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Realising Women's Human Rights in Malaysia: The EMPOWER Women's Human Rights Report

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Abstract

Why do activist groups representing some of society's most marginalized employ legalistic forms of 'rights talk' when the reality of securing rights via the judicial system is almost unimaginable? The article considers this question in relation to the work of the Malaysian non-governmental organisation (NGO) EMPOWER who, in 2011, produced the Malaysian Women's Human Rights Report focusing attention on the rights of informal sector workers, refugees, sexual minorities and women's rights under non-Islamic family law. The engagement of a legalistic human rights perspective is important to this group – the existence of some constitutional guarantees for socio-economic rights and Malaysia's commitments to CEDAW do, after all, provide scope for activism. Yet such activities take shape within the context of rising Islamic conservatism within the political and legal system, commitments to an economic development model in which the interests of labour are subordinated to those of capital, and state authoritarianism. Attempts to engage with justiciable frameworks for human rights serve to legitimate human rights claims in the sense that claims are presented in an appropriately legalistic language. This is a largely aspirational exercise – albeit one that is tied to wider civil-society led critiques of Malaysia's political and economic system.

Keywords: Malaysia, human rights, CEDAW, women's activism

Introduction

The rationale behind this article is to explore why it is that women's organisations seek to engage rights-based activism in contexts where the scope for meaningful outcomes from such approaches are very limited. The article explores the example of the Malaysian women's advocacy group EMPOWER which produced the 2011 Malaysian Women's Rights Report (*'Equality Under Construction'* (EMPOWER 2012)). EMPOWER (or *Pusat Kesedaran Komuniti Selangor*) is a feminist activist non-governmental organization (NGO) engaged in a range of programmes and advocacy activities particularly those that focus on issues of

women's empowerment – with empowerment defined broadly to encompass a range of grassroots activities such as working to build women's political participation and supporting poor women working in the informal sector. The economic and political focus of their grassroots work is reproduced in their advocacy work (often undertaken in collaboration with other women's NGOs) that have focussed on issues such as developing a women's political agenda and, as is discussed in this article, developing campaigns and initiatives around the issue of women's human rights as well as campaigns focussed on promoting democratic governance in Malaysia more generally (<http://empowermalaysia.org/> n.d.). The case of EMPOWER is employed in this article as an example that illustrates how and why activist groups seek to engage with rights and the challenges of doing so. The article looks to how EMPOWER's women's human rights report attempts to explicitly identify the legal basis for violations of women's rights in Malaysian and international law. It identifies how these legalistic interventions are invariably constrained by the extent to which the law in Malaysia functions largely as an instrument of state power rather than as an instrument of justice, but also points to how the invocation of rights by an avowedly feminist women's organization based in the global south serves to challenge the statist, heteronormative and gendered assumptions that underpin the understandings of women's rights sanctioned by the state.

Equality Under Construction catalogues examples of gender specific human rights abuses in four discrete areas (work, family law, refugee issues and sexual identity), human rights claims are framed in relation to a range of international standards/treaties and domestic legislation. In presenting numerous gender injustices as rights violations, a particularly strong appeal is made to the Convention on the Elimination of Discrimination Against Women (CEDAW). The Malaysian government's 1995 ratification of CEDAW (albeit with certain reservations) does, after all, provide a space for legitimating rights-based activism in a state

in which commitments to human rights remain shaky. It is nevertheless important to acknowledge that in spite of a constitutional commitment to gender equality, the place of CEDAW in Malaysian law is both ambivalent and incomplete.

This article seeks to engage with debates concerning the politics of rights-oriented mobilization in the Global South (Cornwall and Molyneux, 2006; Grugel and Uhlin, 2012) – and specifically those writings that discuss the possibilities and pitfalls of engaging with justiciable rights (Epp, 1998; Joshi 2010; Rajagopal, 2007; Wilson, 2009). Furthermore, through the focus on a women’s rights organisation and its invocation of Malaysia’s constitutional commitment to CEDAW, I also aim to contribute to wider feminist debates concerning the role of CEDAW in women’s rights activism (Zwingel, 2012; Merry, 2006). The article acknowledges the importance of critical legal scholarship that is deeply sceptical of the ability of international human rights instruments, treaties and national laws to provide a basis for delivering gender justice (Orford, 2001; Stewart, 2011), but at the same time, seeks to highlight the significant role that non-elite actors located in the global South can play in terms of challenging and transforming human rights struggles (Elias, 2008).

What is interesting, is that despite the fact that the space for women’s rights activism (and indeed, all forms of human rights activism) in Malaysia is exceptionally narrow, EMPOWER seeks to bend, stretch and challenge the government’s very narrow interpretation of CEDAW – they have deliberately adopted a transformatory understanding of women’s rights under CEDAW so that ‘rights’ are understood in relation to non-citizen groups such as refugees, the economic and social rights of informal sector workers, the rights of women under Family Law, and the need to defend the rights of lesbian, gay bisexual and trans gender (LGBT) people. Such readings of CEDAW draw upon the transformative engagement that CEDAW

has had with activist groups which have given rise to new interpretations of the convention (Zwingel 2012) – for example in relation to the issue of violence against women and the rights of sexual minorities.¹

