

**Response of the Republic of China (Taiwan) to the
2014 *Trafficking in Persons Report* of the
United States Department of State**

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I. Introduction

The United States Department of State published this year's *Trafficking in Persons Report* on June 20, 2014. The report recognized the overall efforts of the Republic of China (Taiwan) to prevent trafficking in persons (TIP), and listed it as a Tier 1 country. Various constructive suggestions are made in the report concerning Taiwan. However, the report also suggests that our country fines and deports victims of human trafficking, which is a misunderstanding.

This response aims to explain concrete measures taken by Taiwan to combat TIP with regard to prosecution, protection, and prevention. The ROC government has instructed related agencies to continue to strengthen their efforts and cooperate with the international community to combat TIP crime.

II. Prosecution

1. Strengthening the prosecution and conviction of perpetrators

1.1. To enhance judges' knowledge of TIP, and to help them make appropriate rulings, the Judicial Yuan has published a special guidebook for related court proceedings, and continues to hold TIP-related seminars. In addition, a special area on the Judicial Yuan's website has been dedicated to sex and TIP crimes to serve as reference for judges dealing with related cases. These measures aim to enhance professional training of judges, so that court decisions in TIP cases become more accurate and appropriate, and meet society's expectations.

1.2. Following the entry into force of special TIP guidelines of the Ministry of Justice (MOJ) on December 27, 2006, prosecutors' offices throughout Taiwan, beginning on January 1, 2007, started to designate staff to head special TIP

investigation task forces. Seminars are also held every year on judicial practice in TIP cases, covering such aspects as types of TIP crimes, investigation techniques, evidence collection, and court decisions. The professional skills of prosecutors working on TIP cases are thereby enhanced.

1.3. To strengthen the professionalism and investigation skills of front-line law enforcement personnel, the National Police Agency (NPA) of the Ministry of the Interior (MOI) incorporated TIP in the orientation for new foreign affairs police officers in May 2013. In addition, it instructed police departments in special municipalities, counties and cities to make TIP topics part of their regular annual training courses. In 2013, attendance at these courses was 21,375. Furthermore, from June to November 2013, police departments held TIP seminars for divisions dealing with TIP cases, including foreign affairs, criminal investigation, women's and children's protection, and juvenile delinquency prevention divisions. Local prosecutors, immigration officers, coast guard personnel, investigation staff, social welfare and labor affairs staff, health officials, and NGO representatives were invited to join some of these seminars.

1.4. The National Immigration Agency (NIA) of the MOI held seminars on TIP prevention in June and September of 2013, respectively. These were attended by labor affairs staff of special municipalities and local governments, as well as front-line law enforcement personnel of the Coast Guard Administration (CGA), the MOJ, the NPA, and the NIA. In addition, in July 2013 the NIA organized a TIP prevention seminar in cooperation with the Immigration and Customs Enforcement (ICE) of the US Department of Homeland Security. US immigration officers were invited to analyze actual TIP cases and discuss how they dealt with them, so as to enhance the capabilities of Taiwanese staff. This seminar was attended by personnel from local labor affairs departments, the

CGA, the Investigation Bureau of the MOJ, the NPA, the NIA, the Central Police University, the Taiwan Police College, as well as judges and prosecutors.

2. Increasing the punishment of TIP perpetrators

2.1. When ruling on cases, judges have to take into account the proportionality of sentences, the purpose of the punishment, and social norms and values. To strengthen judges' knowledge, skills, and experience, the Judicial Yuan invited investigators, prosecutors, lawyers, scholars, and members of victim protection groups to draft a list of criteria for sentencing with regard to crimes covered by Articles 31 and 32 of the Human Trafficking Prevention Act (HTPA). It is hoped that judges can incorporate social views into their rulings, so as to make sentences more appropriate. Furthermore, a database was established on sentencing in cases involving human trafficking violations stipulated in Paragraph 2 of Article 2 of the HTPA, as well as violations of the Child and Youth Sexual Transaction Prevention Act (CYSTPA). This database is provided to judges to improve fairness and transparency in sentencing.

2.2. The MOJ has designated staff at local prosecutors' offices to handle TIP cases. It has also requested prosecutors under high courts to form an oversight task force, which convenes a meeting every six months to discuss related issues with local prosecutors' offices and central government agencies. This is done to enhance horizontal and vertical communication, supervise anti-TIP efforts, and ensure that sentences fit the severity of the crime. Among TIP cases handled between January and May 2014, the heaviest sentence was more than 10 years imprisonment.

