

Negotiating Ideations: The Role of State-led Identity-Making in the Progress of Women's Rights in Malaysia

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This article traces the progress of women's rights in Malaysia by reference to law reforms between 2017 and 2022, from the position of a civil society organisation (CSO) advocating for those reforms and using a gender-focused lens. It appears women's rights that were strengthened during this period benefitted from the larger social context, which created windows of opportunity that, through state and non-state actor synergy, enabled reform. This synergy involved use of a range of tactics to enable negotiations on gender policy between key actors, including contextualising feminist ideations to local needs. However, upon closer inspection, we argue that the law reforms achieved were ones the state views as congruous with its wider identity-making project for citizens. Consequently, issues at odds with entrenched values imposed on citizens by dominant state narratives become difficult to reconcile, resulting in roadblocks and stalled progress. Finally, this article reimagines the top-down identity-making approach through the lens of transformative justice.

On 11 August 2022, Malaysia's Dewan Negara (Senate) passed the Anti-Sexual Harassment Bill. The Bill's history can be traced back to spirited campaigning by non-governmental organisations (NGOs) since the late-1990s, with proposed sexual harassment legislation submitted as far back in 2001 (Ameerah Nasri, 2020) – over 20 years ago. The passing of the Bill through both houses of Parliament was therefore historic and a signal for hope; it had been long awaited, after half a decade of promises by four different government administrations. Against a landscape where, increasingly, survivors of sexual harassment are finding the space to speak out and hold their perpetrators accountable – a legacy of the #MeToo movement sweeping the world in different forms – Malaysians had been routinely denied this right. In a recent survey, 57 per cent of women in Malaysia admitted to having been verbally sexually harassed (Cent-GPS and AWAM, 2021), yet, in another survey, a mere 5.8 per cent reported having sought help for sexual harassment (WAO, 2021: 76), signalling a woeful culture of not speaking out, made worse by a lack of avenues for recourse.

With the pandemic exacerbating inequities and setting back the progress of women's rights worldwide – with the gender gap now estimated to need 136 rather than 99.5 years to close (Armstrong, 2021) – Malaysia's journey towards gender equality and securing women's rights continues to be fraught. Ranked 103 in the Global Gender Gap 2022 report (World Economic Forum, 2021), Malaysia's progress has been insufficient to offset growing gender inequalities, especially when compared to other countries. What makes Malaysia unique and, perhaps, particularly challenging, is the way the multiethnic and multicultural landscape obscures a direction for gender policies, reforms and practices, as we explain below.

To better understand trends in Malaysian feminist law reform and avenues for future strategising, we examine reform proposals that have progressed over the last five years and those that have not. We also investigate why these differences arise. Where particular women's rights issues have shown progress, this generally seems to have been because the particular social context enabled state and non-state actors to carry out reform. These windows of opportunity are often shaped by broader, international movements, such as #MeToo, which have provided local state actors the impetus to collaborate with non-state actors (who have often been working on the issue for many years). However, there is a marked difference between reform proposals that progress and those that do not, measured not only by the willingness of government officials to negotiate, but also whether issues are framed in a way that aligns with the morality promoted by the state. Both these factors affect the progress of reform proposals.

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Thus, we argue, law reforms that progress do so because the state views them as congruent with their 'identity-making' of citizens. Reform proposals that are, or are perceived to be, at odds with entrenched values imposed on citizens by dominant state narratives face roadblocks and stalled progress. These state-driven entrenched values are often immovable, even in the face of tactics that usually work to enable state/non-state actor synergy. In its conclusion, this article therefore positions the judiciary as a counter to the state's top-down identity-making approach.

The article begins by briefly defining the relevant key concepts of identity, with specific emphasis on the idea of state identity. The next section provides a context for women's rights and law reforms in Malaysia. The article then examines legal reforms that have progressed and those which have not through the lens of congruence with state identity. Finally, the article reimagines a path ahead through the lens of transformative equality, highlighting the role the judiciary can play with specific reference to two key issues: unilateral religious conversion; and the rights of mothers to pass citizenship to foreign-born children.

It is important to acknowledge at the outset that the authors, as part of the Women's Aid Organisation (WAO), a non-governmental organisation, have been directly or indirectly involved and invested in the development of women's rights in Malaysia since 2012. WAO, founded in 1982, has always had the mission of advancing women's rights to build a better society for all. Additionally, while the law reforms discussed in this article are relevant to women's rights for all Malaysian women, there is a focus on issues relevant to peninsular Malaysia, as this is where WAO is based.

Key Concepts, Definitions and Framework

This section outlines key concepts used in this article, and focuses on law reform, defined as the 'process of analysing current laws and advocating and carrying out changes in a legal system, usually to enhance justice or efficiency' (SDG Accountability Handbook, 2019). Law reforms that advance women's issues and bring Malaysian women's rights closer to international standards (such as those mandated by bodies including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)) are used as a proxy to ascertain the overall progress of women's rights in Malaysia. Acknowledging the challenges involved in meeting CEDAW obligations as a country in the Global South, Malaysian women's rights must also be contextualised in the local landscape.

Law reforms that are seen to be 'successful' may be viewed as based on changes enacted within the legal system, where 'changes' are broadly defined as the introduction of a reform that updates existing laws (that is, amendments to existing or new statutes or tangible steps made towards reform such as proposed bills and public commitments made by the government). Law reforms that do not progress include those that civil society has advocated for, but which have, at the legislative level, stopped or stalled as a result of state actor action or inaction.

Further, as women's movements are a part of civil society, existing in 'the space between the individual and the state', women's movements 'cannot avoid engaging with the state, as a site and instrument of power' (Ng et al, 2006: 9). Therefore, it is necessary to distinguish between 'state actors' and 'non-state actors.' In this paper, a 'state actor' is defined as an individual or entity within the state who has relevant authority or power to determine the direction of the state's policies or laws, whether through enacting, shaping, or influencing law reform. The article does not focus on any one arm of the government, but rather analyses the role of elites across state bodies. 'Elites' refers to people with a high social status, politically, culturally and/or economically (Weeber, 2018). Conversely, a 'non-state actor' is either a person or an entity functioning within civil society, including NGOs, civil society organisations, and private actors who may be linked to, or work with, state actors, but are not themselves involved in, nor have the authority to directly influence, policy or law-making, and, instead, advocate policy or law reform.

