



| Legal System | Constitution | Bill of Rights | Country Structure | Form of Government |
|--------------|--------------|----------------|-------------------|--------------------|
| Civil Law    | Written      | No             | Single State      | Republic           |

## 1. INTRODUCTION

### 1.1. Taiwan and Modern Slavery (Human Trafficking)

Human trafficking, also called “modern slavery,” looms large in Southeast Asia. According to the Walk Free Foundation’s Global Slavery Index 2016, two-thirds of human trafficking victims, or 25 million people, come from East Asia and the Pacific.<sup>1</sup> Consequently, Taiwan, right in the center of the East-Asian island arc, needs to be vigilant in combating human trafficking.

While traffickers subject local men and women to forced labor and subject local women and children to sex trafficking, Taiwan is primarily a destination country for foreign trafficking victims.<sup>2</sup> Its Human Trafficking Prevention Act (HTPA), promulgated in 2009, puts human trafficking into three categories—sexual trafficking, labor trafficking, and organ harvesting.<sup>3</sup> According to the Ministry of the Interior (MOI), most human trafficking in Taiwan fits the first two categories of labor and sexual trafficking.<sup>4</sup> Sex trafficking victims in Taiwan are mostly women lured from China and Southeast Asian countries through deceptive employment offers or fraudulent marriages.<sup>5</sup> Many victims of labor trafficking come from Indonesia, the Philippines, Thailand, and Vietnam; to a lesser extent, they are migrant workers from China, Cambodia, and Sri Lanka.<sup>6</sup>

<sup>1</sup> Mely Caballero, *A Hidden Scourge*, Finance & Development, September 2018, Vol. 55, No. 3, at 19, available at: <https://www.imf.org/external/pubs/ft/fandd/2018/09/human-trafficking-in-southeast-asia-caballero.htm>.

<sup>2</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 537 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>3</sup> *Human Trafficking Prevention Act (HTPA)*, Article 2, Section 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>. The HTPA defines “human trafficking” as: “(1) To recruit, trade, take into bondage, transport, deliver, receive, harbor, hide, broker, or accommodate a local or foreign person, by force, threat, intimidation, confinement, monitoring, drugs, hypnosis, fraud, purposeful concealment of important information, illegal debt bondage, withholding important documents, making use of the victim’s inability, ignorance or helplessness, or by other means against his/her will, for the intention of subjecting him/her to sexual transactions, labor to which pay is not commensurate with the work duty, organ harvesting; or to use the above-mentioned means to impose sexual transactions, labor to which pay is not commensurate with the work duty, or organ harvesting on the victims. (2) To recruit, trade, take into bondage, transport, deliver, receive, harbor, hide, broker, to sex transactions, labor to pay which is not commensurate with the work duty, or organ harvesting, or to subject people under 18 years of age to sexual transactions, labor to which pay is not commensurate with the work duty, or organ harvesting.”

<sup>4</sup> *Taiwan ranks at the top in human trafficking prevention for 11 consecutive years – MOI hosts workshops with contractors to combat forced labor*, Ministry of the Interior (1 Sept. 2020), available at: [https://www.moi.gov.tw/english/News\\_Content.aspx?n=7627&s=199171](https://www.moi.gov.tw/english/News_Content.aspx?n=7627&s=199171).

<sup>5</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 537 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>6</sup> *Id.*

Taiwan is also a source country for forced labor and sex trafficking (mainly women and children), as stated in the 2021 U.S. Trafficking in Persons Report.<sup>7</sup>

Taiwan authorities have demonstrated increasing efforts in combating human trafficking, especially after the promulgation of the HTPA. Moreover, Taiwan authorities have formulated corresponding legislation, strengthened law enforcement, streamlined investigations, and optimized referral procedures.<sup>8</sup> As indicated in the MOI's human trafficking report, in 2020, authorities conducted 159 trafficking investigations (29 labor trafficking and 130 sex trafficking).<sup>9</sup> In 2021, Taiwan not only investigated more traffickers and enhanced identification procedures, but also approved a new "2021-2022 Anti-Exploitation Action Plan" to improve interagency cooperation and coordination on prevention work.<sup>10</sup> Because of its hard work, Taiwan has ranked at the top for human trafficking prevention for 11 consecutive years and remains in Tier 1 in the 2021 Trafficking in Persons Report by the U.S. Department of State (**U.S. Report**).<sup>11</sup> Nonetheless, according to the U.S. Report, the government could improve staffing and reporting mechanisms and address other obstacles in prevention and protection systems.<sup>12</sup>

As the HTPA prescribes, the MOI is the competent authority in human trafficking cases at the central level.<sup>13</sup> The National Immigration Agency (**NIA**), a subordinate agency of the MOI, is responsible for integrating resources from different government authorities and implementing human trafficking prevention measures. Other relevant stakeholders, e.g., the Ministry of Labor and the Fisheries Agency, provide support to certain categories of human trafficking victims (foreign workers and foreign fishermen). However, under Taiwan law, only NIA officials, police, and prosecutors can formally identify victims, while other agencies and stakeholders must follow complex notification procedures to report possible victim status.<sup>14</sup>

Non-governmental organizations (**NGOs**) in Taiwan also address human trafficking:

- A. Taipei Women's Rescue Foundation** was formally registered in 1987 to provide legal consultation and counseling to girls and women in the sex trade, and to assist them in returning to their families and society.<sup>15</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Ministry of the Interior, available at: <https://www.immigration.gov.tw/media/61889/110-01%E6%A1%88%E4%BB%B6%E6%95%B8%E7%B5%B1%E8%A8%88%E8%A1%A8-97.pdf>.

<sup>10</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 537 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>11</sup> NIA, *The Major Policy, Human Trafficking Prevention*, p. 1, <https://www.immigration.gov.tw/5475/5478/141386/141401/234898/>; *Taiwan ranks at the top in human trafficking prevention for 11 consecutive years – MOI hosts workshops with contractors to combat forced labor*, Ministry of the Interior (1 Sept. 2020), available at: [https://www.moi.gov.tw/english/News\\_Content.aspx?n=7627&s=199171](https://www.moi.gov.tw/english/News_Content.aspx?n=7627&s=199171); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 532 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf). The U.S. Department of State rankings are based on the minimum standards specified in the U.S. Trafficking Victims Protection Act of 2000, "which are generally consistent with the [UN] Palermo Protocol." *Id.* at 51.

