Gender diversity on Malaysian corporate boards: a law and social movements perspective

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Abstract
This article is a unique investigation of the interaction between sociocultural perceptions of women in Malaysia and reforms implemented in that jurisdiction to promote gender diversity on corporate boards. It adopts a law and social movements perspective to better understand the legal reforms that have emerged, often amid fraught interactions between the state and women’s rights activists due to their conflicting conceptions of gender roles. The article draws on empirical data to shed light on the practical workings of the reforms, ascertaining the perspective of insiders through interviews and examining the composition of the boards of 30 of the largest listed companies. While an increase in the representation of women on corporate boards suggests that the reforms have facilitated progress towards gender equality, such progress must be viewed in the context of prevalent conservative perceptions of gender roles, and sustained state resistance against women’s rights activists, which together impede progress towards substantive equality.
1 INTRODUCTION

Initiatives towards greater gender diversity on corporate boards have gained traction in many parts of the world. Recommendations by transnational organizations such as the Organisation for Economic Co-operation and Development (OECD) and the Group of Twenty (G20), as well as the United Nations (UN) Global Compact, which underscores the importance of businesses supporting international human rights, have further encouraged the adoption of reforms aimed at promoting the equitable representation of women in corporate decision-making positions. The proportion of women on corporate boards globally has increased along with the international growth in the adoption of laws and voluntary codes that embody these aspirations.

Gender diversity has been found to bring benefits to corporate boards in various ways. In addition to countering groupthink, gender-diverse boards are thought to ‘allocate more effort to monitoring’ and are ‘more benevolent and universally concerned’. While the contribution that each director makes varies depending on individual attributes, studies have found several common traits that women directors tend bring to boards. These often include a more participative leadership style, greater sensitivity to the needs of others, less tolerance for ethical lapses, better resolution of interpersonal conflict, and promotion of collaboration. The business case for gender diversity often focuses on factors such as understanding customers where women constitute a significant portion of the customer base, or the propensity for innovation.

Chapple and Humphrey posit that in terms of financial performance, the business case for gender diversity is not always compelling. Nonetheless, a substantial body of research supports the proposition that gender-diverse boards are correlated with better corporate social responsibility. In recent years, the importance of environmental and social governance has been increasingly recognized and, accordingly, the value that women directors bring in engaging with stakeholders’ interests is vital.

While greater gender equity at higher levels of corporate decision making has been welcomed, several setbacks have been observed and there are tensions around the framing of debates on the business case for gender equality. McCann and Wheeler argue that ‘business case arguments are

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demeaning to women\textsuperscript{9} and scholars such as Prügl caution against gender stereotypes.\textsuperscript{10} Critics have lamented the ‘glacial’ rate at which progress has been achieved in some countries.\textsuperscript{11} Cultural and structural factors, such as perceptions that women may lack the ‘rugged individualism’ for the role or that caring’ responsibilities are an impediment, are thought to underpin the lethargic progress.\textsuperscript{12} Mandatory quotas have been at times proposed or adopted as a means of precipitating change.\textsuperscript{13} At the same time, concerns have been raised over the potential for unintended consequences. These include tokenism\textsuperscript{14} and situations where the benefits of gender diversity initiatives flow to a select group of women, referred to as ‘golden skirts’.\textsuperscript{15} Reforms have been known to be implemented in such a way that their underlying aims are watered down, particularly where there is cultural resistance to changes in gender roles.\textsuperscript{16} In India, for instance, anecdotal evidence suggests that many boards have appointed family members of controlling shareholders, including wives and mothers-in-law.\textsuperscript{17} In many jurisdictions, international norms may be actively resisted ‘by elites who fear loss of power’.\textsuperscript{18} This is especially challenging in jurisdictions where international human rights norms of gender equality conflict with local sociocultural perceptions of gender.\textsuperscript{19} The implications of cultural perceptions of women for gender equality on corporate boards have increasingly been recognized as an issue of significance.\textsuperscript{20} Cultural conceptions of women’s roles, for example, are thought to affect the extent to which women are represented on boards and assume leadership roles.\textsuperscript{21}

Malaysia provides a unique case study for an in-depth investigation of the interaction between sociocultural perceptions of women and rules that promote gender diversity on corporate boards in the context of a specific country. Malaysia’s gender targets of 30 per cent women on the boards


\textsuperscript{10} E. Prügl, ‘Diversity Management and Gender Mainstreaming as Technologies of Government’ (2011) 7 Politics and Gender 71.


\textsuperscript{14} Torchia et al., op. cit., n. 6.

\textsuperscript{15} Huse, op. cit., n. 6, p. 11.


\textsuperscript{17} R. Bhattacharyya and S. Dave, ‘No Independent Woman Director at 40% of NSE Companies’ The Economic Times, 9 October 2017, at <https://economictimes.indiatimes.com/jobs/no-independent-woman-director-at-40-of-nse-companies/articleshow/61011676.cms>.

\textsuperscript{18} Huse, op. cit., n. 6, p. 38.


of large companies were adopted in a context in which advocates of gender equality have at various times faced opposition from the authorities to the point of being imprisoned, intimidated, or otherwise silenced through coercive means. The fraught relations between women activists and government authorities are in part due to conflicting conceptions of women’s rights. In Malaysia, where the authorities largely hold traditional views of the role of women, the expression of views that approximate universal human rights norms as embodied in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has in fact had a tendency to result in the heavy hand of the law being used to silence women’s groups.

This article seeks to facilitate a more nuanced understanding of the reforms aimed at strengthening the representation of women on Malaysian boards by drawing on a law and social movements perspective. It places the reforms in the context of the women’s movement in Malaysia, which has played a significant role in translating international norms of gender equality and fostering a deeper consciousness of women’s rights in the community. Merry emphasizes the importance of intermediaries who play an active role in translating transnational human rights norms for a local cultural context.22 Our analysis illuminates the political, cultural, and economic context of the reforms, drawing on interviews with directors and key players in the industry to shed further light on how the initiatives promoting board diversity have been construed.

Scholars who have examined the transplantation of global norms to Southeast Asian countries have highlighted the need for a better understanding of how global standards are adapted to and transformed by the local social, cultural, and political conditions.23 Such an understanding is particularly important in the melting pot of religions, cultures, and legal traditions found in Southeast Asian countries.24 This article contributes to the emerging body of literature on the adaptation of legal transplants to a specific Southeast Asian context by considering the Malaysian reforms on board diversity and the sociocultural, political, and economic factors that underpin the reforms and potentially limit the impact of the gender targets.

Part 2 below considers the Malaysian rules on board diversity. The discussion then turns to efforts by the women’s movement to bring about reforms in favour of gender equality, and the state’s response, in Part 3. Part 4 examines views from the boardroom. Part 5 draws together and analyses the findings from earlier sections. The article concludes in Part 6.

