

*Paper 1*

**Bringing home exotic women:  
the “mail-order brides” industry and Southeast Asian women**

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**Abstract**

*The paper is based on a research about “mail-order brides” industry and marriage migration, especially in the Southeast Asia and the Philippines. I will articulate my research on gender and race stereotypes in the “mail-order brides” industry’s advertising materials with the in-depth interviews and ethnographic observation I made of “mail-order brides” in the Philippines.*

*My fieldwork shows that Filipino women who experience international matchmaking through introduction agency have to some extent internalized gender and race stereotypes about Southeast Asian women so as to maximize their chance to be selected by men/customers, but they do not fit with the widespread prejudices about them. Like other migrant women, the so-called “brides” are rarely devoid of economic and cultural capitals. Marriage migration denotes in many case women's empowerment, since it allows them to match with social expectation (to start a family), especially for those who are single mother or too old for the local marriage market (because of high education or professional involvement).*

*In the Philippines, women who marry foreign men are often described as victims. Politicians often call for a more effective protection of Filipino women who are going abroad (to marry or to work) and feminist and women's organisations positions are to some extent similar to those about prostitution/sex work. My paper shows an untold alliance between nationalist and/or patriarchal positions and the (global and Southeast Asian) feminists' ones that view marriage migration without any consideration for – certainly ambiguous – forms of women empowerment.*

**Introduction**

In August 31, 2007, Philippine Senate President, Manuel Villar, known as a women's rights advocate, denounced one more time the “mail-order brides’ business”. He evoked a figure, often used by media and NGOs, of 300 to 500 000 Filipino women who leave yearly the archipelago to marry a foreigner<sup>1</sup>. The figure he used has not been discussed and even if it is unrealistic, it is often used by media and NGOs. In the Philippines like in some other Southeast Asian countries (Vietnam and Thailand among others), “mail-order” marriages are portrayed as a contemporary tragedy. The issue is often misrepresented, although public and political debates over “mail-order brides’ business” are chronic.

My paper is not about the “mail-order brides” themselves, nor the “mail-order brides’ business”. It is about women labelled as “mail-order brides”, how they are represented and how their agency is limited both by policy makers and feminist mobilization, both at the national and global levels.

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<sup>1</sup> *Philippines Daily Inquirer*, August 31, 2007.

First, I will clarify the labelling of some women as “mail-order brides”. Second, I will share my findings. Three, I will articulate them with how policy makers and feminist movements participate in stigmatizing “mail-order brides”.

### **“Mail-order brides” and international matchmaking**

International matchmaking is not a recent phenomenon. Introduction agencies can be found each time an imbalance between single men and women occurs. As an example, during the 17th century, France sent women to the New World to wed pioneers. During the 19th century, “picture girls” were going to the West America to marry men who had chosen them through their pictures in catalogues (Enss, 2005).

The international matchmaking is nowadays based on modern communication media, especially Internet. Online matchmaking is only an updated form of the American “mail-order bride” tradition, with the sole difference being the method used for broadcasting the personal adverts. The Cherry Blossoms agency, still in operation today, is one of the oldest and largest international marriage agencies. It was established in 1974 as a catalogue, but has now entirely switched to a web-based format.

Male customers are mainly natives from United States, Canada, Australia, United Kingdom, Germany, South Korea, Taiwan, and Japan. Mail-order brides traditionally hail from Russia, countries of the former Soviet Union, China, countries of Southeast Asia, mostly Vietnam and the Philippines and to a lesser extent from Latin America and Africa. They are thus categorized as “Slavic” or “Russian”, “Asian”, “Latinos” and “African”.

The online matchmaking is unbalanced between women and men. The latter are merely customers. The service costs from several hundred to several thousand dollars for Western men, but women’s enrolment is for free. Third World men’s enrolment is a recent phenomenon, but “mail-order grooms” are, until now, observed in the perspective of homosexual relations.

It is difficult to evaluate how many individuals use international marriage brokers’ services. Many researches, based on immigration’s statistics, evaluate that each year, from 6 to 12 000 American men that find a foreign bride with introduction agencies (Epstein, 2008, 2). In the Philippines, Filipina women marrying foreigners can be estimated around several thousand women each year (Ricordeau, 2010).

Taking a census of international matchmaking agencies is rather challenging, since their activities are forbidden in many states and most of them have numerous branch offices<sup>2</sup>, with various advertising in order to broaden their ability to catch customers. In the United States, international introduction agencies certainly range from 200 to 500. For example, Good Wife (<http://www.goodwife.com>), a portal website with an extensive agencies guide, displays of 60 agencies for Russian women, 30 for Latinos and 20 for Asian. This can be considered as representative of the English-spoken Internet market.

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<sup>2</sup> For example, Filipina Lady [<http://www.filipinalady.com>], Single Filipina [<http://singlefilipina.com>] and Filipina Wife [<http://filipinawife.com>] are actually the same agency. Eurochallenges [<http://www.eurochallenges.com>] has too other website, specialized in Russian and Asian women [<http://femmes-russes.eurochallenges.com> and <http://femmes-asiatiques.eurochallenges.com>].

## **My research**

This paper is first based on advertising materials I collected from websites that address to French or English-speaking customers. The “mail-order brides” they propose are Filipino, “Asian”, “Slavic” or “African”. My agencies’ sample includes a broad range of websites. Some introduction agencies are international and have many branches, while some are family-run and have been created by a Western man and the wife he met through an introduction agency. In my sample, four agencies advertise Filipino women (Everlasting, Filipina Brides on Line, Filipina Lady and Manila Beauty), two advertise African women (Femme Africaine and Afro Introduction), one advertises Asian women (French Asia), one advertising Asian and Russian women (Eurochallenges) and three advertise only Russian women (MCM-AMB, Russian Lady and Your Bride)<sup>3</sup>. Good Wife, the main international search engine for men seeking mail-order brides, is also included in my sample. Are also included discussion forums and three web portals (Planet Love, Anti Scam Club and Good Wife)<sup>4</sup>.

Since 2008, I am also conducting a fieldwork research about women, intermarriages and marriage migration in the Philippines. Reflections I will share with you result from five sorts of data:

- Observation in malls where many intermarried couples can be found or in places like in front of foreign embassies and Philippine administrations dedicated to Filipino migrants. I have to admit that my research has benefited from the very controlled Philippine migration procedure: all Filipino who go abroad to marry or to work have to attend a formation, called Pre-Departure Orientation Seminars that last from a half-day to several days, depending of the country they will travel to;
- In-depth interviews with Filipino women engaged/married with foreign men;
- Newspapers discourse about Filipino women and Western men;
- Philippines public debates about intermarriages and migration marriages.

## **Findings**

During my fieldwork, most women I interviewed were young (under 25 years old), without any qualification, and come from the Philippines major cities’ deprived areas, in particular Manila. But some were older (over 35 years old), single mother, educated, had high socio-professional status and/or were estranged from previous partners. Actually, very few were divorced, since divorce legislation is very restrictive in the Philippines, the procedure is costly and divorced people are often stigmatized. Despite their various profiles,

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<sup>3</sup> Everlasting [<http://everlastinglove.com>], Filipina Brides on Line [<http://www.filipinabridesonline.com>], Filipina Lady [<http://www.filipinalady.com>], Manila Beauty [<http://manilabeauty.com>], Femme Africaine [[www.Femme-africaine.net](http://www.Femme-africaine.net)], Afro Introduction [<http://www.afrointroductions.com>], French Asia [<http://www.french-asia.com>], Eurochallenges [<http://www.eurochallenges.com>], MCM-AMB [<http://www.mcm-amb.com>], Russian Lady [<http://www.russianlady.net>] and Your bride [<http://www.yourbride.com>].

<sup>4</sup> Planet Love [<http://www.planet-love.com>], Anti Scam Club [<http://www.antiscamclub.com>] and Good Wife [<http://www.goodwife.com/>].

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most Filipino women I interviewed explained their choice by their analysis of the local and global marriage market.

Filipino men are rejected because of their “laziness” and their “lack of future”. Some women are disqualified on the local marriage market as too old and/or already mothers. To position themselves on a global marriage market allows Filipino women to escape these disqualifications, especially the stigmatized status of “*solteras*” (single). Physical criteria are also mentioned by interviewed women: beauty and virility stereotypes definitely make white men desirable.