Feminist framing

The work of Ng et al. (2006: 152; 35) explores women's rights movements, movement building, and actors within those movements in Malaysia. They conceptualise feminism as 'embodying women's needs, interests and rights that are of both practical and strategic value' and defines '[t]he notion of 'patriarchy' ... as constituting the origin of gender inequity in society'. The crux of our argument rests on how entrenched patriarchal values are projected onto policies, including law reform processes. Building on Ng et al.'s work, we unpack the motivations of the ruling male elites in Malaysia by considering the entrenched values arising from the concept of 'patriarchy'. The constraints imposed by the patriarchy will be used to explain the progress of law reforms on women's rights.

Identity

'Identity' is another core concept used in this article. We define it as how the state 'sees' or 'reads' an individual, based on a variety of attributes, including gender, ethnicity and socioeconomic status (Scott, 1998). From this arises 'state identity', which will be further defined below.

'Identity' is an important concept in the context of Malaysia. This is because Malaysia is distinctly multicultural and multiethnic, with the population composed of Malay, Chinese, Indian, indigenous peoples (*Orang Asal*), and other ethnic groups. As mentioned above, while advancement of women's rights is relevant to all Malaysian women, state policies separate Muslims and non-Muslims, and so it is difficult to analyse the degree to which individual ethnic identities are accounted for. This is, admittedly, a large problem, but because this paper aims to unpack and better illuminate these issues, it is necessary to situate the argument within this limited scope with regards to ethnic identities as a category of analysis. Importantly, Malaysia's Constitution states that 'Islam is the religion of the Federation; but other religions may be practised in peace and harmony' (art 3(1)). The central tensions created by this Constitutional article will be explored in the following sections.

National identity and State identity

The concepts of 'national' identity and 'state' identity are used in this article to 'highlight the inherent connections and overlaps between people and authority, between top-down and bottom-up processes, and thus between nation and state' (Liu, 2021: 21). However, the two terms have slightly different meanings. 'National identity' is 'a self-concept of individuals derived from their understanding and knowledge of their membership of the nation' (Ashizawa, 2008: 575). 'State identity' is defined as 'groups of characters symbolically imposed on the polity by its political elites, symbolically meaningful externally and considered to shape or drive the policy direction of the state' (Toffolo, 2003: 46-47). State identity is shaped by the state and projected onto the polity/people governed and functions to 'shape or drive the policy direction of the state' (Liu, 2021: 21). This difference is important, as national identity can be constructed through dialogue between those governing and those governed, and pockets of tension can exist where those governed resist the expectations imposed upon them by those governing. Crucially, those governed can also form national identities outside of what the state asserts.

We use 'state-level identity' to explain state-led identity-making, where the 'ideal citizen' is created through elite imaginings of the community, and functions to curate an identity that delineates the parameters of which rights are afforded to whom. These are top-down projections of how the community should be and, ultimately, the state tries to impose its view of ideal morality on citizens. This idea of state-led identity-making explains how identity can be created intentionally through governmentality (Foucault, 1991), or 'the art of governance', constructing the ideal citizen with values that the state prioritises (whether or not these values are actually reflected or found in the citizens themselves).

Women's Rights in Malaysia

In the periods immediately preceding and succeeding Malayan independence, women's groups were largely driven by anti-colonial and nationalist sentiment. As such, any attempt to understand the current progress of feminist laws and policies in Malaysia is incomplete without considering the evolution of the local women's movement and its historical position vis-a-vis the state. The local women's rights movement has existed for a long time, constantly bargaining its relevance through changing times. The seminal work of Ng et al. (2006) details four key phases of feminism in Malaysia, beginning from colonial times and stretching towards the movements of the early 2000s: nationalist feminism, social feminism, political feminism, and market-driven feminism. This section discusses the broad strokes of these periods, how they overlapped, the key state and non-state actors, and their impact on the drawn-out history of the women's rights movement and its present existence.

'Feminism', as a crucial term in the shared language between women activists and organisers, appeared only in formal usage in the 1990s. This may be due, in part, to the largely informal, scattered nature of the movement prior, as well as the struggle of reconciling the ideology of feminism, largely viewed as one belonging to 'the West', with that of the Malaysian state's identity-in-progress (Quek, 2018).

An Overview of Feminism in Colonial Malaya

Nationalist feminism in Malaya began with women's participation in the fight for independence (Rohana, 1999). The fight for women's rights then, though informal, aimed to dismantle barriers to access to participation in decision-making in order to afford women progress in relation to rights.

At the time, oppression from foreign powers was viewed as a more substantive issue than the challenges faced by women, which were rooted in the gendered inequalities of patriarchal governance, such as barriers to formal education and work. Women's issues then 'were not the basis of women's political engagement, but rather a gender-neutral concept of independence' (Speigel, 2010: 116). Thus, social issues – including those pertaining to women's rights – were subsumed beneath the greater goal of independence. *Kumpulan Kaum Ibu* (Mother's Movement Groups) is an example of how the women's rights movement of the time embodied itself as an anti-colonial force, shaped around the Malay-led state identity. *Kumpulan Kaum Ibu* was composed of women who had autonomously mobilised, fundraised, and taken action in the mid-1940s to vehemently resist the proposals for the Malayan Union (Manderson, 1980), which were perceived as a threat to the political status and special privileges of Malays, primarily due to the conceding of citizenship to non-Malay immigrants (Mohamed Noordin, 2005). They played a significant role in the eventual dissolution of that Union, shortly thereafter replaced by the Federation of Malaya in 1948. In recognition of this, these small groups were condensed into a singular unit, the *Parti Kaum Ibu* (PKI), the women's wing of the United Malays National Organisation (UMNO) in 1947. This formalised the women's movement in the political sphere, albeit as an asset to fulfil the main agenda of its patriarchal leadership. Resultantly, women's rights as a priority ranked second to the flourishing state identity and its so-called greater goals, and were continually characterised in this way through the years.

Women's rights in the context of state identity

We can analyse the colonial state as operating with patriarchal values, which do not see women as equal to men. In a period when women were perceived more as objects of legislation for political leverage than active participants in their crafting (as seen in the case of PKI), to step beyond these confines was to risk expulsion from the formal movement. Such was the case of Khatijah Sidek, one of the first leaders in UMNO to question persistent gender disparities within the party. Her resolutions as Chief of PKI included provisions for the PKI to select their own candidates for the Federal Legislative Council elections in 1955. This was heavily debated and opposed by the predominantly male-led UMNO (Ting, 2013; Ng et al, 2006). In her memoir, Khatijah Sidek writes that her outspokenness against patriarchal norms was unacceptable to the male leaders, who

believed women were too weak, belonged in the kitchen, and were not sufficiently articulate to sit in Parliament (Sidek, 1995). Ting (2013: 5) affirms that Khatijah Sidek's expulsion from UMNO in 1956 - a decision endorsed by leaders of the party in her absence - 'served as a warning against any future assertion by the UMNO's women's wing'.