It goes without saying that many of the interpretations of CEDAW found in *Equality Under Construction* are unlikely to be adopted by the Malaysian government. So why engage in such strategies? Two possibilities can be suggested. First, that CEDAW functions alongside various transnational framing strategies employed by activists that seek to employ moral persuasion or ‘shaming’ in order to force the government (or at least sympathetic elements within the government and/or the state) to identify issues of gender justice in new (and confronting) ways. This is a rather top-down understanding of human rights (one that is oftentimes presented in the human rights literature in relation to ideas of normative policy transfer (Risse and Sikkink 1999)) and is problematic in that it fails to take account of how human rights claims are refashioned within local contexts. Second, *Equality Under Construction* was written in order to engage with both the government and other local actors – such as the women taking part in EMPOWER training programmes and events (discussed in more detail in the final section of this article). CEDAW thus becomes part of a locally situated politics of gender justice – one in which human rights for women are continually being reshaped and rethought in relation to the everyday lived experiences of women in Malaysia. To quote from the EMPOWER report: ‘Equality Under Construction ... seeks to decipher the numerous interpretations of equality vis-à-vis the lived realities of women’s lives seen through the lenses of rights’ (*Persatuan Kesedaran Komuniti Selangor* 2012: p. 38). Such an approach rests on the ability of the EMPOWER report to position and legitimate of rights claims within a national normative context highlighting, in particular the everydayness/banality of human rights oppression. But at the same time, they seek to

challenge the very narrow assumptions (defined by citizenship, sexuality, status in relation to family law and class) upon which the Malaysian government has developed its own interpretation of women's rights.

In what follows, I first provide a brief survey of recent debates concerning the role of activists in legal struggles in the Global South around justiciable rights. These developments – often presented as ‘rights revolutions’ (Epp 1998) – have not taken place to the same extent in Malaysia and this section of the article looks briefly at why this might be the case. The analysis then shifts to the EMPOWER report itself which provides a case study of the alternative (non-court oriented) legalistic strategies that activists engage in. I focus on how the language of rights is utilised in the report in terms of: (a) the continual reminder to the Malaysian government of its human rights obligations in international and domestic law (especially with regard to CEDAW); and, (b) the presentation of the voices of those suffering forms of gender-related oppression and marginalisation in order to connect the experience of injustice to everyday lived experience. The third section of the article seeks to place the report within a wider political context. Here I draw attention to EMPOWER's political activism, its approach to gender justice (contrasting this with the government line on gender equality issues) and pointing to the very real limitations that this group faces in terms of engagement with political Islam. In the conclusion I raise some wider issues concerning how this case study provides insights into contemporary forms of human rights activism in the Global South.

As way of background information, EMPOWER is a small NGO that has developed a high profile in Malaysian politics due, in large part, to its director's involvement in organising the anti-corruption, pro-democratic reform struggles known as the Bersih movement. The focus

on EMPOWER in this article does not imply the suggestion that the group is somehow representative of all forms of women's rights activism in Malaysia, and neither do I wish to overemphasise the power and influence of this particular NGO (not in the least because of the very real constraints on civil society activism in Malaysia). My intention rather, is to utilise EMPOWER, and their women's human rights report in particular, as an illustrative example of how and why NGOs maintain a commitment to legalistic understandings of human rights and how engagement with human rights by activists outside of the court system in fora such as human rights reports enables activists to redefine and reshape understandings of human rights on their own terms (see also, Merry et al 2010). To this end, the analysis presented in this article is grounded in a content analysis of the EMPOWER women's human rights report. These findings were supplemented with interviews conducted with EMPOWER director Maria Chin Abdullah in 2010 and 2012 (before and after the publication of the report) as well as other relevant source materials such as news media.

The Legal Possibilities and Limitations of Rights based struggles

A recent wave of writings has sought to explore the legal possibilities afforded to human rights activists engaged in struggles for socio-economic rights in specific developing countries and highlights the significant role of courts in these 'rights revolutions' (Epp 1998; Liebenberg 2001; Gauri and Brinks 2008; Robins 2008; Venning 2008; Joshi 2010).

Nonetheless, even in those states such as India in which activists have sought to pursue rights-based agendas through the courts, a degree of scepticism is raised about the ability of groups representing the interests of the poor to bring about meaningful and significant change (or even to successfully pursue a case) due to either a lack of support structures (Epp, 1998)

or the persistent elitism of judicial decision-making (Rajagopal, 2007). Joshi (2010), for example, points to how action through the Indian courts has been pursued in relation to the country's Employment Guarantee Act. Arguing that 'legal underpinnings do not automatically improve the performance of a recalcitrant administration or necessarily enable the poor to obtain the benefit of the right in practice' (Joshi, 2010, p. 621), she nonetheless suggests 'such legal mechanisms are important not only as mechanisms of formal accountability, but in the impact that they have on collective action by the poor ... having rights enshrined in law (that cannot easily be changed through the whims of successive governments) provides an incentive for activists to invest in mobilizing the poor to access their rights' (Joshi, 2010, p. 627). Activism in Malaysia around CEDAW largely precludes the possibility of engaging a litigation strategy via the courts (see below), but Joshi's point about the mobilizing potential of rights does have some bearing on the case examined in this article.