2 MALAYSIAN REFORMS ON BOARD DIVERSITY

Malaysia adopted reforms aimed at increasing gender diversity on corporate boards through the Malaysian Code on Corporate Governance (Malaysian Code), which was revised in 2017 to require large companies to have at least 30 per cent women on their board of directors25 and to disclose their diversity policy, targets, and measures adopted to achieve the targets.26 Large companies are

22 Merry, op. cit., n. 19.
25 Securities Commission Malaysia, Malaysian Code on Corporate Governance (2021) r. 5.9, at <https://www.sc.com.my/api/documentms/download.ashx?id=239e5ea1-a258-4db8-a9e2-41c215b6bf76>.
26 Id., p. 9.
defined as ‘companies on the FTSE Bursa Malaysia Top 100 Index’ or ‘companies with market capitalisation of RM2 billion and above at the start of the companies’ financial year’. The Malaysian Code is based on an ‘apply or explain an alternative’ approach. Although no sanctions are prescribed in the regulations for failure to meet the recommended target, the then Prime Minister warned that listed companies would be named and shamed if they did not have any women on their boards by 2018. The reforms are consistent with previous efforts by Malaysian law reformers to align local law with international standards such as the OECD’s Principles of Corporate Governance and its obligations as a signatory of CEDAW.

Statistics from the Securities Commission (SC) indicate that the reforms aimed at increasing gender diversity on corporate boards have led to a higher representation of women on the boards of the top 100 Malaysian public listed companies. The proportion of women on the boards increased to 23.7 per cent in 2018 from 16.6 per cent in 2016. When compared with other countries, the representation of women on Malaysian boards is higher than that in Singapore and Hong Kong but lower than that in the United Kingdom and Australia. By 2018, there were no all-male boards among the top 100 Malaysian listed companies. Apart from the few statistics, however, there is a lack of information on the extent of gender diversity and the roles assumed by women on Malaysian corporate boards.

To gain a better understanding of the board composition of the largest Malaysian companies, the authors examined information on the boards of 30 of the largest companies on the Kuala Lumpur Composite Index in August 2020 from their websites or annual reports. The study revealed that women comprised an average of 27.1 per cent of the boards of the companies examined. Women directors were commonly appointed as independent non-executive directors. In eight of the companies, women held the position of senior independent non-executive. Nonetheless, chairs of companies were predominantly male, with only one of the companies having a female chair. The survey revealed that almost all of the women directors had extensive experience in government, industry, finance, compliance, or other relevant fields and had held senior positions in business or government prior to their appointment.

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27 Id., p. 3.
28 In essence, companies must explain how they have applied each of the Code’s recommended practices in their annual reports. Compliance with the recommendations is voluntary. Where companies choose to depart from recommended practices, they must provide an explanation for the departure, disclose the alternative practice adopted, and explain how the alternative practice achieves the underlying aims of the Code’s recommendation. See id., r. 6.3.
32 This was based on ‘the 50 Hang Seng index constituent companies’. T. Ko, ‘Hong Kong Is Falling Behind on Gender Diversity’ Financial Times, 5 March 2020.
Research suggests that it is also often more challenging for women to rise to positions of leadership on boards. Huse raises concerns over ‘an invisible glass ceiling’ that prevents women from reaching top management positions. This appears to vary across countries, however, and in Australia, for example, women who make it to board level have been found to assume leadership roles faster than their male peers. In Malaysia, there appear to be promising signs, with 27 per cent of the 30 largest listed companies having a woman as senior independent director.

Studies on board diversity emphasize the need to have a critical mass of women directors before they are able to effectively influence board dynamics. At least three women directors are thought to constitute a critical mass that is more likely to foster an environment in which women are better able to express their opinions and be supported by the majority. Close to 30 per cent of the 30 largest listed companies in Malaysia have at least three women directors. Many of the women directors in these companies appear to have extensive experience in relevant fields of over 20 years, and some had more than 30 years’ experience. While the statistics shed light on the number of women on the boards of Malaysia’s largest listed companies, little is known about the way in which the reforms have impacted how corporate boards operate and the extent to which gender equality on boards has been realized. This article draws on interviews with male and female directors and key players in the industry to foster a more nuanced understanding of their perspectives on the initiatives promoting board diversity.

The increase in the representation of women on corporate boards indicates that the reforms have facilitated progress towards gender equality. However, the broader context of the reforms suggests that the gender targets for Malaysian corporate boards ostensibly form part of a larger and more complex web of interactions that have centred on the issue of women’s rights. These take place against the backdrop of fraught relations between civil society actors who lobby for substantive equality and state-backed players who advocate a traditional conception of the role of women. Conservative perspectives of gender roles are prevalent and there has been sustained state resistance against women’s rights activists.

3 | LAW AND THE MALAYSIAN WOMEN’S MOVEMENT

3.1 | The women’s movement in Malaysia

Many groups in Malaysia have sought to promote better outcomes for women; some concentrate on social welfare while others have a greater emphasis on equality from a political perspective. With over 100 non-governmental organizations (NGOs) with a focus on women’s issues, the women’s movement in Malaysia is far from homogeneous. Nonetheless, many of the prominent

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35 Huse, op. cit., n. 6, p. 11.
37 Torchia et al., op. cit., n. 6, p. 3.
38 Cook and Glass, op. cit., n. 8.
women’s NGOs have collaborated on major initiatives and advocate for change primarily along the lines of CEDAW. As with many social movements, legal reform has been a central aspect of the women’s movement in Malaysia. In earlier years, initiatives centred on strengthening laws on violence against women, while more recently there has been a shift towards mobilizing women’s political participation. The civil rights movement has had to contend with considerable repression by government authorities and, similarly, women’s groups have at times faced backlash for lobbying against traditional notions of gender.

The state has been described as ‘soft authoritarian’, using repressive laws to curb dissent and at times detaining civil rights activists. Ng and colleagues describe Malaysia as ‘selectively authoritarian and arbitrarily democratic at the same time’. The denial of fundamental freedoms has often provoked discontent among the electorate. As democratic processes have survived to an extent, the ruling coalition has seen the need to placate the electorate. The rhetoric of gender equality has been the coalition’s means of garnering the support of voters and portraying its policies as progressive. At the same time, the state has sought to rein in dissent. Similarly, the women’s movement has had to navigate the complexities of soft authoritarianism, finding creative ways of challenging inequalities in existing social structures while avoiding falling foul of the law.

Merry emphasizes the significance of law in defining the rights and relative balance of power between genders. Law defines what is acceptable behaviour and lends authority to the way in which we perceive ‘ourselves and our relations to others and to the social world’. Law is significant for the symbolism that it embodies and the messages that it communicates on gender roles and relations. Socio-legal scholars assert that ‘the real effect of law often lies in the legal consciousness or the meaning given to law by individuals who experience it’. In the context of gender equality initiatives, an increased consciousness of rights contributes to a deeper understanding of the possibilities that such rights could accomplish, shaping perceptions of gender roles and power relations. In Malaysia, it was this realization that women could influence society through participation in political processes and stronger representation at decision-making levels that set in motion the Women’s Agenda for Change (WAC).

