Over the past two decades, the Malaysian government has made several commitments towards realising women’s rights and gender equality in the country. At the global level, it has ratified – albeit with reservations – three key international human rights treaties: the United Nations (UN) Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of Persons with Disabilities. It is a signatory to major agreements like the Cairo Programme of Action and the Beijing Platform for Action, and outcome documents from the UN International Conference on Population and Development 1994 and the Fourth World Conference on Women 1995. It was also a prime mover behind the Putrajaya Non-Aligned Movement (NAM) Declaration 2005, which focuses on women’s empowerment. At the national level, Malaysia prohibits any form of gender discrimination, via an amendment to Article 8(2) of the Federal Constitution in 2001. As well, there is a National Policy on Women (updated in 2009) and a Women’s Development Action Plan.

For such efforts, which include contributions from the women’s movement, Malaysia’s level of gender equality, as measured by the Malaysian Gender Gap Index (MGGI) – developed by the United Nations Development Programme (UNDP) and Malaysia’s Ministry of Women, Family and Community Development (MWFC) in 2004 – appears to have shown signs of improvement. This index recorded a positive shift from 0.34 (1980) to 0.24 (2004) for the areas of health, education, economic activity and empowerment. This development has not been uniform, however, with the greatest equality registered for education (0.046) and health (0.099) and the least in economic activity (0.247) and women’s empowerment (0.579). Furthermore, while such indices are useful, they are limited in the categories they study – for example, violence is excluded – and are largely descriptive in aggregate terms of the existing situation.

For a more comprehensive and nuanced picture of gender relations in the country, one has to take into account the socio-economic and political context, such as the neoliberal economy, masculinist and semi-authoritarian political regime, and instrumentalisation of ethnicity and religion. In this light, this chapter will discuss gender relations and the position of women in Malaysia in relation to six areas of concern. These are: development planning, poverty, employment, violence, political representation and the law.
Development planning

‘Women’ were singled out in Malaysia’s development agenda for the first time via a standalone chapter of the Sixth Malaysia Plan (1990–1995). Noting that ‘women constitute[d] a vital economic resource’, the government claimed that its goal was ‘to integrate women as equal partners in nation building’ (EPU 1991: 427). This acknowledgement was potentially an important milestone towards gender equality, but little has come of it. Instead, hanging on to an outdated model from the 1970s – which seeks to ‘fit’ women into ‘development’ rather than changing the development paradigm to suit women’s needs – every development plan until now has emphasised maximising the (re)productive capacities of women. They do not consider the complexities of women’s lives, particularly in the era of neoliberal globalisation, and expect that a ‘one size fits all’ approach will work in a multi-ethnic, multi-religious, and multi-class context.

The Ninth Malaysia Plan (2006–2010, 9MP), for instance, spoke of ‘efforts [that would] be undertaken to provide an enabling environment’. But this thrust was ‘to ensure more effective participation of women in national development’ (Government of Malaysia 2006: 281; emphasis added). Compared with earlier plans, the Tenth Malaysia Plan (2011–2015) (10MP) appeared to be an improvement insofar as it professes that the empowerment of women will be a ‘key agenda’. Nevertheless, it, too, qualifies that this focus is to help women ‘realise their full potential and participate more effectively in the economic and social development of the country’ (Government of Malaysia 2010: 179–80; emphasis added). Women’s interests, much less women’s rights, are not the concern of these documents.

For development efforts to work for women, the way forward is to recover the concept of gender as a category of analysis that focuses on the dynamics of power relationships between men and women, in relation to the distribution of resources and knowledge in society. It is also critical that there be analysis of the linkages between gender and other social constructs and structural inequalities. This is where women’s and men’s multiple identities need to be addressed in relation to the intersectionalities of gender with class, ethnicity, culture, ability, sexuality, geographic location, citizenship, and so on. The government has to respect, protect, promote and fulfil human rights and monitor how development outcomes are realised. Adopting a rights-based approach would help achieve this goal.

