

RESPONSE TO
U.S. TRAFFICKING IN PERSONS REPORT 2010

July 2010

Foreword

The 2010 Trafficking in Persons Report released by the U.S. Department of State recognizes Taiwan's efforts to prevent human trafficking and places Taiwan in "Tier 1" for full compliance with the minimum standards for the elimination of trafficking. As the report also points out some inadequacies in Taiwan's prevention work and makes some recommendations accordingly, this response has been prepared in order to help the United States better understand Taiwan's latest measures. In addition, relevant organizations and agencies will continue to step up their efforts to cooperate with the international community in combating human trafficking crimes.

Taiwan's anti-trafficking measures have been divided into three main categories (prosecution, protection and prevention), as follows:

I. Prosecution

A. Continue strict enforcement of the Human Trafficking Prevention Act and prosecution of offenders

1. Following the launch of the Action Plan for Human Trafficking Prevention by the Ministry of Justice (MOJ) on December 27, 2006, the prosecutor's offices of district courts started assigning prosecutors to trafficking cases on January 1, 2007. In conjunction with the implementation of the Human Trafficking Prevention Act and related sub-laws on June 1, 2009, the MOJ issued the Points to Note for Prosecutor Offices in Handling Human Trafficking Cases on June 26, 2009, so as to make it easier for prosecutors to enforce the law and remind them of victim-protection measures already in place. In order to better supervise the handling of human trafficking cases by prosecutor's offices, improve the efficiency of such

investigations, and foster inter-agency communication, the Prosecutors Office of the Taiwan High Court has set up an oversight taskforce as per the instructions of the MOJ. The taskforce calls regular inter-agency meetings to review the anti-trafficking efforts and regularly updates the list of contact windows at the various prosecutor's offices. By doing so, it can facilitate the communication and coordination among the prosecutor's offices, government agencies, and other organizations involved in the prevention of human trafficking.

2. In order to hone the skills of prosecutors handling such cases, the MOJ distributes the *Prosecutor's Office Human Trafficking Cases Operational Manual*, which was compiled in October 2009, to the prosecutor's offices and related law enforcement agencies under the MOJ, providing a comprehensive list of human trafficking-related regulations for their reference. The MOJ also arranges workshops every year for prosecutors in charge of human trafficking cases. The seminar for 2010 took place on April 20-23 and covered a variety of topics, such as protection services for trafficking victims, introduction to Taiwan's Human Trafficking Prevention Act, case studies of related crimes and victim identification. These seminars aim to enhance the prosecutors' professional knowledge and skills so as to improve their investigations of such cases. The MOJ will continue to urge prosecutors to take actions in their investigations and seek stiff penalties against offenders, in accordance with Taiwan's Human Trafficking Prevention Act.

B. Processing of complaints from foreign workers and mediation of labor disputes by local governments

1. When a foreign worker files a complaint and seeks assistance with the mediation of a labor dispute, local governments should accept the case and call a mediation meeting, as stipulated by the Settlement of Labor Disputes Law. Upon the completion of the mediation, the worker and the employer sign the minutes of the meeting(s). The Council of Labor Affairs (CLA) also has produced the guideline Points to Note for Municipal or County (City) Government in Producing Interview Records for Employment Services Act Violation Cases and sample interview records for the reference of local governments that act as mediators in labor dispute cases.
2. In order to ensure that foreign workers have the chance to fully state their case during the mediation or interview session, the CLA issued Operational Guidelines for Municipal and County (City) Governments Handling Depositions (Interviews) of Foreign Worker for Trials in the Company of Non-Profit Organization Staff in December 2007. To respect the right of foreign workers to provide a deposition (be interviewed), the local government officials in charge are to request that an NGO send an interpreter and other staff members with a counseling, social work or legal background to accompany the foreign worker during the recording of his/her deposition and interview.
3. If it is suspected that a foreign worker has accepted the mediation result and signed the mediation meeting record under duress, the mediation result may not be used against the foreign worker. In other words, such foreign workers may withdraw their “consent” to the mediation result and file an appeal with the local government or the CLA. The case then will be reviewed by the authorized agency.
4. The local governments process the complaints of foreign workers

and mediate subsequent labor dispute in a fair manner. Not one incident of bribe-taking by a local labor official has been discovered and, thus, recorded in the *Trafficking in Persons Report*.

