

# MALAYSIA

## EXECUTIVE SUMMARY

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

The most significant human rights problems were restrictions on freedom of speech, assembly, and association; restrictions on the rights of migrants, including migrant workers and refugees; and the persistence of laws that allow detention without trial.

Other human rights problems included some deaths during police apprehensions and while in police custody; caning as a form of punishment imposed by criminal and sharia courts; restrictions on freedom of press and religion; obstacles preventing opposition parties from competing on equal terms with the ruling coalition; and violence and discrimination against women. Longstanding government policies gave preferences to ethnic Malays in many areas. There were restrictions on union and collective-bargaining activity, and various practices continued to create vulnerabilities to child labor and forced labor, especially for migrant workers. The government continued to pursue the prosecution of the leader of the parliamentary opposition on sodomy charges.

The government took steps to prosecute officials engaged in corruption and human rights abuses, although some degree of impunity existed.

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

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were reports that the government or its agents committed arbitrary or unlawful killings. One nongovernmental organization (NGO) asserted that 20 individuals had been killed in police shootings between February and November. This reflects a downward trend from previous years; local media reported that

police killed 35 and 108 persons while apprehending them in 2010 and 2009, respectively. State-influenced print media used a consistent narrative to describe these encounters: the suspect was stopped by police, then tried to attack police; the police killed suspect in self-defense, and evidence of criminal activity was found on the suspect's body. Local human rights groups suggested this pattern was used to justify deaths, usually of ethnic minorities, in police custody.

On April 29, police shot and killed three persons, believed to be foreigners, at a palm oil estate in Maran Jengka. According to the police account, they spotted and pursued a stolen car. The car skidded and hit a tree; rather than surrendering when ordered by the police, the suspects ran towards the policemen wielding machetes, and the police shot them.

On April 6, Selangor Customs Officer Ahmad Sarbaini Mohamed was found dead on the first-floor badminton court of the Malaysia Anticorruption Commission (MACC) office. Sarbaini had been called in by MACC in connection with investigations into corruption cases involving customs officers. On September 26, the coroner's court ruled that the death was accidental and the result of a "misadventure." The coroner speculated that Sarbaini was worried that he would be arrested, tried to exit via the window, lost his footing on the ledge, and fell to his death.

On September 15, police officer Jenain Subi was found guilty of culpable homicide not amounting to murder and was sentenced to five years in jail for the April 2010 fatal shooting of 14-year-old Aminulrasyid Amzah, an ethnic Malay boy. Police had alleged that after a high-speed chase, Amzah placed his car into reverse and was attempting to run over the officers when they drew their weapons and fired.

On June 9, a lawyer for the families of three youths whom the police shot dead in November 2010 presented a report of the postmortem examinations on two of the youths. The report indicated that they were shot at close range and that at least one of them was shot in the forehead at a 45-degree angle, suggesting that he was kneeling when he was shot.

On January 28, the Petaling Jaya Selangor Sessions Court acquitted police constable Navindran Vivekanandan of the charge of causing grievous hurt in the January 2009 death of Kugan Ananthan, an ethnic Indian in police detention, on the basis that the prosecution had failed to establish a prima facie case against the accused.

On July 21, the Royal Commission of Inquiry (RCI), established to investigate the 2009 death of Teoh Beng Hock from a fall in the MACC building, issued its conclusion that Teoh was driven to commit suicide following intense interrogation by three MACC officers. A coalition of more than 100 NGOs issued a statement criticizing the report for not addressing the interrogation methods used by MACC. On August 24, Teoh Beng Hock's brother filed a judicial review application to nullify the RCI's findings. At year's end the attorney general had not taken action against the implicated MACC officers.

### **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. In contrast to prior years, there were no reports of beatings and mistreatment by the nonprofessional People's Volunteer Corps (RELA) and immigration officials in immigration detention centers (IDCs). IDCs continued to be administered by the Immigration Department with RELA providing perimeter security.

On September 21, lorry driver B. Prabakar and crane operator C. Soloman Raj filed suit against the police and the government, alleging that following their 2008 arrest they were tortured during interrogation. They claimed policemen beat them with a rubber hose, splashed hot water onto their bodies, and kicked and stepped on them. B. Prabakar also said he was "hung" on a ceiling fan with a rope and forced to admit to various criminal offenses.

At year's end, the criminal case against former air force sergeant N. Tharmedran for allegedly conspiring to steal two jet engines, and his police report alleging that in 2010 he was tortured into confessing to the crime while in military detention, remained pending.

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

convicted of such crimes as kidnapping, rape, and robbery. The caning was carried out with a half-inch-thick wooden cane that could cause welts and scarring. The law exempts men older than 50 and all women from caning. Male children between the ages of 10 and 18 may be given up to 10 strokes of a “light cane.” Statistics on caning were published only sporadically, but in a March statement in Parliament the government revealed that between 2005 and 2010 it had caned 29,759 foreigners for various immigration offenses. In its 2010 publication, *A Blow to Humanity--Torture by Caning in Malaysia*, Amnesty International estimated that the government canes as many as 10,000 prisoners a year.

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

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

Prison overcrowding, particularly in facilities near major cities, remained a serious problem. In mid-2010 the national prison administration reported that the country’s 31 prisons held 38,387 prisoners in locations designed to hold 32,600. According to the International Centre for Prison Studies, in mid-2010 women made up 6.6 percent and juveniles 2.2 percent of the total prison population. Generally, men were held separate from women, juveniles separate from adults, and pretrial detainees separate from convicted prisoners. Conditions for women in prison were not significantly different than for men. Individuals detained for reasons of national security did not face significantly different conditions from those of the general population.

Local and international NGOs estimated most of the country’s 16 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, lack of regular access to clean water, poor medical care, poor sanitation, and lack of bedding in IDCs. An NGO with access to the IDCs claimed that these conditions and lack of medical

screening and treatment facilitated the spread of disease. The government allowed local NGOs to visit IDCs from time to time; during the year local NGOs with mobile medical clinics were able to visit the IDCs at the Kuala Lumpur International Airport and at Lenggeng, Negeri Sembilan, once every two weeks. One prominent NGO that visited IDCs during the year noted that although there had been some improvement in physical facilities, it did not see any improvement in the treatment of detainees. The NGO further observed that the IDCs could get quite crowded at certain times, such as immediately following a raid. An international NGO that advocates for refugees reported that unsanitary, overcrowded detention facilities with no air conditioning, inadequate clothing and food, and little access to medical care all contributed to continued deaths in IDCs.

In August 2010 the Ministry of Home Affairs' secretary general publicly acknowledged that security measures and living conditions at all the IDCs were seriously deficient and that none met international standards. He added that a five-agency committee had been set up to address the problem at IDCs and upgrade IDC standard operating procedures. Although the Ministry of Home Affairs occasionally asks a third party such as the Human Rights Commission of Malaysia (SUHAKAM) to conduct checks on conditions in IDCs, there were no reports on any activities of the five-agency committee.

On August 11, a former pretrial detainee, Ahmad Syauegy Abdul Ghani, lodged a report with SUHAKAM alleging human rights abuses during his two-week detention at Pengkala Chepa Prison, Kelantan. Ahmad claimed that between June 23 and July 5, he and 113 other prisoners were forced to strip naked in stages, with 10 to 20 prisoners being forced to strip at a time, in front of the other prisoners. Ahmad alleged that prisoners were told to defecate in front of other prisoners while they were caned on their feet as punishment for "wrongdoing." Ahmad was arrested on June 20 under the penal code for obstructing a public officer and behaving indecently in a police station. His trial was pending.

Death of prisoners while in prison or detention occurred. Based on statistics disclosed by the Home Ministry in March, a total of 156 persons died in police custody between 2000 and February 2011. A local NGO reported nine deaths in custody during the year, an increase from four in 2010. Home Minister Hishammuddin Hussein, in a written reply to a member of Parliament (MP), stated that a total of 10 deaths in police custody were recorded in the first half of the year but asserted that most deaths were caused by disease.

On January 7, M. Krishnan, 37, was found dead in the Bukit Jalil police lock-up. Police said the death was due to an ulcer. His wife claimed he had been tortured to death and had bruises on his back and his right eye, and an open cut on his right abdomen. She lodged a report at Sentul district police headquarters, asking that a second autopsy be conducted. The police ultimately agreed, and the autopsy confirmed the police's claim that the death was due to an ulcer.

On September 27, the High Court ordered the government and the Penor prison director to pay RM590,900 (approximately \$186,000) in damages to the family of an 18-year-old youth who died at the prison six years ago following an assault by 10 prison employees.

On April 5, 109 irregular immigrants, dissatisfied with cramped living conditions, the food, and long detention periods, fled a detention camp in Negeri Sembilan after they burned down a dormitory block. Police recaptured 39 of them.

Prisoners and detainees are allowed visitors during specified visiting hours, and, provided the religious practices were not derived from one of the sects of Islam that the government considers "deviant," there were no problems with religious observance. The Prisons Act does not provide a process for prisoners to submit complaints to judicial authorities. It allows judges to visit prisons to examine conditions and ask prisoners and prison officials about prison conditions. According to local NGOs, because prison authorities reportedly monitor all incoming and outgoing materials, complaints normally would not be sent through prison authorities. Communications between an attorney and his or her client are generally treated as private and confidential under the attorney-client privilege.

The authorities generally did not permit NGOs and the media to monitor prison conditions. The government approved visits by the International Committee of the Red Cross and SUHAKAM officials on a case-by-case basis. Prisons provided potable water. Although there is no prison ombudsman, SUHAKAM serves as the government's de facto ombudsman, investigating human rights abuses, including those alleged to have taken place within the prison system. Prison and other officials did not take any noteworthy steps to improve recordkeeping, implement alternatives to sentencing for nonviolent offenders, or make significant improvements to prison conditions or administration during the year.

The UN High Commission for Refugees (UNHCR) had access to registered refugees and asylum seekers detained in IDCs and prisons. Historically, prison and IDC officials denied the UNHCR access to unregistered asylum seekers in

detention; however, since 2009 IDCs scheduled UNHCR visits to interview some unregistered potential refugees. Through these interviews, the UNHCR secured the release of 1,351 refugees from IDCs from January to August.