<sup>12</sup> *Id.* at 532.

<sup>13</sup> HTPA, Article 3, Section 1, available at: <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>. Under the HTPA, the competent authorities are "the Ministry of the Interior at the central government level; municipal governments at the municipal level; county (city) governments at the county (city) level."

<sup>14</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 536 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>15</sup> *About TWRF*, available at: <https://www.twrf.org.tw/info/category/7>.

- B. **End Child Prostitution and Trafficking Taiwan** has worked relentlessly in preventing child sexual exploitation and trafficking, as well as championing children’s rights and online safety since its inception in 1994.<sup>16</sup>
- C. **Covenants Watch** is a non-profit NGO established in 2009 by a coalition of human rights NGOs, lawyers, academics, and activists for the purpose of promoting human rights.<sup>17</sup>
- D. **Anti-Human Trafficking Alliance** consists of several NGOs supporting women rights. It focuses on oversight of human trafficking law enforcement.<sup>18</sup>

## 1.2. Taiwan’s Policy and Legal Position

Taiwan authorities have adopted proactive approaches toward combating human trafficking. The Executive Yuan first launched the Human Trafficking Prevention Action Plan in November 2006 and established the Coordination Conference for Prevention of Human Trafficking in 2007 as a platform for inter-ministerial coordination.<sup>19</sup>

Before the HTPA was promulgated and implemented in June 2009, the Criminal Code and the Child and Youth Sexual Exploitation Prevention Act (**CYSEPA**) were the two main pieces of legislation governing human trafficking crimes. The HTPA created a more comprehensive legal framework to tackle modern slavery issues. The HTPA specifies criminal offenses for all forms of trafficking and enhances victim protection measures.

As the NIA states, human trafficking prevention must address the “4Ps”—Prosecution, Protection, Prevention, and Partnership. Following the 4Ps, the authorities have improved their policies. The conviction rate of human trafficking cases has increased during the past few years, and the authorities have provided more diversified and comprehensive services for human trafficking victims.<sup>20</sup> Also, the government has integrated resources and channels of both public and private sectors to strengthen education, training, and awareness-raising to combat human trafficking.

The 4Ps emphasize partnerships and international cooperation as well. Although Taiwan’s unique diplomatic status presents political challenges, as of February 2, 2021, Taiwan has signed memoranda of understanding with 21 countries to cooperate on immigration affairs and human trafficking prevention.<sup>21</sup> Moreover, the NIA has established cooperation mechanisms with foreign governments and international organizations. For instance, Taiwan authorities have successfully conducted joint anti-trafficking investigations with several countries, such as Kosovo, Montenegro, Paraguay, Serbia, and Vietnam.<sup>22</sup>

<sup>16</sup> About ECPAT Taiwan, available at: [https://www.ecpat.org.tw/AboutECPAT\\_en.aspx?ID=146&ek=&pg=1](https://www.ecpat.org.tw/AboutECPAT_en.aspx?ID=146&ek=&pg=1).

<sup>17</sup> About Covenants Watch, available at: <https://en.covenantwatch.org.tw/about-us/>.

<sup>18</sup> TWRF, *Human Trafficking*, available at: <https://www.twrf.org.tw/info/category/18>; “Anti-Human-Trafficking Association,” The Press Conference of Government Ministries regarding the Evaluation Results of Combating Human Trafficking (「反人口販運聯盟」政府各部會人口販運防制工作評等結果記者會), available at: <https://www.coolcloud.org.tw/node/52692>.

<sup>19</sup> Department of Information Services, *Taiwan Ranks Tops in Human Trafficking Fight 8 Years Straight* (19 July 2017), available at: <https://english.ey.gov.tw/News3/9E5540D592A5FECd/e652a6e8-f0bd-47c7-a7f1-cddff7d3d815>.

<sup>20</sup> NIA, *The Major Policy, Human Trafficking Prevention*, available at: <https://www.immigration.gov.tw/5475/5478/141386/141401/234898/>.

<sup>21</sup> Ministry of the Interior, available at: <https://www.immigration.gov.tw/5385/7445/7535/251222/7607/106951/>.

<sup>22</sup> *Id.*; U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 534 (2021)*, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

## 2. OVERVIEW OF TAIWAN'S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

### 2.1. Taiwan's Regional and International Law Obligations

#### 2.1.1. Fundamental human rights

In 1967, the Taiwan government signed the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) (collectively, **Two Covenants**).<sup>23</sup> Taiwan, however, later withdrew from the United Nations (**UN**) in 1971 and therefore did not ratify the Two Covenants.<sup>24</sup> While Taiwan was under martial law, the Taiwan government did not focus on human rights protection.<sup>25</sup> In 1987, when martial law was lifted, conditions for human rights protection started to improve.<sup>26</sup>

Even though it is not a member of the UN, Taiwan complies with the rules of the Two Covenants. In 2009, the Taiwan Legislative Yuan ratified the Two Covenants and passed the Act to Implement the ICCPR and the ICESCR (**Implementation Act**).<sup>27</sup> According to Article 2 of the Implementation Act, the human rights protection provisions in the Two Covenants have domestic legal effect. Furthermore, Article 4 of the Implementation Act provides that all levels of governmental institutions and agencies should conform to the human rights protection provisions in the Two Covenants, avoid violating human rights, protect the people from infringement by others and promote human rights. Moreover, Article 6 of the Implementation Act requires the government to establish a human rights reporting system in accordance with the Two Covenants.

