A multi-scalar comparison of responses to abuse against domestic migrant workers in Taiwan, Hong Kong, and Shanghai

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Comments most welcome!
Introduction

My paper will propose a comparative survey of the government and private responses to abuse against domestic migrant workers in Taiwan, Hong Kong, and Shanghai. The main goal of this multi-scalar comparison will be to help identify the optimum level of government intervention to efficiently prevent abuse against domestic migrant workers. These three locations have similar demographic and socio-economic characteristics, but the authorities examined in this paper represent three different levels of government: national, semi-autonomous, and municipal. These three locations also represent three different forms of political system: liberal democratic in Taiwan, consultative authoritarian in Shanghai, and a hybrid between the two systems in Hong Kong. This paper, based on fieldwork in these three locations, will identify the actors in government, the agencies that recruit and place domestic workers, and the organizations that advocate the protection of their rights, and assess their relative influence and resources. This structured multi-scalar comparison between Taiwan, the Hong Kong Special Administrative Region (HKSAR), and the Municipality of Shanghai, will analyse the role of governments, employment agencies, civil society and faith-based/communal organizations in promoting/guaranteeing and/or respecting the rights of domestic workers. This is part of a broader project that will outline the cultural context and path dependency of previous political struggles that have shaped the legal framework protecting migrant domestic workers against abuse in these locations.

Research design

The three area considered in this research meet one the classic research designs of comparative politics research: they have most similar conditions with respect to their demographic structure, their levels of social and economic development, their exposure to international trade and their integration into the global economy, and their role as

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major sources of economic, commercial, and political influence within their respective country. Most importantly, the Republic of China (ROC) in Taiwan\(^2\), the HKSAR, the Special municipality of Shanghai, are primarily urbanized area with wealthy middle classes which rely on an unusually high number of migrant domestic workers (MDW). Finally, people in all these three areas share the same cultural heritage, broadly defined here as ‘Chinese’, with markers of identity such as a language using characters, allegiance to worldviews/religions which specific concepts about life after death, retribution for sins, social norms and expectation, and obligations throughout generation, in the tradition of Confucianism, Taoism, and Buddhism. Central to these and of relevance here is the value attributed to the concept of filial piety and the obligation it entails towards one’s parents. Outlining these most similar conditions between Taiwan, the HKSAR and Shanghai should facilitate comparative investigation: they set aside – or control for - variables less likely to exert any influence. Conversely, they point to the variables – key differences – that could help explain variations in outcome.

Two significant differences come to mind immediately with respect to these locations: their varying degrees in terms of level of government, and differences in political regime. With respect to level of government, Taiwan is a fully sovereign state, albeit the PRC has successfully managed to convince most UN member states to deny it this recognition; the HKSAR enjoys a large degree of autonomy within the PRC, under the framework of ‘One Country Two Systems’; and Shanghai is a special municipality within the Peoples’ Republic of China (PRC), with important political clout, but no measure of autonomy. This paper will try to assess whether level of government influences the ability – or the willingness – of authorities to comply with the international labor standards adopted by the International Labor Organization (ILO). Turning to the other significant difference, the nature of political regime, Taiwan is a full-fledged multi-party democracy, Hong Kong is a hybrid regime of multi-party democracy with limited representation, while Shanghai is a constituent entity within an authoritarian party-state whose leaders consider democracy a ‘dangerous idea’. The central question raised by this paper is whether this latter difference, which imply varying degree of possibilities for organizing and

\(^2\) For the sake of simplicity I will refer throughout to Taiwan.
mobilizing civil society, are having any impact on promoting the rights of MDW and pressuring governments to implement them.

I will seek to answer this question as follows: after presenting a short historical outline of the MDW presence in Taiwan, Hong Kong, and Shanghai, I will compare the labor condition and workplace abuses suffered by MDW in the three locations, paying attention to the differences and similarities that will need to be explained. I will outline the key differences in terms of level of government – multi-scalar differences - between the ROC, the HKSR, and the PRC. Moving to the outcomes, I will present the responses of receiving countries to international and domestic pressures from civil society to address the situation of MDW, to underline the effects of multi-scalar differences.

Who are the MDW?
It took the ILO six decades before recognizing the worth of the work done by domestic workers, until recently seen as a labor reality of the past, but now emerging as a salient feature of the global economy. (Boris and Fish 2014) The ongoing efforts by the ILO to address the issue of MDW rights remind us that much needs to be done. This paper focuses on a small portion of this global reality, albeit in a region that is poised to see a significant increase in the demand for such labor in years to come, especially in China’s big cities. Economists have argued that the entry of native women in the labor force of Hong Kong and Taiwan has generated demand for live-in foreign labor doing domestic work and providing child care (Cortes and Pan 2013). Similar dynamics in Shanghai have created a demand for migrant workers who are already living in the city to help women working outside the household. Besides these similarities, however, there are important differences: the range of services that MDW can provide in Hong Kong and in Shanghai is larger than in Taiwan, where the law forbids caregivers working for elder to perform any other tasks such as household chores and child care.3

MDW in Taiwan and Hong Kong are known as ‘foreign domestic workers (in Taiwan 外籍家庭看護工, in Hong Kong 香港外籍家庭傭工)’ but many euphemisms try to

3 Although my informant mentions that this requirement is very often breached.
conceal the reality of their condition, and rob them of their status as workers deserving of labor rights. In Taiwan, they are known as foreign domestic caregivers; in Hong Kong, they are labelled by official authorities as foreign domestic helpers; an identity that conceals their reality as workers. In both cases, foreigners represent a majority of all MDW, and local domestic workers represent a relatively better off minority of the workforce, relative to foreigners, albeit resentful of the latter, whom they see as ‘stealing their jobs’. Local domestic workers are fully protected by the local labor legislations in Taiwan and Hong Kong, as citizens. Not so foreign domestic workers, who are extremely vulnerable, in their conditions as temporary workers without any chance of becoming a citizen in Taiwan, or the right of abode in Hong Kong. Local residents in Taiwan and Hong Kong, on the other hands, shun hiring local domestic workers, whom prospective employers consider too expensive and too demanding.