Particularly under today’s market-led development model – where economic growth has failed to bring about equality and sustainable human development, and instead led to more inequalities and exploitation – a rights-based approach has to ensure that the more vulnerable groups in society do not bear the costs of neoliberal globalisation and development. In the case of women, multiple layers of discrimination have to be unearthed and addressed to achieve gender and social justice. Given the goal of good governance Malaysian authorities have enunciated, it is important that the process of development planning involve the genuine participation of civil society, and be accountable and transparent.

Poverty

Malaysia has displayed impressive gains in fighting poverty. Officially, the incidence of poverty plunged from 52.4 percent in 1970 to 3.8 percent in 2009. The 10MP sought to reduce this figure further, to 2.8 percent. As well, at 0.2 percent, hardcore poverty has almost been eliminated (DOS 2013b: 7). Nevertheless, it is important to note that these achievements are not evenly spread. For example, the poverty gap in rural areas is more than three times that in urban areas, with higher incidences in the east coast states of the peninsula and
Filling in the gaps

in East Malaysia.\textsuperscript{4} The 9MP notes a rise in income inequality from 1990 to 2004.\textsuperscript{5} Moreover, Malaysia’s Gini coefficient is one of the highest in the region, at 0.431 (DOS 2013b), due more to intragroup than intergroup disparities (Ragayah 2009).

It is well established that poverty has a ‘female’ face and globally the feminisation of poverty has been a critical challenge for a number of decades. Despite this, studies of female poverty in Malaysia are hampered by the lack of official sex-disaggregated data. The most recent National Policy on Women revealed that poverty among women-headed households was 11.5 percent in 2004, a drop from 12.5 percent in 2002.\textsuperscript{6} Such information is useful, but its randomness limits any kind of meaningful analysis. Instead, there should be data pertaining to the different categories of poor women, why and how they fall below the poverty line, and how much access and control they have over economic resources.

This gap has been partly filled by the few localised studies that deal with rural women. Research into indigenous women in two villages in Pulau Carey, for instance, concluded that the shift from subsistence production to palm oil monoculture has adversely affected gender roles and power relations (Lai 2008). A 2004 survey of women oil-palm plantation workers found that they not only received a barely liveable wage but were also exposed to health hazards due to the lack of protective gear when handling toxic chemicals.\textsuperscript{7} Another study of dam projects and the resettlement of indigenous groups showed how women, much more than men, lose access to land and rights whenever their communities are involuntarily moved (Yong 2006).

Such research is insufficient and sometimes can produce conflicting results. In two studies about low-waged single mothers, the first, carried out in urban areas of eleven states, found that the majority of the 1,486 respondents who earned less than RM500 a month said that they were satisfied with their living conditions and the well-being of their families (Dasimah et al. 2009). The second, which the National Human Rights Commission, SUHAKAM (2009) conducted, found that respondents from two public housing flats – who also fell below the official poverty line – complained of difficulties in affording healthcare services and sending their children to school. Some also felt that they had been discriminated against for being poor. The availability of more structured and systematically collected data would help address this limitation.

Employment

In the space of less than one generation, Malaysian women have entered the workforce in large numbers. Since the 1980s, almost half the women of working age in the population have entered the formal work sector at some point in their lives. This is due mainly to the export-oriented industrialisation model adopted by the government in the late 1970s, which attracted many multinational companies looking to relocate their labour-intensive work, particularly in the electronics sector. As a result, the participation rate of women in the labour force grew from 37.2 percent in 1970 to 47.8 percent in 1990, before plateauing for the next two decades and never exceeding the 50 percent mark. These figures have been consistently lower than those for men, which peaked at 85.3 percent in 1990 (Table 28.1), and raised cause for concern as it is assumed that the majority of women aged between 15 and 64 are not contributing – as they are expected to – to the nation’s productivity.

Malaysian government data do not fully reflect the numbers or profile of those in the informal economy. For example, the inaugural Informal Sector Work Force Survey Report 2012 (DOS 2013a) states that there are around one million such workers, the bulk of whom are male\textsuperscript{8} and in the construction industry; however, these figures are only for those recognised
as participating in the labour force and performing non-agricultural work. The fact that there were almost five million women in 2011 officially considered as not working or looking for a job raises further questions about the veracity of figures pertaining to informal employment in the country, in particular that of women.

