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# BEYOND TRAFFICKING, AGENCY AND RIGHTS: A CAPABILITIES PERSPECTIVE ON FILIPINA EXPERIENCES OF DOMESTIC WORK IN PARIS AND HONG KONG

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### **Abstract**

Current analyses of trafficking in unskilled female migrant labor are dominated by the concepts of victimization, agency and rights. So far, however, such concepts have done more to legitimate receiving countries' border control protection than to protect the livelihood needs of these migrant workers. Drawing on the experiences of Filipina domestic workers in Paris and Hong Kong, this paper uses Nussbaum's Capabilities Approach to question the efficacy of the current anti-trafficking discourse

### **Introduction**

Traditionally, international anti-trafficking policies have concentrated on the protection of women trafficked, within prostitution. In recent decades, there has been much reported and published on the noticeable increase of the number of women from poor areas of the world who migrate to rich countries for domestic work, and their exploitation by employers and traffickers. In 2000, the UN Trafficking Protocol also recognized overseas domestic workers (ODWs) as unskilled female labor migrants vulnerable to slavery and similar practices.<sup>1</sup> Despite this wider knowledge base, the anti-trafficking principle of "rescuing, reintegrating and repatriating" the victim, continues to persist. Far from protecting the migrant worker and her livelihood needs, this victim-based approach continues to result instead in legitimizing more protection for receiving countries' borders (for example, Doezema, 2000; 2002). An emerging perspective underscoring migrant women's agency is producing a counter-approach that fights for ODWs' rights: not as victims, but as workers. These efforts, however, remain hampered by increasing inequality within the global economy and tightening immigration policies. From poor countries with very limited livelihood options, these migrant women choose overseas domestic work, often at the expense of their human rights. As migrants, they are outsiders whose rights are superseded by the rights of the sovereign, receiving-state, while unenforceable by the sending state (Stasiulis and Bakan,

1997). Consequently, the current rights approach has done little to change the historical course of anti-trafficking policy.

This paper employs Nussbaum's Capabilities Approach to tackle the limitations of the rights-based approach in responding to the situation of migrant domestic workers. Focusing on women domestic workers migrating from the Philippines, the paper shows how current polarized analyses of ODWs theoretically conflate agency with rights, and practically remain aloof to their subjects' needs for sustainable livelihoods. It then draws from Filipina experiences of domestic work in Paris and Hong Kong<sup>2</sup> to show how it is the question of capability (what she is actually able to do and be) rather than rights (what she is entitled to do and be) with which the ODW is most immediately concerned. I then use the Capabilities Approach to theorize agency with rights, and to conclude that rights-based initiatives should foreground capability as the political goal. The current challenges faced by both the victim and agency-based approaches show that unless the ODW's agency is conceptualised in terms of its capability to be practiced, it will continue to provide little impact on the progress of current policy actions on who to protect—the Slave or the Worker; and what to protect - rights or livelihoods.

### **Constrained Agency and the Problem of Rights**

Since the 1970s, women in the Philippines have faced increasing unemployment and insufficient wages. Thus, many have resorted to participating in the global labor market for domestic work. More recently, Filipina overseas domestic workers (FODWs) have come to form the majority of female labor migration from the Philippines, which accounts for around 70% of the country's international labor migrants (POEA 2005). While their participation allows access to wages that sustain livelihood expenses, ranging from raising capital for micro-enterprises to raising families, it remains fraught with violations of their human rights. Given this contradictory situation, studies of FODWs have portrayed them as either coerced or oppressed victims/slaves, or as consenting and empowered agents/workers. Feminists arguing for "the victim" attribute the increase in poor women's migration for work to the expansion of a patriarchal, capitalist global political economy (see especially Ehrenreich and Hochschild, 2002; Sassen, 1988; 1998; 2002a; 2002b). They argue that the structural gendered inequality in the global economy is manifested in both the labor emigration policies of sending countries and the immigration and domestic labor employment policies of receiving countries, which devalue and render migrant women workers invisible. They describe overseas domestic workers (ODWs) as: export-import traded commodities whose labor is reduced and confined to slave-like servitude within the domestic work sector of receiving countries (Aguilar and Lacsamana, 2004; Altink, 1995; Anderson, 2000; Bakan & Stasiulis, 1997; Bals, 1999; Chang, 2000; Cheng, 1996; Chin, 1998; Constable, 1997; Ehrenreich and Hochschild, 2002;

Heyzer, Nijeholt, and Weerakoon, 1994; Li, Findlay, and Jones, 1998; Lindio-McGovern, 2003; Rhacel S. Parreñas, 2000; 2001; Pratt, 1997; D Stasiulis and Bakan, 1996; 1997; 2000). Supporting these observations are human rights-based NGOs findings on ODW abuse worldwide, which includes the withholding of wages/passports, near or total confinement in employers' homes, physical and sexual harm as well as psychological abuse, in terms of constant threats of violence (e.g. Social Alert, 2000) and overwork. In contrast, some feminist works employ the concept of "agency" to highlight the more positive aspects of FODW experiences. These agency-centered studies highlight the individual migrant's decisions to pursue livelihood opportunities in the global labor market, and foreground the migrant's social and financial capital gains from international labor migration (Barber, 2000; Ebron, 2002; Ford, 2001; Gibson, Law, and McKay, 2001; Liane Mozère, 2001; Tacoli, 1999). These studies draw on the increasing acknowledgment in migration studies that international labor migration can empower poor migrant women by enabling the formation of trans-national households, which in turn alter gender power-relations back in their own households to favor the migrant woman (Hondagneu-Sotelo, 1994; Morokvasic, 1984). In addition, international labor migration can politically empower migrant women to participate in collective resistance through migrant networks (Yamanaka & Piper, 2003 pp. 1-2).

