

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

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**Questions**

**1. Please provide any country information on young single Tamil women being denied protection by the police, particularly in Perak in Malaysia?**

**RESPONSE**

There is no definitive information specifically relating to the protection of Tamil women by the police in Malaysia. However, there are several sources demonstrating discrimination towards Tamils in Malaysia.

There is some information indicating discrimination towards women in Malaysian society more generally.

In addition there is some information indicating the government is moving towards reducing the level of discrimination towards ethnic minorities including Tamils.

This subsequent response is divided into three sections:

1. [What is the background of Tamils in Malaysia?](#)
2. [Is there any discrimination towards Tamil's by the state?](#)
3. [Is there any discrimination towards women by the state?](#)

**1. What is the background of Tamils in Malaysia?**

**1.1 Most of the Tamils in Malaysia adhere to the Hindu faith and make up the majority of the Indian population:**

While the Indians are dispersed throughout Malaysia, there are significant concentrations of group members in the country's plantation regions....

The majority of Indians are Hindus (80%) but a minority follows Islam which is the main religion of the dominant Malay community. Most group members speak Tamil instead of the country's main language, Malay. They are also of a different racial stock than the dominant group and there has been little or no intermixture.

The Indians are primarily the descendants of Tamils who were brought to the.....

The economic status of the group has changed little since colonialism as the Indians remain concentrated in the plantation sector and they are reported to be among the poorest sectors of society.

...

The Indians are economically and politically disadvantaged in relation to the country's majority population. They face significant poverty and under-representation in the economic arena due to historical practices by the Malay community. Their political under-representation is also due to the social practices of the dominant group and there are few public policies that seek to redress Indian disadvantages.

Economic and social issues form the primary grievances of group members ('Assessment for East Indians in Malaysia' 2003, Minorities at Risk website, 31 December <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=82003> - Accessed 4 September 2008 - Attachment 1).

## **1.2 Ethnic Indians continue to be among Malaysia's most disadvantaged:**

The Government maintained extensive preferential programs designed to boost the economic position of the Malay majority, which remained poorer on average than the Chinese minority. Such preferential programs and policies limited opportunities for non Malays in higher education, government employment, business permits and licenses, and ownership of land. According to the Government, these programs were instrumental in ensuring ethnic harmony and political stability. Ethnic Indian citizens, who did not receive such privileges, remained among the country's poorest groups (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Malaysia*, February, Section 5, National/Racial/Ethnic Minorities – Attachment 2).

## **2 Is there any discrimination towards Tamils?**

### **2.1 There is information demonstrating discrimination towards Tamils in Malaysia. However, this information is not specific to female Tamils and not specific to the state of Perak.**

#### **2.1.1 For instance, a Times of India report stated:**

CHENNAI: MDMK General Secretary Vaiko on Tuesday requested Prime Minister Manmohan Singh to take immediate steps through diplomatic channels to protect ethnic Indians in Malaysia.

In a letter to Dr Singh, a copy of which was circulated to the media here, he said the Malaysian authorities had used police force against ethnic Indians, mostly Tamils, when they took out a peaceful rally on November 25.

"Making up some eight per cent of Malaysia's population, Indians are historically underprivileged, compared to other ethnic groups and have long felt discriminated."

"More than 90 per cent of ethnic Indians in Malaysia are Tamils. They have contributed to bring economic prosperity in Malaysia, shedding their sweat of labour all these years. But they have been discriminated in education, jobs and business opportunities by Malaysian authorities," he added.

Stating that the reported statement of the Malaysian Prime Minister against the peaceful rally was "disturbing and causes apprehension" about the future safety and welfare of ethnic Indians, Vaiko requested the Prime Minister to take steps to protect them ('Protect ethnic Indians in Malaysia: Vaiko' 2007, *The Times of India*, 27 November [http://timesofindia.indiatimes.com/Protect\\_ethnic\\_Indians\\_in\\_Malaysia\\_Vaiko/articleshow/2575764.cms](http://timesofindia.indiatimes.com/Protect_ethnic_Indians_in_Malaysia_Vaiko/articleshow/2575764.cms) - Accessed 29 August 2008 – Attachment 3).

