

, Human Trafficking of Legal and Illegal Migrant Workers in Taiwan

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Taiwan, January 2011

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1. Introduction

Modern forms of slavery no longer can be ignored and neglected. Governments, media and the general public the world over are becoming more aware of human trafficking. Conventions are ratified and anti-trafficking laws are passed. How effective these interventions are is hard to measure, as the dimensions of the problem itself are not very well known. Currently there are only very rough and wide-ranging estimates of the number of victims, and little is known about the traffickers, trafficking patterns and trends.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children¹, is the first global legally binding instrument with an agreed definition of trafficking in persons. The protocol was adopted by the UN General Assembly in 2000 and up to now got signed by 117 countries. The definition reads as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used.

In 2001 the US Department of State started to publish the annual "Trafficking in Persons Report" (TIP report)². In these reports the department places each country in one of the three defined tiers (levels) in accordance to their compliance with the Trafficking Victims Protection Act (TVPA)³. While governments that fully comply with the TVPA's minimum standards in combating human trafficking are ranked Tier 1, the ones that are making significant efforts in doing so are listed Tier 2. Governments not complying with the minimum standards and not making significant efforts to do so are placed Tier 3.

Until 2004 Taiwan was ranked as a Tier 1 country, but it slipped down to Tier 2 in 2005 and has remained at that level until 2010 when it was placed Tier 1 again. The poor ranking has spurred the Taiwan government to take action. According to the report Taiwan is considered both a destination and a source country of human trafficking. Women, children and men are trafficked for the purposes of forced labor and sexual exploitation. Most of the victims of trafficking (VoT) who end up in Taiwan come from the People's Republic of China and Southeast Asian countries. As stated in the TIP 2010 report *most trafficking victims in Taiwan are workers from Vietnam,*

¹ For the protocol please see: <http://www2.ohchr.org/english/law/protocoltraffic.htm>

² The TIP reports can be found under: <http://www.state.gov/g/tip/rls/tiprpt/>

³ TVPA (<http://state.gov/documents/organization/10492.pdf>)

Thailand, Indonesia, and the Philippines, employed through recruitment agencies and brokers to perform low-skilled work in Taiwan's manufacturing industries and as home caregivers and domestic workers. However, there are no estimates of a possible number of trafficked migrant workers, nor if there are groups of workers that might face a higher risk to fall victim. In January 2009 the Human Trafficking Prevention Act was passed and was implemented in June of the same year. Since the law was enacted, the situation has improved for some trafficking victims. Recognized VoT are now allowed to apply for a temporary visa and work permit, while they wait for their legal cases to be closed. The chance to work and send some money back home to their families is helping to ease their sorrows. Previously, victims were caught in a system in which they were kept sheltered as their cases developed, but they were unable to earn any money to send back home to their families. Nevertheless, the lengthy process until a legal case is closed and the person can leave the country bears a lot of sufferings. It can take only a couple of months for the court case to be closed, but the majority of trafficked persons have to wait one year or even longer before the case is solved. For many the court trial is disappointing and disenchanting: Up to now none of the victims received compensation, many even had to leave without their outstanding salaries or savings. On the other hand the traffickers leave the court with mild sentences.

The Taiwan government's 2009 "Report on Prevention of Trafficking in Persons" reported that - 88 cases of trafficking were uncovered in 2009; 46 of these cases involved forced labor and 42 involved sexual exploitation. Looking at the convictions of human trafficking cases in 2009, around 68 % of the prison sentences were of less than 6 months duration (compared to 63% in 2008). While in 2008 only two out of 287 defendants in suspected human trafficking related cases were sentenced to prison terms of 7-15 years, this number raised to 13 in 2009. Unfortunately it is not known how many of the cases prosecuted finally were found to be cases of human trafficking, and what laws were applied.

This report is exploring what circumstances and conditions might lead migrant workers (documented as well as undocumented) in Taiwan into human trafficking and if there are people more vulnerable than others. A close look will be taken at Taiwan's foreign labor policies and how these policies might contribute to the risk for migrant workers to become victims of human trafficking. It is also an aim of this report is to give the victims a voice and to gain a deeper understanding of their perspectives and experiences.

Although there have been some recent improvements in the prevention of human trafficking in Taiwan, we must still assume that many victims remain unrecognized. Law enforcement agencies as well as the judiciary generally lack an awareness of trafficking offenses, and they are not very clear about many migration-linked problems. Without evidence-based knowledge and a better understanding of trafficking patterns, initiatives might be inadequate and anti-trafficking policies could be rendered ineffective.

2. Methodology

a) Data

For this research, the data of 74 suspected VoT were collected between December 2009 and February 2010 and the cases followed up until January 2011. All 74 of the study participants were either residents in NGO shelters in Hsinchu, Zhongli or Kaohsiung or they were being held in detention centers and were interviewed by NGO staff during their visits. When it wasn't possible to talk to a worker personally, information collected by the NGO staff was used. The victims come from Cambodia, Indonesia, the Philippines and Vietnam (see Table 1). Out of the 74 persons, 62 are women and 12 are men (see Table 2). None of the persons was under-aged, and 14 of the workers were found to be VoT despite being employed legally.

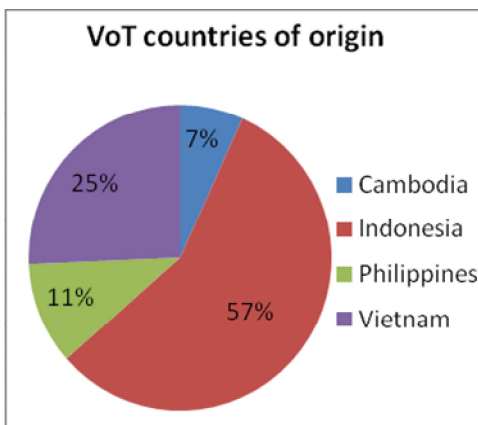


Table1

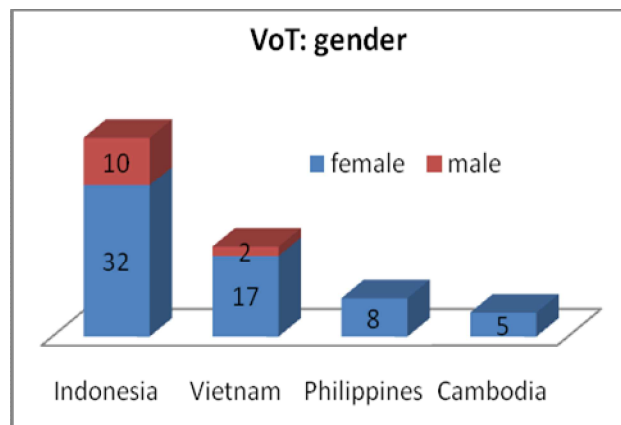


Table2

The cases were looked at from different angles to identify the specific vulnerabilities and main issues of the workers. The study participants were classified by their method of entry, mainly separating the cases into two groups. While the bigger group of 48 workers (all of them female) entered Taiwan with a legal work contract, 26 persons (14 women and 12 men) came to Taiwan using fraudulent marriage certificates or tourist/student visas or with no visa at all (see Table 3). In this study we also identified the employment sectors of those workers who entered Taiwan with a legal work contract. Out of those 48 women, 39 came to Taiwan as caregivers or domestic workers, 8 as factory workers and one as a fisherman. Also, of these 48 women, 14 were identified as VoT during a period of legal employment, while the other 34 were undocumented workers⁴ at the time they were identified as VoT. Of the persons who came to Taiwan without a legal work contract, nine used fraudulent marriages to obtain visas, eight (five women and three men) entered Taiwan as students or tourists and nine (all men) came without any visa. Table 4 shows the trafficking-related work of these VoT categorized by method of entry.