Following the same path, implementation acts give other human rights–related conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), the Convention on the Rights of the Child (**CRC**), and the Convention on the Rights of Persons with Disabilities (**CRPD**) legal effect in Taiwan.<sup>28</sup>

Due to Taiwan's unique diplomatic status, few international regional obligations bind Taiwan. Nevertheless, Taiwan continues to reach out for international partnerships and cooperation. For instance, in 1991, Taiwan became a member of the Asia-Pacific Economic Cooperation (**APEC**) under the name of "Chinese Taipei."<sup>29</sup> In APEC, Taiwan participates in the region's negotiations for economic cooperation as an equal member.<sup>30</sup>

<sup>23</sup> Flora Wan, *Legislature ratifies UN rights treaties*, *Taipei Times* (2009), available at: <http://www.taipeitimes.com/News/taiwan/archives/2009/04/01/2003439900>.

<sup>24</sup> Chian-Fong Wei, *Why We Need A National Human Rights Commission?*, *Taiwan Human Rights Journal*, Vol. 1, No. 3 (2012), at 98, available at: <http://lawdata.com.tw/tw/detail.aspx?no=205346>.

<sup>25</sup> *Id.* at 97.

<sup>26</sup> *Id.* at 97–98.

<sup>27</sup> Act to Implement the ICCPR and the ICESCR, Article 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0020028>.

<sup>28</sup> *The Introduction of the Nine Core Covenants and Conventions of Human Rights*, the Covenants Watch (聯合國九大核心人權公約人權公約施行監督聯盟), available at: <https://covenantwatch.org.tw/un-core-human-rights-treaties/>.

<sup>29</sup> Philip Y. M. Yang, *Taiwan's Approaches to APEC: Economic Cooperation, Political Significance, and International Participation* (14 Nov. 1997), available at: <http://club.ntu.edu.tw/~yang/apec-paper-2.htm>.

<sup>30</sup> *Id.*



ratification with the UN and, therefore, is unable to complete the signing procedures for each covenant and convention.<sup>37</sup> For instance, in 2009, the UN Secretary General rejected Taiwan’s attempt to deposit the instruments of ratification of the Two Covenants.<sup>38</sup>

Some commentators have discussed whether the incomplete signing procedure affects the domestic legal validity of the covenants and conventions.<sup>39</sup> However, Article 2 of the Implementation Act prescribes that the Two Covenants have domestic legal status in Taiwan. Therefore, most experts deem the Two Covenants, including their human rights protection provisions, as having domestic legal effect.<sup>40</sup> Likewise, similar provisions in the Enforcement Act of CEDAW, the Implementation Act of the CRC, and the Act to Implement the CRPD give domestic legal effect for those conventions.

## 2.2. Human Rights Protections Under Taiwan’s Law

The Constitution of the Republic of China (Taiwan) (**Taiwan Constitution**) is the cornerstone of fundamental human rights protection in Taiwan. Articles 7 to 21 in Chapter II of the Taiwan Constitution enumerate the important rights of people, such as personal freedom, freedom of residence, freedom of speech, and the right of existence.<sup>41</sup>

In addition, Article 22 of the Taiwan Constitution has a general clause to safeguard emergent rights. The Constitutional Court of Taiwan interprets Article 22 of the Constitution to recognize emergent rights not enumerated in the Constitution.<sup>42</sup> For example, Judicial Yuan Interpretation N. 689 recognized “freedom of general behavior” and defined this freedom as “an individual’s freedom of willful action or inaction.”<sup>43</sup> Furthermore, it recognized and defined “the freedom of movement” as “guaranteeing a person’s willful movement toward or staying in a place.”<sup>44</sup>

Apart from the Taiwan Constitution, the Civil Code and the Criminal Procedure Law also safeguard constitutional human rights. For example, Article 72 of the Civil Code makes void a juridical act that is against public policy or morals.<sup>45</sup> Another example is Article 156, Paragraph 1 of the Code of Criminal Procedure, which allows into evidence an accused’s confession that is not extracted by violence, threat, inducement, fraud, exhausting interrogation, unlawful detention, or other improper means and that is

<sup>37</sup> *Id.*

<sup>38</sup> Wen-Chen Chang, *Do You Know What Are the Two Covenants? (1) The International Covenant on Civil and Political Rights* (你知道什麼是兩公約嗎？(一) 公民與政治權利國際公約), Judicial Reform J., No. 75, available at: <https://digital.irf.org.tw/articles/1917>.

<sup>39</sup> *We Still Have a Way to Go: Ratification of the two Covenants* (邁向兩公約的漫漫長路：公約批准篇，人權公約施行監督聯盟) (6 May 2019), available at: <https://covenantwatch.org.tw/2019/05/06/twocovenantsbiweekly01/>.

<sup>40</sup> Wun-Syong Huang, *International Covenant - After the Signing the Ratification Instruments of the Two Covenants* (國際公約-簽署兩公約批准書之後) (15 May 2009), available at: <https://www.taedp.org.tw/story/1476>.

<sup>41</sup> Constitution of the Republic of China (Taiwan), Chapter II, available at: <https://english.president.gov.tw/Page/94>.

<sup>42</sup> Chung-Lin Chen, *The Development of Unenumerated Constitutional Rights in Taiwan* (我國憲法上未列舉權利之發展), *The Constitutional Review*, Vol. 44, No. 2 (Oct. 2018), at 98, available at: <http://lawdata.com.tw/tw/detail.aspx?no=372681>; Yeong-ming Chang, *General Behavior Freedom and General Personality Rights as Fundamental Rights Protected by the Constitution*, *TAIWAN L. REV.*, No. 273 (15 Jan. 2018), available at: <http://lawdata.com.tw/tw/detail.aspx?no=411136>.

<sup>43</sup> Judicial Yuan Interpretation No. 689, (29 July 2011), paragraph 5 of the Reasoning, available at: <https://cons.judicial.gov.tw/jcc/en-us/jep03/show?expno=689>.

<sup>44</sup> Judicial Yuan Interpretation No. 689, (29 July 2011), paragraph 5 of the Reasoning, available at: <https://cons.judicial.gov.tw/jcc/en-us/jep03/show?expno=689>.