Pursuing rights based claims in the context of Malaysia: the limited justiciability of rights

Perhaps the most significant distinguishing feature of the human rights discourse in Malaysia is that the country simply does not fit Epp's (1998) 'rights revolution' model. Malaysia is a country in which a growing acceptance of the role of human rights in delivering forms of government accountability (for example, in the form of the human rights commission *Suhakam*) exist alongside an overwhelming hostility from a broadly authoritarian and socially conservative state to the pursuit of rights-based claims. Commentators have highlighted the 'limited and intermittent judicialisation of politics' in Malaysia (Kanagasabai 2011), pointing, in particular, to deliberate efforts to curtail the power and influence of an independent

judiciary during the Mahathir era (1982-2003)² as well as the enactment of restrictive laws that further curtailed access to constitutionally guaranteed rights³.

These developments need to be understood not simply in terms of the authoritarian tendencies of ‘Mahatirism’ but as rooted in the colonial era in which the gradual introduction of modern administrative structures were ‘crude and superficial versions of representative governance’ (Tajuddin 2012, p. 5) never actually intended to generate meaningful political participation. The appearance of formal judicial-legal bureaucratic structures thus served to mask the extent to which colonial rule rested not on a ‘civilizing mission’ but the expansion of capitalist exploitation beyond Europe. This need to mesh the appearance of democratic institutions with the pursuit of capitalist developmentalism is certainly a feature of contemporary Malaysian politics. Yet we also need to be attendant to the unique features of contemporary state authoritarianism in Malaysia – not least the efforts to co-opt the rising Islamicizing middle classes through various state strategies including the growing emphasis on forms of Islamic law (Moustafa 2012).

In looking to the possibilities for rights based activism via the Malaysian legal system therefore, one must remain acutely aware of Rajagopal’s argument regarding the way in which human rights claims are made within an overall ‘logic of the state’ in which judicial decision making serves as an instrument of governance rather than as an instrument of justice (Rajagopal 2007: 159). This logic of the state is clearly evident in relation to the Malaysian government’s constitutional commitment to CEDAW. As a state member to CEDAW, Malaysia is obliged to take all appropriate measures against all forms of discrimination against women. In practice, this is reflected in amendments to article 8(a) of the Malaysian federal constitution which now incorporates ‘gender’ as a prohibited ground for

discrimination. Although, by and large, this constitutional guarantee has been interpreted very narrowly, a landmark high court decision in July 2011 did serve to affirm the binding nature of CEDAW in Malaysia when it was decided in the case *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun and Ors* that a teacher on a temporary employment contract had been discriminated against when she was sacked due to pregnancy. The Malaysian government sought to appeal this decision, reaffirming its view that CEDAW is not part of Malaysian law and that CEDAW provisions should not be enforceable in courts or other legal spaces such as tribunals. In this context, the legally binding nature of CEDAW in Malaysia is somewhat incomplete and, it should be noted that the recognition of CEDAW by a higher court is limited in the sense that it appears to pertain only to public sector employees.

Nonetheless, as the *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun and Ors* case illustrates, recent years have seen a growing level of autonomy in the Malaysian judicial system. One can also point to examples of the courts being used to protect the interests and rights of poor and marginalised groups in a series of land rights cases brought to the courts by the country's indigenous *Orang Asli* population (Nah 2008)⁴. Nonetheless, it remains the case that for many activist groups pursuing rights based struggles, the possibilities for legal mobilization are limited. Rights thus remain, in many ways, aspirational standards. Yet as the following discussion illustrates, writing-off rights as merely 'aspirational' (Wilson 2009, p. 64) ignores an important component of what rights do in terms of socially situated struggles against injustice.

As the preceding discussion serves to illustrate, it is very difficult to position the work of EMPOWER in relation to discussions of the pursuit of rights-based activism around legally enforceable sets of (economic and social) rights. It is also difficult to relate the Malaysian

case (and the issue of women's rights in particular) to those discussions of 'rights revolutions' in which the constitutionally guaranteed rights of the individual are backed by a range of technical, financial and political support structures for legal mobilization that propel rights based activism into higher courts (Epp 1998; Wilson 2009). The discussion presented in this article then, is, in many ways, a stark illustration of what Schiengold (2004[1974]) terms the 'myth of rights' whereby constitutional rights are rendered effectively meaningless within particular political contexts, and yet activists remain deeply attached to the mobilizing potential(s) of rights.

Articulating and claiming women's rights in *Equality Under Construction*

In what follows, I provide an overview of the issues raised in *Equality Under Construction* in relation to the rights of working women, the impact of family law on non-Muslim women, the pursuit of human rights for refugee women and the human rights of LGBT people. In many of these areas, activist groups have sought to secure the rights of these groups through the courts, but, overwhelmingly, the legal system functions merely to enforce the government line thus limiting the possibilities of legal challenges by activist groups.

Focussing-in and developing a content analysis of this report enables me to provide a detailed overview of how a particular activist group has sought to develop a rights approach in its work. The report was selected for analysis because of the interesting and unique ways in which it presents women's rights issues (both in terms of its selection of human rights issues and the ways in which it utilises women's story's and voices in its analysis). Indeed, this in-depth approach reflects a broader concern relevant to studies of women's rights activism

concerning the need to take seriously the specific and socially-embedded ways in which activist groups engage with universalizing concepts such as ‘human rights’ at the local level and in their everyday activities and campaigns (see also Merry 2006). It should be noted, furthermore, that although considerable emphasis is placed on the report itself, I also seek, in the final section of this article, to relate the report to EMPOWER’s broader political activities. In this sense, the report serves as an important piece of documentary evidence in understanding how and why an activist group chooses to engage with ‘rights’.