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

The constitution stipulates that no person may be incarcerated unless in accordance with the law. However, the law allows investigative detention to prevent a criminal suspect from fleeing or destroying evidence while police conduct an investigation. Four laws, most notably the Internal Security Act (ISA), also permit preventive detention to incarcerate an individual suspected of criminal activity or to prevent a person from committing a future crime. Such laws severely restrict, and in some cases eliminate, access to timely legal representation and a fair public trial. In September Prime Minister Najib announced that the ISA and related emergency ordinances would be abolished and replaced by new legislation that would take into consideration the rights and freedoms in the constitution. A vigorous public debate on matters of arbitrary arrest and detention took place through the rest of the year. On November 24, Parliament passed a motion to revoke three 40-year-old emergency proclamations; Prime Minister Najib had said that the emergency situations that had threatened security, economic life, or public order no longer existed. The constitution provides that all laws passed pursuant to the proclamations of emergency expire six months after the emergency proclamations are lifted. Foremost among these is the Emergency Ordinance, which is one of several laws that allow for indefinite detention without trial.

#### **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 (IGP), who reports to the home affairs minister. The IGP is responsible for organizing and administering the police force. The Malaysia Department of Islamic Development (JAKIM) enforces Sharia, which applies only to Muslims. 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 of private premises as well as public establishments to enforce Sharia, including violations such as indecent dress, alcohol consumption, 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 their enforcement vary by state, and the penalties imposed by Sharia courts are limited under the law.

RELA has authority to check travel documents and immigration permits of foreigners, conduct raids, detain and interrogate suspects, and conduct other security activities. Since 2009 the government has reduced RELA's involvement and authority in immigration matters. However, after the August 2010 escape of 20 Afghan nationals from an IDC near Kuala Lumpur International Airport, Deputy Home Minister Lee Chee Leong announced that security for the IDCs would be transferred from immigration authorities to the Prison Department, with RELA providing perimeter security. NGOs and organizations dealing with refugee affairs reported that RELA continued to enforce immigration laws. On June 25, the RELA director general announced that RELA had halted all enforcement operations against undocumented foreign workers unless invited by the police or immigration department.

In August RELA membership reached 2,690,000 members, an increase of more than half a million since 2010. The government took steps to increase RELA's overall role, specifically in assisting police with criminal matters. NGOs remained concerned that inadequate training left RELA members ill equipped to perform their duties. In December 2010 Koh Tsu Koon, minister in the Prime Minister's Department, said that due to the impossibility of stationing police officers on every corner, thousands of RELA members were deployed to assist police in the patrolling of high-crime areas. Reported abuses by RELA members included extortion, theft, pilfering items from homes, and pillaging of refugee settlements. However, such reports were fewer than in previous years.

On March 1, police arrested a RELA member and three others in connection with a February 27 robbery and rape case. According to police the RELA member had lent a pair of handcuffs to two other suspects who had used it to impersonate policemen. The suspects allegedly abducted a woman and drove her to a hotel where they took turns raping her before robbing her of her cash and valuables. There were no known further developments in the case during the year.

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

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

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

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

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

On September 22, the Kuala Lumpur High Court ordered Nadzri Ahmad and the inspector general of police to pay Johari Kasman RM900,000 (\$284,000) in damages. In 2004 Johari was shot in the back by police and became paralyzed from the waist down. The judge ruled that there was no justification for shooting an unarmed person in the back.

### **Arrest Procedures and Treatment While in Detention**

The law permits police to arrest individuals for some offenses without a warrant and hold suspects for 24 hours without charge. A magistrate may extend this initial detention period for up to two weeks. Although police generally observed these provisions, local NGOs reported that a police practice of releasing suspects and then quickly rearresting them and holding them in investigative custody continued. The law gives an arrested individual the right to be informed of the grounds for his arrest by the police officer making the arrest.

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

Police must inform detainees that they are allowed to contact family members and consult a lawyer of their choice. Police often denied detainees access to legal

counsel and questioned suspects without giving them access to counsel. Police justified this practice as necessary to prevent interference in ongoing investigations, and judicial decisions generally upheld the practice. NGOs continued to speak out against a perceived police mentality of “arrest first, investigate later.” On some occasions law enforcement agencies did not promptly allow access to family members.

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

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

The ISA empowers police to arrest without a warrant and hold for up to 60 days any person who acts “in a manner prejudicial to the national security or economic life of Malaysia.” During the initial 60-day detention period in special detention centers, the ISA allows for the denial of legal representation and does not require that the case be brought before a court. The home minister may authorize further detention for up to two years, with an unlimited number of two-year extensions to follow. In practice the government infrequently authorized ISA detention beyond two two-year terms. Some of those released before the end of their detention period were subject to “imposed restricted conditions.” These conditions limit freedom of speech, association, and travel inside and outside the country. An NGO that follows treatment of detainees reported that they received no complaints of mistreatment of ISA detainees.

Even when there are no formal charges, the ISA requires that authorities inform detainees of the accusations against them and permits them to appeal to a nonjudicial advisory board for review every six months. However, advisory board decisions and recommendations are not binding on the home minister, not made public, and often not shown to the detainee.

On August 2, Home Minister Hishammuddin announced the release of eight Immigration Department officers who had been held under the ISA since October 2010 for alleged connections with human trafficking or migrant smuggling activities. The minister said the detainees showed remorse for the mistakes they had made and had repented.

Almost 4,500 people were detained under the ISA from 2000 to 2010. On June 5, police arrested Abdul Haris Syuhadi for allegedly recruiting for the terrorist organization Jemaah Islamiya. Between November 14 and 16, 13 alleged members of Darul Islam, a forerunner of Jemaah Islamiya, were arrested under the ISA. A credible NGO reported 26 arrests and 20 releases under the ISA during the year. According to the home minister, as of November 9, 37 individuals remained in detention under the ISA, plus 13 individuals being held in solitary confinement under the first 60 days of detention. Reasons given for the detentions included alleged links to terror organizations, document forgery, and involvement in human smuggling syndicates.

Under the Emergency Ordinance (EO), the home minister may issue a detention order for up to two years against a person if he deems it necessary for the protection of public order, “the suppression of violence, or the prevention of crimes involving violence.” On September 11, the RMP Vice, Gambling and Secret Societies Unit reported that 722 people were detained under the EO from January to August, including 10 women.

On June 26, 31 members of opposition political party Parti Sosialis Malaysia (PSM) on their way to Penang were arrested at a roadblock on suspicion of spreading communism and conspiring to overthrow the government. One of them, a teenager, was released that day. On July 2, police released the 30 remaining detainees but rearrested six, including MP Michael Jeyakumar Devaraj; all were then held under the EO until their release on July 29. On August 3, the Penang Sessions Court charged the six PSM activists under section 43 of the Societies Act and section 29 of the Internal Security Act with the possession of allegedly subversive documents. The judge released them on bail. At the hearing on October 10, the police withdrew all charges against the 30.

The Dangerous Drugs Act gives the government specific power to detain suspected drug traffickers without trial for up to 39 days before the home affairs minister must issue a detention order. Once the ministry issues the detention order, the detainee is entitled to a hearing before a court, which has the authority to order the detainee’s release. Authorities may hold suspects without charge for successive two-year intervals with periodic review by an advisory board, whose opinion is binding on the minister. The review process, however, contains none of the procedural rights that a defendant would have in a court proceeding. Police frequently detained suspected narcotics traffickers under this act after courts acquitted them of formal charges. The government detained 751 persons under the preventive detention provisions of the act during the year. Deputy Home Minister

Abu Seman Yusop reported that 92,861 people were arrested from January to October for drug-related offences. In 2010, 157,756 people were detained under various antinarcotics laws, an increase from 125,620 in 2009.

The Restricted Residence Act allowed the home affairs minister to order the arrest and detention of any person or to place individuals under restricted residence away from their homes for an initial period not to exceed five years, then renewable annually. These persons may not leave the residential district assigned to them, and they must present themselves to police on a daily basis. The minister was authorized to issue the restricted residence orders without any judicial or administrative hearings. For most of the year, the government continued to justify the act as a necessary tool to remove suspects from the area where undesirable activities were being conducted; however, the act was repealed on December 30. On October 5, Prime Minister Najib announced in Parliament that the home minister would free 125 detainees and cancel 200 warrants of those arrested under the Restricted Residence Act.

On September 15, Prime Minister Najib announced the government's intention to repeal and replace the ISA and the EO with new legislation designed to prevent subversive acts, counter terrorist threats, and preserve public order and safety. The Bar Council and several human rights NGOs have called repeatedly over the years for the repeal of such laws and the ISA in particular, which does not allow judicial review of ISA decisions in any court except for issues of compliance with procedural requirements. The repeal of the ISA and the enactment of any replacement laws requires an act of Parliament, expected in early 2012.

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-2010 pretrial detainees made up 27.3 percent of the total prisoner population. On March 6, then chief justice Zaki Azmi announced that the number of criminal cases waiting to be heard at the High Courts had been reduced 22 percent. The sessions courts' backlog of civil cases was reduced by 46.5 percent and criminal cases by 12 percent. The magistrates courts backlog of civil cases was reduced by 57 percent and criminal cases by 56 percent. The government increased its use of plea bargaining during the year as a means of reducing case backlogs. In September Prime Minister Najib stated that from 2009 to 2011 the judiciary reduced its backlog of cases by 90 percent.

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

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

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

On September 13, the Federal Court ruled that the findings of a Royal Commission of Inquiry (RCI) in a judge-fixing scandal were not reviewable. The RCI was originally formed in 2002 to investigate a videotape of a purported conversation in which a senior lawyer, V.K. Lingam, and a senior judge, Ahmad Fairuz Abdul Halim, discussed arrangements for assigning cases to “friendly” judges. The RCI released its findings in 2008, stating that it had determined that former prime minister Mahathir, UMNO Secretary General Tengku Adnan, and former chief justice Eusoff Chin among others were involved in manipulating judicial appointments and improperly influenced the promotion of judges. In 2009 in a written reply to opposition Democratic Action Party MP Karpal Singh’s question on why there was no follow-up on the commission’s findings, a minister in the Prime Minister’s Department explained that the cases were closed for lack of evidence. In 2010 Lingam, along with Eusoff Chin and Ahmad Fairuz appealed--first to the Appeals Court and then to the Federal Court--the High Court’s 2008 decision denying them permission to appeal the findings of the RCI.

