

# Disempowered “Heroes”: Political Agency of Foreign Domestic Workers in East and Southeast Asia

Written by Annelies Cooper

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ANNELIES COOPER, JUL 6 2011

Migrants have come to fill an essential role in the global economy, yet at the same time states are problematizing immigration as a challenge to its security, sovereignty, economy, and social fabric. States with high levels of outward migration celebrate their emigrants as the “new heroes” for the profits they send to their home state, yet in the destination country these heroes are the most disposable, demonized and alienated workers. Migration studies have developed importance within the social sciences and humanities over the past couple decades within the discourse of globalization. The notion of globalization as the destruction of nation-state borders to foster free mobility of capital, labour and technologies increasingly is challenged in light of the political anti-immigration backlash. However, migrant labour cannot be eliminated, as its contribution to developed as well as developing economies becomes cemented. As argued by Saskia Sassen (1988) migrant labour plays a peculiar role in the processes of capitalist development in the context of globalization of capital and reproduction of capitalism. The migrant worker is imported to fulfill a specific need of industrial economies, which is to provide a cheaper, docile, flexible labour force (Cohen, 2006). Capitalism’s need to expand demands a pool of available labour to take part in the mode of production. The vulnerability of migrant labour contributes an anti-cyclical force against capitalism’s contradictions, thus contributing to the reproduction of capitalism. Migrants themselves are thus needed economically but unwanted, “undesirable aliens” (Ong, 2006) socially and politically. The economic inclusion in society they enjoy is limited and bound under the immigration policies and exclusionary citizenship definitions outlined by the sovereign state of destination. The migrant’s enjoyment of rights in the destination is precarious and controlled by the institutions of citizenship, migration law, employment requirements, and national security.

More and more women are taking part in global labour migration, predominantly in the industry of care. There is a new “international division of reproductive labour” (Parreñas, 2000) in which traditionally unpaid female labour in the home is replaced by foreign workers. This international division of reproductive labour is formed by the economic, political and social forces of globalization of capital and labour. The women themselves serve as commodified exports for their home state and are objects of securitized control for the destination state. The occupational position of migrant domestic workers[1] has peculiarities which distinguish them from the general population of unskilled migrant labour. Their role is in a sense unseen. They work in private spaces to fill the demand for reproductive labour which has increased as the middle class work force becomes increasingly feminized. Exploitation by employers reaches a new dimension for the worker who straddles the public-private spatial dichotomy. The ability to control aspects of the worker’s personal lives to an intimate degree can violate the female migrant’s rights as a human, a woman, and a worker. The isolation of the migrant domestic worker from the public sphere creates new forms of worker exploitation, and of particular concern, acts as a barrier between the workers themselves and between workers and organizations in support of their interests. Freedom of association may be limited institutionally, but “ability of association” is blocked by the specific context of the foreign maid. Since migrant labour fills a demand for a type of worker from which a higher level of exploitation and control is possible, the achievement of rights within the country may reduce the level of their usefulness to capital and their very necessity in the destination countries.

Foreign domestic maids do not have the rights of citizens, have limited rights as temporary workers which are tenuous at best, and the few protective regulations of their rights are difficult to regulate. As a global phenomena

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which transcends borders, who is responsible for protecting the rights of migrant workers? This paper aims to explore the structures and relationships in place which perpetuate the political and social marginalization of foreign domestic caregivers in East and Southeast Asia. I wish to approach the situation of foreign domestic workers from a perspective which will encompass the positioning of the foreign migrant caregivers within globalization and macroeconomic imperatives, their particular role in East and Southeast Asian destination states and their barriers to agency at the household micro-level. By analyzing the various levels and actors involved in the migration of women to perform domestic care-giving, this paper will recognize the complexity of this growing trend and the complexity of forces which keep foreign domestic workers as social and political outsiders. The central research question I am seeking to answer is how do institutional, social, and macro and micro economic level forces manifest politically to perpetuate the marginalized structural positioning of foreign domestic workers? How does this structural position and relation to the state and employers create multiple barriers to the achievement of rights and protection, and the social processes and relationships which allow political agency and foster class struggle? Additionally, whose interests are served, and how, from the political marginalization of foreign domestic workers? To examine in what way migrant women can be protected, and under whose direction, various economic issues which propel individual women into migration and the international political-legal apparatuses surrounding their status must be explored in depth.

The essay will begin by outlining the dramatic growth in migration in East and Southeast Asia, and more specifically the growth in demand for migrant reproductive labour. The substantial increase in flows of migration in the region in recent decades has coincided with the rapid development of the newly industrialized “Asian Tiger” economies, such as Hong Kong, Singapore, Taiwan, and Malaysia. Simultaneously, states such as the Philippines and Indonesia have lagged far behind in development. These states have undergone great increases in emigration of its nationals all over the world, but increasingly within the region. Sending states<sup>[2]</sup> in East and Southeast Asia have advocated migration as a development and growth strategy, as migrants send a significant amount of their earnings back to the home country as remittances. Thus for the weaker economies in the region, this creates a significant economic interest in maintaining emigration (Cohen, 2006; Lan, 2005; Ong, 2006). These economic relations drive the motivation to emigrate, and thus are the starting point of the process of migrant maid’s disempowerment.

Next, the essay will outline the context of institutions which enable emigration in sending states and set boundaries for immigrants in receiving states play a major role in delineating the boundaries of agency for migrant caregivers. The role of state-led emigration schemes in promoting emigration as an honourable pursuit and the cultivation of a culture of migration is explored. The culture of migration promoted by sending states for economic measures permit the absence of sufficient, sustainable employment in the home state. Meanwhile, the sending state has limited administrative ability over its patriots once they have emigrated out of the country. Sending states are caught between maintaining diplomatic relationships with receiving states to maintain migration and promoting the protection and rights of their citizens abroad in those very states. On the receiving state’s end, the demand for migrant reproductive labour incited these destination states to open borders to migrants despite reluctance of the integration of low-skilled workers in their advancing economies. Immigration policies, labour laws, civil society, and socio-cultural discourses on family exert control over foreign domestic workers. The bondage of contract labour delineates a narrow definition of legality for migrants, rendering their residence, employment, rights, and safety vulnerable to the employers.

After establishing these pressures of migration and the delineations of migrant domestic workers in the region, the paper will delineate various strategies and discourses employed to address migrant issues, particularly the strategies of universal human rights and protectionist practices. This section questions whether the institutions and organizations involved in the migratory process have the capability, interest, and jurisdiction to empower migrant workers. Sending states have limited ability to protect migrant workers once migrant workers enter the sovereignty of the receiving state and desire to maintain good diplomatic relation (Oishi 2005, 178-9). There is a tension between the migrant sending state’s interests in protecting its emigrant labour and maintaining its labour export industry. Protections and rights enshrinements of migrant workers contradict the desirability of migrant labour as docile, subservient, and cheap. Added protections for Filipino migrant workers has in some cases seen the demand for Filipino migrants decrease as the supply of migrants from Indonesia, Sri Lanka, and other predominantly migrant sending states has risen (Elias, 2008; Lan, 2006). Regional, international, and bilateral agreements have been employed to protect migrant workers, but the regulation of these is difficult, and the agreements may not go far

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enough. Efforts from non-government organizations (NGOs) and trade unions have been made to advocate migrant worker's interests. There have been examples of successful action taken to protect migrants in terms of labour rights by trade unions and human rights by NGOs. However, the location of domestic workers in the private domain limits the accessibility of migrant domestic workers, and much of the work done for them by these organizations has been on a case by case basis. Whether migrant domestic workers can be involved with trade union activities is questionable, as contract level employees in a private domestic work sphere, maids and caregivers do not fit the traditional union mold. Since migrant maids and caregivers in Southeast Asia are temporary and often participate in cyclical migration, they are global transients, which may also contribute to the lack of migrant domestic specific organization within NGOs and trade unions.

As workers in the industry of reproductive labour there are added barriers to forming relationships of the political struggle of migrants as a unique class of labour in which the security of migrant domestic worker's rights as a group could be advocated. However, the literature on the subject is often focused in terms of either globalization and the macroeconomic framework of migration in general, such as Sassen (1988) and Cohen (2005), or in ethnographic accounts with a strong focus on the household level, such as Pei-Chia Lan's account of migrant domestics in Taiwan (2006). This literature on migrant rights presents many debates on the most effective approach for empowering migrants. Migrant rights are mainly framed in terms of either human rights, labour rights, citizenship rights, rights, or case studies of non-government organization (NGO) activities related to migrants. A focus on one approach, or migrant rights in general without a full picture of the worker's context overlooks some of the marginalizing forces, many of which are specific to the occupational peculiarities of domestic work. Feminist theorists have taken interest in migrant domestic workers and their rights. These discussions are provide a valuable analysis within the larger political and economic processes driving feminized migration.

In approaching debates on enabling rights for migrant labour, there is a challenge of which rights-based approach is appropriate. Within the rights-based discourse on migrants in Southeast Asia, the effectiveness and moral appropriateness of the application of universal human rights to Asian states is in question. Universal human rights approaches are questioned based on the “Asian values” debate and the imposition of Western values, as well as critiques of international regimes for human rights which are inherently exclusionary and historically contingent (Lloyd 2007). Human rights may grant recognition of the humanity of migrant domestic workers, but would there be recognition of political and economic rights? Cultural ethical approaches which emphasize protection of women as a duty have been advanced by some scholars such as Aihwa Ong, to secure better protection of migrant rights. Some NGOs have used this angle to pressure governments to take care of migrant domestics as their “duty” to protect women. However, even if these attempts are highly successful in achieving improved employment standards and reducing employer abuse for FDWs, it must be explored whether this approach brings meaningful political empowerment to the migrant women. The discourse of a duty to protect women may enforce patriarchal biases in which women's decisions are made for them by others, and the individual agency is overlooked.