⁴ Undocumented worker: Currently there are almost 30,000 undocumented migrant workers in Taiwan. One reason for becoming undocumented can be that the contract term is finished but the worker doesn't want to return to his or her country and decides to stay in Taiwan as an undocumented worker. Reasons for leaving a legal employer during a contract term can be very bad working conditions or a very low salary.

When looking at trafficking-related employment, we see that the biggest group is found in the entertainment and prostitution sector. Other employment areas include farming, care-giving, hotel/restaurant work and fishing. Four of the women were found to be VoT not because of their work but because of debt bondage. Not all the 74 study participants were recognized as VoT by Taiwan’s government agencies. Seven Indonesian fishermen who were considered VoT by the NGOs were not officially recognized as such. Also not recognized were six former caregivers from Indonesia who were found working as prostitutes and who were interviewed by NGO staff during their visits to a detention center. On the other hand, some persons identified as VoT by the government agencies are not considered as such by the NGOs.

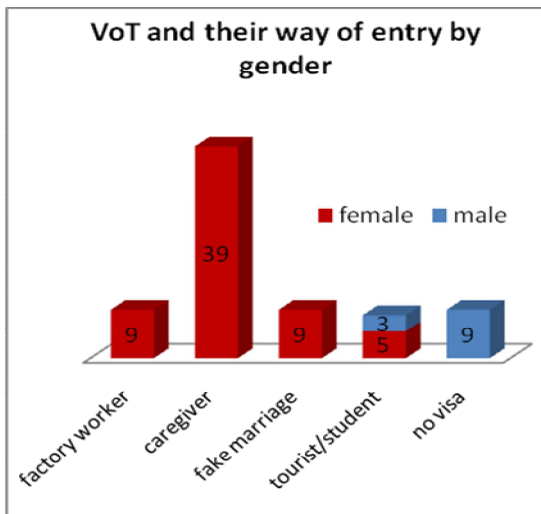


Table3

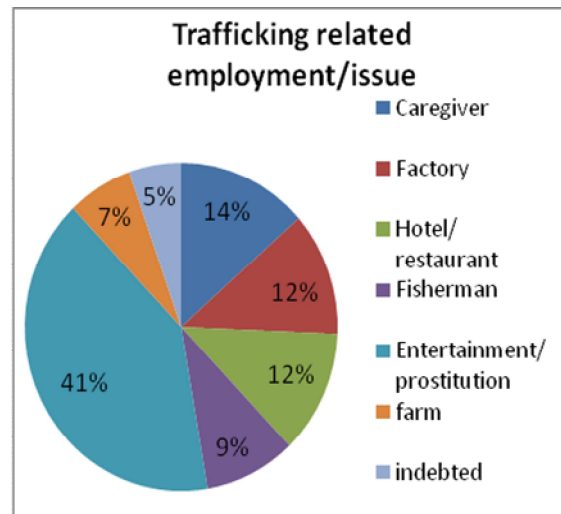


Table4

b) Limitations of the research

The data may not reflect a complete picture of the human trafficking situation of migrant workers in Taiwan but rather may give only a partial impression and some general insights. It is possible that the actual composition of migrant workers who become VoT is different from the data presented here, as the study cases came only from three migrant worker NGOs. The research data also do not include any cases from PRC or Thailand, although it is commonly known that people from these countries also can become VoT in Taiwan.

As the Human Trafficking Prevention Act became law just a short time ago, in June 2009, not much can be said yet about its implementation. According to the Act, the law can be applied only to human trafficking crimes that took place after its enactment.

3. Patterns of Human Trafficking

a) Persons entering Taiwan as legal migrant contract workers

Legally contracted migrant workers in Taiwan mainly come from Indonesia, the Philippines, Thailand and Vietnam. They primarily work in factories and as domestic workers and caregivers, and in smaller numbers as fishermen and construction workers. Their contracts are typically for fixed two-year terms, extendable for one more year. Almost all the legal migrant workers come to Taiwan via recruitment agencies. These agencies demand sky-high commissions (which they term “placement fees”). Although some countries set limits on these fees, the placement fee finally paid by the workers is usually higher. Migrants can work in Taiwan for a maximum of nine years, but they have to leave the country after each three-year term. If they want to come back, either they again have to shoulder the placement fee or their employers need to agree on the direct hiring scheme, in which there are no broker agencies involved. In accordance with Taiwan’s Foreign Labor Policy, a foreign worker’s work permit and visa are bound to the employer. A change of employer or work is possible only under certain circumstances.

Legal employer as trafficker: exploitative working conditions

The working contract system in Taiwan often supports the poor working conditions of migrant workers. First, there are the high pre-departure costs on one side; then there is the inadequate protection of foreign workers, especially of caregivers and domestic workers, on the other. Foreign factory workers are covered by the Labor Standards Law, but caregivers and domestic workers (local as well as foreign) in private households are not. Technically, caregivers in nursing homes are also covered by the labor law, but due to poor implementation this is not yet a reality. The confiscation of personal documents by the broker or employer is fairly routine. Foreign caregivers often are expected not only to take care of a person, as stated in their working contract, but also to perform other household duties or even to clean the houses of the employer’s relatives or to work at other businesses the employer may own, such as a factory or a restaurant. Workdays easily consist of 12 to 15 hours without any regularly scheduled day off. This taxing and unhealthy schedule is often combined with restrictions on personal freedom. These types of exploitative working and living conditions are characteristic of human trafficking. Currently, no control mechanisms or regular and independent inspections of work places of foreign workers in private households or nursing homes are in place. The abuse and exploitation of these workers stay widely undetected.

Case Story1: Abusive treatment of Vietnamese caregivers in a nursing home:

This is the case of six Vietnamese caregivers who were legally employed in a nursing home. They worked 12 hours per day with no days off. Even when sick, the women had to work. They either worked the day shift or the night shift. The first 11 hours of each shift were seen as “normal” and the 12th hour was considered overtime, for which they received overtime payment. Each of

the caregivers had to take care of 25 to 30 mainly bed-ridden patients per shift. Washing, feeding and changing diapers were the main tasks, but the caregivers also had to cook food for the patients, wash dishes and clean the nursing home during the night shifts. The standard payment per month was US\$ 600 plus the overtime payment for an approximate monthly total of US\$ 690. Deducted from this total were the broker's fee (US\$ 60), board and lodging charges (US\$140), and supposed "loan repayments" (around US\$ 240), leaving each worker with only US\$ 240 to US\$ 275 per month.

The dormitory where the women stayed had only one room with five beds for 20 workers. Four women shared one bed, two working the day-shift and two working the night-shift. These women reported that the food was generally poor and that there often was not enough. The women were prohibited from leaving the dormitory. The broker helped them remit money back home to Vietnam, but they had no idea how much he charged for this service. They were also not allowed to have a mobile phone or to use the internet. Every couple of months the employer allowed them to call their families at home, and twice a year the broker took them to buy clothes.

Besides the regular work in the nursing home, these six Vietnamese caregivers were forced to work as morticians. For cleaning and preparing the dead bodies, they were not even provided with surgical masks and gloves. When they complained, the boss said that they didn't have a choice—either they did the work or they would be sent home. For every hour of mortician work they were paid US\$ 1.75. This kind of work was on an irregular basis, on average about 20 times per month, and it added to the heavy workload.

One day the six Vietnamese managed to call for help. They took the chance of calling the migrant workers' hotline, "1955," and their case was forwarded to an NGO. As it turned out, a total of 12 foreign caregivers worked in nursing homes owned by this same employer. However, only the six who were forced to work as morticians were recognized as VoT. The others are still working for the man, who was not arrested. He is still running the nursing homes, although he had to ease the living and working conditions of the migrant workers.

