

**Taiwan's Response to
The United States 2011 Trafficking in Person Report**

August 2011

Introduction

In the 2011 Trafficking in Persons Report published by the United States Department of State on June 28, Taiwan was placed on the Tier 1 List in recognition of its efforts and accomplishments in combating human trafficking. Nonetheless, government agencies in Taiwan have been urged to review and follow up on the report's recommendations on how Taiwan can further enhance its anti-trafficking efforts. In response, this paper outlines the specific measures and practices Taiwan has been implementing with respect to prosecution, protection and prevention.

I. Prosecution

1. Heightening enforcement of anti-trafficking laws

Enforce the Human Trafficking Prevention and Control Act (HTPCA) with heightened investigations, prosecutions and convictions

1.1 Designating personnel to effectively prosecute trafficking crimes

1.1.1 Through the Specific Measures to Combat Trafficking Initiative, the Ministry of Justice (MOJ) has designated certain prosecutors at each district court to be in charge of trafficking cases. At the high (appeals) court level, an anti-trafficking supervisory team meets regularly to review the progress of trafficking cases. The roster of anti-trafficking prosecutors at various courts is updated periodically to facilitate a far-reaching communication network among prosecutors and anti-trafficking partners. The MOJ actively monitors human trafficking cases to ensure timely prosecution while seeking sentences commensurate with the crime.

1.1.2 Judicial police forces are fine-tuning their operations to better crack down on alleged trafficking cases. These include: the Foreign Affairs Department of the National Police Agency, Ministry of the Interior; Specialized Operation Brigades, National Immigration Agency (NIA), Ministry of the Interior; and Maritime Patrol

Directorate General and Coastal Patrol Directorate General under the Coast Guard Administration. In addition, a roster of anti-trafficking judicial police liaisons at the local government level is updated regularly to strengthen horizontal communication. At locations known for hiring migrant workers or peddling sex with foreigners, police forces conduct raids to uncover evidence of human trafficking and rescue victims. Starting in 2011, the raid target list has expanded to include suspected individuals who are not part of syndicates, so as to achieve a greater deterrent effect.

1.2. Boosting conviction rates while seeking stringent sentences

1.2.1. Future sentencing guidelines

In order to ensure that sentencing outcomes are more consistently fair and reasonable, in February 2011 the Judicial Yuan (the highest agency administering the court system) set up a study group on sentencing guidelines for sexual offenses. The study group has a mandate to formulate sentencing parameter codes for the Sentencing Information System software that allows judges to find reference points for appropriate sentencing. This system, based on statistical analysis, aims to improve sentencing consistency, predictability and transparency when a proposed “sentencing hearing” proceeding is introduced into the criminal procedure. A similar sentencing guideline for human trafficking crimes will be explored when the total number of cases reaches a level of statistical significance.

1.2.2. Documenting trafficking rulings

Trafficking offenders have been convicted or fined under HTPCA Article 32.2 for labor exploitation (abusing caregivers’ vulnerability), under Article 31.1 for conducting sexual trade for profit and under Article 39 for trafficking as a regular business operation.

Many of the trafficking case rulings reiterated the universal jurisprudence reflected in the HTPCA – stamping out human trafficking, which is a hideous crime against humanity. These rulings, citing specific facts and applicable laws, serve to prove that Taiwan’s anti-trafficking laws are becoming more effective in protecting victims while deterring human trafficking, generally and specifically, through criminal sanctions.

On top of data collection for all cases and in an effort to better understand the punishments meted out by judges, the Judicial Yuan has begun to compile a human trafficking database that records the number of cases (either by summary judgment or a first- through third-instance trial), the number of defendants, the nationality and number of victims, and court decisions. These cases cite penalty clauses in: Article 29, and Articles 31 through 42 of the HTPCA; Articles 23 through 26 of the Statute for Prevention of Sexual Transaction Involving Children and Adolescents; Article 296 and 296-1, and Articles 298 to 300 of the Criminal Code; and Articles 75, 76 and 81 of the Labor Standard Act.