The case of foreign domestic caregivers in Southeast Asia demonstrates how the intentional or unintentional exploitation of a group of people for economic motivations is made possible by multiple forces of control. State institutions, market imperatives, and particular spatial, social, and economic contexts isolate of the foreign domestic worker from conditions which enable political empowerment and agency. The goal of this project is to lay out the conditions which render migrant maids a distinct class of labour in a transnational labour economy from which unique barriers to political agency manifest. A focus on political empowerment and agency will demonstrate how migrant domestics are denied certain freedoms as outsiders as non-citizens, outsiders as lower class, and outsiders as women. These exclusions deny them the ability to represent themselves politically to assert a more equal and less vulnerable economic and social position in the destination country.

Social conditions which allow the potential for class struggle and political assertions of rights are suppressed by a structure of multiple forces for foreign domestic workers in Southeast Asia. The conditions of macroeconomic causes of migration, state laws, exclusion from citizenship, weak civil society, occupational position and vulnerability to employer, and social prejudices and attitudes create a context in which migrant women in domestic work have limited options and freedoms within their occupation. The possibility of political agency and demanding rights for themselves is very limited; however approaches to improving the lot of foreign domestic workers must consider the

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empowerment of the individual. Universalistic approaches to rights have serious limitations which can tend to perpetuate the silencing of the foreign domestic workers, speaking for them rather than hearing them speak themselves. Therefore, in addressing the issues of foreign domestic workers, the entire context structural exclusions from political agency must be considered to empower this group of migrants as a distinct and unique labour force.

## 2.0 Economic Imperatives

### 2.1 Intra-regional Migration in East and Southeast Asia

The migration of women in East and Southeast Asia as domestic workers cannot be explained solely by poverty and lack of employment at home, but rather from broader economic imperatives within the region as it advances within the global economy. As the global economy becomes increasingly wide-reaching and capital expands into new geographical spaces and zones of production, some theorists describe a new international division of labour in which the stages of production are divided and distributed across borders. Cheah (2006) describes the process and incentives of transnational corporations to separate stages of production: “technological innovations enabled the decomposition of productive processes. At the same time the high costs of labor and infrastructure in the established industrial centres mean that the valorization of capital could be greatly improved by transferring production elsewhere” (p.183). Outsourcing manufacturing to developing states allowed for a greater accumulation of capital by firms controlled in the developed world. This outsourcing of labour intensive work to developing states demonstrates one aspect of the international division of labour. Numerous East and Southeast Asian states welcomed the foreign investment and adopted export-oriented industrialization as a state-led economic development strategy (Cheah, 2006) but success was uneven. This general system of economic restructuring brought rapid growth in certain Asian nations, while others in the region lagged behind and experienced a lowering of living standards. This international division of labour brought about economic imperatives for increased migration in the region: a demand to promote emigration in low growth nations, and a demand for new low-wage labour imports in high growth nations.

Migrant labour fills a demand in developed industrial and post-industrial nations for low-wage, labour intensive labour, often called the “three D” occupations, meaning “dirty, dangerous and demanding” (Cheah, 2006, p.186). Sassen (1988) observes the demand of mobile labour as an aspect of the consolidation of world capitalist economy and globalization of capital. Based on world systems theory in which the most advanced nations, or the core, extract resources from peripheral, less developed states in reaction to the demands of capitalism’s need for lower cost resources and labour, she builds a theory of the increasing mobility of labour from peripheral to core nations (Sassen, 1988). Labour migration from the periphery to the core is a product of capitalism’s global reach, in which non-capitalist subsistence systems in the periphery are displaced and the people turn to wage labor. The incorporation of capitalism into pre-capitalist system commodifies land, displacing landless peasants and creating a reserve of labour for the market. When foreign investment is channeled into manufacturing, Sassen (1988) argues this displacement is induced by the recruitment of women into jobs, “women who under other conditions would not have entered wage employment” (p.19). When foreign investment is directed towards commercial agriculture, small farms, a traditional mode of subsistence, are eclipsed due to lack of competitive viability against large industrial farms. A lack of jobs motivates “voluntary” labor migrations to the developed states with labour shortages.

These observations can explain the increasing international migrations from and within Southeast Asia. According to Sassen, “the export of jobs from the developed countries to the developing countries in the form of export processing zones, has brought about new domestic and international labor flows *within* the developing countries” (1998, p.34). The expansion of capitalism in high growth, rapidly industrialized Asian states generates demand for low wage labour as nationals “[upgrade] to even higher-value-added forms of production based on sophisticated scientific technology, skills, and knowledge” (Cheah, 2006, 184). As Cheah demonstrates through the example of Singapore, higher-value-added technology is adopted as industries grow, and lower-value, labour intensive manufacturing is subcontracted to less developed nations. This leaves a labour shortage for “lower-end industrial and domestic labour” (2006, p.186), which is filled by migrants willing to work at a lower cost than nationals. These labour resources can be extracted from lower developed and suffering economies in the region, such as from the Philippines and Indonesia. The Asian “Tigers” (newly industrialized economies or NIEs in the region including Taiwan, Hong Kong, Korea, and Singapore) which experienced rapid growth have taken on a role in which they are no longer

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peripheral. Export-oriented industrialization replaced import substitution strategies in the early 1960s for these states (Oishi, 2005) with greater success than the migrant sending states of the Philippines and Indonesia. The successful development of Hong Kong, Singapore, Taiwan and South Korea elevated the states from net exporters of labour to net importers (Lan, 2006, p.30). Their economies have advanced from dependence on labour intensive, low return export production to higher value work which elevates them to an intermediate level, in world-systems terms, which imports work from the West (in the form of sophisticated manufacturing) and increasingly imports labour from the peripheral states to perform less desirable labour.

In stark contrast to the Asian Tigers, the Philippines and Indonesia were unsuccessful in cultivating industrialized, high growth economies. In the 1960s the International Monetary Fund (IMF) and World Bank imposed structural adjustment programs requiring the transition to export oriented production, privatization of industry, trade and financial liberalization and promotion of foreign investment as conditions for the receivership of loans (Oishi; 2005). The impact of these measures was a forced economic reliance on the export of commodities. The Philippines and other low growth states in the region were “economically crippled by low commodity prices, high balance of payment deficits, large foreign debt, and massive unemployment” (Cheah; 2006; p.185). The Philippines moved to export oriented production later than the Asian Tiger economies, beginning in the 1960s and accelerating under the Marcos regime late in the decade. By 1967 policies allowing greater foreign investment and the establishment of its first export processing zone helped drive the economy to export-oriented production. By 1997 there were thirty-five export processing zones which employed over 450,000 workers (Oishi; 2005; p.148). However, export oriented production did not bring the same magnitude of profits for the Philippines or Indonesia. Exports for Singapore in 1990 were \$19.774 billion, yet in the Philippines and Indonesia exports amounted to \$1.574 billion and \$157 million respectively. The gap in the profitability of exports led to uneven living standards in the region (Cheah, 2006). In 1994, per capita income was \$950 in the Philippines, \$880 in Indonesia, and in shocking contrast \$22,500 in Singapore (Cheah, 2006, p.185). Between 1980 and 1986 the income of employed workers in the Philippines declined by 27 percent for all industries in constant dollars, and earnings from agriculture dropped to a fifth of 1980 earnings (Cohen, 2006, p.171). In the same period, earnings per capita rose in the newly industrialized Asian countries, meaning “alternative strategies of creating labour intensive export manufacturing are limited by competitor nations” (Cohen, 2006, p.172).

This uneven development has been cited by Cohen (2006) and Cheah (2006) as the primary driver for the increased migration in Southeast and East Asia. In response to their lower economic growth and a global demand for cheap labour, the Philippines pioneered a model of labour exportation. This state became one of the largest exporters of labour to the global economy. Cohen attributes the growth in labor emigration of the Philippines to the decline of living standards and income in the state. While the Philippine’s labour power is exported all over the world, in the last decade the primary destinations have switched from North America and Western Europe to Asian destinations, with 41 percent flowing into East and Southeast Asia from 2001-2004 (Lan; 2006; p.46). This is attributed to the grossly uneven development and a growing gap in development in the region. Cheah argues that as the newly industrialized economies of Hong Kong, Singapore, Taiwan, and Malaysia increasingly

undergo a transformation of their workforce because of rapid industrialization, they experience a shortage of low-skilled manual labor. Because it is economically sounder for them to turn elsewhere for cheap sources of lower-end industrial and domestic labor, they begin to import migrant labor from their less-developed neighbors (2006; 186).

Thus this case of increasing intra-regional migration is an example of the globalization of labour in response to the demands of globalized capital accumulation.