This was the backdrop against which non-state women's organisations began and sustained their work. The National Council of Women's Organisations, subsequently established in the early 1960s, served to unify the Malaysian women's movement, which had primarily taken form as women's branches of political parties and social movements scattered across non-governmental organisations. As a consultative group for the advancement of women and gender equality in Malaysia (Quek, 2018), they led discussions with the government of the time about issues and reforms related to equal pay and labour rights for middle-class women. The organisation's role as a central point for women's groups' relationship with the state proved advantageous to nurture women's meaningful involvement in the political arena beyond the often-subordinated women's wings of existing parties. It also helped the mainstreaming of the gender equality agenda in the state's priorities, challenging the assumption that women's issues should be secondary to broader state interests. Perhaps the National Council of Women's Organisations' distinctive avoidance of politically contentious topics, and considerable emphasis on the struggles of middle-class working women (over those of industrial working women and the union movement), aided in this progression (Ng et al, 2006: 20).

The efforts of the National Council of Women's Organisations' approach of advocating to the state through relationship-building are still reflected in today's contemporary women's movements, as exemplified by the formation and function of the National Domestic Violence Committee, explored below.

Women's Rights and Identity-Congruence

This section presents the central argument of this article and contextualises the previously mentioned issues using the lens of identity-congruence.

As mentioned, state-led identity-making is a process by which elites, embedded within the state, construct the ideal citizen based on values they prioritise. While acknowledging that values are not fixed but instead shift with time, we are particularly interested in describing a pattern of values propagated by a category of elites who remains resistant to change over time.

As an extension of the elite imagination, institutions built by elites reflect their values. Over time, these values become embedded and entrenched, enabling the reproduction and propagation of these values through quotidian functioning of state apparatus. The institutionalisation of these values contributes to their persistence. In Malaysia, many state institutions were built under British colonial rule and, often, by men. The same issues rooted in entrenched patriarchal values arising in the United Kingdom and other Commonwealth countries also plague Malaysia. However, upon Independence, these institutions were entrusted to a majority Malay, Muslim elite category, who embedded 'Muslimness' and 'Malayness' into these institutions. More specifically, upon the drafting of the Malayan Independence Constitution, UMNO was particularly concerned with securing special Malay privileges, a part of which included enshrining Islam as the religion of the Federation (Tew, 2018).

Notably, during the formation of the Constitution, the intention might have been to create a secular state, however, interpretations of the Constitution since its inception, though contested, have left room for the increasing Islamisation of Malaysia, particularly by those who interpret the wording of art 3(1) as justification to expand Islam's role in public spheres (Abdul Aziz Bari, 2000; Mohamed Ismail Shariff, 2005). While these values are associated with 'Muslimness', it is a particular brand of Islam specific to Malaysia, moulded by Malay interpretations and history, that is becoming embedded in the central values of state institutions, shaping trends in legislation and influencing social mores over time. Though their origins merit deeper investigation, other scholars have put forth plausible explanations (Maaruf, 2014; Norizan Kadir, 2019). Arguably, this Islam promoted by elites is difficult to precisely pin down as one particular ideology, which is why we

emphasise our focus on an emergent pattern or tendency towards a set of values that have been powerful enough that they have had an overriding influence over laws - a factor that makes certain outcomes more likely than not, as we explore further below.

The constraints of the elite imagination may not necessarily be deliberate, and the exclusion of women, sexual- and gender-diverse minorities, and religious minorities may merely be a function of the elites' own (limited) identity. However, when the constraints of this identity are projected onto the polity, particularly women, it has historically limited the scope of women's movements, forcing them to navigate these issues within rigid circumscribed structures. In this way, there has been a partial continuation of the NCWO's approach to build and maintain a relationship with the state to negotiate progress for women's rights. Thus, in failing to consider the diversity of needs arising from the diversity of people, law reform becomes necessary. However, an important element considered within these negotiations is whether law reforms are viewed by the state as consistent with the state's existing identity. The central tension arises when, because of how entrenched and embedded certain values are, the state apparatus becomes resistant to change.

State-led identity-making then becomes the tool through which exclusionary ideations of citizens' identities are created and projected, reflecting the core values the state idealises as the national identity. The role of non-state actors, thus, becomes to negotiate these ideations towards a more inclusive end, through interactions enabling, to an extent, the progress of law reforms.

Law reforms, as viewed by the state, are constrained by how well-aligned they are with entrenched state values. The values the state seeks to reproduce fall along several lines, although they most obviously reflect values associated with Malays and Muslims. It is important to highlight, however, that 'the enforced dichotomisation between Muslims and non-Muslims also led to a pervasive if erroneous perception that unequal gender relations are only associated with an Islamised social system' (Ng et al, 2006: 38). Thus, while the state appears largely Muslim and Malay, and embeds these values into institutions, these values, crucially, are generally agreeable with conservative and traditional leanings in prioritising patriarchal norms and narrow conceptions of capitalist productivity.

Patriarchal norms shape a society to value male dominance, inherently creating a power imbalance between genders, regardless of whether this dominance is viewed as 'benevolent', reinforced by the logic of 'protecting women' (Glick and Fiske, 1996). These patriarchal norms interact with the pattern of values practised by the elites. These institutions, entrenched with patriarchal values and shaped by the prioritised identities of the state, carry the historical context that constrains law reforms, forming the limits that prevent certain issues from progressing while allowing others to progress.

Religion as a crucial aspect of state identity and women's place in society

Following the race riots of 1969, the state issued the New Economic Policy (NEP) in 1971 to reduce racial economic disparities and create employment opportunities for economic growth (Lee, 2021). Additionally, although race and religion had been long-established as core components shaping state identity, their relevance to the women's movement and continued Islamisation of the state identity, as described above, became more apparent in the 1980s.

The booming industrial economy of the time drove large influxes of young Malay women from rural areas into urban areas (Kanapathy, 2000). With the NEP running parallel to the state's continued Islamisation of the Malaysian identity, tension emerged between the two seemingly conflicting identity-shaping priorities. Malay women bore the brunt of this tension, with Wazir-Jahan (1987) observing that this growing subgroup was often referred to as *Minah Karan* (Minah, the Electronic Lady), a demeaning blanket term used to associate young, working Malay women with promiscuity and an abandonment of moral values, as defined by the state. As Ong (1990: 268) states, there was a need to '[strengthen] the Malay race [that] required women to adhere to a stricter Islamic version of male authority and of women's roles as mothers and wives'. Neither men in similar settings nor other unmarried women of a similar age outside manufacturing industries were subject to this perception, indicating that standards of particularly conservative interpretations of Islam were heavily imposed upon this group of Malay women participating in

the industrial labour force to criticise the fact that they had left home and, in doing so, were disrupting existing state-sanctioned social structures of the ideal family unit.

