

MALAYSIA 2013 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Malaysia is a federal constitutional monarchy. It has a parliamentary system of government selected through periodic, multi-party elections and headed by a prime minister. The king is the head of state and serves a largely ceremonial role; the kingship rotates among the nine sultans every five years. The United Malays National Organization (UMNO), together with a coalition of political parties known as the National Front (BN), has held power since independence in 1957. On May 5, in general elections, the BN was re-elected although it lost the popular vote to the opposition coalition. The opposition and civil society organizations alleged electoral irregularities. Civilian authorities failed at times to maintain effective control over security forces. Security forces committed human rights abuses.

The most significant human rights problems included obstacles preventing opposition parties from competing on equal terms with the ruling coalition; restrictions on freedoms of speech, assembly, association, and religion; and restrictions on freedom of the press, including media bias, book banning, censorship, and the denial of printing permits.

Other human rights problems included deaths during police apprehension and while in police custody; the persistence of laws that allow detention without trial; caning as a form of punishment imposed by criminal and sharia courts; bans on religious groups; restrictions on proselytizing and on the freedom to change one's religion; official corruption; violence and discrimination against women; discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons; and restrictions on the rights of migrants, including migrant workers, refugees, and victims of human trafficking. Longstanding government policies gave preferences to ethnic Malays in many areas. The government restricted union and collective-bargaining activity, and government policies created vulnerabilities and worsened child labor and forced labor problems, especially for migrant workers.

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

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

a. Arbitrary or Unlawful Deprivation of Life

There were reports the government or its agents committed arbitrary or unlawful killings. One nongovernmental organization (NGO) reported 49 individuals were killed in police shootings in 2012. The home minister announced that police shot 124 persons from 2009 to August 2013, including 56 Malays, 41 Indians, 23 Chinese, and four indigenous persons. State-influenced media often used a common narrative to describe these encounters: suspect was stopped by police, tried to attack police; police killed suspect in self-defense; and evidence of criminal activity was found on suspect's body. Local human rights groups suggested this narrative was used to justify deaths in the course of arrest or in police custody.

There is no entity that examines security force killings. Investigation into a killing by a law enforcement officer only occurs if the attorney general initiates the investigation, or if he approves an application for an investigation by family members of the deceased. In previous years, when the attorney general has ordered an inquest, a coroner's court was convened and the hearing was open to the public. In these cases, the court has generally issued an open verdict, which meant no verdict was reached, and no further action taken against the police.

On January 18, police shot and killed Pua Bee Chun after she allegedly fled a crime scene as a passenger in a stolen car. Police reportedly fired more than 20 times at the car. In August Chun's family filed a summons to compel authorities to reveal the results of their investigation into the shooting.

On June 26, with regard to the 2009 death in custody of Ananthan Kugan, the high court awarded Kugan's mother Ringgit Malaysia (RM) 851,700 (\$260,000) for assault and battery, false imprisonment, misfeasance, and pain and suffering. In 2012 the High Court convicted police constable Vivekanandan Navindran of causing "grievous hurt" to Kugan and sentenced him to three years in prison.

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.

More than 60 offenses are subject to caning, and judges routinely included caning in sentences of those convicted of such crimes as kidnapping, rape, and robbery, as well as some nonviolent crimes, such as narcotics possession, criminal breach of trust, and alien smuggling. The law also prescribes punishment of up to six strokes of the cane for both illegal immigrants and their employers.

Caning is carried out with a half-inch-thick wooden cane that may cause welts and scarring. The law exempts men older than 50 and all women from caning. Male children between the ages of 10 and 18 may be given up to 10 strokes of a “light cane.” The government revealed in a letter to a parliamentarian that from 2010 to June 2013 it caned 42,634 prisoners, of whom 26,214 were Malaysians and 16,420 were foreigners.

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

Prison and Detention Center Conditions

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

Physical Conditions: Prison overcrowding, particularly in facilities near major cities, remained a serious problem. In June the Ministry of Home Affairs reported that the country’s 30 prisons held 39,144 prisoners in facilities designed to hold 32,000. According to the International Centre for Prison Studies, in mid-2012 women made up 5.8 percent and juveniles 2.2 percent of the total prison population. Authorities generally held men separately from women, juveniles separately from adults, and pretrial detainees separately from convicted prisoners. Prisons provided potable water.

Local and international NGOs estimated most of the country’s 17 immigration detention centers (IDCs) were at or beyond capacity, with some detainees held for

a year or more. NGOs and international organizations involved with migrant workers and refugees made credible allegations of overcrowding, inadequate food and clothing, lack of regular access to clean water, poor medical care, improper sanitation, and lack of bedding in IDCs. An NGO with access to the IDCs claimed these conditions and lack of medical screening and treatment facilitated the spread of disease and contributed to continued deaths in IDCs. The government allowed local NGOs to visit IDCs from time to time. NGOs provided most of the medical care and treatment in IDCs.

Accusations of rape of prisoners while in prison or detention occurred.

Death of prisoners while in prison or detention occurred. A local NGO reported that there were seven cases of death in custody from January to June. On May 21, N. Dharmendran died en route to the hospital after complaining of chest pains while in police custody at the Bukit Aman jail where he was detained for 10 days. A government hospital autopsy report surmised that he died from multiple beatings. The lawyer for the family reported Dharmendran's ears were stapled and his back and legs had marks of physical abuse. Four police officers were implicated in the death and awaited trial at year's end.

On January 23, C. Sugumaran died in police custody in Hulu Langat district, Selangor state. Eyewitnesses reported members of the public and police beat Sugumaran to death after he was chased by police and handcuffed. An initial autopsy concluded Sugumaran died of a heart attack; however, this was disputed by the family. After the prime minister called for an inquest into the death, the Health Ministry ordered another autopsy by an outside pathologist. The case remained open as of October.

In January the Court of Appeal upheld a 2011 ruling to award RM500,000 (\$15,290) to the family of Mohd Shukri Mohamed Yusof, an 18-year-old who died in custody in 2004. In 2007 the family filed a civil suit against the prison and the government for wrongful death. One warden of the prison was sentenced to death for the murder of Mohd Shukri.

On August 13, a pathologist reported to the coroner's court that foul play was unlikely in the August 2012 death of Cheah Chin Lee. Cheah died at the Tanjung Tokong Police Headquarters in Penang five hours after his arrest for theft. According to news reports the Penang Hospital attributed his death to "asphyxia due to hanging," but his family doubted that he would commit suicide and filed a police report. The case remained open at year's end.

In July Home Minister Ahmad Zahid Hamidi announced that there were 231 cases of custodial deaths from 2000 to May 2013; he stated that most deaths were due to natural causes. He maintained that only two of the deaths were caused by police.

Administration: NGOs considered recordkeeping adequate. Authorities did not use alternatives to imprisonment for nonviolent offenders. Prisoners and detainees are allowed visitors during specified visiting hours, and, freedom of religious observance provided religious practices were not derived from one of the sects of Islam the government bans as “deviant.” The Prisons Act does not provide a process for prisoners to submit complaints to judicial authorities, but it allows judges to visit prisons to examine conditions and ask prisoners and prison officials about prison conditions. The Human Rights Commission of Malaysia (SUHAKAM) serves as the government’s de facto ombudsman, investigating allegations of human rights abuses within the prison system. According to local NGOs, because prison authorities reportedly monitored all incoming and outgoing materials, complaints normally would not be sent through prison authorities. Communications between an attorney and his or her client generally were treated as private and confidential under the attorney-client privilege.

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

The UN High Commissioner for Refugees (UNHCR) had access to registered refugees, asylum seekers, and unregistered persons of concern who may have claims to asylum and refugee status and are detained in IDCs and prisons. The UNHCR conducted 203 missions to detention facilities and secured the release of 6,351 refugees from IDCs from January through October.

Although the Internal Security Act (ISA) was repealed and replaced with the Security Offenses (Special Measures) Act in 2012, the law allows existing detainees to be held at the home minister’s discretion. At year’s end, six ISA detainees remained in custody.

d. Arbitrary Arrest or Detention

The constitution stipulates that no person may be incarcerated unless in accordance with the law. The law, however, allows investigative detention to prevent a

criminal suspect from fleeing or destroying evidence during an investigation. On October 2, parliament passed the Prevention of Crime (Amendment and Extension) Bill (PCA), which extended the possible term of detention without trial under that law from 72 days to two years and made the term renewable. The legislation transferred authority for ordering such detentions from the minister of home affairs to a five-person Prevention of Crime Board. A suspect brought before the board is not entitled to legal representation. The amended law provides that detention without trial could be invoked for certain registered persons. The Home Ministry may register persons suspected of involvement in organized crime or previously convicted of crimes involving dishonesty or violence. The law requires the home minister to submit an annual report on the implementation of these authorities and provides that these authorities will expire in five years unless renewed by parliament. Civil society organizations and the parliamentary opposition expressed concern that the law could be misused for political purposes.

In 2012 parliament passed the Security Offenses (Special Measures) Act (SOSMA) along with amendments to the penal code, the Criminal Procedure Code, and the Evidence Act. The SOSMA focuses on terrorism and other national security crimes and stipulates that once an arrest has been made, the next of kin must be notified immediately and the accused must have access to a lawyer within 24 hours. A high-ranking police officer may extend the detention period to 28 days, at which time the accused must be charged or released. The law also states that a person may not be charged for his political beliefs or activities. NGO observers criticized what they see as vague language in the SOSMA, such as activities “detrimental to parliamentary democracy” or “activity...that is prejudicial to the security or interest of Malaysia,” and the ability of police to extend detention within the 28-day period without judicial review. Additionally, some observers criticized provisions that allow the identity of witnesses to be kept secret, inhibiting cross-examination of witnesses, and allowing the accused to be kept in detention after an acquittal if the prosecution decides to appeal.

The Dangerous Drugs Act gives the government specific power to detain suspected drug traffickers without trial for up to 39 days before the home affairs minister must issue a detention order. Once the ministry issues the detention order, the detainee is entitled to a hearing before a court, which has the authority to order the detainee’s release. Authorities may hold suspects without charge for successive two-year intervals with periodic review by an advisory board, whose opinion is binding on the minister. Police sometimes detained suspected narcotics traffickers under this act after formal charges were not pursued.

The Immigration Act also allows authorities to arrest and detain noncitizens for 30 days pending a decision on deportation; deportation orders cannot be appealed.