## 2.2 Feminization of Migration

In her analysis of global movements of capital and labour, Sassen connects the move to export-oriented development with the increased feminized emigration from low growth developing regions, including Southeast Asia. She observes a great increase in emigration from Southeast Asia and the Caribbean which coincides with states whose proportion of production is largely directed for export. Her findings indicate explanatory “push factors” for emigration from the lower growth Southeast Asian states. To explain migration flows, she argues that while the introduction of export-oriented manufacturing and specialized export processing zones can create jobs, the increase of wage labour has

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displaced traditional structures of production through the feminization of labour. Export-oriented industrialization demands a large supply of labour, meaning its introduction in developing countries “has drawn new segments of the population into the labor force: mostly young women who under conditions of a more gradual industrialization would not have entered the labor force in so massive and sudden a way” (Sassen, 1988, p. 97). Wage labour in export processing zones and manufacturing centres are highly dominated by women (Oishi, 2005, p.147). The rural to urban migration of these women employed in factories displaces them from communities and traditional unpaid reproductive labour at home. Young women are perceived to be docile, obedient, accepting of low wages, unlikely to unionize and dexterous for factory work, rendering them the ideal factory workers (Oishi, 2005, p.147; Cheah, 2006, p.188). However, research shows their employment is short run with an average of five year tenure (Sassen; 1988; p.116). Once laid off, with little chance of reemployment, a return home to former lifestyles is undesirable and move downward in socio-economic class. This leaves emigration as one of the few options for reentering the work force for one group of states in Southeast/East Asia (the Philippines, Indonesia, and Sri Lanka) which have had less success in industrialization as the high growth “Asian Tigers”.

Migration has become increasingly feminized in conjunction with the feminization of wage labour. However, female migrants are dominating industries which are typically female, such as nursing, textile manufacturing and domestic care whereas men remain in industries such as construction and manual unskilled labour. Domestic care is one of the largest industries relying on female migration. Parreñas explains the migration of Third World women to perform domestic labour as the “international division of reproductive labour” within the process of globalization. The international division of labour is “a transnational division of labor that is shaped simultaneously by global capitalism, gender inequality in the sending country, and gender inequality in the receiving country. This division of labor determines the migration and entrance into domestic service of women” (Parreñas, 2000, p. 569). The increasing involvement of women in productive wage labour does not dissolve gender roles which bind women to reproductive labour. This reproductive labour is outsourced to women of lower classes, which has increasingly meant migrant women. In concordance with Sassen’s observations of the feminization of labour coinciding with export-oriented industrialization, the feminization of labour has occurred rapidly not only in the lower growth Southeast Asian states but also in the NIEs of the Asian Tigers. The feminization of labour in the rapidly industrialized economies indeed expands opportunities for intra-regional migration of women in East and Southeast Asia.

The feminization of the workforce has been a strategic aspect of the advancement and industrialization policies in NIEs. While lower class women are brought into the workforce by labour-intensive manufacturing industry and export processing zones, shifts of economies to capital-intensive structuring bring ever more middle class and married women into the workforce in service sectors and lighter production sectors. The movement of more middle class women and married women into wage labour disrupts the ability of women to fulfill gendered familial reproductive labour. In these states, traditional gender roles and cultural emphasis on family unity remain entrenched in social norms. Thus despite the increased feminization of labour, there has not been a decreased feminization of reproductive labour. Instead, the work within the home remains in the home through delegated to live-in domestic workers.

Singapore, Hong Kong, Malaysia, and Taiwan have undergone similar processes of economic development, feminization of labour, and import of foreign domestic workers. Oishi (2005) claims the processes of these countries constitute a model of NIEs. The use of migrant domestic workers is a significant element of the state industrialization strategy (p.32). In Hong Kong between 1961 and 1991 the participation of women in the labour force rose by 10.8 percent, while in the same period male participation in the workforce dropped by 11.2 percent (Oishi, 2005, p.24). As Hong Kong’s industrial production boomed in the 1960s and 1970s, women made up 49 percent of the workforce by 1981, with 85 percent of these women working in factories (Oishi, 2005, p.24). As the economy shifted towards service-oriented work, large numbers of middle class women entered the work force as well, creating increasing numbers of households unable to maintain unpaid reproductive labour at home. The quantity of foreign domestic workers in Hong Kong rose from 70,000 to 232,000 from 1990 to 2001, with the overwhelming majority of these workers coming from the Philippines (Oishi, 2005, p.27). Singapore followed a similar pattern. In 1980 44.3 percent of women were participants in the workforce, up from 21.6 percent in 1957 (Oishi, 2005, p.28). Married women struggled to enter the workforce as the supply local and Malaysian domestic workers diminished. In 1978, the government opened its borders to new nationalities of foreign domestic workers. This freed housewives to work

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outside of home, with 40.3 percent of married women working in the labour force as opposed to 22.1 percent in 1975 (Oishi, 2005, p.27-28). By 2002, the state had one of the highest amount of households employing foreign domestic workers in the world, rising from 6.7 percent in 1990 to 14.3 percent of households in 2002 (Oishi, 2005, p.31).

Lan describes the economic drive to encourage middle class women in Taiwan to enter the workforce and the growth of FDW employment. As in other export-oriented industrialization economies, Taiwan employed large numbers of women in labour intensive manufacturing industries. In the 1990s Taiwan went through economic restructuring and “upgrading”. Since the mid 1980s, the growth in the service sector surpassed manufacturing and consequently by 2004, 47 percent of women over age fifteen participate in wage labour (Lan, 2006, p.35). Lan (2006) describes employers of migrant caregivers as mainly comprising the new middle class, first generation career women, professionals or small to medium sized business owners who have “built their wealth on the integration of an export economy into the capitalist world system”(p.9). Other high growth states in the region such as Malaysia and South Korea follow similar patterns leading to the use of foreign domestic workers, but these three examples show sufficiently how development drives the feminization labour and subsequently a high demand for reproductive labour. The majority of foreign domestic workers employed in NIEs come from Southeast Asia. The highest numbers of these workers are arriving from the Philippines, but increasingly the market share domination is decreasing with rising numbers of emigration flows from Indonesia and Vietnam as well as Sri Lanka. Thus the uneven development of the region has led to increased amounts of intra-regional migratory flows that are becoming entrenched in the economic, social, and political structures of the region.

### 3. 0 Institutional actors, interests and structural marginalization of FDWS

These migration patterns cannot be explained solely by economic demand. The involvement of institutional actors in driving the emigration flows will be the focus of the proceeding discussion in hopes of connecting how institutions have responded to the economic imperatives driving migration. In the transnational exchange of labour, state institutions are active agents in facilitating the flow of migrants. The nature in which states have responded to imperatives driving migration has placed the migrant in a context in which once abroad, she is bound by various restrictions on her freedom. The political and legal migration frameworks of sending and receiving countries structurally embed migrant labour into the margins of society socially, politically and economically. This section will first outline how sending state governments benefit from high emigration flows through the relief domestic economic pressures, unemployment, and the extraction of remittances from wages earned abroad. Sending states have become directly and indirectly involved, in pushing their local labour to work abroad. The move to “labour export policies” is a commodification of the sending state’s national labour force. Emigrants are celebrated by sending states as the “new heroes” of the nation, promoting a state culture of migration entrenched in its social fabric. This section will also explore how the sending state is caught between maintaining emigration for its own interests, and its limited capacity to protect the individual interests of emigrants in order to preserve the culture of migration.

Secondly, the institutions of migrant receiving states are active agents in controlling the flows of migrants and the migrants themselves once they have landed in the destination. Migrant receiving states in East/Southeast Asia have only in recent decades opened their borders to allow the entry of low-skilled migrants in response to increased demand for unskilled labour as they push the human capital advancement of national citizens for their knowledge-based. The next goal of this section is to illustrate how destination states have developed a restrictive immigration framework strategically as part of their post-industrialized economic development. The policies related to low-skilled immigrants are intended to limit their integration into society and exert control over their residency. The destination state’s economic advancements privilege local citizens and national economies at the expense of the migrant worker who bears the unwanted work under precarious legality. Through human capital development, high growth states encourage local women to enter the workforce, but the state’s response to subsequent reproductive labour demands is to present foreign domestic workers as an affordable and attractive option. This section will also explore how state institutions exert added forces of control on FDWs as workers in the reproductive labour sphere.

#### 3.1 Sending States

The increased flow of low-skilled migrants in the East/Southeast Asian region is guided by both sending and

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receiving states which use migration as part of a development strategy to relieve human capital tensions. Lan (2006) argues that “the direct involvement of the government in promoting international [e]migration is a major feature that distinguishes the Asian system from its counterparts in North America and Western Europe” (p.31). Emigration is used to relieve pressures of unemployment and underdevelopment at home, and foreign currency can be generated for the state in the form of remittances sent home from migrants (Parreñas, 2001). The Philippines has successfully exploited emigration for these economic purposes; a model which a growing number of states have emulated. The Philippines responded rapidly to global labour shortages in 1974 implementing an official “labour export policy” (Lan, 2006, p.45), initially a temporary measure to ease unemployment and underemployment. Emigration rates have continued to increase since 1974, making the labour export policy “permanently temporary” (Lan, 2006) and a major component of employment and the domestic economy. However, migration as development strategy of the labour sending state has not proved a viable long term source for sustainable development. Without the cultivation of a domestic industry that provides employment at home which can provide a standard of living equal or greater than that gained through migration, the cycle of migration and overseas contract labour will perpetuate. The Philippines’ economic growth in 1991 showed a rise in labour exportation rather than a decrease (Parreñas, 2001). The Philippines has become heavily reliant on migrant remittances to sustain its economy as the second largest source of foreign currency, estimated to value at 6 billion dollars per year (Karp, 1995 cited in Parreñas, 2001, p.52-3). If out-migration were eliminated, it is anticipated that economic stability would be severely compromised, with an estimated 40 percent increase in the unemployment rate (Castles and Miller, 1998 cited by Parreñas, 2001).