After the women were sheltered, the employer and the broker both tried to talk to the women to influence their statements. As of this writing there has been no court hearing.

Case Story 2: Exploitation of a female Indonesian migrant worker

Dewi⁵ came to Taiwan as a caregiver, but she never saw the person she was supposed to take care of. Instead, she was forced to work in the employer's restaurant. She worked 18 hours and more per day with no days of rest. The employer beat her and scolded her frequently. Dewi reported that whenever the employer got angry about something, she would beat her. During the six months that Dewi worked at the restaurant, she didn't receive any salary. Whenever she asked for pay, the boss just answered, "You are not working well, so why should I pay you?"

⁵ Name changed

Dewi was not allowed to leave the restaurant or to talk to anybody. The boss often threatened to send her home. When she complained to the broker, he just told her to work harder and smile more. One day the boss said that Dewi's hair was dirty and shaved it off and also threw away her clothes. After more than six months, Dewi was rescued by the police. Because three other VoT who had been working for the same employer in another restaurant managed to escape, the police decided also to check the other places owned by the trafficker. Dewi and the other three migrant workers served as witnesses in the government's court case, but none of them filed a personal lawsuit against the trafficker. They received their unpaid salaries, but nothing is known about the verdict against the trafficker.

Indebtedness as an additional risk factor for falling victim to human trafficking

Most migrant workers coming into Taiwan have to take out loans to be able to pay the placement fee. After arriving in Taiwan, the workers are indebted and are under pressure to pay off the loans (see Table 5). With regular payments, it takes a migrant worker, on average, from 19 months (Philippines) to 44 months (Vietnam) to pay off the debts.⁶ Aside from repaying the loan or any money they borrowed, they have to pay a broker's fee that equals US\$ 1,900 for a 3-year contract, and this is usually legally collected in monthly installments. Having little bargaining power, many workers do not even dare to complain about bad working conditions or unjust payment terms because they fear that it could endanger their employment and result in their repatriation. For migrant workers, to be sent back home is the worst-case scenario. To repay the money borrowed for the placement fee would take many years, especially for workers who lack the training or skills needed to merit higher wages.

TABLE 5. PLACEMENT FEES (TO BE PAID IN THE COUNTRY OF ORIGIN):

INDONESIA REGULATION: FACTORY WORKER: US\$ 1,400, DOMESTIC WORKER US\$ 2,900; ACTUAL COST: US\$ 3,000 - 5,000

PHILIPPINES REGULATION: US\$ 800, ACTUAL COST: US\$ 2,100 - 2,500

THAILAND REGULATION: US\$ 1,300, ACTUAL COST: US\$ 3,200 - 4,000

VIETNAM: NO OFFICIAL REGULATION, ACTUAL COST: UP TO US\$ 7,000

For many, temporary work abroad brings them the only chance to improve their families' living conditions. To be able to earn enough money to support their families at home and to pay off their debts, most workers see no other way than to accept abusive working conditions or even fraudulent and risky offers. Resistance to exploitation may therefore be beyond their power of imagination. This condition of extreme vulnerability applies to more-or-less all migrant workers, and the problem is made worse by the fact that many workers are not aware of their rights. Employers and brokers can take advantage of this lack of knowledge by giving false information

⁶ Also see: <http://www.catholic.org.tw/catholic/in-3.htm>

about laws and the attitude of authorities or simply by threatening that workers who complain will be sent home. In this context, workers view reporting an abusive situation to the police as synonymous with returning home. This kind of vulnerability and dependence created through the brokerage system can be seen as a possible starting point of human trafficking.

Organized human trafficking of undocumented workers

Various reasons can lead a migrant worker to decide to become an undocumented worker (that is, to “run away” from a legal employer and by doing so to lose legal status). As mentioned before, workers coming to Taiwan are already indebted and often are not correctly informed about the extent of their pay deductions and the resulting low net income, or perhaps they are promised that they will have a lot of overtime work. (Too often, the overtime work becomes a reality, but the pay for it does not.)

In addition to their placement fee, Indonesian caregivers and domestic workers have to pay US\$ 800 as a security bond. This bond was implemented by the Indonesian government in reaction to the high number of Indonesians becoming undocumented in Taiwan. If the bond deposit is not paid before departure, it is deducted from the worker’s salary, and it is returned only after fulfillment of the contract. Consequently, a worker who becomes undocumented loses this money. A similar deposit is also paid by many Vietnamese, although in their cases it is currently not a government regulation. For them the amount of the deposit varies from US\$ 500 to US\$ 1000. A third group, Indonesian fishermen, also have reported that security bonds ranging between US\$ 700 and US\$ 900 were deducted from their salaries.

In many cases the monthly installments are directly deducted from the workers’ wages, a practice that is common but illegal. In other cases the workers themselves are responsible for sending in the monthly installments. This is extremely difficult, because for many workers the monthly take-home pay during the first contract year is only about US\$ 50 – US\$ 150. The Vietnamese VoT interviewed in this study was not informed about these deductions in advance and does not know what the deductions are for. Some VoT were told that the deductions are for their deposit or loan repayment, but they never took out a loan.

Besides the unexpectedly low income received, another factor that often fuels the decision to become undocumented is exploitative work conditions, especially for caregivers and domestic workers. Caregivers in nursing homes report having to work at least 12 hours a day, taking care of as many as 30 patients. Most of these workers do not get any days off for months or even years. Similar conditions are found for caregivers/domestic workers in private households. As stated earlier, these live-in workers are often forced to do other work in addition to the duties stated in their contracts, and this adds to their already-heavy workloads. Also, because a private household is an isolated work place, these workers remain mainly invisible to the outside world, and this makes them even more vulnerable to psychological and physical abuse and sexual harassment. Although there are no data available about the number of migrant workers in Taiwan

who face abuse and exploitation, NGO workers often hear about these problems when talking to caregivers/domestic workers.

Some workers decide to leave their legal employers and become undocumented when they cannot accept or stand their working conditions any longer. Others may decide to become undocumented at the end of their legal contract period or when they are not granted a contract extension. Two often-heard explanations for becoming undocumented are: 1) that the loans were not yet repaid and the money being earned was insufficient, and 2) that the person, having fulfilled a contractual term, simply could not afford to leave and then pay the placement fee again to come back to Taiwan to work here for another term.

Although it is not as common as with caretakers and domestic workers, bad working conditions can also be found for factory workers. In 2007, for example, two migrant workers from the Philippines died at their work place. Both had been doing an enormous amount of overtime work over a long period; they were not allowed to refuse or to take a rest. Generally speaking, however, factory workers are better protected and less vulnerable than caretakers and domestic workers.

