Although the government passed antitrafficking legislation during the year, the country was a destination and transit point for trafficking in women and girls for the purposes of prostitution and domestic servitude. Longstanding government policies gave preferences to ethnic Malays in many areas. Court backlogs and limitations on the right to organize unions in some industries impeded workers' rights. Migrant workers faced some discrimination and exploitation.

#### RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings; however, local nongovernmental organizations (NGOs) reported that police killed 16 persons while apprehending them, down from 20 such killings in 2006. Local NGOs also reported that 11 persons died in police custody, down from 19 such deaths in 2006.

In November 2006 police charged police chief inspector Azilah Hadri and police corporal Sirul Azhar Umar with the October 2006 murder of Altantuya Sharibu, a Mongolian citizen and part-time translator. The prosecution also charged Abdul Razak Baginda, a well-known political analyst and advisor to the deputy prime minister, with abetting murder for allegedly ordering her death. The prosecution claimed the two police officers shot Altantuya in the head and then destroyed her body with explosives. The trial remained ongoing at year's end.

The federal criminal investigation department investigated 57 deaths in custody dating back to 2000. The authorities did not release any results of the investigation and were not expected to do so.

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. There were no reports of torture by police. According to the government, investigations followed every report of prisoner abuse; however, the government generally did not release information on the results of internal police investigations, and

information regarding punishment of those responsible for abuses was limited.

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. Judges routinely included caning in sentences of those convicted of such crimes as kidnapping, rape, and robbery. Some state Shari'a laws, which bind only Muslims, also prescribed caning. Caning, carried out with a half-inch-thick wooden cane, commonly causes welts and at times scarring. The law exempted males older than 50 and women from caning. Male children 10 years of age and older may be given up to 10 strokes of a "light cane."

#### Prison and Detention Center Conditions

Prison overcrowding, concentrated near major cities, remained a serious problem. Eleven of 23 facilities experienced occupancy rates more than 50 percent above designed capacity. For example, the Simpang Renggam Prison held more than 4,000 inmates although its design capacity was for 2,100 inmates. Water problems made prisoners prone to skin infections and other illnesses. In September 2006 officials from SUHAKAM, the Human Rights Commission of Malaysia, reported that detainees under investigative detention or awaiting trial accounted for a significant portion of the overcrowding problem in prisons.

In November the Ministry of Home Affairs reported that the country's 29 prisons held 34,917 prisoners, exceeding the prison system's planned maximum capacity of 28,900 prisoners.

NGOs and international organizations involved with migrant workers and refugees made credible allegations of inadequate food and medical care, poor sanitation, and prisoner abuse in the 15 government detention camps for illegal immigrants. An NGO with access to the camps claimed overcrowding, deficient sanitation, and lack of medical screening and treatment facilitated the spread of disease. During the year the government allowed local NGOs with mobile medical clinics into the camps.

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

The UN High Commissioner for Refugees (UNHCR) had limited access to immigrant detention centers. During the year UNHCR staff members conducted numerous visits at various prisons and immigrant detention facilities located throughout the country. 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 \$3,000 (10,000 ringgit), or both, and mandatory caning not to exceed six strokes. The UNHCR intervened to prevent caning and deportation of detained refugees and persons of concern.

#### 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. Several laws also permit preventive detention to incarcerate an individual suspected of criminal activity or to prevent a person from committing a future crime. Such laws severely restrict, and in some cases eliminate, access to timely legal representation and a fair public trial.

#### Role of the Police and Security Apparatus

The Royal Malaysia Police is under the command of the inspector general of police (IGP), who reports to the minister of internal security. The prime minister served as the minister of internal security. The IGP is responsible for organizing and administering the police force. The police force consisted of approximately 93,350 officers, of whom 4,500 were women.

Reported police offenses included accepting bribes, theft, and rape; punishments included suspension, dismissal, and demotion. Police officers are subject to trial by the civil courts. Prime Minister Abdullah Badawi, who was concurrently minister for internal security, reported that there were 25 disciplinary actions against police officers during the year.

The government continued to focus police reform efforts on improving salaries, quarters, and general living conditions of police officers. The status of other reforms recommended in a 2005 police commission report, including the formation of an independent police complaints and misconduct commission, remained uncertain. NGOs complained that the government's efforts to implement the 2005 commission's recommendations lacked transparency.

The police-training center continued to include human rights awareness training in its courses. SUHAKAM conducted human rights training for police three times during the year as part of its regular annual programming.

The Home Affairs Ministry relied primarily upon the People's Volunteer Corps (RELA), consisting of approximately 494,000 citizens, to conduct raids and detain suspected illegal migrants. RELA members received a monthly stipend and a bounty of \$22 (80 ringgit) per person detained. Local and international NGOs, refugees, legal foreign workers, persons of concern, and illegal migrants all reported various abuses by members of RELA including rape, beatings, extortion, theft, pilfering homes, destroying UNHCR and other status documents, and pillaging refugee settlements. According to press reports, after one Indonesian domestic worker escaped an abusive employer, a RELA member took her to his residence. There, he imprisoned and raped her repeatedly, during which time she became pregnant. After a month another RELA member rescued her. An informed source reported that although the victim submitted a police report, the only disciplinary action taken was removing the accused from RELA. A RELA official reportedly offered the woman approximately \$1,430 (5,000 ringgit) to keep the matter quiet.

In May the press reported a food court operator filed a lawsuit against RELA for abuse of power and corruption. The plaintiff claimed that a RELA officer entered his food court and displayed his firearm without reason. The RELA member detained four food court employees and demanded approximately \$570 (2,000 ringgit) from the employer for their release.

#### Arrest and Detention

The law permits police to arrest individuals for some offenses without a warrant and hold suspects for 24 hours without charge. A magistrate may extend this initial detention period for up to two weeks. Although police generally observed these provisions, a 2005 police commission report noted that police sometimes released suspects and then quickly rearrested them and held them in investigative custody.

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. The commission stated that an "arrest first, investigate later" mentality pervaded some elements of the police force and recommended that detention procedures be reviewed to prevent abuse.

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. 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.

Crowded and understaffed courts often resulted in lengthy pretrial detention, sometimes lasting several years. In May the government introduced the country's first night court to help alleviate the number of backlogged cases in civil courts.

In August, after a relative inquired about his whereabouts, a court released a 19-year-old citizen originally detained when he failed to produce his national identity card (MyKad) for a police officer. He was detained for six months during which time police did not allow him to contact family members or meet with legal counsel. The law requires citizens to carry their MyKad at all times.

In July immigration officials detained two women, who claimed to be princesses of a fictitious country, for illegally entering the state of Sarawak from Brunei. A judge ordered their release and deportation after 51 days' detention. Upon their release immigration officials again arrested them and brought them before a magistrate's court. At year's end the case was pending.

Four preventive detention laws permit the government to detain suspects without normal judicial review or filing formal charges: the Internal Security Act (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance, the Dangerous Drugs (Special Preventive Measures) Act, and the Restricted Residence Act.

The ISA empowers police to arrest without warrant and hold for up to 60 days any person who acts "in a manner prejudicial to the national security or economic life of Malaysia." During the initial 60-day detention period in special detention centers, the ISA allows for the denial of legal representation and does not require that the case be heard in open court. Upon the recommendation of an advisory board, the internal security minister may authorize further detention for up to two years, with an unlimited number of two-year periods to follow. In practice the government rarely authorized ISA detention beyond two two-year terms. Some of those released before the end of their detention period are subject to "imposed restricted conditions." These conditions limit freedom of speech, association, and travel inside and outside the country.

Even when there are no formal charges, the ISA requires that authorities inform detainees of the accusations against them and permit them to appeal to an advisory board for review every six months. However, advisory board decisions and recommendations are not binding on the internal security minister, not made public, and often not shown to the detainee. In past years local human rights NGOs claimed police at times intimidated and harassed family members of ISA detainees to prevent them from taking legal action against the police.

The Bar Council has asserted that ISA detentions should be subject to full judicial review; however, the courts do not concur with this interpretation. Courts are not allowed to review procedural challenges to ISA detentions but can submit habeas corpus applications. Detainees freed by judicial order were nearly always immediately detained again.

In September a local NGO stated that there were approximately 90 persons in detention under the ISA. The 90 included 56 suspected of involvement with terrorist groups, 15 held for forging currency, and 19 held for falsification of documents or other offenses. The longest-held ISA detainee has been detained for approximately six years. According to the local human rights NGO, SUARAM, authorities had not formally charged any of these detainees with a criminal offense. The government required released ISA detainees to remain within a fixed area of residence and prohibited them from international travel.