Policy actions remain divided along the same lines. The feminist-structuralist works and human rights NGOs findings on domestic slavery: for example, have resulted in a "modern slavery" discourse which has enabled some NGOs to successfully lobby for the "protection" of victims under anti-trafficking laws (see for example the NGOs mentioned in the policy reports by the Council of Europe on domestic slavery, 2001; 2004). In contrast, there are those who call for a paradigm shift in policy approaches from the protection of the victim, to the assertion of their rights. Schwenken (2003, 2005), for instance, uses the case of RESPECT, a Europe-wide network of ODWs and their supporters, to demonstrate that viewing ODWs as women with voice and agency, rather than as passive victims, allows the rights of ODWs to be heard and respected, rather than repressed, by the receiving state. The RESPECT network calls for the rights of ODWs for mobility both within the states of the European Union (EU) and the EU itself, as well as the right to earn their livelihoods by being recognized as valuable workers doing "proper work." Schwenken argues that recognizing the domestic worker as a bearer of political rights provides the platform from which a political imperative for foregrounding the agency of ODWs can be achieved.

This polarized approach to ODWs shares much in common with the debate over prostitution in less-developed countries, and more recently, over trafficking in sex from less-developed countries, within feminism. Kempadoo (1999) and Agustin (2005), for instance, note the tensions between advocates of "the victim" who emphasize aspects of violence and sexual slavery in prostitution, and advocates of "the agent" who propose prostitution as "work" for

women who have limited livelihood options. Doezema (2000; 2002) further shows how the debate extends to the issue of the victim's "coercion" versus the agent's "consent" in international policies against human trafficking. She traces the debate back to western feminist abolitionists in the early twentieth century who, under the banner of human rights, called for protection of the female victim from trafficking and other forms of slavery. However, Doezema argues that such policies result in justifying repressive measures that deny prostitutes of their autonomy and agency, while restricting their mobility to cross international borders in search of work. Indeed, there has been mounting criticism against the current protective measures that focus more on receiving-countries' concerns of border control rather than on securing sustainable livelihoods for ODWs (Agustin, 2005; Anderson and Davidson, 2003, p. 55; Limanowska, 2004; Pécoud and de Guchteneire, 2005, p. 3; Piper, 2005; van den Anker, 2004, pp. 3-4).

Much like the state of the debate on "prostitution," the growing case for ODWs' agency and the assertive claim to rights entailed stops short of addressing the root cause of migrants' needs for sustainable livelihoods. At the conceptual level, the idea of agency seems to be conflated with rights. It is not clear how having agency directly leads to having rights. Indeed, what type of agency is being conflated with what type of rights? In the particular issue of livelihoods for FODWs, for example, can a FODW earn a livelihood by being a slave? Is she therefore practicing a type of agency without rights? Or is she using her agency to practice her right to earn a livelihood over her right to non-enslavement?

These difficulties with the concept of agency become apparent when considering the feasibility of the rights-based approach in the political arena. Firstly, the focus on rights is concerned with the domestic labor laws and related immigration rules within the borders of the receiving states. This ignores those who undertake circular migration, or who are yet to enter receiving countries' borders, or to return to their country of origin. As Cox (1997) and Sim (2002) have identified, the vulnerability of ODWs extends beyond the workplace destination, and occurs as a process that begins from preparation and recruitment for going abroad, to working abroad, but also to returning home. Secondly, because the focus on rights is based on the demand of overseas domestic work, the supply side, bound in underdevelopment and lack of livelihood access in countries of origin, does not receive appropriate attention. This leads to the third problem in agency-based analysis; that is, the failure to incorporate the role of broader structural contexts that push and facilitate the movements of ODWs through multiple borders, and in the case of circular migration, multiple times. The fourth problem pertains to the applicability of rights in host settings, as well as in the international political arena. In host settings, the issue of rights is in itself precarious and is received differently. For example, while ODWs' rights in western European receiving countries are attached to the right to citizenship, ODWs' rights in receiving

countries in Asia are limited to short-term contracts (Battistella, 2002; Bell and Piper, 2005). Internationally, the fight for rights seems futile in the face of a lack of political will, by both sending and receiving states. The 1990 United Nations Convention on the Rights of All Migrants and their Families remains unratified by receiving countries. Where it has been ratified by the sending country, limited financial and technical capacity to enforce the rules of the Convention, has resulted in a rights-based approach that is practically ineffective (Pécoud and de Guchteneire, 2004, pp. 12-17). Last, a rights-based approach fails to consider the impact of increased rights on the sustainability of livelihoods, even within borders. More rights could lead to demands for better wages and working conditions, and probably citizenship. In turn, this could lead to receiving states closing off the migrant domestic labor market since pressure on state resources would make it preferable to encourage citizens to undertake the work instead. After all, the reason ODWs are “imported” (and tolerated, if illegal) in the first place because they are cheap, flexible, and expendable. Conversely, increased rights can speed up the process of saturation of the overseas domestic work labor market, as supply from the poor and populous countries rapidly expands. In both cases, the issue of sustainable livelihoods for migrant workers could become even more precarious as employment opportunities contract. In many senses, having rights is not necessarily conducive to the practice of agency when the agent is in such highly constraining circumstances.