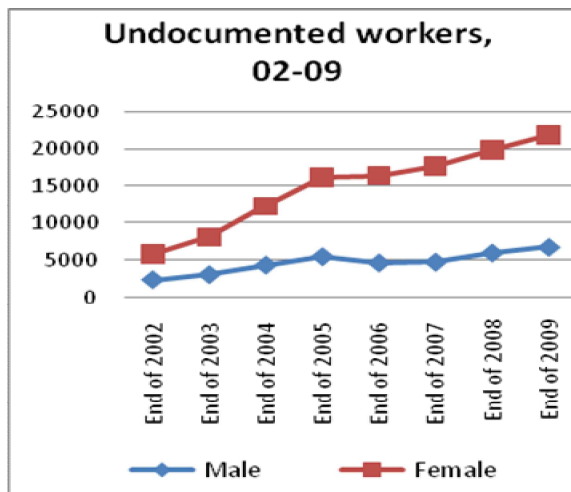


Table6

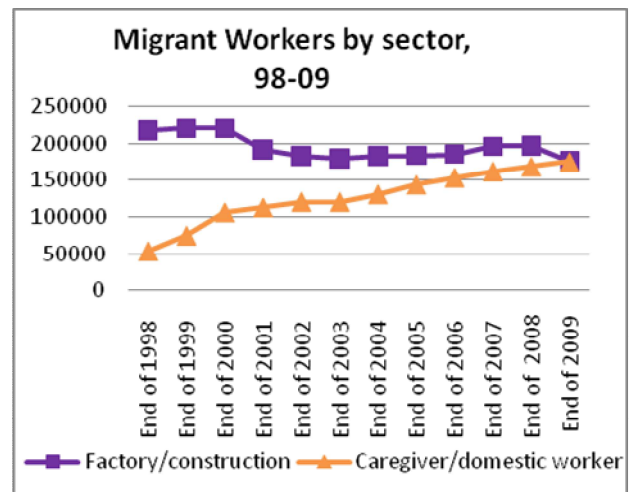


Table7

This fact also can be seen when looking at the official numbers of migrant workers who became undocumented (see Tables 6 and 7)⁷. The increasing number of caregivers/domestic workers corresponds to the rise of undocumented female workers. It can be assumed that there is a direct correlation between the kind of employment and the decision to become undocumented. Out of 29,412 undocumented workers reported in March 2010, over 75% (22,335) were female. Unfortunately, these data did not distinguish between factory workers and caregivers/domestic

⁷ Official data from: <http://statdb.cla.gov.tw/html/mon/monehidx12.htm> In this data only workers who entered Taiwan as legal foreign contract workers are included. Unfortunately, in the second quarter of 2010 the CLA changed the statistics, and they no longer classify the numbers of undocumented workers as to gender.

workers. However, as most caregivers/domestic workers are female and are primarily from either Indonesia (March 2010: 125,905 out of 179,307) or Vietnam (March 2010: 29,273 out of 179,307), it can be concluded that the greatest number of undocumented female workers have been caregivers/domestic workers.

Case Story 3: Hard work and very low income resulted in becoming undocumented

Megawati⁸ came to Taiwan to work as a caregiver in a private household. She had to take care of an old man who required intensive care. She was on duty 24/7 and worked for months with no days off. She was not allowed to leave the house because her patient was not to be left alone. In addition to the personal hygiene/nursing care that she provided to the old man, Megawati also performed housework and had to take care of a small child.

For the first month of work she earned a total net amount of US\$ 47, and for the second month, US\$ 78. The broker told her that for months 3 through 6 she would not earn anything because of deductions. Megawati decided to become undocumented because her income was too low to send enough money to Indonesia to pay the expenses and school fees of her two sons. Before arriving in Taiwan she hadn't been told about the high deductions.

Without the assistance of an illegal broker, it is hard for undocumented workers to find work, unless they have a very good network. According to Taiwan law, to employ undocumented migrant workers is a punishable offense. There is also a reporting scheme in place rewarding people who inform law enforcement agencies about undocumented workers. Every reported case is rewarded with US\$ 150, and the Council of Labor Affairs is thinking about increasing the reward. Undocumented workers are very afraid of being caught by the police and being repatriated to their respective home countries. Due to this fear, they try to restrict their movements to a minimum. Through informal channels of “friends” and other undocumented workers, the contact numbers of illegal brokers are being spread to workers who are considering becoming undocumented. These brokers act as middlemen for factories, nursing homes and private households, as well as for brothels and KTV-bars. Besides an introduction fee (that ranges from US\$ 150 to US\$ 600) that needs to be paid once upfront, the worker also ends up paying a monthly broker's fee (see paragraph above). While some workers indeed can earn more money during their undocumented period, for others, meeting the illegal broker is the beginning of a nightmare. Some illegal brokers turn out to be traffickers who force undocumented workers into abusive work conditions with very low or no income. This often is combined with restrictions on their movement (in the extreme cases, isolation) and physical abuse.

Case Story 4: Vietnamese undocumented workers get trafficked into forced prostitution

A group of undocumented female workers from Vietnam heard about a Vietnamese foreign spouse who was able to help them in finding work. When they called her, she said she had all kinds of jobs available and told them to come to the train station, where they were picked up. All

⁸ Name changed

women reported that they were not informed about the kind of work but only found out the moment they arrived at the brothel. A guard always closely watched the work place as well as the dormitory. The young women were told that if one of them tried to escape, she would always be found. They were also told that reporting to the police would be useless, as their captors had very good contacts in the police force. The Vietnamese spouse mentioned to the women how influential her family is in Vietnam and said it would be no problem to find their families and inform them of the kind of work they were doing—just in case they refused to do as they were told or tried to escape. One of the young women managed to run away to her boyfriend. After only two days, her boyfriend received a phone call from the traffickers telling him that it was very easy to find them and that the girl better return—otherwise, there would be trouble for him. Out of fear, she went back.

b) Persons entering Taiwan via fraudulent marriage visa or tourist- /student visa or no visa at all

Organized trafficking in persons: persons trafficked from their home-countries

While some trafficking gangs are specialized in the trafficking of undocumented migrants that already are in Taiwan, others have set up a system including all the steps, from recruiting a person in the home country to the placement in Taiwan. These gangs often focus on persons from rural and poor areas, those with few employment opportunities and low educational levels. They promise very good work and income conditions. None of the Cambodian trafficked women in this research, for example, went to secondary school; some are even illiterate.

Besides marriage visas, tourist- and student visas are also used to bring people to Taiwan. Usually the recruiters in the home countries of the workers cooperate with partners in Taiwan; sometimes they are Taiwanese themselves. The recruitment procedures are very similar in every country. Either people hear through others about the possibility of going to Taiwan, or they meet a recruiter who is directly offering to “help.” A member of the recruiter’s gang in the home country accompanies the workers during the flight and handles all the immigration and check-in affairs, so the recruited workers don’t see their passports and visas at all. After their arrival, all documents are handed over to the Taiwanese gang member. This practice, too, limits the options of the VoT.

The traffickers have set up an informal network to provide certain types of employers with workers. The trafficked persons mainly work in small family businesses, as caregivers, on farms or as prostitutes. Every month, for each worker provided, an employer has to pay a certain fee to the gang, and this fee is taken directly from the worker’s wage. This fee often exceeds the amount the worker receives, and in some cases the worker doesn’t receive any money at all. One

Indonesian woman reported that there were times she didn't earn anything because the trafficker requested between US\$ 515 and US\$ 690 monthly.

During the ban of Indonesian caregivers and domestic workers from August 2002 to December 2004, a whole migration wing was blocked, giving way to illegal recruitment and migration. A lot of Indonesian women entered Taiwan via fraudulent marriages, or on tourist visas or they were provided with false passports, often unknowingly.

Organized trafficking in persons: Recruitment of Cambodian women

The recruiters in Cambodia choose rural areas in which to look for potential workers. Most of the young Cambodian women we spoke with had received only very basic or no formal education. They get told that a lot of money can be earned easily in Taiwan and that they just have to agree to a fraudulent marriage with a Taiwanese man to be allowed to enter. The promised salary, when discussed at all, is said to be around US\$ 150 for the first year, US\$ 200 for the second and US\$ 300 for the third.

Usually the women are not even aware that a fraudulent marriage itself already is a violation of law. Because there is no Taiwanese trade office in Cambodia, the women are first taken to Vietnam, where they get married to the Taiwanese men. These men, in one way or another, are involved in the trafficking business. One victim reported that the officer at the Taiwanese trade office only asked her if she liked the man, and she reported that she did not really understand what was going on. What's more, she never saw her "husband" again. Altogether, the women generally stay in Vietnam for 3-4 weeks before they receive their visas and fly to Taiwan. A member of the trafficking gang then picks them up from the airport and takes them to their work places.