In Shanghai, the latter distinction between foreign and local domestic workers is not relevant. Most of the MDW are nationals, i.e. fellow Chinese citizens, and as such they are protected by the labor legislation of the PRC. One specific characteristic of China, however, makes the situation of MDW in Shanghai not that different from that of their counterparts in Taiwan and Hong Kong in terms of social exclusion: the hukou, or the residence permit that every Chinese citizen must carry to establish her access to social services, limit their eligibility to important social services in health care, education for their family, and elderly care. As a result of this system, Shanghai MDW who want to benefit from the free or low-cost social services they are entitled to receive as citizen are only available in their province of origins, as indicated in their residence permit, unless they are willing to pay, or willing to accept services with lower quality provided at a lower cost in situation of grey legality.

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4 As a member of the equality opportunity commission explained, this is more ‘friendly.’ An approach which people I interviewed in an NGO and in a trade union rejected strongly.  
5 My informants in Taiwanese and Hong Kong’s trade unions both reported the presence of that bias.  
6 From interviews 7,8, 29 and 33 in Hong Kong and Taipei.
In Taiwan, MDW represent an important proportion of all foreign workers, who are roughly divided in two distinct categories: workers in industry and factories, and domestic workers. According to the Ministry of Labor (MOL) there are, in May 2015, 349,000 workers in ‘productive industries’ and 225,000 workers in the sector of social welfare, which includes mostly MDW. Both categories of foreign workers are not included in the general statistics about employment in Taiwan. Detailed statistics provided monthly by the MOL give information about their national origins, their locations in each of Taiwan’s municipalities and counties, as well as the nature of their work, disaggregated in 19 categories for specific types of activities for factory workers, and in two separate categories for MDW: mostly nursing (98% of the total), and home-maids. The geographical location of MDW in Taiwan is in the most important cities: the greater Taipei area, Taichung, and Kaohsiung.

In Hong Kong, MDW are invisible as far as the government is concerned. Fact sheets produced by the HKSAR government do not indicate numbers of immigrants relative to the population, statistics on the labor force according to industry lump together ‘public administration, social and personal services’, a category most likely to include MDW. The Immigration Department does not help either, as it does not provide numbers for MDW, but only note that 28,300 individuals were admitted to the HKSAR through a program encouraging overseas professional to apply for work if they have special skills, expertise, and experience, lacking in Hong Kong. The Labor Department, finally, mentions two other programs for the importation of labor: a supplementary labor scheme (SLS), which allows employers to import staff, and a program for the recruitment of Foreign Domestic Helpers (FDH), but it does not provide specific numbers for the people who benefit from them.

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7 Foreign professionals in business, higher education, etc are not included in these statistics and not subject to the same restrictions.
9 Most of them are employed in ‘3 K’ industries, which are ‘dirty, dangerous, and labor-consuming’
12 http://www.labour.gov.hk/eng/plan/iw.htm
In Shanghai, the number of foreign workers is relatively modest: they are mostly employed by expatriate residents, and not all of them employ them.\textsuperscript{13} This may reflect the fact that according to an ILO report produced in 2009, that at least until that year they were not allowed in the country (ILO 2009). In formants have mentioned the existence of such foreign domestic workers, but they are present in very negligible number. However, the proportion of domestic workers coming from other provinces in Shanghai’s labor force is important: estimates from a previous ILO study counted over 300,000 people (ILO 2009: 2), which is 50 % more than the number of registered MDW observed in Taiwan, but a smaller proportion to the total workforce than that which is observed in Hong Kong. By 2013, this number has reached 490,000, according to a study by the Chinese Magazine Insight (2014). MDW coming from other provinces in Shanghai, most of my informants have claimed, are likely to work for several employers, and do not have to live at their employer’s residence, in contrast to the situation faced by MDW in Taiwan and Hong Kong.

In both Taiwan and Hong Kong, most of the MDW come from two countries: Indonesia and the Philippines, although the dynamics of migratory flows from the sending countries has changed considerably since the beginning of their arrival in these two locations. Filipinas came first, but over the years, their increasing ability to assert their rights and fight back against the abuse they suffered from a few unscrupulous employers and agencies, made them less likely to be hired as people from another nationality were perceived as less demanding. The importance of Filipina to the economy of their country can hardly be underestimated: in 2013, there were 2,3 million overseas Filipino workers, and their remittance was the second largest source of foreign reserve for the country (Henley 2015). Indonesian women, who do not speak English, and who are perceived as being more ‘modest’ and subservient to their employers, have become favorite employees for Taiwanese, who are now recruiting them in far greater number than Filipinas. 2015 statistics from the Labor Department in Taiwan shows that there are over 170,000 MDW from Indonesia, and only about 20,000 from the Philippines. In Hong Kong, statistics obtained from the Bureau of Labor by Amnesty International indicated that in 2011, 48%

\textsuperscript{13} Interview 27
of the MDW are coming from the Philippines and 49% from Indonesia (AI 2013). Viewed from a historical perspective, the changes in the demographics of MDW by national origins show a trend similar to the one observed in Taiwan: a reliance on Filipina followed by increasing numbers of Indonesians in the late 1990s.

The situation of the labor market at the time of writing is shifting again, following the scandal caused by a horrific case of abuse in Hong Kong, which has prompted the Indonesian government to clamp down on the migration movement out of the country for MDW. The particular case represented the tip of the iceberg for a more systemic problem, but the government of the receiving countries, rather than questioning the nature of the labor market conditions that make possible such kind of abuse in the first place, have simply decided to look elsewhere for the supply of labor and have entered into negotiations with other sending countries to offset the anticipated labor shortage that the Indonesian decision is likely to create. Hence the Labor Department in the New Taipei City government and the Hong Kong Equal Opportunity Commission, in anticipation of trends to come, have both prepared documentation in Vietnamese and other languages to help MDW from other countries. Both are actively cooperating with governments or employers’ agencies in other countries in South and Southeast Asia.

For many years, Filipina represented one of the most important components of the MDW in Taiwan and Hong Kong, and as such, their international movements in and out of these two locations and around the world exercise a significant impact in the economy and the politics of the Philippines but also around the world. (Brigham 2013) In many cases, informants familiar with the Canadian consulate have revealed, an important number of cases processed by Immigration authorities are Filipina MDW who, after a few years of experience gained in Hong Kong, hope to move to Canada where they believe they are more likely to find an employment commensurate to their qualifications.\textsuperscript{14} A similar situation could be observed in Taiwan, except that without proper diplomatic relations between Canada and Taiwan, it is difficult to measure the extent of that reality there.