Under the terms of the government's antitrafficking legislation, foreign trafficking victims certified under a protection order were forced to remain in the country during court proceedings of their cases, and were detained in government facilities for the duration of the trials against their traffickers.

Role of the Police and Security Apparatus

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

The People's Volunteer Corps (RELA) is a paramilitary civilian volunteer corps under the jurisdiction of the Ministry of Home Affairs. The Malaysian Volunteer Corps Act of 2012 describes the main duty of RELA as to "assist any security force or authority established under written law upon request of the force or authority" and stipulates that, while performing those duties, RELA members will be "under the command of an officer of the security force or authority...who is present at the place."

As of September RELA membership stood at 2.9 million. According to a statement by RELA Director General Mustafa Ibrahim, RELA members undergo two training courses. The first is an introductory course; the second is a seven-day basic training course in which trainees are taught discipline, human rights and integrity, and handling arms in cases of emergency. RELA members serve at IDCs, customs and immigration quarantine complexes, national borders, airports in Sabah and Sarawak, and gas stations in border towns to prevent fuel smuggling.

RELA members also monitor 400 schools nationwide. NGOs remained concerned that inadequate training left RELA members ill equipped to perform their duties. Reported abuses by RELA members included extortion, theft, pilfering items from homes, and pillaging of refugee housing. Reports of abuse, however, were fewer than in previous years.

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

The government has some mechanisms to investigate and punish abuse and corruption, and SUHAKAM played a role in investigating alleged abuses committed by the security forces. There were NGO and media reports security forces acted with impunity.

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

An independent police complaints and misconduct commission had yet to be established by year's end.

The police training center included human rights awareness training in its courses. SUHAKAM also conducted human rights training and workshops for police and prison officials.

The Enforcement Agency Integrity Commission announced that from its inception in April 2011 through May 2013 it received 469 complaints of abuse. Of these, 353 involved the RMP. There were also complaints regarding RELA and officers of the Immigration Department. In June the then chief executive of the commission told the media that her organization had insufficient resources, with only one investigating officer to probe complaints against 19 enforcement agencies. Shortly after, she was transferred back to the attorney general's chambers with no replacement appointed.

Arrest Procedures and Treatment of Detainees

The law permits police to arrest individuals for some offenses without a warrant.

Under SOSMA, a suspect may be held for 24 hours, which may be extended up to 28 days on the authority of a police superintendent, but then the suspect must be brought before a magistrate or released. Under the PCA, a Prevention of Crime Board may order certain suspects to be detained without trial for up to two years. Although police generally observed these provisions, local NGOs reported the police practice of releasing suspects and then quickly re-arresting and holding them in investigative custody continued. Some NGOs asserted a police approach of “arrest first, investigate later” was prevalent. By law an arrested individual has the right to be informed of the grounds for arrest by the arresting police officer.

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

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

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

Arbitrary Arrest: More than 100 people were detained under SOSMA, most in connection with the incursion by militants from the southern Philippines into Sabah. Thirty people, including 29 men and one woman, who were arrested for either invading Sabah or aiding and abetting those who did, awaited a hearing at year’s end.

From January to June of 2012, the government detained 433 persons under the preventive detention provisions of the Dangerous Drugs (Special Preventive Measures) Act. During the same time period, according to the Anti-Drug Enforcement Agency, 61,584 people were arrested for drug related offenses and the National Anti-Narcotics Agency identified 4,760 new drug addicts, compared with 11,194 in 2011 and 23,642 in 2010, of whom 3,136 were considered “youths.”

Pretrial Detention: Crowded and understaffed courts often resulted in lengthy pretrial detention, sometimes lasting several years. The International Center for Prison Studies reported that as of mid-2012, pretrial detainees made up 21.6 percent of the total prisoner population.

Detention of Rejected Asylum Seekers or Stateless Persons: A rejected Sri Lanka asylum seeker died of leptospirosis in Seremban Hospital after he became ill while in the Lenggeng immigration detention center.

e. Denial of Fair Public Trial

Three constitutional articles provide the basis for an independent judiciary; however, other constitutional provisions, legislation restricting judicial review, and additional factors limited judicial independence and strengthened executive influence over the judiciary.

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

In 2012 parliamentary opposition leader Anwar Ibrahim was acquitted on charges of having engaged in consensual sodomy in 2008. The attorney general's chambers filed an appeal of the acquittal five months later during the same year. Hearings on the substance of the appeal were pending at year's end.

Trial Procedures

English common law is the basis for the secular legal system. The constitution states that all persons are equal before the law and entitled to equal protection of the law. Defendants are presumed innocent until proven guilty. Trials are public, although judges may order restrictions on press coverage. Juries are not used. Defendants have the right to counsel at public expense if facing charges that may carry the death penalty and may apply for a public defender in certain other cases. According to the Bar Council, defendants generally have adequate time and facilities to prepare a defense if they have the means to engage private counsel. Otherwise the defendants must rely on legal aid and the amount of time to prepare for the trial is at the discretion of the judge. Strict rules of evidence apply in court; however, government-held evidence was not consistently made available to the defense. Defendants confronted witnesses against them and presented witnesses

and evidence on their behalf, although judges sometimes disallowed witness testimony. Defendants may make statements for the record to an investigative agency prior to trial. Limited pretrial discovery in criminal cases impeded defendants' ability to defend themselves. Attorneys must apply for a court order to obtain documents covered under the Official Secrets Act. Defendants may appeal court decisions to higher courts, but the law limits a defendant's right to appeal in instances where the appeal does not raise a question of law and the evidence is sufficient to support the conviction or no material on the circumstances of the case would raise a reasonable doubt of the conviction or that the sentence should be reduced. The government stated that the limits expedite the hearing of cases in the upper courts, but the Bar Council declared that they impose excessive restrictions on appeals.

In firearm and certain national security cases, a lower standard is in effect for accepting self-incriminating statements by defendants as evidence.

Many NGOs complained that women did not receive fair treatment from sharia courts, especially in matters of divorce and child custody.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees. Following the May elections, authorities arrested opposition member of parliament Tian Chua, vice president of the opposition People's Justice Party (PKR); and pro-opposition activists Haris Ibrahim, Tamrin Ghafar, and Adam Adli under the Sedition Act for allegedly attempting to topple the government through street protests. All were free awaiting trial at year's end.

Civil Judicial Procedures and Remedies

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

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

Various laws prohibit arbitrary interference with privacy rights; nevertheless, 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 newspapers; monitor conversations; and take persons into custody without a warrant. The government monitored e-mails sent to internet blog sites and threatened to detain anyone sending content over the internet that the government deemed threatening to public order or security.

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

On February 14, in what has become an annual occurrence since the issuance of an anti-Valentine's Day fatwa in 2005, officers from the Department of Federal Territory Islamic Affairs arrested 10 Muslim individuals for khalwat (close proximity to a member of the opposite sex) during a Valentine's Day operation. In addition to the 10, the department ordered three Muslim men who were found with non-Muslim women to undergo counseling by religious authorities to "restore their belief and faith." In Penang, religious authorities arrested 20 Muslim individuals for similar offenses.

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

The government bans membership in unregistered political parties and organizations.

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

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

Freedom of Speech: The constitution provides that laws may impose restrictions on freedom of speech “in the interest of the security of the Federation... [or] public order.” The election law makes it an offense for a candidate to “promote feelings of ill will, discontent, or hostility.” Violators may be disqualified from running for office. The Sedition Act prohibits public comment on issues defined as sensitive, such as racial and religious matters or criticism of the king or ruling sultans. The Sedition Act, Official Secrets Act, Universities and University Colleges Act, Printing Presses and Publications Act, criminal defamation laws, and other laws restricted or intimidated political speech. Nevertheless, individuals and opposition political parties frequently criticized the government publicly or privately and in online media.

On some occasions the government retaliated against those who criticized it. On March 14, prosecutors charged opposition politician Tian Chua under the Sedition Act for remarks he was accused of making that implied the intrusion into eastern Sabah by Filipino militants (the Lahad Datu confrontation) was a government conspiracy to scare people for political gains. In response Chua stated that he was misquoted and had only accused the government of creating a media blackout during the crisis. Chua was charged a second time in May under the same act along with four other activists for calling on the public to take to the street to protest alleged fraud that took place during the May 5 general elections. Their trial dates had not been set by year’s end.

NGOs asserted government application of restrictions on expression was selective. They noted that when Ibrahim Ali, a politician with ties to the ruling coalition, called on Muslims to burn Malay-language copies of the Bible in January, no action was taken to charge him with sedition.

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

language newspapers. Most radio and television networks were also owned by ruling coalition political parties or businesses linked to them.

The government exerted control over news content, both in print and broadcast media, punished publishers of “malicious news” and banned, restricted, and limited circulation of publications believed to threaten public order, morality, or national security. In December the Home Ministry temporarily suspended the printing permit of *The Heat*, a recently established weekly news magazine. The suspension came after *The Heat* published an article that depicted Prime Minister Najib and his wife, as well as the Prime Minister’s Department as extravagantly spending public funds.

There was some harassment of online media, which were also occasionally barred from covering government press conferences.

The popular online news website Malaysiakini was banned from covering major UMNO events, including the supreme council meetings and the annual general meeting. Malaysiakini purported that the banning was a result of its reporting on an UMNO logging scandal in Pahang five years ago. Malaysiakini was also occasionally barred from certain ministerial press conferences, but these have been selective. The news portal won a legal victory in October when the Court of Appeals unanimously dismissed the Home Ministry’s appeal against a High Court judgment that Malaysiakini portal operator Mkini Dotcom Sdn Bhd be issued a publication permit. The government did not appeal the decision within 30 days of the High Court judgment and therefore Malaysiakini can again apply to the Home Ministry for a license.

Although the Ministry of Information issues official accreditation cards to the media, police requested media practitioners to submit names of reporters covering an opposition rally in January, ostensibly for their protection. Independent online media criticized the move and alleged the request was meant to deter journalists from reporting on the event.

Authorities barred journalists from the Philippines from entering the state of Sabah during the Lahd Datu crisis and in February detained and interrogated three journalists from al-Jazeera for six hours while they were reporting on the standoff between an armed group from the Philippines and Malaysian security forces. The then defense minister Ahmad Zahid Hamidi stated the government took these measures to prevent misreporting during the crisis.