4. Climate of fear: control and manipulation of people

An often-raised question is why badly treated workers or trafficked persons do not escape from exploitative situations. Indeed, in many cases it seems that there are, at least theoretically, possibilities to flee, and the failure to do so is viewed by many judges and prosecutors as an "agreement" by the worker. During court hearings defendants and their lawyers tend to highlight occasions when the suspected victim of trafficking had the opportunity to escape and didn't do so. In some cases, the suspected victims were even "allowed" to leave for one day, and they returned the next.

Using this kind of example as evidence that the individual was not forcefully kept at work but did so voluntarily is a too-limited and superficial interpretation of the situation. It is necessary to have some understanding of the background situation of a person in distress. It is of equal or even greater importance to become familiar with the strategies of control and threat that traffickers use to intimidate and hold persons captive in non-physical ways. The intentional

creation of a climate of fear enables the traffickers to destabilize the workers in order to control them, to manipulate their way of thinking and acting. Typical methods include taking advantage of a worker's undocumented status and emphasizing the person's indebtedness or need to earn money to send to the family back home. Traffickers use many types of invisible chains to confine victims. False promises and dependencies, in addition to coercion, threats, and isolation, are only a few of them.

Only with a thorough understanding of these strategies is it possible to properly investigate and prosecute cases involving human trafficking. Prosecutors and judges need to be sensitized to the strategies of traffickers. The climate of fear created by the traffickers is heavily influencing the statements of suspected victims in court hearings, too. Being in the same room as the traffickers or knowing that the traffickers are in the very next room, can make the trafficked persons very afraid and can lead to incomplete and/or misleading statements. In most cases the defendants are released on bail, adding to the fears of the trafficked persons. If a blind eye is continually being turned on these matters, then the number of undetected victims of human trafficking and the number of traffickers that go unpunished will remain high.

Case Story 5: in a court hearing

In a court hearing about a case of sex-trafficking, the victim appeared as a witness. Although the alleged traffickers were in another room, the witness was very nervous and afraid. She not only had to face the judges and the prosecutor but also the five lawyers of the defendants. The actual prosecutor, who had another court hearing and couldn't come, was replaced with another prosecutor. Unfortunately, the substitute was not well informed about the case, nor about human trafficking in general. The way this prosecutor asked questions helped the defense lawyers in dismantling the witness.

A main topic of the questioning was whether the witness had tried to escape during her time in forced prostitution. She explained that she was too afraid to even try to do so. The judge tried to inquire what made her so afraid, yet she wasn't able to name a reason for her fear. The judge asked if she was threatened by the traffickers, for example by reporting her to the police or harming her. When the victim said "no," the judge got a bit impatient and asked her to describe why she was afraid, but she couldn't. Finally the judge asked if her fear was some "inner feeling." The witness affirmed this description, and the lawyers of the defendants looked relieved. It seemed that there was nothing at all done by the defendants to make her feel frightened. In reality, however, there were very many reasons why she was so afraid. The traffickers not only mentioned from time to time their good contacts to the police, but they also kept telling her that they would find her wherever she went. All the victims in this particular case were most afraid of a gang member who came from the same country they did. This person stressed how influential and rich her family is, and she stressed that they own a lot of land and that they are able to find the victims and their families in the home country.

Background insights: Poverty, indebtedness and low bargaining power

As described in Chapter 3a of this report, most of the migrant workers arriving in Taiwan are heavily indebted after paying the exorbitant recruitment fees. The pressure not only to repay the loans but also to provide the family at home with enough money makes these victims extremely vulnerable to many forms of exploitation and results in their very low bargaining power. Brokers and employers, aware of the workers' situation, often use this knowledge for their own benefit. It is very common for brokers and employers to tell legal migrant workers that they will be sent home if they do not agree on the offered working and payment conditions or if they dare to complain. For people from impoverished families becoming a migrant worker is a once-in-a-life-time chance, and they will do everything to take advantage of it. Of course it is even easier to threaten undocumented workers, for example, by saying that they will be reported to the police and repatriated if they don't follow the given rules and instructions. These conditions of vulnerability and low bargaining power, which apply to more or less all migrant workers, can become the starting point for human trafficking.

Isolation and dependence

People, especially when being trafficked to Taiwan directly from their home countries, lead a very isolated life. After arrival they are taken directly to the employer, mostly small factories, restaurants and private households. The individuals don't know where they are being taken; they don't have any means of communication; they usually don't speak any Chinese; and their official documents have been confiscated. Traffickers try to isolate trafficked persons as much as possible. They are not only deprived of their freedom of movement, but they are also often exposed to verbal and physical abuse, and they are provided with very limited opportunities to communicate with others (e.g., family members, local co-workers). Whereas most trafficked persons who come to Taiwan as legal migrant workers have some Chinese language experience and often know the contact details of the economic office of their country of origin, people who are trafficked from their home country do not usually have these skills and information.

The isolation that is developed also creates a situation in which the victim is dependent on the trafficker: he is the main (or perhaps only) source of information and, therefore, he is able to control the person's perception by creating views according to his needs. By telling trafficked persons that the Taiwan police and other government agencies are very bad and corrupt, that they would harm them, put them into prison, beat them, etc., traffickers enhance the often already-low trust in police and other agencies. Also, psychological and physical violence is used to extend control over persons. The self-confidence of a trafficked person can be broken by constant oppression and insults. In one case the traffickers not only restricted the movement of the trafficked persons, but they added another level of control by regularly calling them, checking on their whereabouts, etc.

Case Story 6: Champei⁹, trafficked from Cambodia

Champei, a young Cambodian woman, came to Taiwan toward the end of 2004. A member of the trafficking gang took her to work in a small factory close to Taichung. She had to work approximately 12 hours per day in the factory, while also doing the cleaning of the house and all the washing for the employer's family. The employer told her not to talk to anybody and said that most Taiwanese people are very bad. Except for the family itself and a few neighbors, nobody knew about Champei's existence. When the family had visitors, she had to hide. In the four years she stayed there, she never was allowed to leave the house—and she never received any salary. The clothes she wore were old clothes that the wife of the employer gave her. Whenever Champei asked for money, the boss got angry. Almost every day she was beaten and scolded. Once every couple of months she was allowed to call her family in Cambodia.

Originally it was said that she had to work for three years and then could return to Cambodia. After the three years had passed, the boss refused to let her go, saying that he had paid a lot of money to the broker (US\$ 330 per month for three years) and that she had to stay for another year. After the fourth year, he still didn't allow her to go back to Cambodia.

Champei described how over those four years she felt so lost, alone and hopeless. The boss and his family made her feel as if she were less than human. During the rare phone calls home, she didn't dare to tell her mother because she didn't want her to be worried. Besides, she didn't think that there was anything her mother could have done for her anyway. She didn't know anybody, didn't exactly know where she was, and wouldn't have known what to do even if she had been able to escape. Her passport had been taken away by the traffickers, and she didn't have any money. She lived under constant fear, not knowing how long this would go on.

Threats

Victims often report that the traffickers threaten to be able to find them wherever they go or to report them to the police if they resist or run away. Other traffickers stress their good connections to the mafia and emphasize that the law enforcement agencies will not help the victims, should they try to escape, but will only put them into jail for many years. Threats are not necessarily communicated in a direct way, but intimidating information is often given indirectly. For example, the traffickers may show off how many influential persons they know, how rich their families are, how many guns they have, etc. Of course, the threat of physical violence or other forms of punishment and penalties are common also.