State led emigration schemes in Asian migrant sending states commodify its surplus labour power as an export akin to manufactured products. The state cultivates a culture of migration by glorifying migrant workers as the “new heroes” of the nation (Lan, 2006; Parreñas, 2001). The label “heroes” celebrates and socially legitimizes the high emigration rates, portraying migration as a system which promotes national development. This portrayal overlooks endemic and systematic abuses of migrant domestic workers overseas and the state’s inability to protect their overseas workers. The image of the migrant as hero is diametrically opposed to the state’s capitalization of migrant labour as commodity to the home state. While individual decision making underlies the choice to migrate, much of the migrant’s personal, political, and economic agency is stripped at migration. The stripping of agency makes the migrant profitable to receiving states and allow the sending state to market their labour abroad. The label “martyr” would be more appropriate, as migrants give up much of their rights and livelihoods to the transnational trade of labour. Salazar Parreñas (2001) argues that migrants “are commodities of the state whose production generates surplus value for both sending and receiving nations at the cost of their abject vulnerabilities as nationless citizens” (2001, p.54).

Sending states have an interest in glorifying migration to maintain the transnational labour movement. However, the transnational flow of labour requires at least some degree of protection for migrants, which the sending state has little ability to enforce across borders of sovereign states. The problem of protection is exacerbated for foreign domestic workers whose work takes place in private homes outside of public space and the state’s purview. The notorious and highly public case of Flor Contemplacion revealed the shortcomings of the Philippine state in regards to maintaining an apparatus of protection for its expatriates. Contemplacion was a Filipina maid in Singapore convicted of murdering another Filipina migrant domestic worker named Delia Maga and the child under Maga’s care. Contemplacion was detained for two years without trial, held over a confession which was believed to have been coerced, and eventually was sentenced her to execution. The press, migrant organizations and popular support for Contemplacion rallied around her innocence, based on evidence of violence against Maga which appeared unfeasible for a woman of Contemplacion’s size. The Philippines lacked the political bargaining power to gain influence in the legal proceedings for Contemplacion, due to the economic influence of Singapore in relation to the lesser power of the Philippines (Parreñas, 2001). Contemplacion’s imprisonment and hanging in Singapore became an international symbol of human rights violation, and in the Philippines encapsulated the image of the migrant hero turned martyr (Hilsdon, 2000). President Ramos of the Philippines and his government faced a national protest movement for Contemplacion’s innocence, blaming government inaction on the case and calling for the government’s diplomatic relations with Singapore to cease. Under pressure from citizen groups and facing a loss of credibility, Ramos acknowledged national responsibility for the fiasco due to negligent ministers and officials, and set up a Philippine inquiry into the evidence (Hilsdon, 2000).



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This case represents the possibilities of citizen driven popular movements on behalf of migrants. The citizen's movement had an effect that outlasted the Contemplacion case, as seen in Ramos's quick actions taken in response to a woman in the United Arab Emirates charged with murder shortly after the Contemplacion case. Pressures from civilian groups shifted their focus from isolated cases of individual migrant issues to lobbying for effective mechanisms for protection of workers abroad. However, sending state protective measures are dependent on the cooperation of receiving states and so the effectiveness of the sending government protective endeavors is limited. International treaties and conventions put forth by the UN and the International Labour Organization (ILO) have not been ratified by receiving states. Bilateral agreements with migrant receiving states are an alternative international legal mechanism for sending states to attempt to protect its workers abroad, however, the reluctance of receiving states is evident. Although the Philippines had nine bilateral agreements on migrant workers by 2006, none of them were with major destination states (Cheah, 2006). Bilateral agreements put into place after the Contemplacion case were criticized for not going far enough in protecting women once in the destination state. While the sending state has interests in pressuring receiving states of migrants to sign these agreements, this conflicts with economic factors that require friendly diplomatic relations. For example, the Contemplacion case ended with a resuming of diplomacy with Singapore as soon as possible due to the importance of the Philippine's economic ties with Singapore. The Philippines received at the time in 1995 US\$63.2 million in investments from Singapore (*Philippine Graphic* 5, 44, April 10 1995:11; cited by Hilsdon, 2000). According to Oishi (2005), the weak leverage of sending states to destination governments is due to the reality that labour migration is “basically a buyer's market” (p. 61) which leaves an imbalance of political power between the two states: “a sending state that responds too forcefully against a receiving state can easily find its immigration quota cut, and lose ‘job orders’ to other sending states” (Oishi; 2005; p.62). Additionally, diplomatic disagreements between states can jeopardize the migrant market, as exemplified by Taiwan's temporary suspension of Filipino labour recruitment over the Philippines cut off of air links and referral to Taiwan as a province of the People's republic of China (Lan, 2006, p.40-41). This use of “foreign labour diplomacy”[3] demonstrates the imbalance of power between sending and receiving states.

## 3.2 Receiving states

The rapid economic growth of SE Asian NIEs and their transformation to information and knowledge-based industrial centres was made possible by the strong guidance of the state. State directed growth involves not only the strong hand of government in economic issues such as promoting industrialization, recruiting foreign investment, and managing trade; but it also includes shaping the state's social and labour capital into a resource base that possesses the characteristics and skills necessary for the particular economic goals. The state's interest in forming specific human capital resources to accommodate economic intentions directly impacts migration policies and delineations of citizenship. East and Southeast Asian states have only in recent decades begun to open borders to migrant workers. There is a general low social acceptance of immigration within the receiving states due to strong nationalism. However, as capitalism has advanced in these states, the profitability of importing migrants for a cheap solution to low-skill labour has pushed the NIEs to open their borders to migrants within a framework of securitization and control.

For example, Singapore's economic development and prosperity has been highly calculated and directed by strong state management. The state has steered the economy towards achieving a higher foothold in the global production chain in which Singapore can stand as a “node of a global knowledge economy” (Ong, 2006, p.178). In order to achieve this global economic position, Ong (2006) argues that Singapore's politics have been reduced “to identifying problems and making technical interventions in order to shape human conduct” (p.178). The state has driven human capital to become highly skilled in technical and entrepreneurial talents through higher education, the recruitment of foreign students, and importing highly skilled foreign workers. However, the development of high skilled and educated human capital coincides with a need to import lower skilled workers for undesirable employment in manufacturing, services, construction, and domestic work. This has resulted in a tiered migration policy which can be summed as skilled Western migrants receive access to privileges of citizens, while the least skilled are subject to the most control and exclusion of state resources and rights of citizens.

The demand for migrant domestic workers is partially a product of state directed social policies which control human capital. The state has actively attempted to promote the institution of the family and raise birth rates at a time when

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marriage and birth rates are in decline. At the same time as encouraging women to enter the workforce, conventional attitudes on the family prevail, encouraging the maintenance of a cultural-moral familial obligation. Taiwan, Singapore, Malaysia and Hong Kong have promoted family expansion and feminization of labour while failing to fill the reproductive labour demands caused by these changes in core family composition. The demand for child and elder care and maintenance of the home is not supported by any social provisions for families, such as public day care and elder care. Ong (2006) describes these interactions between norms, economic demands for paid reproductive labour, and state regulation of migration, as a discourse of the “moral economy of female migration” (p.199). Though indirectly through labour recruitment agencies and NGOs, the state exploits moral family obligations to sustain the institution of the family while maintaining a strong, feminized workforce. Despite growing numbers of couples living outside of the extended family home, households remain burdened with the task of maintaining the family without public assistance. It is the private responsibility of families to provide care for elders and children, and the “filial piety” of the wife and daughter-in-law. In Singapore, the state’s attempts to curb this trend include creating dating and courtship services and instating a “baby bonus” program including tax incentives to encourage couples to have more children (Brooks, 2006; Ong, 2006). Paradoxically, tiered immigration policies also create additional demands for hired reproductive labour with the recruitment of high skilled immigrants and their families. The state encourages skilled immigrants to take citizenship and permanent residence in the state, which includes family reunification as an incentive to taking citizenship. The care of these families may often fall on hired foreign maids. In Hong Kong, the affordability and accessibility of domestic workers is publicized by the state as an incentive to attract high skilled foreign labour.

The appeal of employing migrant women for reproductive labour is the relative affordability of FDWs without state supported social services provided. Additionally, hiring a FDW has become a status rite of the middle class in the region. The state of immigration has encouraged its women to enter the workforce as an indicator and facilitator of economic advancement, and simultaneously promoted the persistence of traditional familial structures through a pseudo hands-off discourse on state involvement in family. The state has not only absolved itself of responsibility of establishing public daycare and elder care facilities to fill new reproductive labour demands, but it has also entrenched the appeal of FDWs as an integral aspect of upward class mobility. Domestic helpers are considered necessary to maintain a high standard of living for two income households. In the destination states in this region “[h]aving a maid at home is a social right, like access to good schools, housing, and shopping malls, and leisure, all entitlements of the middle-classes bent on buying their way to the good life” (Ong, 2006, p.201-202). Thus a culture of immigrant domestic help is nurtured by the status rite of burgeoning economies bent on becoming “global cities” to transfer reproductive work to low-cost imported women. The state benefits from the use of foreign workers by transferring responsibility and costs of family labour to households. The receiving state reaps additional financial benefits through a maid “levy” on employers who house a foreign domestic worker. In Singapore in 1991 the levy was S\$300 per worker, which amounted to \$234 million per year to the state (Brooks, 2006, 21).