Violence and Harassment: Journalists were subject to harassment and intimidation due to their reporting.

In July the Sarawak State immigration department detained and subsequently deported Clare Rewcastle Brown, a British citizen who ran a website and radio station critical of the state government of Sarawak.

Censorship or Content Restrictions: The government censored the media, primarily the print and broadcast media. This was done directly and indirectly by controlling news content; making publication of “malicious news” a punishable offense and empowering the home affairs minister to ban or restrict publications believed to threaten public order, morality, or national security; prosecuting bloggers and journalists for their writings; taking little or no action against those who abused journalists; and limiting circulation of some organizations’ publications to their members. A permit is required to own a printing press. Printers often were reluctant to print publications critical of the government for fear of reprisal. Such policies, together with antidefamation laws, inhibited independent or investigative journalism and resulted in extensive self-censorship.

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

The government occasionally censored foreign magazines, foreign newspapers, and foreign-sourced television programming, most often for sexual content.

Radio and television stations were as restricted as the print media and were predominantly supportive of the government. News about the opposition was restricted and slanted. Television stations censored programming in line with government guidelines. The government maintained a list of public personalities including local and foreign performers, politicians, and religious leaders who were seen to convey messages or practices which “would jeopardize the harmony and unity of the country” and were not allowed to appear on television or broadcast on radio.

The government generally restricted remarks or publications including books that it judged might incite racial or religious disharmony. On October 14, the Appeals Court ruled a newspaper of the Roman Catholic Church could not use the word “Allah” in its Malay-language edition, overturning a 2009 High Court verdict. The church subsequently applied to appeal. The case was pending at year’s end.

The Printing Presses and Publications Act requires domestic and foreign publishers to apply to the government for a permit and empowers the home affairs minister to ban or restrict publications believed to threaten public order, morality, or national security. Judicial review may be sought for banned books. The ministry reviewed, censored, and confiscated many foreign publications.

The Home Ministry banned two books during the year, compared with five in 2012. In September the High Court overturned a 2012 ban on the Malay language translation of the book *Allah, Liberty and Love*, by Irshad Manji. Despite the ruling, the Federal Territories Islamic Affairs Department did not drop charges against Nik Raina Abdul Aziz, a Borders bookstore manager charged in 2012 for distributing copies of the book six days before announcement of the original ban. Raina was specifically chosen because she was a Muslim who could be charged by the sharia court, while more senior staff members who were not Muslims were ignored by authorities. Sharia court proceedings were underway as of October.

The Home Ministry maintained a list of 1,519 banned titles.

On March 14, the Federal Court rejected the government’s appeal to reinstate a 2008 ban on the book *Muslim Women and the Challenges of Islamic Extremism*. The original ban was overturned in 2010.

Libel Laws/National Security: The Defamation Act governs civil defamation disputes and sections of the penal code govern criminal defamation. Criminal defamation is punishable by a maximum of two years in jail, a fine, or both.

On March 12, then deputy inspector general of police Khalid Abu Bakar reportedly threatened those who criticized security forces after questions about the government's response to the incursion in eastern Sabah emerged on social media sites. Khalid told a press conference he issued orders to “hound those who post statements that disparage or demean the actions of our force.”

Internet Freedom

As of the second quarter of the year, approximately 17 million persons (67 percent) of the population used the internet. The government for the most part maintained a policy of open and free access to the internet, but authorities monitored the internet for e-mail messages and blog postings deemed threatening to public security or order. The Malaysian Communications and Multimedia Commission (MCMC), formed in November 2001, is empowered to monitor the internet for content deemed offensive.

The government warned internet users to avoid offensive or indecent content and sensitive matters such as religion and race. In July the MCMC called two bloggers in for questioning after the couple posted a photograph deemed offensive to Muslims.

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

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

In November MCMC Monitoring and Enforcement Division head Zulkarnain Yasin stated that the MCMC blocked 2,753 websites from January to October. In July Deputy Communications and Multimedia Minister Jailani Johari stated that the MCMC had blocked 6,640 websites since 2008 for pornography, malicious content, and copyright infringement. As of November, 10 websites were being investigated for questionable content.

An amendment to the Evidence Act that took effect in 2012 establishes a presumption of fact that any registered network services user is the publisher of a publication sent from a computer linked to that network service. It thus places the burden of proof on the user or owner rather than government investigators. NGOs, the Bar Council, and members of the public criticized the amendment, noting that it could inhibit online activity in areas such as social media or blogs, where site administrators might censor their speech due to liability concerns.

In August Facebook stated in its Global Government Requests Report that on seven occasions it rejected requests from the government for information on 197

Facebook users, as the law did not compel it.

During the run up to the May general elections, independent online media, including the Malaysian Insider and Malaysiakini, alleged they were targeted in internet attacks that filtered content and blocked access to their websites. Along with other news sources critical of the ruling coalition, they maintained they were the targets of distributed denial of service attacks. Malaysiakini also alleged that persons using internet service providers who channel traffic through the state-controlled Telekom Malaysia Berhad had difficulty accessing its website.

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

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

The government regularly censored films, editing out profanity, kissing, sex, and nudity. Films were also censored based on certain political and religious content. Films in Hebrew, Yiddish, or from Israel were not allowed to be shown in cinemas. Although the government allowed foreign films at local film festivals, sexual content was censored by blocking the screen until the concerned scene was over. Media censorship rules forbid movies and songs that promoted acceptance of gay persons (see section 6).

In October the MCMC banned singer Ke\$ha from performing for reasons of religion and culture. Ke\$ha and her team reportedly agreed to modify their planned show, including making changes to her song lyrics and wardrobe, to comply with the government's general guidelines for performers. They were not notified of the ban until the day before the event was scheduled. In September

Malaysian officials banned the metal band Lamb of God from playing due to their “blasphemous” work.

In January *Vishwaroopam*, an Indian film in Tamil, was approved for screening by the censorship board but was subsequently prevented from opening in movie theaters by then home minister Hishammuddin Hussein after an Islamic NGO alleged the movie insulted Islam.

Censorship, however, was reportedly selective. A controversial government-funded movie, *Tanda Putera*, was screened despite objections from the public about its interpretation of race riots that took place in 1969, and for allegedly vilifying minorities in the country.

On September 19, Lena Hendry, from the human rights NGO Pusat KOMAS, was charged under the Film Censorship Act for organizing a private screening in July of the documentary film “No Fire Zone, the Killing Fields of Sri Lanka.” She was released on bail and her case was pending at year’s end. If found guilty under the charge, she could face a fine of RM5,000 to RM30,000 (\$1,529 to \$9,174) and a maximum jail term of three years.

b. Freedom of Peaceful Assembly and Association

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

Freedom of Assembly

The constitution states that all citizens have “the right to assemble peaceably and without arms”; however, this right was restricted by the Peaceful Assembly Act (PAA) and through the Public Order Ordinance and the Police Act. While the PAA eliminates the need to apply for police permits (although it allows police to place conditions on the time, place, and manner of public assemblies); bans street protests altogether; disallows peaceful assembly by noncitizens and minors (under 15); and restricts where and when assemblies may be held by establishing exclusion zones within 50 yards of designated locations such as places of worship, schools and other facilities. The Bar Council and several NGOs criticized the law. The government selectively enforced the restrictions in the PAA.

Court cases relating to the 2012 Bersih 3.0 rally, a gathering by a coalition of

NGOs devoted to electoral reform, were still pending as of October. These included the criminal case against opposition leader Anwar Ibrahim and two other PKR leaders who were charged with violating the PAA by taking part in a “street protest,” disobeying a magistrate’s court order during the Bersih 3.0 gathering, and involvement in breaching police barricades. The government filed a civil suit in 2012 under the PAA against Bersih cochairperson Ambiga Sreenevasan and nine other steering committee members seeking RM122,000 (\$37,308) in damages. The defendants countersued seeking a declaration from the high court that section six of the PAA was unconstitutional and void for violating the right to free expression and assembly. In July the government and the defendants settled the matter out of court, and the terms of settlement were being negotiated at year’s end.

In September opposition politician R. Yuneswaran became the first person to be convicted under the PAA. The sessions court of Johor Baru fined Yuneswaran RM6,000 (\$1,834) for failing to give 10 days’ notice to police before holding a rally against the outcome of the general elections. Yuneswaran denied he organized the event and refused to pay the fine, arguing he had filed notice on behalf of the state chairman of the PKR.

In February the Kuala Lumpur Sessions Court found guilty two of the 16 persons charged with participating in an unlawful Bersih-organized assembly in 2007. The other 14 were acquitted.

The opposition coalition disputed the results of the May 5 general elections and organized a nationwide series of demonstrations also known as the “Black 505” protests. While the gatherings were allowed to take place with little interference from authorities, police subsequently arrested and charged several individuals under the PAA. All were free and awaiting trial.

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 legally function. The government sometimes refused to register organizations or imposed conditions when allowing a society to register. The government had yet to act by year’s end on the 2010 application of the parliamentary opposition parties to register as a coalition. The government banned the Communist Party and its affiliated organizations as a national security threat. The government has the

power to revoke the registration of a registered society for violations of the act. The government did not use this power of revocation against political opposition groups.

The amended Universities and University Colleges Act provides that students who hold a political post are prohibited from conducting political party activities on campus, and universities may ban any organization deemed “unsuitable to the interests and well-being of the students or the university.” Students also are prohibited from “expressing support or sympathy” for an unlawful society or organization.

Some human rights and civil society organizations had difficulty obtaining government recognition as NGOs; as a result some NGOs registered as companies, which presented legal and bureaucratic obstacles to raising money to support their activities. Some NGOs also reported the government monitored their activities.