2.3. Perpetrators of TIP crimes involving sexual or labor exploitation are subject to severe sentences in accordance with ROC law. With regard to cases of sexual exploitation, Article 31 of the HTPA, which specifies penalties

against those who take advantage of vulnerabilities of victims and force them to engage in commercial sex, actually expands the scope of punishment, so as to make up for insufficiencies of the Criminal Code. Cases involving serious labor exploitation are dealt with in accordance with Article 32 of the HTPA, which stipulates relatively heavy sentences.

2.4. According to Article 18 of the HTPA, government agencies should take proactive measures to retrieve costs of human trafficking cases from perpetrators. In addition, guidelines were formulated under Article 35 of the HTPA that serve as a legal basis to seize illegally obtained income of traffickers and compensate victims, with the NIA setting up a special bank account to do so. So far, the Taoyuan District Prosecutors Office and the New Taipei City District Prosecutors Office, having confiscated illegally obtained income from perpetrators of TIP crimes, have contributed NT\$224,851 and NT\$224,100, respectively, to this account. Victims can apply for compensation from this account.

3. Proactively investigating labor exploitation perpetrated by ROC nationals on ROC or other fishing vessels

3.1. When ROC overseas representative offices are notified of suspected labor exploitation on ROC fishing vessels, related information is sent to the Ministry of Foreign Affairs (MOFA), the NIA, or the Fisheries Agency (FA). If these cases involve human trafficking, information is sent, through the MOJ, to the High Prosecutors Office, which designates relevant district prosecutors' offices to start an investigation. Through mutual legal assistance on criminal matters, requests are sent to other countries for help with investigation, evidence collection, and witness interviews.

3.2. When the Council of Agriculture (COA) receives information that ROC

deep-sea fishing vessels are suspected of violating the HTPA, related information and evidence is sent to judicial agencies for investigation. Any cases involving violations of the HTPA are thoroughly investigated and dealt with in accordance with the law, so as to protect the rights of foreign fishing workers. With regard to foreign fishing vessels operated by ROC nationals, jurisdiction belongs to the flag state according to the United Nations Convention on the Law of the Sea (UNCLOS), and the flag state is therefore responsible for management of labor and fishing affairs. Taiwan has no right to intervene in these cases, but is willing to work with the flag state through bilateral mechanisms to handle such cases.

3.3. Before local labor affairs agencies conduct inspections on the employment of foreign fishing workers, the CGA can offer assistance by confirming the status of fishing vessels in harbors. When labor affairs agencies find suspected TIP activities during these inspections and notify the CGA, the CGA either requests that prosecutors lead an investigation into the matter or launches an investigation itself.

4. Enhancing the investigation and prosecution of ROC nationals engaging in child sex tourism overseas

4.1. Penalties for ROC nationals engaging in sexual exploitation of women or children outside Taiwan are based on Articles 31 and 42 of the HTPA, as well as Articles 22, 34, and 35 of the CYSTPA. The CYSTPA is currently being revised by the Ministry of Health and Welfare (MOHW), and an amended version has been sent to the Legislative Yuan for review. On May 20, 2014, Taiwan passed an act to implement the UN Convention on the Rights of the Child following three readings. The actual implementation date of this act is November 20 of the same year. This will make Taiwan's regulations on protection of the rights of children more complete. Given Taiwan's special

diplomatic status, however, only a few countries have signed mutual legal assistance agreements with Taiwan. As a result, foreign law enforcement authorities lack channels to notify MOFA of cases involving Taiwanese perpetrators. In view of the difficulty Taiwan faces in signing mutual legal assistance agreements with other countries, liaison officers, immigration secretaries, and investigators of the Criminal Investigation Bureau of the NPA, the NIA, the Investigation Bureau of the MOJ, or other agencies, stationed in major cities around the world, therefore have the responsibility to enhance cooperation with foreign law enforcement authorities, so as to detect related criminal offenses at an early stage and launch cross-border investigations.

4.2. At annual training courses for tour guides, tour managers, and other personnel, the Tourism Bureau has strengthened awareness of the responsibility to report cases of sexual exploitation and inform the public that sexual exploitation is not allowed in Taiwan or overseas. On the Tourism Bureau's website, information about prevention of human trafficking is available for the public and tourism industry professionals. This information constitutes part of the e-course for tour guides and tour managers in training, and questions on the HTPA and CYSTPA are also included in the final examination. Tour guides and managers are urged to emphasize to their customers that sexual exploitation is not allowed. Meanwhile, at training sessions for hotel staff, awareness is raised regarding offenses involving sexual transactions. Experts and scholars, as well as police officers responsible for women and children's affairs, are invited to explain relevant laws and regulations at these sessions and discuss actual cases.