Violence against women in the time of political feminism

Encouraged by these notions imposed by the state on the people, gender inequality and discrimination against women ran rife. In the wake of this, the Malaysian women's rights movement began rallying around violence against women (VAW) around the 1980s, seeing it as an issue resonant with women's struggle in a patriarchal society, (Ng et al, 2006: 24; Quek, 2018; Rohana, 1999). VAW, as an issue that transcended divisions of ethnicity and class, served as an opportune entry point to raise awareness of and initiate public dialogue about gender inequality as its underlying cause.

In the context of the growing nation-state, the politically-unaffiliated social issue of VAW proved strategically advantageous for formal women's organisations to ground their work. This, in turn, facilitated the accessibility of the women's movement for a varied crowd, through voluntary or formal participation in non-government women's organisations.

By the 1980s, the local women's rights movement had become increasingly professionalised, with the creation of full-time paid positions within some organisations indicating a shift towards deliberate organisation and the mainstreaming of the women's rights agenda into the local context (Quek, 2018). However, women's groups of the time 'did not remain untouched by the ethnic structuration and segregation of the Malaysian society, which was part of the everyday life of the activists and advanced by the process of Islamisation' (Spiegel, 2010: 121). The character of the women's movement continued to be divided along the lines of different ethnic identities. However, compared to state advocacy on women's issues, where the state prioritises state identity creation above all else, non-state actors have consistently questioned, and presented alternatives to, this asserted reality, cementing their role within law reform to this end.

In the case of the Domestic Violence Act, multi-ethnic women's groups faced scrutiny from conservative Muslim groups about their ability to account for Muslim women's rights without impinging upon state-constructed ideologies and values, such as women's subordination to men in private spheres, like the household. The NGO Sisters in Islam (SIS), emerging at the crucial juncture of the 1990s, proffered an avenue for Muslim women to participate in the movement by offering a view of feminism through the lens of Islam. In some ways, this 're-ethnicitisation of the women's movement itself' (Spiegel, 2010: 122) emerged out of the necessity of legitimising the women's movement in Malaysia in the eyes of the State, and tangibly situate Muslim women within it.

In short, non-state actors are not passive observers of the patriarchal state, but instead employ active tactics to mainstream gender equality in the broader national agenda. With this strategy, organisations of this time achieved significant successes, laying the institutional groundwork for the movement today and leading to contemporary progress of some issues.

Key Issues (2017-2022)

In reviewing the progress of feminist law reform within the last five years, this section covers key advocacy reform proposals that have progressed and those that have not, along with further illumination vis-a-vis state identity as to why these issues may or may not have progressed.

Contextualising Issues that Do Not Progress

Issues that have failed to make progress include the gender equality bill, the banning of child marriage, female genital mutilation, Islamic family law, and LGBTQ+ recognition and decriminalisation. This section examines these issues through their incongruence with the state-imagined identity, including tactics used by state actors to stall the progress of relevant law reforms.

We posit that the tactics used by state actors in delaying or halting the progress of certain law reforms results from the inability or unwillingness of the state to find a place for the expression of

universal human rights in the context of the state identity and the identity-making process. While the state adheres rigidly to stereotypical gender roles, international treaties such as CEDAW embody autonomy for all regardless of gender, creating differing socio-cultural perceptions of gender equality in the sphere of human rights. Consequently, tensions appear as irreconcilable roadblocks towards a gender-equal Malaysia. The advancement of women in Malaysia took shape beneath the umbrella of Malaysian family values, cultural norms, and religious piety (Chen et al, 2022). State-formed priorities were reconstituted as a Malaysian idea of feminism and propagated by political elites. Importantly, this was a means for the state to construct ideological boundaries of women's rights and encourage an idea of women's rights distinct from feminism of the West.

Interviews by Quek (2018) point towards a reluctance on the part of women's rights activists to label themselves as feminists, even while their activism and advocacy were rooted in its fundamental ideologies. The separation of Malaysian versus Western ideologies of women's rights manifested in this way at the ground level, reflecting itself at a larger scale in national policy.

Consequently, the state appears to co-opt gender equality as a tool to garner popularity amongst citizens, mirroring trends of the past. Asserting gender equality as a priority signals the state's awareness of public concerns. However, little consideration is given to striving for substantive change, including acknowledging and addressing the intersectional identities of women, namely, how the multiple identities of women intersect towards a spectrum of inequalities. In some ways, the demands by the women's rights movement for substantive change based on feminist ideals and hope for a more gender equal society are 'cherry-picked' by elites, to fit existing values, often for the rationale of economic advancement (Orloff and Palier, 2009). This then manifests in superficial policies that sustain the hegemony of the elites and motivate the state-led identity-making process, as demonstrated by the following proposals for reform.

The Gender Equality Act

The intention behind introducing a Gender Equality Act was not only to prohibit gender discrimination but also impose positive duties on the state to ensure substantive equality for women is achieved (Dairiam, 2017). The Act was also a way for the principles of CEDAW to be incorporated into domestic law and policy. While initially gaining momentum and response under the opposition-led government, with a multi-stakeholder team formed in 2018 to work on drafting the bill, the activities of this team made little progress through government changes. In fact, this Act has now been stalled in favour of other legislative reforms. The Malaysian government, in its follow-up report to the CEDAW Concluding Observations in 2018 (CEDAW Committee, 2021: 2), remarked that it had created a Special Projects Team to draft gender equality legislation but had decided to pivot towards sexual harassment legislation, citing its 'views that sexual harassment is a form of gender-based discrimination and that focusing on this specific area would provide a practical foundation for drafting a gender equality bill later'.

Gender equality might be difficult to achieve fully, given how, in many ways, it opposes values promoted by state institutions. For example, the dominance of Malay Muslim males is evident when looking at the landscape of Malaysian politics. Women occupy just 16.1 per cent of Ministerial, 14.9 per cent of Parliamentary, and, on average, 11.4 per cent of State-elected representative positions (WAO, 2021). When institutions are built by, and for, a certain type of person, barriers to entry to these institutions will be much higher for those who do not fit the archetype, thus resulting in lower numbers and representation. If representation is the key to enacting change, then this perhaps explains the larger hurdles that women's progress has faced: a lack of representation at high levels of decision-making actively hinders progress.