\textsuperscript{14} Many of the Filipina MDW are over-qualified for the tasks they are asked to perform in Hong Kong.
The migration of MDW to Shanghai is more recent than in Taiwan and Hong Kong, although migration of workers to Shanghai, mostly in the construction industry, predates the period of reform and opening of 1978. The migration of MDW to Shanghai increased in the 1990s, following a rise in the demand for their service, as the middle class became ever more important. The MDW are coming from neighboring provinces, especially the poorer ones such as Anhui, an observation made by my informants in Shanghai, but one which I cannot confirm with statistical evidence. The ILO suggests that until 2009, the most important sending provinces along Anhui were Henan, Shandong, Hunan, Sichuan, and Gansu (ILO 2009:1). In all cases, the cultural differences, with respect to language, culinary habits, and customs, are important enough to set these migrants apart from the Shanghai native population. MDW are moving to other cities than Shanghai, but mostly in wealthy cities on the East, where middle class are important in number, such as Beijing, Shenzhen, and Guangzhou (ILO 2009: 2).

**Main source of abuses against MDW**

In all three locations, MDW represent extremely vulnerable categories of the population. As foreigners in Taiwan and Hong Kong, they are at the mercy of potential source of abuse coming from three different sources. *Employers*, some of whom are themselves in relatively deprived socio-economic categories, look at the MDW as an expendable source of labor. In some of the worst cases, employers impose on their employees working conditions, which I will document below, that amount to virtual slavery. *Placement agencies*, which impose fees to employers to help them find the most compatible employees, and extract from the latter ‘training fees’, exploit the opportunity offered by an expanding labor market that has yet to be fully regulated. Finally, MDW suffer from *regulations* that seriously harm their rights and limit their opportunity for redress in cases of abuse. MDW in Taiwan, Hong Kong, and Shanghai confront similar forms of abuse but their ability to address them differs depending on where they live. On the one hand, the media in Taiwan and Hong Kong have been instrumental in attracting attention to the most egregious cases of abuse, and eventually shaming all parties concerned. In Shanghai,
the rules imposed by the CCP to the media limit their ability to expose abuses, which makes it more difficult to get a real measure of the extent of bad treatment against the MDW in that city. Moreover, as I will discuss below, the possibility of a sustained mobilization by civil society actors, in particular religious institutions, in Taiwan and Hong Kong, makes possible redress in a way that is less likely in Shanghai, where civil society has less autonomy. Below, I review the main forms of abuse in relation to the three sources mentioned above, and add the damage caused by traditional biases suffered by foreigners in these three locations.

Workplace abuses in the hands of employers are the most obvious sources of suffering endured by MDW. We know much about the cases of bad treatment reported in Taiwan and Hong Kong, thanks to the advocacy work performed by civil society organizations, some reporting by the media, and major scholarly investigations about the life and work of foreign domestic workers (Liang 2014; Tseng and Wong 2013; Lin and Bélanger 2012; Pan and Yang 2012; Lan 2002). In Taiwan and Hong Kong, many sources of abuse are similar but differences in the labor legislation also explain that there are specific forms of mistreatment in each place. In both Taiwan and Hong Kong, the main source of exploitation rests in the obligation for caregivers and domestic helpers to live in their employers’ house. This obligation, known in Hong Kong as the live-in rule, was meant originally to ensure that their employers have the obligation to find their employees a place to live. But in practice, this rule has come to mean confinement and limited opportunities to communicate outside of the employer’s home, leaving the latter total control over the life of his/her employee. Some of the space set aside for MDW is so tiny that one totally lacks privacy.

An immediate consequence of this live-in obligation is that the employee is available twenty-fours a day for the most abusive employers: Taiwan’s Ministry of Labor found that in 2015, 70 percent of caregivers worked 365 days a year and 30 per cent are given a day off a month (Hsiao 2015). In Taiwan and Hong Kong, employers must, according to the law, provide a day of rest to their employees. For MDW, these breaks are important to socialize, send remittance to their family, and simply get a well-deserved rest.
However, some employers limit this time off, out of fear that their employee could take the opportunity to escape. In the worst cases, the lack of rest that results from these demands for working overtime without any rest have led to death by sheer exhaustion. The restriction on free time not only violates the rights of workers to rest, it also violates their religious rights. For many Filipina who find solace in the Catholic Church, the impossibility to go to mass most of the time represents a form of harm that deprive them of support in ways that can be crucial, as I will show later. In the worst cases of ill-treatment, the absence of a private space for domestic workers make them vulnerable to physical abuse, sexual abuse, and other forms of harassment (Pan and Yang 2012). An especially egregious form of restrictions on MDW’s rights is the practice by employers to confiscate their employees’ passports, to prevent them from leaving to find an employer elsewhere. Not surprisingly, the employers who are abusing physically and sexually their employees are likely to resort to this form of rights’ violation.¹⁵

We know much less about the treatment experienced by MDW in Shanghai, however, because the PRC is lacking on those two fronts relative to the other two locations. In the absence of guarantees that independent NGO can work without fear of retribution from authorities and considering the limitations on reporting for the media, there is no way to confirm authoritatively that the relative absence of media coverage of abuse against MDW reflects the reality of their situation. Among the few scholarly studies about the situation of MDW in China, little is specific to Shanghai (Shen 2015; Qiu 2013). The ILO report mentioned before stands out. It mentions that domestic workers in China suffer from issues similar to those that affect their counterparts in Taiwan and Hong Kong: long working hours and overtime without compensation, risks of sexual or physical abuse, low adherence of labor contract, and lack of access to social insurance. (ILO 2009: 5) There is little reason to believe that the situation in Shanghai is better than elsewhere, as the study by the ILO covered that city along other ones of a comparable size. An indirect evidence that the situation of MDW in Shanghai, and in China in general, deserves more scrutiny are the attempts at organizing into grass-root associations

¹⁵ This was mentioned to me time and again by my informants in NGOs, Churches, and even in government, in Taiwan and Hong Kong. Although a minority of employers engage in these behavior, they do considerable damage to both location’s reputation.
to prevent such abuses, documented by the China Development Brief, a well-respected platform that documents NGO activity in China (Han 2013a; Han 2013b).