Many women who are not captured in official labour force statistics are found in productive but informal employment. It is estimated that the majority of the world’s workers are now contracted in the informal economy, in jobs with minimal or no security, and few or no benefits (Heintz 2006; Razavi 2009; Kabeer 2012). Typically too, those workers with lower skills are poorly paid, but work long and irregular hours. Some studies suggest that there is a gender hierarchy at play, in which men tend to be on top of the pecking order as industrial outworkers or employers and women at the bottom, as employees or waged workers (Chen, Vanek and Carr 2004 cited in UNDP 2010: 62).

The low female labour force participation rate can partly be attributed to the reproductive and care work that women perform (e.g. child-bearing and rearing, housework, caring for sick or older members of the family), most often for free. Even though the government has introduced several measures to support women in these roles – for example, increasing maternity leave for the public sector from sixty to ninety days, offering tax deductions to employers to provide childcare facilities, and legalising flexi-work – women still bear the burden of responsibility because such initiatives do not challenge gender stereotypes, much less change them. Instead of offering longer paternity leave to encourage fathers to play a greater role in raising children, for instance, this is capped at a maximum of seven days.

To help working women or those who want to stay in or re-enter the labour force, it is important that there be good and affordable childcare facilities. Not many public sector bodies offer childcare facilities, while private childcare centres are costly. In 2007, the government introduced a subsidy of RM180 per child to civil servants whose monthly household income was below RM2,000, later extended in 2009 to households earning RM3,000 and below. It also granted a tax exemption of 10 percent to private employers who establish childcare centres, but few have taken up this offer. In 2013, the government announced further incentives, amounting to as much as RM15 million, for both private and public institutions to provide quality childcare services, but their impact has yet to be seen.

Besides childcare, the idea that flexi-work opportunities be targeted at women needs to be revisited. This should be an option for both male and female workers. Otherwise, women will continue to be made solely responsible for work within and outside the home, with many opting to give up formal employment either to become full-time mothers or to juggle family life and work with little or no long-term security. One government study on time usage showed that women perform 75 percent of housework and childcare (Bernama, 8 August 2005). Another, in 2011, found that 66.9 percent of women – versus 2.6 percent of men – outside the labour force cited housework as the main reason why they did not seek

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<tbody>
<tr>
<td>Male</td>
<td>79.3</td>
<td>84.8</td>
<td>85.3</td>
<td>83.3</td>
<td>79.5</td>
<td>78.9</td>
</tr>
<tr>
<td>Female</td>
<td>37.2</td>
<td>42.2</td>
<td>47.8</td>
<td>46.7</td>
<td>46.5</td>
<td>47.9</td>
</tr>
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</table>

Source: Labour Force Survey Reports (various years).
Filling in the gaps

employment; the majority of men cited ongoing schooling (MWFCD 2011). With more
women now having tertiary education, it is a cause for worry if the country’s better-qualified
citizens are out of the labour force in this way.

Over time the occupational distribution by gender has shifted in tandem with structural
trends in the economy. Due to the growth of the services sector, women are now
over-represented as clerks (18.8 percent of all women in the formal labour force) and service
workers (20 percent) (Fernandez 2009). As more women gain tertiary qualification, their
numbers as ‘senior officers and managers’, ‘professionals’ and most especially ‘technicians
and associate professionals’ have also grown (Table 28.2). Even so, they remain outnumbered
by men, especially in the higher occupational groups, suggesting that they still have to
overcome a sticky floor/glass ceiling as top decision-makers in their respective industries.

One other measure of gender inequality at the workplace is wages. Table 28.3 shows that
the overall gender wage gap was recorded as having declined from RM234 in 2008 to RM68
in 2012. Besides the fact that, on average, men still make more than women (RM1,906 versus
RM1,838 per month), the figures reveal a more worrying picture. Discounting those who are
in managerial positions, every other occupation shows a rise in the gender wage differential
from 2008 to 2012. This is particularly disconcerting for jobs in which women dominate
(i.e. clerical support workers, and service and sales workers). Even though the gap at the
managerial level is less now, women’s wages remain on average almost RM1,500 less
than those of male managers. Clearly, their economic contribution is still considered of
lower value – even for similar kinds of work.