In October former ISA detainee Abdul Malek Hussin won a lawsuit against the government over his arrest and torture in 1998. The Kuala Lumpur High Court ruled that the authorities unlawfully detained and then assaulted and tortured him while he was in ISA custody. The court awarded him \$780,000 (2.5 million ringgit).

Under the Emergency Ordinance, the internal security minister may issue a detention order for up to two years against a person if he deems it necessary for the protection of public order, "the suppression of violence, or the prevention of crimes involving violence." A local NGO reported that more than 1,000 individuals were detained under the Emergency Ordinance. The authorities used the Emergency Ordinance on suspected organized crime figures.

Provisions of the Dangerous Drugs Act give the government specific power to detain suspected drug traffickers without trial for up to 39 days before the internal security minister must issue a detention order. Once the Ministry of Internal Security issues the detention order, the detainee is entitled to a court hearing, 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. However, the review process 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. According to the National Anti-Drug Agency, the government detained 433 persons under the preventive detention provisions of the act during the first six months of the year, compared with 1,296 persons during the same period in 2006.

The Restricted Residence Act allows the minister of internal security to place individuals under restricted residence away from their homes. These persons may not leave the residential district assigned to them, and they must present themselves to police on a daily basis. As under the ISA, authorities may renew the term of restricted residence every two years. The minister is authorized to issue the restricted residence orders without any judicial or administrative hearings. The government continued to justify the act as a necessary tool to remove suspects from the area where undesirable activities were being conducted.

#### e. Denial of Fair Public Trial

Three constitutional articles provide the basis for an independent judiciary, and the government generally respected these provisions in practice. However, other constitutional provisions, legislation restricting judicial review, and additional factors limited judicial independence and strengthened executive influence over the judiciary.

The constitution does not directly vest judicial powers in the courts but rather provides that parliament confers judicial powers. It also confers certain judicial powers on the attorney general, including the authority to instruct the courts on which cases to hear, the power to choose venues, and the right to discontinue cases. The attorney general controlled and directed all criminal prosecutions and assumed responsibility for judicial assignments and transfers. The prime minister's recommendation determined senior judge appointments.

Members of the bar, NGO representatives, and other observers expressed serious concern about the general decline of judicial independence, citing a number of high-profile instances of arbitrary verdicts, selective prosecution, and preferential treatment of some litigants and lawyers. On September 19, former deputy prime minister and current opposition political figure, Anwar Ibrahim released an eight-minute videotape of a purported 2002 conversation between a senior lawyer with a reputation as a "fixer" and a senior judge discussing arrangements for assigning cases to "friendly" judges. The revelations caused the public to question the credibility and transparency of the judiciary. The Bar Council lodged a complaint with the Anti-Corruption Agency (ACA), and on September 26, approximately 2,000 lawyers and supporters marched to the prime minister's office demanding that the government establish a royal commission to investigate the alleged judicial corruption. In December the government formed a royal commission to investigate the videotape. The Bar Council president said that the council desired that the commission's scope of inquiry should be wider than just the videotape and opined that the commission's terms of reference gave it sufficient scope to conduct a thorough inquiry.

Sessions courts heard minor civil suits and criminal cases. High courts have original jurisdiction over all criminal cases involving serious crimes. Juvenile courts try offenders below age 18. The special court tries cases involving the king and the sultans. The Court of Appeal has appellate jurisdiction over high court and sessions court decisions. The Federal Court, the country's highest court, reviews court of appeal decisions.

Indigenous groups in the states of Sarawak and Sabah have a system of customary law to resolve matters such as land disputes between tribes. Although rarely used, penghulu (village head) courts may adjudicate minor civil matters.

Shari'a laws, administered by state authorities through Islamic courts, bind all Muslims, most of whom are ethnic Malays. The laws and the degree of their enforcement varied from state to state.

The armed forces have a separate system of courts.

#### 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. 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 requested by an accused individual facing serious criminal charges. Strict rules of evidence apply in court. 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. Defendants are presumed innocent until proven guilty and may appeal court decisions to higher courts. 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 for accepting self-incriminating statements by defendants as evidence is in effect. Regulations also allow the authorities to hold an accused for an unspecified time before making formal charges.

In criminal cases, police sometimes used tactics that impaired a defendant's due process rights. For example, during a trial police summoned and interrogated witnesses who had previously given testimony not helpful to the prosecution. Police also used raids and document seizures to harass defendants.

Shari'a courts do not give equal weight to the testimony of women. Many NGOs also complained that women did not receive fair treatment from Shari'a courts, especially in matters of divorce and child custody. In November, in a first, a 24-year-old woman was appointed as a judge on the lower Shari'a court. The president of the Shari'a Lawyers Association questioned the appointment and expressed doubt that the woman had adequate experience due to her age.

#### Political Prisoners and Detainees

There were no known political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

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 government and government officials can be sued in court for alleged violations of human rights.

#### 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.

In November 2006 the Federal Islamic Development Department (JAKIM) announced revised guidelines for conducting raids on premises where it suspected Muslims engaged in offenses such as gambling and consumption of alcohol. The new guidelines authorize JAKIM officials to enter private premises without a warrant if they deem swift action necessary.

In February Prime Minister Abdullah asked the religious police to quit "snooping around" for couples committing khalwat, or close physical proximity, an offense under Shari'a law. The prime minister said there was no need to invade privacy.

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.

Amendments to the law that took effect January 1 provide the security forces broader authority to surreptitiously install surveillance devices 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 law permits the Ministry of Internal Security to place criminal suspects under restricted residence in a remote district away from their homes for two years.

The government bans membership in unregistered political parties and organizations.

Certain religious issues posed significant obstacles to marriage between Muslims and adherents of other religions, and during the year children were removed from the custody of a non-Muslim parent and placed in the care of a Muslim parent or grandparent.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press; however, some important legal limitations exist. In practice the government restricted freedom of expression and intimidated journalists into practicing self-censorship. According to the government, it imposed restrictions on the media to protect national security, public order, and friendly relations with other countries.

The law provides that legislation "in the interest of security (or) public order" may restrict freedom of speech. For example, the Sedition Act prohibits public comment on issues defined as sensitive, such as racial and religious matters. The government used the Sedition Act, the Official Secrets Act, the Printing Presses and Publications Act, criminal defamation laws, and other laws to restrict or intimidate political speech. 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 Printing Presses and Publications Act requires domestic and foreign publications to apply annually to the government for a permit, makes publication of "malicious news" a punishable offense, and empowers the minister of internal security to ban or restrict publications believed to threaten public order, morality, or national security. It also prohibits court challenges to suspension or revocation of publication permits. According to the government, these provisions ensured that the media did not disseminate "distorted news" and were necessary to preserve harmony and promote peaceful coexistence in a multiracial country. During the year the ministry continued to review, censor, and confiscate many foreign publications. In February SUARAM listed 57 books banned by the government. Among the banned books is a Tamil-language book, *March 8*, which discussed the 2001 Kampung Medah racial clashes between Malays and Indians.

Eleven national daily newspapers--three in English, four in Malay, and four in Chinese--dominated print journalism. Parties in the ruling coalition owned or controlled a majority of shares in two of the three English and all Malay dailies. Politically well-connected businesspersons owned the third English-language newspaper and all four major Chinese-language newspapers.

Criminal defamation is punishable by a maximum of two years in jail, a fine, or both. This along with the government power over annual license renewal and other policies inhibited independent or investigative journalism and resulted in extensive self-censorship. Nonetheless, the English-, Malay-, and Chinese-language press sometimes provided balanced alternative views on sensitive issues. The mainstream press occasionally printed editorials and interviews with opposition leaders that included criticism of government policy.

The appeal of human rights monitor Irene Fernandez of her 2003 conviction is scheduled to be heard in April 2008. The court sentenced her to 12 months' imprisonment for malicious publication of false material regarding abuse and torture of migrant workers at detention camps. She remains free on bail in the case, which began in 1996.

Publications of opposition parties, social action groups, unions, and other private groups actively covered opposition parties and frequently printed views critical of government policies. However, the government requires the annual renewal of publishing permits and limits circulation to organization members only. Printers often were reluctant to print publications that were critical of the government. Unlike in the past, the government brought no libel suits against the media during the year.

Radio and television stations were as restricted as the print media and were almost uniformly supportive of the government. News of the opposition was tightly restricted and reported in a biased fashion. Opposition party leaders alleged that during the April by-election in Ijok the mainstream media provided minimal coverage for their candidate, intensely negative reporting about their party's senior figure, and extensive reporting on the ruling party candidate.

Internet television faced no such restrictions, and the Islamic Party of Malaysia (PAS) continued daily Internet television broadcasts.