On February 28, the Attorney General’s Chambers confirmed it had ended its investigation of the human rights NGO, Suara Rakyat Malaysia (SUARAM). In 2012 five government agencies began an investigation into SUARAM for allegedly raising funds while operating as an unregistered society and for alleged violations of the Companies Act. SUARAM responded that it was registered as a company because the minister in charge of the Registrar of Societies had total discretion in registering societies and that SUARAM registered as a company to avoid “discrimination.” SUARAM claimed it was under investigation because of international attention it had brought to the country by its involvement in a lawsuit in France alleging illegal payments and corruption in the sale of French Scorpene submarines to the country in 2002. The NGO remained under investigation by the Companies Commission of Malaysia at year’s end.

c. Freedom of Religion

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

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

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights, although there were some restrictions, particularly with respect to the eastern states

of Sabah and Sarawak. The government generally cooperated with the UNHCR, and the UNHCR reported good access to government officials. The government generally did not impede other humanitarian NGOs in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: Consistent with the 1963 agreement that incorporated Sabah and Sarawak into the country, these eastern states controlled immigration into their areas and required citizens from peninsular Malaysia and foreigners to present passports or national identity cards for entry. Opposition politicians were denied entry into Sabah, including PKR Vice President and member of parliament Nurul Izzah in May and PKR Vice President and member of parliament Tian Chua in April. Bersih (also known as the Coalition for Clean and Fair Elections), a consortium of NGOs dedicated to electoral reform, cochairperson Ambiga Sreenevasan, who was denied entry to Sarawak in April 2011 during the state election campaign, remained under a ban on travel to Sarawak. Some opposition politicians and activists were also barred from entering states in East Malaysia, during the national elections. Among them were opposition members of parliament Tian Chua in April and Nurul Izzah in late May.

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

Foreign Travel: Although the government lifted a freeze on travel to Israel in 2011, citizens must apply for government permission to go there. According to Christian groups, this permission was difficult to obtain. Groups may travel through their churches only and must get permission from the Ministry of Home Affairs. Authorities imposed quotas on the number allowed on each trip (20 people) and the length (seven days). Churches also are required to prove that those going on the trip are members of the church. The government stated that because the country has no formal relations with Israel and there is a volatile security situation, the imposed conditions are fair.

Exile: The constitution provides that no citizen may be banished or excluded from the country. Chin Peng, the former leader of the communist insurgency, resided in Thailand because he was either unable or unwilling to satisfy a court ruling compelling him to show identification papers proving his citizenship. In September he died in exile. Dissident blogger Raja Petra Kamarudin remained in self-imposed exile in London.

Noncitizens were deported under the Immigration Act.

Protection of Refugees

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

The legal framework for the protection of refugees, however, remains inadequate.

As of October the UNHCR reported 125,375 persons as asylum seekers and refugees, approximately 93 percent of whom were from Burma, with Chin and Rohingya being the most numerous groups, followed by Rakhine (Arakanese), Kachin, Mon, Karen and others. Other sizeable groups of refugees were from Sri Lanka, Somalia, Iraq, Pakistan, Iran, and Afghanistan. The UNHCR noticed an uptick in arrivals from Syria.

According to the UNHCR, other persons of concern included 80,000 Filipinos in the province of Sabah, an estimated 49,000 unregistered asylum seekers, and 40,000 stateless Tamil and members of other indigenous groups.

According to official statistics, in the first quarter of the year, there were 10 landings of boats carrying Rohingya asylum seekers to the country. The Rohingya were detained and had access to the UNHCR within one month.

Refoulement: There were no reports of government deportation of refugees or asylum seekers with UNHCR refugee cards. There were occasional reports by refugees of needing to pay bribes to police to avoid detention, despite carrying a UNHCR card. The UNHCR stated that there have been no confirmed reports of deportation of Burmese refugees at the border since July 2009.

An international NGO reported that in December 2012 the government deported six Muslim-minority Uighurs from detention in the country back to China. The six persons had registered with the UNHCR and were waiting for their claims to be processed when they were deported.

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

The UNHCR received one report of the death of a refugee candidate in detention during the year, a newly arrived Rohingya who was detained in Sungai Buloh prison. Authorities told the UNHCR he was very weak and had a fever when he arrived. He was taken to the hospital and subsequently passed away.

Employment: Although not legally authorized to work, the government typically did not interfere with registered refugees doing odd jobs. The UNHCR reported there were a few cases, however, in which the government brought charges against employers for hiring them. During the year there were official announcements concerning deliberations about allowing refugees to work and the discussion continued in the media.

Access to Basic Services: The government provided access to health care for refugees, but not asylum seekers, with UNHCR cards at a discounted foreigner's rate; however, the costs generally were beyond the means of the refugees. NGOs ran mobile clinics, but access was limited. Refugees did not have access to the public education system. Access to education for refugees was limited to NGO and ethnic community-run schools and the UNHCR estimated no more than 40 percent of refugee children attended school. A lack of resources and qualified teachers limited opportunities for the majority of school-age children. During the year UNHCR staff members conducted numerous visits to various prisons and IDCs to provide counseling, support, and legal representation for refugees.

Stateless Persons

Citizenship is derived from one's parents. The citizenship of one or both of the parents, whether the parents are legally married, and the ability to produce valid identification and proof of citizenship are the key criteria for being able to pass citizenship to a child. As of September the UNHCR estimated there were 40,000 stateless individuals in peninsular Malaysia alone, in addition to approximately 92,943 refugees and 15,393 asylum seekers. The UNHCR estimated there were more than 10,000 children of the roughly 80,000 Filipino workers in Sabah without birth documentation who are technically stateless.

Foreign women often may qualify for permanent resident (PR) status after five years of marriage to a citizen (10 years for foreign men). After two years of PR status, they are eligible to apply for citizenship. While awaiting PR status, foreign spouses of citizens are usually granted visas that allow them an extended legal stay in the country. A local advocacy group for migrant workers reported that in the last five or six years, these processes improved to include shorter waiting times in the processing of PR petitions and visas. Although nationality laws in the country are not overtly discriminatory because of gender, ethnicity, or religion, some unevenness was evident. Refugees were at a particular disadvantage because they often were unable to provide valid documentation to prove citizenship in their countries of origin.

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

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

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

A number of local NGOs and SUHAKAM did research, conducted workshops, and

ran public awareness campaigns on the problem of stateless children.

Individuals without proof of citizenship were not able to attend school, access government services such as reduced cost healthcare, or own property. The UNHCR may provide birth registration or other documentation in some cases.

By law anyone entering the country without appropriate documentation is considered illegal and faces mandatory imprisonment for a maximum of five years, a fine not to exceed RM10,000 (\$3,058), or both, and mandatory caning not to exceed six strokes.

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

The law provides citizens the right to change their government peacefully, and citizens exercised this right through periodic elections based on universal suffrage; however, while votes generally were recorded accurately, there were irregularities that affected the fairness of elections, and this right was abridged. The constitution does not limit the difference in the size of electoral constituencies in each district and each constituency, regardless of size, is represented by one parliamentary seat. The size of electoral districts vary, with rural districts generally smaller in population than urban districts. For example, the rural district of Igan has 18,000 registered voters with one representative, while, the urban district of Kapar had over 144,000 registered voters with one representative. This has the effect of overrepresenting the rural vote, which historically has predominantly supported the ruling coalition.

Elections and Political Participation

Recent Elections: The 2013 national elections marked the second time since 1969 that the opposition denied the ruling BN coalition a two-thirds majority in parliament and thereby blocked the government's ability to amend the constitution at will. Opposition parties won 52 percent of the popular vote, 89 of 222 parliamentary seats, 229 of 505 state assembly seats, and control of three of the 13 state governments. Opposition gains came despite the fact that opposition parties were unable to compete on equal terms with the BN coalition because of unequal access to the mainstream media and the gerrymandering that benefitted the ruling coalition.

The discrepancy in size of electoral constituencies allowed for the ruling coalition

to win 60 percent of the seats in parliament with only 48 percent of the popular vote. In contrast, the opposition received 52 percent of the vote but only obtained 40 percent of the seats, due to its stronger performance in population dense urban districts.

The government offered 10 minutes of prerecorded television airtime to political parties from both the ruling coalition and the opposition to present their manifestos. The government-influenced mainstream media, however, limited the amount of time the opposition could otherwise campaign on the air, as well as which parties could advertise in the newspapers. In March the opposition-led Penang state government attempted to buy advertising space in a mainstream newspaper owned by UMNO. Chief Minister (governor equivalent) Lim Guan Eng reported that the state was informed by the newspaper it would not accept advertisements for the opposition.

One of the most contentious aspects of the general elections was the quality of the electoral rolls. NGOs and opposition party leaders alleged the government illegally registered “phantom” voters from other districts to vote in tightly contested races, inflated voter rolls, and registered noncitizens to vote.

Several incidents of violence or harassment were reported in the run-up to the elections. In April an incumbent opposition member of parliament, Nurul Izzah Anwar, alleged a supporter of the BN coalition threatened a member of her campaign team with a machete. In Penang five assailants seriously injured two men while they were hanging opposition party flags and an explosive device was set off at a BN rally in northern Penang state that injured a security guard. Threats of violence also surfaced on the internet.

The Election Commission (EC) accredited several national organizations to observe the elections, including the Institute for Democracy and Economic Affairs (IDEAS), the Centre for Public Policy Studies (CPPS) and Merdeka Center for Opinion Research (Merdeka Center). A joint report released by IDEAS and CPPS on May 8, three days after the general elections, stated that the elections “proceeded smoothly and with minimal major issues.” They were critical, however, of media coverage in favor of the ruling coalition and reported misuse of government facilities by the BN and doubts about the EC’s impartiality and the integrity of the electoral rolls. Their report concluded the elections were “partially free and not fair.” Cambodian and Indonesian observers who were invited by the EC along with 17 other delegates from Association of Southeast Asian Nations (ASEAN) countries noted that they were able to oversee the process without issue.

The government did not allow international NGOs or representatives from non-ASEAN countries to observe the electoral process.

Following the general elections, both the ruling coalition and the opposition filed petitions challenging the outcomes in certain state and parliamentary seat elections. Most cases were dismissed by the judge in the initial phase of the electoral court, some went to trial, but none resulted in overturning election results. NGOs and the Bar Council noted with concern that the monetary amount awarded by the Election Court as costs for election petitions that were rejected on technical grounds, especially against the opposition, was not in line with normal costs. In September Chief Justice Arifin Zakaria stated that parties which were not satisfied with the costs imposed by the Election Courts could appeal to the Federal Court.

A Royal Commission of Inquiry was held to look into an alleged citizenship-for-votes program in the eastern state of Sabah. Civil society organizations maintained that the government naturalized immigrants extralegally in exchange for pledges to vote for the ruling coalition.

Political Parties: Opposition parties were unable to compete on equal terms with the UMNO-led BN coalition, and were subject to restrictions and outside interference. The lack of equal access to the media was a serious problem for the opposition in the national elections. News about the opposition was restricted and reported in a biased fashion. Opposition leaders claimed that the EC was under government control and lacked the independence it needed to be impartial.