The second source of abuses affects both employees and their employers. Brokers and placement agencies, by promising prospective immigrants a good employment opportunity in Taiwan and Hong Kong, charge a fee for finding a decent working opportunity. These fees can represent up to three months of salary, which basically means that MDW are working as indentured laborers, or without pay, for the first months of their stay in their place of works. Aggravating the situation are the fees charged to employers, which can be imposed on the employees. In addition to the placement fees, some unscrupulous brokers in Taiwan and Hong Kong imposed additional fees for training, the cost of relocation, which can result in more unpaid wage. Brokers also fail both employees and their employers when they fail to notify appropriate authorities when abusive employers mistreat MDW. More concerned by their business, some brokers and placement agencies prefer to ignore the mistreatment imposed by some employers and continue to lead unaware MDW to them. In both Taiwan and Hong Kong, the market for placement agencies is highly competitive and poorly regulated. As I will discuss below, reforming this market of placement agencies has become a priority for NGOs concerned by the welfare of foreign workers.

In China, the ILO concluded in its 2009 report that there are over 600,000 placement agencies for domestic workers throughout the country. However, and although Shanghai represents close to 1/55 of China’s population, the number of placement agency in that city is very far from reflecting that proportion, as there are ‘only’ 1000 registered agencies in Shanghai, or 1 for 600 in the country! This proportion is all the more remarkable since the proportion of the population likely to resort to MDW is among the greatest in all of China’s cities. The relatively small number of placing agencies – comparable to Taiwan and Hong Kong - simply reflects the maturity of the market for this kind of firms. On the one hand, a few placement agencies are operating in many of the city’s districts, and the most important of them are in fact oligopolies that act as federations of smaller agencies. There are few studies of placement agencies, but my own
fieldwork in the summer of 2015 has revealed an extraordinary variety, including large enterprises catering to the whole municipality and local small forms serving the neighborhood. I have not been able to establish a correlation between size and good corporate practice, in terms of relations to employers and provision of protection to employees when they have to deal abusive employment situation. The 2009 ILO report mentioned then five major issues: exclusion from the labor code, undervaluation of domestic services, confusion on whether domestic workers’ disputes should be handled under labor laws or civil laws, low awareness of domestic workers’ rights, and lack of data on their numbers and conditions (ILO 2009: 9). Although there has been progress since 2009 on most of these issues, there remain important gaps on the issue of rights awareness, in the context of a political climate hostile to rights advocacy.

Finally, in all three cases, MDW have to contend with restrictions to their rights derived from government actions or inaction. In many cases, the labor laws, by determining working conditions, empower employers at the expense of those they hire. In both Hong Kong and Taiwan, there is lack of oversight over brokers and placement agencies, and there is no institution that fills that role in Shanghai either. In Taiwan and Hong Kong, as we have seen above, the state is indirectly complicit to one of the worst for of abuse against MDW, with the live-in requirement that not only limits their right to privacy and security, but in actual fact also limits their right to find employment. In Taiwan, moreover, the major issue for which the state does not fulfill its obligations to the MDW has to do with its labor laws and regulation, which do not recognize them as workers but as temporary caregivers. Moreover, the rule according to which MDW in Taiwan can only deliver care for the elderly is not enforced in practice. In the name of respect for privacy, no government inspector investigates private citizens to ensure that they respect this aspect of its regulations. In addition to the restriction mentioned above in Hong Kong, the ‘two weeks rule’ imposed on employees allows them only this short time to find a new employment if they quit or they are dismissed, before they are forced out.

16 Interview 29.
Last but not least, and further trapping MDW in a dangerous situation, media reinforce stereotypes against women in an already vulnerable position. As Ladegaard (2013)’s survey of Hong Kong media has shown, abuses are legitimized by mainstream media, either via the under-reporting, mitigating or explaining away of cases of abuses. Conversely, offences against employers are seen as expression of ‘alien’s characters’ and nurture to the public the perception that MDW do not belong to Hong Kong’s mainstream, thereby legitimizing their exclusion from its moral community.17 Although I have not been witness to such representation in Taiwanese media, informants in NGO and in particular in the labor movement have confirmed that such perceptions are important in their society. In Shanghai, it is impossible to evaluate the extent to which biases can be reinforced this way because I have not seen exposure of cases of abuses against MDW by the media. On the other hand, there is considerable academic research on the perceptions of urban residents in China who have a low esteem of their rural compatriots (Jacka 2014; Kuang and Li 2012; Knight and Gunatilaka 2010; Chan 2010; Wang et al 2010).

Multi-scalar differences and their possible effects

The independent variable considered in this paper is the specific capacity of different levels of government. The approach of multi-scalar analysis has been used in international political economy to understand the effects of globalization, and responses to its effects by local government. (Park 2005) In this paper, I use this multi-scalar approach in the narrow sense of multi-level comparison, aware that there are other meanings to that methodological lens, which include the role of transnational civil society (Kokx and Van Kempen 2010). In this paper, I do pay attention to the latter, as actors who pressure governments on behalf of MDW, but because the focus is on the policy implementation side, I choose to focus on the extent to which levels of government matter in the attempts to redress the worst case of abuses against MDW and prevent their occurrence in the first place. Are local governments, with presumably greater proximity and familiarity with their constituents – including MDW employers, recruiting and placement agencies - better equipped to deal with the actors responsible for these abuses?

17 I do not know of a similar study for Taiwan’s or Shanghai’s media at the time of writing.
Conversely, aren’t central governments, in the frontline in directly interacting with international organizations and transnational civil society, the more relevant agencies for the improvement of MDW rights?

As mentioned before, the three areas considered in this paper represent different levels of government and the analytical question is which of these levels is more likely to address the issues affecting domestic workers. The first level considered here is Taiwan’s central government, national in scope, and sovereign, with the capacity to determine policies and the power to implement them. (Cooper 2003) This is followed by the semi-autonomous/quasi-sovereign government of the HKSAR (Holiday, Ngok, and Yep 2002), whose situation of large autonomy under the ‘One Country Two Systems’ arrangement gives it some powers to manage its own affairs, but within the limits imposed by the central government in Beijing. Finally, we look at what a second-tier, municipal-regional level of government can achieve, namely the Special Municipality of Shanghai (Chen 2009). I seek to examine to what extent the respective powers of these different levels of government make a difference in regulating, enforcing and monitoring regulations and laws relevant to the rights of MDW, paying attention in all three cases to the responses to pressure for change coming from civil society. For each of these three levels of government, I will introduce below the agencies responsible for the management of MDW affairs, spell out the main issues, identify the actors pressuring governments to address them, present governments’ responses, and briefly review remaining obstacles.