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40 C. Ng et al., *Feminism and the Women’s Movement in Malaysia: An Unsung (R)evolution* (2006).
42 Ng et al., op. cit., n. 40.
45 Ng et al., op. cit., n. 40, p. 154.
51 Levitsky, op. cit., n. 41, p. 385.
With the general elections pending in 2000, political parties were lobbied to uphold the cause of women’s groups in favour of gender equality in exchange for electoral support. As the initiative had broad support among more than 70 civil society groups, the WAC was able to influence the ruling political party to adopt some of the rhetoric on gender equality.\(^{52}\) Like the WAC, the Women’s Candidacy Initiative (WCI) sought to foster greater awareness of the influence that women could exercise through democratic processes. One of its aims was to promote ‘a minimum of 30 percent participation of women at all levels of political and policy-making processes’.\(^{53}\)

The establishment of the Ministry for Women and Family Development\(^{54}\) is thought to have been one of the significant responses to the WAC.\(^{55}\) The initiative was ostensibly adopted by the ruling coalition in an effort to portray itself as an advocate of gender equality with a view to winning over women voters. At the time, the coalition had to contend with widespread public protests over the arrest of former Deputy Prime Minister Anwar Ibrahim and harsh treatment of political dissidents. There was also increasing support for the opposition political coalition, which had high-profile, well-regarded women in leadership, such as Wan Azizah, Ibrahim’s wife.\(^{56}\) The coalition’s adoption of policies in support of gender equality was also seen as a means of drawing women voters away from another major political rival, Parti Islam Se-Malaysia (Pan-Malaysia Islamic Party, PAS), with its highly conservative views on women.

The state has conceded reforms that strengthen women’s rights ostensibly as a means of placating voters on several occasions. For instance, following a political crackdown in 1987 known as Operasi Lalang, more than 100 civil rights activists, political dissidents, and others were arrested and detained without trial.\(^{57}\) The breaches of human rights sparked widespread distrust towards the authorities among members of the public. The government then took steps to reform the law relating to rape with a view to placating voters.\(^{58}\) Nonetheless, these steps were criticized as inadequate, as only some of the reforms proposed by the coalition of women’s groups, the Joint Action Group (JAG), were adopted, leaving substantial gaps in the regulatory framework.

Part 3.2 below considers the strategies adopted by the women’s movement in advancing gender equality while avoiding the heavy hand of the law, described in the law and social movements literature as ‘pragmatic resistance’.\(^{59}\) The state has taken steps to co-opt an element of gender equality as a means of enhancing perceptions of its policies as progressive and supportive of women.\(^{60}\) These initiatives are further discussed in Part 3.3 below. Despite having declared a ‘policy of cooperation with women’s NGOs to promote women’s issues’ through its newly constituted Ministry

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\(^{52}\) Ng et al., op. cit., n. 40.

\(^{53}\) Martinez, op. cit., n. 39, p. 90.

\(^{54}\) The ministry was subsequently renamed the Ministry of Women, Family and Community Development and has had several changes in its name over time.


\(^{58}\) Ng et al., op. cit., n. 40.


\(^{60}\) Ng et al., op. cit., n. 40, p. 167.
for Women and Family Development, state authorities have at times continued to take a heavy-handed stance against women’s rights activists. The fraught relationship between the women’s movement and the state may be attributed in part to conflicting views on the roles and rights of women, with women’s rights activists holding to CEDAW while state-sanctioned perspectives are often framed in terms of family values, Asian values, and religious piety. State-sanctioned conceptions of women are examined in Part 3.4.

3.2 Pragmatic resistance

The arrests during Operasi Lalang had a lasting impact on the women’s movement, particularly as several women’s activists were detained and subjected to physical and mental abuse for months on the grounds that they were Marxists ‘rallying women to overthrow the government’. Subsequently, women’s groups have continued their advocacy for reforms by eschewing confrontation with and overt criticism of the authorities and instead adopting a cautious approach of cooperation and negotiation.

This cautious approach resonates with that of civil rights activists in authoritarian states who commonly strike a ‘balance between “pushing boundaries” and “toeing the line”’. Chua describes the strategy adopted by gay activists contending with Singapore’s repression of civil-political liberties as ‘pragmatic resistance’. She likens their tactics to a ‘strategic dance’ that involves assessing the state’s restrictions and responses, and avoiding overt confrontation. While the activists seek to push boundaries, they do so in a manner that does not endanger the movement’s survival. Chua notes that ‘[t]he goal is to stay alive and advance with skirmishes, rather than court demise with open warfare declared on grander principles’. Similar observations have been made of women’s groups in countries where overt protests are likely to be construed as subversive. In such situations, the women’s movements have adopted subtler strategies to challenge and alleviate inequalities in existing social structures while remaining within the limits of the law.

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65 Chua, op. cit., n. 59, p. 723.
66 Id., p. 722.
67 Id.
68 Id.
Following Operasi Lalang in the 1980s, there has been sustained intimidation of some of the most outspoken women’s rights activists by the authorities. Chief among these is Irene Fernandez of Tenaganita, who was arrested for publishing details of the abuse and torture of women migrant workers in detention camps. Fernandez was charged in 1995 under the Printing Presses and Publications Act 1984 for maliciously publishing ‘false news’ and fought criminal charges for 13 years. In 2000, 11 immigration officials raided the Women’s Aid Organisation’s shelter for abused women, behaving in an intimidating manner and detaining several women who were victims of rape and abuse. The basis for the raid was unclear and the organization was subsequently accused of religious proselytization. Another women’s group, Sisters in Islam, has had a *fatwa* issued against it by Islamic authorities for allegedly deviating from Islamic teachings and ‘subscribing to liberalism and religious pluralism’. Similarly, prominent women’s activist Maria Chin Abdullah was detained in 2016 without trial for her central role in the Bersih movement, a coalition of NGOs lobbying for clean and fair elections that garnered public support against the abuse of power and excesses of the Najib administration. Abdullah’s detention caused a public outcry, as she was subjected to inhuman and degrading treatment. Women’s groups held demonstrations and candlelight vigils, highlighting the abuse of legislation aimed at preventing terrorism to detain her.

Women’s groups have responded to the restrictions imposed on civil society actors by developing creative ways to ‘expand the space available for expressions of protest’. Their use of comedy, humour, and political satire as forms of pragmatic resistance resonates with those of women’s movements in other societies where civil liberties are limited.