Despite Western women freedom is often fantasized, most interviewees view their relation with a foreign man as a way to belong themselves to “First World” and quit the “so Third World” (Kim, 2006) and “so patriarchal” Philippines. Actually, “First World”, “Western” and “White” are often used as synonymous by the interviewees, even if foreign men they marry or engaged to are not all white or Western: a lot of them would marry, for example, Japanese, Korean or African American men. However, women consider that, through those men, they will be able to reach a better status, as woman, than in the Philippines, a status that is considered as “modern” in contrast to a “backward” Filipino one. I would like to make two remarks: First, Korean men have a strong reputation, in the Philippines, often to be alcoholic and prone to domestic violence. But for women who marry them, their own modernization does not lie in the intimate sphere, but in the opportunity for them to access to First World consumption, leisure and, for short, status. My second remark deals with the connection between “being white” and being “First World”. In the Philippines, the skin fairness is first a beauty standard that should be analyzed with the Spanish and American colonization as the post-colonial Western-oriented culture. But skin fairness is as well a strong evidence of people position on social ladder. Workers cannot protect themselves from the sun tanning and richest families have often Spanish, Chinese or American ancestors. So, the social hierarchy is rather visible in the Philippines and interviewees women often express their wish “to whiten” through their marriage: they expect to go to a less sunny country and/or to stay at home as a housekeeper and/or that children they will have with their foreign husband will be fairer than themselves.

But, in contrast with Filipino women discourse, they are themselves chosen by Western men (from United States, Canada, Australia...) who are searching for “traditional” wives: those men often express their disgust of the “excessive” effects of women liberation in Western countries. But men from Japan, South Korea or Taiwan regard Filipino women as “modern” ones, especially because they speak English and, due to the American colonization and neo-colonization, their culture is much more US-oriented than in other Asian countries.

After their marriage, most women experience a loss of social status, since they marry “blue collar” men while they often were themselves employed as professional. Most of them were living in Manila or other cities in the Philippines and they move to the countryside in their husband’ place. So their life after marriage seldom match with their dreams of being First World, except when they visit their relatives in the Philippines where they are definitely categorized as “First World”.

### **Stigmatization & politics**

I strongly disagree with the often made reduction (at least in the Philippines) of “mail-order brides” – and even intermarriages - to a mere traffic. This reduction is problematic since it looks like those women are deprived of agency. Actually, I observed, as other researchers (see Constable, 2005), that these women have frequently mobilized several modes of dating (including matchmaking agencies and relatives based overseas). The archetypal marriage narrated in media in which the couple meets for the first time at the ceremony is actually rarely observed. I only met few women, out of several dozens, who all get married to South Korean men, that marry without any relation prior to the marriage celebration.

Like other migrant women, the so-called “mail-order brides” are rarely the most devoid of economic and cultural capitals. Interviews show women’s strategies to mobilize and nurture their cultural capital: for example, techniques as computer or language have to be displayed or learned, as an appropriate form of self-presentation in order to be noticed and selected in the globalized marriage market.

Most women involved in the “mail-order brides” industry have internalized Western gender and race stereotypes so as to maximize their chance to be selected by a First World man. They present themselves as “gentle”, “family-oriented” and “keen”. Some of them hide previous relation or even still being in a relation or that they have children. Often in contradiction with their own aspiration for a more “liberated” status as a woman, they present themselves as “traditional” and explain why Western men are looking for Filipino women. Filipino women success on the marriage market, since it implies their control and often their internalization of stereotypes associated with their class, gender and race can be analyzed as a backlash for them, since it contributes to strengthen the representation of Filipino women as “conservative”.

I cannot precisely detail the growing control and suspicion about Filipino women married with foreign men, but one should notice that they face discrimination both in the Philippines and in their husband countries. Immigration process is more and more difficult for fiancée or married Filipino women. Regarding the public debates since the 1990s, the so-called “mail-order brides” issue is regularly discussed, but these women' voices are nearly never heard. Media often misrepresent intermarriages and compare them with traffic or prostitution. Women are described as victims (of the matchmaking industry and/or of Western men) or as traitors (to the Nation or to the Filipino men). Politicians often call for a more effective protection of Filipino women who are going abroad (to marry or to work), but Filipino women situation in their own country is much less discussed. Feminist and women' organizations positions are much contrasted and to some extent similar to those about prostitution/sex work. To make it short, they often support the idea that those “willing victims” have to be protected against their own will, because they are naïve and due to the economic gap between husband and wife, marriage without romance is prostitution. I think it should be remind here that women love is always questioned when they upper-marry, although love marriage is quite a recent, and Western phenomenon. And I strongly disagree with the view of men as humane-beings trafficker because they nearly all are sincere men looking for having a wife and children.

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The interviewees also frequently mention the patterns' similarity between "true life" and matchmaking process and even "show up" during international introduction agencies tours. This similarity is the concept of love less like a "gift" and more like a skill (that is learned in the course of time, with the birth of children, etc.). The matchmaking stigmatization is actually due to its absence of "love performance". But it is often overview that "performance of love" is reinvested and reinvented by most partners of these marriages. As an example, many intermarried women evoke their "love at first sight" during a "show up" or when it happened to them to cruise through places attended by many Western men (in particular beaches and shopping centres).

**Conclusion**

Mail-order brides' industry cannot be considered apart from other social facts, since frontiers and distinctions are often thin. Some men look for mail-order brides because they consider their service more profitable compared with the sex workers' ones. Moreover, prostitution's geography and mail-order brides' industry share many characteristics.

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*Paper 2*

**Urban Informality and Neoliberalism  
: Formalisation versus Demolition of Informal Settlements in the Philippines**

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**Abstract**

*Within the neoliberal emphasis on the efficiency of cities and their function as globally connected markets, other functions of cities – notably, as shelters and places of living – are marginalised. This imbalance is evident in the fact that forced eviction is growing in its intensity and diversifying in its form. As a consequence, urban informality in the form of informal settlements is a source of increasing vulnerability for urban poor dwellers. This paper examines the extent to which neoliberal urban development can embrace the de facto reality of informality in developing countries. Within the context of the Philippines, this paper finds that the acute threat of eviction conditions informal settlers to actively seek out preventive actions, mainly through various initiatives of tenure formalisation. However, as illustrated in a specific case-study of displacement entailed by the railway upgrading project in Metro Manila, formalisation may not win the increasing competition over urban spaces driven by the neoliberal urban development model. This requires a more critical and creative thinking about the ways to live with informality and about the ways to more fundamentally address the challenge that most city governments are grappling with in between the ambition towards growth and the need to address poverty.*

**1. Introduction**

According to a recently published UN-Habitat report “forced eviction is a global problem”, taking place almost everywhere, in developing and developed countries alike and in urban as well as rural areas (UN-HABITAT, 2011b:1). The report finds that “the most prevalent causes of forced eviction are those that arise as a result of development” (UN-HABITAT, 2011a:34). This problematic situation, where development is taking place at the cost of displacement – clearly captured in the term *development-induced displacement* (DID) – raises fundamental questions about the meaning of ‘development’ such as on what grounds a decision of population displacement can be justified (Penz, 2002) and who has the power to make such decisions (Oliver-Smith, 2002). This renders ‘displacement’ a critical lens through which to examine the way in which development is conceptualised and conducted.

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Within cities, in particular, forced eviction is growing in its intensity and diversifying in its form. This is closely linked to increased urban systemic and spatial restructuring, deemed to be propelled by neoliberalism. Spatial restructuring has long been the mode of conducting 'development', especially of the kind that is geared to economic growth (Oliver-Smith, 2010). Likewise, cities have always been perceived as conducive to economic development due to the clustering of resources and people (Beall and Fox, 2009). However, what seems to be distinctive about neoliberal urban restructuring is that cities are promoted as important drivers for integrating local and national economies within an international framework (United Nations Centre for Human Settlements, 2001, Zetter, 2004). As a result, initiatives to maximise the comparative advantage of cities in the global economy are gaining momentum, transforming cities into more attractive places for international capital and global elites (Atkinson and Bridge, 2005).