In 2008 authorities arrested parliamentary opposition leader Anwar Ibrahim for alleged consensual sodomy with a former aide. Prosecutors charged Anwar in court under the penal code for “consensual carnal intercourse against the order of nature,” which carries a potential sentence of 20 years in jail. The court released Anwar on bail.

Anwar’s trial began in February 2010, with his former aide and alleged victim, Saiful Bukhari, taking the stand as the prosecution’s first witness. On May 16, the High Court ruled that the prosecution had proven a prima facie case against him and ordered Anwar to enter his defense. On August 22, Anwar started his defense by delivering a statement “from the dock.” The trial concluded on December 15, and a verdict was expected early in 2012. Prosecution for consensual sodomy between two adults is extremely rare in Malaysian jurisprudence.

## **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 requested by an accused individual facing serious criminal charges. Strict rules of evidence apply in court. 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. Government-held evidence was not consistently made available. Attorneys must apply for a court order to obtain documents covered under the Official Secrets Act. Defendants may appeal court decisions to higher courts, but the law limits a defendant's right to appeal in some circumstances. The government stated that the limits expedite the hearing of cases in the upper courts, but the Bar Council declared that they impose excessive restrictions on appeals.

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

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

## **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

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

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

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

JAKIM guidelines authorize JAKIM officials to enter private premises without a warrant if they deem swift action necessary to conduct raids on premises where they suspect Muslims are engaged in offenses such as gambling, consumption of alcohol, and sexual relations outside marriage.

On February 14, the Selangor and Kuala Lumpur state religious departments detained 88 Muslims suspected of khalwat (close proximity to a member of the opposite sex) during a Valentine's Day operation.

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 surreptitious surveillance devices on private property. In addition, public prosecutors may authorize police to intercept postal and telecommunications messages if a prosecutor judges these likely to contain information regarding a terrorist offense. Intercepted communications from such efforts are admissible in court.

Until it was officially repealed on December 30, the Restricted Residence Act permitted the Home Ministry to place criminal suspects under restricted residence in remote districts away from their homes for an initial period of up to five years, renewable on an annual basis thereafter.

The government bans membership in unregistered political parties and organizations.

Certain religious issues posed significant obstacles to marriage between Muslims and adherents of other religions. The government does not recognize marriages between Muslims and non-Muslims.

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

### **a. Freedom of Speech and Press**

#### **Status of Freedom of Speech and Press**

The constitution provides for freedom of speech and press; however, in practice 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 the imposition of restrictions on the media.

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

Freedom of Press: The government banned some foreign newspapers and magazines and occasionally censored foreign magazines or newspapers, most often for sexual content. The government exerted control over news content, both in print and broadcast media, required the annual renewal of publishing permits, punished publishers of “malicious news,” and banned, restricted, and limited circulation of publications believed to threaten public order, morality, or national security.

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

Violence and Harassment: Journalists were subject to harassment and intimidation due to their reporting. For example, there were reports of two journalists being threatened with physical violence by supporters of the proposed Lynas rare earth plant in Kuantan, and on August 3, police ordered a journalist with the online newsportal *Malaysiakini* to surrender his notebook to them.

Censorship or Content Restrictions: The government continued to censor the media. This was done directly and indirectly by controlling news content; requiring the annual renewal of publishing permits; making publication of “malicious news” a punishable offense; empowering the home affairs minister to ban or restrict publications believed to threaten public order, morality, or national security; and limiting circulation to an organization’s members only. A permit is required to own a printing press. The Printing Presses and Publications Act also prohibits court challenges to suspension or revocation of publication permits. As a result printers often were reluctant to print publications that were critical of the government for fear of reprisal. Such policies, together with antidefamation laws, inhibited independent or investigative journalism and resulted in extensive self-censorship. On May 3, Utusan Melayu Corporation sacked one of *Utusan Malaysia*’s senior editors and president of the National Union of Journalists, Hata Wahari, for issuing statements against the terms of employment. Hata was alleged to have incited racial dissent through his assertion in his October 2010 interview with *Malaysiakini* that Utusan was not relevant. He criticized *Utusan Malaysia*’s lack of independence and stated that many of the country’s media were too close to the government.

On July 1, *Malaysiakini* reported that the Malaysia Communications and Multimedia Commission (MCMC), which oversees all private television and radio stations, had advised electronic media and telecommunications operators in their news coverage to refer to the July 9 Bersih 2.0 rally as an illegal gathering. MCMC reportedly gave the directive to 22 media representatives who were invited to a seminar on June 30. *Malaysiakini* reported that MCMC, who organized the seminar, told editors that the news should highlight the difficulties and inconvenience the rally caused the public, as well as scenes of public property being vandalized and massive traffic congestion. MCMC also issued a warning that it would shut down Web sites deemed a threat to national security, including those promoting the Bersih 2.0 rally, and would not hesitate to take action against any Web site for breaching the MCMC Act.

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. English-, Malay-, and Chinese-language press sometimes provided alternative views on sensitive issues, as did online media and bloggers.

On September 23, *The Malaysian Insider* reported that a public service announcement video promoting the right to vote had been taken off the air at the direction of MCMC because the video featured some opposition leaders, as well as a prominent senior politician speaking about the country having problems. On July 19, the Home Ministry blacked out portions of an article in *The Economist* covering the July 9 election reform rally and the related arrest of 1,600 people. The Publications Control and Qur’anic Text Division stated that the article, published on July 14, contained incorrect statements that could mislead readers.

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. During the April Sarawak state elections, the mainstream media did not provide proportionate coverage of opposition candidates. Television stations censored programming in line with government guidelines. The government maintained a “blacklist” of local and foreign performers, politicians, and religious leaders who were not allowed to appear on television or broadcast on radio.

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

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 July 19, a High Court judge ordered political blogger Amizudin Ahmat to pay RM300,000 (\$95,000) in damages, plus costs, in a defamation suit brought by Minister of Information, Communications and Culture Rais Yatim over a blog entry that suggested that Rais had raped his Indonesian maid. Amizudin filed an appeal on August 1. In February Malaysia’s most famous blogger, Raja Petra Kamarudin, was found guilty of defaming senior lawyer Seri Muhammad Shafee Abdullah over three articles posted on his Web site *Malaysia Today*. Damages had

not been decided because Raja Petra went into self-imposed exile when the charges were first brought against him in 2008.

Publishing Restrictions: The Printing Presses and Publications Act requires domestic and foreign publishers to apply annually 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. Although judicial review may be sought for a banned book, the suspension or revocation of publication permits are not subject to judicial review. During the year the ministry continued to review, censor, and confiscate many foreign publications.

The Home Ministry banned one new book during the year, down from 25 in 2010. On August 2, a Home Ministry prohibitory order banned the publishing of *Islam: Evil in the Name of God*, by Jake Neuman, stating that it is “the evil effort of certain quarters to sow hatred and negative sentiments against Islam among non-Muslims.” The Home Ministry maintains a list of 1,511 titles banned since 1971.

### **Internet Freedom**

The government for the most part maintained a policy of open and free access to the Internet. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. On February 12, Prime Minister Najib reiterated the government’s stand that it would not resort to Internet censorship.

In September 2010 the Home Ministry revealed that a government task force consisting of police, Internet regulators, the Ministry of Information, and the Attorney General’s Chambers was monitoring the Internet for blog postings deemed harmful to national unity and would take action against those trying to stoke racial tensions. The government monitored e-mails sent to Internet blog sites and threatened to detain anyone sending content over the Internet that the government deemed threatening to public order or security. A second task force existed to investigate complaints about possible threats to national security and unity. The government continued to warn Internet operators to avoid offensive or indecent content, or sensitive matters such as religion and race.

On May 30, MCMC sent a letter to all Internet service providers, ordering them to block 10 prominent file-sharing Web sites because of alleged breaches of the Copyright Act.

Criminal defamation laws and the existence of preventive detention laws led to some self-censorship from local Internet content sources such as bloggers, Internet news providers, and NGO activists.

On April 15, a prominent NGO reported that many opposition and news Web sites fell victim to “denial of service” attacks in the period prior to the April 16 election in Sarawak. Inaccessible sites included Sarawak Report, Radio Free Sarawak, Dayak Baru Blog, and *Malaysiakini*, whose Twitter account was suspended. *Malaysiakini* reported that it was the victim of a limited, two-day denial of service attack over the July 9 electoral reform rally weekend.

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

On March 15, the Petaling Jaya Sessions Court issued a discharge not amounting to acquittal to blogger Irwan Abdul Rahman, who had been charged in September 2010 under the Communication and Multimedia Act for “creating and spreading lies with the malicious intent to hurt others.” Irwan had posted a satire stating that the National Electric Company would sue the World Wildlife Federation for organizing the “Earth Hour Campaign” encouraging consumers not to use electricity for an hour because such an event would cost the national corporation millions in unrealized revenue.

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

The government placed some restrictions on academic freedom, particularly the expression of unapproved political views, and enforced restrictions on teachers and students who expressed dissenting views. The government continued to require that all civil servants, university faculty, and students sign a pledge of loyalty to the king and the government. Opposition leaders and human rights activists claimed that the government used the loyalty pledge to restrain political activity among civil servants, academics, and students.

Although faculty members sometimes were publicly critical of the government, there was clear self-censorship among public-university academics whose career advancement and funding depended on the government. Self-censorship took

place among academics at private institutions as well, spurred by fears that the government might revoke the licenses of their institutions. The law also imposes limitations on student associations and on student and faculty political activity.

The government has long stated that students should be apolitical, and students are forbidden by law from being members of a political party. On that basis the government denied political parties access to student forums. According to student leaders, academic authorities sometimes expelled or fined students who signed antigovernment petitions. School authorities did not restrain propagation of government views on controversial issues on school campuses.

On July 30, four National University of Malaysia students, known as the “UKM4,” were acquitted of disciplinary charges under the University and University Colleges Act (UUCA), which provides that no student “shall express or do anything which may reasonably be construed as expressing support for or sympathy with or opposition to any political party, whether in or outside Malaysia.” They had been brought before a disciplinary panel in 2010 because police and university officials found packages of political fliers in the vehicle in which they were traveling. The Court of Appeal also found some provisions of the UUCA unconstitutional (see section 2.b.).

In the past the government censored and banned films for profanity, nudity, sex, violence, and certain political and religious content. Films in Hebrew, Yiddish, or from Israel are not allowed to be shown in cinemas. During the year 21 films were censored mostly for reasons of sex, nudity, brutality, and violence, but no particular films were banned. The high cost of producing an edited version of 3D movies led to some of them not being shown at all. Although the government allowed art-house foreign films at local film festivals, sexual content was censored by blocking the screen until the concerned scene was over.

