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Malaysia: The possibilities and limitations of "rights talk"**

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ABSTRACT

This article considers the possibilities and limitations that the employment of human rights discourse poses for organizations in Malaysia involved in migrant domestic worker issues. Because domestic employment is such an overwhelmingly feminized occupation, one logical avenue of enquiry is to analyse these organizations’ adoption of ‘rights talk’ from a critical feminist perspective. The case-study research presented in this article suggests that activist groups are keen to adopt the language of human rights and make reference to international human rights standards in their work. The questions that frame this paper, therefore, are: to what extent does the engagement with the language of human rights by the activist groups challenge mainstream discourses of human rights that tend to exclude marginalized groups of women? And, when we make migrant domestic workers the subject of human rights claims, what then are the implications for human rights practice? It is suggested that the activities of activist organizations can play a role in destabilizing universalistic notions of human rights. Specifically, I highlight the ways in which campaigns to protect the rights of migrant domestic workers contain implicit critiques of both the public/private divide upon which mainstream human rights standards have been developed and the problematic relationship between rights and citizenship.

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## **Introduction**

A 'rights based approach' to migration has increasingly come to underpin the work of the International Labour Organisation (ILO) (ILO 2005; Wickramasekara 2004) and transnational activist groups involved in migrant labour issues (Alcid, 2004, Piper 2006, 2004). A rights-based approach to migration can be differentiated from other prevailing understandings of migration based around security/immigration control (policing borders, criminalizing 'illegal' migrants) and economic efficiency (viewing migrants as 'commodities'). These perspectives not only fail to recognise the agency and human dignity of migrants, but also have quite specifically gendered consequences that act to disadvantage women migrants. For example, viewing female migrants as a security problem is seen most clearly in discourses of sex trafficking. As Chapkis (2003) argues, anti-trafficking approaches to migration have served to stigmatise many groups of female migrants and rest upon notions of a public/private divide in which sex work (and, indeed any work associated with the private sphere activity) is not recognised as 'work'. At the same time, the view that migrants are essentially commodities that play an important role in securing social and economic development have been critiqued by feminist scholars such as Parreñas (2000) who point to the gendered inequalities that are integral to the movement of care workers from the developing world to richer states.

Rather than focus on these three competing discourses (security, commodities and rights), I centre my analysis on the issue of migrant rights. The article considers how an increased

commitment and activism around migrant worker rights plays out in a specific and localized context—that of migrant domestic workers<sup>1</sup> employed in Malaysia. The research presented explores how local activist organisations involved in struggles on behalf of this group of workers have framed issues faced by migrant domestic workers as human rights claims. Because domestic employment is such an overwhelmingly feminized occupation one logical avenue of enquiry is to analyse the adoption of this ‘rights talk’ from a critical feminist perspective. Feminist writings on human rights have tended to stress the persistence of ‘gender neutral treaty language’ (Kaufman and Lindquist 1995: 121-2) that obscures the extent to which mainstream conceptions of human rights fail to address the needs of women (Bunch 1995). Specifically, the equation of ‘rights’ with public sphere activities is seen to reflect a pervasive male bias (Peterson and Perisi 1998). And yet, the women’s human rights campaigns of the 1990s were able to successfully challenge some elements of this dominant human rights framework—reorienting it to incorporate the domestic/private sphere as a realm in which rights abuses can take place and rights can be claimed through a focus on the issue of violence against women (Merry 2006). A concern with the role and status of migrant domestic workers raises similar issues relating to the limitations of dominant human rights frameworks. Thus we can observe how the principal international legal mechanisms for dealing with migrant worker rights have been constructed in a largely gender neutral language and how the domestic worker is denied access to a range of rights on the basis of her association with the domestic sphere (as well as her migrant status).

The case study research presented in this article does suggest that pro-Migrant worker activist groups *are* keen to adopt the language of human rights and make reference to international human rights standards in their work. However, whilst it is important to recognise the value of a rights-based paradigm on migration, the recourse to the language of rights also raises dilemmas for critical feminist analysis. As numerous feminist scholars have pointed out, the concept of human rights itself is problematic. This dilemma is usefully summarised by Charlesworth and Chinkin (2000) who argue that ‘campaigns for women’s rights to be recognised as human rights can play a useful, strategic, role in advancing women’s equality, particularly when used in conjunction with other political and social strategies, but that the limited nature of rights must be acknowledged’ (p. 210).

The questions that frame this research, therefore, are: to what extent does engagement with the language of rights by these activists serve to challenge mainstream discourses of human rights that tend to exclude marginalized groups of women? And, when we make migrant domestic workers the subject of human rights claims, what are the implications for human rights practice? Although all of the organisations studied in this article tend to work with accepted definitions of rights as set out in international treaties and conventions, what is clear is that through their advocacy work they do go some way in challenging dominant (masculinist) human rights norms. Firstly, I will show how the work that they are involved in explicitly challenges notions of a public/private divide that operates to prevent domestic workers from claiming rights. Secondly I argue that, for some of the organisations studied, rights-based activism implicitly critiques the quite

exclusionary practices of citizenship upon which access to rights is mediated. Thus what the case study material reveals is that even when rights are codified in international and national treaties and conventions, ‘rights talk’ involves a series of interlocking contestations over their content and meaning. It is this emphasis on the constant re-framing of rights discourse that has enabled post-structuralist scholars such as Nash (2002) and Butler (2002) to reconcile the use of a concept so overwhelmingly associated with both universalism and essentialism with an acceptance of the utility of rights discourse for activists/political practice.