Even on a practical level, a recent survey suggests that Malaysians themselves do not view gender equality to be a particularly pressing issue, with only 46.3 per cent of Malaysians supporting gender equality, and almost a third of Malaysians believing that women exaggerate the extent of gender inequality in Malaysia (WAO, 2021).

Gender inequality begets gender inequality and the lack of efforts towards gender equality in Malaysia may be emblematic of a system which explicitly works against promoting progress towards gender equality legislation. This is symptomatic of a greater state identity wherein the

preference of the Malay Muslim male identity and values inherently works to oppose legislation which could, theoretically, bring about greater equality.

Female genital mutilation (FGM)

There has hardly been any indication of the state's willingness to prohibit the harmful practice of FGM. Instead, the state's response has been ambiguous and even defensive, especially in asserting that FGM, as it is practiced in Malaysia, is not harmful and should not be likened to FGM in other countries, with previous minister of Women, Family and Community Development, Wan Azizah, stating, 'But we are not the same as Africa, all the mutilation (there)' (Lim, 2018).

FGM in Malaysia has drawn the attention of the CEDAW Committee, with the Committee requesting a follow up report in 2020 on Malaysia's progress in ending the practice (CEDAW Committee, 2021). There is no official data for the prevalence of FGM in Malaysia, though Maznah Dahlui, in an unpublished 2012 study, found 93.9 per cent of her respondents (n=1,196) had undergone FGM (TheEdge, 2012), while Rashid and Iguchi (2019) found 99.3 per cent (n=605) had. In their response to Malaysia's submission, the Committee noted the lack of progress and efforts undertaken to end FGM (Chalal, 2021).

While evidence of FGM being an obligatory religious practice remains shaky at best, FGM has become a marker of identity among Malay Muslims, with one interviewee in a study lamenting FGM 'is one of the ways to determine (differentiate) a Muslim and a non-Muslim' (Rashid and Iguchi, 2019: 7). The issue is not helped by the patriarchal and cultural beliefs that FGM prevents female sexual desire and, therefore, reduces social ills (WAO, 2021). As mentioned, in a patriarchal society, there is a presumed need for men to assume the protector role (Young, 2005). The state's inaction can be interpreted as framing FGM as a religious necessity that protects women and girls. It must be stressed that this imagining relies purely on a particular interpretation of Islam and is supported by a Malay culture that accepts this interpretation. Consequently, FGM is subsumed into the moral character of the state identity as a defining practice, leading to stalled progress on reforms to end the practice.

Islamic family law

With the embeddedness of 'Muslimness' and 'Malayness' into state institutions, the institution most indicative of this and, thus, most stubborn to change, is Islamic family law. Family law outside the realm of the Islamic state has progressed, with an amendment in 2017 to the Marriage and Divorce Act, which made substantial positive changes to matrimonial asset division, divorce, and marriage rights, to be fairer to women. One of the biggest amendments, for matrimonial asset division, was the abolition of the distinction between assets acquired by the joint effort of spouses and those acquired by the sole effort of a spouse. This amendment is significant in protecting those who decide to leave the workforce to look after the family, which oftentimes is the woman (Toh and Toh, 2019).

Trends in Islamic family law, on the other hand, seem to suggest a regression in women's rights in the 1990s, with moves against gains in the 1980s around woman's right to divorce, a mother's right to make claims of inheritance upon fathers for children born out of wedlock, and the rights of the first wife in polygamous marriages, among other issues (Chung, 2020). These changes heavily favoured men. For example, the 1994 amendments to the Islamic Family Law (Federal Territories) Act 1984 enabled men to pronounce *talak* (divorce) outside of court,¹ while another amendment additionally placed the responsibility for children born out of wedlock solely with mothers, prohibiting mothers from claiming support from fathers. Further eroding women's rights, additional amendments extended property rights traditionally afforded only to women to men (WAO, 2019). In the original act, five criteria needed to be satisfied before a polygamous marriage could be permitted to safeguard the rights of women and children, but these have since been eroded

¹ In Islam, only men can pronounce divorce through *talak*. Women can ask for divorce as well, but the mechanism is not as simple as merely saying 'talak', which, in Malaysia, a man can say outside of court and would be legally binding.

through amendments. Consequently, obtaining a polygamous marriage has become easier for men, as the court can now retroactively grant permission to marriages which have already been solemnised and, if a polygamous marriage takes place without permission of the court, the most common punishment meted out by the court is a fine of merely MYR 300 (around AUD 100). A husband's burden of proof to justify a polygamous marriage in court has also been reduced. Where the original criteria required the marriage to be 'just AND necessary', amendments have now shifted the requirement to be 'just OR necessary'.

In family law, as with the demeaning categorisations faced by women of the industrial sector in the 1980s, the state appears to apply its values more strictly to Muslims, particularly women, in favouring men. This demonstrates how the interpretation of 'Muslimness' in Malaysia directly inhibits the progress of Islamic family law.

LGBTQ+ recognition and decriminalisation

LGBTQ+ persons are one of the most vulnerable and persecuted groups in Malaysia. There has been a clear regression in laws and policies governing the rights of LGBTQ+ communities in Malaysia. On top of several discriminatory provisions in federal and state laws, of particular concern has been the recent creation of a special task force by the Prime Minister's Office which, among other things, intends to propose amendments to the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560), and the state Syariah Procedure Enactments. These would allow enforcement agencies to act against Muslim persons said to insult Islam and commit Syariah offences. This enables the targeting of Muslim LGBTQ+ people, as hardliners often view their existence as an insult to Islam (Justice for Sisters, 2021). Anti-LGBTQ+ sentiments have escalated over the last few years, threatening the rights and safety of the community.

Undoubtedly this has to do with tensions arising from how LGBTQ+ identities are imagined not only as outside the ideal national identity, but in opposition to it. To be Malaysian, as it is constructed by elite imaginings, is to necessarily be homophobic, in line with homophobic nationalism. This is a national identity that arises in post-colonial contexts as a means of differentiating local values from that of their colonisers for regime legitimacy, precisely as Western stances towards LGBTQ+ communities are shifting towards tolerance and/or acceptance (Wahab, 2012). The embeddedness of 'Muslimness' and 'Malayness' in entrenched values is not only a result of the identity of the elites themselves, but in how they see themselves as departing from the values of the West. The narrative particularly gained traction under Mahathir, with his 'look East' policies, predicated on enshrining 'Asian values' and coinciding with the Islamisation of Malaysia (Pandian et al, 2021). This legacy has effectively shut LGBTQ+ persons out from legal recognition.