In October the lesbian, gay, bisexual and transgender (LGBT) rights group Seksualiti Merdeka was forbidden from holding its annual arts festival because of protest by government officials and religious leaders. Deputy Prime Minister Muhyiddin Yassin called the event inappropriate and “a waste of time.” Media censorship rules forbid movies and songs that promote acceptance of LGBT persons.

In June the youth wing of the opposition Pan-Malaysian Islamic Party (PAS) sent a memorandum to the office of the Selangor chief minister, calling for a ban on an internationally sponsored music concert to be held in Shah Alam, a city in

opposition-controlled Selangor. PAS Youth Chief Nasaruddin Tantawi said such concerts promoted a negative culture as men and women mixed freely. The concert took place as scheduled under preagreed guidelines. During the concert PAS Youth distributed 5,000 pamphlets urging youths to refrain from immoral behavior. In past years the youth wing of PAS protested against singers and groups it considered obscene and not in accordance with Islamic values. The government responded in the past by canceling or placing conditions on performances by some international performers.

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

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

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

#### **Freedom of Assembly**

The constitution states that all citizens have “the right to assemble peaceably and without arms”; however, the government placed significant restrictions on this right through use of the Public Order Ordinance and the Police Act. The ordinance restricts public assemblies that could damage security and public order, while the act requires police permits for all public assemblies except for workers on picket lines. The act defines a public assembly as a gathering of five or more persons.

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

On December 21, the upper house of Parliament passed a contentious Peaceful Assembly Act that had been passed on November 29 by the lower house of

Parliament. The law, set to take effect upon official publication sometime in 2012, eliminates the need to apply for police permits, but it also bans street protests, does not allow for peaceful assembly by noncitizens and minors (under 15), and restricts where and when assemblies can be held. MPs from the opposition coalition, Pakatan Rakyat, walked out in protest before the vote on the bill. A variety of NGOs staged protests against the new law.

Police took preemptive action to disrupt a planned February 27 protest organized by the Human Rights Party (HRP), an ethnic Indian rights group, against the controversial novel *Interlok*, which the HRP claimed contains racial slurs. The police denied HRP's application to hold the demonstration and detained 109 persons in connection with the rally, some preemptively. Most of the 109 were released the same day, but eight were held overnight and released on bail the next day without being charged.

On May 26, Bersih, an electoral reform advocacy group, announced plans for a gathering on July 9 to press for electoral reforms. In response Home Minister Hishammuddin stated the government's position that the rally was "illegal," urged sponsors to call it off, and promised to clamp down on demonstrators if they threatened national security. The government also prohibited the wearing and distribution of Bersih's yellow shirts and declared Bersih an illegal organization under the Societies Act. Bersih countered that as a coalition of 62 groups it need not be registered.

On June 30, police raided Bersih's office in Petaling Jaya, as well as the office of an opposition MP, S. Manikavasagam. More than 150 people were detained in the weeks before July 9 for suspected involvement in Bersih-related activities such as distributing leaflets; most were released after questioning. On June 26, 30 PSM members were arrested in Penang on suspicion of spreading communism and conspiring to overthrow the government. Six members, including MP Michael Jeyakumar Devaraj, were held under the Emergency Ordinance until their release on July 29 (see section 1.d). On July 8, police released a list of 91 individuals who were barred from entering Kuala Lumpur's central business district on July 9.

The rally occurred on July 9. The police made arrests and broke up crowds by using tear gas and chemically laced water cannons. Third party observers estimated between 10,000 and 20,000 participants, although police estimated only 6,000 and rally organizers claimed as many as 50,000. Police confirmed 1,667 arrests, including 167 women and minors. Most of the arrested, including lead organizer and former Bar Council president Ambiga Sreenevasan, were freed by

the end of the day. Although the police generally did not resort to physical violence, there were reports of minor injuries and one death, reportedly due to heart complications.

### **Freedom of Association**

The constitution provides for the right of association; however, the government placed significant restrictions on this right, and certain statutes limit it. Under the Societies Act, only registered organizations of seven or more persons may function as societies. The government sometimes refused to register organizations or imposed conditions when allowing a society to register. The government continued to ban the Communist Party and its affiliated organizations because they allegedly posed a national security threat, and on August 4, the Registrar of Societies refused registration to the HRP. On August 16, the High Court dismissed the HRP's appeal of the decision. The government also has the power to revoke the registration of an existing, registered society for violations of the act. Unlike in prior years, the government did not use this power of revocation against political opposition groups.

The UUCA also restricts freedom of association. This act mandates university approval for student associations and prohibits student associations and faculty members from engaging in political activity (see section 2.a.). Many students, NGOs, and opposition political parties called for the repeal or amendment of the act. A number of individuals affiliated with the ruling coalition also supported reexamination of the act, but for most of the year the government maintained that the act still was necessary. On October 31, the Court of Appeals ruled that the section of the UUCA that disallows student expressions of support, sympathy, or opposition to any political party was unconstitutional. The government appealed the decision reportedly because of its implications for the separation of powers. On November 24, Prime Minister Najib announced the government's intention to amend the UUCA to relax restrictions on student involvement in politics while continuing restrictions against politicians and political activity on campus.

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

On August 3, approximately 30 officers from the Selangor Islamic Department (JAIS) raided the Dream Centre Building at the Damansara Utama Methodist Church in Petaling Jaya, Selangor, during an annual thanksgiving dinner hosted by a private charitable organization, Harapan Komuniti. Attendees included 100 persons from various racial and ethnic backgrounds, including 12 Muslims. It was alleged that JAIS raided the event without a warrant, after receiving a report of an alleged attempt to proselytize Muslims (which is illegal). JAIS seized the program sheets and questioned the dinner guests. The JAIS director, Marzuki Hussin, clarified that the inspection was carried out under the Sharia Criminal Enactment (Selangor) 1995 based on information that a breaking-of-fast function would be held with a thanksgiving dinner in a church. On August 15, the 12 Muslims who attended the event gave their statements to JAIS and were told to appear at the Shah Alam Sharia Court on October 19. On October 10, Selangor Sultan Sharafuddin Idris Shah announced that legal action could not be taken against any party because of lack of evidence. He added that the actions of JAIS were correct and did not breach any law enforceable in Selangor, and that the 12 Muslims would be subjected to counseling sessions by JAIS to “restore their belief and faith.”

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

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://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 movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice, although there were some restrictions, particularly with respect to the eastern states of Sabah and Sarawak. The government’s cooperation with the UNHCR improved during the year, and the UNHCR reported greater access to government officials. The government generally did not impede other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern, with the notable exception of failing to allow the UNHCR to assess the asylum claims of 11 ethnic Uighurs before they were deported on August 18.

In-Country Movement: The eastern states of Sabah and Sarawak controlled immigration and required citizens from peninsular Malaysia and foreigners to present passports or national identity cards for entry, consistent with the agreement on Sabah and Sarawak becoming part of Malaysia in 1963. On September 29, human rights activist and Malaysian citizen Haris Ibrahim was denied entry into Sarawak. He and other civil society activists previously had been barred from entering the state in April during the Sarawak state election. The government regulated the internal movement of provisionally released ISA detainees. The government also used the Restricted Residence Act, which was repealed on December 30, to limit movements of those suspected of criminal activities.

Foreign Travel: Citizens must apply for government permission to travel to Israel.

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

The Banishment Act, which provided for the banishment of noncitizens and which had not been used for more than 30 years, was repealed on December 30. The deportation of noncitizens continued to be implemented under the Immigration Act.

## **Protection of Refugees**

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

Because the UNHCR did not maintain a presence at the country's border, most asylum seekers traveled to Kuala Lumpur for determinations; in 2009 and early 2010 the UNHCR conducted mobile registrations in areas with high concentrations of refugees. As of December 31, the UNHCR reported 96,691 persons as asylum seekers and refugees, approximately 93 percent of whom were Burmese citizens with Chin and Rohingya being most numerous, and sizeable groups of Kachin, Karen, and Mon. According to the UNHCR, the country also hosted a population of some 80,000 Filipinos in the province of Sabah, an increase from an estimate of 60,000 in 2010, who are not recognized by the UNHCR or the Malaysian government as refugees, but for whom the government has assumed responsibility.

Nonrefoulement: Beginning in 2009 the government provided preferential treatment to those individuals carrying a UNHCR card. Reports of government deportation of some refugees and asylum seekers with UNHCR refugee cards effectively stopped as of 2009. Occasional reports by refugees of needing to pay bribes to police to avoid detention, despite carrying a UNHCR card, continued.

On August 18, the government deported to China 11 ethnic Uighur individuals who had been denied access to the UNHCR, resulting in strong condemnation from several human rights groups who feared the Uighurs would be mistreated, tortured, or killed upon their return. The government asserted that they were involved in a people-smuggling ring and that China had requested their extradition. Three others, who had applied for refugee status with the UNHCR, were charged with possession of falsified documents, released on bail, and at year's end were awaiting trial. Two others were released without being charged.

Refugee Abuse: The government sometimes detained asylum seekers, either in police lockups or in immigration detention centers, until an asylum seeker's bona fides were established by the UNHCR. NGOs reported that detention facilities were overcrowded, unsanitary, and lacked adequate medical facilities (see section 1.c.). In 2010 eight people died at the detention center at the Kuala Lumpur International Airport after a bacterial outbreak due to rats' urine in the water supply. One NGO reported that NGOs were allowed to visit only two of the eleven detention centers in the country.

Unlike in previous years, there were no allegations from NGOs, international organizations, and civil society groups that immigration officials were involved in the trafficking of Burmese refugees from IDCs to Thailand, where some were trafficked further. NGOs and international organizations reported that since 2009, allegations of abuse of power by RELA decreased. On June 25, RELA's newly

appointed director general, Datuk Mustafa Ibrahim, announced that RELA had halted all enforcement operations against undocumented foreign workers unless invited by immigration or law enforcement authorities.

According to local NGOs and international organizations, IDCs allowed those with UNHCR documents access to the UNHCR while in detention. Refugees with UNHCR cards occasionally were arrested during raids conducted to arrest illegal migrants but were released after the authorities were satisfied with the documents. Since 2009 the authorities also provided the UNHCR access to potential refugees without UNHCR registration cards, as well as to all Burmese detainees in the IDCs, to verify whether they were asylum seekers.