### **Data and Method**

As part of a study on the nature of constraints to FODW agency, I conducted fieldwork in Paris and Hong Kong to interview twenty-four FODWs (twelve in each city).<sup>3</sup> Paris and Hong Kong were chosen as research sites because of their disparate conditions; Paris as a site for undocumented migrant work, and Hong Kong for documented (the majority of FODWs in Paris are undocumented while the majority in Hong Kong are documented).<sup>4</sup> Comparatively, the study sought to determine to what degree the FODW’s inclusion as either documented or undocumented worker entitles her to citizenship and other rights-based claims. The study also sought to learn from individual migrants’ experiences of documented and undocumented status, within national settings. To fully account for the issues of constraints to FODW agency, the sample in each city consisted one-third of those who had experienced enslavement; another third, of those who were oppressed and/or abused (in ways that the respondents’ considered different from enslavement); and the last third, of those who enjoyed satisfactory working and living conditions and who saw their situations as similar to other waged workers in gainful employment. Because of the criteria for determining who is enslaved, oppressed/abused or contentedly employed rested on the FODWs’ own classification of the situation, variations to the three categories were created (see

Table 1).<sup>5</sup> In this paper, I focus on the life trajectories of JB and Ellen to provide some insights into the complex and temporally fluid relationship between their agency and the constraints they face as ODWs. JB is a recently turned documented worker in Paris who has always seen her situation as that of a “Wageworker,” while Ellen is a documented worker in Hong Kong who classified her situation as that of a “Slave Wageworker.”

**Table 1. FODWs’ classifications of their work situation in Paris and Hong Kong**

FODWs in Paris	Own Classification
Delia	Wageworker
Felise	Wageworker
Gudilia	Wageworker
Mila	Wageworker
Nene	Wageworker
Indiana	Wageworker
JB	Wageworker
Minda	Former Slave now Wageworker
Melanie	Former Slave now Wageworker
Sally	Former Slave now Wageworker
Helena	Former Slave now Abused Wageworker
Lani	Former Slave now Wageworker
FODWs in HK	Own Classification
Michelle	Wageworker
Red	Wageworker
Virgo	Wageworker
Bernie	Wageworker
Loveley	Wageworker
Lilia	Wageworker
Ellen	Slave Wageworker
Jinky	Abused Wageworker
Alili	Oppressed Wageworker
Amity	Oppressed/Abused Wageworker
Gemini	Slave
Ana	Slave

\*Immigration Control and Migrant Domestic Labor Policy in France and Hong Kong.

Increasing inequality between developed and developing countries is a major contributing factor to the rapid growth of irregular migration (for example, Massey and Taylor, 2006; Stalker, 2000). A main consequence of this inequality has been the growth of demands for services in developed economies, from developing economies. Feminist geographers point to the sexual and racial division of labor in the international labor market that underlies this

supply-demand nexus. They argue that the division of labor places unskilled migrant women work at the lowest end of production and for the lowest pay, in the feminized jobs of domestic and sex work (De Dios, 1992; Glenn, 1992; Lee, 1996; Mies, 1998; Sassen, 1984). This has produced what Sassen (2002a) has termed “global cities and survival circuits”; poor women go to work for high-paid workers in global cities, and survival circuits are composed of migrant networks that facilitate recruitment, sometimes involving precarious dealings with smugglers and traffickers to ensure employment. Paris and Hong Kong are such global cities in which many low-income women from developing countries come to work. During 1996, an estimated 17000 FODWs were in France (Anderson, 1996; Torr s, 1996), with a significant number based in Paris.<sup>6</sup> Hong Kong, through a bi-lateral ODWs labor-importation scheme, hosts around 220 000 FODWs (HKID, 2005). Despite rising demand in both France and Hong Kong, state immigration and domestic labor employment policies largely leave unrecognized the crucial contribution of ODWs to national growth, as well as to the national well-being of households (Anderson, 2000; Constable, 1997; Narula, 1999; Tam, 1999).

French immigration policies do not acknowledge independent female entry, forcing many female migrant workers to enter France through tourist visas which most overstay, or by using the services of smugglers and/or traffickers (Misra, Woodring, and Merz, 2005). Some arrive as escapees from the relatively harsh working and living conditions in the Middle East, or from Middle Eastern employers who have settled in France, or who go to France for their vacation. Once in the country, the migrant women are able to remain hidden from immigration authorities by engaging in “invisible” employment such as domestic work. Although France has among the most responsive labor regulations governing domestic work (Blackett, 1998; Cabral, 2001), these regulations apply only to those who are legally employed. The regulations do not address the need to issue work permits for domestic workers, leaving the status of legal employment to the discretion of the employer. However, few employers register their employees, further ensuring that exploitation in relation to their working conditions, pay, and social benefits remains largely hidden (Narula, 1999, p. 161). Similarly, a government initiative requiring employers to legalize their domestic workers, remains largely ineffective as many employers continue to employ cheap and flexible labor, which if documented, would mean higher wages and taxes, and ultimately less control over their employees (see for example, Moz re, Maury, Fijalkow, Dahan, and Lenhart, 2001). In Hong Kong, the Administration’s strictly regulated ODW sector provides a set minimum wage, a formal labor contract, which is contestable in its labor courts, and an Ordinance that provides for the rights of migrant workers to join/form trade unions. However, ODWs remain on-call for 24 hours, as contracts do not specify working hours. The contract is also bound to immigration policies that limit ODWs to two-year terms, to deter any claims to citizenship.<sup>7</sup> In 1987, the Administration introduced the

