

WOMEN ORGANISING FOR CHANGE: COSTING THE DOMESTIC VIOLENCE ACT CAMPAIGN IN MALAYSIA (C.1985-1996)

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This paper seeks to give a comprehensive but critical analysis of the negotiation process involved in getting the Domestic Violence Act (DVA) legislated in Malaysia. This is interesting because for the first time, local women's groups had mobilised across different identities and chosen to work with the state to fulfil a given objective. While this strategy lent solidarity and built alliances, the actors involved were also trying to protect their respective interests. Undoubtedly some compromises were made and the final form of the DVA leaves much to be desired; nevertheless the detailed documentation of the struggle may well provide useful lessons to other non-governmental organisations involved in championing useful causes.

Artikel ini bertujuan untuk membuat analisis yang komprehensif tetapi kritikal terhadap proses perundingan yang terlibat dalam penggubalan Akta Kegananan Domestik (AKD) di Malaysia. Perkara ini sungguh menarik kerana untuk pertama kalinya, perkumpulan-perkumpulan wanita tempatan telah bergerak tanpa mengira perbezaan identiti dan bekerja bersama dengan pihak kerajaan/pemerintah untuk menyempurnakan matlamat yang diberi. Disamping strategi sedemikian telah mewujudkan permuafakatan dan perpaduan, pelaku-pelaku yang terlibat juga telah berusaha untuk mempertahankan kepentingan masing-masing. Yang pastinya tolak ansur telah dilakukan sehingga menghasilkan satu bentuk akhir AKD yang kurang sempurna. Sungguhpun begitu, dokumentasi terperinci usaha-usaha ini boleh dijadikan sebagai pengajaran yang berguna kepada organisasi-organisasi bukan kerajaan yang memperjuangkan usaha-usaha yang bermanfaat.

In the last decade, women's movements across the globe have witnessed a fairly radical development in the strategies they utilise to organise for change. Where previously the main divisions were characterised in terms of political identification or ideological positions, the trend today points increasingly to the building of alliances – permanent or temporary – while acknowledging and accepting that differences do exist among women.

There has also been a greater willingness to rethink the kinds of approach women's groups should adopt vis-à-vis the state. Instead of viewing it as essentially patriarchal and acting consistently in the interests of men, there is

now a shift towards seeing the state as a more complex entity. Put differently, in relation to specific efforts to challenge patriarchy today, both the resourceful and obstructive dimensions of the state are equally recognised.

The campaign to enact the Domestic Violence Act in Malaysia, spanning over 11 years, serves as a good illustration of the above processes.¹ While it was not the first time that local women's groups had mobilised across different identities or chosen to work with the state, the campaign demonstrated how they can lend solidarity and build alliances and at the same time defend and uphold their individual interests. As one of the earliest initiatives which saw state actors being formally invited by women's organisations to dialogue on a particular set of women's concerns, the campaign was also significant because of its distinct strategies of engagement.

I begin by defining the main concepts employed in this paper. Then I give a brief background on the movement against violence against women in Malaysia, out of which emerged the campaign to enact the Domestic Violence Act (DVA). This is followed by an explanation of the campaign's specific objectives and the strategies adopted towards its stated goals. The next section deals with the various players – women's groups of different persuasions and political affiliations, and the many state agencies (including the religious authorities) – who were involved in the DVA campaign. In questioning how differences among these actors were dealt with, i.e. on what basis solidarity was shared, I also discuss how and why alliances were struck between seemingly disparate and competing interests. Having understood the respective interests at play, I conclude with an analysis of the strengths and weaknesses of the strategies which were pursued by the women's groups involved in this campaign.

'IDENTITY', 'SOLIDARITY', 'THE STATE'

'Identity', 'solidarity', and 'the state' are core concepts that run throughout this paper. In dealing with the notion of identity, I wish to examine to what extent one's identity can be maintained while allowing differences to be transcended and alliances built. The importance of asserting one's identity cannot be dismissed because of the transformational potential the struggle for recognition

¹ It is not my intention to critique the appropriateness of choosing a campaign involving legislative reform even though much criticism can be levied in this respect. (see Dairiam & Devaraj, 1994) Instead, I am focusing my analysis solely on the strategies employed by women's organisations behind the DVA campaign.

involves. Nevertheless, identity politics can also be limiting because often it is easily used to glorify one's position, even to the point of elevating it to that of a sacred status. In so doing others get excluded and opportunities for negotiation sealed off. (Dean, 1996:6,48)

Yet it does not have to be an either/or situation. Differences do not mean that there cannot be a commonality of interests. As Chhachhi and Pittin put it, "differences [...] may militate but do not preclude general unity. Alliances may be created on the basis on affinity." (1996:120)