### 3.3 State co-optation of gender equality rhetoric

The state, in turn, has had to respond to an electorate that has become increasingly aware of universal human rights norms and democratic rights. The freer flow of information facilitated by internet-based media, which in contrast to traditional media has remained largely beyond the

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70 Yan, op. cit., n. 63, p. 66.


74 Ng et al., op. cit., n. 40, p. 128.

75 A *fatwa* is a ruling issued by an expert in Islamic law.


79 Milwertz and Bu, op. cit., n. 69, pp. 236–237.

80 For instance, in China, where the women’s movement faces stringent media restrictions imposed by the government, activists have used the creative arts to raise consciousness on issues relating to gender-based violence. Id., p. 229.
control of the authorities, has allowed the civil rights movement to gain traction.\textsuperscript{81} One of the strategies used to placate voters has been the adoption of initiatives promoting gender equality. However, state-sanctioned initiatives have been criticized for their tendency to reinforce conservative perceptions of women as subordinate and for their reluctance to challenge existing patriarchal norms.\textsuperscript{82} While the views of state actors on gender equality and the role of women are far from homogeneous, on the whole, those who have spoken in favour of greater equality have tended to adopt a more moderate stance. An example of this is reflected in initiatives by the Ministry in charge of women’s affairs, which has taken steps towards improving conditions for women while eschewing the more far-reaching ideals embodied by CEDAW.

Following the establishment of the Ministry for Women and Family Development, the Minister adopted a strategy of co-opting the women’s movement by personally visiting women’s groups, providing them with funding, and inviting women activists to participate and chair task forces established under the auspices of the Ministry.\textsuperscript{83} However, the partnership with women’s groups was short lived. When the campaign to raise awareness on violence against women was watered down by the Ministry to ‘one that emphasized women’s roles in ending all forms of violence’, women’s groups withdrew from the campaign, boycotting its launch.\textsuperscript{84} The media subsequently publicized the controversy. The Minister then sought to placate women voters by putting forward to Parliament an amendment of the \textit{Federal Constitution} prohibiting discrimination based on gender.\textsuperscript{85} Nonetheless, the courts have interpreted the constitutional right to gender equality narrowly.\textsuperscript{86}

Several other measures were subsequently adopted by the state in favour of gender equality. In 2004, the policy that women should occupy at least 30 per cent of positions at decision-making levels in the public sector was introduced.\textsuperscript{87} In the same year, the Cabinet Committee on Gender Equality and Non-Discrimination was formed to integrate a ‘gender perspective in the formulation and implementation of policies and programmes and the removal of any form of discrimination against women’.\textsuperscript{88} Notably, the JAG had lobbied for such a Cabinet committee to facilitate the strengthening of gender equality across law and policy.\textsuperscript{89} In 2006, the Non-Aligned Movement (NAM)\textsuperscript{90} Institute of Women’s Empowerment was established in Kuala Lumpur to provide training on gender equality and empowerment to participants from NAM countries.\textsuperscript{91} Aziz posits that

\begin{itemize}
\item N. Othman, ‘Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women’s Struggle for Human Rights and Gender Equality’ (2006) 29 \textit{Women’s Studies International Forum} 339, at 342.
\item Ng et al., op. cit., n. 40, p. 77.
\item Id., p. 79.
\item \textit{Federal Constitution}, art. 8(2); id.
\item M. Chin binti Abdullah, ‘Constituting Women’s Rights in Malaysia’ (2009) Submission to IDEA International Constitution Building Processes Programme, 7 December.
\item The NAM is an organization that represents the interests of developing countries and has approximately 120 members.
\item Aziz, op. cit., n. 61, p. 89.
\end{itemize}
as the Chair of the NAM at that time, the Malaysian government sought to leave a legacy by ‘taking a normative stance on gender equality’.  

State rhetoric such as the *Ninth Malaysia Plan* has echoed the need to increase the proportion of women in decision-making positions, announcing targets of 30 per cent for the public sector. Similarly, in 2011, the SC set a target of having women comprise 30 per cent of corporate boards by 2016, citing the importance of gender diversity to foreign investors. Given the significance of foreign direct investment to the Malaysian economy, it is not surprising that the target for women on corporate boards was subsequently translated into policy.

The seemingly impressive array of reforms, however, did not give rise to a corresponding increase in the level of gender equality. Indeed, the *Global Gender Gap Report* showed that Malaysia fell from its overall ranking of 72nd in 2006, to 98th in 2010, to 102nd out of 136 countries in 2013. In 2017, Malaysia’s rank further fell to 104th out of 144 countries. While many of the neighbouring Asian countries made significant progress in closing gender gaps, Malaysia’s score showed very little change from 2006 to 2017. In 2017, Malaysia ranked 14th out of 18 countries in East Asia and the Pacific. Statistics indicate that the proportion of women in Parliament has remained at 10.8 per cent, largely unchanged over the past decade. Critics argue that the state has lacked genuine commitment to gender equality. Scholars assert that sexism ‘continues to pervade Malaysian society’, even at high levels of government and in Parliamentary debates.

The 30 per cent target for women on the boards of large companies was introduced in the *Malaysian Code* in 2017. Elias attributes the emergence of the target to a ‘particular alignment of powerful corporate and state feminist interests’. She observes that the impetus for reform came from prominent women who held influential positions in government agencies such as the NAM Institute of Women’s Empowerment, which was under the purview of the Ministry for Women, Family and Community Development, the Central Bank, and the SC. She further posits that the issue was presented ‘not only as a gender equality measure but as a corporate governance issue’, observing that

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92 Id., p. 90.
99 Ng et al., op. cit., n. 40, p. 79; Ching, op. cit., n. 96; Mohamad, id.
the issue of women’s representation on corporate boards tends to be presented as a ‘business case’ linked to the view that the presence of women on boards improves profitability and has a positive impact on corporate governance. Thus women’s presence undermines ‘groupthink’, and decreases a propensity towards unnecessary risk-taking. It is an agenda that also, it might be noted, sits very well alongside the strong emphasis on corporate governance reform.102

Elias argues that such reforms towards gender equality were more palatable as they served ‘the interests of economically powerful and elite groups of women rather than the interests of those further down the economic scale’.103 Notably, this resonates with observations that the business case for gender equality tends to ignore ‘broader structures of socioeconomic disadvantage’ that ‘intersect with gender inequality in important ways’.104

3.4 | Conceptions of women’s roles

The prevalence of patriarchal views appears to provide some explanation as to why the various reforms in favour of gender equality have not brought about greater gains for women. The dominant discourse in Malaysia constructs women as a resource for economic and social development whose primary responsibilities revolve around domestic and family matters.105 Women are also subtly represented as subordinate to men.106 Government policy documents reflect perceptions of women as valued participants in the labour force.107 They also emphasize family and domestic responsibilities as integral aspects of the role of women. For instance, the Seventh Malaysia Plan stated that ‘women continued to make tangible contributions to national development … while playing a significant role in the development of their families’.108 The Eighth Malaysia Plan similarly emphasized the need for women to balance ‘career with household duties’ and to ‘cope with twin responsibilities of family and career’.109

In outlining strategies for the advancement of women, the state has emphasized the importance of ‘Malaysian values, beliefs and cultural norms’.110 Antagonism towards Western feminism is reflected in former Prime Minister Mahathir Mohamad’s criticism of the Western women’s liberation movement as having ‘contributed to the corruption of the Western world’.111 Maznah Mohamad has argued that the Ministry for Women and other state-sanctioned initiatives purporting to advance gender equality have, in reality, sought to complement and strengthen the

103 Id., p. 357.
106 Othman, op. cit., n. 82, p. 342.
108 Government of Malaysia, op. cit. (1996), n. 105, [20.01].
ruling elite and its dominant discourse rather than to challenge existing patriarchal norms. The government's ideals of feminism are often framed in terms of family values, Asian values, and religious piety.