However, within the neoliberal emphasis on the efficiency of cities and their function as globally connected markets, other functions of cities – notably, as shelters and places of living – are marginalised. This imbalance is evident in the fact that houses are being demolished by a wide range of activities, both publicly and privately initiated, including large-scale infrastructure projects, mega-events and city beautification (UN-HABITAT, 2011a). As a consequence, displacement has become a corollary of urban change and also a central experience in the life of urban dwellers. In particular, it is well known that those with tenure insecurity and precarious livelihoods become easy prey to eviction threats, and possess relatively limited coping capacities to deal with the negative impacts of eviction (Oliver-Smith, 2002, UN-HABITAT, 2011a). Given the large presence of informal settlements in the cities of the global south, where cases of forced eviction are many and its potential threat is pressing, informality is a serious source of vulnerability for urban poor settlers. It also presents a critical challenge to the capacity of the neoliberal urban development model to become more equitable.

This paper examines the extent to which neoliberal urban development can embrace the de facto reality of informality in the urban land and housing sector of developing countries. Based on a specific case-study of displacement entailed by the railway upgrading project in Metro Manila, the Philippines, the paper explores the increased challenges to informal settlers for staying within cities and their efforts to safeguard their homes.



## **2. Neoliberalism and urban spatial restructuring**

Neoliberalism emerged as a political agenda and analytical framework within specific spatial and temporal contexts, most notably, the United Kingdom and the United States coinciding with the respective elections of Margaret Thatcher and Ronald Reagan (Peck and Tickell, 2007). Although neoliberalism is not a homogenising force and in fact exists in locally transformed variations, over the years it has become a dominant paradigm of thinking and practice that is globally applied as well as contested (Leitner et al., 2007). Diverse, and in fact disparate, initiatives in different countries, cities and localities are put forward and even legitimised under the broad neoliberal paradigm. Locally translated neoliberal projects usually relate to either (or both) of two main agendas: 'market enablement' and 'governance enablement' (Zetter, 2004). Taken together, these present the idea (or even the ideal) that the functioning of the market that enhances individual capacity and freedom is maximised within a specific form of governance characterised by liberalisation, deregulation and decentralisation.

Within this paradigm, the concentration of resources and people in cities is recognised as providing dynamic and efficient markets, as well as socio-political venues for experimenting with new kinds of governance. The neoliberal project of making cities competitive in the world economy renders urban spaces more exclusive to upper- and middle-class citizens and thus less accessible to low-income and working class people, a process known as gentrification, which is increasingly permeating cities of the global south (Shaw, 2008). Explicit displacement is also rampant in these cities, entailed by diverse 'development' projects that require land for new or renewed infrastructures (e.g. mass transit systems, ports and airports), global financial centres with luxury hotels, residences and shopping malls (UN-HABITAT, 2011a). Urban land scarcity is so severe that even projects aimed (allegedly) at addressing the problems of urbanisation, such as environmental concerns, risks of residents living in inhabitable areas (e.g. along river banks or on water ways) and urban vulnerability to natural disasters, lead to forced evictions. Invariably, slum clearance is ordered almost as a prerequisite for making way for new development projects, with the aim of making cities serve the interests of international capital and global elites better.

The displacement of mostly informal or low-income residents raises very critical questions as to who benefits from, and who loses in, current urban restructuring. It is often pointed out that the potential of prosperity promised through the concentration of political power and economic wealth attracts not only capital but also people drawn to the prospect of benefiting from, or even surviving

on, the margins of urban growth. This is evident in increasing migration to urban areas and the emergence of 'mega' or 'primate' cities. Migrants from other areas are often integrated at the lower or lowest strata of cities, forming the urban poor class and making the informal economy an integral and pervasive part of city life in developing countries (Beall, 2002, Beall and Fox, 2009).

Informality is not specific to the neoliberal model of development as it derives from the fact that urban economies (and also city governments) have failed to provide viable labour, land and housing markets and meet the needs of urban dwellers effectively (Beall and Fox, 2009). However, Beall and Fox (2009: 92) note that informality "seems to have grown in response to the combined forces of globalisation and the era of neo-liberal reform." This may be partly explained by the increased tension between the different functions of cities – as 'markets' and 'shelters' – brought to the surface through neoliberal restructuring. This tension is most vividly evidenced by the striking coexistence of prosperity and poverty as described in the following caricature of Southeast Asian capital cities by McGregor (McGregor, 2008:136-137): "In the capital cities of the market-led economies the rich and powerful drive Mercedes Benz past the impoverished and homeless, people feast on gourmet foods from around the world while others suffer from malnutrition, and massive mega-malls provide sharp gleaming contrasts to the unserviced squatter settlements nearby." This reflects the challenge of ameliorating competing (if not conflicting) agendas, namely, urban economic growth and urban poverty reduction, under the broader notion of 'urban development.' This paper examines this challenge within the local context of a specific case study of displacement in the Philippines.

### **3. Displacement risks and tenure formalisation in the Philippines**

The Philippines has urbanised rapidly, with Metro Manila becoming a world city as well as a primate city accommodating over 11.5 million people (in 2007). This has created a tremendous challenge for providing housing, social services and secure tenure, which most Philippine cities are falling short of. The lack of affordable land and housing options is due in part to the failure of the state to provide mass housing (Berner, 2000) and in part to failure of the market, by which low-income households are least able to match rising land and housing costs (Llanto, 2007). According to the Medium-Term Philippine Development Plan (MTPDP), the required housing level in the Philippines was estimated at about 3.75 million units between 2005 and 2010, as compared to the target of constructing 1.15 million additional units during the same period (Teodoro and Rayos Co, 2009). The failure of the land and housing markets to keep pace with urban growth is generally

attributed to poorly defined or inefficiently managed property rights regimes (Beall and Fox, 2009). In the Philippine context, incapacities of land administration are compounded by unclear and inconsistent land policies, a highly politicised land tax system and local-level corruption (Llanto, 2007, Teodoro and Rayos Co, 2009).

Limited access to land has led to a proliferation of informal settlements, where the urban poor live on land that does not belong to them and thus have to suffer from the constant threat of being displaced. Given the inefficient land administration, many urban residents live in a state of legal ambiguity and 'squatters' are tolerated in so far as there is low demand for the land they are on. However, without legal titles or legally binding rental or lease agreements, informal settlers remain vulnerable to expropriation by land speculators, developers and government agents who can readily reclassify their status from 'informal' to 'illegal' (Beall and Fox, 2009:117-118). Thus, informal settlers are easily displaced by large infrastructure initiatives, market development policies, court-ordered evictions, problematic land use and management policies and natural disasters (Teodoro and Rayos Co, 2009). The scale of displacement is such that during the period between 2005 and 2010, the government-scheduled relocation of some 108,358 families came from only a few projects, namely, the North and South Rail development (80,779 households), the Pasig River rehabilitation (6,802 households) and the canal clearing programme (21,047 households) (Teodoro and Rayos Co, 2009).

While the state has not been successful in its role as a provider of housing, its oppressive role has been maintained throughout. In the first place, the functioning of informal housing markets has not been sufficiently understood by policy makers and, thus, has not been translated into more practical housing policies (Berner and Phillips, 2005). Even worse, under the Martial Law regime of the Marcos administration (1972–1986), Presidential Decree 772 (PD 772) declared squatting to be a criminal offense. Despite the introduction of more 'pro-poor' policies during the Aquino administration (1986-1992), reflecting the needs of the urban poor promoted by NGOs and their allies, large scale demolitions, followed by remote relocation – which have proven both inhumane and ineffective – have remained the preferred solution of the state (Berner, 2000). Furthermore, PD

772 has not been repealed in the later administrations and no effective moratorium on demolition has been promulgated (Teodoro and Rayos Co, 2009).<sup>1</sup>

Trapped between the land market failure (and, consequently, having limited access to land) and the acute threat of displacement arising from their very informal land status, the strategies of the urban poor tend to focus on tenure regularisation (ironically mirroring official policy responses). Tenure security is perceived as an important right in itself (e.g. UN-Habitat 2011b) and also as a basis for development. Without tenure, the scarce resources of the poor are used up simply trying to survive the cycle of squatting and eviction, and the urban poor are prevented from developing themselves (Teodoro and Rayos Co, 2009:415). Likewise, relating urban poverty with land issues and underlining the importance of tenure security, Berner (2000) states that housing poverty is largely determined by land supply and allocation, for which the critical dividing line is whether one has legitimate and reasonably secure access to urban land.