Two Week rule,<sup>8</sup> in response to a perceived increase in irregular activities by ODWs. It requires ODWs to leave its borders within two weeks of the termination of their contracts. This means that any labor conflict with employers has a strong likelihood of leading to deportation, and therefore loss of employment for the ODW. Thus, as in France, Hong Kong state policies push ODWs into an invisible realm, in which ODWs stand powerless against (potentially) abusive employers.<sup>9</sup>

In addition to employer-inflicted abuse, NGOs in France and Hong Kong have revealed how practices by recruitment agents/agencies can drive ODWs into slave-like conditions. These practices can range from extortionate rates charged by the agents/agencies that lead to debt-bondage to collusion with employers and/or smugglers and traffickers. Globally, NGOs have been able to broaden their influence at regional and international levels by forming transnational activist networks that fight for domestic workers' rights around the world. The most active NGOs compose mainly of migrant workers, both documented and undocumented (see for example, Law, 2002; Stasiulis and Bakan, 1997). This points to an important characteristic of ODW migration which has received little attention in the literature: that of tenacity. Even in documented situations such as Hong Kong, this observation holds true for the many who stay there (by renewing contracts or, in the minority of cases, by successfully circumventing state rules) for as long as possible. Further evidence to this tenacious migration is the shift in NGO services which used to deal with repatriation but now concentrates on livelihood support (see for example, Roberts in Ball and Piper, 2002, p. 1030). Thus, despite oppressive state policies, significant numbers of FODWs have remained in France and Hong Kong.

Given such structural constraints on the one hand, and their persistent high numbers and growing activism for the right to work and stay in destination countries on the other, FODW participation in overseas domestic work cannot be explained only by structural forces of the global labor market, nor can it be explained through analysis of the voluntaristic orientations of the individual migrants. Such analysis may provide an important basis for understanding how migrants practice agency, but they say little of the migrant's "staying power." Indeed, what are the factors, which determine the migrant's ability to continue in overseas domestic work, and how do they relate with the practice of her highly constrained agency? In other words, what is required to make a victim a victor?<sup>10</sup>

### **The Issue of Capability: Constraints in the Host Locale**

Regardless of self-classifications, legal status and work locations, the respondents' definition of wage work generally reflect the liberal view of the free labor wage contract. In contrast, definitions of enslavement are fluid. While the narratives on slavery are generally reflective of the feminist structuralist

perspective that sees slavery and similar practices in contravention to the labor rights attached to wage work, they importantly reveal an intrinsic link between slavery and waged work in the FODW experience. As Ellen in Hong Kong explains:

[I'm] a "slave wageworker." You see, this is the way I think about my situation: abuse, enslavement, whatever - they are those negative things natural to life; natural to looking for money. It's a fact that it's hard to find and earn money. If you don't move or act or do, neither will money fall into your lap. So that although destiny has put me here in domestic work it has likewise put office workers in office work, say. But essentially, it is just work and we still have to work hard for our money. Enslavement is natural to my type of work, so that I can say, I am a slave - but I am not abused. My employers are higher in status but they still give me my pay and look after me when I'm sick. Just like other employers out there.

Ellen demonstrates here not only how wage work and slavery can be inseparably experienced but also philosophically accepted by the FODW. This perspective of "slavery" is implicitly shared across the range of respondents' situations, from those who classified themselves as slaves to those who classified themselves as wageworkers. However, it would seem that slavery is seen as acceptable on the two conditions: that one is remunerated for the work provided, and one is not subjected to violent abuse.<sup>11</sup> Thus, Ellen could endure domestic work with her employers:

In the earlier years of my work . . . there was little food, long hours; sleeping at 1am and waking at 6am. At the time I had to look after a 3-year old child while also cleaning and grocery shopping...I was dying of homesickness. . . . You need to be very resilient in this job. For example, my employers are very strict on top of the heavy workload. So I just close my eyes to their never-ending demands while just keeping at the work. As [12] years passed, their children grew up and the work became lighter. I began to feel like they didn't need me anymore . . . so I suggested that maybe I should return home for good...[But] they still wanted to employ me. . . . So this is why I am still with them now.

While much of this account highlights the subordinate position of ODWs in the employer/master - domestic worker/servant relationship, it is important to note that Ellen's central concern is not so much the abuse, or how, why and to what extent it occurs. Rather, she is determined to stay in overseas domestic work. Although Ellen has built her own house in the Philippines and has put away some savings for her retirement, she has decided to

continue in overseas domestic work because she wants to help her family in the Philippines:

I have nieces and nephews who are in college. If God could help my body to stay strong, I would like to stay here [for another two years] so that I can help pay for their education until they have finished college. I'm starting to feel tired now . . . I[also] have a nephew who has leukemia and so I help my sister out with his hospital bills.

JB also, having worked undocumented in Paris for five years, plans to stay by "hook or by crook":

My employers [recently] helped me get my papers . . . others who have been here for 10–12 years still can't get their papers [so] I have to say that the real help came from Heaven.

But [if challenged] I know that the Filipinas without papers would probably fight for their right to stay [and work here]. You see they don't want to go back to the Philippines. Life is too impossible there. Look at them now, they will just go home for about a month and then they want to come back here again because they've ran out of money there.

Actually for me, I don't ever want to return home. I will do my best to stay here by hook or by crook. If say, my fight or "crook way" was unsuccessful, then I would return to the Philippines with my savings and start up a business. If that fails, then I would have to go abroad again [to work as an ODW].

