

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Question

Is it a criminal offence in Malaysia for a person (Tamil Indian in this case) to “force a (Muslim) person to eat pork”?

RESPONSE

Is it a criminal offence in Malaysia for a person (Tamil Indian in this case) to “force a (Muslim) person to eat pork”?

Advice provided by the Department of Foreign Affairs & Trade (DFAT), on 25 July 2005, indicates that, while “[t]here are no laws in Malaysian civil law or the state Syariah laws which specifically make forcing a Muslim to consume pork an offence”, “it is possible that it could be an offence relating to criminal force under the Penal Code”. According to the Post in Kuala Lumpur, “[a] person (Muslim or non-Muslim) who has allegedly forced a Muslim to consume pork could be charged with criminal force under sections 349-350 of the Penal Code (Act 574), last amended 1 December 2004”. DFAT’s advice follows in detail:

Both civil law and Islamic religious law (commonly known as syariah law) exist in Malaysia. All Malaysian citizens are subject to civil law, whereas only Muslims are bound by the Syariah law and Syariah courts. Religion, including Syariah law, comes under the jurisdiction of the states, and thus laws and enforcement vary from state to state. While Muslims are forbidden (by the teachings of Islam) to consume pork, no Syariah laws in Malaysia include any specific provision about pork consumption, in the same manner as they do, for example, for consumption of alcohol.

2. We are not aware of any cases in Malaysia where a person has been imprisoned, under Syariah law or the civil law, for forcing a person of Islamic faith to consume pork. Our

interlocutors in Attorney General's Chambers (AGC) were also not aware of any instances. AGC said there have been some instances in which an employer had allegedly forced an employee to consume pork, or use cooking utensils which had not been appropriately cleaned after coming into contact with pork. However, there has never been sufficient evidence to try such cases. That said the scenario is not inconceivable.

A. There are no laws in Malaysian civil law or the state Syariah laws which specifically make forcing a Muslim to consume pork an offence. However, it is possible that it could be an offence relating to criminal force under the Penal Code.

B. A person (Muslim or non-Muslim) who has allegedly forced a Muslim to consume pork could be charged with criminal force under sections 349-350 of the Penal Code (Act 574), last amended 1 December 2004. The case would be heard in a civil criminal court. Punishment would carry a fine of RM 1000 (approx. AUD 400) and imprisonment, ranging from 3 months up to 10 years. A guilty offender may also be sentenced to whipping.

Section 349 of the Penal Code states:

"A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:

Provided that the person causing the motion, or change of motion, or cessation of motion in one of the three ways hereinafter described –

(a) by his own bodily power;

(b) by disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part, or on the part of any other person;

(c) by inducing any animal to move, to change its motion, or to cease to move."

If the person forcing the consumption of pork is a Muslim, he/she could be charged in a Syariah court along the lines of 'dishonouring a Muslim or the sanctity of Islam'. Punishment would depend on a number of factors, including the state in which it occurred, and interpretation by the presiding Syariah judge, but would include a fine, and prison term no greater than 3 years. For example, the Syariah Criminal Offences (Federal Territories) Act 1997, (Act 559), includes offences relating to the sanctity of Islam and its institutions which apply to Muslims in the territories of Labuan and Kuala Lumpur. AGC were not aware of this ever having been used for forced pork consumption.

Syariah Criminal Offences (Federal Territories) Act 1997, Act 559, Part III states:

"7. Insulting, or bringing into contempt, etc. the religion of Islam.

Any person who orally or in writing or by visible representation or in any other manner-

(a) insults or brings into contempt the religion of Islam;

(b) derides, apes or ridicules the practices or ceremonies relating to the religion of Islam; or

(c) degrades or brings into contempt any law relating to the religion of Islam for the time being in force in the Federal Territories,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit [AUD1200] or to imprisonment for a term not exceeding two years or to both” (Department of Foreign Affairs & Trade 2005, DFAT Report 393 – RRT Information Request: MYS17409, 25 July – Attachment 1; the RRT Country Research enquiry which elicited this response is supplied as: RRT Country Research 2005, Email to DFAT: ‘Country Information Request – MYS17409 – Malaysian law and forced consumption of pork’, 24 June – Attachment 11).

Further to DFAT’s reporting of the comment that “there have been some instances in which an employer had allegedly forced an employee to consume pork”, such reports have appeared with a yearly regularity in the press. Such incidents have typically involved the mistreatment of Muslim maids (often contracted from Indonesia) by their employers (who are sometimes identified as ethnic Chinese). A recent bulletin, of 14 June 2005, has reported that action had been taken against one such employer through Malaysia’s Consumer Claims Tribunal. A less recent bulletin, of 5 April 2000, reported that “[a] number of employers or their wives [had] been brought to court or [were] being investigated”. These, and other examples of such reportage, follow below in reverse chronological order:

- On 14 June 2005, *The New Straits Times* reported that Malaysia’s Consumer Claims Tribunal had ordered “[t]he employer of an Indonesian Muslim maid was ordered by the tribunal today to pay RM1,636 for not allowing her to perform her prayers, asking her to handle pork and to work 15 hours a day”. According to this report, “Tribunal President Datuk Abu Bakar Awang” ruled that, under the terms of the maid’s “work agreement”, the employer could “not compel the maid to perform duties contrary to the teachings of her religion” (‘Maid’s employer ordered to pay RM1,636’ 2005, *New Straits Times*, 14 June http://64.233.161.104/search?q=cache:9jAnCWxACMUJ:www.nst.com.my/CurrentNews/NST/Wednesday/National/20050615082447/Article/indexb_html+malaysia+law+%22handle+pork%22&hl=en – Accessed 24 June 2005 – Attachment 2).
- On 22 July 2004, a bulletin published by the Organisation of Asia-Pacific News Agencies reported that – in response to claims made by Human Rights Watch Muslim maids working in Malaysia had been “denied their religious rights and...were forced to handle pork” – Malaysia’s Minister for Human Resources, Dr Fong Chan Onn, had told the *Malay Mail* that “[a]ll foreign workers, including Indonesian domestic maids, have legal protection here. And anyone who perpetrates any form of violence or abuse against them is dealt with according to the law” (‘Malaysia Slams NGO For “Distorted View” On Maids’ 2004, Organisation of Asia-Pacific News Agencies, 22 July – Attachment 3).
- On 16 April 2001, *Agence France-Presse* reported that “[s]ome 30,180 foreign maids out of a total of 176,000 fled their employers” in the preceding year; that “[t]he vast majority of maids come from predominantly Muslim Indonesia”; and that “some [had] complained that ethnic Chinese employers forced them to cook pork” (‘Malaysians offered insurance against runaway foreign maids’ 2001, *Agence France-Presse*, 16 April – Attachment 4).
- On 10 August 2000, *Agence France-Presse* reported that “[s]ome 120 Indonesian maids fleeing physical abuse or attempted rape by employers or agents have taken refuge at their country’s consulate in an east Malaysian state”. According to the report, Nugraha, consul general in Sarawak, had said “some maids from mainly

Muslim Indonesia ran away from employers because they were forced to eat pork, were physically abused or were not paid wages” (‘Some 120 Indonesian maids in Malaysia take refuge with consul: report’ 2000, *Agence France-Presse*, 10 August – Attachment 5).

- On 5 April 2000, *Agence France-Presse* reported that “[a] number of employers or their wives [had] been brought to court or [were] being investigated” as a consequence of “a series of attacks...on maids from mainly Muslim Indonesia”. According to this report, “[i]t [was] not clear whether religion played a part in some attacks but there have been complaints of Muslim maids being forced to cook pork” (‘Malaysia announces new safeguards for foreign Muslim maids, eases rules’ 2000, *Agence France-Presse*, 5 April – Attachment 6).

RRT Country Research has completed a number of Research Responses which have addressed claims of mistreatment relating to the, allegedly improper, consumption, handling and/or sale of pork in Malaysia. These are supplied as Attachment 7, Attachment 8 and Attachment 9. See also a recent report, published by *Reuters News* on 21 April 2005, which indicates that fears, held by Malaysia’s predominantly Muslim community, over the sale and consumption of products containing pork, or other non-halal food-stuffs, under a halal logo have contributed to a “climate of suspicion” in Malaysia (RRT Country Research 2004, *Research Response MYS16992*, 27 September – Attachment 7; RRT Country Research 2004, *Research Response MYS16394*, 17 January – Attachment 8; RRT Country Research 2003, *Research Response MYS16002*, 25 June – Attachment 9; Fernandez, C. 2005, *Reuters News*, ‘Feature – Malaysia tightens halal rules after sausage scare’, 21 April – Attachment 10).

List of Sources Consulted

Internet Sources:

Google search engine

New Straits Times website <http://www.nst.com.my>

Databases:

Public	<i>FACTIVA</i>	Reuters Business Briefing
DIMIA	<i>BACIS</i>	Country Information
	<i>REFINFO</i>	IRBDC Research Responses (Canada)
RRT	<i>ISYS</i>	RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State <i>Country Reports on Human Rights Practices</i> .
RRT Library	<i>FIRST</i>	RRT Library Catalogue

List of Attachments

1. Department of Foreign Affairs & Trade 2005, DFAT Report 393 – *RRT Information Request: MYS17409*, 25 July.

2. 'Maid's employer ordered to pay RM1,636' 2005, *New Straits Times*, 14 June.
(http://64.233.161.104/search?q=cache:9jAnCWxACMUJ:www.nst.com.my/CurrentNews/NST/Wednesday/National/20050615082447/Article/indexb_html+malaysia+law+%22handle+pork%22&hl=en – Accessed 24 June 2005).
3. 'Malaysia Slams NGO For "Distorted View" On Maids' 2004, Organisation of Asia-Pacific News Agencies, 22 July. (FACTIVA)
4. 'Malaysians offered insurance against runaway foreign maids' 2001, *Agence France-Presse*, 16 April. (FACTIVA)
5. 'Some 120 Indonesian maids in Malaysia take refuge with consul: report' 2000, *Agence France-Presse*, 10 August. (FACTIVA)
6. 'Malaysia announces new safeguards for foreign Muslim maids, eases rules' 2000, *Agence France-Presse*, 5 April. (FACTIVA)
7. RRT Country Research 2004, *Research Response MYS16992*, 27 September.
8. RRT Country Research 2004, *Research Response MYS16394*, 17 January.
9. RRT Country Research 2003, *Research Response MYS16002*, 25 June.
10. Fernandez, C. 2005, *Reuters News*, 'Feature – Malaysia tightens halal rules after sausage scare', 21 April. (FACTIVA)
11. RRT Country Research 2005, Email to DFAT: 'Country Information Request – MYS17409 – Malaysian law and forced consumption of pork', 24 June.