Although the primary aim of this article is to consider how rights are given meaning (and even reformulated) through activist struggles, a sub-question that emerges from this analysis is—what are the limitations of ‘rights talk’? Human rights are not a straightforward tool of emancipatory politics—and this is particularly the case when we examine human rights from a critical feminist perspective. As Brown (2000) has argued, the concept of ‘rights’ is essentially paradoxical, providing both a strategic language for activism and yet at the same time resting upon a universalism that acts to mask and perpetuate gendered forms of inequality (as well as class and ethnic inequality). What Charleworth and Chinkin label the ‘limited nature of rights’ is a key theme in the feminist literature on rights activism. For example, Stivens (2000) suggests that the recasting of women’s activism as human rights activism might actually be a process whereby the goals and objectives of women’s groups are constrained rather than enhanced. Others have argued that whilst women’s organisations have had some success with recasting violence against women as a rights issue, discourses of rights (including women’s rights)

have increasingly been co-opted by both neoliberal and neoconservative political agendas (Sen 2005; Hunt 2002). One concern is that a dominant position on women's rights propagated by 'Western' feminist interests has tended to ignore issues of economic deprivation and inequality (Grewal 1998). What these interventions into discussions of women's human rights point to is how scholars need to take into account wider structures of inequality that frame the ability of groups (and individuals) to claim rights. Thus although rights-based advocacy is recognised as having a strategic importance and as providing a powerful language for activism, does the highly gendered and unequal nature of the global economic system fundamentally limit the potential of 'rights talk' as a tool for protecting some of the most vulnerable and disadvantaged groups such as migrant domestic workers?

Thus in seeking to conceptualise the construction, contestation, reconstruction and limitations of feminist and labour activism around migrant rights, I endorse what Lloyd (2007) calls a critical theory of human rights. This approach seeks to interrogate how fixed notions of 'human rights' may in fact conceal dominant social power relations (within which I would include gendered structures of socio-economic inequality) and yet, at the same time, recognises the transformatory and radical potential of rights. This is a position that has clear parallels with the argument put forward by Molyneux and Razavi (2002: 38) that whilst activist groups have moved to 'own' the language of rights, we cannot divorce these processes from the contemporary politics of neoliberal restructuring (a position that has obvious implications for human rights practice in the developing world).

This article is divided into three sections. I start by situating the discussion of migrant worker rights within an overview of the Malaysian political and economic context. This section of the article also serves to introduce three organisations (two NGOs and one trade union organisation) that have played a central role in domestic worker activism. In part two, I consider how the usage of ‘rights talk’ by these three groups offers some transformatory potential and part three then considers the broader limitations of this activism. The inclusion of a trade union organisation in this research is very interesting from the perspective of feminist scholarship on activism and human rights which has tended to focus solely on women’s activist organisations. Indeed, what comes out in the article is that the quite different institutional context for trade union activism compared to women’s NGOs creates particular problems and tensions in its engagement with notions of universal human rights (in particular the dilemma over whether these should be applied to undocumented workers). The article concludes by returning to some of the more conceptual issues that frame this article—asking what are the implications of the research presented in this article for how we understand human rights through critical feminist lenses?

### **Domestic work, Migration and Activism: Contextualising Rights-Talk in Malaysia**

A theme in many of the recent empirical studies of women’s human rights activism in the non-Western world is an emphasis on how universal standards are reformulated within

localized contexts (see for example Merry 2006, Hilsden et al 2000, Banda 2003, Bovarnik 2007). For these writers, locating rights claims within the local context provides a way out of a universalist-relativist dichotomy, that is, ‘contextualization without relativisation’ (Stivens 2000: 3). This section of the article, focuses on the broad context within which the subsequent analysis of the possibilities and limitations of rights-talk is framed. What this discussion points to is the centrality of the (developmental) state to discussions of rights activism in Asia.

Importantly, locating the state in this analysis is not simply a matter of recognising the mechanisms through which state-led repression of civil society actors takes place; we also need to consider the role of the state in the establishment of a highly gendered model of economic development that has increasingly come to rely on low-paid female migrant labour. Like other middle-income states in the region, the rise in foreign, paid domestic workers mirrors the expansion of a middle-class and rising female (formal) labour force participation in the context of societies that have minimal state welfare provision (Chin 1998; Abdul Rahman et al. 2005).

Malaysian Government figures from March 2006 identify that there were officially over 1.8 million foreign migrant workers present in the country, with Indonesians constituting over 1.2 million of this group<sup>2</sup>. However, such figures significantly underestimate the extent of the dependency on migrant labour in Malaysia. The Malaysian Trade Union Congress estimates that the total figure (documented and undocumented migration) is more like 2.6 million (out of a total workforce of 10.5 million). Yet it is likely that the

numbers are even higher (Hugo 2004). These migration flows are highly gendered—both in terms of the increased levels of female migration to Malaysia and also the stratification of the market for migrant workers along gender lines (cross cut with ethnicity and nationality). According to Malaysian government statistics, in 2004, 44.9% of female non-Malaysian citizens were employed in the category ‘private households with employed persons’ compared to just 2.6% of Malaysian citizens—and this is by far the major employment sector that female migrant workers are moving into (Malaysia 2005). Of course, the reliability of government statistics can be questioned because of the level of undocumented migration—it is noted that the nature of the market for domestic workers is significantly unregulated leading to high levels of ‘illegal’ employment (Stivens 1998: 101). But what both the anecdotal and official evidence points to is that this market for domestic labour is overwhelmingly dominated by women migrants—particularly those from neighbouring Indonesia (Rajasekaran 2006: 5, Hugo 2004).