<sup>45</sup> Civil Code, Article 72, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000001>.



consistent with facts.<sup>46</sup> A court further interpreted this paragraph by excluding a confession extorted by torture because it violated an individual's freedom of will.<sup>47</sup>

Taiwan authorities have also passed legislation to protect specific human rights. The HTPA, for instance, specifically defines human trafficking, lays down stringent penalties, and requires certain protection services and measures for victims of human trafficking.<sup>48</sup> The Labor Standards Act (**LSA**) focuses on labor exploitation and bans employers from forcing persons to work under unreasonable conditions.<sup>49</sup> Other supporting regulations detail government and employer obligations, such as the Labor Safety and Health Act, the Employment Service Act (**ESA**), the Guidelines for Determining Victims of Human Trafficking, and the Determination Criteria for Banned Dangerous or Harmful Tasks for Female Child Workers.<sup>50</sup>

To summarize, Taiwan is committed to comprehensive protection of human rights. Its legal framework and implementation have improved to meet the requirements of the ICCPR, the ICESCR, and other international conventions.

### 2.3. Criminalization of Modern Slavery

As prescribed in Article 2, Subparagraph 2 of the HTPA, the definition of human trafficking offenses refers to acts of human trafficking conducted in violation of the HTPA, the Criminal Code, the LSA Law, the CYSEPA, or other related laws.<sup>51</sup> Thus, before the HTPA was promulgated, the Criminal Code, the LSA, and the CYSEPA regulated modern slavery. As prescribed by Article 296-1, Paragraph 1 of the Criminal Code, a person who trades in or mortgages humans shall be sentenced to imprisonment.<sup>52</sup> Articles 231 and 231-1 of the Criminal Code further prohibit acts of sexual exploitation.<sup>53</sup> Moreover, Articles 5 and 75 of the LSA prohibit employers from compelling workers by any illegal means to perform work and penalize violations. Chapter 4 of the CYSEPA, which prohibits sexual exploitation of children and adolescents, penalizes sexual intercourse or obscene acts with a child or adolescent in exchange for consideration (meaning something of value).<sup>54</sup>

However, these laws have insufficient scope and penalties. For example, the LSA does not apply to caregivers or domestic workers who are especially vulnerable to labor trafficking and the typical punishment for forced labor or labor trafficking–related crimes consists of fines or imprisonment of less than one year.<sup>55</sup> Due to the rising awareness of human trafficking in Taiwan, the HTPA was introduced to

<sup>46</sup> Code of Criminal Procedure, Article 156, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010001>.

<sup>47</sup> Taiwan High Court Year 107 Zai-Zi No. 3 Criminal Judgement, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHM,107%2c%e5%86%8d%2c3%2c20180808%2c1>.

<sup>48</sup> HTPA, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>49</sup> Labor Standards Act (**LSA**), available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>50</sup> Employment Service Act (**ESA**), available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>; Guidelines for Determining Victims of Human Trafficking, available at: <https://moilaw.moj.gov.tw/LawContent.aspx?LSID=FL048162>; Determination Criteria for Banned Dangerous or Harmful Tasks for Female Workers in pregnancy or after parturition and Child Workers Under 18, available at: <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=N0060032>.

<sup>51</sup> HTPA, Article 2, Subparagraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>52</sup> Criminal Code, Article 296-1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>53</sup> *Id.*, Articles 231 and 231-1.

<sup>54</sup> Child and Youth Sexual Exploitation Prevention Act (**CYSEPA**), Chapter 4, available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.

<sup>55</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 275 (2009), available at: <https://2009-2017.state.gov/j/tip/rls/tiprpt/2009/index.htm>.

address some of these shortcomings.<sup>56</sup> According to the U.S. Report, the HTPA’s penalties are “sufficiently stringent” by prescribing imprisonment up to seven years and fines up to TWD 5 million.<sup>57</sup> Therefore, making forced labor a crime under the HTPA has solved the problems of insufficient scope and penalties in prior laws.<sup>58</sup>

According to the Taiwan Supreme Court, the HTPA’s definition of human trafficking is not an exhaustive list, as other legislation also includes human trafficking provisions.<sup>59</sup> Article 75 of the LSA, for instance, makes it a crime for an employer to compel a worker to perform work by force, coercion, detention, or other illegal means.<sup>60</sup> In another example, Article 79, Paragraph 2, of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area bans any person who, with an intent to make a profit, forces any of the people of the Mainland Area to enter into the Taiwan Area illegally.<sup>61</sup> Together, all of these laws strengthen the prosecution of human trafficking in Taiwan.

## 2.4. Supply Chain Reporting

Taiwan has no specific legislation requiring oversight or reporting of human trafficking in the supply chain. However, the authorities have turned their attention toward corporate social responsibility (CSR) guidelines to combat human trafficking and forced labor in supply chains.<sup>62</sup>

Article 28 of the Corporate Social Responsibility Best Practice Principles for TWSE/GTSM Listed Companies (**CSR Principles for Listed Companies**), which was introduced on November 7, 2014, requires every listed company to address the environmental and social impact of its supply chain along with its suppliers.<sup>63</sup> A binding ordinance later adopted these CSR Principles in Article 7, Paragraph 3 and Article 10, Paragraph 4, Sub-paragraph 5, of the Regulations Governing Information to be Published in Annual Reports of Public Companies. Moreover, the Taiwan Stock Exchange Corporation’s (TWSE) “Rules Governing the Preparation and Filing of Corporate Social Responsibility Reports by TWSE-listed Companies” (**Rules Governing CSR Reports by TWSE-listed Companies**) and the Taipei Exchange’s (TPEX) “Rules Governing the Preparation and Filing of Corporate Social Responsibility Reports by TPEX-listed Companies” (**Rules Governing CSR Reports by TPEX-listed Companies**) further require that certain companies (those specified in Article 2 of each rule) prepare and file a CSR report and at least comply with the core option of the Global Reporting Initiative (GRI) Standards, which includes labor issues.<sup>64</sup> As regulated in Section 4 of the 2021 Indicators of

<sup>56</sup> The Legislative Yuan Gazette, 98:5(2) 3691, at 95, available at: <https://gaz.ncl.edu.tw/browseDetail.jsp?p=G,3,1.61152216E8>.