Migration within Asia is characterized by tiered immigration laws in the receiving states. Asia differs from North American and European government policies whose immigration policies allow the possibility for permanent residency and sometimes citizenship for all immigrants. In E/SE Asia, unskilled labour is admitted exclusively on temporary schemes, which prevent settling and family reunification. While Japan and until recently South Korea have prohibited authorized legal entry of unskilled labour through a “backdoor” policy scheme, the major destinations for FDWs such as Singapore, Malaysia, Hong Kong and Taiwan use a “front door” scheme allowing unskilled migrants to acquire temporary stay through employment contracts. For these states, “in forming policies on unskilled migration, governments are especially determined to control their labour force while at the same time providing local employers with a pool of flexible labour to assist them cope with market fluctuations and pressures” (Piper and Yamanaki, 2008, p. 168). The regulations for the tier of unskilled migrants can be characterized by industry quotas on the number of unskilled migrants allowed entry and employment, requisite pregnancy tests and denial of residency rights to migrants who marry local citizens, a levy and a security bond employers are required to pay for hiring a foreign labourer, and the exclusion from access to social welfare services (Piper and Yamanaki, 2008). This regulatory regime demonstrates what Ong (2006) categorizes as the “securitization” of the nation against unwanted foreigners. This legal framework of tiered laws and securitization of low-skilled workers adds to their status as not only commodities, but potentially dangerous and undesirable commodities. Their labour is desired and needed within a transnational labour economy, yet in the perspective of destination states, low-skilled migrants carry with them

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potential costs to the security of the nation. This is an attitude that is transferred downwards to the household level, in which it has become common practice for employers to seize the passport and work papers of migrants on their arrival as a disincentive for running away, which Ong (2006) argues effectively confines her in the household. Additionally, employers may withhold a portion of the maid’s wage as “forced savings” until the completion of the contract. This is justified as a “deposit” from the maid against her running away. In Taiwan, forced savings amounts to between one-fifth and one-third of the maid’s monthly wage (Lan, 2006).

Contract based migration stunts the agency of migrants by weighting the bargaining power greatly to the employer’s favor, eliminating job mobility and flexibility and limiting employment rights. Contractual employment allows employers an exponentially greater degree of control over migrants than they would have over local labour. Lan’s (2006) investigation of migrant employment in Taiwan describes the “bondage of contract labour” which distinguishes migrant workers from local labour as a willingness to grant employers greater flexibility and control over the pace and conditions of work (p.54). Because migrants are eager to retain employment in order to pay off debt and make a profit, employers can put greater demands on migrants than would be acceptable to national workers. The obligation of repayment of migration fees and employers practicing forced savings encourages migrants to tolerate conditions which local labour would not, due to their desire to make enough money for return after the fees. And though employers report that the cost of hiring a migrant after associated fees, boarding and food costs are covered is equal to the cost of local labour, the contractual binding of migrants render employers better able to control and greater bargaining power over the migrant worker (Lan, 2006, p.54). Employers can coerce migrant workers into employment conditions which local workers would not accept, such as long hours, substandard conditions, and withholding employment benefits such as paid leave and vacation, and health insurance (Lan, 2006).

Foreign domestic workers are permitted temporary stay in E/SE Asian states excluding Japan on the basis of these employment contracts. Although work permits provide legal status for temporary residence in the country, the legal status “does not entail any rights as it does not automatically entail recognition by national labour laws. In fact, domestic work is widely excluded from national labour legislation,” (Piper and Yamanaka, 2008, p.169). Generally, domestic labour is not recognized as “a legitimate form of labour” under national employment and labour standards laws, creating a host of labour issues for domestic workers including wages determined by the free market with no minimum wage standard, no requirements to grant the workers with rest days, and no regulations regarding work hours (Cheah, 2006; Elias, 2008). Because of the location of the work within a home, it is regarded as impractical to regulate the work of FDWs in the same manner as a workplace. Singapore regards the employment of a foreign worker in a household as a “private contract” between worker and employer, which is not only impractical to regulate but also outside of the state’s purview as it would cross a boundary of interference in household management (Cheah, 2006)<sup>[4]</sup>. The inconsistencies of this logic, in which a state has promoted the conditions leading to this household demand for foreign reproductive labour, are clear. The migrant domestic worker is caught in a state of contradictions in which their labour is marketed as a valuable commodity abroad: they are exported for their labour, and once in the destination state and their place of employment, their labour is regarded as something other than “labour” as such. Their work, replacing the work of wives and mothers is a transfer of familial duty to a woman brought in as “part of the family” and it is regarded as unnecessary and even unseemly to place it under the political-legal schema of labour. Thus the migrant domestic worker has no labour rights or venue of employment protection. Their legal residence is also contingent on the contract; they may not find new employment within the state if they leave the employer they are tied to. Termination of the employment contract forces the women to return to their home state or avoid deportation by remaining in the state as an undocumented, “illegal” resident. Employers therefore may engage in common practices of abuse. Hong Kong is an exception where FDWs are allowed some degree of employment protection, as well as a two week window to find new employment after leaving their contract. However, migrant maids in Hong Kong are still within the uneven employer-employee power dynamic.

The financial burden of migration supports the bondage of contract labour for FDWs in two ways. It discourages abandonment of the contract due to dependence on the wage to pay off the debt used to facilitate migration. According to Lan (2006), the heavy fees FDWs must pay the Taiwanese government and recruitment agencies is often paid via down payment, or unpaid and taken from the domestic worker’s monthly wage. Workers wages within the first year of the contract are withheld for “forced savings” in order to repay placement fees and discourage the worker from running away. Thus a three year employment is “divided into three stages: the first year is to pay the

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debt, the second year is to balance the costs, and the third year finally nets a profit for the worker” (Lan, 2006, p.52). The workers feel they cannot leave their employment since that would render them unable to repay their debts and receive their full wages, especially in the first year of work. The financial burden not only binds the FDW to their employer but also exacerbates the power of the employer over the worker. They are financially bound to remain in their contract, but also bound to obey their employer and their conditions of employment due to fear that the employer will terminate the contract if they were to be considered poor workers.

## 4.0 Foreign Domestic Workers: Rights Approaches vs. Agency

FDWs are bound by the constraints of transnational economic and political biases against migrants, and gender and racial social biases against live-in caregivers and maids. The choice to migrate for better economic opportunities despite the multiple levels of discrimination and marginalization is made in the context of the lack of alternative opportunities in the states of origin. To expect these women to not migrate in order to protect themselves is not a viable solution for ensuring their quality of life. In the face of increased regional migration, scholars have considered various rights based solutions to securing the livelihoods of transnational women. However, much of the rights based discourse does not go far enough in assisting migrant women in achieving the political agency and social capital necessary to express rights appeals for themselves. Given the context of the multiple economic, political, and social barriers faced by FDWs, solutions rooted in labour rights, women’s rights, citizenship rights, migrant worker’s rights, and economic rights are evoked. Each of these categorical expressions of rights can be demanded and incremental solutions obtained, but taken one by one these rights may not suffice in establishing an empowered position for FDWs.

The debate in literature on FDWs rights can largely be divided into advocates for universal human rights or universal citizenship and critics of this strategy. Criticisms of universal rights solutions are based either on practical issues of enforcement within a weak international regime and ineffectiveness in a state system, or based on contestations against the conceptual application of human rights and universalism. Human rights can never be “universal” in the construction of agreed upon inalienable rights, implying a transposition of Western values on Asian cultures. Additionally for FDWs, gender bias and the binary between public and private space have been largely overlooked in narrow definitions of human rights. These debates bring insights to the problems of securing the welfare of migrant women and take many forms, particularly from feminists and labour points of view. Furthermore, within this debate of rights it must be questioned how the proposed rights frameworks might be enforced given the transnational movement of the migrants across national borders, within the judicial domain of the nation state. The contradictions between migrant women caregiver’s rights and the interests of sending and receiving states, employers, organized labour, and even civil society create a complex constellation of issues and forces rallied against them which obstruct political self expression. This portion of the paper will argue that migrant domestic workers require the ability to politically associate as a distinct and unique labour force within a space of political expression prior to a meaningful realization of any of these categories of rights.

### 4.1 Obstacles to the Empowerment of FDWs

The term empowerment will be employed to represent the set of necessary conditions that will allow migrant domestics the ability to politically advance their circumstance as humans, workers, and women within their transnational livelihoods. According to Piper (2008), “empowerment refers to the expansion of choice and agency for those who have less power in society” which is achieved by “altering power relations in multiple spheres through a range of means” (p.251). For migrant maids, the “expansion of choice and agency” means enhancing their ability to assert political claims to rights as workers, women, and humans. Their limited choice and agency is created and sustained by their relationships to multiple political, legal, economic, and cultural systems. Their inability to enhance and negotiate the terms of their employment, living conditions, foreign residency, and rights as non-citizens can only be addressed through transformation of the unequal relationships with the state, employers, and transnational economic processes. One central problem in empowering migrant women is that the sought after goals of empowerment are directly opposed to what makes them desirable as workers and profitable as a labour commodity. The ideal foreign domestic worker is docile and cheap. Employers make an effort to discourage and limit the exposure of their worker to other overseas contract workers. The vulnerability of temporary contract labour and non-

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citizenship ensure a great deal of obedience and submission from the worker, and increase the tolerance for abuses by their employer. To lobby for wage increases, citizenship or residential rights, employment flexibility and mobility is to request the abolishment of all factors which make the FDW valuable and desirable to employers.