Given this, a more recent proposal reflects both the social justice principle, which gave rise to laws such as the Urban Development and Housing Act (UDHA) of 1992 (Teodoro and Rayos Co, 2009), and the neoliberal ideas of market-enablement and governance-enablement, which is expressed in a combined emphasis on strengthening the land and housing market (Llanto, 2007) and encouraging community initiatives (Berner, 2000). The UDHA is a comprehensive law laying down not only a programme on housing but also programmes for urban development, such as public land proclamation, social housing, slum upgrading or urban renewal and programmes of relocation (Teodoro and Rayos Co, 2009). Local governments are at the centre of implementing the UDHA, mandated to increase urban poor consultation and participation in shelter issues and also to provide an enabling milieu for the private sector to enter into social housing provision. The decentralised framework for urban governance was laid by the Local Government Code (LCG) of 1991, which gave local government units (LGUs) relative fiscal and political autonomy as well as the responsibility to deliver basic services and to encourage democratic participation (Ragragio, 2003).

Within this legal framework, Teodoro and Rayos Co (2009) identify three main methods of land acquisition: direct purchase, Community Mortgage Programme (CMP) and Usufruct. Direct

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<sup>1</sup> The current ('Noynoy') Aquino administration (2010–) does not seem to be an exception despite promising an 'anti-eviction approach' to the urban poor during the presidential election in 2010. See, for example, this critical commentary: <http://globalurbanist.com/2011/08/30/manila-to-relocate-500,000-informal-residents-but-to-where>

purchase is a land sale contract involving a prospective community association and a landowner, under agreed terms and conditions such as price and instalment or lump sum payment. . CMP is an innovative finance facility that allows low-income communities to purchase the land they occupy (or land that have identified) for site and housing development. Organised groups of urban poor can apply to the Social Housing Finance Corporation for 25-year loans at a flat interest rate of 6 per cent per annum. Usufruct is a more recent experiment that gives a person called the 'usufructuary' beneficial use of the land, with the obligation to return the land at a specified period of time. It is different from lease in the sense that it is more flexible in terms of use and enforceability (except for the obligation to undertake repairs and pay taxes) and thus becomes an important alternative instrument for securing tenure.

Of these three methods, CMP has received the most attention partly because of its impressive performance (Berner and Phillips, 2005). Among the government's social housing programmes, the CMP has had most success in reaching the poor households (belonging to the housing backlog segment and the lowest 30 per cent of the population by income), approximately 138,871 households during the period of 1989 and 2003 (Teodoro and Rayos Co, 2009). Furthermore, CMP is deemed a desirable solution for keeping physical dislocation minimal and retaining proximity and accessibility to the existing socio-economic relations that have been formed over years. However, its limitations have been increasingly recognised, such as complicated administrative procedures demotivating land-owners, while requiring a very strong community organisation (Teodoro and Rayos Co, 2009). A low repayment rate makes the whole scheme unsustainable without public co-financing (Llanto, 2007). Furthermore, given that the land acquisition process needs to be initiated well in advance for the residents to achieve tenure security and to be saved from forced eviction, all these land acquisition methods are not relevant vis-à-vis very urgent and actual displacement threats, a context that requires different (and a more limited) set of actions.

#### **4. Case-study: demolition of informal settlements**

The case study presented here concerns the displacement of more than 35,000 families who used to live alongside the railway that passes through Metro Manila, the Philippines.<sup>2</sup> Under the Philippine National Railway (PNR), the railway service had over several decades deteriorated so seriously that it had long been in dire need of upgrading. When the proposal was made in 2005 to make it a more

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<sup>2</sup> The particular project considered in this paper is the North Rail–South Rail Linkage project, the first phase of which covers the area within Metro Manila, from Caloocan in the North to Alabang in the South.

effective means of transportation, clearing the right of way for the project was the main concern, due to the anticipated social impacts of displacement. In view of this, the release of the loan that financed the project was conditioned on the provision of adequate resettlement for the people who were to be displaced. Accordingly, the Philippine government took on this responsibility, and between 2003 and 2010 the National Housing Authority (NHA) implemented a relocation programme. As a result, informal settlers from the railway have been relocated to eleven different sites, mostly outside or on the fringes of Metro Manila.<sup>3</sup> The railway project itself started in 2007 and was nearing completion at the time of the field research for this paper, which was conducted from February to June 2010.

The railway project is a stereotypical example in the sense that it was promoted as one of the flagship projects of the Arroyo administration (2001–2010) and also in that the plight of the displaced people has not changed substantially despite the provision of the relocation programme. The most pressing issue after displacement turned out to be the liveability of the relocation sites, not the relocation *per se* (Choi, 2008). In addition to the limited provision of basic facilities and services, such as water and electricity and schools and health clinics, most sites are located in isolated suburban areas and are disconnected from the city, making it difficult for new settlers to maintain their livelihoods. Given that the majority of the urban poor depend on an informal economy, which is embedded in complex economic and social relations, the location of a resettlement site is a critical factor for livelihood reconstruction (Meikle and Youxuan, 2000, Mejia, 1999). However, the challenge of providing such complex environments within which the urban poor can make their living has not yet been sufficiently met by policy interventions (Koenig, 2002).

Anticipating livelihood challenges in remote relocation sites, a problem abundantly evident to people in the Philippines from their lived experiences of the long and repetitive history of forced displacement and resettlement, residents along the railway took pre-emptive action prior to their forced eviction. NGOs played an important role in empowering and mobilising the affected people. One such organisation, UPA (Urban Poor Associates), has long striven to find solutions to the effects of demolition and eviction induced by urban projects, particularly those funded by foreign donors. In 2005, alongside the people who were due to be displaced first, UPA organised a series of campaigns resisting demolition. Although in the end it could not prevent displacement from happening, UPA continued to facilitate the mobilisation of people even after they had been

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<sup>3</sup> Source: National Housing Authority Relocation Status report dated 31 May 2009; obtained on 20 July 2009.

relocated, so that they could address the problems of relocations sites (most notably, that of livelihoods) either through self-help initiatives or through collective negotiations with the local government.

Together with a community in the later phase of displacement, UPA focused its strategy on finding an alternative relocation site for a better prospect of livelihood reconstruction. Abandoned land was located in Rodriguez (Montalban) on the outskirts of Metro Manila, which is nearer and thus cheaper to commute to the city than the official relocation sites. As well as widely appealing their case to relevant agencies by writing letters and arranging meetings, people underwent successful negotiations with the Mayor of Montalban, who welcomed their plan and promised close cooperation and support. Although settlers in the alternative site are still struggling, as the site is not officially recognised by the NHA and the issue of tenure security is not fully resolved, this case demonstrates the extent to which people are willing to take the initiative in pursuing a place of living they deem in fact to be liveable.

However, once forced eviction had materialised, people became extremely limited in reversing or even influencing the course of such change. Faced with the limitations of a relocation programme, over which they had little control, resettlers started to return to the railway area, mainly as a means of coping with livelihood challenges in the relocation site. Investigations at the post-eviction railway area reveal that the experience of returnees is strikingly in contrast to that of people who initiated a tenure legalisation process along the railway line. Returnees were uprooted from their homes in the first place because of their informal housing status, but had little choice but to permeate the city informally once again, mostly by rebuilding a makeshift shanty or living on the street. On the contrary, cases of 'direct purchase' can be pointed to whereby residents organised themselves into a Home Owners' Association (HOA) to negotiate the possibility of purchasing the land they had occupied for a long time from its owner. In one notable case, people have managed to negotiate with the PNR to purchase a portion of its land. By making a timely intervention to become formal landowners themselves, these people could avoid eviction even though their houses were built on PNR land.

##### **5. Discussion: limitations of self-help formalisation**

The cases of tenure formalisation as compared to the actual forced eviction cases confirm that tenure security is crucial for people to stay within cities, where they can make their living At the

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same time, they highlight that the timing of action on the part of the people is critical in increasing the possibility of staying in a place they want. The relocation programme may be seen as a kind of tenure formalisation process, since a package of land plot and housing was provided to displaced people based on a long-term loan contract with the NHA. However, within this 'forced' land acquisition process, people had limited control over determining the location of a site as well as the terms and conditions of the arrangement.