Ellen and JB illuminate here that for the FODW, "work" is about getting paid or earning a livelihood, which is intrinsically bound to being in the host locale, where cases of abuse abounds. However, there must be caution in prematurely accepting the constraints presented by employer/host locale-inflicted abuse, as a conclusion of the FODW situation. Ellen and JB tell of the harsh tradeoffs that are necessary to achieve their valued ends of earning a livelihood:

For me, I really didn't want to leave my family behind . . . going overseas is like taking up a job I really didn't want but it was one who could help my family, so I really had no choice.

Ellen, Hong Kong

The Philippines is my [home]. It's where I grew up and it's where my family is . . . The only thing that doesn't make it home is that there is no money to live. How can you enjoy life with your family when you have to worry about the most basic things in life like a safe and clean environment

in which the children can grow up, access to good food, education and health services. You can't have a home when you have no money. But if I had money, I tell you, I would definitely stay in the Philippines.

JB, Paris

As Ellen has put it, such harsh tradeoffs and other constraints are “natural to making money.” Given this rather hopeless rationalization of the FODW situation, it is important to underscore the reasons that “shackle” her to the host locale in the first place. These reasons, as explored in the following discussion, arise out of structural constraints that lay outside of, but that have a direct impact on her participation in, the labor market of the host locale.

### **Beyond the Host Locale: The Primary and Encompassing Constraint**

To grasp the more complete nature of constraints to FODW agency, it is important to go back to the beginning of the FODWs' journey as prospective migrants:

When I graduated from college [in the Visayas<sup>12</sup>] . . . I thought I would go to Manila to find a job. It wasn't easy so I took up a domestic worker job there with a Visayan woman who had a Chinese husband who ran an autosupply shop. I did everything from the cooking, housework and the shop-keeping. One day, a nephew visited from Hong Kong. I was then asked if I wanted to go to Hong Kong. By the time my contract papers came, I really didn't want to go . . . . But at the time . . . my mother had died and my father was put into hospital. . . . I thought to myself “what am I going to do?” I couldn't afford the hospital bills . . . I was only earning around P1000/mth. My siblings were all married and they were struggling with their own financial situations. I felt like I was the one who could really help . . . . so here I am.

[I am still here because I need to help my family]. They write to me and ask for my help. I know that it's the obligations of the parents themselves to look after themselves and their own children. But I can see that my sisters and brothers are just not able to because they are not earning as much as me. . . . You see, in our province, the reality is even though there are some jobs, they earn just enough for their food. If hospital and other unexpected bills come along, what are they to do?

Ellen, Hong Kong

I was a Teacher in the Philippines . . . . I was very determined to go abroad [and earn] because I didn't want my family and I to be hungry all our lives. My cousin has a recruitment agency. . . . and he found work for me in Thailand . . . as a drummer for a band. But the pay was as lousy as

you would get in the Philippines. A friend told me about Paris and arranged my flight and “tourist” visa.

When I was growing up in our province, I only needed a little to survive. Today, the 300 Euros I remit to my siblings and their family every month is not enough...Just this afternoon, I was crying because I was just on the phone with my brother. Again, he was asking for money. I said to him “but I just sent you some money recently.” He replied, “oh but the tap broke and so we had to buy a new one.” So I had to cry because I work so hard here for my money.

I have my formal work but I also take on another job over the weekend [undeclared]. In this way, I can earn up to E2000/month and I don't have to pay for my board and food. The price you pay for the higher income, however, is that you can't go home because it will be near impossible to get back in here again ...Those who don't eventually get papers will just have to stay here forever. Anyway, they are looked after here better than they would be in the Philippines. If they should get sick here and need an operation, they don't have to spend a cent, if they can't afford it<sup>13</sup>...Come to think of it, it's probably a good thing not to go home. When you go home, you end up dead broke because you spend all your savings! And so we must clean toilets here forever; to keep re-filling our pockets! . . . I could even say that my family back home, because I feel so guilty if I don't send them money, “enslaves” me. I wouldn't work two jobs and get so tired if they could look after themselves. But I feel so guilty when I have the latest fashion clothing here and good food, when members of my family do without them.

JB, Wageworker, Paris

Ellen and JB's account of the reasons for why a FODW might “forever” stay in a locale (Paris/Hong Kong) paints a rich picture of what life is like “outside” of the host locale. JB's reflections on the financial decisions behind remaining in Paris on the one hand, and her endurance of working conditions that she sees as akin to enslavement on the other, underscores the structural problems of (under) development in the Philippines. JB underpins the connection between experienced slavery in the host locale and cause of the experience as arising from the locale of origin. As she explains, she works two jobs and gets so tired precisely because her family cannot “live a certain way” without her earnings. Unlike JB, they are in a setting of underdevelopment, and are thus unable to earn enough to buy fashionable clothing and good food. In similar ways, both Ellen's and JB's labor migration illuminates how materialist structural conditions, and the financial and livelihood constraints arising from them, directs their practice of agency. Poverty, in other words, is both the reason and cause for their labor migration (see Campani, 1993, pp.

197-201; Parreñas, 2005, pp. 56-66). Indeed, the great majority of the respondents said they would not have left the Philippines had they been earning enough to support themselves and their families.<sup>14</sup>

Experiences with recruitment agencies are particularly illuminating of the centrality of poverty in the decision to migrate for overseas domestic work. Those who used recruitment agencies had to take out loans from the agencies themselves. Unlike banks, recruitment agencies allow the borrower to loan 100% of funds. Re-payment is then made with the first few months of earned wages, and with extortionately high interest rates. Alternatively, those who cannot raise the recruitment fees or are not willing to take the recruitment agency loan deal, simply cannot go overseas to work. As Ellen tells of her experience:

Although I am here as a direct hire,<sup>15</sup> I've had a brush with a recruiter when I was still in the province. There was a man who came to our province and informed us that for a P20 000 placement fee, I could go to work in Oman. This was in the late 1980s. I was told I could earn a great deal of money. . . . But my family couldn't raise P20 000 . . . so I didn't end up going.