A critical and thorough exploration of the issues involved in fostering solidarity between different interest groups can only lead to improving future collaborative action by those in the Malaysian non-governmental organisation (NGO) sector. Central to this paper then, is also the study of building solidarity and alliances that allow for not only difference and fragmentation, but also for engendering unity. However, as has been shown, "unity cannot be assumed on the basis of shared identities but has to be constructed in relation to specific issues (or discourses)". It is this process of construction that offers women with "different and potentially conflicting identities" the opportunity to collaborate and move forward. (Charles, 1996:22)

The type of cooperation needed is what Jodi Dean terms "reflective solidarity". It recognises that even though diversity is often accompanied by the risk of disagreement, this should not deter efforts at building alliances. The whole notion of "reflective solidarity" is based on a belief that differences are key in constructing solidarity. The point, however, is that this can only take place when differences are respected by all parties involved. Once this is achieved, trust can also be established such that the various perspectives in the group are allowed to flourish. So, unlike conventional forms of solidarity, "reflective solidarity" does not demand that members give up their own agendas and identities for the collective good. (Dean, 1996:3,34)

The following analysis is also informed by feminist theories of the state which suggest that although the state is gendered and largely directed to male interests, the fact that it is made up of so many players and arenas means that it constantly has to juggle different and conflicting demands. (Connell, 1995) Precisely because the state's position in gender politics is constantly shifting, it is possible that tensions and crisis tendencies develop. (Connell, 1995:160) It is this that offers women's organisations the opportunity to get the most out of their interventions with the state.

Clearly there are many other factors that determine how the state responds to the demands of women's groups, e.g. the nature of state-civil society relations.

and the strength of women's activism. But my purpose here is to show that, though caution should be exercised, women's groups need to go beyond the position which insists that there is no scope for benefits to be derived by engaging with the state. A separate challenge remains as to how this can be done without them being co-opted and marginalised in the process.²

CONFRONTING VIOLENCE AGAINST WOMEN IN MALAYSIA

In 1985, five NGOs and concerned individual women came together to initiate what has since become an on-going campaign against violence against women (VAW) in this country. The Joint Action Group against VAW (JAG) started off with a two-day workshop-cum-exhibition on issues related to rape, domestic violence, sexual harassment, prostitution and the negative portrayal of women in the media.

Following this successful initiative, the movements against VAW gained momentum and encouraged those involved to continue their efforts through a multifaceted approach. This included training and education to raise the level of public consciousness, organising and mobilising public action, advocating for better services for women who had been violated, and lobbying for legislative reforms to protect women. (Fernandez, 1992:106)

1985 can thus be seen as a watershed of events for women's concerns in Malaysia. The workshop-cum-exhibition was groundbreaking because prior to this there had never been any effort to raise women's concerns and voices publicly in such a concerted manner. It was also the first time a direct challenge was made to the prevailing attitude that VAW was not an important or credible issue to be addressed by all in society.

The underlying message (or at least the viewpoint held by some of the women actors involved) implied that women had a right to be free from all forms of violence and that they had a right to control their own bodies. This was especially meaningful given that most Malaysians believed domestic violence was a private affair which deserved to be kept confined within the family.³

² The question of how women's groups can maintain their autonomy is an important one to consider but is outside the scope of this paper.

³ The results of a nationwide survey published in 1995 further indicated that 15 per cent of the adult population saw nothing wrong with physically abusing a woman. (Rashidah, Raj-Hashim & Schmitt, 1995:12)

WHY THE DVA CAMPAIGN?

In the same year, together with the National Council of Women's Organisations (NCWO) – an umbrella organisation of mainstream women's groups⁴ – JAG organised another workshop, this time highlighting laws which discriminated against women. This resulted in the drafting of a joint memorandum to the government, signed by over 50 organisations, calling for reforms to all discriminatory laws against women. Among other demands this memorandum pointed to the urgent need for legislation against domestic violence.⁵

Even though the DVA campaign really only took off after 1989,⁶ its origins can be traced as early as 1982 when the Women's Aid Organisation (WAO) was set-up. Initially conceived as a service and welfare centre for battered women,⁷ the WAO also had some younger (and more progressive) members who tried to promote the belief that women had the right not to be battered under any circumstance. These members soon realised that there were some very fundamental obstacles in their quest to provide women with freedom from violence within their own homes. These fell under three areas: assault, protection orders and guardianship of children.

In the first instance, the problem was essentially that the law did not recognise domestic violence as a crime. Since there was nothing written specifically in the statutes about men who assaulted their wives, this meant that the police were not obligated to assist a battered woman. Help was dependent upon the whims of officers involved at the time. Worse still, instances where the police refused to record reports of marital violence and instead would instruct the women to return home, were not uncommon. (Samuel, 1983:123-24)

⁴ In Malaysia, women's NGOs can crudely be divided into two types, those which are more supportive of government policies and positions, and those which are more critical and try to organise for change accordingly. The former I term 'mainstream' and the latter 'alternative'. In the next section, I will provide a further explanation of these two strands.