<sup>57</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 533 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>58</sup> *Id.*

<sup>59</sup> Taiwan Supreme Court Year 2013 Tai-Shan-Zhi No. 4202 Criminal Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPSM,102%2c%e5%8f%b0%e4%b8%8a%2c4202%2c20131017>.

<sup>60</sup> LSA, Article 75, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>61</sup> Act Governing Relations between the People of the Taiwan Area and the Mainland Area, Article 79, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010001>.

<sup>62</sup> *Courage, Moral, and International Partners – 2020 International Workshop against Human Trafficking Held by the Ministry of the Interior* (勇氣、道德與國際夥伴 內政部移民署舉辦 2020 年防制人口販運國際工作坊), released by the Ministry of the Interior, R.O.C (Taiwan) (18 Sept. 2020), available at: [https://www.moi.gov.tw/News\\_Content.aspx?n=2&s=198647](https://www.moi.gov.tw/News_Content.aspx?n=2&s=198647).

<sup>63</sup> CSR Principles for Listed Companies, Article 28, available at: <https://twse-regulation.twse.com.tw/m/en/LawContent.aspx?FID=FL052368>.

<sup>64</sup> Rules Governing CSR Reports by TWSE-listed Companies, Article 2, available at: <https://twse-regulation.twse.com.tw/m/en/LawContent.aspx?FID=FL075209>; Rules Governing CSR Reports by TPEX-listed Companies, Article 2, available at: <http://eng.selaw.com.tw/LawArticle.aspx?LawID=FL082123&ModifyDate=1090102>.



Corporation Governance Evaluation, the disclosures in these CSR reports would further influence a company's corporation governance score.<sup>65</sup> Similarly, other guidelines and ordinances also regulate the oversight of CSR performance, such as the TWSE's Directions for Auditing Internal Control Systems of Listed Companies, the Taipei Exchange Directions for Auditing Internal Control Systems of TPEX-listed Companies, and the Sustainable Development Best Practice Principles for TWSE/TPEX-listed Companies.<sup>66</sup>

However, since CSR remains more of a voluntary nature, other mechanisms are still needed. For instance, the NIA's annual International Workshop on Combating Human Trafficking invites representatives from around the world to exchange ideas.<sup>67</sup> The NIA also proposes an Anti-Exploitation Action Plan each year to integrate and coordinate the resources and strengths of the various ministries of Taiwan to curb human trafficking and implement the protection of human rights.<sup>68</sup>

Likewise, some Taiwanese companies are taking the initiative to counter human trafficking. For example, according to Acer's Slavery and Human Trafficking Policy, it is a member of the Responsible Business Alliance, a nonprofit coalition of electronics companies so it is expected to conform to the Code of Conduct and its standards as a total supply chain initiative.<sup>69</sup> As a result, it has set up Acer Responsible Supply-Chain Management to meet its responsibilities toward society and the environment arising from its supply chain.<sup>70</sup>

Through this mechanism, in 2019, Acer conducted on-site audits of 101 supplier plants. These suppliers had more than 210,000 direct employees, 3,744 of whom were interviewed.<sup>71</sup> Pursuant to its policy, Acer conducted unannounced audits of suppliers previously identified as having child labor concerns, falsified records, discrimination issues, high levels of Priority Non-Conformance or low audit scores.<sup>72</sup> Acer then issued Corrective Action Reports (**CAR**) to audited suppliers. Within 30 days of receiving such reports, suppliers had to submit their own written CARs to Acer's management for its approval.<sup>73</sup>

<sup>65</sup> *The 2021 Indicators of Corporation Governance Evaluation*, TWSE, available at: <https://cgc.twse.com.tw/evaluationCorp/listCh>.

<sup>66</sup> TWSE's Directions for Auditing Internal Control Systems of Listed Companies, available at: <https://twse-regulation.twse.com.tw/ENG/EN/law/DAT0201.aspx?FLCODE=FL024636>; Taipei Exchange Directions for Auditing Internal Control Systems of TPEX-listed Companies, available at: <http://eng.selaw.com.tw/LawArticle.aspx?LawID=FL024794&ModifyDate=1060411>; Sustainable Development Best Practice Principles for TWSE/TPEX-listed Companies, available at: <https://twse-regulation.twse.com.tw/m/en/LawContent.aspx?FID=FL052368>.

<sup>67</sup> *The 2020 International Workshop against Human Trafficking: The Minutes* (2020 年防制人口販運國際工作坊會議實錄), at 3, available at: [http://www.hjpb.gov.tw/admin/upload/twgov\\_file\\_202104281347001.pdf](http://www.hjpb.gov.tw/admin/upload/twgov_file_202104281347001.pdf).

<sup>68</sup> *2021-2022 Anti-Exploitation Action Plan*, at 1, available at: <https://www.immigration.gov.tw/5475/5478/6928/6934/>.

<sup>69</sup> *Our Policies on Slavery and Human Trafficking*, Acer, available at: <https://www.acergroup.com/sustainability/en/slavery-human-trafficking-policy.html>.

<sup>70</sup> Acer 2019 Corporate Responsibility Report, at 41, available at: [https://www.acer-group.com/userfiles/Acer\\_CR\\_Report\\_2019.pdf](https://www.acer-group.com/userfiles/Acer_CR_Report_2019.pdf).

<sup>71</sup> *Id.* at 45.

<sup>72</sup> *Id.* at 47.

<sup>73</sup> *Id.* at 48.