To address the issue of wage differentials requires continuous monitoring mechanisms
that can determine the nature and extent of gender wage discrimination in the workplace.
On the one hand, the Malaysian government has agreed to close such gaps, as exemplified
by its ratification of the ILO Convention on Equality of Wages between Men and Women
in September 1997 (MWFCD 2004). On the other hand, it has not incorporated the ILO
Equal Remuneration Convention 1951 (No. 100) into existing law to ensure equal pay for
work of equal value.

Table 28.2 Employment distribution by occupation and sex, 2001 and 2010 (by number employed,
millions)

<table>
<thead>
<tr>
<th>Occupation</th>
<th>2001</th>
<th>2010</th>
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<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Senior officers and managers</td>
<td>0.545</td>
<td>0.153</td>
</tr>
<tr>
<td>Professionals</td>
<td>0.273</td>
<td>0.186</td>
</tr>
<tr>
<td>Technicians and associate professionals</td>
<td>0.715</td>
<td>0.415</td>
</tr>
<tr>
<td>Clerical workers</td>
<td>0.315</td>
<td>0.578</td>
</tr>
<tr>
<td>Service workers, shop and market sales workers</td>
<td>0.733</td>
<td>0.561</td>
</tr>
<tr>
<td>Skilled agriculture and fishery workers</td>
<td>0.890</td>
<td>0.378</td>
</tr>
<tr>
<td>Craft and related trade workers</td>
<td>0.975</td>
<td>0.183</td>
</tr>
<tr>
<td>Plant and machine operators and assemblers</td>
<td>0.993</td>
<td>0.488</td>
</tr>
<tr>
<td>Elementary occupation</td>
<td>0.618</td>
<td>0.382</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6.056</strong></td>
<td><strong>3.323</strong></td>
</tr>
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Source: Tan and Thambiah (in press).
In sum, despite economic modernisation, the majority of women employees are still in unskilled or semi-skilled jobs, with limited prospects for upward mobility. While there are some women who have completed tertiary education and reached middle-management positions, all women workers continue to face challenges, such as health and safety hazards, sexual harassment, limited upward mobility, and lack of avenues to organise and have their views heard.

Violence

The UN (1993) defines violence against women (VAW) as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'. Those from marginalised communities like the poor, refugees, migrants or sexual minorities are especially vulnerable when it comes to crimes like rape, domestic violence, incest and sexual harassment.

Table 28.4 shows reported VAW cases in Malaysia for 2000–12. These numbers, which are believed to be the tip of the iceberg,\(^{13}\) show little improvement over time, and in some instances, demonstrate a worrying upward trend. For example, rape cases more than doubled during this period. Worse, in 2007, it was reported that just over half the victims were below age sixteen (The Star, 7 May 2009). A 2004 memorandum by women’s groups confirmed this grim situation, noting that many cases occur in spaces that are assumed as ‘safe’ for women; the profile of victims and assailants was increasingly younger; conviction rates are low; women are being raped in custody or by those they trust; and extreme violence, including murder, was now being used during rape.

The picture is similar with domestic violence (i.e. physical, psychological, emotional or sexual abuse) except that, as Table 28.4 illustrates, this category consistently registered the highest frequency of reported cases for the same period. This is possibly because there is greater awareness of the Domestic Violence Act 1994, which women’s groups had lobbied for, or greater confidence to lodge such reports. Even so, as stated before, there are likely to be
Filling in the gaps

many more cases out there that do not make it into national statistics. The narrow legal definition of the term does not help. So, for instance, women survivors of violence in a de facto relationship are not recognised under the law. A recent local study which revealed that women experience domestic violence in nine out of every hundred households supports the contention that official figures are inaccurate (see Noraida 2013).