Television stations censored programming in line with government guidelines. The government banned some foreign newspapers and magazines and, occasionally, censored foreign magazines or newspapers, most often for sexual content; however, the Internet provided a means to bypass such restrictions. 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 radios.

The government generally restricted remarks or publications, including books, that might incite racial or religious disharmony; it also attempted to restrict the content of sermons at mosques in the states controlled by the governing coalition. Some state governments banned certain Muslim clergymen from delivering sermons. The Religious Affairs Department continued to conduct background checks on all clergymen. The government maintained its ban on the weekly Chinese-language newspaper *Epoch Times*. In August the government suspended the Tamil-language newspaper *Makkal Osai* for one month for publishing an image of Jesus Christ with a cigarette and beer can. The Ministry of Internal Security banned 51 books with religious elements, including *The Life and Times of Muhammad* by John Glubb, *Now You Can Know What Muslims Believe* by Ministries to Muslims, *What Is Ahmadiyah Movement* by Mirza Bahiruddin Mahmud, and *Tasawuf in the Quran* by Mir Aliudin.

#### Internet Freedom

There were no government restrictions on access to the Internet. However, in July Prime Minister Abdullah warned that Internet users, particularly bloggers, "do not have the freedom to do whatever they like...It is not for them [bloggers] to claim that they are immune from the law simply because their Web sites are hosted overseas where they have the right to say anything."

In August a university student studying overseas released a satirical video highlighting political corruption. The student rewrote the national anthem lyrics, and the video was widely viewed. Responding to the video, UMNO Youth chief Hishammuddin Hussein said, "UMNO Youth warns that freedom has its limits and we will not tolerate those who touch on the issue of national stability, harmony, cultural values, and the personality of national leaders." He called for legislation that would allow the government to recall from overseas citizens who "smeared the country's image."

On July 13, police detained and held incommunicado Nathaniel Tan, a prominent political blogger, activist, and staff member of the opposition People's Justice Party for five days allegedly for violating the Official Secrets Act. Police did not allow Tan contact with his family or legal counsel until after a legal activist spotted him with police at the magistrate's court. Police allegedly attempted to have Tan arraigned without the presence of his lawyer. On July 25, police questioned for eight hours the online political commentator Raja Petra Kamaruddin. In both cases, senior UMNO party members filed police reports alleging the men had posted seditious articles on their blogs. Both Tan and Kamaruddin regularly published articles and commentary on their Web sites regarding political corruption. Police investigations of both Tan and Kamaruddin's alleged criminal activities were ongoing at year's end, and neither had had formal charges filed against them.

Internet access was widely available, and Internet subscriptions totaled approximately 13.5 million at the end of 2006; however, criminal defamation and preventive detention laws generated some self-censorship from local Internet content sources such as bloggers, Internet news providers, and NGO activists. The Malaysian Communications and Multimedia Commission (MCMC) shut down 11 Web sites for contravening rules and regulations concerning the publication of information on the Internet. Neither the MCMC nor the government released the names of the 11 Web sites.

The Communications and Multimedia Act (CMA) requires certain Internet and other network service providers to obtain a license. Previously, the government stated that it did not intend to impose controls on Internet use but that it would punish the "misuse" of information technology. The CMA 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.

Police continued investigations of Malaysiakini, the country's largest independent Internet news organization. One investigation stemmed from an erroneous report that identified police officials as possible participants in an assault on former prime minister Mahathir Mohamad in July 2006. Another investigation concerned the National Petroleum Company's (Petronas) 2005 accusation of criminal defamation.

#### 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 the 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. In 2004 University Utara Malaysia officials fired a university lecturer and his wife, who was also a lecturer at the university, for refusing to sign the pledge. Subsequently the lecturer wrote about his termination, and the university demanded a public apology for the published articles, claiming they tarnished the

university's reputation. The lecturer refused and threatened the university with legal action. In August the university filed a lawsuit seeking compensation for tuition and salaries the university paid the couple while they were pursuing their doctorates overseas.

Although faculty members sometimes were publicly critical of the government, there was clear self-censorship among public university academics whose career advancement and funding depended on the government. Private institution academics practiced self-censorship as well, fearing that the government might revoke the licenses of their institutions. The law also imposes limitations on student associations and on student and faculty political activity.

The government has long stated that students should be apolitical and it used that assertion as a basis for denying political parties access to student forums. According to student leaders, academic authorities sometimes expelled or fined students who signed antigovernment petitions. School authorities did not restrain propagation of government views on controversial issues on school campuses.

The government censored and banned films for profanity, nudity, sex, violence, and certain political and religious content. Among films banned during the year was *The Village People Radio Show*. According to the censorship board, the film about Malay communist guerrillas now living in Thailand was too sympathetic toward communism and too critical of the government. Also initially banned but subsequently allowed a showing in one theater was *I Don't Want To Sleep Alone*. The censor board determined that the film about migrant laborers portrayed Kuala Lumpur negatively.

## b. Freedom of Peaceful Assembly and Association

### 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 Public Order Ordinance and the Police Act. The ordinance restricts public assemblies that could damage security and public order, while the act requires police permits for all public assemblies except for workers on picket lines. The Police Act defines a public assembly as a gathering of five or more persons.

The decision to grant a permit rests with the district police chief; however, senior police officials and political leaders have influenced the granting or denial of some permits. Police granted permits routinely to government and ruling coalition supporters but used a more restrictive approach with government critics, opposition parties, and human rights activists.

On September 8, police in Terengganu used water cannons and tear gas to disrupt an opposition party-sponsored rally on election reform after demonstrators refused to disperse. In the ensuing violence, one officer shot and injured two demonstrators, one critically. Police and government spokespersons alleged that the officer fired in self-defense and charged one of the shooting victims with attempted murder. The rally organizers alleged that undercover police within the crowd acted as agents provocateurs.

On November 10, in defiance of warnings by the prime minister and the police, tens of thousands of demonstrators led by major opposition political leaders assembled and marched to the National Palace to petition the king for electoral reform measures. The security forces deployed approximately 4,000 personnel (firefighters, RELA, and riot police) and used water cannons (and in some instances tear gas) to disperse the crowd at two assembly points. However, the police allowed the demonstrators to proceed to the palace. After the demonstrators had presented their petition to a palace official, the police asked them to disperse, and demonstrators complied. The police reported that 245 persons were detained at various times during the demonstration, most briefly, and organizers said that a least seven persons were beaten and kicked by police, including one man whose leg was broken.

On November 25, the Hindu Rights Action Force (HINDRAF), a small activist NGO, organized a demonstration in Kuala Lumpur with the intent to present the British High Commission with a memorandum asking for Queen Elizabeth II's intervention on their behalf. HINDRAF's leaders intended to highlight the marginalization of the country's Indian minority. Approximately 20,000 demonstrators gathered at multiple points around the city in defiance of warnings from government officials and the police. Police actively dispersed the crowds of demonstrators over a period of six hours, repeatedly using tear gas and water cannons. During and after the rally, the police arrested approximately 400 persons. The police released the majority of those detained, but the attorney general charged 31 demonstrators with, among other things, the attempted murder of a police officer, illegal assembly, and destruction of property. Human rights activists, opposition leaders, and other civil society leaders condemned the attempted murder charges as politically motivated and meant to intimidate others from participating in future demonstrations. The attorney general dropped the attempted murder charge in December.

On December 9, police arrested eight persons, including five lawyers, for participating in an "illegal assembly." The eight had organized a march involving approximately 60 persons to mark International Human Rights Day in Kuala Lumpur. Police also arrested the Bar Council's Human Rights Committee chair, Edmond Bon, when he tried to prevent city officials from removing human rights day banners, which were critical of government practices and political corruption, from the Bar

Council's building. All nine remained free on bail with trials scheduled for early in 2008.

On December 11, police arrested 26 members of the Coalition for Clean and Fair Elections, a coalition of opposition parties and NGOs seeking reforms to the electoral process. The group was attempting to deliver a memorandum to Parliament protesting the extension of the Election Commission chief's term past retirement age through a constitutional amendment. Police claimed the group had breached a court order, obtained by the police the previous day, which banned gatherings in front of the Parliament. The court released on bail 17 persons from the December 11 arrestees. The police released the remaining nine persons unconditionally.