## 2.5. Investigation, Prosecution, and Enforcement

### 2.5.1. Investigation and prosecution of criminal offenses

The prosecutors' office and the police carry out the investigatory and prosecutorial functions, as set forth in the Code of Criminal Procedure, the Directions of Prosecutors' Office for Human Trafficking Cases, and the Directions of Negotiation and Contact of the Police for Human Trafficking Cases.<sup>74</sup> There are also some other supporting agencies, officers, and personnel, prescribed in Article 9, Paragraph 1, Article 10, and Article 11, Paragraph 3, of the HPTA, such as social workers or relevant experts who could provide assistance in investigations and inspections for the victims' identification procedures.<sup>75</sup>

The procedure for investigation and prosecution in Taiwan usually involves several steps. According to the HTPA and the Human Trafficking Cases Operation Procedure,<sup>76</sup> the first step is to discover potential victims. After discovering potential victims, the police or other related agencies undertake victim identification procedures and initiate the investigation procedure. Concurrently, the police will report and transfer the cases to the responsible prosecutors' offices for further investigation and prosecution. Individuals who are identified as human trafficking victims will be given protection and shelter. The victims will subsequently go through other related procedures, such as questioning as part of the investigation or trial. Once the judicial authorities believe that it is no longer necessary to provide assistance to victims during the investigation or trial, the victims will be returned to their country (area) of origin without delay.

According to the U.S. Report, Taiwan meets the minimum standards for the elimination of trafficking, including its law enforcement efforts.<sup>77</sup> However, the U.S. Report further indicated that the government could improve staffing, inspection protocols, legislation to protect migrant domestic caregivers' labor rights, and victim identification procedures, among other issues.<sup>78</sup>

### 2.5.2. Mutual assistance/international cooperation

Human trafficking usually involves cross-border crimes. Consequently, mutual assistance and transnational cooperation is extremely important in combating trafficking. For example, Taiwan launched the Mutual Legal Assistance in Criminal Matters Act (**MLACMA**) in May 2018. The MLACMA aims to enhance international mutual legal assistance in criminal matters, to suppress and prevent crimes jointly, and to safeguard human rights and interests.<sup>79</sup> According to Article 2 of the MLACMA, for issues concerning international mutual legal assistance in criminal matters, treaties apply.<sup>80</sup> If there are no such treaties or no

<sup>74</sup> Code of Criminal Procedure, Articles 101-1 and 455-38, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010001>; Directions of Prosecutors' Office for Human Trafficking Cases, available at: <https://mojlaw.moj.gov.tw/LawContent.aspx?LSID=FL049614>; Contact of the Police for Human Trafficking Cases, available at: <https://glrs.moi.gov.tw/LawContent.aspx?id=FL053331>.

<sup>75</sup> HTPA, Article 9, Paragraph 1, Article 10, and Article 11, Paragraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>76</sup> *The Human Trafficking Cases Operation Procedure*, Ministry of Interior, available at: <https://www.immigration.gov.tw/5385/7445/7535/49049/49085/>.

<sup>77</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 532 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>78</sup> *Id.*

<sup>79</sup> Mutual Legal Assistance in Criminal Matters Act, Article 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawParaDeatil.aspx?pcode=I0030053&bp=1>.

<sup>80</sup> *Id.*, Article 2.

applicable provisions in such treaties, the MLACMA shall apply.<sup>81</sup> When no provisions of MLACMA are applicable, the Code of Criminal Procedure and other laws apply.<sup>82</sup>

Therefore, as mentioned in Article 2 of the MLACMA, Taiwan’s mutual assistance obligations and international cooperation are based on the provisions of the bilateral agreements (those with substantive legal binding force). Despite Taiwan facing international law enforcement challenges due to its unique diplomatic status, Taiwan authorities have successfully signed several agreements and conducted joint anti-trafficking investigations with other countries.<sup>83</sup> For instance, Chapters 3 and 4 of the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, which was signed on April 26, 2009, improved the cooperation and exchange of information between immigration agencies from Taiwan and China.

Taiwan authorities’ hard work to improve cooperation between Taiwan and other countries has paid off. For example, in February 2021, the Criminal Investigation Bureau’s (CIB) International Criminal Affairs Division (ICAD) successfully busted a cross-border prostitution ring through its collaboration with the United States.<sup>84</sup> In that case, after receiving notice regarding a potential prostitution crime from the American Institute in Taiwan, ICAD took action under the Taiwan-U.S. Preventing and Combating Serious Crime mechanism and arrested the suspects.<sup>85</sup>

### 3. TAIWAN’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

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#### 3.1. Overview of Criminal Offenses

Criminal offenses for slavery, slavery-like conditions, and human trafficking are set forth in the Criminal Code, the HTPA, the LSA, and the CYSEPA. The HTPA was enacted to specifically and comprehensively address human trafficking issues.

##### **Article 2 of the HTPA**

The terms used in this Act are defined as follows:

1. Human trafficking:
  - (1) To recruit, trade, take into bondage, transport, deliver, receive, harbor, hide, broker, or accommodate a local or foreign person, by force, threat, intimidation, confinement, monitoring, drugs, hypnosis, fraud, purposeful concealment of important information, illegal debt bondage, withholding important documents, making use of the victim’s inability, ignorance or helplessness, or by other means against his/her will, for the intention of subjecting him/her to sexual transactions, labor to which pay is not

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 534 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>84</sup> *Taiwan, U.S. bust cross-border prostitution ring*, CNA (18 Feb. 2021), available at: <https://focustaiwan.tw/society/202102180020>; *Taiwan, U.S. bust cross-border prostitution ring*, CIB (18 Feb. 2021), available at: <https://cib.npa.gov.tw/ch/app/news/view?module=news&id=1885&serno=17216d03-a085-4e27-8257-cb18f5c6b8bf>.

<sup>85</sup> *Taiwan, U.S. bust cross-border prostitution ring*, CNA (18 Feb. 2021), available at: <https://focustaiwan.tw/society/202102180020>.

commensurate with the work duty, or organ harvesting; or to use the above-mentioned means to impose sexual transactions, labor to which pay is not commensurate with the work duty, or organ harvesting on the victims.

- (2) To recruit, trade, take into bondage, transport, deliver, receive, harbor, hide, broker, or accommodate a person under 18 years of age for the intention of subjecting him/her to sexual transactions, labor to which pay is not commensurate with the work duty, or organ harvesting, or to subject people under 18 years of age to sexual transactions, labor to which pay is not commensurate with the work duty, or organ harvesting.