In a considerable number of cases countrymen of the victims are involved in the trafficking. They tend to threaten the victims by saying that they'll do harm to the victims' families, or they stress how they will be able to find the victims when they are back in the country of origin. Even after being rescued by the police, many victims do not dare to speak out but, instead, protect the

⁹ Name changed

traffickers out of fear. In court hearings this may result in statements of victims absolving the accused.

Case story 7: Indonesian woman threatened by her illegal broker

Mira¹⁰, an Indonesian women, came to Taiwan through a fraudulent marriage and with a false passport. Even before leaving Indonesia the illegal broker told her that if she ever would report him to the police, her family would be in trouble. Years later she was identified as a VoT. During the court hearing she was too afraid to admit that the passport was fake and that the name she was using was not hers. When the police found out about it, she started to tell the true story. The illegal broker was informed about her testimony, and soon Mira received threatening text messages from other Indonesians who were in contact with the broker. Twice the broker even sent people to her house in Indonesia to beat up or kidnap her little sons. The kids had to move often and couldn't go to school for more than one year because the family was too afraid that something could happen to them.

5. Foreign Labor Policies in Taiwan

Since Taiwan adopted a contract system for hiring migrant workers in 1992, the number of foreign workers has increased steadily. In August 2010 there were more than 372,000 migrant workers in Taiwan. The state strictly limits and controls the number of foreign workers and the sectors of employment available to them. In the government discourse migrant workers are seen as a way to fight shortages within the labor force. According to the web-site of the Bureau of Employment and Vocational Training, the Taiwan Foreign Labor Policy is “For the purpose to fulfill the economic and social needs of the country, foreign workers are introduced to meet the labor shortage in limited trades and quantities.”¹¹. Labor policies overlook the migrants’ well being and human rights.

Discussion on undocumented migrant workers

In the official discourse, migrant workers who become undocumented are viewed as being related to an increase in criminal events. Statistics on crimes committed by migrant workers are published monthly by the Council of Labor Affairs (CLA). With the discourse channelled that way, strict controls and harsh punishment are justified. However, in September 2010 an accident at a public construction site in Nanto brought the government’s attention back to a focus on cracking down on undocumented migrant workers. In the accident six undocumented Indonesian migrant workers died. Subsequent discussions have been about possibly increasing the rewards for reporting undocumented migrant workers as well as the penalties on employers for hiring undocumented workers. According to statistics of the CLA the three main reasons for migrant

¹⁰ Name changed

¹¹ http://www.evta.gov.tw/eng/content/content.asp?mfunc_id=99&func_id=99&type_id=0&cata_id=0&id=9223

workers to become undocumented are: 1) friends advised them to change employers, 2) their contracts are about to expire and 3) they want to earn more money. Interestingly, this information is based on interviews with employers¹². The focus group itself was not interviewed for this particular research. NGO-staff visiting detention centers and asking detainees for their reasons for becoming undocumented, often get told that in addition to expiring contracts, reasons include abusive working conditions with very low pay, long work hours, and having no days off in months.

Most undocumented migrant workers are female

By the end of March 2010 around 22,000 out of around 29,000 undocumented workers were female.¹³ More than 19,400 of them were either Indonesian or Vietnamese, representing the two countries that send the most foreign domestic helpers and caregivers to Taiwan. These workers are not covered by the Labor Standards Law, except when they are employed in a nursing home, and they therefore are left vulnerable to all forms of exploitation and abuse. Many undocumented caregivers explain that they just couldn't take it any longer and that the broker was not willing to help them to change their employer; some said that the broker even encouraged them to run away. In the end, the workers took the risk and became undocumented.

The government has promised to better protect domestic workers and caregivers in private households. Because of the "special nature of the work," the CLA came to the conclusion that an inclusion under the existing Labor Standards Law is not possible and that a special law would be more effective. The draft was promised for the beginning of the 2010 legislative session, but it did not become a reality until October 2010. Unfortunately, the current draft law is insufficient and doesn't meet the standards required for a better protection of workers in private households. In chapter 6 you can find a more-elaborate discussion of this topic.

Practices to reduce the number of undocumented workers

One practice designed to counter high rates of undocumented migrant workers is bans. From August 2002 to December 2004 the Taiwan government, for example, banned Indonesian caregivers and domestic workers from entering Taiwan. During those 2.5 years, illegal channels were used to bring Indonesian female workers to Taiwan. Many women came to Taiwan through fraudulent marriages or on tourist-visas. They often were not clear about their illegal entry and stay. The brokers told them that a fake marriage was the easiest way to enter Taiwan. After their arrival the women found themselves in vulnerable situations. With loans to repay and their illegal status in Taiwan, they were willing to accept bad working, and bad payment conditions.

There are no estimations available about how many Indonesians entered Taiwan through illegal channels during the ban. But starting in 2006-2007 a lot of Indonesian VoT were found who

¹²Taipei Times, October 06, 2010

¹³ Unfortunately the CLA later in 2010 started not to divide undocumented workers in gender anymore.

entered Taiwan during that period. In general these women had to pay very high monthly brokers' fees, between US\$ 440 and US\$ 630 – the lion's share of their salaries. Some only earned around NTD 5000 per month or even less. Most of them were not given any rest days, nor were they allowed to leave their houses.

6. Experiences and Findings

a) Identification of victims of trafficking

Although the process of identifying VoT has improved and there are attempts to standardize it, still there are contradictory results. In very similar cases in the past, law enforcement agencies came to different decisions. While it is sometimes unintelligible that persons are not identified as trafficked, although many factors in their cases would support this, the opposite can be true also. Persons are sometimes identified by the prosecutors as trafficked in cases that NGOs might view as abuse, rape or fraud, but not necessarily human trafficking.

Only two of the identified VoT in this research, who entered Taiwan as migrant workers and became undocumented later, were asked about their working and living conditions during their legal period and about the reasons behind their becoming undocumented. In many cases, however, caregivers and domestic workers suffer slave-like conditions even during their legal work periods.

In the Taiwan government Report on Anti-Trafficking in Persons of 2009, it is stated that 329 VoT were identified in 2009, and their cases were forwarded for further investigation. Unfortunately, there is no information about the number of cases and persons that, by the end of a court case, are found to be VoT. It is very possible that the number of identified victims might differ from the number of VoT finally legally classified as such.

Trafficking victims: not recognized

Six women in a detention center were interviewed by NGO staff and were found to be VoT. They worked as entertainers in KTVs and/or as prostitutes. They were under constant surveillance. In the dormitory there was CCTV everywhere. When there were customers, the women were taken to and picked up from work. They were threatened by the broker, who told them to follow all his rules or else he “would become very angry.” If they refused any customer demands, the customers could ring the boss or broker. For every complaint received, money was deducted from the woman's wage. All of the women had mobile phones, but none of them dared to ring for help. They not only didn't know whom to ring, but also were very ashamed of their situation. Here it needs to be added that migrant workers often come from countries where the government agencies, including the police, are not very trustworthy but rather are involved in criminal activities.

While many similar cases were recognized by law enforcement agencies as cases of human trafficking, this particular case of the six women wasn't. Instead, they were repatriated. It is unknown what happened to the broker and boss. In this case, there seemed to be some unknown factor(s) that influenced the outcome.

Generous recognition (padding the numbers)

In this case the National Immigration Agency arrested two men. The police received information of the whereabouts of workers the brokers had found employment for and went to the different places to rescue five Indonesian and four Vietnamese women. During the interrogation at the police station, three of the Vietnamese women and one Indonesian woman reported that they had been raped by one of the brokers, and another Indonesian woman complained about sexual harassment. All nine women were recognized as VoT. As undocumented migrant workers, they had contacted the illegal brokers to find jobs for them as caregivers, factory workers or domestic workers in a hotel. Their working conditions, no doubt, were abusive, including daily work schedules up to 15 hours long. The monthly wage was around US\$ 690 of which 25% had to be paid to the illegal broker. According to the information given by the women, there were no threats from the illegal broker or employers and no restriction of movement.