II. Protection

A. Enhance the consistent use of legal standards in identifying human trafficking cases by law enforcement personnel

1. In consideration of the complex patterns of human trafficking crime, the MOJ added the section Reference Indicators for the Identification of Human Trafficking Victims when revising the Principles for the Identification of Human Trafficking Victims in February 2009. The new section supplies reference questions for when interviewing suspected victims. This makes it easier for law enforcement personnel to conduct investigations consistently. Also, because of the hidden nature of human trafficking, in the beginning the victims might not cooperate with law enforcement officers or consider themselves as victims. Therefore, in order to rescue trafficking victims, during investigations law enforcement officers need to adopt the “dynamic identification” system promoted by the MOJ (e.g. after receiving a report from an NGO or detention center, etc.).
2. The MOJ, Coast Guard Administration, National Policy Agency (NPA) and National Immigration Agency (NIA) have implemented the Operating Procedures for Investigating Human Trafficking Cases as their standard operating procedures (SOP) for such cases. They have also been urged on many occasions at the Executive Yuan Human Trafficking Prevention Inter-Agency Meeting to step up their training on the SOP. In light of the MOJ’s

Principles for the Identification of Human Trafficking Victims and the *Reference Indicators for the Identification of Human Trafficking Victims*, enforcement officers must determine whether a suspect is actually a trafficking victim and take subsequent action based on the findings from the “dynamic identification” process and the existing guidelines so as to protect the victim’s human rights.

B. Keep victims informed of the progress of their case and uphold their interests and rights

1. Pursuant to Article 11 of the Human Trafficking Prevention Act, law enforcement officers, upon the discovery or report of a suspected human trafficking case, must immediately take action to identify whether the person in question is a human trafficking victim. Beforehand, they must inform the suspected victim of the related procedures and protection measures before commencing with the interview. Thus, law enforcement officers are urged to follow the MOJ’s Principles for the Identification of Human Trafficking Victim and the Reference Indicators for the Identification of Human Trafficking Victims when trying to identify victims. If a person is identified as a victim or suspected victim, the person is to be informed of the standard procedures and protective measures in place.
2. To help trafficking victims understand and willingly cooperate with the subsequent investigation work, the NIA has prepared versions in multiple languages of its pamphlet *The Rights of Human Trafficking Victims*. The pamphlet introduces victim protection services, the expedited judicial process and the rights of victims granted by law

enforcement officers and prosecutorial offices. Audio versions of the pamphlet are also available for illiterate victims. In addition, to minimize misunderstandings and misjudgments on the part of law enforcement officers during the identification process due to language barriers, the MOJ requires that law enforcement agencies arrange for an interpreter and a social worker (through an NGO) to be present during the questioning process. This helps relieve the suspected victims and better explain to them the follow-up procedures and protection measures available.

3. When investigating a human trafficking case, the prosecutor in charge is to exercise discretion in letting the victim learn certain parts of the investigation without violating “the investigation not public principle”, as provided in Paragraph 1, Article 245 of the Code of Criminal Procedure. The MOJ is pushing to have legislation enacted to ensure victim’s right to attend the related trials, allowing them to more readily participate in their case as it progresses.
4. Currently, if a trafficking victim wishes to learn more on the progress of his or her case after the law enforcement officers have turned the case over to the prosecutor’s office, the victim can ask the police agency through the authority in charge of his/her placement to check with the prosecutor’s office or court. The authority then forwards the response to the victim.

C. Crime Prevention and protect victims

1. The Judicial Yuan been promoting the following measures:
 - (1) Before the implementation of the Human Trafficking Prevention Act, the Judicial Yuan arranged for scholars and experts to provide lectures on the theory and practice of human

trafficking. The ones scheduled for 2010 include Introduction of Human Trafficking Crime and Criminal Procedures, as well as the Criminal Aspect of the Human Trafficking Prevention Act. It is hoped that training on the legal and practical aspects of human trafficking will enhance the judges' understanding of the actual problems encountered during a trial.

(2) The Judicial Yuan has issued a circular to courts to stress the provisions on confidentiality, segregation, assisted interviews and other victim protection measures for human trafficking cases.

(3) The Judicial Yuan assists NGOs in promoting the public's awareness of human trafficking and related legal issues, dispatches personnel to attend pertinent discussions, and fosters communication among law enforcement agencies.

(4) The Judicial Yuan also has developed a computer system for the handling of detainees, which includes information on how a detainee was identified as a victim or a witness. This aims to shorten the litigation process through better information management.

2. Since the implementation of the Human Trafficking Prevention Act, one conviction (pursuant to Paragraph 2, Article 32 of the Act) has been made in cases involving the abuse and exploitation of a caregiver. Court rulings for other cases note how human trafficking deprives victims of their dignity and is illegal in all countries throughout the world. The Human Trafficking Prevention Act has been effective in protecting victims by aiding in the determination of facts, the establishments of applicable stipulations and the convictions of cases.