⁵ According to Fernandez, the broad focus of this campaign for legal reform was narrowed to specific aspects of VAW, after discussions with the Ministry of Justice, to whom the memorandum was addressed. (1992:106)

⁶ Before this, women's groups had concentrated their efforts on amending the laws relating to rape in Malaysia. Due to various reasons, including the lack of resources and the need to act immediately on publicity surrounding the brutal rape and murder of an eight year old girl, the DVA campaign was put on hold until amendments to the rape laws were passed in 1989.

⁷ The refuge was made possible through the financial support of a former Minister of Finance.

While women needed immediate protection from battery, the laws then were more punitive in nature. Women who wanted to stop their partners from inflicting future acts of violence on them found that they could only secure Protection Orders after filing for divorce or legal separation. Quite apart from the difficulties in obtaining a divorce⁸ this situation was problematic since it did not leave women much room to manoeuvre out of their violent situations. Leaving their husbands is often not an option for a range of reasons including social stigmatisation, economic or emotional dependence, and fear of losing custody of children. Practically, this meant that battered women could not obtain immediate assistance when they needed it. (Samuel, 1983:124)

Those who wanted to go ahead with getting injunctive relief found that they needed to go through the High Courts, all of which were located in the capital of each state. If a woman lived outside a state capital, she had to spend considerable time and money in getting to these courts. For most, it also meant having to engage their own lawyers which incurred extra costs.⁹ To make matters worse, even when injunction orders had been granted, many husbands paid little heed and their wives were left feeling short-changed since the violence merely continued. (Fernandez, 1992:102)

Finally, since the law only recognised fathers as legal guardians of children, women who wanted to flee from their violent situations could never be guaranteed that they would have custody of their children in the long run. If they did take their children with them, there was always the fear that they would be charged with kidnapping their own children. (Samuel, 1983:124)

Given the shortcomings in legislation existing then, it became clear to those involved in the campaign to end VAW that while other strategies still had to be employed, the area of legal reform should receive priority. Specifically, the need to campaign for the enactment of the DVA was identified. Through this it was hoped that survivors of domestic violence would have a better chance at securing fast, effective and affordable relief.

⁸ Under the Marriage and Divorce Act, a person seeking divorce has to first obtain the approval of the conciliatory tribunal, a process which requires waiting as long as six months. (Samuel, 1983:124)

⁹ Free legal aid was available but this was limited to those who fell within a certain income bracket. This bracket has been criticised as it was set at a level so low that it excluded women who earned some income but still had no other access to legal representation. A private lawyer then would have cost at least RM600 to hire. (Fernandez, 1992:102)

But who exactly was behind the DVA campaign? The next section provides a discussion on the actors involved, their interests and the alliances which were developed in the course of this campaign.

STAGING ACTORS AND BUILDING ALLIANCES

The entity known as JAG – comprising women's groups, women's committees of mixed organisations, and individual women – was chiefly responsible for initiating and carrying out the DVA campaign.¹⁰ However, it was not the only player involved in this process. Different to the earlier campaign to amend the laws relating to rape, various state agencies were invited to take part in JAG-initiated meetings to draft the proposed Domestic Violence Bill. After the draft had been submitted to the government in 1992, dialogue with the state continued with the Ministry of National Unity and Social Development, under whose purview women's affairs fell.

That a decision was made to deliberately engage with the state is worth noting. However, before going further into analysing this strategy, it is first necessary to understand what and whose interests JAG actually articulated.

The Joint Action Group against Violence against Women (JAG)

Although this ad-hoc alliance may have presented a common set of demands in relation to the enactment of the DVA, this should not be taken to mean that its members had exactly the same interests or points of view. After all, women are not only defined by their identity as 'woman' but also by a host of other factors. These include ethnicity, religion, sexual preference, age, location, education, occupation, ideology and so on. And since women have multiple identities, groups which represent these women cannot be expected to speak in unison but rather, with many voices. (Lai, 1996:38)

To some extent, the organisations which participated in JAG mirrored the variety of existing local women's NGOs. Even though there was a greater tendency for them to be middle-class, urban-based, English speaking, and

¹⁰ As an ad-hoc alliance, the composition of JAG has changed through the years depending on the issue being taken up (e.g. rape, domestic violence, sexual harassment, etc.). Several actors have stayed while some enter and exit at different times. Although the organisational make-up in 1985 was not entirely the same as that in 1989, several key individuals remained. Others had merely gone ahead to form or join new organisations which were not existing in 1985.

comprising mostly of non-Malays and non-Muslim women, the JAG members could be further differentiated as follows.¹¹

On one hand, there were interests represented by NGOs such as NCWO which were more reformist in nature and display a greater willingness to seek concessions from within the present system. (Ng & Yong, 1990:7) As an umbrella body, the membership of NCWO spans from benevolent and welfare-type women's groups to women's wings of political parties. They are not known to be very vocal in their criticisms of government actions or policies.¹² It is also not unusual for their members to be related or connected to the ruling class or elite of society.¹³ Such groups are typically seen as being 'mainstream'.