Islam is integral to the Malay identity and of central importance to the majority of Malaysians. Interpretations of the role of women vary even within the Muslim community, with some adopting a more liberal view of gender equality. Mohamad has argued that the dominant conceptions of Muslim families and women’s roles within them are determined primarily by those who control the religious bureaucracy. Othman and colleagues attribute the rising influence of Islamic religious scholars to the competition between Malay-Muslim political parties. The religious authorities issue fatwas that operate as quasi-legislation when they are gazetted. In some states, failure to comply with fatwas is a criminal offence. Anwar observes the tendency of religious authorities to adopt highly conservative views on issues relating to women, noting that fatwas are not subject to normal legislative processes including Parliamentary debates. Scholars assert that in modern Malaysian sharia, masculinist perspectives are presented as authentic Islam.

Although the patriarchal views prevalent among religious authorities are at times contested, the power to issue fatwas is also used to discredit alternative interpretations of Islamic teachings and to stifle dissent. This is exemplified by the fatwa issued against Sisters in Islam for deviant teachings. Similarly, activists who question the authoritative interpretations of religious authorities have been charged with insulting Islam.

Scholars such as Merry emphasize the need to understand the impact that ‘cultural practices embedded in local social and legal contexts’ may have on gender rights premised on universal norms. The Malaysian reforms that set a target of 30 per cent women on the boards of large companies emerged in a unique cultural, legal, and political context. Malaysia has a system of legal pluralism in which sharia plays a significant and dominant role for Muslims. However, corporate law is governed by the common law system and has largely been modelled on international standards of corporate governance. Against this backdrop, the discussion now turns to consider

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112 Mohamad, op. cit., n. 56, p. 217.
114 The *Federal Constitution*’s definition of ‘Malay’ includes the criteria that a person ‘professes the religion of Islam’. *Federal Constitution*, art. 160.
118 Id., p. 75.
119 Id., p. 71.
120 Mohamad, op. cit., n. 115; Othman, op. cit., n. 82, p. 342.
121 Anwar further argues that the ‘attempt to monopolise the meaning and content of Islam’ serves the ‘political agenda of those who use Islam to mobilise popular support’. Anwar, op. cit., n. 117, p. 73.
122 Othman, op. cit., n. 82, p. 348.
123 Anwar, op. cit., n. 117, p. 73.
the views of insiders to gain a better understanding of the way in which the reforms in relation to corporate boards have been received.

4 | THE VIEW FROM THE BOARDROOM: INTERVIEWS ON THE IMPACT OF THE NEW RULES IN MALAYSIA ON CORPORATE BOARDS

In January 2018, 11 interviews were conducted. Ten of the interviewees were current or former directors of Malaysian corporations, comprising five females and five males. Several of the directors who were interviewed had also held senior positions in academia and government. The eleventh interviewee was a female who had not held a directorship, but had held senior leadership positions in academia and government agencies.

4.1 | Are the current measures working?

The interviewees were asked whether they believed that the current measures have been effective in encouraging companies to increase the number of female directors on their boards. Many interviewees expressed the view that what has made the difference is the perception that the government is serious about this issue. For example, one female director said:

I think it is important for the government to come out and support [gender diversity]. … Because without the government’s support, it’s going to be very difficult. So the fact that the government is supporting this as a matter of policy, I think it’s a good thing.

In addition, many interviewees stated that pressure from institutional investors, the SC, and Bursa Malaysia has been instrumental in increasing the number of women on boards. For example, one female director said:

Nowadays, the institutional investors are also … attending AGMs [annual general meetings] and asking, ‘Where are your women directors? … We are a big investor. We own 30 per cent, 80 per cent of your company. We want to see the women directors.’ … So if you have investors asking [where your women directors are], that also puts the pressure on companies to look for women.

The same director noted that the expectations of the regulators are influential, stating that ‘it also helps, even though it is not a listing requirement, [that] when companies go up for listing, as a matter of practice, the SC or Bursa would expect them to have women on their board’.

Some other interviewees expressed doubts about the impact of the threat by former Prime Minister Najib Razak to name and shame public listed companies (PLCs) that do not have women on their boards. One male director said that ‘[it] doesn’t really have strong sanctions’. This director went on to express the view that there are few incentives to meet the gender quotas if compliance does not improve the company’s profitability or ability to acquire contracts. Another male director’s response also indicated that he did not believe that the naming and shaming initiative has
an impact on the commitment of companies to increase the number of female directors: ‘You can just name. Whether I’m shamed [is questionable] … We don’t have women [on our board].’

4.2 Factors that work against achieving increased gender diversity on corporate boards in Malaysia

Many of the interviewees identified factors that work against the attainment of gender diversity on corporate boards in Malaysia. Several observed that despite the initiatives, those in control of companies tend to choose people with whom they are comfortable to sit on their boards. They are often their friends, and are usually male. For example, a female director said that ‘the directors are chosen based on “who you know”. Decisions are made on the golf course…. Obviously it’s an old boys’ club. So unless we do something concrete, it’s difficult to break that habit.’ Another female director said that ‘it’s hard for some boards because you’ve got the chairman of the company, you’ve got all your buddies on the board, all of the same age, you all play golf together – who would want a woman on the board?’ A male director said that when he appoints directors to companies that he controls,

I look for my friends and my friends are mainly men, not so many women. But beyond that, when I’m looking for professional staff to work and to fulfil a certain role or certain function, I look at ability, no longer men or women. If that person can do well, then fine.

Two female directors said that while the initiatives designed to increase gender diversity are helping to change the reliance on the ‘old boys’ club’ when selecting directors, there remain other challenges such as family responsibilities, cultural perceptions of gender roles, a limited pool of women with the requisite experience, and a business culture that views career interruptions negatively. Those challenges continue to impact the number of women appointed to boards.