The opposition organized a nationwide series of demonstrations to protest alleged electoral fraud. Organizers and speakers at some of these demonstrations were investigated under the PAA or the Sedition Act. In September the Johor secretary for opposition party PKR was convicted under the PAA for organizing a protest against the elections outcome (see section 2.b.).

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.

Opposition-run state governments in Selangor and Penang attempted re-introduction of local government elections but faced resistance from the federal

government, the EC, and the courts. On June 27, however, the Federal Court granted the Penang government leave to file a petition to challenge sections 10 and 15 of the Local Government Act of 1976, which prevents the holding of local government elections.

Participation of Women and Minorities: Women faced no legal limits on participation in government and politics. Only two of 32 cabinet ministers were women, however. Women held 23 of the 222 elected seats in the lower house and 15 of the 60 seats in the appointed senate.

The politically dominant Malay majority held the most powerful government senior leadership positions. Non-Malays filled nine of the 32 ministerial posts and eight of the 26 deputy minister positions.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption; however, enforcement generally focused on relatively small-scale, low-level crime. The media reported numerous cases of alleged official corruption, and there was a broadly held perception of widespread corruption and cronyism within the governing coalition and in government institutions.

Corruption: While the government successfully prosecuted rising numbers of bribe-taking officials and persons paying bribes, observers noted the relatively few senior officials prosecuted (or convicted). Following the general elections, Prime Minister Najib created a new ministerial position in charge of governance and integrity and appointed former Transparency International-Malaysia president Paul Low to the position.

The Malaysian Anti-Corruption Commission (MACC) is responsible for investigating and prosecuting corruption of both private and public bodies. An auditor general has the responsibility, set forth in the constitution and the Audit Act, to audit the accounts of the federal and state governments, government agencies, and other public authorities. The MACC reported that from January to August, 315 people, including 109 civil servants, were arrested under anticorruption laws. There was a perception that the government at times used the MACC, as well as the Official Secrets Act and other statutes, to harass or silence opponents.

There were a limited number of reported prosecutions of officials including police

and political figures. In June a High Court judge found the newly appointed Inspector General of Police Khalid Abu Bakar liable for covering up the death of Kugan Ananthan, a suspect in a car theft case. The judgment also ordered the government to pay damages to the victim's family.

On May 30, the Court of Appeal upheld a 2011 decision by the Shah Alam High Court to sentence Mohamed Khir Toyo, a former UMNO chief minister of Selangor, to 12 months in jail for graft and illegally obtaining two plots of land for himself and his wife.

The 2012 Auditor General's Report, released during the year, noted possible fraud and abuse in a range of government programs, including the disappearance of police vehicles and firearms, government procurement at highly inflated prices, and poor management of funds and assets.

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

In October parliament passed a controversial amendment to Penal Code Section 203A, which provides that "whoever discloses any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under any written law shall be punished with a fine of not more than one million ringgit, or with imprisonment for a term which may extend to one year, or with both." Critics claimed that the amendment contravened the spirit of the Whistleblower Protection Act 2010 by dissuading civil servants from disclosing corruption. Critics noted that the Official Secrets Act 1972 and the Banking and Financial Institution Acts 1989 allowed for the protection of government secrets and that the amendment was unnecessary.

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

basis and not upon entry or exit of their posting. Those who refused or failed to declare their assets faced disciplinary actions and were ineligible for promotion. Information contained in the declarations was not made public.

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

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

The states of Selangor and Penang, both controlled by the federal opposition coalition, are the only states with freedom of information laws that allow public access to certain state documents.

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

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

The government generally allowed NGOs to function independently, met with representatives from some NGOs and responded to some requests of NGOs. In some instances, however, the government also took actions against some NGOs. Lena Hendry from the human rights NGO Pusat KOMAS was charged for screening a movie about human rights violations in Sri Lanka (see section 2.a.). Human rights activist Cynthia Gabriel from the human rights organization SUARAM was called in for questioning in August under the Sedition Act for making allegedly seditious statements during a speech at a fundraising dinner.

In March the Registrar of Societies and the Attorney General’s Chambers stopped

their investigations into SUARAM for alleged violations of the Societies Act and other purported offenses (see section 2.b.). The NGO remained under investigation by the Companies Commission of Malaysia.

The Sarawak and Sabah state governments prevented some domestic activists from visiting their states. For example, the Sarawak State government banned NGO leaders associated with the Bersih movement from entering Sarawak in connection with Bersih activities inside the state. The Sabah State government also blocked two leaders from the opposition coalition from entering the state (see section 2.d.).

UN and Other International Bodies: The government cooperated with some international organizations, including the UNHCR.

The government, along with civil society, participated in the second Universal Periodic Review of Malaysia in October. After the review was completed, NGOs accused the government of not adequately consulting with civil society during the process and of writing a report that did not sufficiently address human rights concerns in the country.

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

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

In April SUHAKAM released a report on the actions taken by protesters and police in connection with the 2012 Bersih 3.0 rally. The report found that police used “disproportionate force” during and after the rally and noted that police attempted to limit freedom of information by confiscating media equipment, deleting photographs, and arresting and assaulting journalists. The government did not

respond to the report by year's end.

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

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

Women

Rape and Domestic Violence: Rape, including marital rape, is a criminal offense, as are most forms of domestic violence. The penal code states that rape is punishable by a prison term of up to 30 years, caning, and a fine. Marital rape does not have a minimum penalty, but the maximum penalty is five years' imprisonment. There is no minimum jail term for a man convicted of statutory rape of a girl age 15 years or less. The government enforced the law effectively. In 2012 rape victims lodged 2,998 police reports, compared with 3,301 in 2011. In 830 of the reported rape cases, charges were brought against the accused, resulting in 156 convictions. Of the 3,419 cases of domestic violence reported, charges were brought in 1,131 of them, resulting in 526 convictions.

Cultural attitudes and a perceived lack of sympathy from the largely male police force resulted in many victims not reporting rapes. 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. Women's groups claimed that courts were inconsistent in punishing rapists.

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

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

Reports of rape and spousal abuse drew considerable government, NGO, and press attention. Under the Domestic Violence Act, anyone who uses violence against a protected person to willfully contravene a protection order may be punished by imprisonment of up to one year and a maximum fine of RM2,000 (\$611). 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 a broadening of the definition of rape to include husbands forcing themselves on their wives and other forms of sexual assault. They also believed the act failed to protect women in immediate danger because it requires that separate reports of abuse be filed with both the Social Welfare Department and police, causing a delay in the issuance of a restraining order. Cases also required visible evidence of physical injury.

In 2012 an amendment to the Domestic Violence Act that expanded the definition of domestic violence to include mental, emotional, and psychological abuse as well as physical violence took effect. It also allows courts to issue protective orders to prevent third parties from physically abusing, or even communicating with, victims of domestic violence and allows police to arrest a perpetrator when a protective order has been violated. Activists welcomed the amendment but pressured the government to amend it further to cover stalking and intimidation, relationships between unmarried persons, and make domestic violence a separate offense under the penal code.

Women’s rights groups most often pointed to the lack of support from police as the main obstacle of enforcing the new law. For example, on June 25, a woman in Penang suffered burns on more than 60 percent of her body after allegedly being set on fire by her husband. Women’s groups noted that at least five police reports were made by the victim and her family claiming abuse had taken place repeatedly. The attack occurred four days after the victim was granted an interim protection order, which the women’s groups contended was not enforced by police.

Up to 120 police officers participated in four training sessions on the Domestic

Violence Act during the year.

Female Genital Mutilation/Cutting (FGM/C): In 2009 the Fatwa Committee of the country's National Council of Islamic Religious Affairs ruled that "female circumcision" was obligatory for Muslims but "if found to be harmful to health must be avoided." In 2012 a university study reported that of more than 1,000 women interviewed, more than 90 percent of Muslim respondents stated that they were circumcised. The most common reasons cited for its practice were religious obligation, hygienic purposes, and cultural tradition. The Ministry of Health responded to the fatwa by developing guidelines for the practice of female circumcision and allowed the practice to take place in health-care facilities, where, prior to the fatwa, it was prohibited. NGOs reported FGM/C was also performed privately outside of government clinics. The practice reportedly gained popularity, even among adult women, converts to Islam, and in urban centers (see Children below).

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

The Employment (Amendment) Act 2012 makes certain forms of sexual harassment in the workplace criminal offenses. Under the act, sexual harassment encompasses complaints in the employer-employee relationship including sexual harassment complaints made by an employee against another employee, an employee against an employer, or an employer against an employee. It excludes complaints by or against independent contractors. Employers are obligated to inquire into most sexual harassment complaints in a prescribed manner. The penalty for noncompliance is a fine not exceeding RM10, 000 (\$3,058).

Advocacy groups, such as the Association of Women Lawyers, stated the provisions pertaining to sexual harassment under the Employment Act were not comprehensive enough to provide help to victims. The association advocated for passage of a separate sexual harassment bill making it compulsory for employers

to formulate sexual harassment policies.

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

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

The law requires equal pay for men and women workers for work of equal value. NGOs reported, however, continued discrimination against women in the workplace in terms of promotion and salary.

Women experienced some economic discrimination in access to employment. The UN Development Program Country Program report for Malaysia (2013-2015) noted participation in the labor market for women was 46.1 percent compared to 78.7 percent for men.

According to the UN Development Program, women made up 36 percent of the labor force, which it defined as women ages 15 to 64 actively engaging in the labor market, by either working or actively looking for work. In June Prime Minister Najib stated women occupied 33 percent of decision-making positions in the public sector. The law provides that women in the private sector are entitled to 60 days' maternity leave and women in civil service are entitled to 90 days' maternity leave. Men are not entitled to paternity leave. Some pregnant women experienced

employment discrimination. Employers routinely asked women their marital status during job interviews.

The government undertook a number of initiatives to promote equality for women and the full and equal participation of women in education and the workforce. The Women's Ministry developed programs and workshops to encourage women to enter the business community and operate small- and medium-sized enterprises. Women outnumber men in universities. A leading public university, Universiti Kebangsaan Malaysia, reported approximately 70 percent female enrollment in its 2012 academic year.

The Women, Family and Community Development Ministry established a Women Directors Registry, which compiled data on qualified women. The ministry also implemented a training program that included coaching on technical and soft skills.