Employment: Although they were not legally authorized to work, the government typically did not interfere with registered refugees doing odd jobs. During the year there were no official announcements concerning deliberations about allowing refugees to work. The government registered 2.3 million documented and undocumented foreign workers under a “6P” migrant registration exercise that began August 23 and subsequently announced plans for a separate program for registration of refugees, in cooperation with the UNHCR, scheduled to be implemented in early 2012.

Access to Basic Services: The government provided access to health care for refugees with UNHCR cards at a discounted foreigner’s rate; however, the costs generally were beyond their means. Mobile clinics run by NGOs existed, but access was limited. Refugees had no access to formal education, and although there were schools run by NGOs and ethnic communities, opportunities for schooling were limited by a lack of resources and qualified teachers. During the year UNHCR staff members conducted numerous visits to various prisons and IDCs located throughout the country to provide counseling and support to its persons of concern and ensure legal representation.

### **Stateless Persons**

Citizenship is derived from one’s parents. The citizenship of one or both of the parents, whether the parents are legally married, and the ability to produce valid identification and proof of citizenship are the key criteria for being able to pass citizenship to a child. The UNHCR estimated that there were 40,000 stateless individuals in peninsular Malaysia alone, in addition to approximately 83,000 refugees and 12,000 asylum seekers. The Philippine government estimated that there were 30,000 children of undocumented Filipino workers in Sabah.

Foreign women often may qualify for permanent resident (PR) status after five years of marriage to a citizen (10 years for foreign men). After two years of PR status, they would be eligible to apply for citizenship. While awaiting PR status, foreign spouses of citizens are usually granted visas to allow them an extended legal stay in the country. A local advocacy group for migrant workers reported that in the last five or six years, these processes have improved to include shorter waiting times in the processing of PR petitions and visas. Although nationality laws in the country are not overtly discriminatory on the basis of gender, ethnicity, or religion, some unevenness in application 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 Malaysia, regardless of whether or not the child was born in wedlock, but Malaysian 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 can be registered as Malaysian citizens. Children born abroad in wedlock to a citizen mother and a foreign father traditionally have been considered to have inherited the father's citizenship. In 2010 Home Minister Hishammuddin announced that such children could be registered as citizens, provided they meet certain requirements, but it was not clear whether this updated procedure had been implemented.

Children born out of wedlock to foreign women are considered by Malaysian authorities to have inherited their mother's citizenship. Such births can be registered only upon production of valid proof of citizenship. This creates a risk of statelessness because many foreign women are unable to produce valid proof of citizenship, such as a passport. According to the UNHCR, there are many cases in which refugees or asylum seekers 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 firm data for the number of children affected by this issue but estimated that it was a widespread problem among the population they served. These undocumented children were not able to attend public schools or access other services that require proof of identification or citizenship.

Some refugees and asylum seekers marry Malaysian men. Although their children born in Malaysia are eligible for citizenship, the woman may have trouble registering the marriage and subsequently the child's citizenship because of inability to provide a valid passport or identification document. Some observers indicated that children born to Muslim refugees and asylum seekers often have an

easier time receiving citizenship than non-Muslim refugees and asylum seekers. For Muslim marriages, a UNHCR document or other documentation may be accepted in lieu of a passport.

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

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

By law anyone entering the country without appropriate documentation is considered illegal and faces mandatory imprisonment for a maximum of five years, a fine not to exceed RM10,000 (\$3,160), 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 formally exercised this right in practice through periodic elections based on universal suffrage; however, while votes generally were recorded accurately, there were some irregularities that affected the fairness of elections, and this right was abridged in practice. The sizes of electoral districts vary, with rural districts generally smaller in population than urban districts. This has the effect of overrepresenting the rural vote, which historically has predominantly supported the ruling coalition.

#### **Elections and Political Participation**

Recent Elections: In the 2008 national elections the opposition parties won 49 percent of the popular vote, 82 of 222 parliamentary seats, 198 of 505 state assembly seats, and control of five of the 13 state governments. The opposition's electoral success for the first time since 1969 denied the ruling coalition a two-thirds majority in Parliament and thereby blocked the government's ability to amend the constitution at will. These gains came despite the fact that opposition parties were unable to compete on equal terms with the governing BN coalition,

led by the UMNO party, which has held power at the national level since independence in 1957, because of restrictions on campaigning, freedom of assembly and association, and access to the media. The opposition parties won eight of 16 by-elections since the 2008 general election.

Bersih 2.0 (see section 2.b.) actively campaigned for electoral reforms. Its principal demands included cleaning of the electoral roll, reform of postal voting, use of indelible ink to reduce the problem of “phantom” voters, and a longer campaign period. A parliamentary select committee on electoral reform was established effective October 3, and tabled an interim report on December 1. Among its ten recommendations were the use of indelible ink, implementation of early voting for security and armed forces personnel, extension of the postal ballot to citizens living overseas, allowing out-of-district voting, cleaning up the electoral roll, and strengthening the Election Commission (EC) to ensure its independence. On December 19, EC Chairman Abdul Aziz Mohd Yusof announced that the EC had agreed to implement seven of the commission’s ten recommendations before the next general election, including the use of indelible ink. Bersih 2.0 welcomed the announcement but also criticized it as being incomplete.

Political Parties: Opposition parties were unable to compete on equal terms with the governing BN coalition, which has held power at the national level since 1957, and could not operate without restriction or outside interference. The lack of equal access to the media was one of the most serious problems for the opposition in the 2008 national elections and in the subsequent by-elections. News about the opposition was restricted and reported in a biased fashion. Opposition leaders also claimed that the Election Commission was under government control and lacked the independence needed to carry out its duties impartially. There were numerous opposition complaints of irregularities by election officials during the 2008 national election campaign; however, most observers concluded that they did not substantially alter the results. During the year NGOs and opposition party leaders continued to lodge allegations of illegally registered “phantom” voters, reportedly brought in from other districts to vote in tightly contested districts; inflated voter rolls; nonregistered voters using fictitious names or the names of dead voters still listed on the voter rolls; and noncitizens registered to vote.

The constitution states that parliamentary constituencies should have approximately equal numbers of eligible voters; however, in practice the numbers varied significantly, particularly between urban and rural districts. The most recently publicized data (for the 2008 general election) showed that the Putra Jaya constituency had 6,606 voters, while in urban Kuala Lumpur the Seputih

constituency had 76,891 voters. In Perak, Gopeng had 74,344 voters compared with Lenggong, with 23,223 voters. Each of these constituencies had one MP.

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

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

In prior years opposition figures in Parliament have been suspended from Parliament from time to time for reasons such as making misleading statements to Parliament and contempt occasioned by their opposition to another's suspension.

Participation of Women and Minorities: Women faced no legal limits on participation in government and politics. As of December two of the 32 cabinet ministers were women. Women held 22 of the 222 seats in the lower house and 13 of the 65 Senate seats.

In practice the political dominance of the Malay majority meant that ethnic Malays held the most powerful senior leadership positions. Non-Malays filled 12 of the 29 ministerial posts and 21 of the 40 deputy minister positions.

#### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials often engaged in corrupt practices with impunity.

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. On June 13, the newspaper *The Star* reported that MACC had arrested 442 people from April 2010 to March 2011 for attempts to bribe enforcement officers. On August 23, MACC reported that it had arrested 46 people in Penang from January to July, with 20 of those suspected of having accepted bribes. On June 27, MACC reported that it had made 944 arrests in 2010, representing an 88.8 percent increase over 2009.

On December 23, the High Court found Mohamed Khir Toyo, a former UMNO chief minister of Selangor, guilty of graft for illegally obtaining for himself and his wife two plots of land.

On September 21, Inspector-General of Police Ismail Omar confirmed the arrest of three senior MACC officers in connection with a RM1 million (\$316,000) extortion and robbery case.

On September 15, the Putrajaya Sessions Court transferred the case of former transport minister Chan Kong Choy to the Kuala Lumpur High Court. As a member of former prime minister Abdullah Ahmad Badawi's cabinet, Chan was charged with deceiving Badawi into approving Kuala Dimensi Sdn Bhd as the turnkey developer for the Port Klang Free Zone mega-transshipment hub project. Chan's predecessor was also charged with deception, and four other prominent figures were charged with various offenses for their involvement in the project, including criminal breach of trust and fraudulent claims. All of the cases remained pending at year's end.

MACC is responsible for investigating and prosecuting corruption by both private and public bodies. Civil servants who refused or failed to declare their assets faced disciplinary actions and were ineligible for promotion.

The Whistleblower Protection Act 2010 is designed to protect individuals who disclose information on corrupt practices in both the public and private sectors. The act states that anyone who has evidence of someone who has committed a corrupt practice, act, or fraudulent activity can file a complaint against that individual and refer the case to court. The whistleblower would be provided immunity from civil or criminal charges.

The Official Secrets Act prohibits the dissemination of classified information. The act encompasses documents concerning national security, defense, and international relations. However, critics accused the government of using the act to prevent dissemination of materials and stifle dissent. Individual members of

Parliament were allowed to request and obtain such information on an ad hoc basis, some of which was then made available to the public.

On April 1, the opposition-controlled Selangor State Assembly passed the Selangor Freedom of Information Enactment, which upon implementation in 2012 is intended to allow public access to certain state documents. This is the first law of this type in the country.

### **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 somewhat cooperative and responsive to their views.

The government allowed NGOs to function independently, met with representatives from NGOs and responded to some requests of NGOs. The government also suppressed some positive media coverage of NGOs that espoused views that were contrary to the ruling coalition's and took some actions against some NGO leaders. For example, the government detained some NGO leaders in connection with the planned rally for electoral reform in July (see section 2.b.), and the Sarawak state government barred some NGO leaders from traveling to Sarawak in connection with state elections in April. Amnesty International's 2010 report *Abused and Abandoned: Refugees Denied Rights in Malaysia* noted that it was given unprecedented and unfettered access to three IDCs in and around Kuala Lumpur. UNHCR representatives and members of the diplomatic corps also noted increased willingness by the government to allow visits to IDCs and trafficking shelters.