Using CEDAW as a framework for women’s rights in Malaysia.

The decision to embark on the writing of a women’s human rights report reflected concerns that women’s rights issues were not being substantially reflected in the work of other local human rights organisations. The EMPOWER report is important in terms of the evolution of understandings of rights in Malaysia because it seeks to highlight the experiences of ‘invisible’ groups and/or the invisibilisation of forms of gender injustice. Indeed, in devising this report, EMPOWER purposefully eschewed a focus on violence against women (VAW), not because this isn’t an important women’s human rights issue but because commitments to VAW have come to dominate discussions of women’s human rights to the exclusion of other forms of injustice.⁵ Women’s groups in Malaysia have in fact had a relative level of success in pushing the issue of domestic violence onto the government’s agenda – with the Domestic Violence Act being enacted in 1996 after a decade of activism around this issue by women activists.⁶

The report itself is divided into four main sections: (1) Women’s Rights to Employment: The forgotten and invisible workers; (2) A CEDAW approach to family Law in advancing

equality and non-discrimination; (3) ‘Because I am a refugee’; The denial of human rights to refugee women and girls in Malaysia; and (4) CEDAW in defending the human rights of Lesbians, Bisexual women and trans gender people in Malaysia. As mentioned earlier in the article, CEDAW provides an important frame of reference for the report’s discussion of women’s human rights, but it CEDAW is not seen as the only source of human rights standards and so other international legal instruments and conventions pertaining to human rights as well as domestic laws are mentioned in the text. Each section of the report contains numerous recommendations to policy makers which include the need to better adhere to CEDAW articles and recommendations (and other international conventions and treaties to which Malaysia is signatory – such as the Convention on the Rights of the Child CRC), the need to sign onto existing international human rights treaties and conventions and for these standards to be embedded in domestic law, and improvements in the government’s constitutional commitment to gender equality. Alongside these legislative changes, the report calls for a genuine commitment on the part of the state to enforce programmes of gender sensitivity training within the judiciary, the police force and other arms of the state – measures that would, in Epp’s terms, strengthen the support structures for legal mobilization around women’s rights. In the discussion of the human rights of refugees, the report also calls for Malaysia to sign up to the various UN conventions pertaining to refugees and stateless persons. But at the same time, draws attention to the 2006 report from the CEDAW committee on Malaysia in which the government was called upon to ‘integrate a gender sensitive approach throughout the process of granting asylum/refugee status, in close cooperation with appropriate international agencies’ (CEDAW 2006, p. 6).

Women workers – especially women employed in the informal sector – are the focus of the first substantive chapter of the report. The discussion centres on gender-based workplace discrimination in Malaysian, particularly in relation to pay scales. This chapter emphasises

how such realities are incompatible with Malaysian government commitments under CEDAW and also how other discriminatory practices such as the lack of trade union rights for women in the electronics sector and those employed informally stand at odds with Malaysia's obligations as a ratifying party to various ILO conventions such as the Right to Organise and Collective Bargaining (no. 98). Attention is drawn to the limits of human rights activism around jurisdictional rights – in particular in relation to the Beatrice Fernandez case that failed to hold Malaysian Airlines accountable for discriminatory practices against women, underlining the extent to which constitutional guarantees for gender equality are not seen as enforceable within the private sector.⁷

Other sections of the report also point to the limitations of actions taken through the courts. Refugee women and their children are portrayed as battling a Malaysian legal system that continually seeks to find ways to criminalize and deprive them of access to their rights. The section of the report on family law points identifies how family law – in particular the Law Reform (Marriage and Divorce) Act (1976) – places obstacles in the path of women seeking divorce. Malaysia's dual legal system creates particular problems in the area of family law. Although Islamic family law is not an issue that is addressed head-on in this report, the report points to a number of court cases in which a male spouse's conversion to Islam can enable husbands to take no responsibility for the maintenance of their former spouse or children from that marriage in cases of divorce (since non-Muslims cannot apply to *Syariah* courts for maintenance) and has implications for inheritance when a converted spouse dies intestate (Menon 2012). Finally, in the section of the report that examines the rights of sexual minorities, we are shown how the state actively persecutes these groups not only through practices of religious policing and harassment but also through punitive legal measures. Section 66 of the *Syariah* Criminal Enactment (1992) of the state of Negeri Sembillan states

that men ‘posing as women’ are liable to a fine of up to 1,000 RM or imprisonment of up to six months (Press Statement of the *Mak Nyah* Community of Malaysia 2010). The issues addressed in the report point to the urgent need for revisions to be made to the legal system in ways that better recognise and protect the rights of women.