The Rights of foreign caregivers in Taiwan

Are higher levels of government in East Asia more likely than lower tier of governments in the same region to respond to international pressure concerned with the welfare and the rights of MDW? A brief examination of Taiwan’s central government policies on MDW, who are known there as foreign caregivers, represents a good way to start answering this question. The ROC operates as a centralized state like the PRC, but on a much smaller
scale, with no province-level government, with the exception of special municipalities.\textsuperscript{18} Taiwan counts three other local levels of government: county (xian), district-township (xiang-zhen), and community-village (li-cun), in descending order. All policies are determined at the center: the representatives for the main political parties usually debate in the Legislative Yuan the laws submitted to them by either fellow representatives, members of the Executive Yuan, or other sources. Once these laws are adopted, lower levels of government are expected to implement them.

At the central level, the main agency responsible for foreign caregivers is the Ministry of Labor (MOL), which is responsible for a wide range of services for all workers, including the enforcement of labor standards, promotion of gender equality, supervision of labor relations, management of services ranging from welfare and retirement, etc. To address the issue of labor shortages in key sectors of the economy, the MOL has established a Workforce Development Agency (WDA) looking for the recruiting of workers, including foreigners, to fill gaps in the labor force. The WDA has created for foreign caregivers two specific structures: the Cross-Border Workforce Management Division, and the Cross-Border Workforce Affairs Center. Most local administrations have a Department of Labor Affairs that implements the regulations from the MOL, through two bureaus, one for foreign workers inspection, and one for foreign labor consultation services.\textsuperscript{19}

We have seen before that one of the most important sources of abuse for foreign caregivers in Taiwan is the live-in requirements that put them in situation of extreme vulnerability. But foreign caregivers are also excluded from labor regulations that protect workers’ rights such as workplace safety because they are there expected to be in Taiwan on a temporary basis only. Conversely, foreign caregivers must abide by very rigid regulations that confine them to the task of providing elderly care at home or care to the disabled when no relative is available. Regulations rarely allow Taiwanese household to hire a caregiver to look after a senior below the age of 80, and strictly forbid Taiwanese

\textsuperscript{18} The ROC constitution states that there is a provincial-level government, but the ROC being limited to the province of Taiwan and a small district of the province of Fujian, the provincial government has been streamlined to avoid the management of a redundant administration.
\textsuperscript{19} \url{http://www.labor-en.ntpc.gov.tw/_file/1413/SG/29365/40830.html}
employer from hiring a foreign caregiver to serve as a maid, nanny, or home-helper, unless a very strong case is made by the employer that a senior under the age of 80 is seriously incapacitated and no-one in the household could help her/him. There are countless cases in which employers ignore these rules, and many of the caregivers end up nursing babies, doing house chores, gardening, getting drawn in situations of illegality against their will.

Many recruiting and placement agencies represent the most serious offenders in putting foreign caregivers in these situations. Agencies present themselves as intermediaries between people looking for work as caregivers and their eventual employers. They propose to job seekers occupations as ‘au pairs, nannies, babysitters, pet sitters, housekeepers, tutor, personal assistants, and senior carer,’ suggesting a wide range of attractive jobs, and do not mention anything about the limitations imposed by the existing regulations discussed above. Moreover, employers and caregivers depend on recruiting agencies and brokers based on both sides, in the sending countries, as well as in Taiwan. Sending countries agencies can pay for the airfare, preparation of relevant documents – passports, vaccine certificate, etc. – for admission in the receiving country, while agencies in Taiwan charge fees for training, as well as instruction about the local culture, laws, and regulations. These fees, unregulated, can add up to the equivalent of months of the caregivers’ salary. In many cases caregivers have gained too little knowledge about local regulations and their rights, despite having paid fees for that purpose.

To prevent abuse against foreign caregivers, many actors in Taiwanese civil society arose over the years. Individuals moved by some cause célèbre, direct witness themselves of abuse, acquaintance to a victim, or simply concerned citizens, many people have expressed their solidarity with care workers over the years. The Awakening Foundation, which originally established in 1982 the ‘Awakening Magazine’ to promote women’s rights and awareness, represents one of the best-known of these organizations. Among its many activities on behalf of all Taiwanese women, it has promoted in 2007 and 2009 the Amendment to the Immigration Act to protect the rights of women immigrants in Taiwan. The Taiwan International Workers Association (TIWA), along with its main mandate of
supporting the rights of workers for workplace safety in factory, has campaigned since its founding in 1999 to organize caregivers into trade union, a process made all the more difficult because most caregivers are in Taiwan for a limited period of time and do not see the interest for the long-term involvement implicit in organizing and, as mentioned above, because some Taiwanese domestic workers resent such possible competition from outsiders. Finally, religious actors have been quite active in helping caregivers in difficulty. The Garden of Hope, a non-denominational Christian NGO, has been active in directly providing shelter and counselling to caregivers victims of abuse. The Presbyterian Church is doing advocacy for individual cases, even taking up legal cases. The Catholic Guangchi communication broadcasting service reaches out to university students and sensitizes them to the situation of caregivers by organizing face-to-face meetings. 20 In sum, concerned and aware citizens in Taiwan have organized and advocated changes in the laws and regulations affecting foreign caregivers.