4.3. In view of the need for international cooperation when investigating crimes committed by ROC nationals overseas, the ROC government will consider the following measures to enhance the prosecution of such individuals:

4.3.1. Fostering relations with other countries: Child sex tourism is particularly rife in such Asian countries as Thailand and Cambodia, as well as Central and South America. Once it is established which countries are popular destinations among ROC nationals, and what type of activities they engage in, competent authorities and scholars of these countries can be invited, along with Taiwan prosecutors and competent authorities (e.g. the Social and Family Affairs Administration of the MOHW), to international seminars on mutual legal assistance on criminal matters organized by the MOJ. Exchanges and discussions at such events can help produce bilateral cooperation opportunities and enable the creation of contact windows. If these countries discover that ROC nationals are engaging in child sex exploitation in their territories, relevant information can be provided to judicial agencies in Taiwan for further investigation and prosecution.

4.3.2. Setting up mutual legal assistance mechanisms with specific countries: In consideration of the fact that information sharing, evidence collection, and other forms of mutual legal assistance are required in the fight against cross-border crime, it is preferable that prosecutors and police agencies of cooperating countries engage in institutionalized collaboration. By signing mutual legal assistance agreements on criminal matters with specific countries (e.g. Thailand and Cambodia), the ROC government can work with them to clamp down on ROC nationals who engage in child sex exploitation overseas.

III. Protection

1. Reducing exploitation of foreign migrant workers

1.1. Given that brokerage fees paid by workers before coming to Taiwan may differ by country, the Ministry of Labor (MOL) has suggested to source countries that these brokerage fees should be no more than the equivalent of one month's minimum wage in Taiwan. It has also worked with source

countries to clearly define the types of fees that have to be paid by workers coming to Taiwan, as well as related amounts. Foreign workers should pay fees in accordance with these standards, and sign an affidavit verified by local labor agencies. This will be used as reference when authorities check the status of these payments following the worker's arrival in Taiwan. In bilateral meetings with source countries on labor issues, the ROC government urges them to review their brokerage fee standards and strengthen oversight of situations in which brokers overcharge workers, so as to prevent exploitation of foreign workers.

1.2. To prevent Taiwan brokers from charging excessively high fees, the MOL has formulated standard types of fees and related amounts for private employment service companies, stipulating that service fees can only be charged when services are provided to the foreign worker based on a written service agreement, in line with standard practice in society. Brokers are therefore not allowed to collect service fees before services have been actually provided. In addition, the MOL has stipulated that service fees may not exceed NT\$1,800 per month in the first year, NT\$1,700 per month in the second year, and NT\$1,500 per month in the third year of the foreign worker's employment in Taiwan.

1.3. Foreign laborers have to pay brokerage fees and government levies in their home countries before coming to Taiwan. The vast majority of workers have to take out loans to pay these fees, and then use the salary they earn in Taiwan to repay these loans. To ensure workers receive their actual salary, and to prevent exploitation, the Regulations on the Permission and Administration of the Employment of Foreign Workers—amended by the MOL on January 3, 2008—stipulate that wages should be paid in full to foreign workers and that, if service fees are illegally withheld from their salaries, employers concerned

have to pay the full salary within a defined period of time, or receive a fine of NT\$60,000 to NT\$300,000, based on the actual circumstances of the case. In addition, employers' permits for recruitment or hiring of foreign workers may be partially or fully suspended, and their foreign workers must be allowed to switch employers.

1.4. On August 20, 2009, the MOL announced an amended version of the Foreign Worker's Affidavit for Wage / Salary and Expenses Incurred before Entering the Republic of China for Employment (hereinafter referred to as the "affidavit"), which came into effect on October 20, 2009. This stipulates that brokers in Taiwan cannot withhold money from foreign workers' salaries related to loans they took out in their home country. Those who do are charged with overcharging. The affidavit should be verified by competent authorities in the home country of foreign workers, and employers are not allowed to make changes to the content of the affidavit in a way that harms the rights of the foreign workers.

1.5. The MOL set up Direct Hiring Service Centers on December 31, 2007, so as to provide employers with a wider variety of channels to hire foreign workers and to reduce the burden on foreign workers. These centers enable employers to hire foreign workers without the help of a broker, so as to reduce expenses that arise in the process of working with domestic and foreign brokers. To expand the scope of direct hiring, the MOL also established an online platform on January 1, 2012, to create links with human resource databases of other countries and streamline administrative procedures. This allows employers to use an online mechanism to directly select workers, and enables foreign workers to save money otherwise spent on high brokerage fees in their home country.