Many of the interviewees stated that in Malaysia women are seen as having the primary responsibility for looking after the home. A male director claimed that ‘women may think they are more suited for a role taking care of the family where the man will find the money’. A female director said:

I always joke with my staff, with my managers and say that ‘After all these things, you guys go home and you’ll have a meal prepared for you. Whereas for me, I’ve got to make sure that I have my husband’s meal taken care of.’

Cultural perceptions of gender roles were identified by some of the interviewees as a factor that has a negative impact on the attainment of gender diversity on corporate boards. While some directors said that there has been a shift over time, and cultural perceptions are not what they once were, they continue to be influential. One female director said:

[I]f you look at a lot of successful women in the West, a lot of them have got their husbands, their spouses, their partners who have literally stopped work to support them 100 per cent. I could never do that because my cultural values can never accept that, especially as an Asian, as a Muslim Asian.
The same director went on to say that ‘there is still some uniqueness in the Asian culture’ that means that as a woman you can work but you also have to ‘take care of your children and take care of your home, [and] take care of your parents’. Another female director said that ‘it is always in [men’s] minds to think that the women’s role is always something else. And even if you are in [a directorial] role, you are supposed to be more modest with the way you behave.’ One of the male directors referred to Eastern traditional views of women as ‘dependent on men’ and asked ‘So when somebody is dependent, why are you making them the leader?’ Another male director said:

Some Asian men are still raised as if … they are the centre of the universe. The primogenital law of male succession is still very strong, if you talk about family companies – very strong – because the name must carry on. This dilemma is a very real one.

He went on to explain that he thought that having the government encouraging companies to have

30 per cent [women on corporate boards] is not going to work…. It is partly culture, although the word ‘culture’ has to be unpacked. [There are] aspects of culture which [are] convenient for the male to use … to stop … female emancipation. It is so convenient, either because Confucian ethics tells them that, or the dominant religion tells them that.

However, in response to a question about the possibility that cultural inhibitions prevent women’s participation, one female director said:

I don’t think people fuss too much about that anymore. Maybe [some] people of my generation … think that women should be looking after the children and not get involved … [but in my] my own experience, I’ve never been hindered in expressing my own opinion … [and] I don’t see it as a problem, even among the Malaysian males.

Interestingly, the same female director went on to say that when she is involved in training programmes for female directors, she does ‘remind the women who are attending the programme that they must always remember the Asian culture of making the men feel important, thus you must not go in acting like you know everything’.

A number of directors said that there is a limited pool of women with the requisite experience for companies to draw from, and that factor inhibits the attainment of gender equity on corporate boards. One male director argued:

[T]o have the pool with that experience, you need a career life of 20, 30 years of full-time [employment]. A woman has to take care of the family. … To find a woman who is balanced in the corporate world and the family world [is difficult].

Another male director agreed, saying that there is a

limited pool of women due to lack of experience. They are unable to take up opportunities due to childbearing and family responsibilities. They can’t cope with the training and the job. Women tend to retire early [to look after their grandchildren].
The factors that inhibit the attainment of gender equity on corporate boards in Malaysia that were identified by the interviewees are often inter-related. For instance, there are social expectations that women should look after the family including children, husbands, elderly parents, and grandchildren. Working women are required to juggle their family responsibilities with work. Time off work to care for the family is detrimental to women’s careers. Some interviewees observed that women tend to retire early, possibly to spend time with family. These factors seem to contribute to the perception that there is a limited pool of women with the requisite experience.

4.3 What more should be done?

The interviewees were asked whether they thought that more should be done to increase the number of women on corporate boards. Many of the interviewees felt that there is no need to introduce additional measures, and none recommended the introduction of legal or regulatory requirements. For example, one female director argued that while progress has been slow, she was happy with what has been done so far. She noted that there has been advocacy from the government and from NGOs, and that companies are being pressured by institutional investors to increase the number of women on their boards, so what has already been done in Malaysia is sufficient. She did not believe that it should be ‘legislated in the tougher sense’. A male director indicated that there is no need for additional requirements, saying that ultimately companies must see the value in having women on their boards.

When asked whether the current soft approach that encourages an increase in the number of women on corporate boards is sufficient, or whether stricter regulations should be introduced, one male director said that ‘I think today, younger generations of business entrepreneurs and businessmen would … be quite happy with a woman’. He went on to say that ‘[having] more regulations to force you to employ or to bring in women when there are not many available can be counterproductive’.

Where interviewees did identify further steps that they believed need to be taken to increase the number of women on corporate boards, none of those steps involved increased legal or regulatory requirements. For example, when asked whether she had any suggestions as to what could be done to increase female representation on corporate boards, one female director said that ‘the nominations committee itself must play a more effective role. At the end of the day, it is the nominations committee that recommends candidates to the board.’ Typically, she said, an existing director will ‘whisper’ the name of their ‘golf buddy … into the [nominations] committee's ears’, which will then take the nomination through the formalities – ‘[b]ut if the nominations committee takes its work seriously’ and adopts the Nomination Committee Charter that is recommended by OECD, then it has

a very important role in implementing diversity on boards. So rather than just waiting for government policy, waiting for the law, the companies themselves, if [they] have a strong nominations committee … that is not biased in the sense of [being an] old boys’ club …. [and it] is aware that you need this kind of diversity, then you will [see more women on corporate boards].

When asked what further changes are required, a number of interviewees said that there needs to be more explanation of how women add value. Several highlighted actions that women should take to increase female participation on boards. For example, one female director emphasized
that women need to network. However, not all directors answered this question by putting the responsibility for change on women. For example, one male director said:

I think men must really look at themselves and say to themselves, ‘Are you still working on a very traditional model because of your own lack of security as a person, whether you are male or whatever? Is your insecurity stopping you from allowing women to take part in decision making where they contribute as equal partners?’

4.4 Implications of the reforms for stakeholders

The interviews may also shed some light on the potential impact of having more women on boards. Some of the directors who were interviewed took the view that women tend to have a ‘deeper empathy for stakeholder issues in areas of corporate social responsibility’ and are much more animated about ‘philanthropy and the needs of stakeholders outside the best interests of shareholders’. While they cautioned against generalizations, some of the directors also indicated that women tend to bring a ‘human’ perspective to matters involving employees or consumers.

5 THE REFORMS IN CONTEXT

The interviews discussed in Part 4 reflect some of the common issues also encountered in other countries in relation to the representation of women on corporate boards. At the same time, they suggest the significance of cultural norms for the way in which the reforms on gender diversity are perceived and the implications of gender targets for Malaysian corporate boards. Such cultural conceptions of women’s roles ostensibly form a more formidable barrier to notions of gender equality in Malaysia when viewed against the socio-political backdrop of repression. Ideals of women as equal contributors or assuming leadership roles in corporate decision making sit uncomfortably with state-sanctioned perspectives of women as subordinate. The implications of socio-political influences on the reforms are considered in Part 5.2, while Part 5.1 analyses the trends revealed through the interviews, placing them within the broader international experiences of gender diversity on corporate boards and highlighting the cultural differences.