D. Further strengthen the counseling and assistance hotline for

foreign workers (1955)

1. To improve the network for foreign workers to obtain counsel and submit complaints, the CLA has set up a free 24-hour counseling and assistance hotline (1955). The hotline is staffed by bilingual personnel who can offer foreign workers counseling, assistance on submitting complaints, other legal assistance, referrals, placement services, and information on services provided by other agencies. Starting in 2010, the CLA has forwarded complaints to or assigned cases with local labor authorities electronically for further investigation, making the follow-up and management of such cases more effective. The hotline, which was launched on July 1, 2009, offered counseling on 27,845 occasions and recorded complaints by 1,009 foreign laborers in 2009, and counseling on 67,627 occasions and recorded 2,118 complaints in the first four months of 2010. Such complaints have been assigned to local governments for investigation, as stipulated by the law.
2. To expand the pool of interpreters available for 1955 hotline, the CLA has been recruiting bilingual service personnel through the foreign spouse network and related NGOs, and through the database of interpreters used by local and central government agencies. To address the increasing volume of calls on 1955, the CLA plans to expand the number of lines from 7 to 14 and increase the number of operators from 21 to 42. To hone the professional skills of operators, the CLA will also step up case assignment and emergency rescue and placement services. It also will enhance the training of the hotline operators, create and maintain up-to-date a database, establish standard lexicon, conduct monthly inspections of audio recordings, and hold case discussions to better safeguard the interests of foreign workers.

E. Adopt concrete measures to protect foreign workers against forced labor and exploitation

1. Fees paid by foreign workers before they enter Taiwan to work are under the jurisdiction of the source countries. In its efforts to uphold the rights and interests of foreign workers, the CLA has suggested that source countries limit the job placement and service fees charged by brokers to a maximum of one month of their basic wage, as stipulated under Taiwan's Labor Standards Act. The CLA also has endeavored to work with the source countries to set out specifically the brokerage fee items and schedule for working in Taiwan. As the great majority of foreign workers cannot afford to pay the broker's and government's fees before coming to Taiwan, they must borrow money and use their wages in Taiwan to repay the loan. To make sure foreign workers actually receive their wages and are not exploited, the CLA amended the Regulations on the Permission and Administration of the Employment of Foreign Workers on January 3, 2008, stipulating that an employer must pay the foreign worker his/her wages directly in full. The CLA also has sent a letter to all county (city) governments on February 12, 2009, authorizing them that, if an employer illegally deducts fees from a worker's pay instead of paying him/her in full, the local labor authority may order the employer to pay back the difference within a given time period. In addition, the authority may mete out a fine ranging from NT\$60,000 to NT\$300,000, in accordance with the severity of the violation. Moreover, the violator could have its recruitment permit and employer permit revoked temporarily or permanently. The foreign worker would be allowed to find other employment in Taiwan as well.
2. To prevent disputes over the collection of fees or loan payments

from foreign workers by a local broker on behalf of a foreign broker, the CLA amended the Foreign Worker's Affidavit Regarding Expenses Incurred for Entry into the Republic of China to Work and the Wage/Salary (referred to as the "Wage Affidavit" hereunder) on August 20, 2009 (the amendment took effect on October 20, 2009). It stipulates that a local broker may not collect from or charge a foreign worker for loans acquired before coming to Taiwan. Violators are subject to penalties set forth in Subparagraph 5, Article 40 of the Employment Services Act. The amendment also stipulates that the Wage Affidavit must be authenticated by the labor authority of the foreign worker's home country and that an employer may not change the Wage Affidavit in a manner unfavorable to the foreign worker. In 2009, in 111 cases, local brokers were found to be making related overcharges and subsequently fined from 10 to 20 times the overcharges. The brokerages of 13 of the cases have ceased operating, and another 7 brokerages involved in another 10 cases had their operations suspended.

3. To prevent the improper repatriation of a foreign worker, the CLA has implemented an employment termination verification procedure since November 2006. It stipulates that an employer may not repatriate a foreign worker before the two of them appear together before the local governing agency. This measure is to determine whether a foreign worker willingly seeks to terminate his/her employment and labor contract. In 2009, local governments verified and approved 60,128 applications to terminate a foreign worker's contract early. The CLA also has drawn up the Operational Guidelines for the Temporary Placement of Foreigner Working under Subparagraphs 8-11, Paragraph 1 Article 46 of the Employment Services Act. This is to

address the need to place and protect foreign workers whose employer is trying to force his/her termination of employment and repatriation. It also is authorizes local governments to protect foreign workers in cases involving injuries, disputes over applicable laws, illegal employment of a foreign worker, or illegal attempt to repatriate a foreign worker.