**2.1.2 In addition a March 2004 BBC report sets out clearly some of the discrimination issues being faced by Tamils in Malaysia. These include fear of arrest, unequal education funding and preferential treatment being given to indigenous Malays:**

'Malaysia's prime minister has ordered his government to take a fresh look at recruitment levels of non-Malays, after thousands of ethnic Indians took to the streets to protest against what they say is years of discrimination.....

Police used tear gas and water cannon to break up the marches.

The level of support was unprecedented, but, aside from the numbers involved, what has particularly concerned the Malaysian government is the ethnic division the protest highlighted.

Modern Malaysia is built on the co-existence of three ethnic groups - Malays, Chinese and Indians.

The protesters were Indians, who make up around 8% of the population, railing against the Malay majority, who account for about 60%.

The country has quotas that ensure preferential treatment for Malays looking for work or those who want to set up a business.

The Indians say this means they lose out.

**Fears realised**

P Uthayakumar is one of the lawyers who lead the Hindu Rights Action Force (Hindraf) - the organisation behind last Sunday's protest march.

Along with two colleagues, he was arrested and charged with sedition before the event, but later released without charge.

He says discrimination was something Indians have always been worried about.

..."There was even one suggestion made... that we would be completely at the mercy of the Malay [Muslim] majority. Today it has become completely true," he said.

## **Unequal funding**

The marchers were calling for fairer treatment. Education is a key complaint.

They say their Tamil-speaking schools do not get the same money as other public schools, which means the level of teaching is lower.

But in the area of the capital where the Indian community is centred, 21-year-old graduate and telecoms engineer Tavan Aysan said he had done very well out of Malaysia's education system.

"In my case I didn't face that sort of a problem," he said, but added: "It could be my luck."

But the people around us as we spoke, getting on with their work, illustrated the problem many complain of.

## **...Heightened anxiety**

The two million Indians in Malaysia are predominantly Hindus, and the Hindraf campaigners say there has been religious discrimination too.

Hindu temples have been torn down to make way for new buildings without proper consultation, they claim.

All of this would be valid grounds for complaint in the eyes of many governments but in Malaysia, protests are not acceptable.

Prime Minister Abdullah Badawi warned people that taking to the streets was not "the proper way" in Malaysia.

## **...'Social transition'**

But there is also a contemporary political element to these protests.

A general election is coming here, probably in the new year, and the race card is a vote winner, although you are unlikely to hear many say that overtly.

At the recent annual assembly for Umno - the main party of Malays and the main party in the governing coalition - the politicians warned people not to challenge Malay rights, which lie at the foundations of modern-day Malaysia.

...The key difference with last weekend's protest was that it was a protest rooted in ethnic division.' (Brant, Robin 2008 'Malaysia's lingering ethnic divide', *BBC News*, 4 March <http://news.bbc.co.uk/2/hi/asia-pacific/7121534.stm> - Accessed 29 August 2008 – Attachment 4).

## **2.2 A paper produced by the Immigration and Refugee Board of Canada dated 23 September 2003 demonstrates discrimination towards Malaysian Tamils but suggests there are very few sources available to corroborate this. For example:**

Information on the treatment of Hindu Tamils was scarce among the sources consulted by the Research Directorate.

*Country Reports on Human Rights Practices for 2002* states that Indians in Malaysia disproportionately suffer from poverty and, unlike the majority Malays, have not benefited from government programs and policies designed to improve educational and employment opportunities (31 Mar. 2003).

Several 2002 reports in the *Malaysiakini*, an online pro-opposition newspaper, discuss some Tamil groups' concern, especially for poor Tamils, over the government's move to have mathematics and sciences taught in English (15 Aug. 2002; 22 Nov. 2002; 24 Nov. 2002). These Tamil groups, in disagreement with the Malaysian Indian Congress (MIC) over the language issue, claimed that the MIC's stand did not represent the views of all of Malaysian Indians (*Malaysiakini* 15 Aug. 2002). K. Arumugam, an NGO representative who teaches impoverished children, stated that "the government has eroded almost every right by imposing repressive laws<sup>3/4</sup>from free speech, freedom of the press, assembly<sup>3/4</sup>now it wants to take away the people's right to education" (ibid. 22 Nov. 2002). *Malaysiakini* also reported that approximately 200 people, predominantly of Indian origin, marched on 24 November 2002 in protest of the language issue (24 Nov. 2002). Police reportedly unsuccessfully attempted to stop the procession and retrieve identity cards from the participants (*Malaysiakini* 24 Nov. 2002).