Taiwan authorities are certainly aware that in their difficult struggle for international recognition from the international community, the shaming by transnational NGO on its mistreatment – by omission rather than by action - of foreign caregivers undermines seriously its efforts to generate support. The situation is becoming critical, as shaming is coming from countries considered friendly to Taiwan. Hence, in its 2015 annual report on human rights, the United States State Department broke with the previous tradition of generally lenient opinion on Taiwan’s respect for human rights and criticized both the exploitation of domestic workers and the government’s lack of effort to address the issue (Lowther 2015). The Philippines government has reacted to reported cases of abuse in Taiwan by increasing the awareness of Filipino migrant workers about their work, following an investigation that found poor knowledge of government regulations made them very vulnerable to abuse (Battistella and Asis 2011). Indonesia’s decision to phase out and restrict migration after the horrors endured by an Indonesian national in Hong Kong, has put Taiwan in a difficult position. This is all the more so as the lack of

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20 Mass are important occasions to reach out to Filipina domestic workers and help them as well. Hence, as I have witnessed at a mass attended by mostly Filipina worshippers, the ceremony concluded with Church lay people providing to all assembled worshippers the number to reach if they need help in case of abuse.
diplomatic recognition for Taiwan makes it difficult to achieve internationally recognized and binding agreements with other potential sending countries such as Vietnam, which the MOL considers turning to.\textsuperscript{21}

The government’s timid response to cases of abuse is mediated by the confluence of many conflicting interests, ranging from brokers and employers’ associations concerned by costs and profit margins, to trade unions, some of which wish to terminate reliance on foreigners and instead recruit local caregivers. For many years, authorities in Taiwan have tried to navigate between these conflicting interests, or did not consider it to be a priority. Among the few responses that the government has undertaken, and which did not risk offending too many constituencies, has been the institutionalization of a mechanism to provide emergency assistance to foreign caregivers in distress, suffering abuse at the hand of their employer. To that end, the MOL has sub-contracted since the 1990s to the NGO Garden of Hope the task of providing shelters to foreign caregiver victims of abuse. More potentially substantive responses, such as the passing of the Domestic Worker Protection Act during the late spring of 2015, after 12 years of active promotion by NGOs, turn out to be merely symbolic, according to local observers.\textsuperscript{22} In sum, despite its capacity to improve the situation of foreign caregivers, the state in Taiwan has not acted decisively, likely captured or distracted by too many divergent interests. The next section shall help us assess if a lower tier level of government could do better.

\textit{The rights of Foreign Domestic Helpers/Workers in Hong Kong}

The HKSAR stands in an intermediate position, between Taiwan and Shanghai, in terms of its ability to independently adopt and implement policies for the local people. According to its Basic Law, a quasi-constitution that determines its powers and obligations to the PRC, the HKSAR represents a special case of local government administering its territory with a large degree of political autonomy, but always with a

\textsuperscript{21} Interview with a government official on June 10, 2015, Taipei.
\textsuperscript{22} This was the view expressed by Taiwanese colleagues in legal and political studies, a few weeks after the passing of the law.
possibility of censure coming from above. Hong Kong does not have its own foreign policy – a responsibility of the PRC – but as a major hub of international trade and finance, it has a special status in many international organizations and institutions with an economic objective, such as the IMF and the WTO. As far as the ILO and workers’ rights are concerned, Hong Kong is considered a part of the PRC, and does not enjoy representation in that organization. However, this does not prevent independent trade unions in the HKSAR to organize, even when the target of the organizing is foreign domestic workers. Finally, and even if the HKSAR is responsible for the management of its workforce and its own immigration policy, like Taiwan does, decisions on the granting of citizenship must defer to the central authority in Beijing.

Three organizations in the HKSAR government are especially relevant for the welfare of foreign domestic workers/helpers. The Labor Department, as the executive arm of the Hong Kong Labor and Welfare Bureau, primarily looks after issues of health and safety in the workplace, and provides some information about foreign domestic helpers’ rights and protection ordinances. To that end, it publishes for the benefit of employers and foreign domestic workers a list of their rights and duties. Besides this service, the Labor Department refers to the Hong Kong Immigration Department, which processes visa applications for prospective foreign domestic workers, and provides to employers basic instructions about the eligibility of potential applicants. Finally, the Equal Opportunity Commission, whilst not a government agency but a public institution, monitors abuses against employees and reports to relevant HKSAR authorities. Its mandate is to monitor compliance with HKSAR governments’ ordinance on gender and racial discrimination, but it does not look specifically at cases of discrimination against domestic workers, simply because no ordinance has been produced for that particular group of people.

All the above agencies are aware of the problems caused by the proliferation of placement agencies and offer information useful to employers and, eventually, foreign domestic helpers. The Labor Department, for example, provides a monthly gazette with a

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23 The HKSAR does not have a distinct status within the ILO.
list of employment agencies licensed to place foreign domestic helpers, with a list of the agencies that have lost their authorization and a list of institutions that benefit from an exemption to the rules. However, as mentioned above, rampant abuse by brokers and placement agencies, and some of the regulations, such as the two weeks rule and the live-in requirement, are problems related to labor regulations that only the authorities have the ability to solve. As most of my interviewees, this is not a priority for the administration, and only a minority in the Legislative Council (Legco) is willing to tackle such issue. Like caregivers in Taiwan, Foreign Domestic Helpers/Workers are not protected by Chinese nor Hong Kong labor laws because of their status as non-citizens, and because they are not considered qualified workers the same way that foreign teachers, bankers, and professionals are. Thus, they remain an extremely vulnerable component of the Hong Kong labor force.

As observed in Taiwan, many actors in Hong Kong civil society have risen to support the rights of foreign domestic helpers. The labor movement has been quite active and able to maintain its independence from the trade unions in the PRC. Hence, the Hong Kong Confederation of Trade Union (HKCTU) and its affiliates, the Federation or Asian Domestic Workers (FADWU), the Union of Filipina Workers (UNIFIL), the Thai Migrant Workers Union (TMWU), etc. have sought to encourage foreign domestic workers to join force, despite the opposition of many native domestic workers. Perhaps the bigger obstacle to organizing for collective action, however, is the isolation at the workplace imposed by employers. Besides the labor movement, NGO such as Amnesty International, which considers labor rights violations a human rights violation, contributes to bring to the attention of the outside world the situation that prevails in Hong Kong.

The legal profession has been especially active in the promotion of domestic workers rights. Many lawyers have accepted to defend cases on a pro bono basis, despite the enormous difficulties they face. One of the biggest hurdles to achieve redress lawyers face is when cases are dropped because the aggrieved party has left the HKSAR before a ruling can be issued by courts. In addition to prosecuting or advocating for foreign
domestic workers, some lawyers have even sought to tackle the problem of abusive and unscrupulous brokers by setting up their own data bank and organizations to name and shame the unlicensed and problematic placement agencies, helping both employers and employees. Last but not least, as observed in Taiwan, churches have been extremely active in advocacy, counselling, and basic humanitarian support to the foreign domestic workers. Anglicans, Catholics, and Protestant denominations have housed or supported financially institutions such as the Christian Action, Mission for Migrant Workers and Pathfinders, who see solidarity with foreign domestic workers as an expression of their faith.