Giving Voice to Injustice

With the exception of the chapter on Family Law, the report draws upon vignettes – women’s stories – and voices in order to display the gender injustices that are built into the Malaysian legal system as well as broader structures of work, employment, family life, national identity and sexuality. In interview, EMPOWER’s director Maria Chin Abdullah suggested that they had lacked the resources to develop a more ‘rigorous’ (i.e. drawing upon survey data) research-based report, finding that they only had the resources to present the stories and voices of particular women.⁸ It should, of course, be noted that there has been a significant shift towards more quantifiable forms of human rights reporting in recent years (Merry 2011) and EMPOWER’s concerns about not having this kind of data is certainly a reflection of the overwhelming shift towards measurement and quantification in both human rights reporting and policy analysis. The decision to draw upon voices and vignettes also reflects some of the very real difficulties of conducting research into issues deemed too controversial or as ‘unimportant’. Informal sector workers simply do not feature in government labour force statistics and there is little data (especially age and sex disaggregated data) available on refugees in Malaysia – largely due to the lack of capacity that the UNHCR in Malaysia has to perform this task given the state’s highly antagonistic position toward refugee groups (Nathan 2012, p. 186). The EMPOWER report also mentions how the Ministry of Women Family and Community Development undertook a survey of non-heterosexual people’s experiences

(*Projek Kasturi*) which was said to include personal accounts of stigmatization and discrimination, but the report was withheld from dissemination under the Official Secrets Act.

Merry (2011) points out that human rights measurement frequently serves to render complex problems as simple, but this concern can also be levelled against more qualitative approaches to human rights reporting. For example, we need to be aware of how personal testimonies are ‘curated’ (Patel 2012: 235) (that is, put together and presented in particular ways) within human rights research and reporting in ways that similarly simplify the complex. Criticism can be levelled for example at the way in which international human rights experts increasingly take responsibility for presenting individual accounts of human rights violations in ways that fail to take account of the broader structures of power and inequality within which violations take place (Patel 2012). Human rights reports increasingly serve as key ‘sites of narration’ for personal human rights narratives (Schaffer and Smith 2004) with groups such as Amnesty International and Human Rights Watch pioneering this approach. In the area of women’s rights, one concern is that these personal narratives, often appearing in text boxes and accompanied by images of ‘victims’, serve to reconfirm Western ideas of third world (women’s) victimhood (Redhead 2007).

Nonetheless, the technique of utilising women’s voices in order to present first-hand accounts of injustice a very useful strategy – enabling the Malaysian audience at which this report is aimed to connect with these stories to locate an understanding of injustice within a local context inhabited by ‘ordinary’ people, in ways that a more technical report would fail to do. The report is not targeted at a distant Western audience. Rather, these stories function as forms of ‘translation’ (Merry 2006) in the sense that they enable local readers to identify how

the injustices experienced by particular groups are at odds with government commitments under CEDAW. Furthermore their use also serve another purpose – exposing how commitments to gender equality require more than just commitments to CEDAW. The report thus develops a sustained critique of the way in which practices of gender inequality and subordination are reproduced within a localized gender order shaped by both Malaysia's experience of capitalist developmentalism (in particular in relation to the states repressive system of labour control that has some overtly gendered features – see Elias 2009) and the rise of Islamic populism both inside and outside of the state. Thus we see how legal impediments to equality are sustained through wider cultural and political-economic practices that serve to underpin practices of gender inequality.

Taking the example of the section of the report concerned with a range of injustices faced by women workers in Malaysia, it is the voices of informal sector workers that are presented at length in the report as part of a case study section – a technique that gives voice to a deeply marginalized, invisible and exploited group of workers. The case of one of the informal sector workers 'Rozita' is just one of a number of informal sector workers whose experiences are represented in the report:

Rozita is among those who take on formal paid work at a small factory that produces hot water heaters. Contractually, she works eight hours a day but she usually puts in 10-12 hours daily, as she needs the overtime wages. Although she is single, she is obliged to help her sister's family with four young children, and a household income of under MYR2800. Rozita's wages [of around MYR900] help supplement their income (Abdullah 2011, p. 91)

Such examples expose the reality of the multiple burdens faced by women, emphasising how their access to waged labour takes place within the context of unequal social relations. For these informal sector workers waged work, whether it takes place inside or outside of the home, is shaped and constrained by their family responsibilities and limits their ability to secure favourable pathways out of poverty.

Drawing attention to everyday oppressions and injustices in this way is a technique also utilised to good effect in the chapter on refugees. The chapter includes a discussion of human rights violations against female refugees in Malaysia, and how these include sexual and gender based violence, and trafficking into the sex industry/bonded labour. Yet the stories of the refugees provided in this section of report are dominated by oppression of a more commonplace order – the way that they live their lives in constant fear of the police/other security actors, are subject to exploitative forms of employment and squalid housing conditions, how families are separated and their children are unable to access education, and their lack of access to adequate healthcare services. It may have been the case that the sample of refugee women interviewed for this project were unwilling/unable to discuss these issues publically, but there is something important to be noted here in terms of the everydayness/banality of human rights violations – violations that many Malaysians would struggle to see as human rights issues. The voices of those refugee women struggling to live in Malaysia challenges ideas that refugees are not ‘deserving’ of rights (for example, concerning freedom of movement, access to education and health care or decent work) on the grounds of their undocumented and, often, criminalized status. To take an example from the report:

Despite having a UNHCR card,⁹ Maina [a refugee from Burma] has been stopped by the police. Usually the officers accept whatever money the refugees have on them – usually MYR20 to MYR50. She is terrified that she may be detained by them one day. She is worried for her husband too, but most of all, for her children [two girls aged 15 and 17]. Maina maintained that they are good children who do not give her any problems. However, she confided that they too were very worried about their own future. She thinks resettlement would ensure a better future for them. ‘Burma is home. But we cannot live in Burma. We just want a good life.’ Currently they live in fear (Nathan 2012, p. 220)