In Paris, many who either did not escape from abusive Middle Eastern employers or came directly hired, used the sort of recruitment service that provided "tourist visas" to overstay or the services of smugglers/traffickers. JB had traveled to Paris in the former mode, but as she explains, underlying the many accounts of the dangers of traffickers is the need of FODWs to use them:<sup>16</sup>

Traffickers" will always exist in some form as long as there are poor and rich countries. Ultimately, these so-called traffickers can serve as another, more effective form of recruitment for those who would not be allowed in [receiving] countries. [These recruiters] really do end up helping people—because what is life if you are left to starve in the Philippines? Or in other poor countries for that matter.

[I know there are more risks of abuse and enslavement in Hong Kong and the Middle East [than in Paris]]. But . . . let's say, there was no way I could get to Paris, I would still risk Hong Kong and the Middle East because ultimately the risk is a calculated one . . . I would have more chance of living a good life, rather than not at all. It's either these countries or the Philippines.

That poverty is consistently the underlying reasons for FODW migration is important in informing assumptions that most FODWs cannot come from the poorest of the poor since they are "educated" (see for example, Parreñas, 2001). Like the other respondents, Ellen and JB began their labor migration

with very limited or insufficient income. Indeed, their experiences remain consistent with reports on the situation of the majority of women in the Philippines that underscore experiences of poverty and high unemployment for example, Chant, 1996; Chant & McIlwaine, 1995; Elson, 1991; McCulloch and Stancich, 1998). Furthermore, the very notion of many FODWs being “educated” ignores the politics of education in the Philippines. Having attained educational qualifications in their local provincial regions, JB and Ellen are unfortunately among the many whose college degrees did not come from prestigious universities and are thus unable to secure more gainful employment in the country.

### **Constraints, Resources and the Issue of Capability to Pursue a Livelihood**

Ellen and JB’s narratives across Hong Kong and Paris show that their access to resources for the purposes of a livelihood determines their continued participation in overseas domestic work. When considering the livelihood of FODWs, JB and Ellen tell us that it is important to recognize their earning power as not only intrinsically tied to migration for domestic work in the wealthier countries, but also to sustaining life for families back home, including their own upon their return. Olwig and Nyberg-Sorenson (2002) calls this practice of making a living in the context of globalization, “mobile livelihoods.” The practice involves the employment of means and strategies to maintain and sustain life in situations of underdevelopment. As Ellen and JB’s narratives show, “means” refers to resources in cash and kind accessed through paid domestic work overseas, while “strategies” refer to their engagement with recruiters and other bodies that ensure continued access to resources. In turn, resources are used to reduce poverty and the occurrence of poverty by being refashioned in terms of savings, capital accumulation and investments and/or for daily livelihood expenditures such as food, shelter, medicine and education for themselves and their families.

Of central importance to issues of livelihoods and resources for the FODW is the recognition that they are pursued. This means that if FODW “agency” is exercised, resources simply do not exist for the taking. Rather, they exist in a highly political environment of restrictive immigration controls that constrain FODW use of domestic work migration as a livelihood strategy, but also of underdevelopment processes that have obliterated livelihood resource access in their country of origin. As Ellen and JB highlight, it is underdevelopment in the Philippines and the lack of livelihood resources this entails that can “incapacitate” their agency. Actual access to livelihood resources is therefore an important measure of the capability of FODW agency to be practiced; to make FODW agency effective, we have to look at what she is actually able to do and be. As discussed earlier, the role of rights-based migrant NGOs has been crucial as both a means and strategy to provide con-

tinued access to overseas domestic work by opposing immigration and migrant domestic labor policies. However, their inefficacy was also highlighted, pointing in particular to a poor articulation of what rights actually constitute in the case of FODWs, and how they can best be articulated in the context of underdevelopment.

### **The Value of Nussbaum's Capabilities Approach<sup>17</sup>**

Martha Nussbaum's Capabilities Approach (CsA) provides a theoretical framework within which to directly link issues of human rights with FODW agency, how in turn, they link with livelihood resources. The CsA is a broad and multi-dimensional framework for evaluating individual well-being and the intrinsic experience of development and justice entailed. The CsA argues for a concept of human development to challenge the economic growth-centred orthodox model of measuring development within a country, and thus articulates resources qualitatively rather than quantitatively. Development is seen in "human" terms: in terms of a quality of life and what people are able to do and be, rather than as a measure of how many resources people have or are given by the state. This departure from treating people as factors of production to seeing them instead as agents of production foregrounds the immediacy of capability over functionality. As Nussbaum (2002) puts it, "about a variety of functionings . . . of central importance to a human life, we ask, is the person capable of this or not?" (p. 127). In this way, the CsA finds both theoretical and practical resonance with human rights: capability is seen as a pre-requisite to what a person can actually do and be.