In its *World Report 2002*, Human Rights Watch, briefly documents a 9 March 2002 incident of violence between ethnic Malays and Indians in an underprivileged area of Kuala Lumpur (2003). The Malaysian police reported that six people five of whom were ethnic Indians were killed in the dispute (HRW 2003). Opposition party members claimed that the death toll was higher (ibid.).

Amnesty International's annual report on Malaysia for events occurring in 2002, documents opposition member Gopala Krishnan's arrest for sedition after he criticized the treatment of ethnic Indians in police detention (2003). Krishnan was released on bail (AI 2003).

The following reports on the treatment of Indian nationals in Malaysia may also be of interest. According to the BBC, over two hundred information technology professionals, who were Indian citizens, were detained under suspicion of passport and visa irregularities and reportedly "treated discourteously" by Malaysian police in March 2003 (10 Mar. 2003). While most of the detainees were released, approximately ten individuals had problems with their passports or visas (BBC News 10 Mar. 2003). In May 2003, *Malaysiakini* reported the detention of another Indian professional who reportedly overstayed his visa and was later released (27 May 2003).

No further information on the treatment of Hindu Tamils in Malaysia could be found among the sources consulted by the Research Directorate (Immigration and Refugee Board of Canada 2003, *MYS41990.E – Malaysia: Update to MYS31167.E of 1 February 1999 on the treatment of Hindu Tamils*, 23 September – Attachment 5).

### **2.3 However there are also several new sources that indicate the government's commitment to addressing discrimination within Malaysian society including changes to policy. For example, the International Herald Tribune stated:**

PENANG, Malaysia: Malaysia's opposition-governed states will no longer follow an affirmative-action program that benefits ethnic Malays, top leaders said Tuesday in a major reversal of policy after an election upheaval clipped the governing coalition's powers.

...The result in part reflected anger among the country's sizable ethnic Chinese and Indian minorities over social and racial inequalities.

The clearest policy reversals were announced by Lim Guan Eng, who was sworn in Tuesday as the chief minister of the northern state of Penang, which is dominated by ethnic Chinese. The industrial state is the site of many multinational electronics companies such as Intel and Dell, and is also known as the country's tourism jewel.

Lim said his government will do away with the New Economic Policy, the 37-year-old affirmative-action program for Malays, in awarding state contracts.

"We will run the government administration free from the New Economic Policy that breeds cronyism, corruption and systemic inefficiency," Lim, an ethnic Chinese, told reporters.

..."This is a government that is based on democracy. This is also a government that believes in equal opportunity and social economic justice. We are here to build a dynamic Penang for all," he said.

Following the elections, Lim's Democratic Action Party, the Pan-Malaysian Islamic Party and the People's Justice Party of Anwar Ibrahim, the former deputy prime minister, formed coalition governments in the states of Penang, Kedah, Perak and Selangor.....

....Anwar told reporters in Kuala Lumpur that the opposition did not have the power to abolish the New Economic Policy nationwide.

But in the five opposition-governed states, the governments will "reduce race-based affirmative-action policies and begin to implement a more competitive merit-based system," Anwar said.

He said that the five states will try to ensure that the poor among all races receive benefits such as low-cost homes and education, and that affirmative-action policies become obsolete ('Opposition parties vow to end race-based policy in 5 Malaysian states' 2008, *International Herald Tribune*, 11 March <http://www.iht.com/articles/2008/03/11/asia/malay.php> - Accessed 4 September 2008 - Attachment 6).

### **2.3.1 Further to this a BBC report discusses the pro-Malay policy and how it discriminates against non-Malay's:**

The Malaysian state of Penang says it will no longer follow a controversial central government policy favouring ethnic Malays above other citizens.

Penang is one of five states now controlled by the opposition, after elections on Saturday saw big losses for the governing coalition.

Malaysia has had a policy of favouring ethnic Malays in jobs and education for almost four decades.

The large Chinese and Indian minorities have become increasingly angry.

Correspondents say it was largely this anger that led to the dramatic election results over the weekend.

#### **Equal Opportunities**

Lim Guan Eng was sworn into office as head of state in Penang, after his Democratic Action Party (DAP) won a convincing election victory.