It is noteworthy that people took the active role in promoting a secure and sustainable housing option that best serves their needs and interests. All the land acquisition methods outlined above require strong community organisation in order to overcome the myriad challenges involved in the transition of land status from informal to formal (Teodoro and Rayos Co, 2009). While it is impressive that people take up the initiative of improving their tenure security or negotiating a better housing option, this should not be conflated as part of (or even as a result of) the neoliberal style of governance that emphasises self-help and the autonomous capacity of people to be expressed through their active participation in decentralised, local government systems. It seems more accurate to understand people's activism as emerging from the limitations of both the market-driven and the state-led models in meeting their housing and other needs, rather than facilitated or even dictated by the neoliberal idea of governance.

Decentralisation as a widespread form of governance in the Philippines predates the more recent neoliberal promotion as it was introduced by the Local Government Code (LGC) of 1991 (Teodoro and Rayos Co, 2009). This legal and institutional change gave real mandates and incentives to local governments in working closely with their constituents, contributing in part to the increasing participation of NGOs and POs in the planning, implementation and monitoring of the local government unit (LGU)-led projects (Ragragio, 2003). Furthermore, community organisation has a long and strong tradition in the Philippines, which cannot be reduced merely to a (rather passive or strategic) response to a governance change.

A critical question is to what extent people's active participation alone is an alternative and sustainable solution to the land and housing situation, where the contradiction of high land prices and the low incomes of the urban poor is sharpening (Berner, 2000). Specifically with regard to tenure formalisation, some people may be excluded from or left out because it is a legal process mediated through or conditioned by affordability in the market place. Notably, limited (financial)



resources are known to be one of the biggest challenges for people in formalising their tenure. Using CMP as an example, Berner and Phillips (2005) argue that the neoliberal emphasis on self-help does not work for all poor communities or for all people in such communities. When completely left to market processes and community initiatives, even the community-organised CMP may exclude a substantial portion of informal settlers who cannot afford it without subsidies. Also communities have their internal dynamics of conflict and cooperation which may not always lead to the successful implement of a programme.

This requires a more political and structural approach to the problem, which recognises existing inequality and the heterogeneity of communities. For example, whilst supporting market-based housing policies for the urban poor, Llanto (2007) is wary of the fact that vested interests based on political clans, together with the inability of weak institutions to mediate differing interests, has led to a situation in which laws and resource priorities are seen to favour certain powerful constituencies. Given this, collective actions need to be taken in order to strengthen the voice of the urban poor and ideally for them to be in a position to drive the reform process (e.g. through networking and advocacy). That is, community organisation is only the start, and a city-wide, broader coalition is needed for putting pressure on governments in finding more fundamental solutions such as redistribution of resources (Berner and Phillips, 2005, Racelis, 2005).

## **6. Conclusion**

This paper demonstrates that urban informality in the form of informal settlements is a source of increasing vulnerability for urban poor dwellers within the neoliberal model of urban restructuring. In its emphasis on the efficiency of cities and relative neglect of equity issues, informal settlers are threatened by, or are suffering from, growing and intensifying cases of forced eviction driven by market-oriented development projects. The acute threat of eviction conditions them to actively seek out preventive actions, mainly through various initiatives of tenure formalisation. This implies that neoliberalism mediates its uncomfortable (if not incompatible) relationship with urban informality through a 'formalising' effect. Even though the formality rule may not be overtly put forward it may be needed and supported by those who can afford (and thus have the power) to claim a piece of land or a particular space within cities through the formal land market transaction.

However, the efforts of the urban poor to stay within the city, either by formalising their housing status (before eviction takes place) or even by informally returning to the city (after they are

relocated), underline that cities are as much living places as markets, and cater not only to global elites but also to local residents. The problem is that the latter group of people are likely to lose the competition over urban spaces when different interests collide as was the case in the railway project. Given the scale of informal settlement and the increasing competition for (and the value of) urban land, formalisation may not be able to provide a secure home for the majority of urban poor residents. This requires a more critical and creative thinking about the ways to live with de facto informality and about the ways to more fundamentally address the challenge that most city governments are grappling with in between the ambition towards growth and the need to address poverty.

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*Paper 3*

**Legal Mobilization in Post-Colonial Malaysia:  
The Law as a Political Tool for Marginalized Groups\***

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**Abstract**

*This paper provides extracts from an ongoing doctoral study on the legal mobilization of the 'Malaysian Indians', examining the utilization of law by the ethno-cultural group to mobilize their cause and claim grievances seeking minority rights and protection as well as constitutional rights in Malaysia. First, the paper will examine to what extent the law plays a role in the constitution of a legal identity as an ethno-cultural minority group and in the construction of grievances and claims such as discrimination, inequality and minority protection. Secondly, the paper seeks to explore the extent to which the law has been utilized in the formation of a minority group strategy, either by pursuing 'active' public interest litigation (initiated by the group or others) or in 'passive' litigation (where civil disobedience and direct action methods lead to criminal litigation), or by pursuing rights-based activism (civil disobedience methods and political lobbying). The basis of the paper is to put forth that the legal constitution of identity, the legal framing of grievances and legal strategy may be useful to marginalized minority groups that have little or no political leverage, especially in an ethnic-based political system. Coming from a socio-legal-political perspective, this study utilizes Michael McCann's legal mobilization theory in the analysis of litigation and rights activism as a legal and political strategy. Legal mobilization studies have centred on North American and European social movements, and this paper hopes to explore the gap in studies done in Southeast Asia, especially within the common law legal system. (250 words)*

**Introduction**

This paper proposes to examine the legal mobilization of Malaysian Indians, a diverse and complex ethno-cultural minority group in Malaysia. In order to do this, first, the legal mobilization theory, which stems from multidisciplinary research on law, contentious politics and social movements, will be briefly explained. Secondly, a background summary will be given of the role of law in the construction of the ethno-cultural identity of the highly fragmented Malaysian Indian group and its related grievances such as discrimination and inequality. Last, the paper proposes to explore to what

extent the law has been used as an effective political tool to mobilize the minority group, to put forth its grievances, in an attempt to gain more leverage in an ethnic-based political system.

### **Legal Mobilization Theory**

In determining whether the law matters to minority group mobilization, the studies that examined the connection between the law and group mobilization are sociolegal studies (a study on connections between law and society) and social movement studies. An emerging multidisciplinary area of study known as legal mobilization studies, attempts to bridge sociolegal studies (*inter alia* judicial impact studies and critical legal studies) and certain social movement theories (political process theory expounded by Sidney Tarrow (1994) and Doug McAdam (1982), and frame analysis by David Snow and Robert Benford (Snow & Benford, 1986; Benford & Snow, 2000). As political process theory leads to an analysis of political opportunity structures, and while frame analysis relates to movement ideology and culture, both theories have become useful to understand the role of law as a constitutive element of group mobilization (McCann, 2006). Building from previous cross-disciplinary attempts, such as Joel Handler's study (1978) on social movements and the legal system and Edward Rubin's study (2001) on the legal scholarship of social movements, legal mobilization attempts to question to what extent the law really matters to social movements or mobilization of marginalised or powerless groups. Chris Hilson (2002) used 'political opportunity structures' to develop 'legal opportunity structure' in his study of new social movements in the United Kingdom, whereas, Lisa Vanhala (2009) used frame analysis to explain the legal mobilization of the disability movement in Canada.

In terms of methodology, legal mobilization study differs and conflicts with previous studies done on the usefulness or the utilization of the law by marginalized groups or groups with little or no bargaining power, such as the Blacks in the United States (Rosenberg, 1991). The Gerald Rosenberg judicial impact study took a positivist 'top-down' approach in determining that the United States Supreme Court ruling of *Brown v. Board of Education of Topeka*, 347 US 483 (1954), which overturned sanctioned racial segregation, had insignificant impact on United States desegregation policy. While Rosenberg attested that the law is a 'hollow hope' for minority groups, Troy Riddell's judicial impact study (2004), which took a 'bottom-up' approach, found that the law helped to mobilize the minority Francophone community in Canada. McCann proposes that the difference lies in the constitutive analysis of interpreting legal mobilization as opposed to the

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positivist causal method, which is 'instrumental, linear and unidirectional' which disregards the 'human experience' which is 'unpredictable and indeterminate' (McCann, 1996; Rosenberg, 1996).