Figures for sexual harassment in the workplace – in which women are the majority of ‘victims’ – seem low, despite the Code of Ethics for the Prevention and Eradication of Sexual Harassment at the Workplace 1999 and new provisions curbing sexual harassment in the Employment Act 2011. These figures do not reflect results of surveys like that conducted in 2005 by Universiti Malaya, in which more than half the 657 female respondents stated that they had experienced at least one form of sexual harassment at work (New Straits Times, 9 November 2009).

Indeed, amendments to prevailing laws appear to fall short of ensuring women’s lives are free from violence or discrimination. Hence, even though the Employment Act was reformed in 2011 to address sexual harassment at the workplace, numerous loopholes render these changes problematic. For instance, the act applies only to the private sector and in Peninsular Malaysia; there is no independent body to investigate complaints; a complainant has no recourse to appeal a decision; there is no possibility of compensation or apology to a victim; and no action is possible against perpetrators who are not permanent employees at a workplace (e.g. contract workers, vendors, visitors, etc.). The government’s latest moves to amend the Penal Code demonstrate its preference to address sexual crimes punitively rather than through rehabilitative or reparative measures.

The persistence of VAW in Malaysia can be explained in several ways. First, there is a perception that such violations are acceptable because, many a time, perpetrators get away with impunity because of the ineffectiveness of the legal framework or a lack of political will to deal with such matters. To correct this, the government needs to exercise greater due diligence. While laws are important, however, it is equally crucial to conduct education and awareness-raising programmes that challenge socio-cultural beliefs that perpetuate VAW. Such changes will ensure that women are able to benefit from legal mechanisms and other services extended by the government and civil society groups. Government intervention can also remedy sexist, patriarchal and stereotypical attitudes that women face when

### Table 28.4 Cases of violence against women and girls in Malaysia

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</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1,217</td>
<td>1,431</td>
<td>1,760</td>
<td>2,454</td>
<td>3,409</td>
<td>3,595</td>
<td>2,998</td>
</tr>
<tr>
<td>Incest</td>
<td>213</td>
<td>306</td>
<td>334</td>
<td>332</td>
<td>334</td>
<td>NA</td>
<td>302</td>
</tr>
<tr>
<td>Outrage of modesty*</td>
<td>1,234</td>
<td>1,522</td>
<td>1,661</td>
<td>1,349</td>
<td>2,131</td>
<td>2,054</td>
<td>1,803</td>
</tr>
<tr>
<td>Sexual harassment at the workplace</td>
<td>112</td>
<td>84</td>
<td>119</td>
<td>101</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

**Notes:**
*This phrase ‘outrage of modesty’ is an archaic remnant of British colonialism and often used as a euphemism for sexual harassment.

NA = Not available.
attending to access these opportunities, as well as women’s lack of financial independence, mobility and exposure in dealing with public institutions. Experiences at NGO women’s shelters show that women need assurance that they and their children will not suffer immediate poverty and indignity when they choose to act against the violence they face.  

Political representation

After fifty years of nation-building, Malaysian women’s underrepresentation in formal politics continues. Following the last general election in 2013, women constitute just over 30 percent of appointed senators in the Dewan Negara (Upper House), and a mere 10.36 percent of those elected to the Dewan Rakyat (Lower House). Ranked 113 out of 189 countries in women’s representation in parliament, Malaysia is surpassed by poorer neighbours like Timor Leste, Vietnam, Cambodia and Indonesia. At an average of 8 percent, women’s numbers in state legislative assemblies are likewise disappointing. Since independence, the number of women cabinet ministers has never exceeded three, a situation that has only worsened under Prime Minister Najib Razak’s administration.

Selangor is the solitary state in which women form 40 percent of the state’s executive committee. Most other states have less than 10 percent, or in Terengganu, Perak and Sarawak, zero. A similar picture is seen for local councils, where women comprise fewer than 20 percent of appointed councillors, and just 4.8 percent are local council presidents (WAO 2012: 119).

The fact that women make up about a quarter to half of the members in all major political parties in Malaysia gives some perspective on what these numbers mean. Such consistently low figures reflect the patriarchal set-up of the political regime, which limits and excludes women from public decision-making. Even when elected, women face a hostile environment, with sexist remarks being the norm. A strategy of ‘fast tracking’, it is argued, can help remove barriers that impede women’s entry into the political arena. Underpinning that approach, however, is an assumption that a critical mass needs to be accompanied by critical acts – that is, what women elected to office do with their position is equally important.