Marital rape

While rape itself is criminalised within the Malaysian Penal Code (s 376), the state has consistently refused to recognise marital rape, husbands being exempted by s 375. The Penal Code was amended to add s 375A, but this only criminalises 'hurt or fear of hurt or death' caused in the course of marital rape, and not the act of rape itself (WAO, 2018). Further, the call to amend provisions in the Penal Code to strengthen protection for women against marital rape was made by a member of parliament in 2018, after lobbying efforts by women's groups. This, however, was met with opposition when then-deputy law minister, Mohamed Hanipa Maidin, clearly indicated that this was not an issue that the government would pursue (Azril Annuar, 2018).

Despite rape falling within the concerns of the protectorate state, there appear to be certain forms of rape that, under patriarchal-identity constraints, the state views as permissible, namely rape within state-sanctioned marriages. This further demonstrates how the state identity imposes a very rigid understanding of gender roles and expectations upon its polity.

Reconciling Issues That Do Progress

Although reform proposals that do not progress far fall more clearly outside the scope of state imaginings of national identity, these lines are less clear with issues that do progress. This section

will further examine proposals that have progressed to analyse how they are captured by entrenched state values. The argument in this section is that, ultimately, while progress towards securing women's rights is possible, it must necessarily function as a continuity of embedded state values.

Domestic violence, sexual harassment, and stalking

The logic of masculinist protection guides much of the reforms aimed at securing women's rights (Young, 2005). This arises from an awareness of the violent domination of women and children common to patriarchal societies, exemplified by the imagining of 'selfish, aggressive, dominative [men] who [desire] sexual capture of women' (Young, 2005: 4). In response, the paternalistic state necessarily constructs itself as a protector. This functions as a continuity of entrenched state values because the protection of the vulnerable is an image to which a patriarchal state aspires. While this results in the progress of law reforms related to the general protection of women, such as domestic violence, sexual harassment, and stalking, ultimately, it underlies the gendered differences the state wishes to reinforce and sees as part of the national identity. Coupled with the lack of progress towards securing women's equality, this relegates women and children to a 'subordinate position of dependence and obedience' (Young, 2005: 16).

The state has, by far, appeared most receptive towards law reform in the area of domestic violence. A 2017 Bill proposed amendments of the Domestic Violence Act 1994 that, among others, saw a strengthening of definitions and protection remedies for survivors. Although the Bill was introduced by the state, it was premised on consultations in the preceding years held with, and often led by, women's groups. In bringing forth a multitude of issues faced by survivors in accessing protection and justice, women's groups were pivotal in highlighting gaps in the legal framework of protection.

In the same vein, women's groups have also led calls for inter-agency mechanisms to respond to domestic violence to be instituted at federal, state and local levels, drawing lessons from successful models such as the Duluth Minnesota Model (Pence, 2017). It was not until 2019, at the helm of the opposition-led government, that the vision of a multi-stakeholder platform materialised in the form of the National Domestic Violence Committee, finally bearing testimony to the success of this long advocacy campaign (Harits Asyraf Hanan, 2019). Clusters like these provide a dedicated discussion space for a breadth of emerging or persistent issues and trends relating to cases of domestic violence amongst stakeholders working on different planes of frontline law enforcement, advocacy, and social work. Although far from perfect, this policy change enabled a mechanism that afforded women's groups better avenues to bring attention to legal and policy gaps pertaining to domestic violence in Malaysia. It also provided opportunities for various parties to voice their concerns on proposed policies in order for these to be addressed, and, in some cases, resolved, before being broached at higher levels of policymaking.

When further examining law reforms on these issues, the gaps clearly align with the reproduction of other state values, confirming that these reforms function as a continuity of entrenched imaginations. For example, in the case of domestic violence, despite intimate partner violence increasingly gaining attention as an issue warranting legal recognition (UNFPA, 2021), domestic violence between non-married, non-family persons remains out of state purview. This is a recreation of entrenched Malay, Muslim values, creating reluctance to extend protection to heteronormative pre-marital couplings and extra-marital relations, fearing that such actions might be seen as the state lending legitimacy to these 'contentious' pairings. Consequently, many lack access to basic protections, with little avenue for legal recourse.

With sexual harassment, meanwhile, there are two concerning shortcomings with the current Anti-Sexual Harassment Bill 2021, which passed the houses of parliament but has not yet been gazetted.² The first is the lack of a comprehensive definition, which fails to account for hostile or offensive environments confronting victims or others. In a patriarchal society, this loophole is

² Implementing regulations are yet to be written. Due to the complex nature of the Bill introducing an Anti-Sexual Harassment Tribunal, the rollout will take time.

perhaps beyond understandings of the scope of 'sexual harassment', and it, unfortunately, leaves room for plausible deniability. The second, and far more worrying, issue arises from the lack of an organisational duty of care, which would mandate organisations to take steps to prevent, address, and create awareness about sexual harassment. Viewed through the lens of state-led identity-making and congruence, while the issue of sexual harassment falls within the scope of the masculinist protectorate state, the need for organisational commitment is likely viewed as placing undue burden on organisations. This may lead to productivity loss, an instance where capitalist priorities take precedence. At the time of writing, these are issues non-state actors are pushing for inclusion into the Bill's regulations.

Finally, stalking is another threat from which the paternal, patriarchal state views it as necessary to protect the vulnerable, resulting in law reform progress. Anti-stalking law amendments, previously subsumed under domestic violence issues, became a standalone campaign in 2018. Due to consistent lobbying by women's groups, in 2019 an anti-stalking multi-stakeholder committee was formed, producing a draft law. In 2020, the Prime Minister's Office publicly made a commitment to prepare cabinet papers to make stalking an offence (New Straits Times, 2020).

On 3 October 2022, anti-stalking law amendments passed in the Dewan Rakyat (lower house). Positively, this version of the anti-stalking bill encompasses definitions of stalking that had previously encountered pushback from the State when proposed by civil society actors (WAO, 2022). However, gaps persist within this newly-passed bill. These include limitations in the definition of stalking behaviours already well-documented in local cases, as well as constraints on the duration of protection orders available to survivors. These will present challenges for a subset of stalking victims who will not have access to the protections of this anti-stalking legislation. They will have to seek recourse through other means, such as the Anti-Sexual Harassment Bill.

Further to that, on 10 October 2022 – one week following the passage of anti-stalking legislation in the Dewan Rakyat – parliament was dissolved. This presents a slight setback, in that the Anti-Stalking Bill will have to repeat its second reading among new Members of Parliament elected through a General Election, who may have different priorities. This is slated for November 2022.

Nevertheless, despite these gaps and range of setbacks, the significant progress of the Anti-Sexual Harassment Bill and the Anti-Stalking Bill are promising signs of continuing efforts to problematise gender-based violence and institutionalise specific solutions within state purview.