The employment of Indonesian women as domestic workers forms part of the broader context within which contestations over rights for migrant workers take place. The high levels of employment of Indonesian women as domestic workers have generated particular public discourses concerning the untrained/uneducated worker recruited from rural *kampungs* (villages) with little experience of urban living. Indonesian domestic workers command considerably lower wages compared to Filipinas (average salaries are around 400RM per month for Indonesians compared to around 750 RM for Filipinas<sup>3</sup>). The discrepancy in wage rates is usually explained with reference to Filipinas’ English language abilities, and higher levels of educational attainment. However, the higher

wages commanded (as well as the insertion of clauses into Filipinas' employment contracts granting them some rest days per month) also reflects the more assertive role that the government of the Philippines has taken in seeking to go some way in protecting its nationals employed as domestic workers in Malaysia. Indonesian women are, furthermore, constructed as a source of not only low cost but also unskilled, passive and compliant labour. Yet this perceived lack of education is seen as something of a positive attribute by employers seeking the kind of 'passive' 'rural girl' who will not demand labour or human rights since she is not even aware that such possibilities exist. As the Malaysian Immigration Director General commented in July 2006:

They [employers] prefer Indonesian maids due to cultural and linguistic similarities, and also because most Indonesian maids have poor educational background and are, therefore, less demanding (*Bernama* 2006b)

The situation of Indonesian domestic workers in Malaysia has been highlighted by a 2004 Human Rights Watch report. The report documents how many of these women are vulnerable to violent and/or sexual abuse at all stages of the recruitment and employment process. However, whilst these kinds of incidents are generally viewed as rare, what many commentators have highlighted is the persistence of highly exploitative employment practices such as a lack of rest days and overly long working days, non and under-payment of wages, withholding of passports by the employer or recruitment agency and lack of freedom of religious practice (Human Rights Watch 2004; Josiah 2006; Chin 1998).

A focus on human rights debates in Malaysia also enables the introduction of some broader issues and dilemmas for human rights activism in those parts of the developing world characterised by forms of governance that Woodiwiss (1998), employing Weber's term, has characterised as 'patriarchalism' (and in the case of Malaysia as 'authoritarian patriarchalism' (Woodiwiss 1998)). Rights activism of any kind in Malaysia has frequently been met by a political regime intent on limiting the scope and activities of civil society. Whilst numerous human rights organisations have played an active role in Malaysian political culture such activities need to be situated within an understanding of the government's efforts to manipulate the political system in ways that curtail political opposition (Elias 2004: 66-7). Of particular relevance to discussions of migrant labour in Malaysia has been the level and extent of labour repression and the effective undermining of the trade union movement as well as the repressive tactics taken against so-called 'illegal' migrants and refugees/asylum seekers. Malaysia does not have a strong record of ratifying international human rights treaties and instruments (with the significant exceptions of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC)). The ability of organisations to claim 'rights' for migrant workers is thus complicated by this political and legal context. Obviously one issue that ought to be brought in at this point is that of the 'Asian Values' debate of the mid 1990s in which the leaders of Malaysia, Indonesia and Singapore argued against universalistic 'Western' notions of human rights in favour of an emphasis on economic development and communal values (Mauzy 1997). However, I would warn against a characterisation of the Malaysian government's stance

on human rights issues as couched purely in the language of Asian Values. For example, the Malaysian government and state officials have themselves employed notions of human rights and, following the rise of *Reformasi* politics in the late 1990s, established a human rights commission (SUHAKAM). For all of its faults (for example, lack of ability to implement decisions, political interference etc), the establishment of SUHAKAM further strengthens and legitimates the activities of an active and vibrant Malaysian human rights movement. Thus in opposition to arguments based on essentialised notions of Asian cultural values, my preference is to characterise the Malaysian political system in terms of the intersection between state capitalist development imperatives and the (authoritarian/hierarchical) modes of domination that characterise East Asian legal and human rights regimes.

Of course, it is important to note that human rights activists in Malaysia are very much aware of the Asian Values debate (although they are keen to reject such ideas) and how it has the potential to stifle and constrain claims to human rights. This is of course a dilemma for activists—as Merry points out, human rights can be most useful to activists when it provides an alternative language, but by accessing an alternative language activists face accusations that they are endorsing or even being co-opted by colonialist interests (Merry 2006: 100). Woodiwiss thus suggests that we employ the ‘mundane’ but ‘theoretically liberating’ line that rights be understood simply as ‘discursive entities’ (1998: 37). Indeed, such an approach is very useful in any analysis of human rights activism in the non-Western world and underscores the focus on ‘rights talk’ endorsed in this article.

### *Civil Society Activism and Foreign Domestic Workers in Malaysia*

The three groups utilised as case studies in this article represent quite different approaches to migrant worker activism. Two of these groups (Tenaganita and the Women's Aid Organisation (WAO)) define themselves as NGOs and the third is the national trade union body (the Malaysian Trade Union Congress (MTUC)). These three organisations were the most prominent organisations working with migrant domestic workers at the time of the fieldwork conducted in late 2006. All three are Malaysian based and run by Malaysians rather than migrant workers. This is a typical pattern of political organisation for migrant workers in Asia since self-organising is often difficult. In Malaysia societies and unions must be registered (under the terms of the Societies Act and the Trade Union Act) and this is a lengthy and convoluted process. Furthermore, migrants are likely to have clauses in their employment contracts forbidding them from joining unions or associations. The three organisations are not, however, the sole players involved in the issue of migrant domestic workers' rights—a whole array of human rights and women's organisations have been active in signing memos and issuing statements on the issue although these groups tend not to deal directly with migrant domestic workers themselves (Gurowitz 2000).