On the other hand, there are organisations like AWAM (All Women's Action Society) which locate the source of inequality between the sexes to male-dominated socio-economic, cultural and political systems. Patriarchy is seen as manifesting itself in different systems. As such, these groups are more inclined to address the range of oppressions that women may face in addition to patriarchy.¹⁴ (Ng & Yong, 1990:7) In other words, since they make the connection between gender subordination and other forms of inequality and power imbalances, they are more apt to supporting interventions in different spheres.

These organisations consider themselves to be autonomous and activist-oriented, and as an 'alternative' to groups like NCWO. At the same time they are perceived by the latter as being too radical and feminist in orientation. Despite their more critical stance towards the state, the 'alternative' groups have

¹¹ Unlike women's movements in other parts of the world, local groups cannot be easily categorised into ideological strands. More specifically, although some groups may display characteristics of a particular school of feminism, few (if any) explicitly profess to be liberal, socialist, radical, eco, or post-modern feminist, let alone publicly proclaim themselves as feminist in the first place. Indeed, while women's groups have proliferated and even gained credibility in the last ten years, it is worth noting that many don't feel it appropriate or necessary to publicly assert their feminist identity.

¹² This observation holds true for the time before *Reformasi* – a social and political movement that grew out of dissatisfaction surrounding the dismissal of the former deputy Prime Minister in 1998 – swept through the nation. Since then some key individuals within NCWO have been seen to be critical of the government and even joining the ranks of opposition parties.

¹³ For some years the head of the organisation has been no less than the recently deposed Minister of National Unity and Social Development.

¹⁴ The two more obvious ones being those related to class and ethnicity.

shown a certain level of willingness to work within the existing system and structures as well.

If these two strands were so different in their approaches and points of view, one might question how and why they were able to come together in JAG.

One incentive was the proposition that joint action provided the possibility of yielding additional benefits, e.g. increased public profile, maximising their impact, and exerting greater pressure to secure the changes that were being sought. (Griffen, 1995:3) Where the 'mainstream' organisations are concerned, their perception of domestic violence as a 'non-political' issue was also an important consideration. The significance of this fact can be better appreciated if one understands how views of what is 'political' and what is not has, on other occasions, prevented these same groups from supporting other causes in the past.¹⁵ Over and above this, their mutual desire to make better avenues of relief available to survivors of domestic violence possibly counts as the major reason why these groups were willing to overcome their differences.

All these show that even though women (and women's groups) have multiple interests and identities, these are not fixed. Depending on the circumstances at a particular point in time, different priorities come to the fore. (Lai, 1996:35) Additionally, even when those involved in JAG may not always have seen eye-to-eye or agree with each other's politics, on this one matter of domestic violence they were able to forge ahead by transcending their differences and working on a common interest: the enactment of a DVA.¹⁶

Before ending this section, it is necessary to reiterate that while this experience shows how women can and will unite for a particular issue – because they have a common vested interest on the basis of a specific identity – the task of building solidarity to reach a common platform should never be assumed. Rather, it is a process of negotiating differences and building on whatever little commonalities there are, to overcome existing conflicts. In the words of Pringle

¹⁵ The DVA campaign can best be contrasted to that of the Women's Manifesto. The latter involved a list of demands to the different political parties contesting in the 1990 general elections. Some women's NGOs refrained from endorsing this document claiming that the 'political' issues (such as the environment, corruption and human rights) it contained went beyond the realm of women's concerns.

¹⁶ That their collective action was specific to the enactment of this law is further contrasted by the fact that over the course of the VAW campaign, these groups have organised on their own and used various other strategies, reflecting in part their differing perspectives. (Ng & Yong, 1990:9)

and Watson, "Any connections among groups have to be constructed, articulated and maintained; they are not pre-given." (1992:66) Certainly the JAG position on the DVA was not produced out of one or two meetings but instead evolved as the campaign unfolded.

The State

When seeking help, women's groups are often not the only bodies domestic violence survivors approach. Prior to the passing and implementation of the DVA, many women turned to the more established and visible sources of help: the police, welfare officers, hospital and even religious authorities.¹⁷ Recognising this reality, JAG invited representatives from these agencies to regular dialogues so that they could share their experiences and put forward their perspectives on this issue. There was also hope that by involving them in the formulation of the Bill, the different state players participating would feel more affinity and actively support its implementation once it was passed.

It seemed to make more sense to work with these bodies rather than to alienate them. This logic was governed by a desire to foster better relationships with some of them as well, in a few cases building on linkages that had previously been established.¹⁸ Working together also meant that there was a greater probability that those drafting the Bill in JAG would be better positioned to take into account the various problems that a battered woman faced when seeking help – problems which women NGOs would otherwise have been unaware of.