An important event in the Spring of 2015 bringing together most of the above institutions, noted local politicians, and even foreign representative, signaled that some progress was possible. The ‘Domestic Workers Roundtable’, sponsored jointly by the Center for Comparative and Public Law at the Faculty of Law (University of Hong Kong), and the Hong Kong Public Interest Law and Advocacy Society, brought on board the International Labor Organization and the International Organization for Migration as observers. On the occasion, participants considered the creation of an Inter-governmental Working Group to provide an informal framework for dialogue on domestic workers. The mobilization orchestrated by these organizations has contributed significantly to bring to attention the plight of domestic workers to the eyes of society at large, and at the time of writing, the roundtable is being institutionalized, with ongoing activities to promote legal change, defend specific cases, and inform public opinion.

But the obstacles to change remain daunting. The Hong Kong Labor and Welfare Department has long resisted attempts to change the law with respect to foreign domestic workers, despite the vigorous pressures mentioned above. Immigration Department officials do not believe that they have any power to change rules for the right of abode or the granting of citizenship to foreign domestic workers, as they believe that such matters can only be determined in Beijing. The Equal Opportunity Commission, while mandated to monitor compliance with a number of ordinances related to racial and sexual discrimination, is deprived of a specific ordinance that would help looking after the
specific problems affecting foreign domestic helpers, and cannot do advocacy on their behalf. A small ray of hope at the time of writing is that change is being debated within the Legco, as a direct result of the roundtable convened in the Spring of 2015. At the end of the day, however, many issues related to immigration depend on the agreement of central authorities in Beijing.

Maids, nurses, and home workers in Shanghai

The Special municipality of Shanghai is an entity with the responsibilities of a provincial government. It is important to keep in mind, however, that the PRC is not a federal state, and Chinese provinces do not have their own powers according to the constitution, in contrast to federal regimes such as the United States, Canada, or Switzerland. Even though Shanghai has discretionary powers for spending and administering its own affairs, in area as diverse as tourism, communication, or religious affairs, any degree of autonomy is ultimately determined by decision from the center, which has the authority to grant more powers or withdraw them at any time. This is even truer when one considers the CCP, the ultimate source of power in China. Although the Party Secretary for the CP Municipal Committee of Shanghai is a member of the Political Bureau, the most powerful and the highest source of authority in the political system, the Shanghai Party Secretary cannot impose its will on his peers, and can be shuffled - or demoted - to any other position by the CCP. In other words, Shanghai is a lower level of government, even though an important one, relative to Hong Kong and even Taiwan, in terms of population, as we have seen before, but also in terms of economic activity. It has clout, but not the final say on most decisions.

Because the composition of the migrant domestic workers labor force in Shanghai is primarily made of fellow Chinese, not foreign workers, one would expect differences between Taiwan and Hong Kong, on the one hand, and Shanghai, on the other, in the state approach to migrant domestic workers. In Taiwan and Hong Kong, authorities have shaped and framed the issue of foreign caregivers and foreign domestic helpers as a problem outside the bounds of the national community. Migrant workers in Shanghai
being Chinese and not foreign workers, how could municipal authorities adopt the same approach? Yet, as we have seen before, the residence permit system imposed by the central government, by entrenching differences in the social and economic sphere, produces result that are not different from those observed in Taiwan and Hong Kong: in all three cases, domestic workers – overwhelmingly women – are intimate strangers: living among the middle class family who employ them, but yet seen as ‘alien’, because of their different culture. In Shanghai, the shared Chinese identity is not enough to overcome the view that migrants are different, because of their lower levels of education, and their mores.

Several agencies in the central government are responsible for looking after issues that directly affect domestic workers, such as social security, population policy, labor regulation, and health, but as the ILO report on the conditions of these workers in China revealed, the issue has long been a lack of integration between these agencies and the absence of a unified set of policies targeting this specific population (ILO 2009: 5). The agencies enforcing, regulating, and monitoring aspects of migrant workers’ lives were then: the Ministry of Human Resources and Social Security, the Ministry of Commerce (domestic service is seen as ‘consumption’), and the State Administration of Industry and Commerce, which licenses the recruiting and placement agencies. In 2012, reflecting changes in the higher level of government, the Shanghai Bureau for Human Resources and Social Security, in coordination with ten other commissions and GONGO, has adopted a series of measures meant to regulate the industry of domestic workers, and two years later, the Shanghai Department of Commerce has adopted new rules to regulate the placement agencies. To what extent these measures have made a difference?

While China is not a ‘free market economy’ – state-owned enterprises represent an important source of economic activity and employment - some aspects of its labor market evoke unfettered capitalism, with all its dangers for vulnerable workers. The fact that most migrant domestic workers in Shanghai are not foreign nationals may mitigate some

25 In Taiwan and Hong Kong, we have seen that migrant domestic workers live in the household of their employers, but that is not always the case in Shanghai.
of the worst aspect of the situations faced by Taiwan and Hong Kong MDW. To start with, if migrant domestic workers want to leave their employer, they do not have to fear deportation. They do not enter into a situation of illegality if they change employers – assuming that they are allowed to do so - while it is forbidden by law in Taiwan and Hong Kong, or permissible only under exceptional circumstances. Finally, there are no established limitations on the kind of work that migrant domestic workers can do.

Chinese migrant workers can choose to be maid, housekeeper, elderly care-giver, baby sitter, etc. Most of my informants, in employment agencies as well as in NGO, claimed that migrant domestic workers have the ability to negotiate their working conditions, leave if they are unhappy with their employers, and can work part-time for more than one employer. Moreover, there is no requirement to live in the employer’s house. It is extremely difficult to adjudicate the issue of whether Shanghai migrant domestic workers are better off than their Taiwanese or Hong Kong counterparts, in the absence of systematic data about their welfare. In theory, they seem better protected by a variety of regulations.