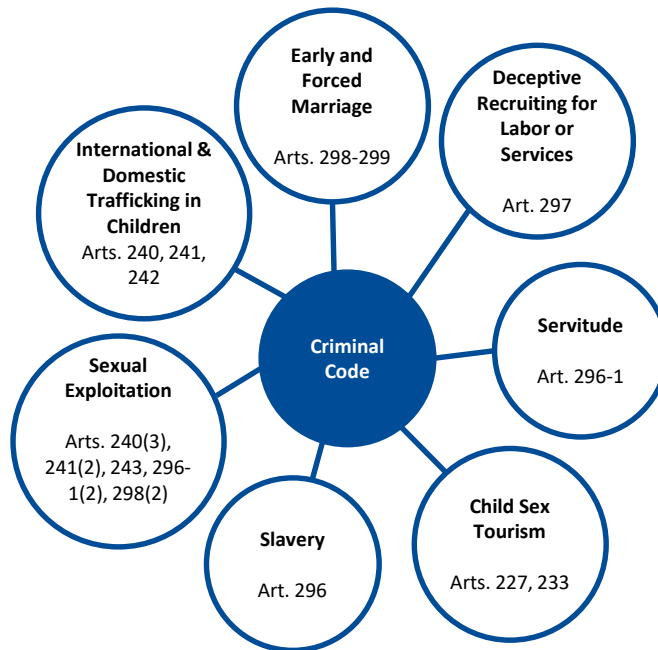
2. Offenses of human trafficking:

Referring to acts of human trafficking conducted in violation of this Act, the Criminal Code, Labor Standard Law, or Child and Youth Sexual Exploitation Prevention Act, or other related laws.

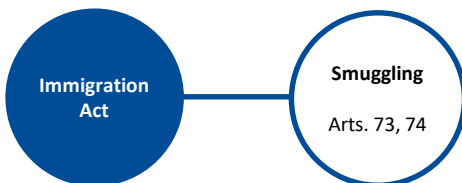
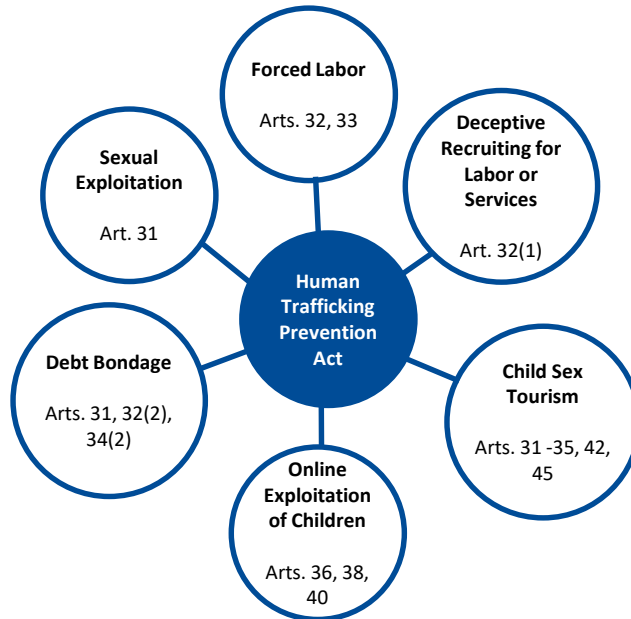
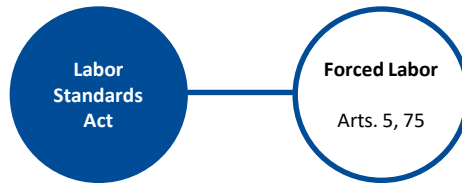
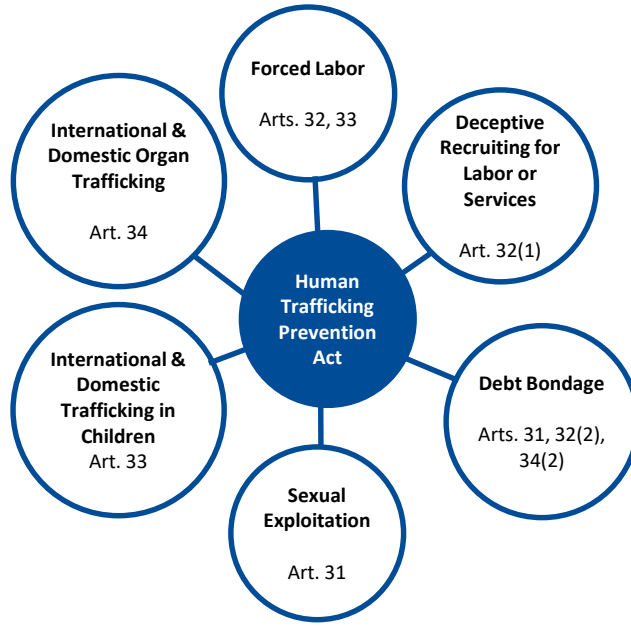
3. Improper debt bondage:

Referring to the use of unclear contracts or unreasonable payments of a debt to place people under bondage, subjecting them to sexual transactions, labor exploitation, or organ harvesting in order to fulfill or guarantee the payment of their debts.<sup>86</sup>

Four diagrams provide an overview of the human trafficking-related criminal offenses in the Criminal Code, the HTPA, the LSA, the CYSEPA, and the Immigration Act.



<sup>86</sup> HTPA, Article 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.



## 3.2. Slavery Offenses Under the Criminal Code

### 3.2.1. General

Slavery offences are regulated in Article 296 of Chapter 26 (Offenses Against Freedom) of the Criminal Code.<sup>87</sup> Article 296 defines the traditional crime of slavery and of any behavior similar to slavery.<sup>88</sup> It was originally enacted in 1928 to eliminate the outdated and inappropriate custom of keeping slaves during the Qing Dynasty,<sup>89</sup> the last dynasty before the current Republic era (since 1912).

| Slavery Offenses Under Criminal Code |   | Imprisonment   | Amount of Fine |
|--------------------------------------|---|--|----------------|
| Criminal Code §296                   | Offense of enslaving another or placing another in a position as not free as a slave.<br><br>(Attempt applicable) | 1 year to 7 years<br><br>(Reduced for Attempt offense) | N/A            |

### 3.2.2. Extraterritorial application

Article 5(1)(9) of the Criminal Code provides for extraterritorial application:

[t]his Code shall apply to any of the following offenses outside the territories of the Republic of China: ... 9. The offenses against personal freedom specified in Articles 296 and 296-1 ...<sup>90</sup>

Accordingly, courts in Taiwan generally have jurisdiction over slavery offenses committed both within and outside the territories of Taiwan.