2. Training law enforcement personnel on investigation and evidence collection

2.1. Judicial stakeholders as a whole

Under the auspices of a cabinet-level task force, the MOJ conducted a workshop on anti-trafficking practices for prosecutors, judicial police forces and NGO representatives in August 2011. The MOJ presented a study of suspected trafficking cases that went unprosecuted, analyzing why these cases collapsed under Taiwan’s Criminal Procedure Law. Equipped with better awareness of the various situations, participants learned how to hone their techniques in investigation and evidence collection. The MOJ is soon to make human trafficking courses a compulsory part of the pre-job and on-the-job training curriculum for judicial personnel.

2.2. Prosecutors

In October 2009, the MOJ published the Manual for Prosecutors Confronting Human Trafficking, a compilation of relevant laws and regulations to facilitate timely prosecution of trafficking offenses. In addition, annual workshops are held to boost prosecutors' ability to address human trafficking.

2.3. Judicial police

Human trafficking case studies, and raising service quality and sensitivity, are part of judicial police training. In August 2011, the NIA conducted road shows around Taiwan to familiarize front-line law enforcement personnel with related issues. Active-duty members on the NIA's specialized operation squad also received training on investigations and victim identification. On duty policemen are being trained during August-October 2011 in a program conducted by all city and county police stations. Four groups of coast guard officers are being trained in 2011.

II. Protection

1. Keeping victims informed of the judicial process

1.1. Identifying and sheltering victims

Article 11 of the HTPCA requires judicial police to identify human trafficking victims as soon as discovering or being informed of alleged trafficking offenses. Persons responsible for victim identification should inform the potential victim of what to expect next and the protection measures available. During inquiries into trafficking cases, judicial police are required to provide victims with the most complete information possible through translators, with a social worker present, and to respect the decisions that victims make about going to a shelter or testifying in court.

1.2. Keeping victims informed

At their own discretion, prosecutors assigned to human trafficking cases are to inform victims of the status of their cases, so long as they do not violate Article 245.1 (non-disclosure of information concerning ongoing investigations) of the Criminal Procedure Law.

1.3. Expediting judicial proceedings

Judicial police and staff at shelters are required to inform victims of Taiwan's judicial proceedings and their options with respect to assisting in prosecutions. Each prosecutor's office has a designated liaison to facilitate horizontal communication among the stakeholders – judicial agencies, social workers, labor authorities, the police and victims – to keep victims informed of the situation so as to maintain their desire to stay in Taiwan to assist in convicting traffickers. Starting in 2010, regular roster reviews at placement facilities have prompted the MOJ and the courts to expedite trials where a victim's testimony is required, thus safeguarding the victim's right to be repatriated in a timely manner.

2. Augmenting the “1955 hotline” and language support

2.1 Hotline service

The toll-free “1955 hotline” for migrant workers has recruited bilingual staff (Chinese plus Indonesian, Vietnamese, Thai or Filipino) from various sources – such as foreign spouses, NGOs, and local and central governments – to provide information, in the caller's native language, on filing complaints, applying for legal aid, referral to protective placement and related government agencies. The hotline also offers an over-the-phone interpretation service to facilitate communication between migrant workers and employer, recruitment agents, or civil servants at government agencies. The Council of Labor Affairs (CLA) has developed an electronic platform to assign complaints/disputes involving migrant workers to local labor authorities for investigation. The platform also monitors case progress.

2.2 Language service

Migrant worker service stations at the local level now employ interpreters. On August 6 this year, the CLA published a guideline for city/county governments to facilitate having NGO staff members accompany trafficking victims to judicial inquiries. The guideline indicates how to obtain interpreters from the database maintained by NGOs, NIA and the courts. With professional backgrounds in law, social work, psychology, or labor affairs, these interpreters can facilitate communication at judicial interviews so that victims can better recount the facts.