2. Alien Permanent Resident Certificates (APRC) for TIP victims

According to Articles 28 and 29 of HTPA, penalties for TIP victims who have violated other criminal or administrative laws as a consequence of being trafficked should be reduced or annulled. With regard to victims who face risks when returning to their home country as a result of providing assistance to an investigation or court case, competent central authorities may decide, on a case-by-case basis, to allow these people to stay or reside in Taiwan. Trafficking victims who legally reside in Taiwan for five consecutive years—spending more than 270 days in Taiwan in each of these five years—may apply for the Alien Permanent Resident Certificate (APRC). In practice, therefore, the ROC government reduces or annuls the criminal or administrative liability of trafficking victims who have violated other laws and regulations as a consequence of being trafficked. In addition, if there are concerns regarding victims' personal safety when returning to their home country, they may apply to stay, reside, and permanently reside in Taiwan in accordance with the aforementioned regulations. So far, the government has issued an Alien Resident Certificate (ARC) to one stateless human trafficking victim, and continues to provide assistance to this person. Victims who wish to return to their home country following the completion of relevant judicial procedures receive necessary assistance from the ROC government. They are not fined and deported. Therefore, the statement in the US Department of State's 2014 *Trafficking in Persons Report* that trafficking victims are fined and deported following their court case is not in line with the facts, and must be based on a misunderstanding.

IV. Prevention

1. Revising action plans and guidelines to stay abreast of latest TIP trends

1.1. The latest issues and international trends in human trafficking are thoroughly discussed and analyzed at regular anti-TIP coordination meetings

convened by the Executive Yuan. In addition, all relevant government agencies have to conduct a review every two years of their tasks, training courses, and promotional efforts related to the prevention of human trafficking, and revise relevant prevention and implementation plans, so as to deal with human trafficking problems. Concrete efforts that have been initiated over the past few years include the following:

1.1.1. With regard to foreign workers issuing complaints in other countries that Taiwan deep-sea fishing vessels are involved in human trafficking, the FA has established standard operating procedures (SOP), so as to properly deal with the problem of exploitation of deep-sea fishing workers.

1.1.2. The SOP used by the CGA clearly state that suspected cases of human trafficking should be categorized according to their characteristics. If a case is confirmed to involve human trafficking, the investigation has to be expanded and a special officer has to be assigned to interview victims, so as to gain a better understanding of the criminal groups behind the trafficking operations.

1.1.3. In consideration of the irregular schedules of fishing boats, the MOL has cooperated with the COA, immigration agencies, police agencies, and coast guard agencies to build a system that can report in real time the arrival of a fishing boat in a harbor, so as to implement inspections of foreign workers and act upon violations of the law. This information is checked against a fishing management database maintained by the FA. When a fishing boat enters a harbor, local governments, together with related agencies, inspect the boat to ascertain the status of foreign workers and see whether labor exploitation has occurred.

1.1.4. Domestic workers, who are employed by individual families, provide

care for family members and do household work. Given the difficulty in defining the type of labor they perform, as well as their work and rest hours, and considering the fact that their employment contract arrangements are different in nature from regulations under the Labor Standards Act (LSA), this act is not easily applied to domestic workers. To safeguard their rights, the MOL has drafted a domestic worker protection bill, which has been sent to the Executive Yuan for review. Pending the completion of the legislative process for this bill, the MOL has drafted guidelines governing the rights of domestic workers. In addition, the Employment Service Act was amended on December 25, 2013, to relax rules regarding mutual agreements between employers and domestic workers on the transfer of domestic workers. With these new regulations, the employer can immediately employ a new domestic worker following the transfer of the previous one, while the willingness to reach aforementioned mutual agreements increases on both sides. This also protects the employment rights of foreign workers.

2. Preventing ROC nationals stationed abroad (e.g. diplomats) from engaging in exploitation of domestic workers or other forms of human trafficking

MOFA attaches great importance to the leadership qualities and character of its personnel, especially senior officials stationed overseas. To prevent diplomats from engaging in human trafficking or illegal employment practices, MOFA often reminds them to adhere to related regulations, act in accordance with the law, and exercise prudence, so as to avoid abuse of official authority or law violations in Taiwan or host countries. MOFA also continues to enhance audits of overseas offices and performance reviews of heads of mission, and send inspection teams to these offices.

V. Conclusion

Preventing human trafficking requires long-term efforts, international cooperation, and worldwide vigilance. In the future, the ROC government will continue to oversee the public sector and integrate resources of the private sector. It will work to prevent criminal activity, strengthen protection for victims, and enhance the investigation and prosecution of perpetrators. It will also work with the international community to safeguard basic human rights and implement the principles and spirit of the two main UN human rights covenants—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Indeed, Taiwan aspires to become an example for other Asian countries with regard to respect of human rights.