The story of ‘Wai’ (Nathan 2012, p. 203) also provides an account of the experiences of oppression and injustice faced by refugee women. Wai’s story, like that of Maina, also highlights police harassment. In Wai’s case, her ill health forces her to make regular trips to the hospital, which make her vulnerable to being apprehended by the authorities. Other first-hand accounts attest to similar fears as well as a range of other intersecting injustices which largely stem from the oppressive nature of state power over non-citizen refugee groups in Malaysia. The issue of refugee rights exposes a central dilemma for human rights activism – that whilst human rights are conceptualized as having a universal character and are enshrined in various international legal instruments, they remain instruments of the state that are implemented by states via the notion of citizenship (Basok et al 2006). Bringing in the voices of refugees discussing their fears for their children, their inability to access education for their children, their experiences of police corruption and their everyday struggles to survive thus serves to bring a human face to struggles against social injustice.

In the final chapter of the report, on LGBT rights, the issue of citizenship emerges in a different manner. Here we see that certain groups are denied rights by the state because they are seen as transgressing gender norms – norms that as many scholars have pointed out are central to the construction of the category of citizen (Richardson 2000). We are introduced, in this chapter, to Malay Muslim trans gender woman ‘Rini’ who was arrested and assaulted by Islamic religious officers on four occasions (pp. 279-83). On one occasion when she attempted to complain about her treatment at the hands of officials she was denied legal aid and was told that she had committed a crime for being a *Mak Nyah* (a local term for transwoman). She is quoted in the report as follows:

I am traumatized and very afraid. I am arrested even when dressed as a I no longer use a scrunchie but a rubber band to tie up my hair. I am afraid that the scrunchie will be seized as evidence and used against me. I am extra careful when I go out of the house, more so if I have to go to my friend’s boutique at night to get the items for bridal make-up services [her primary form of employment]. This is because they can arrest me under Section 66,¹⁰ and say that I am a *pondan* (a local derogatory term for transwoman) because I look like a woman. I do not feel safe at home either (‘Rini’ cited in Kuga Thas 2011, p. 281).

The report then goes on to argue that Rini’s experiences are not only at odds with recently adopted CEDAW recommendations regarding the rights of sexual minorities, but also conflict with a range of other commitments that the government has made to CEDAW – namely those relating to freedom of movement (CEDAW Article 15), her persistent harassment by the Islamic religious affairs enforcement officers mean that she is denied

access to earning a livelihood (CEDAW Article 11). She is also not treated as an equal person before the law (CEDAW Articles 3 and 15).

The Report's emphasis on the experiences of trans gender people is very important in that it signals a recognition of how a focus on women's rights should not ignore issues of gender diversity. This stance stands in firm contrast to the approach of the contemporary Malaysian state – an approach that has served to institutionalize 'a politics of heterosexism and homophobia' (Peletz 2006, p. 323). Malaysia's *Mak Nyah* community is dominated by Malay (and therefore, formally, Muslim) individuals and the struggles documented in *Equality Under Construction* point to the role of Islamic Law in policing sexuality and preventing what Goh (2011) refers to as the 'queering' of Islamic practice. Rights have emerged as a central thrust of LGBT activism in Malaysia in recent years (Goh 2011). Nonetheless, concerns should be raised about the extent to which there is a mismatch between human rights policy instruments such as CEDAW that reproduce relatively fixed (even binary) understandings of sexuality and the complexity and variety of lived sexual subjectivities in Asia (Offord 2013; Blackwood and Johnson 2012).

The report nonetheless illustrates how institutionalized practices serve not only to stigmatize all individuals involved in trans gendering, but are disciplinary mechanisms that serve to maintain the marginal and oftentimes impoverished status of Malaysia's trans gender population. The report identifies how state practices concerning the policing of sexuality serve to render transwomen economically marginal – and, moreover, points to how issues of *both* gender diversity and poverty matter for women's rights activism. Putting the issue of poverty on the women's rights agenda in Malaysia is indeed a feature of all four chapters.

Gender inequality and discrimination, in whatever form it takes, is always understood as having effects on livelihoods.

Contextualising *Equality Under Construction* within EMPOWER's wider activities

The above discussion has focussed on a content analysis of the EMPOWER women's human rights report. The discussion has emphasised (a) how the report specifically seeks to engage CEDAW as an important and, oftentimes, justiciable international legal instrument that can be invoked in making claims for gender justice; and, (b) how giving 'voice' to those groups suffering from gendered form of oppression enables the report writers to contextualise an understanding of women's human rights within the everyday experiences of those groups rendered invisible by and unprotected from forms of oppression and exploitation. In this final section of the article, I seek to place the writing of the EMPOWER Women's Human Rights Report within the context of the NGO's own processes of grassroots engagement and the broader struggles and agendas being pushed by the Malaysian women's movement.