Given this imbalance, the call to increase women’s political representation – particularly through use of quotas – has grown louder recently. The 9MP, for instance, spelt out a policy objective of having at least 30 percent women in decision-making positions. In 2007, the MWFC and the UNDP commissioned a study on this issue to recommend a plan of action to meet this goal by 2015. This effort came after it was revealed that women were lagging far behind as decision-makers in both the public and private sectors. The starkness of women’s poor representation becomes clearer against the fact that even though they now dominate the public sector, women occupy a mere 20 percent of decision-making positions.

The opposition Pakatan Rakyat (PR) coalition has started to make inroads to enhance women’s political representation. In 2009, a component party, Parti Keadilan Rakyat (PKR, People’s Justice Party) amended its constitution to ensure that at least 30 percent of decision-making posts be held by women, the first party in the country to do so. The PR-led state of Selangor has also committed itself to this goal, while Penang has two women local council presidents and a state-funded body – the Penang Women’s Development Corporation (PWDC) – to promote gender equality. Penang was also the first state in the country to adopt gender-responsive budgeting (Ng 2011a, 2012).
The law

The law is a powerful tool to engineer social change. As mentioned, Malaysia ratified CEDAW in 1995, in conjunction with the Fourth World Conference on Women. Although it has removed some of the original reservations it first made, the government has persisted with objections to five provisions concerning citizenship, and marriage and the family. It is a well-established principle of international law that once a state ratifies an international treaty, it is bound to implement the treaty provisions in good faith. Malaysia, however, has been slow to domesticate this pivotal women’s human rights law, opting instead to delay the introduction of enabling legislation that will allow CEDAW to have the force of law locally.

Even so, the non-incorporation of international human rights norms into domestic legislation has not deterred women and other human rights advocates from pushing the boundaries and trying to set a legal precedent through the judicial system. The first attempt, Beatrice Fernandez v. Sistem Penerbangan Malaysia & Anor (2004), failed after the Court – which narrowly interpreted Article 8(2) of the Federal Constitution – ruled that discrimination on the basis of gender was permissible on certain grounds (Box 28.1). It took another seven years before a High Court judge finally declared that CEDAW had the force of law and was binding on member states. This decision was reached when Noorfadilla Ahmad Saikin sued the Education Ministry for discrimination after the ministry retracted a job offer it made because she was pregnant. Even though the government initially chose to appeal the decision, it eventually withdrew its appeal, leading to a significant victory for women’s rights in the country (Box 28.2).

Box 28.1 The Beatrice Fernandez case

In 1991, Beatrice Fernandez was fired from her job as a flight attendant with Malaysian Airlines (MAS). Under the prevailing collective agreement, any flight attendant who becomes pregnant after two pregnancies is obliged to resign. In her case, she fell pregnant for a third time but refused to resign and her employment was thus terminated. She then took her case to court, but lost after the judges ruled that:

1. Malaysian Airlines (MAS) was a private enterprise and the law protected an individual only if their rights had been violated by state or public authorities;
2. Article 8(2) of the Federal Constitution, which prohibits gender-based discrimination, does not apply, because collective agreements are not considered law;
3. the term ‘gender’ was included in the Federal Constitution only after 1991 – the year of the offence – and thus cannot be applied retrospectively; and
4. no discrimination took place because all female flight attendants were treated the same.

Box 28.2 The Noorfadilla Ahmad Saikin case

2008: Noorfadilla applies for a temporary teaching position in a government school.
2009: She is offered a teaching job, which she accepts; however, the offer is later withdrawn after she is discovered to be pregnant. The government (Ministry of Education) claimed it could
not employ pregnant women because their absence for two months after delivering would require hiring a replacement teacher, and that if a woman encountered health problems during her pregnancy, she would be absent from the job. Noorfadilla files a court application to declare the government’s actions discriminatory, unlawful and unconstitutional.