As soon as he was appointed, he immediately targeted the central government's long-standing New Economic Policy favouring ethnic Malays.

"We want to run the state government administration free from the New Economic Policy that only breeds cronyism, corruption and systematic inefficiency," he told reporters.

"This is also a government that believes in equal opportunity and social economic justice. We are here to build a dynamic Penang for all," he said.

The policy was started in the early 1970s, to increase opportunities for the often poverty-stricken ethnic Malays - giving them preference in jobs, university seats and access to services.

But many Malaysians - even some Malays - say that it has only benefited an elite few.

### **Election Upheaval**

The country's large Chinese and Indian minorities - who make up more than a third of the population - have become increasingly critical of what they regard as blatant racial discrimination.

Ethnic Indians held a large protest rally in November which attracted more than 80,000 people ('Penang abandons pro-Malay policy' 2008, *BBC News*, 11 March <http://news.bbc.co.uk/1/hi/world/asia-pacific/7289509.stm> - Accessed 4 September 2008 - Attachment 7).

## **3 Is there any discrimination towards women by the State?**

The government of Malaysia has over the past decade taken some significant steps aimed at addressing discrimination towards women. The Women's Aid Organisation, a Malaysian based NGO, stated in its 2001 status report that there was significant inequality for women in Malaysia including in the work force, government representation, law, culture and religion. However it is also noted that the government has taken some significant steps aimed at addressing these inequities:

### **3.1 The Government and Women's Equality**

'The Government of Malaysia has committed itself to women's equality and taken a number of initiatives to promote this:

By agreeing to the commitments set forth in the [Beijing Platform for Action](#) at the UN Fourth World Conference on Women (1995), the Government promised to:

1. Enhance the national machinery for women's advancement.
2. Increase women's participation in decision-making.
3. Safeguard women's rights to health, education and social well being.
4. Remove legal obstacles and gender discriminatory practices.

The Government has also ratified the [UN Convention on the Elimination of All Forms of Discrimination Against Women](#) where,

*“...discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (CEDAW, Article 1)*

### **National Machinery for Women's Advancement**

In response to the United Nation's 1975 resolution to integrate women into the development process, the Government of Malaysia formed the National Advisory Council on Integrating Women in Development (NACIWID). This serves as an advisory and consultative body for the Government on matters relating to women in development planning and implementation.

In 1983, the government established a Women's Affairs secretariat (HAWA), which was upgraded in 1997 as a department of the Ministry of National Unity and Social Development. HAWA's role is to ensure that women's interests and concerns are taken into consideration.

Both the Sixth and Seventh Malaysia Plans (1990-1995; 1996-2000) contained special sections on Women and Development, where it is stated,

*“...the Government also recognises that specific strategies must necessarily be formulated to effectively incorporate women in the process of development. Towards this end, concerted efforts will be made to progressively reduce existing constraints and facilitate the assimilation of women into the mainstream social and economic activity.” (Sixth Malaysia Plan).*

A National Policy on Women was formulated in 1989, followed by an Action Plan for Women in Development in 1997.

In January 2001, the Government announced the formation of a [Women's Affairs Ministry](#), heralded by the Prime Minister's Office as recognition of the contribution and role of Malaysian women.

### **...Women, Culture and Religion**

The different religions and cultures of Malaysia have many positive aspects in women's lives. However, it is also the case that women are discriminated against by their religions and cultures, which perpetuate stereotyped gender roles and protectionist and patriarchal attitudes towards women.

The “family” remains culturally at the centre of Malaysian life. A 1999 WAO report, *'Monitoring the Fulfilment of the Malaysian Government's Obligation to Women's Equality: A Baseline Report on marriage and Divorce'*, shows how Malaysian women face much discrimination in the area of marriage and divorce, through attitudes towards expected roles of women, and through the formulation, interpretation and implementation laws.

Within marriage, many women are expected to remain in the home, as homemakers and mothers. If women are given the choice to work, many are forced to give their salaries to their husbands. Many women who work before marriage have been ordered to give up their jobs when they marry.