Where Muslim women were concerned, JAG was motivated by an additional consideration. Since it was deemed a family matter, domestic violence cases fell under the jurisdiction of family law. The problem here was the practice of separate family laws governing Muslims and non-Muslims in Malaysia.¹⁹ To make matters more complicated, there are 13 separate jurisdictions since Islamic laws are administered by each state.²⁰ The non-uniformity of the laws,

¹⁷ Since then more and more women have sought assistance from the NGO community. This has to do with the improved quality of services by women's groups as well as heightened public awareness of their existence.

¹⁸ Where the police were concerned, a fairly good rapport had already been formed with a special unit dealing with sexual assault that had been set-up earlier in response to the campaign against rape.

¹⁹ There is a dual legal system in Malaysia whereby Islamic Shariah laws and Civil laws operate exclusively of each other.

²⁰ Fortunately, this situation is slowly changing. As a result of strong lobbying by women's groups there has recently been agreement by several states to adopt a uniform set of Shariah laws.

not only between Muslim and non-Muslim women but also among Muslim women themselves, was seen as another obstacle battered Muslim women faced in their quest for justice.

Given this, JAG believed that it would be in these women's interests to be covered under the proposed Domestic Violence Bill, and as such, argued for a Bill which would include every woman in Malaysian households. Being the official state religious body, it was then considered strategic to invite *Pusat Islam* representatives and solicit their opinions as well as seek their endorsement for a common law in relation to this crime.

As mentioned, the dialogue between JAG and the state did not end with the drafting of the Domestic Violence Bill. Between 1992 when JAG presented its proposed Bill to the government, and May 1994 when the Bill was finally legislated in Parliament,²¹ JAG and representatives from the Ministry and the Attorney General's Office had many meetings to negotiate the details of the Bill that would eventually become law. It was necessary to continue talking with the state at this point for several reasons.

The first was a matter of procedure. In order to table a Bill in Parliament, JAG needed the services of a Member of Parliament (MP). No doubt it could have relied on several opposition MPs for this purpose. Instead, it chose not only to go through an MP from the ruling party, but an MP who was also a Cabinet Minister. Given the history of Malaysian politics,²² it would not have been very strategic to rely on an opposition MP to table a Bill. It was also believed that going through a Cabinet Minister – who theoretically wielded more influence – would enhance the chances of getting the Bill passed in Parliament. Moreover, this was the Minister whose portfolio included women's affairs.

The second reason was simply to make sure that as much as possible of the original draft forwarded by JAG would be incorporated into the document that was finally tabled in Parliament. Since the draft Bill by JAG still had to be approved by the Attorney General's office, there remained much room for the state to alter its recommendations. As it turned out, sitting in the meetings with the Ministry and the Attorney General's office was a worthwhile exercise since

²¹ The DVA was not implemented, however, until 1996, after further pressure from women's organisations.

²² Politically, a system of parliamentary democracy has existed in Malaysia since independence from the British in 1957. The ruling party, the National Front, which is an alliance of several political parties mostly organised along communal lines, has been in power since. During this time, they and opposition party members have agreed on only a handful of matters in Parliament.

JAG members were able to put forward its position and continue to have access in influencing the process right till the very end.

When analysing the alliance between JAG and the state then, it is apparent that there were very practical motivations for engaging with the different sectors of the state. Yet the political significance of this strategy should not be overlooked.

At least for groups like AWAM which come from a tradition of being wary of the state, the DVA campaign marked a shift in their perception that the state could not be counted upon to uphold women's interests. Unlike many earlier women's groups in the West which saw the problem as the state being a socially masculine monolithic entity, the progressive groups in Malaysia had had a fairly strained relationship with the state, in particular the government, for different reasons.²³ This included the unnecessary curbing of activities perceived to be critical of state action and policies, as well as a consistent rejection of calls to adhere to basic universal human rights standards. Even so, they were aware that certain quarters of the state were sexist and male-dominated too.²⁴

By virtue of campaigning for legal reforms, perhaps one could say that JAG had no choice but to engage with the state. Alternatively, because JAG was an alliance, the minimum action plan its different members agreed upon necessitated such interventions. Still, the DVA campaign was not just an exercise in putting forward women's demands to the government. As demonstrated, the campaign involved on-going dialogue with the state that took place on two fronts: one with the agencies that dealt directly with battered women, and the other, with the ministry responsible for safeguarding the interests of women in Malaysia. How was this possible?

For one, there was a growing recognition that for the campaign to have greater impact across the nation, and also to influence some of the state's numerous gender programmes, it was not possible to ignore this sphere any longer. This supports Connell's proposition that because "the state is a focus for the mobilization of interests that is central to gender politics on the large scale",

²³ The infamous *Operation Lalang* in 1987 where over 100 social activists, leaders, trade unionists, academics and the like were arrested by the government under the Internal Security Act on the pretext of threatening the nation's security, still serves as a reminder of how the state can behave towards NGOs.