The nationalized labour market of migrant maids provide an example of the contradictions between empowering this contingent of the transnational labour force and the nation's female migrant caregivers' value as a transnational labour force. The growing strength of non-governmental organizations for migrant rights in the Philippines and Filipina rights awareness and wider organization at home and abroad has coincided with a dramatic decrease in the proportion Filipina women employed in domestic work (Piper, 2008). In Taiwan, the Filipina contingent of FDWs fell a shocking 65 percent in four years, from 83 percent in 1998 to 18 percent in 2002 (Piper, 2004). During the period of decline of Filipina maids in Taiwan, Indonesian maids in Taiwan grew from 7,761 in 1998 to 81,490 in just four years to 2002 (Lan, 2006). The growth of state protectionism and NGO advocacy in support of Filipina maids devalued them on the buyer's market of international labour as their bargaining power for better wages increased and gained some success. Relative to Filipina maids who have secured higher wages and rest days, Vietnamese and Indonesian FDWs became a better “buy”; more work can be extracted from them for less money. According to Lan, “[t]he racialized boundaries across migrant groups...demarcate hierarchical differences in their status and rights” (Lan; 2006; p.78). Labour brokers in Taiwan advise employers on differential treatment of foreign maids based on nationality. While it is generally considered acceptable to request to an Indonesian maid that they relinquish their day off or stipulate in their employment contract no days off will be given, the general rule is Filipina maids will not accept such treatment.

The contractual binding of FDWs discourages migrant domestics from association. Limitations to migrants associating include their temporary and tenuous legal stay in the country. Employers are advised to discourage or mitigate the possibilities of their domestic worker from socializing “too much” with other domestic workers. Allowing this association is considered dangerous, that it may lead to experienced migrants planting ideas of running away, demanding certain “privileges” such as rest days and limited hours to the work day, and better wages (Cheah, 2006; Lan, 2006). Thus FDWs are confined inside the household in which association is simply not possible. Even for migrants who do demand rest days, largely Filipina workers who are more rights aware, the ideas of associating politically to demand rights can be outweighed by the possible consequences of termination of employment, and subsequently deportation and in all likelihood left with substantial debts to pay off, or a negligible proportion of their income as profit. The temporary stay of workers makes association or “causing trouble” not worth it when the contract of one to two years can be endured. However, FDWs are unlikely to escape their conditions after completion of one contract. Most migrant women enter into cyclical migrations, in which return home will result in another departure with a new temporary contract, so that just the Philippine's labour export policies, migrant domestic workers are “permanently temporary”.

The migrant worker straddles the public/private binary in which they remain unseen in public, but as hired labour should be considered to be performing public work. According to Hilsdon (2000), human rights have not been enforced in the domestic sphere as “many of the threats to women's lives, such as endemic violence, occur in the ‘private’ non-governmental sphere left untouched by the International Covenant on Civil and Political Rights” (p.181). As workers located in the “private” sphere, the advancements made by labour in modern capitalism for the protection and rights of workers are not granted to the foreign domestic worker: “while the ‘public-private’ dualism of modern capitalism restricts national labour laws in Singapore from protecting domestic workers' conditions, international human rights and labour conventions also fail to protect domestic workers while they are underpinned by this dualism” (Hilsdon; 2000; p.182). The ability to join unions is impeded by numerous factors. In Malaysia and Indonesia domestic workers are prohibited from joining unions by law (Ford, 2004). Furthermore, although some migrant unions have been formed in Hong Kong (Ford, 2004), for FDWs the confinement in the home creates labour conditions unlike other workplaces, in which workers can associate and through collective bargaining power such as forming unions make demands for better working conditions. For domestic workers, migrants may only have contact with the employer family, the labour recruitment agency and their national embassy (Hilsdon, 2000). The refusal of states to impose standard work hours for domestic workers under the justification of domestic and reproductive labour the domain of the family and to be negotiated by the family means work hours can be extended to the full day. In Singapore, for example, the law requires employers only to provide their domestic workers with “adequate

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nutrition” and eight hours of sleep per day (Hilsdon; 2000), meaning that the work day may be as long as sixteen hours per day, leaving no free time for the worker to leave for socializing, community and network building, or attending union and other organizational meetings. Additionally, as domestic work is unrecognized as “work” under labour laws, domestics have not been included into established unions (Piper, 2008). Migrants must depend on organizations set up by citizens due to the restrictions to the formation of organizations. In Malaysia, no NGOs or groups have been set up by migrants themselves and in Singapore, due to the requirement of organization registration, migrant organizations established by solely non-citizens is “unheard of” (Piper, 2008, p.259).

## 4.2 Universal Human Rights Approach: Practical Issues

The issues of FDWs are often framed in terms of a deficiency of rights. As mentioned, FDWs face a deficiency of various categories of rights: human rights, citizenship rights, labour rights, and economic rights to name a few. Since citizenship and labour rights must be transmitted by the state, many scholars and activists turn to a discourse of universal human rights to ground the appeal for migrant workers’ protection and freedom. However, we must be wary of solutions in which institutional and legal declarations are constructed to delineate what rights a human should be morally universally guaranteed. Declarations of rights are institutional claims for ideals of human equal treatment but may not be guaranteed to be reflected in enforcement. Enforcement requires institutions. However, there are various national and international institutions with conflicting jurisdictions, and separate interests which may be implicated in the application of rights guarantees. It is impossible to identify a single responsible institution to enforce human rights for migrants as international institutions must rely on national government cooperation. For national governments sovereignty and border enforcement, economic growth and stability, and political security take priority over the rights to equal treatment of migrants. Another practical danger in rights-based solutions is granting minor protections or incremental, minimal improvements to livelihoods of the marginalized without granting the ability of the marginalized to speak and act for themselves in a political manner. Enshrinement of political rights in theory does not guarantee marginalized individuals and groups will be enabled to express these rights. This problem is applicable to migrant workers whose lack of citizenship can obstruct access to the protection of rights by the destination state.

Benhabib (2004) declares the international human rights regime exists as “a set of overlapping global and regional regimes that encompass human rights treaties as well as customary international law or international ‘soft law’” (p.7) which acts upon the sovereign state pertaining to transnational migrations by ensuring through the United Nations Declaration of Human Rights (UN 1948) to enforce the right to freedom of movement across borders and the right to nationality. However, the freedom to move across borders in application is the “right to emigrate” and leave a state, but not a “right to immigrate” (Benhabib, 2004, p.11). The international regime for migration in other words sees a crime against humanity in a state binding people inside its borders, but it cannot intervene in the sovereign right of a state’s ability to refuse entry of “alien” persons. This international regime of human rights demonstrates the bare minimum criteria for human security and decency. Piper (2004) elaborates on the problematic nature of the institutions which construct and are meant to enforce universal human rights for transnational migrant workers, namely the nation-state governments as well as international organizations such as the United Nations, the International Labour Organization, and the International Organization for Migration. The rights of migrants have been obstructed by a lack of political will from nation states for micro- and macro-level self interests. Attempts at international cooperation on migrant rights, such as the 1990 United Nations Convention on the Rights of All Migrants and their Families (ICMR) have failed to be ratified by major migrant receiving states due to the fact that these attempts are riddled with the conflicting norms of international human rights and state sovereignty. The lack of an effective international regime to guarantee migrant rights because “[u]ltimately, the ‘rights of states’ clearly prevail over the ‘rights of migrants’” (Piper, 2004, p.81).

Thus in the face of international deadlock between institutions, the agency of migrants is overshadowed by attempts at relief of “crimes against humanity”. In Southeast and East Asian states, the destination states refuse to ratify treaties, bilateral and regional agreements relating to migrant freedoms. The weak and sometimes exclusionary civil society constricts the ability of migrants to politically voice objections to their condition. Even in cases where migrants in theory have the freedom to protest and organize politically in civil society, the conditions of their employment and residence render them unable to do so. Unskilled overseas contract labourers in Southeast/East Asia are particularly dissuaded from political action due to the precarious legitimacy of their residence in the host

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country. Their security of employment and residence is at stake, predisposing the workers to docility, obedience and tolerance of the conditions of their marginalization. A migrant's participation in political demonstrations and protests would put their employment and legality at stake. This demonstrates the problematic aspect of the receiving states' condition of contract labour. These conditions set up by receiving states as prerequisites for allowing the entry of non-citizens are boundaries of exclusion from the rights granted under the legal apparatus of citizenship. There is a dilemma in demanding sovereign states to grant political rights to a group of people they have systematically and intentionally kept on the margins of society, as their marginalization ensures they retain the characteristics which render them valuable to that society. The state's system of migrant exclusion runs counter to claims for political rights for migrants. This is in part why the expression of rights for migrants must be delivered by the migrants themselves. The sovereign state under the Westphalian state system is better challenged from within its borders from the “abject” and marginalized (Nyers, 2003) than pressures from individual sovereign states, or international regime built of composite sovereign states. The states have an interest in maintaining control of the “alien” non-citizen, and keeping the “right to immigrate”, as presented by Benhabib (2004), unrealized.

## 4.3 Universal Human Rights Approach: Theoretical Issues

Theoretically, human rights approaches are appealing for addressing migrant issues because the concept promises universal application derived from a foundation in the singular condition of being human. By employing the basic understanding of humanity to encompass necessary inalienable conditions to all persons, the concept promises to transcend difference via a normative moral standard of the equality of human dignity. However, the concept of universality is inherently exclusionary of the particular. Particular struggles of women and temporary migrants in general as well as migrant domestic workers specifically cannot be universalized because they are not universally applicable. Enshrining universal human rights appeases the basic necessities of humanity on the surface, yet the particular needs of specific groups, such as women and non-citizens, are excluded from this rights framework. Feminist critiques of human rights discourse make a significant contribution to the questions surrounding the application of human rights to FDWs, as these theories contextualize the notion of “universal” rights within the definition of how rights constructed to define who constitutes the “human” and who is excluded in this process.