Both Tenaganita and WAO are organisations that can be described as feminist organisations linked into national, regional and international NGO networks. Tenaganita is the most well known migrant activist group in Malaysia. Founded in 1991, its early work focussed on women factory and plantation workers. However, the rapid growth of

migrant workers in Malaysia during the 1990s led the organisation to establish a migrant labour programme. At the time, Tenaganita was one of the only organisations involved in migrant labour issues and it has worked with groups of both male and female migrants (including refugees). Tenaganita provides a range of support services to migrants and has attained national and international prominence through its advocacy work. As Lyons (2004a: 11) argues, the significance of Tenaganita politically is in its willingness to link its advocacy work to critiques of the human cost of neoliberal globalisation.

WAO is another established Malaysian NGO founded in the early 1980s as an organisation to assist women suffering from domestic violence. The organisation works with foreign domestic workers on the grounds that '[a]ny woman who is in a situation of crisis was as far as possible never turned away from our Refuge' (WAO, 2002: 15).

WAO is also a prominent advocacy organisation—for example on issues such as domestic law reform. As an organisation that has much experience in dealing with domestic violence they draw parallels between the abuse suffered by Malaysian women experiencing violence at the hands of a (usually male) partner or family member and the committing of abuse against domestic workers by (often female, as well as male) employers. Unlike Tenaganita whose advocacy has emphasised the connections between rights violations and the operation of a neoliberal economic model in which the voices of the disadvantaged go unheard, WAO tends to conceptualise the rights of domestic workers within a framework that incorporates a strong focus on violence against women. For WAO, then, the domestic sphere—the way in which households are deemed as being

somehow ‘outside’ of the law—creates the structural conditions within which abuse (be it violent or otherwise) is perpetuated.

The final case study organisation considered is the MTUC—an organisation that has only recently come to focus on foreign domestic workers with the establishment of a migrant worker desk and attempts to establish an association for foreign migrant domestic workers. This is unsurprising, nationally-organised unions have traditionally taken an antipathetic, even antagonistic, stance towards foreign workers, viewing them as a threat to jobs, pay rates and working conditions. Two important developments have contributed to this shift. Firstly, in late 2004 the MTUC experienced a change in leadership when the president, Zainal Rampak, who had developed a close relationship with government, was replaced by more ‘radical elements’ (Rowley and Bhopal 2006: 106-107). The change in leadership brought several trade unionists who take a somewhat less nationalistic perspective on migrant labour issues to prominent positions<sup>4</sup>. Secondly, the direct role of the ILO was important in persuading the MTUC to adopt this programme and in providing funding for the programme for two years. However, more generally, another important reason for the shift within the MTUC was the pressure from civil society activists and trade unionists from sender countries that drew attention to the shortcomings of the MTUC on the migrant worker issue<sup>5</sup>.

As stated in the introduction, all three organisations have incorporated some kind of engagement with international human rights standards into their work. All of the organisations interviewed made reference to the universal declaration of human rights. As

the respondent from Tenaganita pointed out ‘rights are rights, they are set out in the universal declaration of human rights. We see this as the basis’<sup>6</sup>. Such claims point to the way in which universal human rights standards often have a strategic utility for activists—particularly in framing their political opposition to government and state interests. Take, for example, this quotation from a media interview with Tenaganita programme co-ordinator Aegile Fernandez. Fernandez is asked to comment on the issue of ‘illegal’ migrants and responds with the following: ‘... I don’t know how they [i.e. the government of Malaysia] use the word illegal because we believe, *as under human rights instruments*, that nobody is illegal. We’re all legal in this world and its only boundaries that separate us’ (Phang 2007 emphasis added).

Although the universal declaration of human rights is invoked as a statement of universal principles, for WAO more practical significance is attached to the CEDAW convention. WAO is a member of the JAG Coalition (the Joint Action Group on Violence Against Women), a loose network of women’s NGOs, and in this capacity has taken a major role in the shadow CEDAW reporting process and has successfully advocated on behalf of foreign domestic workers in this forum (NGO Shadow Report Group 2005).

It is important to note that, whilst all three organisations recognised the relevance of international standards and conventions in their work, they also emphasised the centrally important role of the state to discussions of human rights in Malaysia. Firstly, both the MTUC and Tenaganita stressed the importance of ratification of international treaties into domestic law. Tenaganita emphasised their campaign work on the need for the

Malaysian government to ratify the ICMR (the International Convention on the Rights of Migrants and their Families) and the MTUC focused, almost exclusively, on the need for the government to ratify the core ILO convention relating to freedom of association<sup>7</sup>.

Secondly, there was an emphasis placed on how concepts of ‘rights’ are enshrined in law through the Malaysian Constitution—and in many respects most of the organisations interviewed felt that migrant rights activism centred on constitutionally guaranteed rights provided a good basis for rights activism. It is worth stressing that national legislation is an important reference point for many civil society advocates of rights-based approaches (Cornwall and Molenyeux 2007). Indeed, all three organisations have emphasized how certain rights that are available to Malaysian citizens are not available to migrant workers and migrant domestic workers in particular.