3. Regulating recruitment fees to stamp out debt bondage

3.1. Regulating fees incurred in the source country

To safeguard workers' rights, the CLA has advised each source country to cap recruitment fees at one month's minimum salary (based on Taiwan's labor standards). In addition, source countries are urged to stipulate allowable fee items and the amounts charged to Taiwan-bound workers, and to ensure workers pay no more. This is manifested through workers' written declarations duly authenticated by the labor authority of the source country. In cases of labor disputes or suspected trafficking crimes in Taiwan, the authorities here are to make official decisions based on this declaration. Further, to keep workers from falling into debt bondage, Taiwan always takes advantage of bilateral meetings on labor cooperation with source countries to appeal for the regulation of recruitment fees and for the stamping out of unscrupulous agencies or brokers.

3.2. Ensuring workers receive full wages

Before departing for Taiwan, the vast majority of migrant workers borrow money to pay recruitment fees and government fees incurred in Taiwan, expecting to pay it back with wages earned in Taiwan. To ensure that workers receive their full wage without dubious deductions being made by employers (purportedly to pay back worker

debts), the CLA issued the Measure for Recruitment Permits and Management of Foreign Workers on January 3, 2008. This measure requires employers to pay wages in full to foreign workers, directly and on time. Then, on February 12, 2009, the CLA sent an official letter requiring local governments that uncover violations by employers to demand they pay workers by a given deadline or else face a fine of between NT\$60,000 and NT\$300,000 (approx. US\$2,000 – US\$10,000) depending on the gravity of the offence. In addition, the employer's recruitment and employment permits shall be annulled in whole or in part. Migrant workers that are underpaid in such circumstances are allowed to change employer.

3.3 Banning brokers from deducting wages “to pay debts”

Effective from October 20, 2009, the CLA amended its policy on the Fee and Salary Declaration of Taiwan-bound Workers and related measures to ban Taiwanese recruitment agencies/brokers from deducting money from wages under the pretense of this being to pay back debts incurred by workers before coming to Taiwan. Any violation will be considered overcharging and the agency/broker will be disciplined according to Article 40 of the Employment Service Act. Furthermore, employers must not alter any part of the Fee and Salary Declaration of Taiwan-bound Workers if the alteration puts workers at a disadvantage. This is essential for safeguarding workers' rights. During 2010, there were 22 Taiwanese agencies sanctioned for overcharging. Each was fined 10 to 20 times the excess amount collected. Nine of the agencies have since terminated their operations, while another two have had their licenses revoked.

3.4. Direct hire center

To facilitate direct contact between employers and foreign workers and to reduce the financial burden on Taiwan-bound workers, at the end of 2007 the CLA set up a direct hire center in Taipei and service counters at five public placement agencies operated under the auspices of the CLA. The center enables employers to hire foreign

workers directly without going through recruitment agencies, a welcome alternative to the previous arrangement that strictly required agency involvement. Currently, the center assists employers with rehiring the same foreign workers. To facilitate direct new hires, the CLA is developing a “choose and hire” website that will connect directly to labor databases in the various source countries. This website is to be launched in 2012, and will enable both rehiring and new hires directly. Both workers and employers will benefit from cutting out the middlemen.

4. Protecting workers from forced labor

4.1. Banning forced labor

Article 57.7 of Taiwan’s Employment Service Act (ESA) stipulates: “Employers are prohibited from exerting coercion, threat, or any other illegal means upon foreign employees to compel the latter to work against their free will.” Those in violation will be sanctioned by Article 72.2 of the ESA and Article 12 of the Guidelines to Annul Recruitment Permit and Employment Permit for Employers Violating ESA Article 72. Accordingly, all or some of their permits will be revoked. This is calculated by multiplying the number of people forced to work by five.

4.2. Sticking to the letter of the declarations

When local authorities conduct audits of migrant worker wages/salaries, officials should check these against the numbers contained in the Fee and Salary Declaration of Taiwan-bound Workers, which is authenticated by the authorities in the source country and submitted within three days upon arrival in Taiwan.