Children

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

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

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

UNICEF's *State of the World's Children 2011* highlighted as a cause for concern

secondary school enrollment, which was 71 percent for girls and 65 percent for boys according to 2008-11 data, compared to 96 percent overall enrollment in primary school. The Malaysia Millennium Development Goals Report 2010 also noted 85 percent of students who dropped out of school were from poor families.

Child Abuse: Child abuse took the form of neglect (failure to provide basic needs), physical abuse, sexual abuse, and abandonment of infants. Punishment for child abuse included fines, imprisonment, caning, or a combination these measures.

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

According to the Ministry of Women, Family, and Community Development, there were 1,023 reported cases of child abuse, 669 girls and 354 boys, from January to March. In 2012 there were 3,831 cases reported.

In January a magistrate sentenced T. Rajasegaran to 12 month's jail for abusing his three-year-old stepson in September 2012. He was charged in December 2012 under the Child Act of 2001, which carries a maximum imprisonment of 10 years or a fine of up to RM20,000 (\$6,116) or both. A video of Rajasegaran beating the toddler with a rice ladle at his house went viral on Facebook.

Forced and Early Marriage: The minimum age of marriage is age 18 for men and age 16 for women and girls. Muslim girls under age 16 may marry with the approval of a sharia court. Although such marriages were uncommon, some statistics pointed to a rise in the incidence of child marriages.

In October mainstream media reported that as of May, the sharia courts approved 446 of 600 applications for marriage involving girls under age 16. According to the Malaysian Syariah Judiciary Department, in 2012, there were 1,165 applications for marriage in which one party, usually the bride, was younger than the legal marrying age. It was also reported that in 2012, 1,022 applications were approved compared with 900 in 2011. According to the 2010 Population and Housing Census, 82,382 girls ages 15 to 19 were married compared with 55,915 in 2000.

There were reports of child marriages, including the marriage of a 12-year-old girl to a 19 year-old man in November. Civil society activists criticized the practice, as well as statements by government officials supporting child marriages as an approved Islamic practice.

In the state of Kedah, the state Islamic Religious Department reported a 35 percent increase in marriage applications involving underage individuals between 2008 and 2010, with 90 percent of them involving girls under age 16. According to a UN report, 7,260 girls between the ages of 10 and 19 underwent premarital HIV screening in 2009.

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

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

The law outlaws pornography but does not address the involvement of children specifically. Child prostitution existed, but children in prostitution often were treated as offenders or undocumented immigrants rather than as victims.

Statutory rape occurred and was prosecuted. Islamic law considers a Muslim girl an adult after her first menstruation, however, which sometimes complicated the prosecution of statutory rape. The victim may in fact be charged with *khalwat* (close proximity between members of the opposite sex), an offense under sharia, even if she is under the age of 18 and her partner is an adult. A person convicted of statutory rape may receive punishment of imprisonment up to 30 years or caning, or both. According to the Ministry of Women, Family, and Community Development, most victims were under 15 years of age. Sharia courts sometimes were more lenient with males charged with *khalwat*, although in many cases Muslim men were charged and punished for statutory rape under civil law. According to the Attorney General’s Office, as of mid-2012, 859 statutory rape cases were reported (109 involving children under age 12 and 750 cases involving

victims between the ages of 13 and 15).

In 2012 the Home Ministry informed parliament that the number of sexual crime and rape cases involving victims under age 16 rose from 1,777 cases in 2010 to 2,419 in 2011.

Displaced Children: The prevalence of street children was a problem in Sabah. Estimates ranged from a few hundred to 15,000 children born in the country to illegal immigrant parents, some of whom were deported. These unaccompanied children lacked citizenship and access to government-provided support and often resorted to menial labor, criminal activities, and prostitution to survive; they were vulnerable to forced labor, including forced begging.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

Estimates of the country's Jewish population were between 100 and 200 people. Anti-Semitism was a problem across the political spectrum and attracted wide support among segments of the population. Anti-Semitic books were displayed prominently in many bookshops and other public places. Hitler's "Mein Kampf" and the infamous "Protocols of the Elders of Zion" were on display at the Kuala Lumpur International Airport. Government-owned newspapers and statements by current and former political officeholders, sometimes blamed civil society activity on "Jewish plots" or "Jewish conspiracies."

Trafficking in Persons

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

Persons with Disabilities

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

The Persons with Disabilities Act of 2008 states that persons with disabilities should be treated equally with access to public services and facilities and that the

government and other providers should make improvements to ensure the availability of services. The government, however, did not mandate accessibility to transportation for persons with disabilities, and few older public facilities were adapted for such persons. Recognizing 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 Women, Family, and Community and Development was responsible for safeguarding the rights of persons with disabilities.

A public sector regulation reserves 1 percent of all public sector jobs for persons with disabilities. New government buildings were generally outfitted with a full range of facilities for persons with disabilities.

In November disability rights activist Bathmavathi Krishnan was sworn in as the country’s second-ever senator with a disability.

A code of practice serves as a guideline for all government agencies, employers, employee associations, employees, and others to place persons with disabilities in private sector jobs. Special education schools existed but were not sufficient to meet the needs of persons with disabilities. Students with disabilities were allowed to attend mainstream schools but accessibility remained a serious problem.

In 2012 SUHAKAM initiated a task force to develop a system to monitor public facilities and policies for persons with disabilities. The SUHAKAM director stated the task force would specifically look into public transport services, facilities in buildings, health care, and education. SUHAKAM also pointed out that the Persons with Disabilities Act of 2008 was not fully enforced; for example, persons with disabilities could not access much of the public transportation system or navigate through cities on the sidewalk. Employers were also reluctant to hire persons with disabilities.

Disability NGOs commented that while the Persons with Disabilities Act contained adequate accommodations, the act was not enforced and therefore was not effective. They lamented that the general public saw persons with disabilities as a burden on society instead of a group of active, contributing members of society, and that this perception was amplified by the way in which they were portrayed by the government as welfare cases.

National/Racial/Ethnic Minorities

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

Despite the government’s stated goal of poverty alleviation, these race-based policies were not subject to upper income limitations and contributed to a widening economic disparity within the bumiputra community. Ethnic Indian citizens, who like ethnic Chinese citizens do not receive such privileges, remained among the country’s poorest groups. Another goal of this policy was for bumiputra to hold 30 percent of the nation’s wealth. According to several studies, the program reached or exceeded this target, but official government figures placed bumiputra equity at 23 percent. The government did not respond to public requests to make its methodology available.

In August Prime Minister Najib announced over RM3 billion worth (\$917 million) of government projects that were offered only to companies owned by ethnic Malays. In September Najib announced an appropriation of almost RM30 billion (\$9.2 billion) for the Bumiputera Economic Empowerment program with five initiatives that benefit only the bumiputra, who make up 68 percent of the population. The program includes loans for entrepreneurs, requires every government ministry to hold contracts from large projects to award to bumiputera-owned businesses, and requires state companies to establish targets for bumiputera participation.

In October Home Minister Ahmad Zahid Hamidi was quoted as supporting a police “shoot first” policy when apprehending criminals. In his remarks, Ahmad Zahid claimed that more than 50 percent of the country’s gang members were ethnic Indians, and the victims were predominately ethnic Malays. His statements were criticized for disregarding basic human rights and for the discriminatory nature of his comments in regard to ethnic minority groups.

Indigenous People

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

The Orang Asli, who numbered approximately 180,000 (0.86 percent of the population) and who were found throughout the peninsula except in Perlis and Penang, constituted the poorest group in the country. According to the 10th Economic Plan covering the years 2011-15, 50 percent of the 29,990 Orang Asli households lived below the poverty line. Of these, approximately 5,700 households (19 percent) were considered extremely poor. In 2010 a local NGO focused on Orang Asli rights estimated that these numbers underreported poverty because it considered only Orang Asli living in established villages, not those living deep in the rainforest.

A government-sponsored national advisory council existed to monitor the development of Orang Asli, but a local NGO reported that the council did not meet during the year.

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

The uncertainty surrounding Orang Asli land ownership made them vulnerable to exploitation. Logging companies encroached on land traditionally held by Orang

Asli as well as that of indigenous groups in the Borneo states. Indigenous people in Sabah and Sarawak protested encroachment by state and private logging and plantation companies onto land that they considered theirs under native customary rights.

In October the Kuantan High Court ruled that a group of Orang Asli did not have rights to land beyond what was expressly conferred under the Aboriginal People's Act 1954, resulting in the tribe losing their village, Kampung Mengkapur, which occupied 7,000 acres of land. The Orang Asli filed a lawsuit against the government in 2010 after the Kuantan state government notified them that the land that they were living on would be cleared for a rubber plantation project. The community was not consulted prior to the state government giving approval to carry out the felling activities and claimed the land as customary lands. The Orang Asli indicated that they would appeal the decision.

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

The Penan, an indigenous community of Sarawak, used native customary rights to establish land ownership and stewardship. Each group of Penan maintained its own foraging area, which is passed down from one generation to another. Customary native lands were not always well demarcated. Indigenous rights groups alleged Abdul Taib Mahmud, the chief minister of Sarawak, leased Penan and other indigenous groups' customary land to logging companies and land developers in exchange for political favors and money. Local observers claimed logging companies harassed and sometimes threatened vocal Penan leaders and land-rights activists. 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 November police arrested 10 Penan protesters in Murum who staged blockades for several weeks to protest the Sarawak government's plan to relocate them in order to continue the construction of a hydroelectric dam that is flooding villages and has displaced more than 1300 Penan. In December local media reported that the Penan were offered RM23,000 (\$7,033) per family to break down the blockade and move quietly to the land designated by the government as their resettlement area. Local activists stated that the resettlement land had been previously used for palm oil production and was uncultivable.

It was reported the Sarawak state government planned to build 12 hydroelectric dams throughout the state, all of which, according to indigenous rights activists, would adversely impact the lives of the indigenous tribes living there. So far one dam has been completed in Bakun, displacing more than 1500 Penan. The next dam planned could displace 20,000 indigenous people.

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

In August SUHAKAM released the National Inquiry Report into the Land Rights of Indigenous Peoples in Malaysia. In the report, SUHAKAM outlined its investigations into complaints of human rights violations against the indigenous population regarding land rights. The report concluded indigenous people are “among the most marginalized and disadvantaged groups in Malaysia” and the provisions in the Federal Constitution and domestic laws safeguarding the land of indigenous people have not been followed.