### **Thinking critically about migrant domestic worker rights**

It is one thing to establish that migrant worker organisations engage with the language of human rights and make reference to international human rights treaties and national standards. But what does this engagement with ‘rights talk’ mean in terms of the propositions being tested in this article? In other words, how might the human rights issues that have been advanced by these groups be conceptualised as leading to reformulated notions of rights that are more sensitive to the needs of migrant domestic workers? My concern here is not to say which categories of rights are ‘best’ for foreign domestic workers—rather, I want to re-engage with the idea of a critical theory of rights

introduced at the start of this article, suggesting ways through which rights-based activism challenges and reformulates dominant understandings and practices of rights.

### *Challenging the public/private divide*

Firstly, we can point to the way in which activists have fought to overcome the operation of a public/private divide by highlighting how the domestic sphere provides the context for workers' abuse and exploitation. One of the most obvious ways in which this problem plays out in Malaysia is the non-recognition of domestic workers as 'workers' in the 1955 Employment Act. This means that domestic workers are excluded from the terms of the act which include stipulations regarding rest days, hours of work, holiday leave, termination, lay-off and retirement benefits and a four-week notification of termination of employment period amongst other issues (Josiah 2006). It is in this context then that Tenaganita has pushed for the recognition of 'maids' as 'workers'<sup>8</sup>; emphasising how the subordinate status of this group of employees is perpetuated the view that they are mere household 'helpers'. A dominant construction of domestic workers as 'members of the family' has engendered an attitude that it is impossible to legislate for things like hours of work or enforce labour law within the domestic setting. Thus both legally and in popular discourse the household is constructed as an essentially non-economic realm; it is not viewed as a place within which paid labour (or even 'labour' more generally) takes place.

In May 2006, the Malaysian and Indonesian governments finally agreed a Memorandum of Understanding (MoU) on migrant domestic workers (a statement of minimum standards relating to recruitment and employment conditions). However, from the

perspective of many NGOs, the MoU did not go far enough—domestic servants remained unrecognised as employees and no minimum wage was set in place. Under the terms of the MoU wages were to be determined by ‘market forces’ and yet, as Tenaganita argue in a statement critiquing the MoU, a free market approach to wage levels perpetuates structures of exploitation that lock poor women into under-paid and potentially abusive forms of work: ‘what is promoted is of trading in women between Indonesia and Malaysia for an unrecognized form of labour’ (CARAM-ASIA 2006). The lack of status given to either domestic work or the domestic worker herself makes her particularly susceptible to violent abuse. Migrant domestic worker’s structural inequality within the global political economy, the local economy and the households within which they work clearly contribute to this vulnerability. In my interview with a respondent from WAO a question concerning why foreign domestic workers were so vulnerable to abuse was answered ‘it’s all about power’. The interviewee argued that that domestic work was seen as having ‘no value’ and that the ‘master-servant relationship inevitably leads to abuse’<sup>9</sup>. Indonesian women were viewed as especially vulnerable because they lacked basic knowledge of their rights and were in no position to try and improve their workplace situation because of their structural subordination as poor rural women within the global economy.

Problematizing the domestic sphere as the site of domestic worker’s subordination has also led WAO to stress the role that social fears over the intimate relationship between domestic workers and family members play in discourses of social control over migrant workers. As they argue on their website, it is such discourses of domestic workers as

untrustworthy, ‘husband stealers’ and ‘sexually promiscuous’ that render them particularly stigmatised within Malaysian society, and feed into highly exploitative regimes of labour control within the household.

In a letter to the New Straits Times... a former employer stated that it was ‘...desirable to gradually phase out maids so that no more sexually transmitted diseases will be brought to our homes’. Employers use their assumptions about their domestic worker’s promiscuity to justify confinement of the domestic worker to the home. [<http://www.wao.org.my/research/fdw.htm#do> accessed 03.11.06]

Christine Chin’s work in particular has charted employers’ utilisation of control and surveillance practices that serve to confine the worker to the home and prevent her from interacting with outsiders (Chin 1998). These practices contribute to a curtailing of workers’ access to the world outside of the household and this, clearly, prevents them from learning of their contractual rights (e.g. stipulations regarding rates of pay). Thus the MTUC complained of facing real difficulty in contacting Indonesian women (compared to Filipinas) because of their effective confinement to the home<sup>10</sup>. Tenaganita go further, labelling such practices ‘bonded labour’ (Phang 2007). At the same time, these discourses intersect with those concerning how the workers are lazy and ‘unintelligent’ and thus not ‘deserving’ of rest days or higher rates of pay. As WAO note:

The underlying assumption... is that domestic workers are lazy and don’t want to work, and therefore run away at the first chance they get. Never do the employers

examine their own behaviour as a contributing factor to the situation.

[<http://www.wao.org.my/research/fdw.htm#do> accessed 03.11.06]

*Transnational migrants, citizenship and rights*

In assessing the transformatory potential of these organisations' rights-based advocacy, I now turn to the second issue that these organisations have raised; that of the problematic relationship between the migrant's 'transnational' status and the limits of conventional human rights practice. All three organisations have pointed to how the transnational status of migrant workers makes them particularly vulnerable to exploitation and abuse. On the one hand this issue can be seen in the myriad of dangers that migrant workers face as migrants—how the various stages of the migration process expose workers to dangers (Human Rights Watch 2004). On the other hand, we can see how the migrant worker issue highlights a tension between notions of universal human rights and citizenship that are current within the contemporary human rights regime. Whilst human rights are conventionally presented as universally applicable to each and every individual in the world, such a formulation obscures the extent to which human rights norms are articulated through states and state-centric institutions such as the United Nations (Goldston 2006). Human rights are translated into political practice in the form of citizenship rights which 'represent the specific interpretation and allocation by individual nation-states of the more abstract, unconditional and universalisable human rights' (Lister, 2003:60).