Critical legal theorists ('Crits') like legal positivists also came to conclusions that the law is not useful for minority groups, finding that any sort of legal reform tends to rationalize and legitimate rather than challenge injustices and hegemonic relations (Gabel, 1984) and that 'rights' only legitimize unjust power structures in society (Delgado, 1987). These findings have been subsequently challenged by studies that show that the Crits had got it wrong. Richard Delgado (1987) and Patricia Williams (1987) contend that though the Crits argue that 'rights-talk' paralyzes minorities and individualizes them, calculative rights-based activism and rights discourse can serve to paralyse the oppressor and to instigate and foster political cohesion among minority groups. Francesca Polletta's (2000) seminal work found that activists in the Southern American civil rights movement in the 1960's successfully used rights-talk 'outside the courtroom' to mobilize aggrieved groups, widen movement agenda and contribute to civil disobedience activities.

Mari Matsuda (1987) found that the problem with the Crits lies in their 'top-down' approach of failing to 'look at the bottom' and relating theory to the actual experience of oppression. This proposition of looking at the bottom may be served by using legal mobilization theory of examining the law as a constitutive element of the marginalized group's identity, in its power to rally the group together, and use the law as a political strategy against the oppressor.

The 'top down' approach also plagues other law and social movement studies, which seem to resonate that there are 'limitations, burdens and biases in most cause lawyers' propensity to litigate for change rather than to press for alternative, more 'political' reform tactics' (McCann, 1998). Tomiko Brown-Nagin (2006) for instance argues that 'social movements and juridical law are fundamentally in tension...Social movements are more likely to achieve their goals when they are free from the constraints imposed by law and lawyers - even the politically astute ones'. McCann (2006b) criticizes this study as being too entrenched in normative actions related to litigation, lawyers and legal reform, which over-determine empirical accounts and 'discourages attention to the complexities, contingencies, and ironies at stake in legal mobilization'.

What is established is that legal mobilization studies, uses constitutive analysis and disregards a purely causal logic of group mobilization. It proposes to study the law as 'legal discourses,

conventions and practices in constructive meaning' (McCann, 2006a) and 'as a system of cultural and symbolic meanings than as a set of operative controls' (Galanter, 1981). In other words, this study not only looks at the courtroom law but also law in public spaces, where it thrives under the 'shadow' of official legal rules. As Rubin (2001) writes, social movement studies trail the social movement from inception and abandons it at the 'courthouse door', whereas sociolegal studies meets it at the other side of the door, decontextualizes the activist and only takes relevant facts and legal arguments. It ignores the litigant's identity and social origins. Legal mobilization studies attempts to fill this gap, between the 'courthouse door' and the court domain.

In studying the law in these spaces the law is seen as being a constitutive power of group mobilization, as it begins by framing the legal personality of the class or group of people stigmatized by certain defining traits and the constraints attached to social and legal statuses (Cotterrell, 2004; Eskridge, 2001). Law's power in constituting identity and grievance could be in the form of official classifications of ethnic groups for census or affirmative action programmes as in the case of the Dalits in India (Sommer, 2001), or culminating from constitutional or treaty rights as in the case of the Native Americans in the United States (Gooding, 1994), or legally repressive methods for example, the legal segregation of the Blacks in the United States (Mack, 1999), police brutality or judicial mistreatment suffered by the Chicanos in the United States (Lopez, 2001) and the legal eviction of Malaysian Indian estate labourers from former rubber plantations (Bunnell, et al., 2007).

In using the law to construct identity and grievances, frame analysis becomes crucial, as 'a group's collective action frames and the way it creates meaning and purpose defines, and in turn is defined by, its collective identity' (Vanhala, 2009). John Brigham (1987) explains that the law helps in the formation of grievances, through a rights-based frame, both in the struggle against legally sanctioned oppression and in seeking remedy through legal action in court. Strategic litigation does offer a tactical leverage but on the flipside, legal gambits may not result in concessions from economically and politically powerful opponents, who can make it very expensive to mobilize by harassing the activists through repressive laws. This high cost of mobilization can only be reduced by the activists' 'access to courts that will protect them' (Eskridge, 2001), but if rules of standing are restrictive, and the court cannot protect constitutional principles and the dissidents, or when there is little or no judicial receptivity to policy arguments in court (Hilson, 2001), activism in court is likely to end.

However, strategic litigation may offer a normative advantage if it is coupled with legal advocacy and political tactics such as lobbying and civil disobedience. The case of *Brown v. Board of Education of Topeka* provided resource to the American civil rights movement to take defiant action, where ‘the two approaches - legal action and mass protest - entered into a turbulent but workable marriage’ (Morris, 1984). What is evident is that law as political strategy figured prominently in elevating civil rights claims and intensifying the struggle. Chris Hilson (2009) writes about the politics of place and space in legal mobilization, where the anti-nuclear movement in the United Kingdom used the courts and other sites ‘for enacting the theatre of direct action’.

Thus, by using legal mobilization studies to study the role of the law in constituting group identity and its grievances, as well as examining the role of litigation as a legal and political strategy, this paper hopes to consider whether the law really matters to the mobilization of the Malaysian Indian minority group. This becomes a crucial step in examining the usefulness of the law to marginalized groups.

### **Malaysian Indians: Identity, Grievance and Strategy**

The legal mobilization of Malaysian Indians cannot be investigated without first exploring the identity of this ethno-culturally diverse group. The identity of the Malaysian Indians is depicted in this paper as a legal, political and social construct, as it will be argued that a legally or officially constructed identity and the ensuing legal framing of grievances has been utilized to mobilize the group and strengthen both strategic litigation that involves official or court-based law and legal mobilization politics that involves rights-based advocacy. In essence it is argued in this paper that the law constructs Malaysian Indian identity and grievance and plays a dual role of being legal and political strategy both inside and outside the courtroom.

A brief survey of historical accounts show that the ‘gestation’ of the Malaysian Indian group was between the years of 1900 to 1945 (Tate, 2008; Sandhu & Mani, 1993), a period of intense immigration of colonial labour from India and Ceylon (present day Sri Lanka). Malaysian Indians to begin with, was (and continues to be) a highly fragmented group, divided along regional, sectarian, linguistic and religious lines. In fact, the coherence of the Malaysian Indian group is only



based on their 'Indian-ness', 'a cultural affinity' which is 'felt by themselves and as seen by others' (Tate, 2008).

It has been put forth that it was a group created out of British colonial administrative and official practices, such as census classifications to support the 'divide and rule' colonial labour policy (Hirschman, 1987). Ethnic groupings in Malaya from the 1900's, has been argued to be a reflection of the political economy and colonial ideology of that time, which was Social Darwinism that justified the role of the British colonials as a more 'evolved' race with the need to legitimize paternalistic colonial policies (Hirschman, 1986). The labour that came from India were predominantly from Tamilnadu, spoke Tamil, belonged to low caste groups (a number consisting of the 'Untouchable' or scheduled castes) and were documented by the British colonials as a cheap and docile labour force, 'more amenable to discipline and management' compared to the Chinese and Malays (Hirschman, 1986). The Ceylon Tamils and 'Other' Indians were from higher caste groups and mostly English educated, enabling an easier usurpation into colonial administration and estate management. It is argued that the 'divide and rule' policy was not just applicable to the three different ethno-cultural groups – Malays, Chinese and Indians, but also worked within the already fragmented Malaysian Indian group. Unlike the Chinese, the Indians easily broke into 'proletariat' and 'bourgeois' sub-groups, where the submissive Tamil proletariat remained socio-economically weak, and the Indian middle class preferred to identify more with their colonial rulers and perhaps even 'despised' the proletariat sub-group due to caste and sectarian boundaries (Tate, 2008).

This fragmented identity has naturally led to diverse grievances, but the primary grievance due to the higher population of the proletariat group has constantly been labour related issues. In the 1930s, the leaders who championed the rights of the proletariat group ironically came from the Indian middle class, who used both labour union movements and socio-religious reform movements to mobilize the Malaysian Indians. The labour unions used a legal rights-based framework demanding for minimum wages, worker rights, fair labour practices, protection from both exploitation by planters and the fluctuating world rubber market (Jain, 1988; Sundaram, 1993; Ramachandran et al, 1995; Ramasamy, 1993). The socio-religious reform movements, heavily influenced by the Dravidian nationalist movement in Tamilnadu, took an almost atheist stand and mobilized the group by rejecting caste-based social restrictions and championing the Tamil language (Arasaratnam, 1993).