Moya Lloyd (2007) applies a feminist critical theory of human rights in “(Women's) Human Rights: Paradoxes and Possibilities”. Lloyd's scepticism of human rights is that the “universal” is in constant flux as a historically contingent concept. Thus human rights are constructed politically, and are inherently exclusionary to the particular. The construction of human rights keeps the “human as the foundation”, but a certain human “already known, already defined” (Lloyd, 2007, p. 94-95). In essence, Lloyd reveals that the subject of human rights is the “normative human” who conforms to the ideal of the political structures which have constructed it. The “human” at the basis of universal human rights is constructed with a male bias, as particular rights pertaining only to women are excluded. Lloyd notes that “women have distinctive rights that have yet to be acknowledged; indeed that cannot be acknowledged when the human is presumed to be male. When women claim human rights in such a setting, the universal is exposed as unrealized” (2007, p.97). So too does the migrant have specific rights that do not pertain to the universal human. This critical theory recognizes the tension between Western liberal ideals and cultural sensitivity. Asian states have resisted universalist human rights norms for being Western-centric and counter to “Asian values” which value the community and the family over the individual.

Working from Lloyd's critical theory of human rights, it can be explored how human rights discourse both fails to include specificity of women's rights, and how human rights in application can be thwarted by Asian states in a justification of cultural specificity. Attempts by the international human rights regime to implement rights for migrant workers have reflected state biases against women in that the treaties and conventions are framed in gender neutral language which does not take account specificity of women migrant's context. For example, the ILO has made advancements in establishing core labour standards which all workers should be granted, including enshrining trade unions as the primary voice for workers. By applying gender neutral language, a gender bias is assigned in that women migrant specific issues are not addressed, such as the state's exclusion of domestic work from the legislative designation of work and prohibitions against domestic worker's right to form unions (Elias, 2010; Ford, 2004). By failing to push the reconstruction of the household from a space of private life outside of state intervention, and rather a site of workplace and opportunity for human rights abuses, the ILO has failed to incorporate migrant women's

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rights into the fold of the international rights regime. In a case study of two NGOs and one trade union in Malaysia which actively support migrants, including female domestic workers, Elias (2008) describes the state's vocal resistance to universal rights, and suppressive mechanisms employed against civil society. She describes how the Malaysian government has suppressed human rights and labour activists with strategies such as requiring the registration of organized associations, refusing legitimacy of migrant based societies, and targeting migrant rights groups in order to expose undocumented workers. The Malaysian state views migration in terms of securitization and “illegality”, in which a space for migrant rights is not created. Additionally, Malaysia has taken official justifications of “Asian values” and anti-Western imperialism in order to reject human rights frameworks promoted by the West. Asian states as autonomous, sovereign nations have a right to claim cultural specificity and refuse the imposition of western norms whether it is for the preservation of their culture or the preservation of exploitation of foreign workers, creating a challenge to attempts by an international rights regime to establish universal norms. With the state as the primary agent of political-legal enshrinement of human rights, it is unlikely in this region to be quickly accepted by the state in terms of migrant political rights as cultural specificity is claimed by states as a strategy to override the discourse of human rights taken up by some NGOs. Elias's work contributes to the discussion as it recognizes broader context of the limitations of civil society as human rights must be articulated through the state's mandate for rights, the state's definitions of “worker” and “citizen”, and the narrow mandate of international treaties and bilateral agreements endorsed by the activist groups.

Lyons (2004) provides an account of the obstacles to migrant domestic activism in the context of Singapore. She utilizes a theory of “transnational feminist activism” which is obstructed by Singapore's authoritarian stance towards civil society. The ruling government imposes restrictions through the *Societies Act* such as required registration of organizations of more than ten people which are barred from participating in “political activities”, limited ability of foreign and transnational based organizations from accreditation, and the formation of umbrella organizations to oversee the broad category of women's groups. These organizations work within the boundaries of the state's acceptable activities and issues, including avoiding “out of bounds” or “off-limits” subjects. Class based social divisions and specifically migrant domestic workers as a distinct social class fall under the “off-limits” subject list. This impedes the ability of migrant-oriented organizations to address the issues FDWs face. Additionally, the umbrella women's organization, Association for Women's Action and Research (AWARE) comprises mainly of middle class women, whose women's liberation of increased participation in the workforce is enabled by the employment of migrant domestic workers[5]. She presents a bleak picture for migrant empowerment, utilizing examples of activism whose intentions may not be realized. However, within this literature there is a lack of discussion of the migrant domestic worker as an individual with her own agency. In terms of the activist groups, an essential question is to what extent are migrants themselves involved. And if organizations are “for” migrants, rather than organized by migrants, how well are migrant's issues and claims represented?

## 4.4 Human Rights, Discourse, Non-governmental Organizations and FDW Empowerment

The human rights paradigm assumes “private, autonomous beings as holders of human rights” (Lloyd; 2007; p.100), in which “by treating violence in individualist terms... consideration is denied to the political and economic structures which produce the conditions and violations of women's rights in the first place” (p.100-101). That is, in viewing particular cases of abuse suffered by FDW, such as harassment, sexual violence, or domestic violence, as violations against a victim's individual humanity, the structural conditions which enabled the violence to occur remain out of focus. Individualizing abuses against migrants, women, and FDWs as a distinct group depoliticizes the economic and political structures of oppression against migrant women. We can see evidence of treatment of abuses against FDWs as isolated incidents in the work of NGOs, trade unions and church groups in receiving states (Elias, 2008; Elias, 2010; Lyons, 2004; Piper, 2008). In Singapore, the Catholic Church established the Commission for Migrant and Itinerant People, which has worked with the Ministry of Manpower on running workshops entitled “How to establish a Harmonious Working Relationship with your Foreign Domestic Helper”, these two groups “operate in partnership with the Singaporean government to address the question of individual treatment of domestic workers by employers rather than dealing with broader questions of labour law, immigration law, or citizenship rights” (Lyons, 2004, p.159). The limited agency and migrant domestic workers' inability to freely associate and actively make demands of the state can be justified by such programs said to exist to create of a “healthy” environment for FDWs. The discourse needs to turn towards how the context of the FDW keeps many of the potential abuses silenced, but additionally the



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many other legalized and thus “within the system” abuses and the uneven power relationship created by the temporary contract labour system. While there is importance in the work that is done, the isolated case by case treatment of abuses does not address the multifaceted structural oppression of migrant domestic labour. Furthermore, NGOs and church groups perpetuate the structure by filling this role of a haven and location of support to female migrants. The work relieves pressures on the state to address runaways and the issue of undocumented migrants. In part, ad hoc support for migrant workers legitimizes structures of oppression[6] by individualizing issues rather than establishing a critical discourse of the processes which disempower FDWs. Instead the focus on isolated incidents of physical or sexual abuse which are brought forward or complaints of a particular nature such as wage holding overlook the larger picture. Doubtlessly, these cases are not uncommon, and are horrific violations against these women, but this discourse cannot be solely focused on these incidents, as broader structures of marginalization are at stake.

While universal human rights can draw attention to the needs of equal treatment of those on the margins of society, the use of this framework can potentially exacerbate the silencing of the marginalized. The discourse of human rights is often framed in terms of moral obligations to “protect”. A significant challenge to the protection of FDW’s rights is the public/private binary which articulates human rights issues as issues of the public sphere, whereas the private sphere is outside of the contention of human rights. The UN Declaration of Human Rights envisions rights abuses located in the public sphere, committed primarily by states (Lloyd, 2007). The binary is challenged by workers in private homes, yet in the privacy of a home, what the families do in one’s own home is perceived in our minds as apart from issues of universality or human rights. But in what way can universalistic rights enter the private sphere without intrusive acts of the state and without employing paternalism? Protection within the private sphere exacerbates the problem of paternalistic state and international community which so often is turned towards both women and ethnic minorities. In the case of migrant maids, they inhabit both of these categories, and thus become the “objects” of rights, infantilized and removed of agency and subjectivity. The question of whose responsibility to protect the migrant domestic worker is indeed a serious problem in the face of migrant domestic worker’s complex context; however, a discourse of protection does little to empower the worker directly. So long as the migrant woman is the object of debates rather than a participant, she continues to be silenced and without agency. This protectionism is an extension of the paternalism the migrant maid is already subject to under her employment in reproductive labour. Immigrants, refugees, trafficked and undocumented migrants are often discussed in protectionist terms; however for women and for employees of reproductive labour this discourse is amplified (Ong, 2006).