Thus states translate rights into practice and, in doing so, access to rights come to be mediated by exclusionary notions of citizenship (exemplified by how states have responded to the issue of migration through restricting, regulating and securitizing migration flows). In Malaysia, migrant workers face myriad restrictions that demarcate them as both ‘different’ from Malaysian citizens and limit their access to rights enshrined in national legislation (Healy 2000). Although they may be formally eligible to claim certain rights (for example a right to hold onto their passport) they are denied these rights through repressive immigration policies and state-sanctioned practices. The exclusionary face of citizenship is seen most clearly by those workers who do not have documented employment status (either because they entered the country ‘illegally’ or became undocumented during the course of their employment experience). The Malaysian government has pursued draconian policies against ‘illegals’; which include the sanctioning of the volunteer police force, RELA, to round-up undocumented workers (a process that NGOs have highlighted as involving high levels of brutality (SUARAM 2005: 119; Migrant Forum Asia 2006; *Aliran* 2006)), imprisonment in detention centres and capital punishment. The numerous state raids on ‘illegals’ act to compound and ‘exacerbate the unequal distribution and exercise of power in employer-servant relations’ (Chin 1998: 125). The state’s policing of migrant worker groups obviously intersects with the inability of domestic workers to be recognised as workers. And this too can be seen as an exclusionary citizenship practice—one that does not accord the same kinds of citizenship rights to women compared to men.

All three organisations pointed to the state's role in shoring up systematic forms of abuse. For example, domestic workers find it near impossible to seek redress through the courts for any abuses suffered because once a work permit is cancelled by an employer a worker finds it very difficult to remain in the country during a lengthy court case (a civil suit can take 3-5 years). Tenaganita in particular have campaigned on the issue of 'a legal right to stay' and they have advocated that migrant workers should have a right to work when legal cases are pending. The major problem is that once a work permit is cancelled, migrants are only able to obtain a monthly special pass at a cost of 100RM (per month) and, under the Employment (restriction exemption) Order of 1972, are prohibited from working. WAO's president raised similar issues in a recent open letter to the minister of Human Resources:

Our federal constitution in article 8 provides for the equal protection of all individuals. This translates as equal protection to Malaysians and Non-Malaysians.

Let us not just pay lip service to its meaning but make it a reality. (Samanther 2006)

Perhaps the most noteworthy challenge that NGOs such as WAO have made in confronting the exclusionary practices of citizenship through human rights activism has been the inclusion of the issue of the lack of employment rights accorded to migrant domestic workers within the shadow reporting process of CEDAW (NGO Shadow Report Group 2005). CEDAW is regularly criticised by feminist scholars for endorsing an 'equal rights' approach to women's rights that fails to recognise the structures of gender inequality that restrict women's access to 'rights' (Kaufman and Lindquist 1995).

However, such a perspective on CEDAW fails to recognise the significance of the shadow reporting mechanism in challenging conventional human rights norms. Thus we can point to the inclusion of the issue of violence against women within the remit of the CEDAW process in spite of its absence from the original treaty (Merry 2006). The inclusion of domestic worker employment rights within the CEDAW process should be recognised as significant because it challenges the Malaysian state's perspective that CEDAW is only applicable to women citizens of Malaysia and not to female migrants. This, then, is an example of how feminist activism can challenge the citizenship-rights nexus in ways that are much more inclusive.

### **The limits of 'rights talk'**

The advocacy that organisations such as the MTUC, Tenaganita and WAO are involved in is playing a role in raising human rights concerns—concerns that place the experience of both women and workers at their centre. But at the same time, this process is subject to a number of limitations. It is widely documented in the literature on human rights and activist struggles that 'rights talk' can provide a powerful strategic language to build solidarity between diverse civil society actors both nationally and internationally (Ackerly 2001; Steans 2007). However, this article also cautions against undue optimism. We should consider that, whilst discourses of rights are endorsed and accepted within all three organisations studied, this is not always their principal and/or only discursive strategy. As Shaw and Hale (2002) have warned in their work on women workers in

export processing zones, the language of rights is often seen as too abstract and too far removed from women's everyday struggles (see also Elias 2007). 'Rights' are not always the main focus of NGO advocacy and support work. This is complicated by the fact that the kinds of rights enshrined in international law might not always be the most helpful for dealing with the issues faced by migrant domestic workers.

It is notable for example, that the vast majority of international human rights standards that are typically referred to in making the case for a rights-based approach to migration are framed in a gender-neutral language that makes little to no recognition of the problems and issues faced by female migrants (Piper 2006). The ILO (2005) has sought to position itself as a major player within the field of migrant worker rights—by which they mean a greater emphasis on international legal standards relating to worker rights in general and the rights of migrants in particular (Wickramasekara 2004). The ILO's draft framework on labour migration *does* make reference to the problems and issues faced by female migrants. However, the framework is ultimately rooted in commitments to uphold the rights of migrant workers through adherence to the ILO's Core Labour Standards (ILO 2005: 9). These 'core' standards make little reference to the specific problems suffered by domestic workers that stem from their positioning within the household or their status as migrants<sup>11</sup>. As blanket minimum standards they do have some utility, but the reality is that for the two NGOs considered in this study they are not viewed as of primary importance. Similarly, there are high levels of gender blindness in the kinds of international human rights standards usually referred to in discussions of migrant worker rights (these include the ICMR, the Universal Declaration of Human Rights, the