On December 13, police arrested five HINDRAF leaders--P. Uthayakumar, M. Manoharan, R. Kenghadharan, Ganabathirau, and T. Vasantha Kumar--under the ISA and indicated they would be held without trial for a period of two years. After the November 25 rally, government officials, the police, and the government-influenced mainstream media reports on HINDRAF included claims the NGO was a militant organization with links with foreign militant groups including the Liberation Tigers of Tamil Eelam and the Hindu fundamentalist group, National Volunteer's Organization (Rashtriya Swayamsevak Sangh). An official from the Office of the Prime Minister, in a published statement, explained the decision to use ISA as follows: "The government had warned HINDRAF not to engage in activities that would inflame communal tensions and had charged its leaders in court for sedition. This did not stop the spread of inflammatory rhetoric. On two occasions, the leaders of HINDRAF issued implicit threats that the group would turn to violence if its demands were not met. The Royal Malaysian Police have also uncovered links with international terrorist organizations. While the government is determined to take action against the five individuals in open court, it is also determined to preempt any unfortunate incidents that may be inspired by the irresponsible words and deeds of a small minority." Local and international NGOs and civil society groups condemned the detention under the ISA and appealed to the government to charge the five in an open court.

A SUHAKAM public inquiry into the handling of a peaceful 2006 demonstration over fuel and electricity price increases found that the police abused their powers. SUHAKAM named officers who used excessive force, and the police transferred the accused to other districts. The police authorities did not publicly reveal what other disciplinary action, if any, was taken against the accused officers.

#### 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 prohibited the Communist Party and its affiliated organizations from registering. It also has blocked the registration of the Socialist Party of Malaysia since 1999. The government has the power to revoke the registration of an existing society for violations of the act, a power that it enforced selectively against political opposition groups.

The Universities and University Colleges Act also restricts freedom of association. This act mandates university approval for student associations and prohibits student associations and faculty members from engaging in political activity. Many students, NGOs, and opposition political parties called for the repeal or amendment of the act. A number of ruling coalition organizations and politicians also supported reexamination of the act, but the government maintained that the act still was necessary.

c. **Freedom of Religion**The constitution provides for freedom of religion; however, the government placed some restrictions on this right. The constitution defines all ethnic Malays as Muslims and stipulates that Islam is the official religion. The government significantly restricted the practice of Islamic beliefs other than Sunni Islam. Non-Muslims, who constitute approximately 40 percent of the population, including large Buddhist, Christian, Hindu, and Sikh communities, were free to practice their religious beliefs with few restrictions. The government provided financial support to Islamic religious establishments and provided more limited funding to non-Islamic religious communities. State authorities imposed Islamic religious laws administered through Shari'a courts on all ethnic Malays (and other Muslims) in some civil matters but generally did not interfere with the religious practices of the non-Muslim community. Over the past several years, the civil courts have ceded jurisdictional control to Shari'a courts in certain areas of family law involving disputes between Muslims and non-Muslims.

Prime Minister Abdullah, a proponent of Islam Hadari ("civilizational Islam"), continued to emphasize religious tolerance. On July 17, Deputy Prime Minister Najib Razak stated the country was an Islamic and not a secular state. Leading members of the non-Muslim community and senior lawyers publicly challenged this and argued that the country was constitutionally a secular state. After several days of public discourse, the government prohibited the mainstream media from addressing the debate except to report statements by the prime minister and deputy prime minister. On August 4, the prime minister stated the country was neither secular nor theocratic, but a parliamentary democracy.

The Registrar of Societies, under the Ministry of Home Affairs, registers religious organizations. Registration enables organizations to receive government grants and other benefits. The government did not recognize some religious groups as such; these groups sometimes registered themselves as businesses under the Companies Act.

The government maintained that views held by "deviant" groups endangered national security. According to the Jakim Web site, the government identified and prohibited to Muslims 56 deviant teachings as of September. They included Shi'a, transcendental meditation, and Baha'i teachings. The government asserted that "deviationist" teachings could cause divisions among Muslims. Religious authorities, with the consent of a Shari'a court, arrested and detained members of groups deemed "deviationist" in order to "rehabilitate deviants" and return them to the "true path of Islam." The religious affairs minister stated that members of these groups were subject to prosecution, detention under the ISA, or rehabilitation. Neither the government nor religious authorities provided data on the number of persons subjected to prosecution or rehabilitation.

The government continued to monitor the activities of the Shi'a minority, and state religious authorities reserved the right to detain Shi'a followers under the ISA as members of a "deviant sect." According to the government, it did not detain anyone under the ISA for religious reasons during the year.

In August Khatijah Ali, a cult leader, renounced her teachings before the Selangor State Religious Affairs Department, which had declared her teachings deviant in 1998.

The Selangor Islamic Affairs Department continued efforts to stop the spread of the banned al-Arqam Islamic group. The Federal Ministry of Internal Security continued to investigate the group as a "threat to national security." Authorities strictly monitored the group.

The government generally respected non-Muslims' right of worship; however, state governments have authority over the building of non-Muslim places of worship and the allocation of land for non-Muslim cemeteries. State authorities sometimes granted approvals for building permits very slowly. Minority religious groups reported that state governments sometimes blocked construction using restrictive zoning and construction codes.

The government demolished unregistered religious statues and places of worship. Several NGOs complained of the demolition of unregistered Hindu temples and shrines located on both private and government-owned lands. The structures were often located on government-owned plantations, which had been private property prior to independence. In May 2006 persons who used a 150-year-old unregistered temple sought a court injunction against a planned demolition by Negeri Sembilan state authorities. The court case remained open at year's end.

In June following the demolition of a 110-year-old temple, approximately 200 Hindus demonstrated in front of the Attorney General's Office. The Attorney General's office did not respond to the protest. In July local authorities in Melaka demolished another unregistered temple. Local NGOs condemned the demolition and urged the authorities to be sensitive when dealing with places of worship.

In practice, Shari'a law as interpreted in the country does not permit Muslims to convert to another religion. In several court rulings during the year, secular courts ceded jurisdiction to Shari'a courts in matters involving conversion to or from Islam. Shari'a courts routinely denied conversion from Islam requests. In May the Federal Court upheld a 2005 lower court decision that the civil courts did not have jurisdiction over the conversion case of Lina Joy and that Joy should take the matter to Shari'a court.

In January Revathi Masoosai, a 29-year-old ethnic Indian woman whose parents converted to Islam, was arrested after she went to the Shari'a court to change her Muslim name and religion on her identity card to reflect her religion as Hinduism. Revathi married her husband in 2004 according to Hindu rites, and both were practicing Hindus. Revathi said her grandmother raised her as a Hindu and that she would continue to practice the religion. The court gave Revathi's Muslim parents custody of their two-year-old daughter. The Malacca State Shari'a Court ordered Revathi sent to the Islamic Rehabilitation Centre for 180 days' rehabilitation to help her "return to Islam." She was released in July into the custody of her parents. The authorities ruled she could not convert out of Islam and that her marriage was void. The court also ordered her to attend weekly religious classes and banned her from seeing her husband. At year's end Revathi's parents retained custody of the child.

The Federal Court made no decision in the appeal of Kaliammal Sinnasamy, a non-Muslim woman, involving the disposition of the remains of her spouse. He allegedly converted from Hinduism to Islam before his death. Islamic religious authorities buried the man with Muslim rites.

The law strictly prohibits non-Muslims from proselytizing Muslims; proselytizing of non-Muslims faced no legal obstacles. In July the opposition-controlled state of Kelantan announced it had increased the maximum penalties for proselytizing Muslims from two years' imprisonment and a fine of approximately \$1,430 (5,000 ringgit) to five years' imprisonment, a fine of approximately \$2,860 (10,000 ringgit), and six lashes with the cane.

According to the Malaysian Consultative Council of Buddhists, Christians, Hindus, Sikhs, and Taoists the government continued to restrict visas for foreign clergy under the age of 40 to inhibit "militant clergy" from entering the country. While representatives of non-Muslim groups did not sit on the immigration committee that approved visa requests for clergy, the committee asked the consultative council for its recommendations.

Religious education is compulsory for Muslim children and follows a government-approved curriculum. Muslim civil servants are required to attend Islamic religious classes taught by government-approved teachers.

The government discouraged but did not ban distribution in peninsular Malaysia of Malay-language translations of the Bible, Christian tapes, and other printed materials, but it restricted distribution and required "Not for Muslims," be stamped on all Malay-language materials. The distribution of Malay-language Christian materials faced few restrictions in the eastern states of Sabah and Sarawak. In June the government banned 51 book titles and publications on Islam, alleged to undermine the faith of Muslims. The books included *The Qur'an* by M.A.S. Abdel Haleem, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* by Haideh Moghissi, *The Life and Times of Muhammad* by John Glubb, and *War, Terror & Peace in the Qur'an and in Islam: Insights For Military and Government Leaders*, by T.P. Schwartz.

The government generally restricted remarks or publications that might incite racial or religious disharmony. This included some statements and publications critical of particular religions, especially Islam. The government also restricted the content of sermons at mosques. In recent years both the government and the opposition party PAS have attempted to use mosques in the states they control to deliver politically oriented messages. Several states attempted to ban opponent-affiliated imams from speaking at mosques.