5.1 Malaysian perspectives of women directors

Several themes raised in the interviews resonate with the experiences of board gender diversity in other countries. Caring responsibilities, drawing on an ‘old boys’ club’ when selecting directors, and ideals of the requisite skills and experience (such as uninterrupted careers) also pose challenges to board diversity elsewhere. As in other countries, the interviewees highlighted the limited pool of women directors with the requisite experience, challenges faced by prospective entrants, and the value of networking. Notably, ‘Asian values’ often emerged in the interviews as an overarching consideration that underpinned the interviewees’ emphasis on the role of

125 Branson, op. cit., n. 12; Spender, op. cit., n. 12.
women as being primarily responsible for the family, shaping interactions with board members. At various times, interviewees underscored the distinct differences between Asian and Western cultures, highlighting the need for culturally appropriate behaviour. While initiatives have been taken in countries such as Australia to promote equal responsibility for parental care, the interviews reflect the notion in Malaysia that caring for family members is intrinsically a woman’s responsibility.

The interviews suggest that cultural norms play a part in influencing the interactions among board members and the extent to which women directors may be willing to express their views. Cultural expectations of the way in which women should present themselves may frame the role that they assume in board deliberations, although this is likely to vary according to individual personalities and circumstances. Limits that women directors appeared to accept in relation to their interactions with boards are seen in the comments by women in key leadership positions that women must ‘always remember the Asian culture of making the men feel important, thus you must not go in acting like you know everything’ and that ‘even if you are in [a directorial] role, you are supposed to be more modest with the way you behave’. The perception of women as dependent on men was also seen to run counter to the idea of women in leadership. The anomaly is reflected in the comments of the director who referred to Eastern traditional views of women as ‘dependent on men’ and asked ‘So when somebody is dependent, why are you making them the leader?’ While some interviewees indicated that, over time, male directors were more accepting of gender diversity on boards, there were others who highlighted continuing challenges posed by new entrants to what was described as an ‘old boys’ club’ prior to regulatory intervention.

The rise in recent years of repression against Muslim feminists in the broader socio-political milieu potentially influences the way in which gender roles are perceived among Malaysia’s predominantly Muslim population. Notably, when questions of religion and gender were raised, interviewees tended to avoid discussing these issues. One exception was a male director who suggested that it is convenient for men to rely on dominant cultural and religious views of gender that tend towards perceptions of women as subordinate, although he argued that religious texts permit more liberal interpretations of gender equality. He also observed the sensitivities around interrogating established norms, noting that people are often reluctant to rock the boat. Nielsen and Huse posit that ‘when women are perceived as less valuable board members they are less likely to contribute to board decision-making’. If women directors are more reticent in contributing to board discussions as a consequence of prevalent sociocultural norms, the benefits of gender-diverse boards may not be fully realized.

The rules on the representation of women on boards in Malaysia are limited to large companies and the interviews reflect the view that the gender targets are more suited to government-controlled companies than to private or family-owned companies. The definition of ‘large companies’ is fairly restricted, applying only to the ‘companies on the FTSE Bursa Malaysia Top 100 index’ or ‘with market capitalisation of RM2 billion and above’. Consequently, most Malaysian companies do not fall within the definition and the implications of the reforms for corporate governance in the wider commercial context may be limited. As mentioned in the interviews, family-owned companies are usually led by the male heir, with females often assuming a lesser role in accordance with cultural norms. To an extent, this resonates with research that suggests

that boards in cultures where women are commonly viewed as being of lower status tend to be less diverse and have fewer women in board leadership positions. The progress with gender diversity on the boards of Malaysia’s largest listed companies stands in stark contrast to the rising tide of repression against Muslim feminists, and marginalized women being subjected to harsh corporal punishment by religious authorities. Facebook posts by the Women and Family Development Ministry during the COVID-19 outbreak have continued to reinforce inequality, telling women to wear make-up, speak like cartoon character Doraemon, and giggle coyly to keep the peace at home. In a country with a predominantly Muslim population, the seeming incongruity of the underlying conceptions of gender roles is significant, particularly when viewed against the historical and political background of law and the women’s movement.

5.2 The socio-political context

The gender diversity target of 30 per cent women on boards of large companies is part of state-led reforms, consistent with the policy of aligning Malaysian corporate law with international corporate governance standards, which, in turn, are perceived as an important means of maintaining a competitive edge in an increasingly globalized world. In addition to the economic interests inherent in the adoption of international standards, the reforms were ostensibly more palatable due to their tendency to benefit an elite group of women. Furthermore, the reforms were brought about as a result of a ‘particular alignment of powerful corporate and state feminist interests’ and avoided controversial issues such as Islamic feminism and child marriage. The Malaysian experience resonates with Roberts’ observation that the business case for gender equality put forward by transnational organizations ‘ignores the historically constructed structures, social relations and power dynamics that condition individual behavior and perpetuate poverty’ and Calkin’s assertion that this entrenches ‘structural inequalities that perpetuate women’s subordination’.

The requirement of 30 per cent women on boards also appears to be consistent with the perspective of women as part of the workforce and targets for women in decision-making positions previously expressed in government policy documents. The reforms were also supported by...

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129 Carrasco et al., op. cit., n. 20, p. 429. McLean and colleagues similarly found that in cultures with ‘gender-egalitarian beliefs, firms are 20% more likely to have a female director, and almost twice as likely to have a female CEO’. McLean et al., op. cit., n. 21.


133 Elias, op. cit., n. 101, p. 357.

134 Id., p. 358.


former Prime Minister Najib Razak at a time when he was facing increasing criticism and interna
tional scrutiny over the embezzlement of several billion dollars’ worth of public assets through
1Malaysia Development Berhad.\textsuperscript{137} His administration had brought growing numbers of sedition
charges against critics in an effort to silence them.\textsuperscript{138} Past experience indicates that reforms in
favour of women have at times been adopted to placate voters and mitigate damage to public percep-
tions of the government’s human rights record following the repression of dissidents.