The federal government denied entry to several human rights lawyers and activists, and the Sarawak state government also prevented several domestic activists from visiting Sarawak. For example, on July 22, French lawyer William Bourdon was detained upon arrival in Kuala Lumpur on a domestic flight from Penang, where he had given a speech the night before regarding corruption allegations relating to a French company's sale of "Scorpene" submarines, and then deported.

UN and Other International Bodies: The government cooperated with some international organizations during the year. In addition to the improved cooperation with the UNHCR noted above, the International Organisation for

Migration (IOM) worked with the Ministry of Women, Family, and Community Development on projects such as an international training academy on Langkawi Island and a review of antitrafficking laws. The government also worked with the IOM to assess shelters for trafficking victims.

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

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

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

The constitution provides for equal protection under the law and prohibits discrimination against citizens based on race, sex, religion, descent, or place of birth. The law is silent on discrimination based on disabilities. However, the constitution also provides for the “special position” of ethnic Malays and the indigenous groups of the eastern states of Sabah and Sarawak (collectively, bumiputra), and discrimination based on this provision persisted. One of the requirements to be considered an ethnic Malay is to be able 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 5 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. On May 19, the *Malay Mail* reported the following RMP-released rape statistics:

In 2010 there were 3,595 police reports lodged by rape victims, compared to 3,626 in 2009. Of the cases reported in 2010, police arrested 5,068 suspects. Unlike in prior years, the police did not publicly report the number charged, convicted, and punished on rape charges.

In 2009 a sessions court in Pahang State sentenced a man to the maximum five years in jail, in what was believed to be the first successful prosecution of marital rape under the law after it was amended in 2007 to outlaw marital rape. There were no reports of such prosecutions in 2010 or 2011.

The *Malay Mail* reported 3,171 domestic violence cases compared with 3,643 in 2009, and 413 incest cases compared with 385 in 2009. As in the case of rape, the police did not report data on charges, convictions, and punishments for domestic violence cases. Many government hospitals had crisis centers where victims of rape and domestic abuse could make reports without going to a police station. NGOs and political parties also cooperated to provide counseling for rape victims, but cultural attitudes and a perceived lack of sympathy from the largely male police force resulted in many victims not reporting rapes. A leading women's NGO estimated that only 10 percent of rape cases were reported to police. 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 order to help overcome the reluctance by victims of sexual crimes to report crimes and describe the details of what they experienced, the police began using a reenactment process, which allows the police to obtain information by asking the victim to agree or disagree with events depicted in a reenactment. 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, however, generally prohibit wives from disobeying the "lawful orders" of their husbands and presented 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 willfully contravenes a protection order by using violence against a protected person may be punished by imprisonment of up to one year and a maximum fine of RM2,000 (\$630). In extreme cases involving “grievous hurt” inflicted using a deadly weapon, the maximum imprisonment increases to 20 years. Women’s groups continued to criticize the act as inadequate and called for amendments to strengthen it. In their view the act failed to protect women in immediate danger because it requires that separate reports of abuse be filed with both the Social Welfare Department and the police, causing delay in the issuance of a restraining order. Cases also require visible evidence of physical injury.

In October an amendment to the Domestic Violence Act passed that expands the definition of domestic violence to include mental, emotional, and psychological abuse as well as physical violence. 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. A prominent women’s rights NGO welcomed the amendment, but stated that it does not go far enough because it does not cover stalking and intimidation, applies only to marriage relationships, and does not make domestic violence a separate offense under the penal code. In addition, women’s rights activists pointed out that despite the amendment’s passage, its provisions had yet to be implemented by year’s end.

Female genital mutilation (FGM): Some news articles reported that this practice was gaining in 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, which is meant to raise public awareness of the problem, but women’s groups advocated passage of a separate law on sexual harassment. In past years the Malaysian Employers Federation opposed any attempt to legislate against sexual harassment in the workplace, arguing that government-imposed policies would unduly restrict the management of labor relations. One lawyer familiar with sexual harassment cases reported that the authorities take such claims seriously, but victims were often reluctant to report sexual harassment because of the difficulty of proving the offense, the length of the trial, and embarrassment. One women’s rights NGO reported that approximately 500 sexual harassment cases were filed

with the Women, Family and Community Development Ministry from 2000 to 2010; however, according to statistics provided by the ministry, nearly 900 such cases were reported from 2000 to 2007. The ministry has not publicized yearly data since 2007.

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 the birth-control pill and condoms were permitted and were locally available. Estimates of contraceptive use by women remained at approximately 50 percent. The great majority of births were attended by skilled medical personnel, and women generally had access to postpartum care. Women and men generally had equal access to diagnostic and treatment services for sexually transmitted infections, including HIV. According to the most recently published UN statistics, the maternal mortality rate was 31 per 100,000 live births in 2008.

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

Women experienced some economic discrimination in access to employment. On March 9, Minister of Women, Family, and Community Development (MWFCDD) Shahrizat Jalil stated that 47.3 percent of 13.4 million women in the country were in the labor force. The law provides that women are entitled to 90 days' maternity leave. Some pregnant women experienced employment discrimination. On July 13, the High Court in Shah Alam ruled in favor of Noorfadilla Ahmad Saikin, whose offer of employment had been withdrawn once the employer learned she was pregnant. The judge cited the UN Convention on the Elimination of All Forms of Discrimination Against Women and the constitution in ruling that Noorfadilla had the right to be appointed as a relief teacher and that the revocation

of her placement was unconstitutional. NGOs reported that women continued to be discriminated against in the workplace in terms of promotion and salary. On June 1, Minister Shahrizat made public ministry statistics showing that women occupied 32.3 percent of decision-making positions in the public sector. Women were routinely asked their marital status during job interviews. In Kedah women entertainers are only allowed to perform in front of all-female crowds, a policy that the NGO coalition Joint Action Group for Gender Equality has condemned as an infringement of gender-equality rights protected by the constitution.

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

## Children

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

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.

Child Abuse: The number of physical child abuse cases increased approximately 26 percent, from 203 in 2009 to 257 in 2010, the highest number recorded in a five-year period, according to data provided by the RMP to the *Malay Mail* in

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

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

Harmful Traditional Practices: There are no laws on female genital mutilation. FGM reportedly is common among some communities of Muslim Malays, particularly in rural villages in the northern part of the country. In 2009 the online news portal *Malaysiakini* reported that "in Malaysia, FGM refers to the act of making a small scratch or using a sharp penknife to nick the prepuce of the vagina. It is usually performed on infants within a few months of birth, by medical doctors or midwives."

Child Marriage: The minimum age of marriage for males is 18; Muslim girls below the age of 16 may marry with the approval of a Sharia court, but such marriages were uncommon. Based on the incidence of premarital HIV screenings of children, some NGOs concluded that the practice of child marriage continued despite lack of coverage in the media.

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

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

Statutory rape occurred and was prosecuted. A person convicted of statutory rape may receive punishment of imprisonment up to 30 years or whipping, or both. According to the MWFC, most victims were below 15 years of age. However, Islamic law provisions that consider a Muslim girl an adult after her first menstruation sometimes complicated the prosecution of statutory rape. Such a girl

may in fact be charged with khalwat, an offense under Sharia, even if she is under the age of 18 and her partner is an adult. Sharia courts sometimes were more lenient with males charged with khalwat, although in many cases Muslim men were charged and punished for statutory rape under civil law.

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

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

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at [http://travel.state.gov/abduction/country/country\\_3781.html](http://travel.state.gov/abduction/country/country_3781.html).

### **Anti-Semitism**

Estimates of the country's Jewish population were between 100 and 200 people. Other than occasional editorials in government-owned newspapers and statements by current and former political officeholders, which tend to blame civil society activity on "Jewish plots," there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

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

The government did not discriminate against persons with disabilities in employment, education, access to health care, or in the provision of other state services. A public sector regulation reserves 1 percent of all public-sector jobs for

persons with disabilities. The government did not mandate accessibility to transportation for persons with disabilities, and few older public facilities were adapted for such persons. New government buildings were generally outfitted with a full range of facilities for persons with disabilities.

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

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

Following protests by disabled persons in past years, the government undertook initiatives to promote public acceptance of persons with disabilities, make public facilities more accessible to such persons, and increase budgetary allotments for programs aimed at aiding them. Recognizing that public transportation was not “disabled-friendly,” the government maintained its 50 percent reduction of the excise duty on locally made cars and motorcycles adapted for persons with disabilities. The Ministry of Human Resources was responsible for safeguarding the rights of disabled persons.

On September 9, Minister Shahrizat announced that the cabinet approved a proposal requiring all local authorities include a person with disabilities on planning and development committees. The proposal also suggested that local authorities set up an access auditing unit for the purpose of recommending access improvements for such persons to buildings and facilities.

The 2008 Persons with Disabilities Act recognizes the rights of persons with disabilities to enjoy the benefits of public transport, housing, education, employment, and health care. However, there is no penalty for those who do not comply with its provisions. For example, there are bylaws requiring new buildings to provide access for persons with disabilities but also loopholes that allow local authorities to exempt compliance. Critics called the act a “toothless tiger.”

A prominent advocate for persons with disabilities pointed out that practical difficulties continued to outweigh any prodisabled laws or policies. For example, the 1 percent set-aside for public sector jobs was not in fact filled, and buildings still lacked adequate toilet and other facilities. He described elementary schools as being practically inaccessible to disabled students, requiring parents who had the means to come to school to carry their children up and down stairs, feed them, and

carry their books to class. Some public transportation was equipped with ramps that can manually be put in place to assist disabled patrons, but they required driver assistance and were seldom used. The government does not pay caregivers of persons with disabilities.

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

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 non-bumiputra in higher education, government employment, and ownership of businesses. Many industries were subject to race-based requirements that mandated bumiputra ownership levels, limiting economic opportunities for non-bumiputra citizens. 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 appeared to contribute to the widening economic disparity within the bumiputra community. Ethnic Indian citizens, who did not receive such privileges, remained among the country's poorest groups. Another goal of this policy is for bumiputra to hold 30 percent of the nation's wealth. According to several studies, the program reached or exceeded this target; however, official government figures placed bumiputra equity at 18.9 percent. The government did not respond to public requests to make its methodology available.