²⁴ Such was the lesson learnt when the male-dominated Parliament mocked attempts at amending the laws relating to rape in 1989, before finally passing them.

women's organisations cannot avoid dealing with it.²⁵ (1994:159) Indeed, because the state is "a set of arenas, a by-product of political struggles, whose coherence is as much established in discourse as it is in temporarily apparent but shifting connections of individuals, policies, and institutions", it made sense not to disregard it. (Lovenduski & Randall, 1993:172)

There is little dispute that JAG's pursuit of the DVA was influenced by certain elements it identified as positive connections within the state. Take for example, the Minister with whom they were in contact. Perceived to be sympathetic to women's issues and agreeable to being approached by women's NGOs, she was an important link between JAG and the state. Similarly, the Women's Affairs Bureau (HAWA) located in the same Ministry showed that it was supportive of this cause.

These linkages helped convince JAG members that the state could not be assumed to always act as the agent of particular groups – in this instance, men who beat up women they lived with. This concurs with the proposition that although the state has a "gender regime" which is related to the wider patriarchal order of society, the fact that this "gender regime" is historically constructed means that it is not longer possible to talk of a purely "male state". (Connell, 1994:151) In turn, this recognition would have spurred JAG on to further negotiate with the various arms of the state.

They too had their own reasons for getting involved with JAG and the DVA campaign. We should not for one minute believe that this was strictly a one-way relationship. Of course the state's reasons for engagement were quite different. It ranged from genuinely wanting to improve conditions for battered wives, to political reasons such as wooing public support and gaining popularity.²⁶ Just as some JAG members had changed their perception of the state, there was a positive shift in attitude towards certain women NGOs and their concerns by some quarters of the state as well.

²⁵ The only questions remaining, he adds, would be how, on what terms, what tactics and towards what goals such interventions involve. (Connell, 1994:159)

²⁶ It has been noted that politicians show a decidedly keen interest in women's concerns around the time of general elections.

EVALUATING THE STRENGTHS AND WEAKNESSES OF THE DVA CAMPAIGN

The fact that the campaign took almost ten years before the passing of legislation should say something in itself. In this section, however, I will venture deeper into discussing the strategies JAG employed and judge how successful these were in relation to the objectives set. For this, I focus on three areas: the prolonged duration of the campaign, the implications of the bargains made, and the real impact of the Bill that finally became law.

Why the long wait?

Although there are several reasons accounting for the prolonged campaign, one major factor was the sheer lack of political will. The Malaysian government did not take the cue and begin working on this matter in 1986 when the Memorandum on Laws Discriminating Against Women was submitted to the Ministry of Justice.²⁷ It was left to JAG to draw up the proposed draft Bill in 1992. After that, it took another two years before Parliament passed the Bill and another two more years before it was enforced. So, no matter what the reasons were, the role of the Malaysian government in delaying the enactment of the Act cannot be denied.

My purpose in raising this point however is not to go into the reasons for their inaction but to show how indeed, because JAG had chosen a campaign which hinged on successful negotiations with the state, the passage of the Bill was very much in the hands of the government.

Certainly JAG could have exerted more pressure on the state to speed-up both the enactment and the implementation of the Act. In the first instance it did not have much success, but in the second, a demonstration it organised almost immediately resulted in the Act being implemented. This suggests that by not exerting similar pressure earlier, to some extent it was a weakness on the part of JAG that allowed the government to delay the passing of the Bill.

In many ways JAG members worked well together. The idea of building an alliance was clearly advantageous. It resulted in a better utilisation of expertise and generation of greater impact. For example, each member brought to JAG specific contributions which when pooled together provided a good resource base for forwarding the campaign. While organisations like AWAM, which were more familiar with conducting advocacy and lobbying campaigns, steered

²⁷ In an earlier point I mentioned that the need for a DVA was already highlighted in this memorandum.

the direction of the campaign, the Association of Women Lawyers' expertise was relied upon in the drafting of the proposed Bill. At another level, the politically more acceptable groups like NCWO, and the women's wings of ABIM and the Selangor Chinese Assembly Hall, all combined to add to the legitimacy of the demands being made.

However, some of the problems characteristic of coalition-building – e.g. different levels of commitment and resources – also surfaced in JAG. These appeared to have been fuelled either by an inability or a reluctance to commit the necessary resources to conduct a concerted and well-coordinated campaign. JAG members were already stretched with their own organisational demands.²⁸ So when made to choose between this and the DVA campaign, the latter took a backseat. The burden of carrying-out the necessary coordinating activities of the campaign then fell on groups that were 'more committed' or which had the luxury of employing staff.²⁹ Clearly then, another reason why the DVA campaign dragged on was because it was never sufficiently prioritised by every JAG member.