In family and religious matters, Muslims are subject to Shari'a. According to some women's rights advocates, women were subject to discriminatory interpretations of Shari'a and inconsistent application of the law from state to state. In 2005 parliament approved amendments to the Islamic Family Law Act intended to harmonize Shari'a family law throughout the country. However, a review of amendments continued at year's end.

State authorities in Kelantan continued to ban traditional Malay dance theaters, prohibited advertisements depicting women not fully covered by clothing, enforced wearing of headscarves by Muslim women, and imposed fines for violators. In December 2006 the Kelantan state government enacted a by-law against "indecent dressing" by Muslim women working in retail outlets and restaurants. The dress code requires headscarves and allows only faces and hands to be exposed. The law also stipulates that non-Muslim women should avoid dressing "sexily or indecently." Women who violate the dress code face possible fines up to \$139 (500 ringgit). Women's rights leaders and the minister of women, family, and community development criticized the new law as overly restrictive.

The government provided no statistics regarding raids by federal religious police of nightclubs and similar places during the year.

#### Societal Abuses and Discrimination

No reliable estimate of the country's Jewish population was available, and there were no locally based Jewish communities or synagogues. There were no reports of anti-Semitic acts.

For a more detailed discussion, see the [2007 International Religious Freedom Report](#).

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

The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice, although there were some restrictions. 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. The government provided limited cooperation with the Office of the UN High Commissioner for Refugees (UNHCR) and generally did not impede other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern.

The government regulated the internal movement of provisionally released ISA detainees. The government also used the Restricted Residence Act to limit movements of those suspected of some criminal activities.

Citizens must apply for government permission to travel to Israel.

The constitution provides that no citizen may be banished or excluded from the country. However, according to the terms of a 1989 peace agreement, Chin Peng, the former leader of the communist insurgency in the country, continued to live in exile in Thailand, and the government denied him permission to return. The government also demanded he provide evidence that he remained a citizen.

#### Protection of Refugees

The law does not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating

to the Status of Refugees and its 1967 protocol, and the government has not established a system for providing protection to refugees. The government did not grant refugee status or asylum. In practice the government did not provide protection against refoulement, the return of persons to a country where there is reason to believe they feared persecution. The government generally did not deport individuals recognized as persons of concern by the UNHCR.

The government continued to deport some refugees and asylum seekers but allowed certain refugees and persons of concern to remain, pending resettlement to other countries. The government generally did not distinguish between asylum seekers and illegal immigrants and detained them in the same camps. Detention facilities were overcrowded and lacked adequate medical facilities. Local human rights NGOs alleged prison officials sometimes abused detainees and provided inadequate food.

A group of Thai citizens, who illegally entered the country in August 2005, reportedly to escape violence in southern Thailand, remained in an illegal-migrant detention center in Terengganu. Due to several births, their number has grown from 131 to 134. The government allowed Thai authorities full access to this group to try to persuade them to return to Thailand. In August, according to a Malaysian national news agency report, the government turned one of the original 131 over to the Thai authorities for alleged involvement in the southern Thailand violence.

As of the end of August, the UNHCR listed 7,351 persons as asylum seekers and 30,132 as refugees, approximately 50 percent of whom were Burmese citizens.

By the end of August, the UNHCR submitted 8,098 refugees to third countries for resettlement consideration. Third countries accepted and resettled 3,183 refugees. The cases of the remaining 4,915 refugees remained pending and at risk for detention and deportation by immigration officials.

The UNHCR reported 813 asylum seekers and refugees, including 135 children, remained in immigration detention centers and prisons after immigration officials or RELA members arrested them. By the end of July, the UNHCR had facilitated the release of 1,196 individuals from police lockups and immigration detention camps.

In August the government, on humanitarian grounds, announced a one-year visa for refugees from Aceh.

In 2006 RELA detained 25,045 illegal immigrants, refugees, asylum seekers, and persons of concern. As of November RELA members arrested 30,332 illegal immigrants, refugees, asylum seekers, and persons of concern and carried out approximately 40 raids per night (see section 1.d.).

The immigration law provides for six months in prison and up to six strokes of the cane for immigration violations. In practice delays in processing travel documents led to the detention of many illegal immigrants in camps for more than a year. As of the end of July, authorities caned 30 refugees or persons of concern compared with 10 for all of last year.

In November the Bar Council opined that the extended detention of eight Burmese refugees was unlawful; prison officials extended their sentences in order to carry out caning imposed as part of their punishment. A Bar Council official noted that the prisons cannot hold someone once his sentence had been completed irrespective of whether a caning has been executed. The council urged the government to stop prosecuting refugees and asylum seekers as illegal immigrants.

In 2005 the Prisons Department took over management of immigrant detention centers from the Immigration Department. Nonetheless, NGOs reported that conditions in the centers had not materially improved, largely due to inadequate funding for food, medical care, and infrastructure maintenance. In November the minister of home affairs transferred responsibility over immigration detention centers from the Prisons Department to the Immigration Department. RELA members were expected to staff the immigration centers for up to two years while the Immigration Department trains a permanent staff.

#### Stateless Persons

Citizenship is derived from one's parents (*jus sanguinis*). NGO estimates of the number of stateless persons ranged from several thousand to as many as 30,000. A foreign government estimated that approximately 10 to 20 percent of the 60,000 illegal immigrants and persons of concern living in Sabah were stateless children born in Sabah. Government officials denied stateless persons access to education, health care, and the right to own property.

Some persons were stateless because the government refused to register their birth due to inadequate proof of their parents' marriage. Interfaith marriages not recognized by the government sometimes resulted in undocumented, *de facto* stateless children.

#### 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 formally exercised this right in

practice through periodic elections based on universal suffrage; however, while votes generally were recorded accurately, there were irregularities that affected the fairness of elections and this right was abridged in practice.

### Elections and Political Participation

Opposition parties were unable to compete on equal terms with the governing coalition (which has held power at the national level since independence in 1957) because of significant restrictions on campaigning, freedom of assembly and association, and access to the media. Nevertheless, opposition candidates campaigned actively, with some success in past state and national elections. In the most recent national elections, held in 2004, opposition parties captured 19 of 219 parliamentary seats and 52 of 505 state assembly seats.

The lack of equal access to the media was one of the most serious problems encountered by the opposition in the 2004 national elections and in subsequent by-elections. Opposition leaders also claimed that the election commission 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 2004 campaign; however, most observers concluded that they did not substantially alter the results. NGOs and opposition party leaders lodged 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.

As of September there were approximately 21 million eligible voters in the country and an estimated 16 million registered to vote.

The constitution states that parliamentary constituencies should have approximately equal numbers of eligible voters; however, in practice the numbers varied significantly.

The Malay-based UMNO party dominated the ruling National Front coalition. Since 1969 the National Front coalition has maintained at least a two-thirds majority in parliament, which enabled the government to amend the constitution at will.

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. Nonetheless, government officials often faced sharp questioning in parliament, and the press reported in greater detail than in the past.

Under the Local Government Act, elections of public officials were confined to state assemblies and the federal parliament. Some politicians and NGO activists advocated the reintroduction of local government elections, which the government abolished after the 1969 race riots. Some ruling party municipal officials noted that local bodies were simply "rubber stamps" for the government.

Women faced no legal limits on participation in government and politics. At the end of September, three of 33 cabinet ministers were women. Women held 21 of 219 seats in the lower house and 17 of the 64 senate seats.

In practice the political dominance of the Malay majority meant that ethnic Malays held the most powerful senior leadership positions. Non-Malays filled 10 of the 33 ministerial posts and 21 of 35 deputy minister positions.

### Government Corruption and Transparency

The law provides criminal penalties for official corruption. Government commitment to the effective implementation of the law remained unclear, and the media reported numerous cases of alleged official corruption. There was a broadly held perception of widespread corruption and cronyism within the governing coalition and in government institutions. The World Bank's worldwide governance indicators reflect that corruption was a problem. As of 2006 the ACA employed approximately 1,800 staff members nationwide. According to the ACA director general, the agency initiated the arrest of 492 individuals during the year. In August the government announced that civil servants who refuse or fail to declare their assets would face disciplinary actions and would be ineligible for promotion.

A deputy prime minister-headed panel investigating allegations of log smuggling by a member of parliament (MP) had not completed its investigation by year's end.

There is no law designed to facilitate citizens' requests for government statistics or other information collected and compiled by the government. Individual MPs were allowed to request and obtain such information on an ad hoc basis, some of which was then made available to the public.

#### Section 4 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. Government officials were somewhat cooperative and responsive to their views.