The non-governmental sector is the most promising venue for the empowerment of migrant maids. There are a number of migrant activist groups around the world, including Southeast and East Asia where the numbers are estimated to be growing to 300 migrant related NGOs in the region (Ford, 2004). This numbers comprises NGOs which represent multiple variations of different ethnic, nationality, religious and class compositions. Many have conflicting purposes, from church run training programs, to women’s groups organized by middle-class women, to radical anti-capitalist feminist organizations. However, for effective migrant empowerment, the character and nature of the organizations must be one in which migrants are active participants rather than passive objects of protection. As discussed above, migrant-oriented organizations which employ protectionist discourse can be problematic in silencing migrants themselves. For example, in the midst of the Flor Contemplacion crisis, NGOs in the Philippines rallied their government to react to the abuse of FDWs. Their calls to suspend migration were responded to by the state. The suspension resulted in a backlash from migrants themselves whose economic and mobility rights were denied, disrupting their livelihoods. Furthermore, some migrant-oriented NGOs reinforce the processes and norms of female reproductive labour migration by facilitating the process within the status quo by speaking for and on behalf of migrants rather than with them. Ong (2006) discusses the moral economic language put into discourse by NGOs to facilitate “bare life” of migrants. She argues “NGOs give moral value to bare life by defining the maids’ biological existence in relation to political space. NGOs thus gain power over the politically excluded and exercise the power to regulate, frame, and represent their interests” (p.210). Thus, NGO organizations which work “for” migrants contribute to disciplining FDWs to tolerate their conditions. Piper makes an important distinction between organizations which work on behalf of migrants, and migrant initiated and run organizations. A perfect example of the importance of this distinction is a Singapore church-based NGO which claims to help the maids “cope” using the Bible, discouraging “complaining” as anti-Biblical and alternatively encouraging forbearance (Ong, 2006). This

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discourse and interaction with migrants does nothing to encourage political agency or empowerment of FDWs, instead allowing the current marginalizing policies to exist. Blame is placed on the migrants for lack of tolerance and self discipline rather than focusing on oppressive policies and structures of exclusion. While migrant-run NGOs are rare and their establishment within the nation state can be repressed, self-organized migrant associations are “particularly effective” (Piper, 2008, p.260). For example, the Filipino NGO MIGRANTE International is a global alliance of overseas migrant organizations staffed by former migrants themselves which has been successful in garnering widespread grassroots supports and networking. According to Piper (2008), MIGRANTE “has been vital to organizing Filipino migrants on a large scale” (p. 265). These migrant run NGOs are expanding across borders and building stronger transnational networks fomenting a voice for migrants. However, it is essential to recognize that these must operate within the legal-political limits of a destination state’s civil society to access migrants themselves, a challenge especially for domestic workers confined in private space. Thus the importance of the migrant’s “ability of association” and ability to associate independently as a unique sector of labour is critical for migrant empowerment.

While the context of FDW exclusion in E/SE Asia is grim, there are beacons of hope as gradually migrant movements are taking shape across the globe. According to Nyers (2003), migrant activism contests citizenship boundaries and state nationalism by migrants “taking” a political voice to assert a political presence where political rights are denied. Despite the tremendous barriers to migrant maid organization in the Southeast and East Asian region, a small fraction of FDWs may bear the risk of speaking and “take” agency. Using a theoretical framework of critical cosmopolitanism, Nyers discusses how policies of immigration which are based on securitization of the sovereign state from foreigners are contested by political actions of migrants. His discussion focuses on refugees in the Western world, but this theoretical understanding can be applied on a wider scale to any category of migrant which is targeted for exclusion. Migrants are the “abject cosmopolitans” in which they exist in a transnational political and economic sphere that is one which transcends the domain of the state, yet they are “abject” members in that they become degraded, debased, silenced, and forced out of sight and sound. However, through migrant activism the abject migrant may interrupt this uneven balance of power. Movements for immigrants, refugees, and undocumented denizens which make the claim “no one is illegal” are making a claim against state apparatuses that target migrants as potential enemies that challenge state sovereignty as the basis on which states administer privilege and rights. The political objections of “abject cosmopolitans” are not appeals to a global citizenship and universality, but rather to challenge norms of citizenship and sovereign right to “transform the meaning and practice of citizenship from a ‘juridical status distributed (or not) by states’ to ‘a *practice* in which denizens, migrants, residents, and their allies hold states accountable for their definitions and distributions of goods, powers, rights, freedoms, privileges and justice” (Nyers, 2003, p.1076). Through self-organizing to raise debates on their exclusions from privileges, migrant movements challenge the basis of their exclusion and promote a rethinking of the notions of who has a right to raise a political voice.

This paper shows temporary contract based migrants in Asia are bound by securitization policies which prohibit their integration into society and political rights expression. Rather than existing as an object of securitization processes or an object of rights protectionism, migrants become “democratic taker[s]” (Nyers; 2003; p.1078), subjects in cosmopolitanism enabled to “constitute themselves as political agents under new terms, taking different positions in the social space than those in which they were previously positioned” (Ranciere, cited by Nyers; 2003; p. 1078). Any opportunities for FDWs to express objections to their political, economic and social context is an opportunity to reveal arbitrary exclusions and challenge non-citizen discrimination. By voicing objections, the migrant is able to assert herself as a political actor rather than a transnational object. Opportunities for FDWs to make these political expressions are significantly blocked by the context of their uneven relationship with varied forces economically, politically and socially. This is not to say it is impossible. Given the growing number of migrant related NGOs, support for FDWs is growing. However, it is essential for there to be growing inclusion of migrants in the organization rather than recipients of services from these organizations, and for FDWs to collectively raise a political objection to the very obstacles in place as deterrents to political action to disassemble the systematic discrimination and abuse of FDWs.

## 5.0 Conclusion

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This paper argues that the contradictions between FDW’s rights and the interests of states, employers and even civil society create a complex set of pressures preventing their access to political self expression. Some of these pressures are deep seated endemic factors, such as labour commodification, exclusionary citizenship and sovereignty, and gendered discrimination of reproductive labour. Other pressures can be targeted with policy solutions, such as abolishing temporary contract based immigration laws, establishing gendered language in international regimes for labour, human rights, and migration, inclusion of domestic care work under employment legislation and labour standards, strengthening civil society and opening it to migrants, and promoting economic development and job creation at home to relieve the pressure to emigrate in the first place. However, for migrant domestic workers to achieve the ability to politically associate as a distinct and unique labour force, the endemic conditions blocking their empowerment need to be addressed so that they can speak and act for themselves within a political space.

FDWs represent a particular contingent of transnational labour, with unique issues. As a group of workers transcending national borders they are denied the rights of others within their locations. Barriers of their non-citizenship, occupational position, and lower class status work against them within structures of migration to remove them from political agency and empowerment. Macroeconomic causes of migration and the push of migrant sending states perpetuate the need and social pressure of women in the Philippines, Indonesia, and other lower developed states to migrate. Once these women have migrated, apparatuses of the state such as exclusionary citizenship, temporary immigration schemes, as well as weak civil society, occupational position and vulnerability to employer, and social prejudices and attitudes all interact with one another and the migrant to perpetuate a marginalized position in which the FDW has no agency or voice.

Universal human rights language dominates the discourse and strategies to addressing migrant issues. However, these strategies encounter practical limitation due to an incoherence of what level of institution is responsible for ensuring migrant rights. A lack of ability of the sending state and international bodies and lack of will of the receiving states places pressure on the non-governmental sector which is often severely limited, as receiving state has considerable control over the abilities of these groups. Additionally NGOs which operate on behalf of migrants can tend to perpetuate the silencing of the foreign domestic workers, speaking for them rather than hearing them speak themselves. Approaches to improving the conditions of foreign domestic workers must consider the empowerment of the individual. Universalistic approaches to rights also have serious theoretical limitations which tend to exclude migrant women from the very definitions of universality and humanity. The possibility of political agency and demanding rights for themselves is very limited, yet it is necessary for a meaningful release of migrant domestics from systematic abuse and discrimination.

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[1] The term “domestic worker” in this paper refers to international immigrants employed in domestic (household) labour. They are live-in caregivers for children, elders and/or maids, living in the home of their employer. While many live-in caregivers have migrated internally within one state, the focus of this paper is foreign migrants. The terms migrant domestic worker, foreign domestic worker (FDW), migrant maid, and migrant live-in caregiver will be used interchangeably.

[2] “Sending state” or home state refers to states with predominantly outward migration (emigration); whereas “receiving state” or destination state refers to states with a majority of workers migrating inwards (immigration). In terms of this project, sending states are those which export high volumes of women working as domestic workers in other states, and receiving are those which import high volumes of foreign domestic workers.

[3] Lan (2006) p.39-41 utilizes the term “foreign labour diplomacy” to encapsulate Taiwan’s strategic exclusive opening of borders. Taiwan restricts entry of temporary contract migrants to migrants from the Philippine, Thailand, Indonesia, and Malaysia, excluding non-ASEAN states such as Sri Lanka and Bangladesh. Lan argues these decisions are made on the basis of cultural affinity and political-economic interests. These policies are particularly sensitive to sending state’s recognition of Taiwan as an independent nation from mainland China.

[4] See Elias, 2008, p. 292-291 and Lan; 2006. The ethnographical account of employers and social discourse of the migrant maid as considered “one of the family” is employed with regards to state interference in employment conditions is contradicted by discourses from the same actors which encourage and express mistrust, the need for boundaries, and the racial and class “othering” of the FDW such as fear of migrant sexual promiscuity and blame for sexually transmitted disease, and as potential “homewreckers”.

[5] A lack of middle class women’s support for migrant domestic caregivers can be seen across the region. Piper (2008; p. 263-4) discusses divisions between women’s organizations comprised of middle class women and women’s migrant associations support, and the lack of a feminist alliance that transcends class and overcomes the class divisions in Hong Kong, Malaysia, and Singapore.

[6] The structures of oppression being exclusion from citizenship, residency, exploitation of labour in exchange for levies and relief of reproductive labour pressures, etc. in the destination country as well as the sending state’s state-led emigration schemes promoting migration in the first place.

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*Written by: Annelies Cooper*  
*Written at: university of Regina*  
*Written for: Dr. Simon Glezos*  
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