EMPOWER is involved in a range of programmes focussed on women's political participation. Some of these schemes involve working with established political parties seeking to field more women candidates in state and national elections, but the programme also incorporates grassroots level training – often with groups of women workers employed in the informal sector. The term 'political participation' is thus interpreted broadly and includes educating women about their employment rights and the importance of gender equality and seeking to encourage women from poor and marginalized communities to stand for election, for example to neighbourhood associations. The focus on informal sector

workers in EMPOWER's everyday political activism matters because it shows quite clearly how they see the struggle for women's human rights in Malaysia as something that cannot simply operate as a top down process, but needs to be enacted via the grassroots. Most importantly, these training programmes centre on getting marginalized groups to engage with the language of rights and to claim it as their own – enabling them to recognise themselves as rights-bearing subjects. As EMPOWER's director commented in interview 'it's actually looking at the whole issue of their right to be able to work and to actually be able to negotiate with their husband to make them see why women shouldn't be really stuck to the home'.¹¹ Furthermore, informal sector women are not only trained to understand what CEDAW is and how it is an international human rights treaty that can be made to matter in improving their lives, they are also encouraged to actively participate in politics in ways that might have the potential to place their concerns higher up the political agenda. The organisation's work with informal sector women is important then because it demonstrates that connecting human rights struggles to the 'everyday' is not just a narrative device employed in the Women's Human Rights Reports – but is connected to some very real, albeit nascent, political struggles.

EMPOWER's work is connected to other, quite significant, forms of political activism. The group is a member of the JAG coalition of activist women's organisations and has drafted civil society responses or 'shadow reports' as part of its engagement with the CEDAW process (NGO Shadow Report Group 2005; Malaysian NGO CEDAW Alternative Report Group 2012). Notable also is the prominent the role of its director, Maria Chin Abdullah, and other officials in wider political struggles for electoral reform – in particular the Bersih (clean government) 2.0 and 3.0 demonstrations of 2011 and 2012. In 2012, a women-focussed clean government campaign, *Wanita Suara Perubahan*, was formed by EMPOWER and led

protests in March of that year not only around issues of corruption and government accountability, but also focussing on issues such as the need for a living wage, the impacts of privatisation and violence against women.¹² Groups such as EMPOWER thus seek to ensure that issues of women's rights and political representation are firmly situated within a critique of the exploitative effects of capitalist expansion. As stated in the chapter on informal sector workers written by Abdullah in *Equality Under Construction*:

Ratifying CEDAW is one step towards equality. The real test is in the implementation of laws and policies using substantive equality as a guide to achieve standards of equality and non-discrimination, instead of conforming to the formal equality rule. Coupled with this is the political will to prioritise the interests of women worker. This requires a fundamental transformation in thinking – women workers should be regarded as people with rights and not as economic resources to fit into the dominant neoliberal growth theory (Abdullah 2011, pp. 103-104)

CEDAW is thus viewed as a starting point, underlining the reflexive view of rights that goes beyond the formal legalistic interpretation of human rights (after all, the report is entitled *Equality under Construction*). For groups like EMPOWER the need for engaging a transformative agenda in this manner can be contrasted with the tendency of the Malaysian government to generally endorse a view that women's rights can be equated with formal equality before the law (a perspective that itself is rather untenable given the catalogue of gender discriminatory acts by the Malaysian courts charted in *Equality Under Construction*).

In terms of placing *Equality Under Construction* within a broader political context, one of the major challenges for the Report writers was how to approach the politically sensitive issue of

Malaysia's system of *Syariah* law in relation to questions of women's human rights. What is clear is that the report was written in the context of growing political sensitivities over the role of Islam in Malaysia and growing competition over the Malay vote which has served to generate ever more conservative Islamic agendas. A discussion of gender equality issues between EMPOWER and a range of government officials at a 2011 closed door event in the run up to the publication of the report elicited criticism from conservative Islamic leaders because they were seen as having the potential to encroach on Islamic Law and moreover would secretly fuel 'campaigns and advocacy to change the values and moral foundations of Islam that are central to Malay Muslims and Malaysians in general' (statement by the Malaysian Muslim Organisations Consultative Council (Mapim), cited in Aw 2011). EMPOWER has sought mostly to minimise its criticism of Islamic law especially in relation to family law (after all, the chapter of the report is written about the experiences of women under *non*-Islamic family law). As mentioned, the Islamic legal system is criticised in the report in relation to the rights of non-Muslims married to converts and in relation to the treatment of LGBT groups at the hands of Islamic legal authorities. There is certainly a desire not to engage very forcefully with political/legal Islam – a course of action that would raise real challenges for a secular and multiracial organisation whose leaders may well feel that that they lack both the capacity and legitimacy to make a significant intervention.¹³

Conclusion

This article has explored how EMPOWER's engagement with legal frameworks for human rights provides insights into forms of feminist-oriented human rights activism. First, and most importantly, *Equality Under Construction* serves to give voice to marginalised groups

suffering intersecting forms of gender oppression – their stories are made visible in the report challenging dominant assumptions what constitutes ‘human rights’. Thus the report serves to challenge assumptions concerning who is best able/ allowed to access human rights (i.e. how rights claims are mediated by claims to citizenship that privilege nationalist, masculinist and heteronormative assumptions). Second, whilst recognising the ways in which gender violence impacts upon the lives of different groups of women, the report eschews a framing of women’s human rights purely in terms of the issue of violence against women (VAW). Nonetheless, the report does draw attention to the broader political economy of VAW in which specific forms of violence (e.g. within marriage, against those engaged in practices of trans-gendering, against refugee women) can only understood in relation to the very everyday experiences of injustice rooted in economic deprivation.