SUHAKAM was generally considered a credible monitor of the human rights situation and a check on police activities. SUHAKAM is not empowered to inquire into allegations relating to ongoing court cases and must cease its 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. They repeatedly noted that a major unresolved challenge was the slow government response to their reports on major topics that touched on fundamental liberties.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution provides for equal protection under the law and prohibits discrimination against citizens based on sex, religion, race, descent, or place of birth. However, the constitution also provides for the "special position" of ethnic Malays and the indigenous groups of the eastern states of Sabah and Sarawak (collectively, bumiputras), and discrimination based on this provision persisted. Government policies and legislation gave preferences to bumiputras in housing, home ownership, awarding of government contracts and jobs, educational scholarships, and other areas. Nonbumiputras regularly complained about these preferences, arguing that government subsidies for disadvantaged persons should be dispensed without regard to race.

##### Women

The penal code states that rape is punishable by a prison term of up to 30 years, caning, and a fine. According to the police, 3,177 rapes were reported during the year, compared with 2,435 in 2006. Spousal rape is not a crime, although a husband may be charged for causing hurt to his wife while attempting to force sexual relations with her.

The courts may decide the minimum jail term for a man convicted of statutory rape of a girl age 15 years or less. Prior to 2006 the penal code had stipulated minimum jail sentences for such behavior. In addition the law prohibits a person in authority from using his position to intimidate a subordinate into having sexual relations.

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. According to the Ministry of Women, Family, and Community Development (MWFCD) and a leading women's NGO, only 10 percent of rape cases were reported to police. Women's groups noted that while some rapists received heavy punishments, including caning, other rapists received inadequate punishments.

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

Violence against women remained a problem. During the year police received 3,264 domestic violence reports. Reports of rape and spousal abuse drew considerable government, NGO, and press attention. Under the Domestic Violence Act, anyone who willfully contravenes a protection order by using violence against a protected person may be punished by imprisonment of up to one year and a maximum fine of \$556 (2,000 ringgit). In extreme cases, involving "grievous hurt" inflicted using a deadly weapon, the maximum imprisonment increases to 20 years. Women's groups criticized the act as inadequate and called for amendments to strengthen it. In their view the act fails to protect women in immediate danger because it requires 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, despite its interpretation to include sexual and psychological abuse.

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. Police responses and sensitivity to complaints of domestic violence continued to improve, but women's rights activists claimed that police needed additional training in handling domestic abuse and rape cases.

Prostitution is not a criminal offense, although Muslims engaged in prostitution could face civil penalties under Shari'a for engaging in sexual relations out of wedlock. Foreign prostitutes were routinely arrested as illegal immigrants or for violating the terms of their nonimmigrant visas. Financially benefiting from the prostitution activities of others, is illegal and was prosecuted. The police conducted 9,878 (gambling/prostitution) raids from January to August, compared with 12,901 for all of 2006. The police arrested and placed in preventive detention 44 panderers from January to August, detaining 30 under the Restricted Residence Law and the remaining 14 under the Emergency Ordinance. There were no reports that the police charged anyone under the penal code. In 2006 the police arrested and charged 35 panderers under the penal code. The police arrested 5,250 foreign prostitutes from January to August, compared with 5,968 in all of 2006. The police arrested 428 local prostitutes from January to August, compared with 545 in all of 2006. NGOs accused the police of profiling female Chinese nationals as potential prostitutes, following several highly publicized arrests. Police and NGO representatives estimated 150,000 women were involved in prostitution.

A government voluntary code of conduct provides a detailed definition of sexual harassment, which is meant to raise public awareness of the problem, but women's groups advocated passage of a separate law on sexual harassment. 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.

Women's rights advocates asserted that women faced discriminatory treatment in Shari'a courts due to prejudicial interpretations of Islamic family law.

The law allows polygyny and Muslim men practiced polygyny in limited numbers. Islamic inheritance law generally favors male offspring and relatives. There was a small but steadily increasing number of women obtaining divorces under the provisions of Shari'a that allow for divorce without the husband's consent.

Non-Muslim women are subject to civil law. The Guardianship of Women and Infants Act gives mothers equal parental rights. Four states extended the provisions of the act to Muslim mothers, and women's groups urged the other states to do the same.

The government undertook a number of initiatives to promote equality for women and the full and equal participation of women in education and the work force. According to the MWFCDC, women made up approximately 7.6 percent of total board members of publicly traded companies and 6.9 percent of state assembly members. At year's end women accounted for 46.1 percent of the labor force, including a significant portion of the country's dentists (56.2 percent), lawyers (45.7 percent), accountants (44 percent), and medical doctors (37.2 percent).

#### Children

The government demonstrated a commitment to children's rights and welfare; however, the law allows use of a "light cane" to administer a maximum of 10 strokes to male children between the ages 10 and 18.

Parents must register a child within 14 days of birth. The authorities require citizens to provide their marriage certificate and both parents' MyKad. Non-citizens must provide 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. Asylum seekers who register a birth risk arrest as illegal immigrants. The UNHCR registers children born to refugees. Marriages between Muslims and non-Muslims are void. Couples in such marriages have 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) are required to pay higher medical fees, which caused hardship in many cases.

The government allocated approximately 25 percent of the national budget to education and provided free education for children through age 17. Although primary education is compulsory, there is no enforcement mechanism governing school attendance. There was no apparent difference in the treatment of girls and boys at the primary and secondary levels.

A variety of programs provided low-cost health care for most children without distinction based on gender.

The government recognized that sexual exploitation of children and incest were problems. Incest in particular was a problem in rural areas. The law provides for six to 20 years' imprisonment and caning for individuals convicted of incest. The police stated that 332 cases of incest were reported in 2006, up from 295 cases in 2005. In past years the majority of incest cases involved children less than 15 years of age. 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.

Statutory rape occurred and was prosecuted. According to the Women, Family and Community Development Ministry, 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 prosecution of statutory rape. Such a girl may be charged with khalwat, even if

she is under the age of 18 and her partner is an adult. Thus Shari'a courts sometimes punished the victims of statutory rape. There were no reports of Shari'a courts charging rape victims with khalwat during the year. Shari'a 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.

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

Sabah had a problem of street children. Estimates ranged from a few hundred to 15,000, 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.

#### Trafficking in Persons

On July 26, the Antitrafficking in Persons Act was enacted. It prohibits all forms of trafficking in persons; however, there were reports that persons were trafficked to, from, or within the country. The government can use other laws, such as the Child Act, the Immigration Act, and the Restricted Residence Act, to arrest and detain traffickers.

Trafficking in persons was a serious problem. The country was a destination, and to a lesser extent, a source and transit point for men and women trafficked for the purposes of sexual exploitation and forced labor. Foreign trafficking victims, mostly women and girls from China, Indonesia, Cambodia, Thailand, the Philippines, and Vietnam, were trafficked to the country for commercial sexual exploitation. These women often worked as karaoke hostesses, "guest relations officers," and masseuses. Some Malaysian women, primarily of Chinese ethnicity, were trafficked abroad for sexual exploitation. Some economic migrants, mostly from Bangladesh and Indonesia, working as domestic servants or laborers in the construction and agricultural sectors, faced exploitative conditions that met the definition of involuntary servitude.

According to police, the Bar Council, and SUHAKAM, many foreigners found to be involved in prostitution were possible trafficking victims. Foreign embassies, NGOs, and government authorities reported that police and NGOs rescued and repatriated at least 300 to 400 trafficking victims in each of the past two years. The rescues did not lead to a significant number of arrests and prosecutions of traffickers.

A small number of Malaysian women and girls were trafficked for sexual purposes, mostly to Singapore, Macau, Hong Kong, and Taiwan, but also to the United Kingdom, Japan, Australia, and Canada. According to police and ethnic Chinese community leaders, female citizens who were victims of trafficking were usually ethnic Chinese, although ethnic Malay and Indian women also were exploited as prostitutes domestically. The Ministry of Foreign Affairs and NGOs estimated that fewer than 100 Malaysian women were trafficked abroad during 2006 and that the number had declined in recent years.

Foreign trafficking victims were kept compliant through involuntary confinement, confiscation of travel documents, debt bondage, physical abuse, and forced drug use. According to news reports, these women said that they were lured to the country by promises of legitimate employment but were forced into prostitution upon their arrival in the country.

Police and NGOs believed that criminal syndicates were behind most of the trafficking. Employment agencies were also believed to be heavily involved in trafficking migrant workers.

Under the Antitrafficking Act, any person convicted of trafficking an adult is subject to a maximum imprisonment term of 15 years and a possible fine. A person convicted of trafficking a child receives a minimum sentence of three years and maximum of 20. Any person profiting from the exploitation of a trafficked person may serve a maximum of 15 years and pay a minimum fine of approximately \$14,285 (50,000 ringgit) and maximum of approximately \$142,850 (500,000 ringgit).