Compromising Interests

Previously I noted that it was not easy for those in JAG to reach common positions since this required delicately balancing individual members' interests and the diversity within the coalition. Indeed, the DVA campaign serves as a classic example of how the act of building alliances can lead to personal interests being compromised. This is because when multiple voices are cast in negotiations, often what ends up being accepted as 'the' voice – in this case, 'the' JAG position – is the lowest common denominator of agreement. This 'voice' may be further modified when women's groups enter into play with the state. (Lai, 1996:38)

For example, it is questionable if JAG would have chosen to call the proposed Bill the 'Domestic Violence Act', as opposed to say the Wife-Abuse Act, if its passage through Parliament was guaranteed. Despite the need to offer all members of the household protection from violence, and the desire to avoid suggesting that aggressive behaviour is an innate male trait, there was a cost in naming the proposed Bill as such. By proposing legislation which did not

²⁸ The NGO sector in Malaysia has never been very attractive. Volunteer members carry out most of its activities, either with little or no budgets. This is in contrast to the much greater demand for services that some within this sector provide.

²⁹ This included initiating and calling for meetings among JAG members, and also between JAG and the various state representatives.

explicitly emphasise the unequal male-female relationships in the family, the role of male domination as a root cause of violence against women continued to be ignored. (Dairiam & Devaraj, 1994:27) Evidently a major concession was made so that the Bill would be less threatening and more palatable to the male-dominated legislature.

In any case, as soon as the proposed Bill came under scrutiny by the Attorney General's office, the interests of JAG were further compromised.

One of the first issues to be contested was the definition of the term 'domestic violence'. Whereas JAG forwarded a definition which implied that all women had a right to say 'no' to sex with their partner, the state countered this by limiting the definition to cases "compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, *from which the victim has a right to abstain.*" (emphasis in citation in Lai, 1996:55) The phrase "from which the victim has a right to abstain" is contentious exactly because it is assumed that women do not have a right to say 'no' to sex with their husbands.³⁰ In so doing, the Act excludes marital rape, one of the most common forms of abuse against women in domestic situations. (Lim, 1995:3)

JAG may also have wanted the Act to cover all men and women who were violated – as opposed to confining its application to relationships between married partners – but even in this regard the state was very adamant that it would not endorse sexual relations outside the family unit. Instead it adopted a very narrow definition of 'spouse' which excluded persons outside legally recognised marriage.³¹ This position is unsurprising given the overall state discourse which promotes the family institution as pivotal in maintaining the stability and well-being of society.

JAG could not secure its objective for the DVA to protect all women either since the state was only interested in offering protection to women who were located within the legally-accepted form of the family. For the state, the DVA was a means of providing safety for the children involved in a situation of domestic violence, and/or to provide some breathing space for the spouses so

³⁰ In fact, because the DVA has to be read with the Penal Code, the latter specifically says that while there is a right to abstain, this does not include "rape of a wife by her husband whether or not force is used". (Lai, 1996:55)

³¹ Although women's NGOs were initially hopeful when the Act defined 'spouse' as including 'de facto spouses' – since this meant it could still be applied to unmarried couples – Lai maintains that the latter term was only meant to deal with the differences in various customary and tribal laws governing marriages of Malaysian citizens. (1996:50-51)

that they could reconcile their problems. (Lai, 1996:64) It was never its intention, as was JAG's, to unconditionally free women from abusive situations at home.

Being at the mercy of the government to pass the Bill meant that to a large degree, compromises were inevitable. But the fact that JAG was unable to hold onto its stakes when dealing with the state revealed a major weakness: its lack of power to secure priorities and objectives through the process of law-making. It has been argued elsewhere that states only act to protect the interests of women when public pressure is exerted to the point where state legitimacy is questioned. (Connell, 1994:156) So on the one hand, the passing of the DVA might signify the success of JAG's lobbying and public education efforts. On the other, it reveals how the state is able to pacify such demands by appearing to take action – in this case by legislating against domestic violence.³² Seen in this light, the real success of the DVA campaign is debatable.

An Act with or without teeth?

Another criticism of the JAG campaign was its failure to ensure that at the end of the day, survivors of domestic violence had immediate access to protection. The DVA, instead of making legal proceedings simpler and more accessible, turned out the opposite. In one of the final meetings between JAG and the Ministry of National Unity and Social Development (which was represented by the Deputy Minister), the latter managed to convince JAG that it would be in the interest of all parties for the Act to be read with the Penal Code. It was argued that if the DVA fell under the jurisdiction of Criminal Law, it could be applied to all Malaysian women, Muslim and non-Muslim. This however involved a trade-off.

Women's NGOs had mobilised for legislation against domestic violence because the Penal Code had proven ineffective in giving battered women protection. Under the new Act, very little changed since most cases would continue to be viewed as minor offences, meaning that the Public Prosecutor's approval still had to be obtained before the Police could begin investigations. Speed was obviously not the order of the day. Also, for women who did not

³² Connell also writes that through appearing to act against male violence at home, the state is able to cleverly "construct the issue as one of a deviant minority of violent husbands and to deflect criticisms of marriage as an institution that generates violence." (1994:156)

want their abusive partners charged under criminal law, there continued to be no avenue to escape.³³ (Lim, 1995:2-3)

On top of this, there was the recurring problem that inflicting 'non-seizable' injuries was not viewed as an offence under the Penal Code. The police were not forced to take action if a woman suffered emotional battery or if her injuries were in the form of bruises. This contradicted another objective of the DVA campaign which sought to fight all forms of violence be they physical, sexual, emotional or psychological. Thus while JAG managed to get an Act which is believed would protect all women, the effectiveness of the law still ended up limited.