The SUHAKAM report was initially to be submitted to parliament in April, but due to the announcement of elections, and the subsequent dissolution of parliament, the release was deferred and SUHAKAM was not permitted to table the report for debate in parliament, even after the new parliament was in session. Indigenous NGOs and the Bar Council objected to this and encouraged SUHAKAM to submit the report directly to parliament.

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

Section 377 of the penal code states that sodomy and oral sex acts are “carnal intercourse against the order of nature” but was rarely enforced. It was, however, the basis for the case against parliamentary opposition leader Anwar Ibrahim (see section 1.e.). Religious and cultural taboos against same-sex sexual conduct were widespread.

Transgender individuals were often charged under Section 21 of the Minor Offences Act of 1955 for “indecent behavior” and “importuning for immoral

purposes” in public. Those convicted of a first offense may be fined up to 25RM (\$7.65) and up to 14 days in jail. The sentences for subsequent convictions may be up to RM100 (\$30.60) and up to three months in jail. Local advocates contended that those imprisoned served their time in the male prison population and were often mistreated verbally and sexually by police and other inmates.

In 2012 the High Court in Seremban dismissed an application by four Muslim transgender individuals to declare unconstitutional a law that bans men from dressing as women. Each of them was born male but acted and dressed as women. They had previously been arrested or fined by the Negeri Sembilan Islamic Religious Department for violating the Sharia Criminal Act, a state-level sharia law that prohibits Muslim men from dressing and posing as women. The court ruled that the Federal Constitution’s provision on freedom of expression, which bans discrimination based on gender, was not applicable to Muslims who violated the relevant portion of the Sharia Criminal Act. One individual appealed the decision and the case was pending at year’s end.

In February seminars on “understanding issues of LGBT” continued and were extended to government officers, including those from the religious department. These parenting seminars against the LGBT “lifestyle” began in 2012 and were endorsed by the Ministry of Education.

In March Asmara Songsang (Abnormal Desire), a controversial play disparaging the LBGT community and sponsored by the Ministry of Information, Communication and Culture, premiered in Kuala Lumpur. The local press quoted the director general of the ministry, Fuad Hassan, as saying, “We will bring the show to public and private higher education institutions in a few states and major cities... that aims to warn young people about the perils of being lesbian, gay, bisexual and transgender.” LGBT and human rights activists condemned the play as derogatory and promoting discrimination against LGBT persons. After Kuala Lumpur, the play was performed around the country in schools and universities.

On October 18, the Friday sermon written by JAKIM alleged that complaints of human rights abuses against LGBT persons in the country were not genuine and actually part of a plan by NGOs to push the LGBT agenda to undermine Islam. The sermon was reportedly in response to reports written by NGOs for the Universal Periodic Review of Malaysia.

In July a transgender Thai national was assaulted by a group of youths armed with steel rods and hockey sticks in Kuantan, Pahang. The victim filed a report and

police stated they would investigate the incident. The same month, organizers of the banned gay rights festival Seksualiti Merdeka failed for the second time to obtain permission to initiate judicial review against the police to lift the ban on their event first proposed in 2011.

Other Societal Violence or Discrimination

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

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutory instruments, allows for limited freedom of association and for some categories of workers to form and join trade unions, subject to a variety of legal and practical restrictions. The law provides for the right to strike and to bargain collectively, but both are severely restricted by regulations and by sector.

Defense or police officials, or public sector workers categorized as “confidential, managerial, and executive,” are prohibited from joining a union. Additionally, the act restricts a union to representing workers in a “particular establishment, trade, occupation, or industry or within any similar trades, occupations, or industries.” Foreign workers may join a trade union; however, the Immigration Department bars foreign workers from holding trade union offices, as is stipulated in the Trade Union Act. Contract workers may not form a union because they are technically employed in a different industry (for example, staffing) than that in which they are actually working (such as hospitality). They may not join in-house unions or regional/national unions, nor may they benefit from collective agreements.

There are two national labor organizations. The Malaysian Trade Unions Congress (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 Congress of Unions of Employees in the Public and Civil Services is a federation of public employee unions registered under the Trade Union Act.

While the Ministry of Labor prohibits national unions within the country, there are

three territorial federations of unions (Peninsula Malaysia, Sabah, and Sarawak) that are allowed to operate. Trade unions were free to associate with these territorial federations, which must register separately as societies under the Societies Act and which exercised many of the responsibilities of national labor unions, although they could not bargain on behalf of local unions. In companies designated as having “pioneer status,” including the electronics sector, workers are not permitted to affiliate with territorial union federations. Trade unions are permitted to affiliate with international trade union organizations, subject to the approval of the director general of trade unions (DGTU).

The law prohibits employers from interfering with, restraining, or coercing a worker in the exercise of the right to form trade unions or participation in lawful trade union activities, including in employment contracts. The law prohibits employer retribution against a worker for participating in the lawful activities of a trade union. The law requires reinstatement of workers fired for union activity.

Most private sector workers and, to a lesser extent, public sector workers, have the right to bargain collectively. The law restricts collective bargaining in “pioneer” industries. Some public sector workers had only a consultative role in collective bargaining that allowed them to express opinions on wages and working conditions but not to actually negotiate. The law imposes restrictions on the scope of subjects that may be collectively bargained. The law explicitly states that issues of transfer, promotion, appointments, dismissal, and reinstatement are internal management prerogatives; therefore, excluded from collective bargaining.

The process of collectively bargaining is complex and lengthy. First, the trade union submits a proposal for a collective agreement to the employer and the employer has 14 days in which to reply; if the employer accepts the invitation, collective bargaining must begin within 30 days. If the employer refuses to negotiate or fails to reply, or there is a deadlock in the negotiations, a trade dispute is deemed to exist and the union may notify the DGTU to take conciliation measures. If the parties are still unable to agree, the minister of human resources may refer the dispute to the Industrial Court for binding arbitration.

Although private sector strikes are legal, the right to strike is severely restricted. Strikes are prohibited in a range of industries categorized, according to an overly broad definition, as “essential.” The law denies unions and individuals the right to hold strikes protesting lack of recognition of their union. Strikes are illegal with regard to all collective agreement matters, or based on certain issues not covered by collective agreements, such as transfers, layoffs, and dismissals. The process

for conducting a legal strike is unwieldy, and strikes or lockouts are prohibited while a dispute is before the Industrial Court. MTUC officials maintained that requirements imposed by authorities were so stringent that it was almost impossible to strike.

The DGTU enforces freedom of association provisions. Charges of discrimination against employees engaged in union organizing activities may be filed with the Ministry of Human Resources or the Industrial Court. In cases of wrongful termination, the law limits worker compensation to a maximum of two years from the time the employee was laid off. Provisions preventing management from taking reprisal actions against workers for union activity, however, were not effectively enforced. A labor group blamed delays of enforcement not on lack of resources or training but on an absence of understanding of the effect of delays on the workers involved and an accompanying lack of urgency.

The Industrial Relations Act requires an employer respond to a union's request for recognition within 21 days of application. If an employer does not respond within 21 days, the union must submit a written appeal to the DGTU within 14 days, which is to then notify the minister of human resources of its findings. If the union fails to submit the appeal within the stipulated period or the minister decides that recognition is not to be accorded, the union is not recognized. Unions also undergo a competency check by the Industrial Relations Department in order to be granted recognition. In the event the employer challenges the decision of the DGTU stating that a union is not competent then the director general of industrial relations performs an additional competency check.

The government interferes to some degree with trade union activity. For example, the DGTU and, in some cases, the minister of human resources may refuse to register or withdraw registration from some unions, without judicial oversight. When registration is refused, withdrawn, or canceled, a trade union is considered an unlawful association. Workers' organizations have no recourse to an independent body in the event that authorities refuse union registration.

The government prevented some trade unions from forming territorial federations. The textile sector is limited to state-based federations of unions in those states that have a textile industry. Trade unions in Sabah and Sarawak may not form a federation with Peninsular Malaysia-based unions, while the unions in East Malaysia can form a federation. According to the MTUC, none of the four regional electronics trade unions approved by the government in 2010 has been recognized by its respective companies. The fact that antiunion discrimination was

not enforced and the inability of unions to provide more than limited protection for workers, particularly foreign workers, created a disincentive to unionize. In some instances, companies reportedly harassed leaders of unions seeking recognition. Some trade unions reported that the government detained or restricted the movement of some union members under laws that allow temporary detention without the recipient being charged with a crime and that some workers were not paid or were terminated because of union-related activity. A terminated worker legally ceases to be a member of his trade union. Labor activists complained that the loss of membership upon termination comes at a time when trade union support and assistance is most needed.

The minister of human resources or the director general of industrial relations orders recognition of a union if at least 50 percent of the workers in the relevant establishment are members. Membership of 50 percent is often difficult to achieve because of the numbers of contract workers and workers designated as management or in official roles and who are not eligible for union membership. MTUC officials expressed frustration about delays in the settlement of union recognition disputes. It was common for such applications to be refused or if approved, the decision challenged in court by the employer to delay recognition and consequently unions have gone unrecognized for one to several years.

The Ministry of Human Resources released 2012 statistics regarding trade union formation, showing the ministry recognized 39 new unions while 68 applications were not recognized, withdrawn, or deemed ineligible.

On August 19, the National Union of Transport Equipment and Allied Industries Workers (NUTEAIW) reported that Hicom Automotive Manufacturing Sdn Bhd and Isuzu Hicom Sdn Bhd terminated 18 workers for allegedly creating a perception that “the companies were involved in politics.” The union claimed that the workers were fired because they met with an opposition candidate after working hours in their district before the general elections to obtain commitments on worker’s rights. The workers met with the Industrial Relations Department and the company agreed to reinstate them. The workers discussed with the company possible compensation for the period during which they were unemployed.

According to the MTUC, the Immigration Department requested that foreign employees sign contracts with conditions including the following: The employee may not marry a citizen or participate in political or trade union activities; change his/her employment during the contract period; or organize, participate, or be involved in any kind of industrial action during the period of employment.

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

Companies increasingly turned to contract labor as a way to avoid paying extensive employee benefits, resulting in a class of workers often referred to as “outsourced workers” who legally are not considered employees of the principal or owner of their workplace. The Employment Act of 1955, as amended, legally exempts the labor supplier from certain legal obligations of employers towards employees who are outsourced workers, including with regard to freedom of association and collective bargaining.