2011: On 12 July, Justice Zaleha Yusof of the Shah Alam High Court rules in favour of Noorfadilla, stating that the Ministry of Education’s actions constituted gender discrimination as defined in CEDAW, and violated Article 8(2) of the Federal Constitution. The Ministry appeals the decision.

2013: In June, the government withdraws its appeal. The landmark decision of the Noorfadilla case stands, and as noted by the Joint Action Group for Gender Equality (JAG), ‘There can be no more excuse for an employer, be it the government or private entity, to deny a woman her right to work and to the same employment opportunities as men, on the basis of gender’ (Press statement, 27 June 2013).

Note:

Without detracting from this latest achievement, in general, the process of legal reform has been arduous and other attempts at challenging discriminatory laws have been less successful. In 2012, the Court of Appeal told a group of women factory workers who had been forced to retire at age fifty that there was no bias in having different retirement ages for male and female employees, even when this clearly violated Article 8(2), the non-discrimination provision, of the Federal Constitution. In the case of Islamic legislation, amendments from the 1990s onwards have caused Muslim women’s rights to be whittled away. Prior to this, Malaysia had one of the more progressive family enactments in the Muslim world in its 1984 version of the Islamic Family Law (IFL). Without the intervention of women’s groups like Sisters in Islam, the latest efforts by the central government to impose uniform legislation across all states would have caused the erosion of rights that Muslim women previously enjoyed. For example, in the past, Muslim men were only able to contract a polygamous marriage if they could prove that this was ‘just and necessary’, and more importantly, that the subsequent marriage would not impair the standard of living of the existing family. The 1984 IFL was repealed in 1994 and in 2005 the government proposed several changes including rewording ‘just and necessary’ to ‘just or necessary’, thus making it easier for Muslim husbands to take on additional wives.

As well, there are certain provisions under Islamic law that have resulted in Muslim women’s being denied rights enjoyed by women of other faiths, especially in relation to marriage and the family. For instance, the minimum age of marriage for Muslim women is sixteen; for other women, eighteen. Regardless of age, the former need the permission of a wali (male guardian) to marry; the latter do not. Once married, a Muslim wife has to submit to and obey her husband, failing which she can be charged in court. Only Muslim women are subjected to polygamous marriages, they do not have equal rights in relation to divorce or guardianship, and where inheritance is concerned, daughters get half the share of a son. It is commonly understood that Malaysia’s earlier mentioned reservations to CEDAW are made to preserve this status quo.
Finally, the regulatory powers of the law have also been used to perpetuate and uphold a particular and rigid notion of what constitutes the ‘ideal’ Malaysian woman. It penalises those it deems as being ‘immoral’ or who dress or behave ‘indecently’. Although all women are subjected to sexual policing, those who are younger, less affluent, look masculine and/or are Malay-Muslim bear the brunt of such controls. This situation has worsened with the politicisation of ethnicity and religion in recent times (Tan 2012).

Conclusion

On the whole, Malaysia does not suffer from a dearth of policies and programmes that can improve women’s lives. As the account above shows, the government has a fairly reasonable track record of introducing changes; however, most of these have remained on paper. It has also been reluctant to take on additional progress by ensuring that the barriers that women encounter are effectively addressed. This can happen only by taking into account women’s multiple identities. Unless this situation is reversed, the labour force participation rate of women will continue to stagnate at around 50 percent, since affordable childcare facilities are lacking in both the public and private sector. As well, present occupational hierarchies will continue to be reproduced under conditions of capitalism and patriarchy. While there may be slight improvements in women’s decision-making positions, top posts will largely benefit elite women who have the prerequisite education, professional qualifications and network connections.

Patriarchal ideology and control over women have been difficult battles for the women’s movement to overcome, particularly in the arena of violence against women. Increasingly, Muslim women have been under attack, purportedly for reasons of immorality and irreligious behaviour (see Pang, this volume). Unless there are real cultural, structural and systemic changes at all levels, the potential for all women to live violence-free lives in the future is bleak. Democracy and socio-economic justice are prerequisites to gender equality, and thus opening up such spaces and insisting on a more equitable distribution of the country’s resources are indispensable towards realising women’s rights and gender equality in Malaysia.