Theoretically, Nussbaum (see especially, 2002; 2005) explains the relationship of capability with human rights through what she terms the "basic," the "internal," and the "combined" aspects of capabilities. Basic capabilities refer to capabilities that are innate to the human condition such as that of practical reason and imagination. Internal capabilities refer to "states of the person herself that are, so far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions." Combined capabilities are "internal capabilities combined with suitable external conditions for the exercise of the function" (2002, p. 132). Through these dimensions of capability, Nussbaum shows how human rights can be understood in two distinct yet integral ways. First, rights can be understood in terms of basic capabilities as "prior to and a ground for the securing of a capability" (2002, p.136). Thus, to take for example, a FODWs' call for a right to a livelihood even when her circumstances obviously do not secure such a right to her, Nussbaum (2002, p. 135) here would argue that, "just in virtue of being human, a [FODW] has a justified claim to have the capability secured to her." Secondly, rights can be understood as equivalent to combined capabilities. In this regard, "to secure a right to a [person] is to put them in a position of capability to go ahead with choosing that function if they should so desire" (2002, p.

135). Because people cannot function without basic capabilities, and cannot function freely as they see fit for their own circumstances without combined capabilities, Nussbaum (2002, p. 131) argues, “capability, not functioning, is the political goal.” In this way, capabilities can be seen to provide an informational base that allows tangible and achievable outcomes for the highly abstract and highly contentious notion of human rights. Not only does a CsA define what it means to secure a person’s rights, it also ensures the explicit inclusion of the larger structural context involved in securing a person’s rights or “combined capabilities.” As Nussbaum (2005) asserts, the CsA “makes it clear that securing a right to someone requires making the person really capable of choosing that function . . . [and] makes it clear that all human rights have an economic and material aspect” (p. 175).

In practical terms, Nussbaum has captured the intrinsic relationship between capability and rights by creating a working list of capabilities to ensure that certain capabilities essential to a quality of life are constitutionally secured to the individual. Nussbaum argues for a Capabilities Constitution because the rights approach with particular regard to individuals in the developing world vulnerable to unemployment, hunger, and other resource-challenged situations has proven futile both in theoretical epistemological and practical/enforceable terms. The existing provisions for livelihood, development, economic and social security in various international human rights declarations and conventions are exclusively state-oriented. The very methodology of setting up such conventions are also state-dependent. In contrast, understanding rights as a person’s capability transcends the traditional distinction between the private realm of the family and the public sphere within human rights approaches. It also transcends the traditional distinction between state action and state inaction in implementing rights since securing capability in a person will necessarily require state action to provide the economic and material resources necessary to secure that capability.

The articulation of rights in terms of capabilities also serves an important role in providing a basis from which to understand the relationship of agency and capability in the FODW context. Approaching rights from a capability perspective enables a richer appreciation of rights and capabilities as issues of human security rather than human agency i.e. “making the person really capable of choosing that function.” A human security paradigm centralises the problems of unequal human development as FODWs experience and respond to it; as a problem rooted, but also structured transnationally by their lives in the host country, as well as back in their homeland. If a Capability Approach “allows comparisons between individuals and across nations as to how well they are doing” (Nussbaum, 2002, p. 122), then as economically disadvantaged individuals from an economically disadvantaged nation, FODWs are not doing so well. They remain deprived of commodities, incomes and other resources, but more specifically, of “combined capabilities.” “Educated” Filipinas, for example, share much in common with many edu-

cated women in Kerala who cannot find jobs other than sex work in Delhi (Nussbaum 2005, p. 180). The FODWs' standard of living is thus precarious and largely dependent not only on their maintained presence in the host locale, but also on their capability to function or practice their agency within it. In this light, it becomes possible to see that FODW agency requires capability to successfully mediate victimisation; agency in itself is insufficient.

It is a valuable characteristic of the CsA that exposing the limitations of both "rights" and "agency" it fortifies them with capabilities and capability, respectively. As such, it is able to provide the basis from which a theoretical framework for correcting the conflation of rights with agency is achieved.<sup>18</sup> In both theoretical and practical terms, it illuminates the FODW agency in a more accurate context of FODW capability as the right to access resources in overseas domestic work for the function of sustaining a livelihood. Shifting thus, the FODWs' orientation of her agency from its right to its capability to be practiced, it becomes possible to grasp a more appropriate understanding of FODW agency that questions how far notions of their agency, which differ to the type of policy being promoted, can be imposed on them.

### **Conclusion: Capability as the Political Goal**

The aim of this paper has been to question the current anti-trafficking discourse, using the experiences of a lack of capability of the victims/potential victims of trafficking such as those of FODWs. Although current approaches polarize understanding of the FODW situation in terms of the question "slavery or work?" Filipina experiences of domestic work in Paris and Hong Kong would seem to provide no conclusive evidence to support one or the other. Rather, they show that the issue of gainful work is of central importance to their livelihoods—so much that they would endure slave-like conditions to keep open the possibility of gainful employment, which, due to the combination of a "push" effect caused by their structural impoverishment in the sending country, and a "pull" by the global economic demand for domestic service, has become available only from overseas domestic work. Given this relationship between slavery/victim and work/agent, as "slaves of their hopes to work," must they choose between work and human rights? (Bals, 1999, p.190). Rather than frame the FODW situation in these dichotomous terms, this paper employed Nussbaum's Capabilities Approach to shift analyses from looking at the lack of choices/rights/agency for (F)ODWs to focusing on their capability to ensure ongoing access to both work and rights. Indeed, as Ellen and JB articulate in this paper, the choice between work and rights should be more accurately viewed as a choice between work (in the host locale) and no work (back in the Philippines).