In addition, the content of the declaration may not be altered against the interests of workers. Therefore, any subsequent labor contract agreed upon between employers and migrant workers may not contravene the declaration. If employers are found, upon complaint or

inspection, to be assigning migrant workers to engage in work that is outside the scope of their permits (as per Article 57.3 of the ESA), they are liable to a fine of between NT\$30,000 and NT\$150,000 (approximately US\$1,000 to US\$5,000). Employers that fail to rectify the situation by a specified deadline and who are found to be committing a second violation will be punished with repeat fines and the annulment of their permits.

4.3. Reining in improper dismissal

In view of irregularities with migrant worker dismissal and repatriation, the CLA instituted a new procedure, starting November 2006, to validate the termination of employment. The procedure stipulates that employers may not unilaterally repatriate migrant workers until both parties have appeared before the local authority to verify the foreign workers' true intent and both parties have signed an Early Termination of Employment Contract.

To make it easier for migrant workers to file complaints, they can do so at CLA service counters at international airports and over the bilingual hotline. The airport counters also distribute a pamphlet called *What Foreign Workers Need to Know in Taiwan*, to help them safeguard their rights.

III. Prevention

1. Curbing child sex tourism and quashing child sex trafficking

1.1. Reaching beyond borders

None of the child sex offenses prosecuted in 2010 involved violations abroad. Prosecutors find it hard to make the case for an act happening in a foreign jurisdiction, and Taiwan's lack of formal diplomatic recognition complicates the work. Taiwan is therefore actively seeking to sign mutual judicial assistance agreements with other

countries to create a collaboration platform conducive to combating child sex exploitation by Taiwan nationals abroad.

1.2. Protecting youngsters

The Ministry of the Interior aims to achieve a prosecution rate of 53% (including deferrals) to maintain judicial deterrence effectiveness. As of the end of June 2011, the rate was ahead of target, at 76.96%. The National Police Agency also produced a series of web-based animated clips appealing to youngsters and women to be vigilant about their personal safety when using the internet. The films are also available on DVD for public and school campaigns.

1.3 Campaigning against child sex tourism locally and abroad

1.3.1. To the public

The Children's Bureau of the Ministry of the Interior continues to advise the public against child sex through electronic bulletin boards at public transportation depots. A film clip "child sex is a public enemy" is aired periodically on cable television networks to reach an even wider audience.

1.3.2. At the tourism frontline

The Tourism Bureau delivers the message during its routine hotel audits, which have covered 63 establishments in 2011. Relevant information on gender equality, human trafficking prevention and curbing sex with minors is also readily available on the bureau's website and as part of e-learning materials for people seeking to obtain tour guide licenses. Tour operators advise groups, whether traveling locally or aboard, against child sex.

1.3.3 To the fishing industry

The Fisheries Agency regularly reminds ship owners and crews, through trade publications and certification courses, not to engage in such activities as human trafficking and child sex.

2. Educating judges on anti-trafficking laws and victim protection

2.1. Competence of judges

The Judicial Yuan routinely organizes seminars for judges so that they can stay abreast of the nature of human trafficking crimes, related laws and practices in Taiwan and abroad. A seminar to give judges insight on trafficking cases from the viewpoint of prosecutors was held in January 12, 2011, while another one is scheduled for September 26 to September 29.

2.2. Sensitivity towards victims testifying in court

Victims of human trafficking and sexual abuse go through intense physical and emotional trauma. The court system has previously issued guidelines for victim protection, including protecting their privacy and personal safety, as well as also keeping confidential the identity of people accompanying victims. A workshop held for the various stakeholders on July 27, 2011, focused on providing a friendly atmosphere during judicial proceedings for victims testifying in court. Many suggestions were forthcoming, including: issuing subpoenas respectfully, providing a courteous notice about protection measures at court, conducting a visit prior to the court date, arranging a secluded room, ensuring judges maintain a kind demeanor in court, making the wording in court rulings clear, serving court rulings confidentially and so forth. Specific recommendations include compiling a multi-lingual edition of victim-related court documents, keeping the identity of people accompanying victims as confidential as that of the victim, and wider adoption of live video links for obtaining victims' testimonies. While the above discussions were largely geared towards victims of sexual offenses, the principles also apply to trafficking victims.