Moreover, the EMPOWER report is usefully understood in relation to Fraser’s (1990, p. 67) conception of ‘subaltern counterpublics’ that is ‘parallel discursive arenas where members of subordinated social groups invent and circulate counterdiscourses to formulate oppositional interpretations of their identities, interests and needs’ that ‘emerge in response to exclusions within dominant publics’ and, accordingly, ‘help to expand discursive space’. The engagement of legalistic rights language in the EMPOWER report is a mechanism employed in order to present alternative visions of social justice that are both ‘public’ in their invocation of rights agendas and international law, but are decidedly ‘counter’ in their construction of an understanding of women’s human rights that is considerably at odds with the understandings of both rights and the law invoked by the state. Fraser’s (feminist) subaltern counterpublic is usefully examined alongside De Sousa Santos and Rodriguez - Garavito’s (2005) work on ‘subaltern cosmopolitical legality’ which focuses on the processes through which rights struggles are made and claimed amongst the dispossessed and

marginalized. Although fully cognisant of the role of the law in upholding injustice – this perspective remains optimistic in terms of the emergence of alternative rights regimes.

Thus I argue that EMPOWER and groups like them are engaged in a very different kind of ‘rights revolution’. On the one hand, we can observe an NGO keen to engage with legal arguments in its discussion of women’s rights, but the other hand, it challenges the very classed, gendered, racialized and nationalistic assumptions that are embedded in national rights regimes. Tracking the everyday experience of injustice is important for the writers of the EMPOWER report then because it highlights the very intersectional nature of gender injustice but, more importantly, it draws attention to how CEDAW or other international human rights instruments are only a starting point for challenging gender oppression. Thus we also need to think about the transformative possibilities that engaging with rights grants grass roots movements and the potential for grassroots activism to reshape rights agendas. As Grugel and Uhlin (2012) argue, there is a need to connect macro level studies concerning the perpetuation of injustice to a closer analysis of ‘how justice is claimed in practice by specific communities’ – that is ‘how vulnerability is both lived out and challenged as a daily experience’ (p. 1704). Likewise Cornwall and Molyneux (2006) point to the significance of women’s rights activism in developing countries in relation to the development of a culture of rights practice which goes way beyond encoding rights claims in legislation but serves to ‘foster a sense of entitlement, of the right to have rights’ (p. 1189).

So what does the case of the EMPOWER Women’s Human Rights Report tell us about whether rights work in securing gender justice? What we see is that whilst the ambitions of this report remain largely aspirational in the current Malaysian political context, the report does matter in the sense that what EMPOWER has sought to do is to connect rights struggles

to the everyday experiences of the marginalized and within this context, notions of gender (in)justice are reframed – they come to be disconnected from narrow (gendered, nationalistic and heteronormative) understandings of citizenship and are articulated alongside a concern with the effects of capitalist exploitation. But most importantly, the report shows how rights matter for the marginalised because making them rights bearing subjects and telling their stories of injustice and exploitation serves to challenge the processes of invisibilisation that enable rights abuses to take place.

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¹ In 1992, the CEDAW Committee adopted General Recommendation 19 on Violence Against Women. More recently, General Recommendation 28 recognises the intersectionality of gender oppression stating that '[t]he discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.'

² Most notably the 1988 revisions to article 121 of the national constitution which served to restrict the powers of the judiciary.

³ For example, the Societies Act (1988) or the Printing Presses and Publications Act (1984)

⁴ Although success in this area is limited, such cases do operate as a form of political mobilization and in terms of certain educative effects both for groups of Orang Asli peoples and for the legal practitioners involved in the cases (Nah 2008).

⁵ Interview with EMPOWER director Maria Chin Abdullah (28.07.10) at EMPOWER headquarters, Petaling Jaya.

⁶ Interview with EMPOWER director Maria Chin Abdullah (28.07.10) at EMPOWER headquarters, Petaling Jaya.

⁷ Despite the commitments in the Malaysian constitution to gender equality, in 2005, the supreme court ruled that discriminatory practices against pregnant female airline staff activities did not constitute gender discrimination because female airline crew constituted a discrete class of employees and could therefore be treated differently to male employees.

⁸ Interview with EMPOWER director Maria Chin Abdullah (20.02.12) at EMPOWER headquarters, Petaling Jaya.

⁹ Malaysia is not party to the 1951 Refugee Convention or its 1967 Protocol. There is no system in place for the regulation and/or protection of refugees and Malaysian law does not distinguish between refugees and documented migrants. Refugees can register with the UNHCR and may receive some documentation – a UNHCR card. However, this documentation doesn't automatically protect refugees from arbitrary arrest, detention and deportation.

¹⁰ Section 66 of the Syariah Criminal Enactment (1992) of the state of Negeri Sembilan as mentioned above.

¹¹ Interview with EMPOWER director Maria Chin Abdullah 20.02.12 at EMPOWER headquarters, Petaling Jaya.

¹² The *Wanita Suara Perubahan* protests took place on 18th March 2012 and involved many of the same women activists who had been involved in wider Bersih campaigns for clean government.

¹³ Foley (2004) notes furthermore that the space for engagement with the state's interpretation of Islam is exceptionally narrow even for Islamic women's movements.