Notes

1 Under the United Nations human rights treaty system, states are allowed to place ‘reservations’ to a treaty for provisions that they do not accept and by which they will not be bound. Reservations are allowed so long as they are not incompatible with the objective and purpose of said treaty. They are meant to be temporary; over time, the state needs to demonstrate that it is making progress toward removing a reservation.

2 The range of values of the MGGI is between 0, no gender inequality, and 1, maximal gender inequality (see MWCD and UNDP 2007). The latest MWCD data show that this gap has been maintained (MWCD 2009).

3 This followed the Women in Development (WID) model popularised in the 1970s by economist Ester Boserup.

4 Sabah registers the worst poverty rate, at 8.1 percent (DOS 2013b).

5 The share of the bottom 40 percent of the populace fell from 14.5 percent (1990) to 13.5 percent (2004), while that of the top 20 percent grew from 50 to 51.2 percent for the same period (Ragayah 2009).

6 It should, however, be noted that the incidence of poverty among female-headed households is still higher than among male-headed households (2.1 versus 1.6 percent), and the former’s mean monthly income is RM3,671 whereas the latter’s is RM5,248 (DOS 2012: 40–41).

7 See Sangaralingam 2005.

8 The official 2012 figures count 616,700 men (59.07 percent) versus 427,200 women (40.92 percent).
The report defines ‘employed persons in the informal sector’ as working for establishments that:
(1) are not registered with the Companies Commission of Malaysia or any other professional body;
(2) produce goods and services that are meant for sale or barter; and (3) employ fewer than ten persons.

In 2011, out of 9,555,700 women of working age, fewer than half (4,575,300) were in the labour force (tan and Thambiah in press).

For those in the private sector, maternity leave remains at sixty days.

The state of Selangor, ruled by the Pakatan Rakyat coalition since 2008, is an exception, with fourteen days' paternity leave.

It is well known that only around 10 percent of VAW incidents are reported, for such reasons as shame, culture, inaccessible reporting procedures and poor awareness levels, resulting in a stark discrepancy between incidence rates and police reports of VAW. Further research is still needed to determine if there has merely been a rise in the rate of reporting.

‘Memorandum to Nancy Shukri, Minister in the Prime Minister’s Department in charge of law, and Ahmad Zahid Hamidi, Minister of Home Affairs on the Proposed Amendments to Laws relating to Domestic Violence and Sexual Crimes in the Penal Code and Criminal Procedure Code’. Submitted by the Joint Action Group for Gender Equality (JAG), 30 September 2013.

See the various annual reports by Women’s Aid Organisation (WAO) and Women’s Centre for Change (WCC), as well as Noraida and Intan Hashimah 2011.


At one point, he had only one woman in his cabinet. After the last general election, this figure climbed to two out of the thirty–three appointees.

Reservations to Articles 5(a), 7(b) and 16(2) have been dropped, but those to Articles 9(2) (women’s transferring their nationality to their children), 16(1)(a) (right to enter into marriage), 16(1)(c) (equality in marriage), 16(1)(f) (guardianship) and 16(1)(g) (a wife’s right to choose a family name and occupation) remain.

Article 27 of the Vienna Convention on the Law of Treaties 1969 stipulates that ‘a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty’.

Any international treaty entered into by Malaysia is not self-executing; a local law must be passed to give effect to an international commitment.

The case began in 2001 when the jobs of the eight women from Guppy Plastics Industries were suddenly terminated after their company changed its employment regulations, including forcing female employees to retire at fifty while men were allowed to work until fifty-five. Though the women won their case at the Industrial Court, the High Court later overruled this decision.

Islamic family law falls under the jurisdiction of each state in Malaysia.

Following protests by Sisters in Islam, the government withdrew these amendments for further review; however, there has been no resolution on this matter since.

In some states, women can also be forced into marriage through a wali mujbir, a male guardian who has the right to compel a woman to marry.

Bibliography


Filling in the gaps


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