However, mobilizing the group through a rejection of the caste system and advocating the Tamil language did not fully unite the diverse Malaysian Indian group, as there was a highly entrenched social class division. In colonial times, the Malaysian Indian group consisted of four sub-groups: the elites (professionals and high government officials), the upper middle class (English educated government servants), the lower middle class (vernacular-educated merchants, school teachers, journalist, small holders) and the labourers (usually in government service and in private estate employment) (Ampalavanar, 1972). These class-based cleavages continued to exist in post-colonial Malaysia, a socio-economic frame shows that there is the plantation sector (rural Indians) and the urban sector (with a multiplicity of social classes) (Jain, 2009; Tate, 2008).

Ravindra Jain writes that, 'there is a correlation in the Malaysian Indian context between this social stratification and sub-ethnicity as well as caste' but qualifies this, by stating that it is a 'situational' correlation, where different sub-groups or classes come together for a purpose. Jain gives a contemporary example of this occurrence, where the Jaffna Tamils and Malaysian Indian Tamils, showed solidarity in the issue of suppression of the Tamil *eelam* movement (the Sri Lankan Tamil autonomy movement) by Sinhalese political masters. This is also reminiscent of what Susan Gooding (1994) terms the 'layered form of identity'. In her research where the United States Federal Indian law had legally constructed the collective identity of Native American tribes as 'linear, fixed and singular', while the tribes themselves had a fluid identity based on location and culture, treaty-based litigation, legal framing, and rights-based claims resulted in the construction of a 'layered form of identity' where the legal and non-legal aspects of identity became layered. Thus, similarly, the Malaysian Indian identity can be argued to consist of several layers: the ethnic, regional, religious, cultural as well as class-based.

This heterogeneous identity meant that the Malaysian Indians were seen as a transient and almost apolitical group, but the post-colonial communal approach that was adopted in Malaysian politics in 1957 meant that 'cultural identity' was becoming increasingly important (Tate, 2008). Due to communal and ethnic politics, the Alliance party consisted of the Malaysian Indian Congress (MIC), the only recognized political voice of the Malaysian Indians, the United Malays National Organization (UMNO) representing Malay interests and the Malaysian Chinese Association (MCA) of Chinese interests (Muzaffar, 1993). Simon Barraclough (1984) suggests that the MIC which contained Tamils, Sikhs, Punjabis, Bengalis and other 'Indian' ethnic groups as well as adherents of Hinduism, Islam and Christianity can be argued to have overcome the internal communal barriers

but he qualifies this statement by admitting that it is 'the competitive position of these groups (sharing a common geographical origin) beside the politically dominant Malays which promotes a communal solidarity'.

Though academics contend that ethnic identity in Malaysia is a product of socialization in an ethnic conscious society (Tan, 1997) and ethnic politics (Barraclough, 1984), it is argued in this paper, to be a construct of the law. This is evident especially in the legal requirements of registration of persons (*Section 5* of the *National Registration Act 1959* specifies that, '...every person within Malaysia shall be registered under and in accordance with this Act') and census classifications, which require stipulating one's 'race' or 'community' (*Section 8* of the *Census Act 1960* requires every person to be bound to answer truthfully the questions put forth, 'to the best of his knowledge and belief'). In the registry of births, marriages and deaths, national identity cards, official records and labour exchanges, one is expected to specify a distinct ethnic identity (Nagata, 1974). As such, if one is not Malay or Chinese or Indian, one falls into the residual category of 'Others'.

Ethnic identity becomes paramount and is embedded in the Malaysian Constitution, Malaysian laws, and in developmental and economic policies. The Malaysian Constitution specifies only what a 'Malay' is, and not who a Chinese or Indian is, as the legal construction of the Malay race has a purpose of providing special rights to the group. *Article 160* of the *Malaysian Constitution* defines 'Malay' as, *inter alia* a person who professes Islam, habitually speaks the Malay language and conforms to Malay customs. This definition relates to *Article 153* of the Constitution, which explains the special rights position and affirmative action programmes reserved for Malays. The term *bumiputera* ('sons of the soil') was later coined in policy but not the constitution or law, in order to incorporate the non-Malay indigenous groups in Borneo. As Tun Mohamad Suffian (1976), the former Lord-President of the Malaysian Federal Court explains, that the Malay 'special position' was a result of 'the bargain that was struck between the representatives of the major communities' which 'was that in return for the relaxation of the conditions for the granting of non-Malays of citizenship, the rights and privileges of the Malays as the indigenous people of the country were to be written into the constitution'.

In this way, it can be argued that the law has been instrumental in indirectly creating a 'non-Malay' or 'non-*bumiputera*' group consisting of the Chinese, Indians and Others. Not only has the law been used to arbitrarily carve these 'ethnic' categories, it has also led to the grievances experienced by

the 'non-Malay' or 'non-*bumiputera*' group in terms of the positive discrimination and inequality experienced through the affirmative action programmes that excludes them economically.

As Mah Hui Lim (1985) writes, the Malay Special Rights Programme, initially created by the British colonials to protect the Malays, who were economically weaker than the Chinese and Indians, was intended also to maintain a 'class system' where Malay aristocrats were given political and administrative power while Malay peasants were kept in rural paddy cultivation in order to avoid Malay encroachment into the British rubber plantations and tin industry. This way, the Chinese and Indians were also kept politically subordinate.

The laws and policy on the special rights position accorded to Malays is argued to have framed all political, economic and social issues in purely ethnic terms and has entrenched Malays, Chinese and Indians as homogenous groups, when they have 'never been homogenous, often rent by economic, regional and other divisions' (Mah, 1985). The policy was said to have caused resentment and a rift between Malays and non-Malays which led to the 'racial' riots of 13<sup>th</sup> May 1969, framed as 'racial' by the Alliance government though it has also been recently uncovered as a 'political' *coup d'état* (Kua, 2008).

The riots led to a further legal entrenchment of racial and ethnic ideology, where the post-colonial Alliance government strengthened the special rights programme in the form of the 1970 New Economic Policy (NEP) and in constitutional amendments (where clause (4) was added to *Article 10* of the Malaysian Constitution allowing Parliament to pass any law prohibiting the questioning of 'any matter, right, status, position, privilege, sovereignty or prerogative' protected under the special position clause *Article 153*). Hickling wrote that, Article 153 is 'so entrenched in the constitution that it has become impossible of discussion...Whether this gag upon discussion will work to a tolerance and acceptance of Article 153 remains to be seen. Fires long suppressed can...erupt with sudden and devastating fury' (Suffian, et al, 1978).

On 25<sup>th</sup> November 2007, when an 'Indian' demonstration suddenly erupted, 'in defiance of a police ban, a court restraining order and repeated official warnings', the reported 50,000 Malaysian Indian protestors claimed 'perceived injustice and racism' in Malaysian law and politics (Bunnell et al, 2010). This strangely reflected what Professor Hickling warned 30 years before of 'suppressed fires'. As 'the constitution had effectively institutionalised communalism as the state ideology' and

‘the basic provisions of “juridical equality” had to be compromised’ (Kua, 2008), this led to a marginalization of non-Malay groups in Malaysia, especially the socio-economically weak Malaysian Indian proletariat group.

With ethnic identity clearly entrenched in the constitution, the law, development policy and politics, this paper argues that the Malaysian Indian group has framed its grievances as both an ‘ethnic minority right’ for instance claiming racial discrimination and racial inequality, and as a ‘human rights’ violation, claiming class-based discrimination and social inequality. Collective action framing in social movements, as explained by Snow and Benford (1986, 2000) is an activity of ‘meaning construction’, where frames are used to render events as ‘meaningful’, for example where ‘problems’ are diagnosed using an ‘injustice frame’ in order to mobilize the group. In this framing process, collective identity construction becomes crucial, because they not only link individuals and groups, they also ‘proffer, buttress, and embellish’ identities (Snow & Benford, 2000). As Vanhala (2009) found, ‘a group’s collective action frames and the way it creates meaning and purpose defines, and in turn is defined by its collective identity.’