The reforms were premised on international standards that are underpinned by universal
human rights norms. The fraught relations between the women’s movement and the state, which
form the backdrop against which these reforms have occurred, reflect resistance against the notion
of gender equality embodied by CEDAW. The heavy-handed approach of the authorities towards
women activists such as Irene Fernandez and Maria Chin Abdullah in more recent times reso-
nates with Merry’s claims that human rights are actively resisted by elites who fear loss of power.
Their resistance against human rights norms is often expressed in terms of these rights being of
Western origin and unsuited to local Asian values.\textsuperscript{139} Merry further emphasizes the importance of
intermediaries who play a critical role in translating the ideals embodied by transnational human
rights norms into local practices and perceptions. According to her, universal norms gain greater
legitimacy when they are adapted to the local cultural context.\textsuperscript{140} Nonetheless, the intermediaries’
ultimate loyalties may be questioned, and they may be distrusted.\textsuperscript{141}

In the Malaysian context, Islamic feminist group Sisters in Islam has faced considerable resis-
tance from the authorities in recent years. Nonetheless, its members ostensibly function less as
intermediaries of universal human rights norms in the process of vernacularization and more as
interpreters of authoritative religious texts. Their advocacy is premised largely on Islamic texts
such as the Quran that pre-date the universal human rights discourse. According to Barlas, Mus-
lim feminists ‘derive understanding of equality and patriarchy from the Quran not from any fem-
inist text’.\textsuperscript{142} Mir-Hosseini asserts that Muslim feminists engage with Islamic texts and legal tradi-
tion to challenge patriarchal notions within an Islamic framework.\textsuperscript{143} Barlas describes their role
as one of ‘recovering the liberating and egalitarian voice of Islam’ and ‘critiquing the methods by
which Muslims produce religious meaning and rereading the Quran for liberation’.\textsuperscript{144}

The rise of Islamic fundamentalism appears to be correlated with repression against women,
which Abusharaf explains is ‘not only about a controversy over conflicting interpretations of the
Shari’a, but also about the traditional polity of the state and the greater deference it gives to
traditional institutions’.\textsuperscript{145} The traditionalist interpretation commonly ‘discriminates against

\begin{thebibliography}{99}
\bibitem{139} Merry, op. cit., n. 19. 
\bibitem{140} Id., p. 40. 
\bibitem{141} Id. 
\end{thebibliography}
women and lowers their status as full-fledged citizens with rights and civil liberties equal to those of men. Women’s groups that advocate for equality and justice for Muslim women are alleged to reflect Western influences. Muslim feminists underscore the role of politics in such traditionalist interpretations, positing that Islamic jurists or ulama are able to exercise significant sociopolitical influence through their advice to the government on whether social policies and laws are in line with Islamic principles.

The increasing political influence of the religious authorities and the narrowing of space for Islamic feminists would appear to be at odds with reforms such as targets for greater representation of women on Malaysian corporate boards. There are several possible explanations for the seeming inconsistencies. These include legal pluralism, constructing women’s roles in a manner that serves political interests, and differences in views held by the federal government and state authorities.

First, the seemingly inconsistent trajectories of development towards gender equality may be explained in part by the legal pluralism inherent in Malaysia’s legal system. Commercial law, which is largely governed by the common law system, has often emulated reforms in other common law countries that embody international standards to facilitate a competitive edge for the Malaysian economy. Sharia, which has co-existed with the English common law system since colonial times, differs fundamentally in its jurisprudence and relies substantially on interpretations by Islamic scholars.

Second, the literature suggests that apparent inconsistencies may also be a result of traditionalist interpretations that assign women designated roles ‘to serve specific political interests’ while integrating women to some extent as a means of maintaining popularity and control. This would seem to resonate with the Malaysian experience. Government policy documents emphasize the role of women as valued participants in the labour force, family, and home. The gender targets introduced for corporate boards are in line with the perception of women as important contributors to national economic development.

Third, divergent views held by the federal government and state religious authorities potentially contribute to the phenomenon. Anwar observes that the federal government has tended to advocate a progressive Islam, whereas state religious authorities have been more opposed to women’s rights and fundamental liberties. The rules on gender diversity on corporate boards emerged from the federal government, whereas resistance against Sisters in Islam has primarily come from state religious authorities.

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Nonetheless, competition between dominant Malay-Muslim political parties has led to the increasing influence of Islam at a national level. Historically, fataws did not have the force of law but were a form of guidance or advice. Over time, their influence as a means of social control has grown as reforms have allowed religious authorities to impose sanctions for failure to comply. Anwar asserts that policy decisions on religious matters should incorporate a more nuanced understanding of Islamic legal theory and be subject to democratic processes, as is the case with secular law. She similarly argues:

In a modern democratic nation-state, then, independent reason (ijtihad) must be exercised in concert and through democratic engagement with the ummat [community]. The experience of others who have been traditionally excluded from the process of interpreting and implementing Islam must be included. The role of women, who constitute half of the ummat, must be acknowledged in this process of policy- and law-making.

Sisters in Islam has continued the battle with state religious authorities to uphold the rights of Muslim women, resulting in protracted legal proceedings. Recently, the Federal Court decided in favour of Sisters in Islam by allowing the group to challenge the state laws used to silence it. Notably, the decision was made by a female judge. Empirical research on decisions made by the Federal Court suggests that women judges may be more willing to go against the tide and vote against the government, in contrast to their male Malay-Muslim counterparts who dominate the Bench. This could perhaps be indicative of the influence that women in decision-making positions may have, raising questions as to whether having more women on boards could potentially have the effect of strengthening gender equality in the broader community through board decisions. Having greater gender equality on boards is thought to give rise to a potential flow-on effect on employees and stakeholders, and to have an impact on the community through corporate social responsibility. These views resonate with the perspectives of the directors in the interviews discussed in Part 4, which suggest that women directors may have particular benefits for stakeholders through corporate social responsibility. While the recency of the reforms means that there is as yet

little conclusive evidence on the impact of board gender diversity on stakeholders, these effects, if any, may become more apparent in time.

6 | CONCLUSION

Initiatives promoting greater gender equality on corporate boards have gained popularity internationally, although progress in this area has been slower in Asian countries. The Malaysian reforms were introduced in a context in which influential women’s group Sisters in Islam has encountered increasing resistance, raising questions of how the gender diversity targets came about and what their implications may be. This study suggests that an alignment of various factors acted as a catalyst for the reforms. Significantly, they were consistent with the established trend among Malaysian corporate law reformers of adopting international corporate governance standards as a means of attracting foreign investment and remaining globally competitive. The gender targets were further supported by the NAM Institute of Women’s Empowerment, influential women in senior government positions, and the former Prime Minister who was battling criticisms of corruption internationally and facing increasing domestic opposition.

The rules that promote gender diversity on corporate boards ostensibly function as a means of placating women voters in a manner consistent with state-sanctioned conceptions of women’s roles as contributors to national economic development while avoiding vexed issues such as Islamic feminism and child marriage. Interviews with directors suggest the tendency of insiders to interpret the role of women on boards along the lines of dominant cultural values. Conflict between the values embodied by international human rights norms and local sociocultural values, and the continued repression of the women’s movement, reflect the challenges faced in giving substantive effect to the reforms. The results of the study resonate with the scholarship that highlights the significance of culture and politics in the translation of global norms to the local Malaysian context. When viewed against its legal pluralism, soft authoritarianism, and cultural and religious values, the analysis reveals how reforms based on global norms that promote gender diversity on corporate boards may function differently when transplanted, highlighting the importance of local perspectives and an understanding of law in its societal context.

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