Taking into consideration the highly constraining environment of overseas domestic work to FODW agency, the paper sought to foreground the central issue of capability to make the issue of protection clearer for both re-

searchers and policymakers: protecting FODW human rights does not guarantee livelihoods, but protecting their livelihood creates the opportunity or capability for securing human rights. Through a Capabilities Approach therefore, it becomes possible to more accurately identify the issue of rights for the FODW as most primarily an issue of capability. However, without completely abandoning the fight for human rights, it is important to consider that the fight be defined in terms of capability. Fighting for capabilities instead of rights can avoid the inherent difficulties in the lack of political will by some states to implement, let alone consider, migrant workers' rights. As Nussbaum (2005: 175) has emphasized, "securing capability in a person will necessarily require state action to secure that capability." Furthermore, and most importantly, framing rights in the context of capability can allow the "victim" herself to reclaim her right for her intended and valued quality of life. So far it is only researchers, state-oriented policymakers and non-ODW based NGOs that have dominated both the discourse and actions on the reclaiming of this right. The practical feasibility of the Capabilities Approach will require further discussion. However, to end here for the moment, in serious recollection of the respondents' struggles to earn a livelihood, is to hopefully mark the beginning of a research and policy agenda that centralizes the issue of capability along with rights for (F)ODW empowerment.

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#### Notes Chapter Four

- <sup>1</sup> The full name of this international protocol is the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime."
- <sup>2</sup> In this paper, I use "Hong Kong" as the abbreviated version of the Hong Kong Special Administrative Region of China.
- <sup>3</sup> The study was conducted from September to November 2003. For full details on the methodology, see Briones (2006).
- <sup>4</sup> In this regard, I could have chosen any two similarly contrasting destinations such as Germany and Canada, respectively, New York and Riyadh, respectively and so on. For purposes of research feasibility, Paris and Hong Kong seemed to me to be two sites in which I could undertake my research relatively quickly, safely (e.g., I would not have felt safe in Riyadh) and comprehensively. In addition, little was written about the situations of FODWs in Paris in contrast to the wide media coverage of migrant domestic workers' 'slavery' there. I thought that Paris (and because I also had sufficient French language skills) would provide the required stark contrast from the abundantly written situation of documented FODWs in Hong Kong.
- <sup>5</sup> While I was not able to speak with those who experienced the worst forms of slavery, which usually entail house imprisonment, contact with those recovering in a shelter enabled insights into these conditions. For example, I met Lani, who was living in a shelter in Paris, two weeks after an NGO had rescued her. Notably, Lani and the other respondents who 'reclassified' their situations from slave to waged worker (Table 1) enabled further insight into the dynamics of FODW agency. The FODW names used here are pseudonyms.

- <sup>6</sup> Due to the undocumented status of FODWs in France, the figures given here are questionable. For instance, despite a 5-year lag, O'Dy (2001) uses the same estimate of 17000 as used by Anderson and Torr s in 1996. In contrast, personal communication with Ms Estrada of the Philippine Consulate in France (23 Sep 2003) suggested the estimate of the Filipino population to number at around 50 000 in France, with 20 000 located in Paris, and of which the great majority were women.
- <sup>7</sup> 'Hong Kong citizenship' does not technically exist, but 'permanent residency' is its legal and practical equivalent. I retain the term 'citizenship' here for consistency in style. See here also Bell and Piper (2005, p. 199).
- <sup>8</sup> Also known as the New Conditions of Stay (NCS).
- <sup>9</sup> The Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law provide the Hong Kong Special Administrative Region with full authority on its own matters of immigration control. It is in this respect that I refer to Hong Kong as a 'state' in this paper.
- <sup>10</sup> For further context to this question, see Momsen (1999) from which I borrow the terms "victim or victor."
- <sup>11</sup> This is perhaps best exemplified by those who classified their situations as "Former Slaves now Wageworkers" Although these respondents had experienced harrowing treatment in their previous work, they persisted (some even risked their lives escaping their abusive employers) with overseas domestic work, eventually finding fair employers. For their respective stories, see Briones, 2006, pp. 188-98.
- <sup>12</sup> The Visayas is an island/cultural group of the Philippines located in between the island groups of Luzon to the North and Mindanao to the South.
- <sup>13</sup> Aide M dicale d'Etat is a health service in France for foreigners, including those who are undocumented. This is a medical insurance provided by the state for access to medical care including examinations and prescriptions. Access for those who have lived in France for fewer than three years, however, is limited to hospital care.
- <sup>14</sup> Virgo, the only respondent who deemed her income sufficient to live comfortably in the Philippines, and whose primary reason for migrating was to leave her husband (divorce is socially, religiously and legally unacceptable in the Philippines), nevertheless acknowledged that her "case would be in the great minority."
- <sup>15</sup> The term "direct hire" has a double connotation in the recruitment business in Hong Kong. The first is used more commonly among recruitment agencies and refers to recruitment agency-facilitated hiring of workers directly from the Philippines. The second refers to the hiring by employers of interested Filipinas still in the Philippines, usually referred through familial/social networks. This second connotation is also the case for those going to Paris and other destinations without official bi-lateral labor program agreements with the Philippines.
- <sup>16</sup> Mila, who has experienced both forms, tells how tighter immigration controls in France leave smuggling/trafficking as the only current option for entry: "The first time [1984] I came as a tourist...—just packed my bags with my visa. The second time..., it was more difficult so I had to come the clandestine way. It took me four months to reach France."
- <sup>17</sup> For a full treatment of this approach, see Nussbaum (1988; 1992; 1995; 1998; 2000; 2003; 2004; 2006).
- <sup>18</sup> For a full theorization, see Briones (2006).