4. Employers are required to notify the local government three days after a new foreign worker enters the country. The local government is to conduct inspections from time to time to determine whether the employer has been using the worker legally. If an employer is found through complaint or inspection to have violated the provisions in Subparagraph 3 of Article 57 and Article 68 of the Employment Services Act by appointing the employed foreign worker to engage in work that is not within the specific tasks contained in his/her work permit, the employer will be fined between NT\$30,000 and NT\$150,000. If such employer fails to rectify his practice within a given time period and is found to violate the aforesaid provisions a second time, the employer will be fined again. In addition, the CLA may, pursuant to Subparagraph 3, Article 72 of the Employment Services Act, annul the employer's recruitment permit and employment permit. If the foreign worker is found to be not at fault, the CLA also will let the worker change employer or switch work so as to protect his or her rights.

III. Prevention

A. Preventing forced labour with legislation that protects the rights of foreign domestic helpers

1. The Human Trafficking Prevention Act Taiwan promulgated in 2009 came into effect on June 1 that year. Pursuant to Article 32

of the Act, anyone attempting to profit through the use of force, coercion, intimidation, confinement, monitoring, drugs, deception, hypnosis, or by any other means that go against people's will, and anyone employing other persons for pay that is clearly incommensurate with the labor, shall be sentenced to imprisonment for up to seven years and fined up to NT\$5 million. The Act can effectively prevent forced labor and provide workers with better protection.

2. We already have regulations in place that protect the rights of both local and foreign caregivers and domestic helpers. Under the Gender Equality Employment Act, these workers are entitled to maternity leave and protection against sexual harassment, regardless of nationality.
3. With respect to ensuring good working conditions for caregivers and domestic helpers, given that most are employed to do domestic chores and take care of patients, their work patterns are far from uniform. It is therefore difficult to determine when they should work and rest. Given also that the nature of their employment contracts and grounds for termination differ from those stipulated under the Labor Standards Act, it is difficult to apply its provisions to caregivers and domestic helpers. Due to the employment of caregivers often burden with high care costs and other expenses; thus, the impact that might bring to the caregivers' family should also take into consideration. After completing a preliminary draft of the Domestic Worker Protection Act, the CLA held a hearing in January 2010 for workers, employers, broker groups, and county and city governments to discuss its provisions before submitting it to the CLA Legal Affairs Committee for review. Before it can be implemented, additional support measures on substitute workers for when caregivers or domestic

helpers are on vacation will be required, measures that are currently under discussion.

B. Raising awareness among CLA officials and labor inspectors on human trafficking prevention

1. To enhance the relevant knowledge and abilities of local government labor inspectors and front line personnel stationed at Taiwan Taoyuan International Airport's Foreign Laborers' Service Center, the CLA commissioned an NGO to hold three workshops on human trafficking and foreign worker regulations. Held between June 10 and June 23, 2009, a total of 400 people attended. The CLA has also created a course on the Human Trafficking Prevention Act and Victim Shelter Assistance, which is available on the CLA e-learning website (<http://cla.hilearning.hinet.net>) to conveniently allow labor personnel to increase their knowledge on the subject.
2. To familiarize county and city government placement agencies with human trafficking cases and case-handling skills, to strengthen cooperation between the placement agencies, the county and city governments, as well as the CLA, and to help promote better management of foreign workers, the CLA commissioned an NGO to hold four workshops on foreign worker counseling services and inspectors, between June 2 and June 30, 2010. A total of 440 people attended.
3. To keep abreast of the working conditions and management of foreign caregivers hired by institutions providing welfare services for the elderly, county and city government labor inspectors launched a series of inspections from June 21 to September 20, 2010, in line with a directive from the Ministry of Interior. The

CLA also held a workshop on June 7, 2010, to enhance the inspectors' professional knowledge and awareness of human trafficking issues.

C. Stepping up the prevention of child sex tourism and combating the child sex trade

1. Paragraph 1 and Paragraph 2 of Article 22 of the Child and Youth Sexual Transaction Prevention Act stipulate varying degrees of penalties for persons engaging in sexual intercourse with children under 16 years old, and with persons over 16 years old but under 18. To curb sex tourism, Paragraph 3 of the same article also stipulates penalties against Taiwanese citizens engaging in sexual transactions with children or teenagers outside the country. In 2009, 58 persons nationwide were prosecuted for violating Article 22 of the Child and Youth Sexual Transaction Prevention Act. None of these cases involved sexual transactions with children outside of Taiwan, which indicates that investigating cases outside of our jurisdiction is problematic. Indeed, Taiwan's special circumstances and lack of formal diplomatic ties with most countries makes investigations and evidence gathering much more difficult. To address this situation, we are looking to sign agreements on mutual legal assistance in criminal matters with other countries. Hopefully, international cooperation will enable us to better conduct investigations and curb sexual exploitation of children beyond our borders.
2. In the continuing effort to combat the child sex trade, the Children's Bureau, Ministry of the Interior, has compiled relevant regulations and cases to produce a reference booklet for government agencies and the private sector. In 2009 and 2010, the