International Convention on Social, Economic and Cultural Rights and the International Convention on Civil and Political Rights). One key issue that is inadequately dealt with in these treaties is the issue of *how* rights are to be claimed. Many migrant domestic workers lack access to a public sphere within which rights claims can be advocated. As we have already seen in this article, this exclusion from the public sphere is two-fold; their work is not recognised as ‘employment’ in national legislation and they are effectively prevented from joining any kind of migrant worker organisation/trade union by state practices that make organising near impossible and employment practices that confine domestic workers to the household. Questions need to be raised therefore about the extent to which these gender-blind standards can effectively meet the needs of migrant domestic workers. CEDAW is clearly a notable exception here, with the United Nations Development Fund for Women (UNIFEM) pushing the CEDAW shadow reporting mechanism as one of the best routes through which the rights of female migrant workers can be put forward internationally<sup>12</sup>.

International standards, however, are overwhelmingly highly legalistic in nature—even involvement in the CEDAW shadow reporting process requires a strong degree of legal competency. As one NGO official that I interviewed commented, many international human rights treaties and standards are seen as too abstract and technical to be incorporated into their advocacy work. Thus attention should be given to Yuval-Davis’ (2006) concern that an increasingly ‘technical’ understandings of rights has led to ‘the growing professionalization of feminist advocacy’ and that ‘[t]o a large extent feminism has stopped being a mass social movement and come to be the full-time business of

trained experts’ (p. 288). The same NGO official argued that in their day to day work they tended to focus more on women’s ‘welfare’ and it was through this focus that they would invariably raise rights issues<sup>13</sup>.

The language of rights is thus accepted as part of the everyday struggles that activist groups are involved in—and yet, at the same time, the often highly technical and legalistic framing of rights language is seen as a barrier. When ‘rights talk’ is adopted it is done so in a context dependent manner. But this is not to suggest that rights discourses are marginal to the strategies pursued by these three organizations. As asserted at the start of this paper, the focus on rights matters because of the push within international organisations such as the ILO and the emphasis of transnational advocacy groups on taking a rights-based approach to migration. Rather, what this empirical discussion shows is how an inter/trans-national rights discourse plays out (or is ‘translated’ (Merry 2006)) in the local context. What is evident is that the language of rights is employed strategically and thus rights are understood in different ways by different actors—often depending on how they position themselves within local and global civil society(ies) and their relationship *vis a vis* the state.

Indeed, the context for rights activism in Malaysia is one in which waves of human rights and labour activism have been met by (often draconian) state repression, placing quite overt limitations on the role and activities of activist groups. The discussion of migrant worker ‘rights’ must take account of the fact that *any* notion of worker ‘rights’ remains a low priority. All three organisations emphasised the nature of the Malaysian political

regime within which a semi-authoritarian style government has limited the extent and level of civil society activism. For example, attempts by the MTUC to even register a migrant domestic worker association under the terms of the Societies Act has proven exceptionally difficult. As noted earlier, such a repressive style of government has, in the past, been justified with reference to ‘Asian Values’. This was a discourse that was rejected by all of the organisations studied—and yet, they all recognised how this anti-Western human rights rhetoric made ‘rights speak’ somewhat difficult.

The way that the state has framed migrant labour issues around discourses of illegality also acts to limit the effectiveness of activism. WAO and Tenaganita premises have both been the target of state-sanctioned raids aimed at capturing undocumented migrants. As argued above, the boundaries of (national) citizenship form an important part of the context within which rights claims are made. This in itself creates problems—particularly for a trade union organisation like the MTUC which, in spite of its attempts to organise some groups of migrant workers, still remains attached to nationalistic notions of labour protectionism. Thus the MTUC asserted the importance of freedom of association for all workers but emphasised that it wanted no dealings with workers who had entered the country without proper documentation<sup>14</sup>.

Finally, for some, the limitations of migrant rights activism can be located within the class divisions and tensions that exist within ‘home grown’ feminist movements. Ng (2004) for example has suggested that ‘[t]he lack of support shown by women’s groups as a whole to female migrant domestic workers can perhaps be attributed to the fact that

the predominantly middle-class women's movement has not reconciled the role it also plays in denying these workers their rights'. Such debates obviously chime with the concerns that some writers have over the way in which discourses of 'womens' rights' might be used to privilege the rights of one group of women over another (Grewal 1998). However, at the same time, we need to recognise the significant role that many middle-class female activists have played in campaigns to protect migrant domestic workers in Malaysia.<sup>15</sup>

### **Conclusion: Contesting Rights**

What is evident from this discussion, therefore, is that the issue of migration raises particular problems for how we think about human rights, and the ways in which talk of universal human rights often conceals the extent to which 'rights talk' rests upon highly parochial understandings of who counts as 'human', as a 'worker' and as a 'citizen'. The analysis points to how activist groups have sought to disrupt dominant conceptions of the migrant domestic worker as 'not a real worker' and as a 'threat' to the family unit and the national economy (and in need of tight control). Such disruptions have implications for human rights practice by locating rights violations within a domestic sphere, challenging the linkage between rights and citizenship and finally, in the fact that their focus on *worker* rights necessitates closer engagement with concepts of economic rights that have often been overlooked in feminist human rights struggles.