There were allegations of corruption among law enforcement personnel, since some trafficking victims passed through two or more ports of entry without travel documents.

The government assisted some underage persons exploited as prostitutes and rescued some trafficked women and girls. During the year police continued a referral system to place foreign trafficking victims in shelters operated by NGOs and certain foreign embassies. However, shelter space in private shelters remained inadequate to hold all identified victims, and those whom shelters could not accept were transferred to immigration detention facilities for deportation processing. Police participated in NGO and foreign-funded antitrafficking seminars.

#### 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, or in the provision of other

state services. A public sector regulation reserves 1 percent of all public sector jobs for persons with disabilities. The government did not mandate accessibility to transportation for persons with disabilities, and few older public facilities were adapted for such persons. 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. SUHAKAM recommended legislation to address discriminatory practices and barriers facing persons with disabilities, and it organized dialogues among persons with disabilities, government departments, and NGOs to promote awareness of the rights of persons with disabilities.

Special education schools existed but were not sufficient to meet the needs of the population with disabilities. The government undertook initiatives to promote public acceptance of persons with disabilities, make public facilities more accessible to such persons, and increase budgetary allotments for programs aimed at aiding them. 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 the disabled.

#### National/Racial/Ethnic Minorities

The law and government policy provide for extensive preferential programs designed to boost the economic position of bumiputras. Such programs limited opportunities for nonbumiputras in higher education, government employment, business permits and licenses, and ownership of land. According to the government, these programs were necessary to ensure ethnic harmony and political stability. Ethnic Indian citizens, who did not receive such privileges, remained among the country's poorest groups.

In August 2006 the minister of higher education stated that the nation's 17 public universities employed few nonbumiputra deans. At the Universiti Malaya, 19 of 20 deans were bumiputras; in many other universities, deans were exclusively bumiputras. They also accounted for more than 85 percent of the country's almost 1.15 million civil servants at the end of 2006. The percentage has steadily increased.

In November HINDRAF organized a march to increase awareness of the perceived marginalization of ethnic Indians, who make up 8 percent of the population. Police used tear gas and water cannons to disperse the demonstrators. In December five HINDRAF leaders were detained under the ISA (see section 2.b.).

#### Indigenous People

Indigenous people (the descendants of the original inhabitants of the peninsular region of the country and the Borneo states) generally enjoyed the same constitutional rights as the rest of the population. However, in practice federal laws pertaining to indigenous people of the peninsular region, known as the Orang Asli, vest considerable authority in the non-Orang Asli minister for rural 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 Orang Asli, who numbered approximately 150,000, constituted the poorest group in the country. Government statistics, categorized approximately 77 percent of Orang Asli households as living below the poverty level. A government-sponsored national advisory council monitored the development of Orang Asli, but only five of the council's 17 members were Orang Asli. In addition, only one Orang Asli held a management position in the government's Department of Orang Asli Affairs. Under its ninth economic plan covering the years 2006-10, the government allocated slightly more than \$100 million (361.8 million ringgit) for development projects for the Orang Asli. These focused on improving health, preschool education, infrastructure, and economic activities. The plan included an additional \$28 million (100 million ringgit) for development of lands inhabited by the Orang Asli. In July the Ministry of Education and the UN Children's Fund introduced a remedial education program especially tailored for the Orang Asli to improve reading and writing skills.

In March 2006 the minister of rural and regional development stated that the dropout rate among Orang Asli children was more than 50 percent in secondary schools. Village chiefs reported strangers lured teenagers from various Orang Asli tribes away from their villages with promised jobs as domestic workers in cities. The Orang Asli Affairs Department suspected the teenagers were kidnapped. The department responded by sending letters to the chiefs of some 800 villages to be wary of strangers and consult the authorities if their young women planned to take up job offers outside the village.

Under the Aboriginal People's Act, Orang Asli were permitted to live on designated land as tenants-at-will, but they did not possess land rights. 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.

The uncertainty surrounding Orang Asli land ownership made them vulnerable to exploitation. Logging companies continued to encroach on land traditionally held by Orang Asli and other 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. After four SUHAKAM commissioners visited impoverished natives of the large Penan tribe in Sarawak in September 2006, they stated that living conditions of the Penan people had not improved during the past five years. The commissioners also found that the government had not registered as citizens the vast majority of the Penan people visited. In July the Sarawak Penan Association urged 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. In August SUHAKAM released a report on the Penan in Ulu Belaga, Sarawak. The report stated the tribe no longer had the legal avenue to claim their rights over ancestral land due to amendments to the Sarawak Land Code that do not recognize ancestral land rights. The report indicated that the Penan tribe was among the poorest groups in the country and lived below the poverty line. SUHAKAM urged the government to ensure the availability of necessities for the Penan through poverty eradication and income generation programs. As of September the state government had not responded to either group's recommendations.

A case regarding ownership of the land used for the construction of the Kuala Lumpur International Airport remained pending at year's end. In September 2005 the Court of Appeal upheld a high court ruling that the Temuan, an Orang Asli group in peninsular Malaysia, were the rightful owners of the land and ordered the Selangor state government to pay compensation; however, the government appealed the decision. In November 2006 the Federal Court agreed to hear the appeal initiated by the state of Selangor and the federal government.

Laws allowing condemnation and purchase of land do not require more than perfunctory notifications in newspapers, to which indigenous persons may have no access. In past years this deprived some indigenous persons of their traditional lands with little or no legal recourse. In March the Semalai, another Orang Asli group in peninsular Malaysia, filed a petition at the high court to review a Pahang State government-ordered eviction from an area the Semalai claim as their traditional land. The land, approved as an aboriginal reserve in 1974, was not officially registered. The state government decided to divide the land among neighboring Malay villagers through a government approved land scheme. As of September the suit was still pending.

#### Other Societal Abuses and Discrimination

Although there are no laws that prohibit homosexuality, laws against sodomy and "carnal intercourse against the order of nature" exist and were enforced. Religious and cultural taboos against homosexuality were widespread. The government's response to HIV/AIDS was generally nondiscriminatory, although stigmatization of AIDS sufferers was common.

#### Section 6 Worker Rights

##### a. The Right of Association

By law most workers have the right to engage in trade union activity, but trade unions represented only 9.5 percent of the labor force. Those restricted by law from joining a union include public sector workers categorized as "confidential, managerial, and executive," as well as defense and police officials. In theory foreign workers can join a trade union; however, the Immigration Department barred foreign workers from holding trade union offices, and most foreign workers' contracts banned them from joining a trade union.

The Trade Unions Act 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. However, 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 director general of trade unions may refuse to register a trade union and in some circumstances may withdraw the registration of an existing trade union based on provisions outlined in the act. When registration is refused, withdrawn, or canceled, a trade union is considered an unlawful association; there were no reports of any such actions during the year. Trade unions from different industries may join in national congresses, but such congresses must register separately as societies under the Societies Act.

Malaysian Trade Union Congress (MTUC) officials continued to express frustration about delays in the settlement of union recognition disputes. While the Industrial Relations Act requires that an employer respond to a union's request for recognition within 21 days of application, it was not uncommon for such applications to be refused and unions to go unrecognized for one to four years. In August parliament amended the trade union act making it more difficult for workers to form unions. Under the amendments if an employer does not respond to the union application within the 21 days the union must submit a written appeal to the director general of trade unions within 14 days. If the union fails to submit the appeal within the stipulated period, the union automatically is not recognized. The amendments also denied the right of unions and individuals to hold strikes protesting the nonrecognition of their union.

Government policy inhibited the formation of national unions in the electronics sector, the country's largest industry, because it has "pioneer status," which affords certain investment incentives. The government stated that establishment of national unions in the electronics sector would impede foreign direct investment and negatively affect the country's

international competitiveness in the sector; government leaders stated that enterprise-level unions were more appropriate for the electronics industry. According to MTUC officials, 150,000 electronics workers were unable to organize, and only eight in-house unions existed in the electronics industry.

Unions maintained independence from both the government and political parties, but individual union members may belong to political parties. Although by law union officers may not hold principal offices in political parties, individual trade union leaders have served in parliament. Trade unions were free to associate with national labor congresses, which exercised many of the responsibilities of national labor unions, although they cannot bargain on behalf of local unions.

Trade unions were permitted to affiliate with international trade union organizations, such as global union federations and the International Trade Union Confederation, subject to the approval of the director general of trade unions.

#### b. The Right to Organize and Bargain Collectively

Workers have the legal right to organize and bargain collectively, and collective bargaining was widespread in those sectors where labor was organized.

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 Service (CUEPACS), a federation of public employee unions registered under the Trade Unions Act.