In 2010 the prime minister unveiled a New Economic Model that called for restructuring the country's system of bumiputra ethnic preferences to reduce unequal treatment of different ethnicities by the government and to better target subsidies and preferences to the poorest citizens, regardless of ethnicity. Conservative bumiputra-rights groups raised strong objections to any changes that could threaten ethnic preference programs. On February 8, Prime Minister Najib launched Unit Peneraju Agenda Bumiputra (Teraju) to strengthen further the bumiputra development agenda and boost its economic participation. Critics expressed concerns that Teraju would undermine the New Economic Model and failed to focus on merit-based affirmative action policies. The government claimed that it was necessary because bumiputra equity in the economy remained low.

### **Indigenous People**

Indigenous people (the descendants of the original inhabitants of the peninsular region of the country and the Borneo states, such as the Penan) generally enjoyed the same constitutional rights as the rest of the population. However, in practice federal laws pertaining to indigenous people of the peninsular region, known as the Orang Asli, 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 made 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 makes no reference to the Orang Asli. The government did not effectively protect indigenous persons’ civil and political rights.

The Orang Asli, who numbered approximately 180,000 (0.86 percent of the population), constituted the poorest group in the country. According to the 10th Economic Plan covering the years 2011-15, 50 percent of the 29,990 Orang Asli households were living below the poverty line. Of these, approximately 5,700 households (19 percent) were considered to be ultrapoor. In 2010 a local NGO that focused on Orang Asli rights estimated that these numbers underreported the population living in poverty because it considered only Orang Asli living in established villages--not those living deep in the rainforest. A government-sponsored national advisory council existed to monitor the development of Orang Asli; five of the council’s 17 members were Orang Asli, and a local NGO reported that the council did not meet during the year. One Orang Asli held a senior management position in the government’s Department of Orang Asli Development (known by its Malay acronym, JAKOA). The director general of the socioeconomic development section of JAKOA stated that 24 percent of JAKOA’s employees were Orang Asli. JAKOA reported that the dropout rate among primary school children had improved from 30 percent to 20 percent since 2008. Moreover, the number of students who drop out between primary and secondary school declined from 50 percent to 30 percent during the same timeframe. One supporter of Orang Asli interests pointed out, however, that these statistics did not account for Orang Asli children who had never been to school at all. Approximately 300 Orang Asli students attended university.

Under the Aboriginal People’s Act, Orang Asli are permitted to live on designated land not as owners but as tenants at-will, and they did not possess land rights. The law allows the government to seize land of indigenous peoples with the payment of compensation. Observers reported that over the years, the total area of land

reserved for Orang Asli had decreased, and some land previously set aside as Orang Asli reserve was rezoned for development. Although the Orang Asli were given the authority to reside on the land, these rights were often undocumented. This led to confrontations between the Orang Asli and logging companies. While the government continued development in these areas, the Orang Asli struggled for rights to land. In 2008 the government announced it would grant land ownership rights of 125,000 acres of rural land currently belonging to state governments to 20,000 Orang Asli households. In 2009 the government instituted a new policy towards the Orang Asli designed to lift them out of poverty by giving two to six acres to each of the approximately 30,000 Orang Asli families to work and cultivate on their own. NGOs such as the Center for Orang Asli Concerns expressed disagreement with such plans, noting that what the Orang Asli stood to lose under such a program was far greater than what they stood to gain. Although JAKOA can act as an intermediary in implementing this policy, the final determination for compensation for land is a state matter.

On August 16, JAKOA announced that it had concluded discussions with all state governments concerning the policy on granting land titles to the Orang Asli. On August 24, the president of the Malaysian Bar Council, Lim Chee Wee, (who represents a number of Orang Asli in several claims against developers and state agencies) said the Orang Asli did not welcome the announcement because it demonstrated the government's refusal to consult the Orang Asli community before formulating policies. On August 25, SUHAKAM Chairman Hasmy Agam said that SUHAKAM was disappointed that the government proceeded with the amendments without waiting for the completion of the government's national inquiry into the Land Rights of Indigenous Peoples, held on September 17 to October 1, and until "all efforts have been made to obtain free, prior and informed consent from all stakeholders, especially the affected Orang Asli."

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

Laws allowing condemnation and purchase of land do not require more than perfunctory notifications in newspapers, to which indigenous persons may have no access. In past years this deprived some indigenous persons of their traditional lands with little or no legal recourse. In recent years court decisions recognizing

native customary title in land have resulted in greater protections of the Orang Asli land rights; however, the decisions result in compensation to the plaintiffs, not return of confiscated lands. In 2007 the Federal Court, the country's highest court, found that native customary titles are recognized in common law.

The 2007 petition filed by the Semalai, an Orang Asli group, to the high court to review a Pahang State government-ordered eviction from an area the Semalai claimed as their traditional land remained pending, with a hearing scheduled for March 2012. In 2007 a suit was filed against authorities who allegedly tore down an Orang Asli church in Gua Musang. In 2009 the high court declared that the demolition was not legal because it was done before the expiry of the 30-day notice given to the Orang Asli as required by law, that the Orang Asli had a right to occupy the land and to practice the religion of their choice under the constitution, but that the building was not legal because it did not comply with building regulations and that the land itself belongs to the government. The government appealed the judgment, and the case remained pending at year's end.

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 was passed down from one generation to another. Customary native lands were not always well demarcated. Indigenous rights groups alleged that Abdul Taib Mahmud, the chief minister of Sarawak, leased Penan and other indigenous groups' customary land to logging companies and land developers in exchange for political favors and money. Local observers claimed that logging companies harassed and sometimes threatened vocal Penan leaders and land-rights activists. The Sarawak Penan Association continued urging the state government to delineate the Penan's native customary land boundaries, revoke timber licenses that overlapped their land, stop issuing provisional leases for plantations, and halt all logging and plantation development activities on their land. The Penan tribe was among the poorest groups in the country and lived below the poverty line.

In January the Sarawak Women for Women Society submitted a proposal to state and federal governments to the effect that logging companies should only be awarded contracts if they complied with conditions to protect Penan girls and women from sexual abuse. The proposal stemmed from allegations made in 2009 by an international NGO that reported that workers from two logging companies, including one owned by the chief minister's family, regularly sexually abused Penan women and girls, resulting in several pregnancies. In 2009 Minister Shahrizat confirmed that Penan girls had been raped and molested by timber

company workers. The minister announced that the timber company was identified and police would take further action. Subsequently, Deputy Commissioner of Police for Sarawak Hamza Taib stated no further action would be taken on three of the cases, while the fourth was still pending. In July 2010 Minister Shahrizat visited the Penan community and urged the police to take these cases seriously. In August 2010 the logging company Samling threatened to withhold transport services for locals unless the Penan retracted their sexual abuse and rape allegations.

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

Laws against sodomy and “carnal intercourse against the order of nature” exist but were rarely enforced. However, this law was the basis for the case against parliamentary opposition leader Anwar Ibrahim (see section 1.e.). Religious and cultural taboos against same-sex sexual conduct were widespread. On April 18, the Terengganu State Education Department announced that it had sent 66 schoolboys, listed by their schools as students who displayed feminine qualities, to a camp where they received counseling on masculine behavior to discourage them from being gay and to guide them back “to a proper path in life.” The Joint Action Group for Gender Equality, among other groups, condemned the move and described the singling out of the boys as “highly discriminatory.”

### **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 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 laws provide for the right to strike and to bargain collectively, but both are severely restricted by regulations and by sector.

The 1959 Trade Unions Act (TUA) prohibits interfering with, restraining, or coercing a worker in the exercise of the right to form trade unions or participation in lawful trade union activities. Defense or police officials, or public sector

workers categorized as “confidential, managerial, and executive,” are prohibited from joining a union. Additionally, the act restricts a union to representing workers in a “particular establishment, trade, occupation, or industry or within any similar trades, occupations, or industries.” The Industrial Relations Act (IRA) prohibits employers from taking retribution against a worker for participating in the lawful activities of a trade union.

Enforcement of freedom of association lay primarily with the director-general of trade unions (DGTU). For example, the DGTU and, in some cases, the minister of human resources can 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. By law employers are prohibited from imposing conditions on union membership and activity in employment contracts. In theory foreign workers can join a trade union; however, the Immigration Department bars foreign workers from holding trade union offices.

The IRA requires that an employer respond to a union’s request for recognition within 21 days of application. If an employer does not respond to the union application within 21 days, the union must submit a written appeal to the DGTU within 14 days, who will then notify the minister of human resources of his findings. If the union fails to submit the appeal within the stipulated period or the minister decides that recognition is not to be accorded, the union is not recognized.

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

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

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

Although private sector strikes are legal, the right to strike is severely restricted. The IRA contains a list of "essential services" in which unions must give advance notice of any industrial action, including financial, transportation, utilities, communications, defense, security, and government sectors, and other industries designated by the minister of human resources as essential to the economy. The list includes sectors not normally deemed essential under International Labor Organization (ILO) definitions. The IRA further denies the right of unions and individuals to hold strikes protesting the lack of recognition of their union.

Additionally, the process for conducting a legal strike is unwieldy. MTUC officials said that requirements imposed by the authorities were so stringent that it was almost impossible to strike. According to MTUC officials, there were no strikes during the year (and no major strikes since 1962).

Private sector workers and, to a lesser extent, public sector workers, have the right to organize and bargain collectively, and collective bargaining was widespread in those sectors where labor was organized. In companies designated as having pioneer status, the government did not allow workers to affiliate with territorial union federations. In 2010 the government approved the formation of trade unions in the electronics sector, formerly a "pioneer" sector in which collective bargaining was restricted. The Electronics Industry Workers' Union (EIWU) (Southern Region) is an example of an electronics trade union that was recognized under the new policy. On January 27, the union at ST Microelectronics voted to join EIWU.

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

The ILO has repeatedly, including during the year, asked the government to amend the IRA to remove restrictions on the scope of subjects that can be collectively bargained. The law explicitly states that issues of transfer, promotion, appointments, dismissal, and reinstatement are internal management prerogatives; therefore, they are excluded from collective bargaining. The ILO has also called on the government to limit the amount of discretionary power allotted the DGTU and the minister, including when to intercede in bargaining.

The minister would commonly order recognition of a union if at least 50 percent of the workers in the relevant establishment were members. This threshold, however, was often difficult to achieve because of the numbers of contract workers and workers who were designated as being in management or official roles and who were therefore not eligible for union membership. MTUC officials continued to express frustration about delays in the settlement of union recognition disputes. In practice it was common for such applications to be refused and unions to go unrecognized for one to four years.