The case was handed over to the prosecutors' office. After waiting for 13 months, the women who suffered from sexual assault were asked to act as witnesses in court. At about the same time the other women involved in this case received the information that they were no longer required as witnesses. No further information was given regarding their case and the outcome of the investigation or prosecution. In the court hearing, the illegal brokers were accused of the employment of undocumented workers and also of sexual assault. The verdicts for the illegal brokers were 6 months for one and 30 months for the other. The raped women received a compensation of between US\$ 690 and US\$ 1030, in the case that the broker had the money. All the other women just received a letter from the court stating that they were not needed as witnesses anymore but were allowed to go back to their home countries. In the court's verdict, the offense of trafficking in persons is not mentioned at all. When the judge's secretary was contacted for clarification of this case and verdict, she said that the anti-trafficking act was not used because the criminal court is stronger. Our office is waiting for further explanation.

b) Prosecution: non-transparent procedure and lengthy process

The Anti Trafficking Act came into effect on June 1, 2009, and as the law can be applied only to cases identified on that date or later, experiences with the application of the law are still limited. In its 2009 "Report on Anti Human Trafficking" the Taiwan government provides information about the number of human-trafficking-related cases prosecuted in 2009 but doesn't mention what laws were applied and how long it took for cases to be finally closed. Judging from the

cases mentioned in this research, it is not uncommon for it to take 8 months or longer before the first court hearing, and it can take 12 months or more for the cases to be solved. On the other hand, there were cases of labor trafficking in the farming sector that were solved in only 4 to 5 months.

Only in two of the cases we studied the victims sued their traffickers. All the others decided not to do so. One of the main reasons given by those who did not sue was that they don't have trust in the judicial system. They doubted that they could win their cases, as the accused have more influence and are able to afford very good lawyers. Most of them felt that participating in all the court hearings and enduring all the suffering they had experienced once more, along with the probability of losing the court case, wasn't worth it and would only add to their pain and disappointment. Other trafficked persons said that they believe the trial will take longer if they sued the traffickers. This response seems to indicate not only that these victims mistrust the judicial system but also that they have a strong desire to conclude the case and return to normal life.

Case Story 8: Lack of trust in judicial system

Dung¹⁴ decided to sue her traffickers but withdrew the accusation after two weeks. Her reasons were not very clear in the beginning. She said at one point that her boyfriend advised her to withdraw because the prosecution of the case would take very long and in the end she would lose anyway and would be very disappointed afterwards. It became clear that Dung doesn't believe in a just judicial system in general and reckons that the claimant with more money and influence will win, no matter who is the actual offender. Another factor that influenced her decision was that one of the traffickers threatened the victims, telling them he would be able to find them or their families anywhere in their home country.

None of the identified victims in this research was clear about the meaning of human trafficking when we first spoke. Besides that, very few of them were told that they have the right to decide just to go back home without acting as witnesses or even suing the traffickers. During the investigation and prosecution period, the victims received hardly any information about their cases. The many months of waiting were a period of increasing uncertainty. When any of them would call the prosecutor's office, the response usually given was that the respective prosecutor was not available or that no information could be given. Trafficked persons commonly complain about this type of treatment within the judicial system; they feel ignored, used and disrespected.

As most of the persons did not sue the traffickers but acted only as witnesses, the final verdict will not be sent out to them. There were cases in which the sheltering NGOs were totally unable to receive any information about the court rulings, leaving the trafficked persons uninformed and anxious. Recently, information from the High Prosecutors' Office indicated that a new procedure might be implemented to improve communication between the prosecutors' office and victims.

¹⁴ Name changed

Case Study 9: Lengthy process

Three Indonesian women, who were identified as VoT by an enforcement agency, were waiting to go to court as witnesses. Over a waiting period of more than a year, whenever the prosecutor was called, there was no answer. One of these women, Saraswati,¹⁵ especially suffered a lot under the uncertainty of this situation. She told the social workers about many sleepless nights because she didn't know how long she would be staying in Taiwan and when she could go home. She felt left behind and ignored. Saraswati had also called the officer at the Immigration Agency who was responsible for her case and was surprised when he told her that he also hadn't received any updates on the case.

After 13 months the women finally received a letter from the court informing them that they no longer were needed as witnesses but could return to Indonesia. In these 13 months the women never were asked to act as witnesses nor received any information about their ongoing cases.

c) Light sentences

Five of the cases uncovered in this research involve incidents that occurred after the implementation of the Anti Trafficking Act, and these are officially recognized as cases of human trafficking. Out of these five cases, two have completed trial, while one case is currently under appeal, and two case is still under prosecution.

Human trafficking of five men

In this case five men (three Indonesians and two Vietnamese) were found to be VoT while working on a farm. None of the men hold a valid visa, and to obtain work they all contacted an illegal broker who acts as an intermediary for undocumented workers and illegal migrants. The workers had to pay an introduction fee of around US\$ 200 and were promised they would each earn US\$ 25 per day working on a farm. They were taken to the countryside and were locked in a house. Each morning the employer would come and transport them to their work place, and each evening he would take them back to the house, where they were then locked up again. When the weather was bad, the workers didn't go to work but stayed locked inside for the whole day. In this case, which was prosecuted in 5 months, the employer and broker received fines and 4 to 6 months imprisonment for the employment of undocumented workers. The Anti Trafficking Act was not applied.

¹⁵ Name changed

Human trafficking of six women legally employed as caregivers

These six women worked as legal caregivers in a nursing home. Besides working the daily 12-hour shifts without any day of rest, they were also forced by the employer to work as morticians. The women were not allowed to take a rest even when they were sick. The case is still ongoing.

Human trafficking of nine women from Indonesia and Vietnam

In this case, two Taiwanese men acted as intermediaries for undocumented migrant workers. The women worked either as caregivers, or in factories or as cleaners in a hotel. Each of the illegal brokers raped two of the women, and at least one other woman reported sexual harassment. The defendants were sentenced to prison terms of 2 years and 6 months and 1 year and 2 months. The only court hearing dealt with the sexual assault. The Anti Trafficking Act was not applied, but the Employment Service Act and the Criminal Code were applied instead. At the moment the NGO is still following up with the prosecutor on how he dealt with the other five women who were not victims of sexual assault. This case was prosecuted in 13 months.

Human trafficking of nine Indonesian women

These nine women, all of them migrant caregivers and domestic workers, became undocumented. They were trafficked into prostitution and were controlled and threatened by the traffickers. The two main defendants were sentenced to 1 year and 2 months in prison, and the other defendants all received 5- to 7-month terms. The Anti Trafficking Act was applied in this case, which was prosecuted in 9 months. The prosecutor appealed because of the minimal sentences for the accused. As of this writing, the case remains under appeal.

Human trafficking of six Vietnamese women

All of these women said they didn't know they would be working as prostitutes but were forced to do so. The traffickers threatened them and controlled them by saying that to run away would be useless because the traffickers have good contacts in the police force and will be able to find them wherever they go. In addition, the traffickers threatened to inform the women's families in Vietnam about the kind of work they were doing. The court found the accused not guilty for human trafficking, the Anti Trafficking Act has not been applied in this case. The defendants were sentenced to prison terms from 1 year and 8 months to 6 months.

d) Understanding of Human Trafficking

After the US Department of State released the 2010 TIP Report, officials of different government departments in Taiwan commented on the country's Tier 1 placement. On June 16, 2010 the Central News Agency quoted a judge, Mrs. Zhu Rui Juan, as she commented on the allegations that judges are generally unfamiliar with human trafficking issues. She said that dealing with

human-trafficking-related cases is very similar to dealing with cases of sexual assault and domestic violence, and therefore the judges are presumably not so unfamiliar with the topic. While to a certain extent this might be true for cases involving sex trafficking, it is not true for cases of labor trafficking.