Parental leave

Paternity leave, as a law reform objective, has progressed to seven days from none, as stipulated by the Employment (Amendment) Act 2022. However, when inspecting paternity leave closely, the unwillingness to allow for more than just seven required days of paternity leave for private sector employees demonstrates the centrality of capitalist productivity in the state's imagining of its citizens. In other words, the fear of productivity loss constrains how much paternity leave the state is willing to grant. The same can be said for maternity leave – the fear of productivity loss constrains the amount of time the state is willing to allow for leave.

At the same time that paternity leave was created, maternity leave allocations were increased as well: from 60 days to 98 for private sector employees, in accordance with the requirements of the International Labour Organisation (ILO) Maternity Protection Convention, 2000 (No. 183). However, despite quantifiable progress on paternity leave, the persistence of a 'gender leave gap' perpetuates inequalities in the home and workplace, exacerbating gendered norms of caregiving and formal work that are posited to hinder paternity leave uptake even where available (ILO, 2022).

The difference in the amount of leave a male or female parent may take lies in patriarchal concepts of parenting and whose role it ultimately is to take care of child(ren). In this case, the state clearly views mothers as more integral to parenting than fathers, resulting in shorter paternity leave, and in fact, an extension of the gender leave gap from 8.6 weeks to 13 weeks.

Stalking versus child marriage

When examining the reform proposals that progressed and those that did not, it becomes apparent that differences in outcomes are not merely a result of tactical differences by activists. For example, the mobilisation strategies by non-state actors for both stalking and child marriage reforms were similar, involving grassroots level campaigning targeting the general public, along with calls to action by state actors. The outcomes were, however, very different.

In both cases, there were key state actors invested in seeing them through. For example, in the case of stalking, there was state buy-in through the Head of Royal Malaysia Police Unit D11, which specifically investigates sexual crimes and crimes against women and children. This commitment blossomed into a partnership with non-state actors, enabling a holistic approach: state actors endeavoured to address the policy concerns with input from NGOs, while non-state actors rallied support for reform from citizens through campaigns to raise public awareness. In the case of child marriage, the former Minister and Deputy Minister of Women, Family and Community Development, Wan Azizah and Hannah Yeoh, were both strong proponents of banning the practice. In fact, in early 2020, they had unveiled a national plan to combat child marriage (KPWKM, 2020). A reported proposal around the same time to legally raise the minimum age of marriage from 16 to 18 also signalled efforts to eliminate the practice (New Straits Times, 2020). However, even with key support and buy-in from several government agencies, along with cooperation and campaigning by non-state actors, child marriage reform progressed less than stalking reform. The difference, we contend, lies in the issues' congruence with state values. Stalking activated the state in its role as protector, motivating the state apparatus to fill the gap. Child marriage, on the other hand, failed to do so. Why the state considers child marriage not aligned to its imagined values is difficult to understand, especially when children are vulnerable and the harms inflicted by child marriage are well documented and undeniable (Nour, 2009), but we posit it likely has to do with the state's imagining of Islam, which allows for an interpretation wherein child marriage is permissible, a perversion of the ideal family unit the state values.

The prioritisation of the ideal family unit leads, in this context, to the associated harms of child marriage and neglect of children's welfare, health and autonomous rights. Worryingly, perceptions of girls as objects to fulfil conservative state ideals (such as those of the family unit), and the state systematically turning a blind eye towards larger social issues that place families at extreme economic risk and girls at risk of underage pregnancy and marriage, appear to trump the state's instinct to protect, or is rationalised as part of these values. Again, standards derived from particularly conservative interpretations of Islam are imposed upon girls, extending from derogation of young, Malay working women in industrial Malaysia (Minah Karan) to the perpetuation of ideals of a family unit, institutionalised further in family law.

Unfortunately, the enduring practice of child marriage entrenches the custom, making policies aiming to depart from the status quo difficult. An overwhelming 70 per cent of Malaysians reject child marriage in all forms (WAO, 2021), suggesting the problem lies with the state apparatus and its inability to disrupt the status quo, even when it is only supported by a small majority of Malaysians. This demonstrates the harm the state can perpetrate when it lacks the political will to shift away from entrenched values.

These examples illustrate that it is not merely the tactics employed by supporters of change (both state and non-state) that ultimately decide whether a reform progresses, but rather the congruence of particular issues with the constructed state identity.

The Transformative Equality Approach

Beyond how the executive and legislative arms of the state operate to propose and enact reforms, as previously discussed, this next section will examine the unique role of the courts in legal change. As such, this section will define 'transformative equality' and apply it to procedures of securing women's rights through the Superior Courts (defined below). 'Transformative equality' relates to the 'transformation of institutions, systems and structures that cause or perpetuate discrimination and inequality', as well as 'the modification or transformation of harmful norms, prejudices and stereotypes' (Cusack and Pusey, 2013). This is part of CEDAW efforts to achieve equality. Using

transformative equality to (re)imagine the way forward addresses the issue of state-led identity-making and its entrenchment through a two-fold approach: first, institutions themselves are reimagined, or restructured, to better respond to securing women's rights; and, second, and most importantly, the harmful norms and beliefs that were embedded in the institutions and remain the biggest barrier for marginalised groups' access to rights are addressed. This approach aims to holistically tackle the barriers preventing equality through transforming both institutions and attitudes.

Transformative equality, as a tool, can be used to rethink how ideations are negotiated. Societal attitudes undoubtedly play a role, and part of transforming societal attitudes involves transforming state and institutional attitudes, as the state can transform society. One key player in Malaysia in this regard is the judiciary. This paper will now delve deeper into this, specifically examining two legal changes mediated by the judiciary that have advanced women's rights.

The Role of the Judiciary in Transformative Equality

This section focuses on the civil courts in their role as agents of transformative equality. Malaysia has a parallel justice system (Tew, 2011), with Syariah courts governing matters related to Islamic law and customs, while civil courts convene all other matters, with a few exceptions, where issues related to religion have been brought to the civil courts. The civil courts are divided into Superior Courts and Subordinate Courts, where Superior Courts are the Federal Court, the High Courts, and the Court of Appeal (Tew, 2011). We particularly focus on the Superior Courts and their role in negotiating ideations to enact transformative equality because of their ability to read and interpret the Constitution (somewhat independently from state imaginings), which allows them to depart from the constraints of the state identity. We note that this does not mean complete independence from state identity because the courts remain a part of the state, whose function is to interpret and reinterpret the Constitution, a document of the state. However, the degree of freedom awarded to courts, through judicial independence, in interpreting the Constitution can allow for departures that can secure women's rights. We, thus, acknowledge that the court can be progressive in acting against retrogression by the state – namely, if the state is in contravention of prior commitments as stated by the law, the courts can work to correct this through interpretation of the Constitution.