In addition to the increasing use of outsourced workers, a growing use of short-term employment contracts also contributed to the declining number of workers involved in trade unions. The short-term nature of contract workers’ employment is a disincentive to joining and participating actively in trade unions. Trade unions hold general meetings and elect leaders only once every three years, a period that is longer than many short-term employment contracts. Similarly, observers noted that the government, by classifying contract workers as self-employed, further limited their ability to organize.

There have been no industry-wide strikes since 1962, but several strikes took place during the year as a result of employers who refused to implement the new minimum wage requirement. About 2,600 Vietnamese textile factory workers staged a strike to protest their company’s failure to implement the new monthly minimum wage, while 1,000 workers from a furniture plant also went on a brief strike. The government subsequently postponed implementation of the minimum wage to 2014.

b. Prohibition of Forced or Compulsory Labor

The penal code and the 2008 Anti-Trafficking in Persons Act (amended) prohibit forced or compulsory labor. Five agencies, including the Department of Labor, have enforcement powers under the law, but their standard operating procedures

did not always result in officers actively searching for indications of forced labor. The penalties for perpetrators of forced labor under the penal code are imprisonment of up to one year and an undisclosed fine. The penalties for exploitation of a trafficked person under the Anti-Trafficking in Persons Act include imprisonment up to 15 years and a fine depending on the nature of the offense.

The national antitrafficking council reported that labor officers received specialized training including with other law enforcement agencies to help increase coordination. The Labor Department relied on evidence of three months' nonpayment of wages in order to initiate an investigation into a potential forced labor case.

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

Labor activists and human rights NGOs reported debt bondage often characterized conditions for foreign workers on some plantations as well as in some factories and other businesses. Labor union representatives described a typical pattern involving recruiting agents who imposed high fees which made foreign workers vulnerable to debt bondage.

Passport confiscation, which was widespread among employers of migrant workers, increased workers' vulnerability to forced labor. Although the law criminalizes possession of someone else's passport "without legal authority," the practice occurred with impunity. NGOs reported that agents or employers in some cases drafted contracts that included a provision for employees to sign over the right to hold their passports to the employer or an agent, and in other cases employers reportedly confiscated employees' passports without contractual authority. This practice effectively made some foreign workers captives of the hiring company. NGOs pointed to examples where affected workers, whose passports were being held by their employer or labor agent, were forced to accept harsh working conditions, lower wages than promised and unexpected wage deductions, and poor housing, all under threat of imprisonment or deportation. A November 7 media report also highlighted passport retention and debt bondage at an electronics factory south of Kuala Lumpur. The report noted that Nepalese workers paid exorbitant fees to employment agents to obtain jobs and once in Malaysia, their passports were taken, which, in addition to leaving them without

money, prevented them from returning home.

In August authorities arrested and charged two owners of a foreign worker employment agency in Malaysia, Sim Whye Hong and his sister Sim Yee Sie, with 31 counts of trafficking Indonesian women with the intent of exploiting them through forced labor. In September they pleaded not guilty and were released on bail of RM310,000 (\$94,800) each. The court ordered them to surrender their passports and report to the police station once a month. The case was pending at year's end.

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

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the employment of children younger than age 14 but permits some exceptions, such as light work in a family enterprise, work in public entertainment, work performed for the government in a school or in training institutions, or work as an approved apprentice. In no case may a child work more than six hours per day, more than six days per week, or at night. Government officials did not deny the existence of child labor in family businesses but maintained that foreign workers had largely replaced child labor and that child labor provisions were vigorously enforced.

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

d. Acceptable Conditions of Work

The national minimum wage provision applies to Malaysian citizens only. The minimum wage policy for the private sector took effect for all companies with six or more employees on January 1 and for smaller companies on July 1. By September 30, approximately 600,000 small and medium enterprises received

permission to postpone full implementation of the minimum wage until January 1, 2014. Employers who received deferments were not permitted to impose a levy on foreign workers to offset the cost of accommodation or other allowances. Under the new policy, the minimum wage was established at RM900 (\$275) per month on the peninsula, and RM800 (\$245) per month in the states of Sabah and Sarawak. The new policy affected 3.2 million workers across the country, including in construction, plantation agriculture, and manufacturing sectors. It does not apply to domestic workers. The minimum wage rates fall below the Ministry of Finance published poverty income levels in Sabah and Sarawak.

In July, the Human Resources Ministry postponed the enforcement of the minimum wage scheme for foreign workers until 2014 for small and medium enterprises and some companies that had suffered losses for the past two to three years. More than 5,000 Nepalese workers in Johor protested the delay. Some groups called for a higher minimum wage, criticized the government for not introducing the new rates immediately for everyone, and found fault with different minimum wages for different parts of the country. The ministry also announced that employers would be allowed to deduct government levies on foreign workers from the minimum wage paid to the workers, resulting in a wave of online complaints and other minor protests.

Working hours may not exceed eight hours per day or 48 hours per workweek of six days. Each workweek must include a 24-hour rest period. The law also sets overtime rates of 1.5 times the base hourly rate for regular overtime, two times the regular hourly rate for work on rest days, and three times the regular hourly rate for work on the 10 mandated public holidays. It mandates public holidays, annual leave, sick leave, and maternity allowances. Limits on overtime vary by sector. The limits apply to foreign workers under the Employment Act.

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.

The National Wages Consultative Council is responsible for recommending

changes to the minimum wage and coverage for various sectors, types of employment, and regions. The Labor Department of the Ministry of Human Resources is responsible for enforcing standards on working conditions and occupational safety and health. No information was available on the number of inspectors. MTUC reports that 12-, 14-, and 18-hour days were not uncharacteristic in the food industry as well as others.

An official at the Ministry of Human Resources reported the Labor Department charged 97 employers with various offenses under the labor law during the year and 80 percent of the offenses were related to salaries, stating that “among the offences were failure to pay salary arrears, compensation, and gratuity that had been ordered by the Labor Court.” Additionally, it made 103 charges under the Workmen’s Compensation Act against employers who failed to insure their foreign workers or report accidents to the Ministry of Human Resources. The department charged five companies under the Private Employment Agencies Act for operating without a license and issued 461 summonses to various employers, of which 67 percent were for failing to report hiring foreign workers within 14 days of employment. The department issued another 10 percent of the summonses against employers who did not pay salaries within the stipulated period, and since 2010 collected RM1.47 million (\$450,000) worth of fines. Penalties for employers who fail to follow the law begin at a fine not more than RM10,000 (\$3,058) per employee and can go up to imprisonment of not more than five years.

Employers or employees who violate the Occupational Safety and Health Act are subject to substantial fines of up to RM50,000 (\$15,290) or imprisonment for up to two years, or both, although the MTUC complained some employers flouted the rules with impunity.

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

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

to end abuses. Nonetheless, NGOs claimed that some legal labor contractors regularly used intimidation tactics and physical abuse to prevent workers who were being exploited from seeking justice. The MTUC reported there were no prosecutions of labor suppliers or contractors.

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

The law permits migrant workers to bring employment disputes to the Industrial Court. Nevertheless, court policy was not to hear complaints of undocumented migrants. Industrial Court proceedings were time consuming, which may have prevented migrant workers from seeking redress through the court system. Once their work visas expire, migrants require "special passes" to stay in the country in which case they could follow the court case but may not work. The passes are valid for one month and cost RM100 (\$31) to renew. Renewal is subject to the discretion of the director general of immigration.

Mechanisms for monitoring workplace conditions were inadequate. Private, for-profit labor agencies, themselves often guilty of abuses, were often responsible for the resolution of abuse cases. A May 2011 MOU with the government of Indonesia called for the creation of a joint task force to monitor the situation of Indonesian domestic workers. It provides for one rest day per week (or compensation) and rules on the repayment of recruitment fees. In July Deputy Prime Minister Muhyiddin Yassin announced an amendment to the MOU that raised the cost of hiring an Indonesian maid from RM4,511 (\$1,380) to RM8,000 (\$2,446) based on costs incurred in both countries. He also noted that the salary of Indonesian maids would not be bound by the Minimum Wages Act of 2012 but would be based on current market prices and the employer. A 2011 Cambodian government ban on new Cambodian domestic workers going to Malaysia remained in effect.

Foreign migrant laborers, legal and illegal, often worked under difficult conditions, performed hazardous duties, had their pay withheld by employers, and had no meaningful access to legal counsel in cases of contract violations and abuse. Some workers alleged that their employers subjected them to inhuman living conditions, confiscated their travel documents, and physically assaulted them. In May a court sentenced a married couple to 24 years in prison after being found guilty of

“culpable homicide not amounting to murder” of a Cambodian national who they employed as a domestic worker. The 24-year-old died from prolonged starvation.

Employers sometimes failed to honor the terms of employment and abused their domestic workers. In February a Filipino NGO documented a range of abuses of Filipino migrant workers in Malaysia. Employers reportedly restricted workers’ movement and use of cellular telephones; provided sub-standard food and living conditions; physically and sexually assaulted workers; and harassed and threatened workers, including with deportation. An NGO reported in November authorities rescued at least three Filipino domestic workers in Penang from abusive households and took the victims to the Philippines Embassy for repatriation assistance. One worker reportedly suffered sexual abuse on a regular basis.

Plantation workers generally received production-related payments or daily wages. Under a “safety net” agreement, workers are bound to work for 26 days per month, unless unable to do so due to a natural disaster such as flooding or heavy rain, and are paid a minimum of RM650 (\$200). There are three main categories of plantation workers: general field, harvest (constituting the majority), and rubber tappers. Bonus or overtime rates depend on the productivity level. For example, rubber tappers who bring in more than the minimum 24.2 pounds of rubber per day receive extra earnings of up to RM2,000 (\$612) for the most productive tappers. The Malaysian Agriculture and Plantation Association must approve such agreements in line with the law.

Based on an MOU between the governments of Malaysia and Bangladesh, Home Minister Ahmad Zahid Hamidi announced that new identity documents with radio frequency identification, biometric technology, and a debit card would be issued to all Bangladeshi workers in Malaysia beginning in 2014. The card would purportedly limit the ability of workers to change jobs and would entail a fine of up to RM12,000 (\$367) if they do so. Workers are to be required to pay for the issuance of the card.

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