Children's Bureau used as reference relevant information from other countries, as well as domestic regulations, to step up the campaign against the child sex trade (including sex tourism). This involves raising public awareness through all kinds of channels (television, movie theaters, online chat rooms, train stations, highways, airports and harbors) to prevent such activities both domestically and abroad.

3. In 2009, the police authorities identified 464 cases of online crime allegedly violating the Child and Youth Sexual Transaction Prevention Act. These cases have been forwarded to prosecutors for further investigation.

D. Measures to continue reducing sex transactions

1. Measures taken by the Ministry of Education (MOE) to step up gender equality education and provide students with a sound understanding of sex-related issues:
 - (1)The MOE has been commissioning the production of educational materials for a campaign to prevent the child and juvenile sex trade:

Pursuant to the Regulations Governing the Education Campaign Against the Child and Juvenile Sex Trade, the MOE will select materials from various media (including books, films, printed materials and event records), compiled since the regulations were first implemented, to produce a reference manual for teachers. This will be made available on the MOE website as a downloadable electronic file, so as to help raise educator awareness of and proficiency in preventing child and under-age sex transactions.
 - (2)In 2010, the MOE subsidized local governments for the

following undertakings, which includes a campaign against sex transactions:

- a. Establishing a Gender Equality Education Resource Center in 63 schools.
- b. Holding 95 workshops for teachers on developing education courses and practical training on gender equality.
- c. Providing 548 guidance sessions or study groups to enhance media literacy on gender equality education, and to discuss student pregnancy, gender discrimination and prevention of gender-based violence, etc.

(3) The MOE commissioned the production of a *Student Handbook on Gender and the Law*, which introduces laws and regulations governing sex transactions, as well as case studies, to enhance middle school students' legal knowledge on commercial sex transactions. An electronic file of the same is also available for download on the MOE website.

(4) The MOE set up a sex education counseling hotline for students and parents: Between July 2009 and June 2010, 785 people sought counseling.

2. Measures taken by the Tourism Bureau, Ministry of Transportation and Communications, to prevent sex tourism:

(1) The Tourism Bureau sent letters to hotel associations, travel agency associations and tour guide associations, among others, to enlist their help in the campaign against child and youth sex tourism in Taiwan and abroad.

(2) The Tourism Bureau asked the ROC Travel Quality Assurance Association to establish self-regulatory rules and step up efforts to pass information to travel agencies, tour managers and tour guides during conferences and other occasions, thereby enlisting their help in preventing sex tourism.

- (3) The Tourism Bureau put the materials for the campaign to prevent human trafficking and the child and juvenile sex trade, on its website (taiwan.net/tw/administrativeinformation/consumerprotection/travelindustry/otherpubliccampaign) for access by the public and tourism professionals.
- (4) In January 2009, the Tourism Bureau commissioned an NGO to produce stand-up boards displaying information on preventing child and youth sex trade, as well as flyers on human trafficking prevention, numbering 165,000 in total, which were distributed at travel agencies, hotels and theme parks, or placed at counters and in guest rooms for perusal by travelers. These stand-up information boards and flyers are also found at the visitor information centers in airports and national scenic areas. In September 2009, the Tourism Bureau further subsidized an NGO to produce 50,000 luggage tags with the slogan “Child sex is a global public enemy” and distributed them through travel agencies and visitor information centers at airports to raise awareness among outbound travelers.
- (5) To enhance awareness on sex tourism prevention among tourism professionals, the Tourism Bureau held 21 training sessions for 3,218 hotel workers, and 60 training sessions for 6,593 tour managers and tour guides.

Conclusion

Taiwan has long been a firm advocate of human rights. We will continue to ensure that government agencies enforce the Human Trafficking Prevention Act, and integrate private sector resources to jointly promote prevention work. With crime prevention forming the backbone, we will step up investigations and prosecutions of offenders, while also enhancing victim protection, so that we can maintain our Tier 1 status. We will also continue to seek cooperation with the international community on safeguarding basic human rights, so that we might effectively curb human trafficking crimes and give expression to the respect for human rights that this country was founded on.