CUEPACS is an umbrella organization that included 127 distinct civil servant unions with approximately 300,000 members out of a total of one million civil servants, represented by an estimated 160 unions. Teacher unions accounted for 140,000 of CUEPACS' 300,000 members. CUEPACS holds talks with the government through three National Joint Councils (NJs) that represent three types of workers: managerial and professional, scientific and technological, and general (all other types of workers, such as clerical and support staff). The government established the NJC system to have NJCs serve as aggregating, intermediary negotiating bodies between the government and the various unions served by CUEPACS. NJC members are elected from constituent unions. While an individual civil service union may approach the government directly on narrow issues that affect only that particular union or its members, broader issues that affect the entire civil service flow up to CUEPACS and then to one of the NJCs, depending on the type of civil servants involved.

Government regulations limited CUEPACS' negotiating power and virtually eliminated its right to organize strikes. CUEPACS has sought a minimum wage for civil servants; however, by year's end the government had announced no plans to institute a minimum wage for public or private sector workers. In May the government approved a pay raise of as much as 35 percent for civil servants, the first such increase in 15 years.

The government placed limits on collective bargaining agreements in companies designated as having pioneer status. The MTUC continued to object to legal restrictions on collective bargaining in pioneer industries. On June 3 and August 8, MTUC and its 200 affiliated unions organized a nationwide protest and demanded a national minimum wage of \$250 (900 ringgit) per month and a cost of living allowance of \$85 (300 ringgit) per month, equivalent to the amount paid to public sector workers. By the end of September, the government had not responded to MTUC demands.

Charges of discrimination against employees engaged in organizing union activities may be filed with the Ministry of Human Resources or the industrial court. Critics alleged that the industrial court was slow to adjudicate worker complaints when conciliation efforts by the Ministry of Human Resources failed.

The government holds that issues of transfer, dismissal, and reinstatement are internal management prerogatives; therefore, they are excluded from collective bargaining, which is not in accordance with International Labor Organization (ILO) standards.

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. The list includes sectors not normally deemed essential under ILO definitions. MTUC officials said that requirements imposed by the authorities were so stringent that it was almost impossible to strike. According to MTUC officials, there were eight lunchtime pickets or one-day work slowdowns but no strikes during the year. Employees in the public sector do not have the right to collective bargaining.

The Industrial Relations Act requires the parties to notify the Ministry of Human Resources that a dispute exists before any industrial action may be taken. The ministry's Industrial Relations Department then may become involved actively in conciliation efforts. If conciliation fails to achieve settlement, the minister has the power to refer the dispute to the industrial court. Strikes or lockouts are prohibited while the dispute is before the industrial court. The act prohibits employers from taking retribution against a worker for participating in the lawful activities of a trade union. However, some trade unions questioned the effectiveness of the provisions. In August parliament amended the Industrial Relations Act, limiting worker

compensation to a maximum of two years from the time the employee is laid off.

Companies in export processing zones (EPZs) must observe labor standards identical to those in the rest of the country. Although the electronics sector's pioneer status inhibits organizing, many companies had "in house unions"; however, these were seen as controlled by management and were not allowed to affiliate with national union umbrella bodies.

#### c. Prohibition of Forced or Compulsory Labor

The constitution prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred. Some of the estimated 320,000 foreign women employed as household workers were subjected to physical abuse and forced to work under harsh conditions, and some child household employees worked in conditions amounting to forced labor. Some domestic workers were not paid or were paid below the agreed salary. Some of the abused women reported their employers forced them to sleep on kitchen floors and fed them only the scraps from a meal. Two Indonesian domestic workers escaped abusive employers by climbing down the side of high-rise residences with homemade ropes. Although Malaysia and Indonesia concluded a Memorandum of Understanding (MOU) in 2006 that, among other things, called for domestic workers to be paid directly, receive compensation for personal injury, and be given time off in lieu of overtime, it remained a common practice for employers to deposit wages with recruiting agencies as repayment for debts. Under terms of the MOU, domestic workers have to surrender their passports to their employers to ensure they will not run away. Child labor occurred in certain areas of the country.

In 2004 a 19-year-old Indonesian domestic worker, Nirmala Bonat, allegedly was burned repeatedly with an iron and scalded with boiling water by her employer's wife, Yim Pek Ha. The abuse produced severe disfigurement. The government charged Yim with the crime, and the court released her on bail. The trial, which began in 2004, proceeded slowly and continued as of year's end.

#### d. 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.

Most child laborers worked informally in the agricultural sector, helping their parents in the field; however, only adult members of the family received a wage. Child labor in urban areas was often found in family food businesses, night markets, and small-scale industries. 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.

#### e. Acceptable Conditions of Work

No national minimum wage provision was in effect, as the government preferred to allow market forces to determine wages. Prevailing market wages generally provided a decent standard of living for citizens, although not for all migrant workers. Wage councils, established by a 1947 act to provide a recommended minimum wage for sectors in which the market wage was deemed to be insufficient, had little impact on wages in any sector. According to MTUC officials, the wage councils had not met for more than 15 years, and their recommended wages have long been obsolete.

Plantation workers generally received production-related payments or daily wages. Under a 2003 agreement, plantation workers received a minimum wage of \$97 (350 ringgit) per month. Proponents of the agreement said that productivity incentives and bonuses raised the prevailing wage to nearly \$194 (700 ringgit).

Under the Employment Act, 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 act also sets overtime rates and mandates public holidays, annual leave, sick leave, and maternity allowances. The Labor Department of the Ministry of Human Resources is responsible for enforcing the standards, but a shortage of inspectors precluded strict enforcement.

There were approximately two million legal migrant workers, who worked in the country mainly in manufacturing (35.9 percent), plantations and agriculture (24.7 percent), as domestic workers (15.8 percent), and in construction (14.1 percent). According to the Ministry of Human Resources, as of September 30, legal foreign workers primarily came from Indonesia (58 percent), Nepal (11 percent), Bangladesh (9 percent) and India (7 percent). Among legal foreign workers, Indonesian workers accounted for 90 percent of domestic helpers, 89 percent of plantation workers, and 81 percent of construction workers. The deputy prime minister stated that between 300,000 and 500,000 illegal migrants also worked in the country, but many observers and officials believed that the number of illegal migrant workers exceeded one million.

Legal and illegal foreign workers from Indonesia, Nepal, India, Burma, Vietnam, Bangladesh, the Philippines, and other countries constituted approximately 20 percent of the work force. Illegal foreign workers have no legal protection under the

law and have no legal recourse in cases of abuse. 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.

Foreign workers, particularly if they were illegal aliens, generally did not have access to the system of labor adjudication. However, 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. Like other employers, labor contractors may be prosecuted for violating the law. According to the results of a survey conducted during the year by the Federation of Malaysian Manufacturers, the average monthly wage of foreign workers engaged in the manufacturing sector was \$161 (581 ringgit). In October the Ministry of Human Resources opened an investigation into a complaint by 700 Bangladeshi textile factory workers who alleged they were being paid only one-sixth of the amount their employers had promised. By year's end the government had enforced payment of back wages, and many of the workers had been repatriated back to Bangladesh.

The Workmen's Compensation Act covers both local and foreign workers but provides no protection for foreign household workers. According to the government, foreign household workers are protected under the Employment Act with regard to wages and contract termination. However, these workers are excluded from provisions of the act that would otherwise ensure that they received one rest day per week, an eight-hour workday, and a 48-hour workweek.

Employers sometimes failed to honor the terms of employment and abused their household workers. Only household workers ages 25 to 45 were allowed into the country, according to Immigration Department officials. They were not allowed to bring family members into the country while employed. The terms of the contract for Indonesian domestic workers, who made up approximately 92 percent of all foreign household workers, were often vague and open to abuse. The typical contract provided for a monthly salary of \$111 (400 ringgit) but did not specify the number of working hours per day. NGOs reported that many Indonesian household workers were required to work 14 to 18 hours a day, seven days a week. The contract for Filipina household workers included more comprehensive protections, but both groups suffered from a lack of education concerning their legal rights.

Some workers alleged that their employers subjected them to inhuman living conditions, withheld their salaries, confiscated their travel documents, and physically assaulted them. Workers have the right to take legal action against abusive employers. According to NGOs, 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 precluded aggrieved foreign workers from seeking redress through the court system.

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. Bilateral labor agreements with Indonesia do not provide adequate protections for household workers.

The Occupational Safety and Health Act 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 that violate the act are subject to substantial fines or imprisonment for up to five years, although the MTUC complained that some employers flouted the rules with impunity. There are no specific statutory or regulatory provisions that provide a right for workers to remove themselves from dangerous workplace conditions without arbitrary dismissal.