During the International Workshop on Strategies for Combating Human Trafficking, organized by the National Immigration Agency in September 2010, it was conceded that the prosecution and conviction of human trafficking cases remain a weak part of Taiwan's judicial system. Several examples presented at the workshop demonstrated the judges' lack of understanding and knowledge of human trafficking. A policeman who participated in the workshop shared his experience in dealing with suspected victims of human trafficking. He reported that it has proved to be a successful strategy to hold a suspected victim in a detention center for a couple of weeks and that afterwards the person is more likely to cooperate willingly with the law enforcement authorities.

In a court hearing of one of the cases in this study it happened that the responsible judge refused to allow the victims who were acting as witnesses to be separated in a different room from the traffickers. In making this request, the victims and the prosecuting lawyer explained that the women were very afraid of the traffickers, especially since they knew that most of the accused traffickers were no longer imprisoned but out on bail. Finally, during the hearing the witnesses had to sit within a couple meters of the traffickers. During the court hearing the judge even mentioned the city where the victims were being sheltered, making it easy for the traffickers to track down the women if they wanted to do so.

e) Vulnerability of domestic workers and caregivers

As mentioned already in Chapter 3a, domestic workers and caregivers in private households are very vulnerable to exploitation. In Taiwan, as in many other countries, workers in this sector are not covered by labor laws. Worldwide, domestic worker groups are fighting for better protection. Finally in 2010 the International Labor Organization (ILO) started the drafting of a domestic workers convention. Taiwan also promised better protection for workers in private households as a measure to strengthen their rights and to help prevent human trafficking. The current draft law for domestic workers includes a provision that domestic workers and caregivers will no longer be excluded from the minimum wage policy and that all money earned should be given to the worker directly and completely. This is an improvement, but upon reading a bit further in the proposed legislation, we find that it says that an employer is allowed to charge for a worker's food and lodging. Other than that, workers are entitled to one rest day in a 7-day period as well as eight hours of continuous rest per day. This provision is weakened by the sentences that follow it, which state that if there is a need to work outside these limitations, an agreement can be made between the employer and the worker defining the content of work and the payment

without limiting the maximum hours of overtime in a certain period of time. Also, there will be no standard contracts for workers in private households. Instead, each contract and its contents will be agreed upon by the employer and worker. A standard contract would be a better way of protecting the workers' basic rights, however, especially as most workers do not have a very clear understanding of their rights and are unfamiliar with the interpretation of contractual formulations.

One of the core problems regarding work done in private households is the potential for exploitation and long hours of work. This problem will not be solved as long as the work itself is not clearly defined and recognized as work. The CLA draft does not resolve this issue but rather states in its Article One that the hours of work and hours of rest are very hard to determine. This indecisive language enables employers to freely interpret work time and rest time for their own benefit. A standardized definition of the so-called "stand-by time" is also missing. In Article 10 of the proposed ILO convention for domestic workers, "stand-by time" is understood as periods of time "...during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls..." These periods are regarded as work, and workers should be paid for this time.

Other groups that play an important role in the plight of migrant domestic workers are the broker agencies. Unfortunately, these groups are not mentioned at all in the CLA's draft. It seems that it would be very important to address the liability of recruitment agencies and to establish criteria for the qualification of agencies and for inspection mechanisms.

7. Recommendations

Human trafficking is a crime against mankind, and therefore the human being should be at the center of all efforts to combat it. When talking about the human trafficking of migrant workers, a comprehensive approach includes an understanding of the labor migration model and its related policies and practices. Labor migration is a complex phenomenon influenced by different factors and actors. Many workers in developing countries need to leave home and become migrant workers in order to help their families survive. A lot of money is expended in the recruitment process already, leading migrant workers into indebtedness even before they arrive in the country of destination. There they are all too often seen and treated as commodities in the form of laborers, a dehumanizing perspective that deprives them of adequate protection and leaves them vulnerable to exploitation and abuse.

As pointed out in this report, there are three main areas related to the human trafficking of migrant workers in Taiwan that need improvement. For the classification of what needs to be done in these areas the "3 P" paradigm (prevention, protection and prosecution), a widely used framework to combat human trafficking, can be applied. The first area requiring attention is Taiwan's foreign labor policies and the protection of migrant workers (prevention and

protection); the second is the brokerage system (prevention and protection), and the third is a better understanding of human trafficking and the labor migration approach of all involved government agencies (protection and prosecution).

a) Foreign Labor Policies and protection of migrant workers

Implemented structures like immigration and foreign labor policies view the employment of migrant workers as a measure to fight labor shortages and the workers themselves as a social risk. It is exactly these policies that are increasing the risk for migrant workers to be abused or even to become victims of human trafficking. Especially migrant workers employed in private households face a lot of abuse and exploitation. Without proper legal protection, equal to that provided for other workers, they hardly have any chance to improve their situation. Becoming undocumented is for many the last option. Besides the standard reasons, such as the end of the contract term has arrived but the migrant worker doesn't want to return to her/his home country yet or wants to earn more money, many of these workers simply can't bear their working and living conditions anymore. While many workers are unaware of the possibility of changing their employer under certain circumstances, there are others who try to do so but are thwarted by a broker who is not willing to assist them or who tells them that it is not possible. In Taiwan the majority of undocumented migrant workers have been legally employed as domestic workers or caregivers. This group of workers is not covered by the labor laws—or, in the case of caregivers in nursing homes, the laws are not implemented well. Facing exploitative work situations, often going without any day of rest for months and receiving low or no payment, these (mostly) women become undocumented in the hope of finding better working conditions. Many examples in this report show the vulnerability to abuse and exploitation of undocumented migrant workers. Better legal protections for domestic workers and caregivers would not only reduce the number of undocumented workers but would also help to fight human trafficking. To criminalize undocumented migrant workers, as is common in the current public discourse, is not only overlooking one of the root causes of the high number of undocumented workers but is also the wrong way to successfully combat human trafficking.

b) Better regulation of the brokerage system

Taiwan's brokerage system is known to be the cause of a lot of the misery that migrant workers are facing. To be able to pay exorbitant placement fees, workers have to take out loans or must agree to the fee being deducted from their salaries in Taiwan. They arrive in Taiwan burdened with this huge debt and the pressure to pay it off. Unscrupulous and abusive brokers and employers use the workers' indebtedness to make even bigger profits. The workers have little bargaining power, and many do not dare to complain about bad working conditions or payment

irregularities for fear of being repatriated. Unfortunately, there have been no binding regulations that set a maximum amount on these fees paid by the workers. Increased regulation and monitoring of labor agencies involved in the recruitment and placement of migrant workers would help decrease the occurrence of abuse and exploitation. In addition, memorandums of understanding are needed between Taiwan and each of the labor-sending countries to effectively restrict and regulate placement fees.

c) Extended training and information for all involved government agencies

The different victims identification standards, as well as the light sentences handed down by judges and the rare use of the Anti Trafficking Act, are proof that we need further training of the relevant government agencies, not only in regard to human trafficking but also regarding human rights. For successful prosecution of cases of human trafficking, this education is crucial for all involved parties—the enforcement agencies who rescue and identify victims, the prosecutors who investigate the crimes and the judges who finally need to weigh evidence and pronounce judgment. Only if these parties are well informed and trained on the topic and understand the situations of migrant workers, can the prosecution of human trafficking crimes be successful.