There are two issues - equal rights to citizenship and unilateral religious conversion - that have progressed due to Superior Court intervention, modelling the transformative equality approach, and allowing a reimagination of what justice and legal change could look like in Malaysia.

Case study: unilateral conversion

The case of unilateral religious conversion is significant, demonstrating how Superior Courts can defy the encroaching state. Unilateral conversion occurs when a parent converts their children to Islam without the consent of the other parent. These cases typically present as fathers unilaterally converting their children, often in order to gain the upper hand for custody.³ Therefore the issue is one of women's rights.

In a landmark ruling (*Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak (The Directors of the Perak Islamic Religious Council) & Ors* [2018]), Indira Gandhi, a mother of three children who were unilaterally converted to Islam by their father, questioned the legality of the process and the Federal Court ruled that unilateral conversion as unlawful. This case focused on an interpretation of art 12(4) of the Constitution, which states that 'the religion of a person under the age of eighteen years shall be decided by his parent or guardian'. The Federal Court interpreted this article as requiring the consent of both parents (Tew, 2019). This set a precedent, which has since been upheld, and has extended to cases against religious councils of other states, such as

³ Traditional knowledge dictates that converting a child to Islam involves the Syariah Court, which will grant custody of a Muslim child to its Muslim parent.

Perlis, in the case of *Loh Siew Hong v Nazirah Nanthakumar bt Abdullah & Anor* [2022]⁴ (Tee, 2022b), and Selangor (where the mother was only named as 'W') (Tee, 2022a).

This illustrates how state institutions, such as the court systems, can resist entrenched state interpretations of 'Muslimness' and 'Malayness', and can be viewed as agents of transformative equality.

Case study: equal rights to citizenship

Malaysia remains one of the 24 countries in the world where mothers lack equal rights to confer citizenship on their children (UNHCR, 2022). This is specified in art 14 of the Constitution, which states that 'every person born outside the Federation whose father is at the time of the birth a citizen' are automatically Malaysian citizens 'by operation of law'. Currently, under these state-constructed interpretations of 'citizen', foreign-born children of Malaysian mothers must apply for citizenship. This is a clear example where the interpretation of the Constitution is supported by patriarchal constructs, resulting in a reading that disregards women, despite art 8(1) and (2) of the very same document entitling all persons to equal protection of the law and prohibiting discrimination based on gender (Equal Nationality Rights, 2018).

In a landmark ruling in 2021 (*Suriani Kempe & Ors v Kerajaan Malaysia & Ors* [2021]),⁵ the High Court ruled that children born to Malaysian mothers abroad should automatically be conferred citizenship, like children born abroad to Malaysian fathers. The presiding Judge ruled that art 14 must be read in harmony with art 8, announcing that the word 'father' must, therefore, be read to include 'mother' (Chin, 2021).

Unfortunately, however, in August 2022, the Court of Appeal allowed the government's appeal against the High Court, ruling in a 2-1 decision (MalaysiaNow, 2022).

This demonstrates how the Court can reimagine state identity, as dictated by the Constitution, therefore renegotiating the boundaries of the exclusionary imagined community. However, this reimagining may be imperfect, with its own sets of limitations; the very mechanisms that can give rise to change can easily turn it back. Arguably, this may arise from the fact that the Malaysian courts generally do not practice judicial activism and have, historically, mostly used their power to block state attempts at pulling back women's rights. As the courts allow upward escalation through appeals, this example demonstrates how not all judicial layers will act as agents of transformative equality and some may even rule against the interests of women, a function of the pervasiveness of the patriarchy.

At the time of writing, the women leading the fight for equal citizenship rights have stated a desire to appeal in the Federal Court, with Suriani Kempe stating, 'We continue to hold faith in our justice system [...] We stand firm in the belief that one day, our government will see us, Malaysian women, as we see ourselves – as equal citizens, and that our children have just as much of a right to be Malaysian as the children of Malaysian men' (MalaysiaNow, 2022).

Undoubtedly, this route to legal change is time-consuming and taxing, both financially and emotionally. Many cases extend into years-long proceedings. Further, not every issue of women's rights can be contested in the courts, narrowing the scope of applicability. However, the courts can offer hope and a path for transformative equality as state apparatuses functioning as sites of contestation, where women's rights can progress.

Conclusion

This article has explored the role of state-led identity-making in the progress of women's rights in Malaysia, focusing on how the state's imagination of its desired citizens was built from a reflection of the identities of ruling elites, embedding values arising from 'maleness' and 'Muslimness'. Consequently, the progress of women's rights has been constrained by these embedded values. In reviewing the progress of women's rights issues from 2017-2022, this article has demonstrated how

⁴ [2022] MLJU 391

⁵ [2021] 8 CLJ 666 [HC].

the progress or failure of reform proposals was heavily dependent on the state's imagination of its citizens and the identity it crafted for them, as can be seen in the examples of stalking and child marriage, where similar state and non-state actor synergy tactics were used for both but only stalking progressed in terms of law reform.

This article has also posited a potential means of mediating this state identity through the Superior Court system. As a state actor, the courts can prevent narrow state interpretations of identity and, thus, potentially function as an agent of transformative equality, although this has its own set of constraints. Crucially, state identities are malleable and not set in stone, as demonstrated by the ebb and flow of VAW's prioritisation by the changing state, enabling women's rights to be secured where windows of opportunity open.

That said, there are limitations to the arguments proposed in this article. In particular, this paper focused on the state and non-state actor dichotomy and, therefore, did not fully consider the role of citizens. While citizens do partially form non-state actors, the movement for women's rights and the fight for them is not merely constrained to these two realms. Due to space constraints, this article did not disaggregate state and non-state actors, viewing both as separate monoliths. Disaggregating these actors may offer increased clarity and could be an area for future research. Further, the scope of progress of law reforms between 2017-2022 can only offer a glimpse into the true progress of women's rights in Malaysia. The complexities of identity, including those constructed as a response to the state's imaginations, in all their varied intersectionalities should be further explored. Finally, marginalisation in Malaysia extends beyond women, and includes groups ranging from indigenous peoples to queer peoples to other racial minorities. These issues are worthy of separate in-depth explorations. However, this process, in attributing modern and contemporary inequalities to limited state imaginations, offers a way to explore the underlying structures in a way that, hopefully, sheds new light on the issues.

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⁶ This has passed in the Dewan Rakyat (House of Representatives) and Dewan Negara (Senate), but it has not yet been gazetted.