2.3 Producing a manual for judges

A reference manual is being compiled to help judges adjudicate human trafficking cases according to the HTPCA, which was enacted on June 1,

2009. The proposed content covers legal provisions related to human trafficking, the evolution and jurisprudence of the HTPCA, the Act's place in the overall legislative framework, frequently ask questions, NGO expectations about HTPCA enforcement, and resources available to facilitate smooth trials.

3. Pushing for the enactment of a Domestic Worker Protection Act to stamp out labor abuse

3.1. Forging an effective law

Home caregivers and domestic workers are hired by private individuals to look after family members and perform household chores in a confined environment. Taiwan's Labor Standards Act (LSA) is ill-equipped to regulate domestic workers (both local and foreign) and their employers because the nature and scope of the jobs are hard to define, and there is no clear line between what is on-duty or off-duty. Since the employment relationship is described in a contract, it is currently governed by the Civil Code. However, the CLA's Domestic Worker Protection Bill, which aims to address the unique aspects of domestic labor, was sent to the cabinet for review on March 15, 2011. Public sector stakeholders were consulted at a coordination meeting on May 10, and the CLA has incorporated their recommendations, along with suggestions from private stakeholder groups, into a revised bill that is pending further review and finalization.

3.2 Abiding by the Fee and Salary Declaration of Taiwan-bound Workers

Despite the LSA's inadequacies, private caregivers and domestic workers from abroad are currently well protected by the Fee and Salary Declaration of Taiwan-bound Workers, a binding document specifying the salary and working conditions signed between the worker and the employer, and authenticated by authorities in the worker's country before departure. Registered with the CLA within three days upon arrival, this document protects workers, since

employers are prohibited from altering it in ways detrimental to workers.

3.3. Protecting workers' financial interests

Article 43 of the Regulations on the Permission and Administration of the Employment of Foreign Workers stipulates that employers must pay salaries directly to workers on time, in cash and in full. Only legitimate costs incurred by workers can be deducted. For payments made in any other form, employers should provide workers with proof of payment. Employers failing to make up any payment shortfalls by a deadline set by the authorities will be penalized as described above.

4. Raising awareness among labor officials and inspectors

4.1. Training frontline personnel

Since 2000, a series of seminars has been held for counselors and labor inspectors serving migrant workers and, as of 2010, the staff members of shelter facilities have also participated. Around 400 people are trained each year on migrant worker management, labor dispute resolution, administrative procedures, human trafficking prevention, gender mainstreaming, and sexual harassment and assault prevention. From April to June 2011, 418 people received training through a series of four seminars.

4.2 E-learning

Labor administrators at local governments are invited to view the materials on the HTPCA and victim sheltering assistance available on a CLA learning website (<http://cla.hilearning.hinet.net>) set up in October 2009. As of July 31, 2011, there have been 2,065 visits.

4.3 Training hotline and counter staff

Supervisors and operators at the "1955 hotline" are trained on various aspects of human trafficking and victim protection. Thirty-seven

people were trained in 2009, and 129 in 2010. The 2011 seminar took place in three sessions during May 2 to August 23 , with 56 people participating. Supervisors and counseling staff at airport service counters are trained to deliver better service to incoming and outgoing migrant workers. Fifty people were trained from 2007 to 2010, while 48 attended the 2011 seminar held on June 17.

Conclusion

Taiwan is committed to protecting human rights. Long-term mandates include pooling public and private resources to accomplish the three P's of the anti-trafficking campaign: prevention, protection and prosecution. The government has every intention of maintaining Taiwan's Tier-one status and further safeguarding human rights through even greater effort and collaboration, both domestically and internationally.