Regardless of these problems, it remains doubtful whether JAG had considered the interests of all Malaysian women when it advanced its draft Bill. Although its members may have believed otherwise, the fact was that JAG and the state saw only heterosexual persons as being worthy of protection under the DVA. (Lai, 1996:61-2) Both JAG's proposed Bill and the final Act were silent on preventing battery within homosexual relationships. Of course in a homophobic and heterosexist environment, this is not entirely surprising. A more generous critique would attribute this omission to women being a heterogenous group, and as such, no one policy is expected to benefit all of them. (Pringle & Watson, 1992:68)

Despite all these shortcomings, the DVA campaign is still commendable on several grounds.

One major success was JAG's ability to use the campaign to raise the public profile of domestic violence so that at least it is now no longer termed a 'family matter' but instead recognised as a social problem by the state. The silence around domestic violence has well and truly been shattered. Further, throughout the campaign, and especially towards the end when it gained momentum, there was no public opposition by women to the proposed Bill. This can be interpreted to mean that it had the support of all Malaysian women.

A less obvious achievement was how the DVA campaign continued the task started by the VAW movement in 1985, paving the way for more public

³³ Basically the problem remained that the procedures in the Act are dependent on the Criminal Procedure Code. Meaning that relief is only available to those who want to instigate criminal proceedings against abusive family members. As pointed out before, this goes against the interests of many battered women who want protection from abuse but not necessarily desire sending their abusers to jail.

discussions on sexuality. Before this, sexuality had been almost invisible in this arena. Now, not only had it surfaced as a national issue, but also it permitted the continuation of a discourse on women's right to control their own bodies.³⁴ (Lai, 1996:45) Through this an indirect but nonetheless important gain was made for women in Malaysia.

Lastly, in learning how to negotiate both among themselves and with the state, the members of JAG set the tone for constructing future alliances together. Efforts to foster solidarity among women's NGOs are especially important when the benefits derived from working together are so numerous. In JAG what emerged visibly was the ability of women's groups to come together, despite their different identities, to organise a joint campaign to enact the DVA. It is this demonstration of "reflective solidarity" which in the long run remains a necessary step for those attempting to secure greater democratic spaces in society.

CONCLUSION

The difficulties in engaging with the state are manifold. I have argued however, that it is more helpful to do so rather than to reject outright any form of involvement with this body. The state is not homogenous, and like women and the organisations they belong to, it comprises many different actors, each with interests that are not given but shaped on a daily basis through interactions among themselves and with civil society. This shifting and unstable composition of the state offers many opportunities for women's groups. Whether or not their liaisons bear fruit depend on how successful the latter are at negotiating and standing their ground, and not allowing their issues to be usurped.

The JAG-initiated DVA campaign highlights the complexities involved for NGOs working together in Malaysia. The notion of "reflective solidarity", although attractive, is not so easily grasped since it hinges on the elements of respect and trust. Thus, while JAG succeeded in one aspect of this concept i.e. bringing divergent identities together in this campaign, the difficulties it experienced in this area of respect and trust finally showed up in a piece of legislation that did not live up to the expectations of all those involved.

³⁴ Admittedly this is still more often assumed rather than explicitly stated by women's groups. Until recently, the discourse on sexuality had also remained limited to issues of violence and health, leaving out more contentious topics such as sexual preference and identity. (Tan, 1997)

Nevertheless, the campaign also illustrates the benefits that can be gained when different interests are able to unite in particular circumstances to create a common agenda for action. Hence, in spite of the compromises and set-backs along the way, the DVA campaign can be considered a success in as far as contributing to the on-going efforts at alliance building among women's groups in the country is concerned.

Postscript

Since the time the DVA was implemented in 1996, its progress has been far from satisfactory. While it has provided some women with relief, by and large many more are being left out due to gaps in both the substance and implementation of the Act. Groups that have kept a close eye on the workings of the law such as the Women's Crisis Centre and the Women's Aid Organisation have voiced "serious doubts" over its efficacy, its failure to "significantly change" the lives of domestic violence survivors in this country. (Herbert 1997:37). In 1999, the former submitted a memorandum calling for a review of and amendments to the DVA in order for it to realise its full potential. This document lists 20 recommendations for improvements, mostly pertaining to implementation matters but also including calls to widen the definition of domestic violence and scope for protection under the law.³⁵

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³⁵ For details, see "Review and Proposals for Amendments to the Domestic Violence Act 1994", Memorandum submitted by Pusat Krisis Wanita, Pulau Pinang, March 1999.

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