Engaging with human rights does, however, create dilemmas for feminist activism and scholarship. What this article has done is to show how ‘rights talk’ involves dialogue around a whole range of formal understandings of rights (be these international conventions or more locally specific rights guaranteed in national constitutions and legislation), a process that creates both possibilities and limitations for activism on behalf of female migrant workers. Activism that engages with the language of human rights could be conceptualised as a process that leads to the reformulation and reinscription of supposedly universal standards. The most obvious example of this is the successes of women’s human rights activism during the 1990s. More recently, writers such as Elson and Gideon (2004) have discussed how women’s organisations in the developing world have employed notions of economic rights in pointing to the gender injustices inherent to neoliberal development. Such practices challenge therefore the association of human rights with other sets of liberal rights—in particular the right to hold property.

Lloyd however, takes a more nuanced position. Developing an analysis of the relationship between rights and power, she stresses an understanding of rights as ‘constitutively indeterminate’—‘a view that lends itself, in my view, to a more politically sensitive understanding of how human rights are constructed (not merely represented or advocated) as well as their potential for transformation’ (p. 94). Significantly, the construction of rights is conceptualised as taking place through complex power relations (including socio-economic inequalities) and determinate modes of political agency (Lloyd 2007: 102). Thus whilst human rights scholars such as Stammers (1999: 1006) argue that ‘the construction and use of human rights discourses by social movements can

play an important and positive role in challenging relations and structures of power', I would suggest that such an analysis is overly optimistic—rights cannot be understood straightforwardly as a tool of emancipatory politics. Take for example, the MTUC's antipathy towards the plight of undocumented workers. Such a stance clearly reifies the role of the state in shoring up exclusionary practices of citizenship that have actually legitimated abuses.

Furthermore, formal legalistic understandings of rights (such as ILO core conventions) are often rooted in an oversimplified emphasis on equality of social standing without recognising the complex power imbalances that inhibit individuals' ability to claim rights (Chinkin 1998; Brown 2000). Of course, related to these points are wider debates concerning the uncertain place of economic and social rights that are deemed to have a redistributive dimension within discussions of human rights more generally (Evans 2000; Thomas 1998). In this sense, the research can be situated alongside an emerging body of scholarship that has sought to move away from an exclusive focus on women's rights in terms of a violence against women framework and to focus on the ways through which feminist voices are increasingly engaging with questions of women's economic rights (Elson 2002; Elson and Gideon 2004; Unni 2004) and both the possibilities and limitations that such engagement entails (Desai 2005; Elias 2007). And yet, by and large all three groups overviewed in this paper were unwilling to criticize or challenge international human rights norms—for them, human rights provides an important platform from which to make demands of the Malaysian government in local and international media and at international forums.

Activist groups will need to engage more thoroughly with the gender-blindness of existing approaches to migrant worker rights and in doing so they will need to confront the ways through which gendered power inequalities are a fundamental feature of the global political economy. Importantly then, whilst one strand of feminist scholarship has asserted the significant role that international treaties can play in protecting women's human rights in the context of neoliberal globalisation (Sjoberg, Gill and Williams 2001) an alternative, more critical, perspective highlights how rights language may itself be firmly tied up with the gendered practices of neoliberal globalisation within which household and reproductive labour is rendered invisible (Peterson and Perisi 1998; Yuval-Davis 2006). As Eisenstein (2004) argues, universalistic understandings of rights are by their very nature exclusive—we need to rethink 'universals' from the perspectives of the disadvantaged including 'the girl working in the Philippine sweatshop' (p. 197) and, we might add, the Indonesian domestic worker.

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<sup>1</sup> In this article, I used the terms 'migrant domestic worker' and 'foreign domestic worker' interchangeably. Early writings on Malaysian industrialization have used the term 'migrant worker' to refer to rural-urban migrants within Malaysia. In this article, I use the term 'migrant' to refer exclusively to the movement of workers across internationally recognised state borders.

<sup>2</sup> Other significant migrant groups included workers from Nepal (over 200,000) India (over 139,000), Burma/Myanmar (over 92,000), Vietnam (over 85,000), Bangladesh (over 58,000) and the Philippines (over 22,000) (*New Straits Times*, 2006).

<sup>3</sup> These figures were widely reported in the Malaysian press and in interviews with NGO activists at the time of conducting the research in late 2006.

<sup>4</sup> Personal interview with MTUC General Secretary (18.10.06)

<sup>5</sup> Personal interview with MTUC General Secretary(18.10.06)

<sup>6</sup> Personal interview with Tenaganita migration programme officer (18.10.06)

<sup>7</sup> For a through overview of NGO activism around international human rights standards pertaining to migrant workers in Asia (and female migrant workers in particular) see Piper (forthcoming).

<sup>8</sup> Personal Interview with Tenaganita migration programme officer (18.10.06)

<sup>9</sup> Personal Interview with WAO official (17.10.06). Similar points are also raised in an interview with Tenaganita programme co-ordinator Aegile Fernandez (Phang 2007).

<sup>10</sup> Personal Interview with MTUC migrant domestic worker project organiser (18.10.06)

<sup>11</sup> For gendered critique of the Core Labour Standards see Elias (2007).

<sup>12</sup> Personal Interview with UNIFEM representative, Bangkok (12.12.06)

<sup>13</sup> Personal interview with WAO official (17.10.06).

<sup>14</sup> Personal interview with MTUC General Secretary(18.10.06)

<sup>15</sup> Lyons (2004b) raises similar concerns in the context of Singaporean feminist activism.