Government interference in union activities was rare; however, some trade unions reported that the government detained or restricted the movements of some union members under laws that allow temporary detention without the recipient being charged with a crime and that some foreign workers were not paid or were denied usual work because of their union activity. For example, in May MTUC lodged a complaint on behalf of five Indian nationals based in part on nonpayment of 7-10 months' wages. The Labor Office investigated and on November 4, charged the employer for trafficking. A hearing was scheduled for January 2012.

Many employment contracts for foreign workers contained provisions banning the worker from joining a trade union. NGOs reported that sometimes, 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. The president of the newly formed electronic workers union for Renesas Semiconductor was dismissed in April following his posting on a blog about his union recognition claim. Labor activists claimed that his only “crime” was being responsible for organizing workers.

The law has the practical effect of encouraging employers to hire contract workers who are then left without the ability to form a union because they are technically employed in a different industry (staffing) than that in which they are actually working (e.g., hospitality). One NGO reported that following its engagements with Sime Darby, the company agreed to switch to direct recruitment of full-time workers on at least two of its large plantations instead of using recruitment agencies. Similarly, observers noted that the government, by classifying more workers as self-employed, put further limits on their ability to organize.

On September 21, the National Union of Bank Employees (NUBE) accused Maybank, the country’s largest bank, of backing a new, in-house union in order to dodge a claim for bonuses. Maybank chief executive Datuk Seri Abdul Wahid Omar said that although 61 percent of Maybank employees in the clerical/non-clerical category were NUBE members, other employees decided to form the Maybank Non-Executive Union (Mayneu) on January 3. NUBE continued its dispute, initiated in 2009, with Maybank over bonuses and was seeking 80 months’ pay for its members.

In practice the fact that unions are only able to provide limited protection for workers, particularly foreign workers, created a disincentive to unionize. Some foreign workers reported to NGOs that workers who were successful in proving that their rights had been violated would at best be able to obtain their unpaid wages but no damages, costs, or interest. The employers suffered no additional penalty.

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

The constitution prohibits forced or compulsory labor. By law five agencies, including the Department of Labor, have enforcement powers, but their standard operating procedures did not always result in officers proactively searching for indications of forced labor. A variety of sources reported occurrences of forced

labor, and conditions existed that created vulnerabilities to forced labor in commercial agriculture, the fishing industry, factories manufacturing computer components, garment production, restaurants, and domestic households.

The main types of forced labor included debt bondage and involuntary domestic servitude. Conditions on some plantations created vulnerabilities to debt bondage, labor activists and human rights NGOs reported, as well as in some factories and other businesses. Labor union representatives described a typical pattern involving recruiting agents that impose high fees that sometimes made foreign workers vulnerable to debt bondage. Being indebted to their employers and often without their passports, affected workers were often forced to accept harsh working conditions, lower wages than promised and wage deductions, and poor housing, under threat of imprisonment or deportation.

The government prosecuted several alleged exploiters of forced labor. The police and, to a lesser extent, the Immigration and Labor Departments initiated a combined 45 labor trafficking investigations during the year. The police initiated three prosecutions for labor trafficking but reported no convictions. The police reported that from January to November, officials issued 116 interim protection orders to suspected victims of labor trafficking and 74 protection orders. On September 30, Home Ministry Secretary-General Mahmood Adam announced that 136 people, including eight Malaysians, had been rescued in 53 human trafficking cases--19 involving forced labor--between January and August.

Although the Malaysian Passport Act criminalizes possession of someone else's passport "without legal authority," NGOs continued to report that agents or employers in some cases drafted contracts that included a provision for employees to sign over the right to hold their passports to the employer or agent, while in other cases they simply confiscated employees' passports without contractual authority, thereby making employees more vulnerable to forced labor. This practice effectively made some foreign workers captives of the hiring company.

One high-profile example of forced labor involved 31 Burmese migrant workers working at a factory run by the Malaysian subsidiary of Japanese electronics firm Asahi Kosei (M) Sdn Bhd. The workers alleged that they were being paid wages lower than promised when they agreed to come to Malaysia; that they suffered numerous illegal wage deductions, loss of cooking utensils, electricity and accommodation for lodging complaints; and that they were threatened with termination and deportation when they lodged complaints.

When human rights blogger Charles Hector sought to publicize the workers' complaints, the company sued Hector for defamation, based on its argument that no direct contractual relationship existed between the workers and the company. In exchange for the company dropping its defamation suit, Hector retracted his statements. There were no reports of the outcome for the migrant workers involved.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://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 in the past, many Malaysians had worked on plantations as family units, and both children and adults, particularly ethnic Indians, experienced forced labor. During the year, however, the majority of plantation workers in Peninsular Malaysia were migrant workers who did not bring their families. For this reason the union reported that it was now very rare to find children involved in plantation work in peninsular Malaysia. Child labor in urban areas often was found in family food businesses, night markets, and small-scale industries. Child labor was also evident among domestic workers, especially Indonesians and Cambodians, as a result of document fraud (incorrect ages on travel and work documents). One NGO reported that stateless children in Sabah were especially vulnerable to labor exploitation, reportedly in the forms of forced begging and occurrences of work in service industries, including restaurants.

### **d. Acceptable Conditions of Work**

No national minimum wage provision was in effect. Prevailing market wages generally provided a decent standard of living for citizens, although not for all

migrant workers. According to the results of a 2010 survey conducted by the Federation of Malaysian Manufacturers, the mean basic monthly salary of foreign workers engaged in the manufacturing sector was RM750 (\$240). Wage councils, established by a 1947 act to provide a recommended minimum wage for sectors in which the market wage was deemed insufficient, had little impact on wages in any sector. According to MTUC officials, the wage councils had not met since 1996, and their recommended wages have long been obsolete.

On June 30, Parliament passed the National Wages Consultative Council Act, which aims to set up a National Wages Consultative Council, to recommend the minimum wage and coverage for various sectors, types of employment, and regions. Both the MTUC and the Malaysian Employers' Federation opposed the act, united in the view that it gives the minister of human resources overly wide discretion in setting, amending, or cancelling minimum wage directives. The wage council will include at least five members each representing workers, employers, public officers, and other unspecified members. However, the government has full discretion to determine when the council may make its recommendations and to accept or reject them. Once the government accepts and implements a minimum wages order, it may amend or revoke the order at any time. The act imposes a RM10,000 (\$3,160) fine for each worker if the employer fails to pay the basic salary designated by the council.

Under the Employment Act, working hours may not exceed eight hours per day or 48 hours per workweek of six days. Each workweek must include a 24-hour rest period. The act also sets overtime rates and mandates public holidays, annual leave, sick leave, and maternity allowances. Limits on overtime vary by sector. The Labor Department of the Ministry of Human Resources is responsible for enforcing the standards, but a shortage of inspectors precluded strict enforcement.

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

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

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

Mechanisms for monitoring workplace conditions were inadequate. Private, for-profit labor agencies, themselves often guilty of abuses, were often responsible for the resolution of abuse cases. Bilateral labor agreements with Indonesia did not provide adequate protections for household workers; however, a new MOU with Indonesia signed in May calls for the creation of a joint task force to monitor the situation regarding Indonesian domestic workers. The amended MOU also provides one rest day per week (or compensation) and rules on the repayment of recruitment fees. In December the Indonesian government lifted its ban on sending domestic workers to Malaysia after a minimum monthly wage was agreed (RM700 (\$221), increased from RM450 (\$142). The first workers under this new agreement were expected to arrive in April 2012.

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

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

The law permits migrant workers to bring employment disputes to the Industrial Court. However, the policy of the court was not to hear complaints of migrants who were undocumented. Court proceedings were time consuming, which may also prevent migrant workers from seeking redress through the court system. Once their work visas expire, migrants require “special passes” to stay in the country-- they would be permitted to follow the court case but would not be allowed to work. The passes are valid for one month and cost RM100 (\$32) to renew. Renewal is subject to the discretion of the director general of immigration.

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

Plantation workers generally received production-related payments or daily wages. Under a “safety net” agreement, workers are bound to work for 26 days per month, unless unable due to a natural disaster such as flooding or heavy rain, and are paid a minimum of RM650 (\$205). There are three main categories of plantation workers: general field, harvest (constituting the majority), and tappers. Bonus or overtime rates depend on the productivity level. For example, tappers who bring in more than the minimum eleven kilos of rubber receive extra earnings, up to RM2,000 (\$631) for the most productive tappers. Such agreements are approved by Malaysian Agriculture and Plantation Association and are in line with the Employment Act.

Employers sometimes failed to honor the terms of employment and abused their household workers. For example, the contract terms for Indonesian domestic workers, who made up approximately 90 percent of all foreign household workers, were often vague and open to abuse. At the same time that arrivals from Indonesia dropped due to the 2009 ban, arrivals from Cambodia and other countries increased. An estimated 30,000 Cambodian maids arrived in the first seven months of the year, and some encountered conditions similar to those that had led to Indonesia’s ban. In July one young Cambodian maid was found dead under suspicious circumstances and another was rescued by police after she was allegedly abused and had her head shaved by her employer. In October the Cambodian government banned recruitment firms from sending domestic workers to Malaysia following numerous reports of abuses. The Cambodian ban remained in force at year’s end; the Indonesian ban was lifted in December.

On November 1, the Indian High Commission began implementing its revised guidelines for the employment of workers from India that included a minimum wage structure ranging from RM800 (\$252) per month for unskilled workers (restaurant, construction) to RM1,400 (\$442) per month for skilled domestic workers. According to the High Commission, Indian authorities do not grant workers clearance for travel to Malaysia unless they can produce a conforming employment contract that has been attested to by the High Commission in Kuala Lumpur as meeting the guidelines.

On June 5, Isti Komariyah, a 26-year-old Indonesian maid, died on her way to the hospital after being physically abused by her employers. On June 16, the magistrates court in Kuala Lumpur charged her employer with murder, which carries a mandatory death penalty upon conviction.

In January the Kuala Lumpur High Court dismissed the appeal of Hau Yuan Tyng from her conviction for causing grievous harm to her Indonesian maid, Siti Hajar. In May 2010 Hau had been found guilty on three counts; she allegedly scalded Siti Hajar with boiling water as well as tortured and starved her. In dismissing Hau's appeal, the judge increased her jail time from eight years to 11 years and ordered her to pay RM5,000 (\$1,580) in compensation to Siti Hajar.