The phenomenon of using the ‘Indian’ identity as well as the class-based identity to create meaning and frame ‘injustice’, and the way the ‘rights’ and other legal rhetoric defines the Malaysian Indian identity, will be briefly examined by analysing the grievances exposed in the discourses, official and unofficial statements and political rhetoric, by various Malaysian Indian non-governmental organizations (NGOs), mobilizing both the ‘proletariat’ Tamil plantation group, and the more educated Indian middle class.

Although Malaysian Indian grievances have been extremely diverse, without any coherence or single leadership, Bunnell et al (2010), contend that the ‘Hindraf’ (Hindu Rights Action Force) rally (a coalition of NGOs) in 2007, brought together Malaysian Indians ‘for all kinds of individual and collective reasons – ranging from plantation poverty and evictions, temple demolitions, “body-snatching” by Muslim religious authorities, detention without trial under the Emergency Ordinance for alleged criminal offences, police violence and the death of youths in custody and the Kampung Medan ethnic violence’, a mob attack on Indians in the poor housing estate of Kampung Medan in 2001 (Wilford, 2008; Nagarajan, 2004) to ‘lack of places in local public universities and discrimination in public sector employment and promotions’.

**PANEL V: MARGINALISED COMMUNITIES**

While the diverse set of grievances all flow from discriminatory laws, policies and politics in Malaysia, there is a general division in the framing of grievances, as some groups like the Hindraf called for race-based or religion-based rights ('Indian' or 'Hindu' because of the temple demolitions), while others, especially NGOs formed by the Indian middle class, articulate the same or similar grievances as being 'class-based' (Jain, 2009). Dr. Jeyakumar Devaraj (2007), an Indian Member of Parliament and member of the Socialist Party of Malaysia (PSM) who won in the March 2008 general election, states that the Hindraf ethnic-based strategy is misguided, as it will not overcome racial discrimination. Hindraf he states demands for the cessation of the *bumiputera* policy, affirmative action policies for Indians and monetary compensation from the British government (referring to the petition to the Queen of England seeking one million pounds 'for the pain, suffering, humiliation, discrimination and continuous colonisation suffered by each and every Indian and their ancestors in Malaya be awarded to each and every living Malaysian of Indian origin. (Claim no. HQ07X02977 dated 30 August 2007)' (Jain, 2009). The Indians he stresses are not just facing 'racial discrimination' but 'economic discrimination' and lists grievances associated with workers in general, such as low wages, restrictive and pro-management labour laws, etc.

The grievances that have been articulated are the same or similar, but the way it is framed differs. What seems united though is that they both use legal frames calling for an end to 'discrimination' whether it is ethnic-based or economic-based. This was clearly shown in the spate of evictions of former plantation workers, as it has been a major grievance of the Tamil proletariat group, where nearly 300,000 Malaysian Indians have been forcibly displaced and relocated in urban squatter settlements since 1980 (Govindasamy, 2010). This paper will examine three cases of eviction of plantation workers that occurred between 2003 and 2011.

The first of these cases is Kamiri Estate, in the state of Perak, where in 1999, fifty-six estate workers, were retrenched by Guthrie Corporation and given the legal minimum compensation of almost RM 10,000 (Govindasamy, 2010; Jeyakumar, 2003). The workers requested alternative housing as part of the retrenchment and appealed to the government to negotiate a settlement. In early 2003, Guthrie obtained a court injunction to evict and in October 2003, the Ipoh High Court ruled in favour of Guthrie. An NGO called JERIT (*Jawatankuasa Jaringan Rakyat Tertindas* or Oppressed People's Network) began to assist the estate workers by providing them with legal information and mobilized the group, which gathered in front of the state Chief Minister's office, and later staged a demonstration in front of Guthrie's headquarters in Kuala Lumpur (Govindasamy,

2010; Jeyakumar, 2003). When state assembly members declared that the government had no legal basis for acquiring private land for housing purposes, JERIT quoted *Section 3, Perak State Land Acquisition Act (Act 486)* that stated clearly, the government could intervene in the matter. Despite the court judgement, Guthrie was unable to physically evict the workers, due to the rights-based advocacy by JERIT, and the demonstrations, which gave wide publicity to the matter, and provided the estate workers the confidence and negotiation skills needed.

The second case is that of Bukit Jelutong estate, located in Shah Alam, Selangor, where in 1997, estate workers of Guthrie were retrenched and offered compensation of RM 330 per year of service and option to purchase a low-cost flat for RM 25,000. The compensation amount being insufficient to purchase even the low-cost flat, the workers were unable to leave. On 6<sup>th</sup> June 2002, Guthrie obtained an ex-parte order from the Shah Alam High Court for vacant possession. Guthrie only served the order on the workers on 26<sup>th</sup> June 2002, and proceeded to demolish their houses within an hour (when the legal requirement was 14 days of notice) (Jeyakumar, 2002). The workers finally filed for an injunction to stop the demolition, but lost their case, and on appeal in 2003, the Court of Appeal, rejected the workers' application for a stay order with costs. The NGO called Aliran commented that 'the judges never asked about the plight of the estate workers, never questioned the illegal demolitions and never talked about shelter, suffering and poverty' (Aliran, 2003, July 19).

In the case of Bukit Jalil estate, in Selangor, in 2011, the Kuala Lumpur City Council (DBKL) attempted to use the Emergency Ordinance to evict forty-one Malaysian Indian families. Both PSM and Hindraf came to support the case, taken up by another NGO called Lawyers for Liberty. While PSM leaders stressed on the 'natural justice' and 'inhumane treatment' accorded to former estate workers (Vinod, 2011, May 10), Hindraf declared it to be an 'ethnic cleansing' to eliminate Indians. Nevertheless, Malay lawyer, Fadhiah Fikri, spoke of the court as 'the last bastion for the common people to seek justice' and later reprimanded the court for taking 'the government's side' (Vinod, 2011, August 10). The three NGOs assisted the workers in filing a suit and providing support in terms of publicizing the issue through an advocacy of 'rights' and staging a small demonstration in front of the courthouse. Though the High Court and Court of Appeal dismissed the plea of the Bukit Jalil estate workers, the NGOs had pledged to 'take the struggles to the streets' and even appealed to the Prime Minister of Malaysia. This finally caught the attention of the Malaysian Indian Congress, who intervened to negotiate with DBKL, and to date, the eviction has been put on hold (Vinod, 2011, August 18).

In a preliminary examination of the eviction cases, it can be argued that the law is a useful political tool and strategy for marginalized groups. Although litigation has largely been unsuccessful, the publicity and the awareness of 'rights' that it creates, seems to mobilize the Malaysian Indian group, and provide an avenue to make claims and even the bargaining position. The legal mobilization here is seen to be between the 'courthouse door' and the court domain. As Hilson (2001) wrote, if there are no laws on standing and judicial receptivity, movement actors are unlikely to get justice in the courts. The Malaysian cases on eviction seem to point that the judiciary is not receptive to the argument of the estate workers. However, though litigation has been unsuccessful, the publicity and awareness that it provides seems to mobilize the group, and use advocacy and 'right' based rhetoric to gain a better bargaining position.

## **Conclusion**

This paper concludes that by examining the mobilization of Malaysian Indians, using legal mobilization theory, it is shown that the law has been instrumental in the construction of their identity and in the framing of their grievances. Malaysian Indians are a diverse and complex ethno-cultural minority group in Malaysia, with a 'layered identity' that seems to both divide as well as unite the group. Though the group has been plagued with class divisions since colonial times, the grievances that have appeared in post-colonial Malaysia, of legal discrimination and inequality, seems to have united the group, albeit on a situational basis. The legal framing of grievances shows that the law has been a fundamental tool in mobilizing the group, even when used with multiple frames, such as discrimination based on 'ethnic' grounds or 'class' grounds. This paper proposes that a further examination is needed in order to explore to what extent the law has been used as an effective political tool to gain more leverage in an ethnic-based political system. Though a preliminary overview of cases seems to show that legal strategy both outside and inside the courtroom has created awareness and provides a better bargaining position for the weak, a further study of the law as a political tool is needed. As this paper is an excerpt of an ongoing doctoral study of the legal mobilization of Malaysian Indians, further empirical accounts currently being conducted, hopes to provide more answers in a future publication. Nevertheless, the conclusion at this stage seems to point out that by studying the law as a culture, and even as a 'language' as pointed out by Susan Gooding (1994), the 'law serves neither simply as a tool for oppression nor as a strategy for resistance, but as both and much more'. (5157 words)



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