In contrast to Taiwan and Hong Kong, many of the domestic workers in Shanghai find employment in this sector through their contacts – either relatives or former co-workers – or as part of the efforts by the All-China Federation of Trade Union (ACFTU) to find employment for laid-off workers. However, as is the case in Taiwan and Hong Kong, there exists a considerable number of placement and recruiting agencies: in a context of limited space for activist NGO, there is little pressure on government to regulate and oversee the proliferation of placement agencies and prevent abuses of the kind observed in Taiwan and Hong Kong. The limited evidence available suggests that there are efforts at self-regulation, such as the Association of Shanghai Family Service Trade (上海市家庭服务业行业协会), along with many efforts to consolidate the industry. Shanghai counted 6,117 agencies in 2014 (Insight 2014), and many of them run their own websites. A cursory look at sites advertising their services opens a window to the nature of these operations: candidates are listed, with their photographs, details about their age, height, level of education, cultural background, ethnicity, and matrimonial status. (http://www.198526.com/)
Owing to the contrast between Taiwanese liberal democracy and its regime of rule of law, and Shanghai’s consultative authoritarian politics and the regime of rule by law prevailing in China, we would expect that the landscape of civil society associations promoting the rights of migrant domestic workers to differ considerably from that of Taiwan and Hong Kong. One of the most important by-products of the PRC approach to civil society – its opposition to it, in fact, under Xi Jinping – is the prevalence of GONGO, or government-organized NGO. Some of them, such as the All-China Women’s Federation, or the ACFTU, are united front work organizations, closely working with the CCP. The same is true for associations such as the YMCA, connected with the officially-recognized Protestant Church of China, even if it appears somewhat distant from the Party-state. Besides these GONGO, however, there also exist genuinely independent NGO in Shanghai. However, their chances of affecting changes are limited. Like their counterparts in Taiwan and Hong Kong, they are advocating for redress on behalf of populations that have little power and few allies. Moreover, it is almost impossible to trace the process of state response to these civil society pressures because of the opaque nature of the policy-making process in the PRC.

**Concluding discussion: the remaining obstacles**

We have seen that higher levels of government are not necessarily more likely than governments at lower levels in addressing the issue of abuse against MDW. This finding went again the initial expectation that governments at higher levels have more power than their counterparts at lower level to affect change. This is especially relevant to entities that belong to centralized states such as Taiwan and the PRC, in contrast to federal states, where constituent provinces or states can have the powers to intervene on specific policies such as immigration, labor, etc, that are relevant to the welfare of MDW. The evidence did not show that the higher level of government in Taiwan’s centralized state would be more likely to act than lower-level ones in Hong Kong, and Shanghai, two subordinated components of another centralized state.
The evidence from Taiwan and Hong Kong leaves us with some surprising findings. Hong Kong and Taiwan both see a greater and more robust presence of civil society organizations relative to Shanghai. We can observe a similar discrepancy between these societies with respect to the media, much more likely to shame governments over the issue of MDW in Taiwan and Hong Kong, than in Shanghai, where the issue is not discussed as often. However, these discrepancies in the vigor of civil society in Taiwan and Hong Kong, on the one hand, and its weakness in Shanghai, on the other, did not seem to have generated significant differences in outcome: governments in Taiwan and Hong Kong have been extremely slow in responding to pressure. In other words, we end up with the realization that even the nature of political regimes may not make a big difference, and that the structural forces of the market and demographic pressure are stronger than the political difference in preventing change with respect to MDW rights. Despite the efforts of civil society, many if not most of the residents in Taiwan and Hong Kong believe that temporary workers such as MDW are not entitled to citizenship rights. Some liberal observers have even argued that, at best, MDW can only be entitled to differential rights, because they are unlikely to adapt to local Confucian societies (Bell and Piper 2005).

The sobering conclusion to the question raised at the beginning of this paper about the effect that levels of government can have on the promotion and enforcement of MDW rights and the improvement of their conditions is limited or non-existent. In Taiwan, Hong Kong, and Shanghai, MDW face social, economic, and political marginalization, and monitoring efforts by local governments to enact laws ensuring that they enjoy basic rights remains an important task for the International Labor Organization (ILO). At one end of the spectrum, we found that Taiwanese authorities at the central, municipal, and county levels have greatest latitude and ability to enforce laws and regulations that could affect the rights of domestic workers. At the other end, Shanghai, which is subordinated to the Chinese central government, has less autonomy than the two other entities. Hong Kong, which has considerable autonomy under the regime of ‘one country two systems’, is, in principle, able to decide on internal matters, but it does not want to intervene on the status of MDW, because the issue of nationality is interpreted as the responsibility of
Beijing. And yet, despite these differences, all three locations appear equally determined not to change the status quo too much.

In sum, political differences do not appear to matter much when they are weighed against the forces of market and the cultural resources that governments deploys to give legitimacy to their preference for these forces. The current policies give the veneer of the natural – if not that of the sacred – when they suggest that the reliance on domestic workers is deemed ‘necessary’ to fulfill the filial piety ‘obligations’ of dutiful sons and daughters. Questioning this cultural logical stands out as a categorical imperative, and will constitute the core issue addressed in another paper related to this issue. Meanwhile, the urgent issue that is aggravated by that cultural logic remains the dismal conditions that millions of women face as they get trapped into the political economy of care for the ageing population of post-industrial Asia. Enhancing their rights is an urgent and pressing issue too important to ignore for East Asia, as the demands for this category of workers is very likely to increase significantly along with the rates at which these societies witness an unprecedentedly rapid ageing of their population. Moreover, the hiring of MDW, often construed as liberating women who seek work outside the household, can merely reproduce patriarchy and unequal relations of power, as mother still feel a disproportionate sense of responsibility, and fathers conceived hiring MDW as a ‘gift’ to their wives. (Groves and Lui 2012)

The reliance on MDW in Taiwan, Hong Kong, Shanghai, and elsewhere, ultimately, reveals antecedent policy choices that are problematic. The reliance on domestic workers is ‘naturalized’ as a ‘need’ in these societies where Confucian values such as filial piety are supposed to constitute the foundation of moral, social, and political order, in spite of the fact that younger generations repudiate them. This ‘naturalization’ of Confucian values is suddenly becoming difficult to resist, as it has received endorsement from some hitherto unlikely places. Hence, Xi Jinping, as leader of the Communist Party – an organization that has done more than any other one perhaps in history to ‘relegate Confucianism in the dustbin of history’ - is promoting the revival of that tradition as a key element of his China Dream that it must nurture. The task of future research will be
to document such strategic deployment of cultural resources by the state and its agencies, as well as the corporate sector, in the tug-of-war between the social forces that refuse further expansion of state-provision of social services, and those who struggle against this policy of retrenchment.
Sources


List of interviews provided upon request after obtaining necessary permissions