... Women who choose not to work also find themselves discriminated against. For example, the Domestic Violence Act (1994) does not protect individuals who live together but are not



married according to civil or customary law, or victims of dating violence. In short, the Domestic Violence Act criminalizes violence against women, but only if you are a married woman

...Several of the religions practised in Malaysia, including Islam, Catholicism, Buddhism and Hinduism, deny women access to interpreting and implementing their sacred texts. Such patriarchal structures and practices contribute to women's lack of representation in leadership positions. Women are also denied access to certain sacred places and rituals, for example, if they are menstruating. Such practices encourage negative attitudes towards women, including disrespect and inferiority to men, and demean the status of women.

...School curricula, religious teaching material and media images continue to stereotype women as homemakers when many women in also Malaysia work and pursue careers.

Although the number of women members of political parties is high, representation of women in decision-making positions in the Government and other statutory bodies is poor, and falls well short of the 30% women participation rate in Government targeted in the 1995 Global platform for Action.

### **Women in Work**

Women represent 36% of the Malaysian workforce according to official statistics. However, half of this comprises women working as unpaid, family workers.

Although the number of economically active women has increased, the largest growth in women's participation has been in middle- and low-level jobs, such as clerical and production jobs. And while more women are entering professional sectors, this is largely restricted to nursing and teaching professions.

In 1980, women accounted for only 7% of employers in the economically active population of Malaysia. By 1990, female employers had still only reached 8.5%, with men still comprising the vast majority in employee status. Conversely, women continue to greatly outnumber men in unpaid work, 64% women to 35% men in 1990. Especially in the private sectors, women continue to collect lower wages than their male colleagues. (1)

### **...Women's Equality**

Equality is enshrined in the Federal Constitution of Malaysia,

*“All persons are equal before the law and entitled to equal protection of the law” (Article 8 (1)).*

Yet the protection against gender discrimination guaranteed in Article 8 (1) is not upheld in Article 8 (2),

*“Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.” (Article 8 (2)).*

The absence of State sanctioned protection against sexual discrimination in the Federal Constitution has failed to protect against a legal system and social structures in which equality between the sexes is apparent.

Women and men are not equal before the law, nor do the sexes have equal protection of law' (Women's Aid Organisation 2001, 'Women's Equality in Malaysia Status Report', Women's Aid Organisation website, March - <http://www.wao.org.my/news/20010301statusreport.htm> - Accessed 4 September 2008 – Attachment 8).

### **3.2 The US State department in its 2007 country report on human rights practices in Malaysia indicates that violence against women continues to be an issue:**

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

...Many government hospitals had crisis centers where victims of rape and domestic abuse could make reports without going to a police station. NGOs and political parties also cooperated to provide counseling for rape victims, but cultural attitudes and a perceived lack of sympathy from the largely male police force resulted in many victims not reporting rapes. According to the Ministry of Women, Family, and Community Development (MWFCD) and a leading women's NGO, only 10 percent of rape cases were reported to police. Women's groups noted that while some rapists received heavy punishments, including caning, other rapists received inadequate punishments.

...Violence against women remained a problem. During the year police received 3,264 domestic violence reports. Reports of rape and spousal abuse drew considerable government, NGO, and press attention...

Although the government, NGOs, and political parties maintained shelters and offered other assistance to battered spouses, activists asserted that support mechanisms for victims of domestic violence remained inadequate. There was a sexual investigations unit at each police headquarters to help victims of sexual crimes and abuse. Police responses and sensitivity to complaints of domestic violence continued to improve, but women's rights activists claimed that police needed additional training in handling domestic abuse and rape cases (US Department of State 2008, *Country Report on Human Rights Practices for 2007 – Malaysia*, March, Section 5, Women – Attachment 9).

## **List of Sources Consulted**

### Internet Sources:

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Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca>

US Department of State <http://www.state.gov>

#### **United Nations**

#### **Non-Government Organisations**

Women's Aid Organisation (Malaysian based) <http://www.wao.org.my/index.htm>

Amnesty International <http://www.amnesty.org/>

#### **International News and Politics**

BBC News <http://news.bbc.co.uk>

Times of India <http://timesofindia.indiatimes.com/>

International Herald Tribune <http://www.iht.com/>

The Star <http://thestar.com.my/>

Malaysiakini <http://www.malaysiakini.com/>

## Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

## **List of Attachments**

1. 'Assessment for East Indians in Malaysia' 2003, Minorities at Risk website, 31 December <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=82003> - Accessed 4 September.
2. US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Malaysia*, February.
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