## 3.3. Slavery-Like Offenses in Taiwan's Legal Order

### 3.3.1. Servitude

The servitude offense is regulated in Article 296-1 of the Criminal Code.<sup>91</sup> In 1999, this provision was added to the Criminal Code to address sex trafficking. Sexual exploitation is an aggravating element.

| Servitude Offenses Under Criminal Code |  | Imprisonment                                    | Amount of Fine                                  |
|--|--|---|---|
| Criminal Code §296-1(1)                | Trading in or mortgaging humans.<br><br>(Attempt applicable)   | More than 5 years (Reduced for Attempt offense) | Under TWD 500,000 (Reduced for Attempt offense) |
| Criminal Code §296-1(2)                | The preceding offense was committed for the purpose of making a person engage in sexual intercourse or an obscene act. | More than 7 years                               | Under TWD 500,000                               |

<sup>87</sup> Criminal Code, Article 296, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>88</sup> *Id.*

<sup>89</sup> See the legislative explanation of Article 313 of the Old Criminal Code of 1928 cited in Huang-Yu Wang, *Human-Trafficking Crime and Slavery Crime*, 5 ANGLE CRIMINAL LAW REVIEW 5 (2017), at 11, available at: <http://lawdata.com.tw/tw/detail.aspx?no=409326>.

<sup>90</sup> Criminal Code, Article 5(1)(9), available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>91</sup> *Id.*, Article 296-1.





| Forced Labor Offenses |  | Imprisonment                                       | Amount of Fine   |
|-----------------------|--|--|--|
|                       | the work duty for profit.<br><br>(Attempt applicable)  | Attempt offense)                                   | (Reduced for Attempt offense)                            |
| HTPA §32(2)           | Anyone using such means as debt bondage or the abuse of another person’s inability, ignorance, or helplessness to subject that person to labor to which pay is not commensurate with the work duty for profit.<br><br>(Attempt applicable)                                       | Under 3 years<br><br>(Reduced for Attempt offense) | Under TWD 1,000,000<br><br>(Reduced for Attempt offense) |
| HTPA §33(1)           | Anyone recruiting, transporting, delivering, receiving, harboring, hiding, brokering, or accommodating another person under 18 years of age in order to subject that person to labor to which pay is not commensurate with the work duty for profit.<br><br>(Attempt applicable) | Under 7 years<br><br>(Reduced for Attempt offense) | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |

**3.3.3. Deceptive recruiting for labor or services**

Three Articles in three different Acts punish deceptive recruiting for labor or services. The first one was inserted in Article 314 of the Old Criminal Code early in 1928 and later became Article 297 of the current Criminal Code, which was enacted in 1935.<sup>96</sup> It purported to prohibit trading in people overseas for profit, but it somehow limited its application to cases of fraud, which made the Article of little use in combating modern human trafficking.<sup>97</sup> The other two Articles, discussed in Section 3.3.2. (Forced Labor), are Article 75 of the LSA and Article 32 of the HTPA.<sup>98</sup> In these two Articles, “deceptive recruiting” is one of the means to exploit labor.

| Deceptive Recruiting for Labor or Services Offenses |   | Imprisonment                                       | Amount of Fine   |
|---|---|--|--|
| Criminal Code §297                                  | A person who for the purpose of gaining profit causes another to leave the territory of the Republic of China by means of fraud.<br><br>(Attempt applicable)  | 3 to 10 years<br><br>(Reduced for Attempt offense) | Under TWD 300,000<br><br>(Reduced for Attempt offense)   |
| LSA §75   | An employer compelling a worker to perform work by force, coercion, detention, or other illegal means.  | Under 5 years                                      | Under TWD 750,000  |
| HTPA §32(1)   | Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person’s will to subject that person to labor to which pay is not commensurate with the work duty for profit.<br><br>(Attempt applicable) | Under 7 years<br><br>(Reduced for Attempt offense) | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |

<sup>96</sup> Criminal Code, Article 297, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>97</sup> Huang-Yu Wang, *Human-Trafficking Crime and Slavery Crime*, 5 ANGLE CRIMINAL LAW REVIEW 5 (2017), at 11–12, available at: <http://lawdata.com.tw/tw/detail.aspx?no=409326>.

<sup>98</sup> LSA, Article 75, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>; HTPA, Article 32, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

### 3.3.4. Early and forced marriage

Two Chapters of the Criminal Code—“Offenses Against Marriage and Family” and “Offenses Against Freedom”—provide criminal offenses penalizing early or forced marriage.<sup>99</sup> Articles 240 to 243 of the Chapter prescribing “Offenses Against Marriage and Family” make it a crime to abduct or forcibly abduct a juvenile from the juvenile’s family for the purpose of sex exploitation.<sup>100</sup> These Articles to a large extent were intended to prevent juveniles from early and forced marriage. Likewise, Articles 298 and 299 in the Chapter setting out “Offenses Against Freedom” make it a crime to forcibly abduct a woman for the purpose of marriage or sexual exploitation.<sup>101</sup>

| Early and Forced Marriage Offenses |   | Imprisonment  | Amount of Fine  |
|------------------------------------|---|---|---|
| Criminal Code §240(1)              | A person who abducts a male or female under the age of 20 from their family or from another who has custody of the male or female.<br><br>(Attempt applicable)  | Under 3 years<br><br>(Reduced for Attempt offense)                      | N/A   |
| Criminal Code §240(2)              | A person who abducts a married male or female from their family.<br><br>(Attempt applicable)  | Under 3 years<br><br>(Reduced for Attempt offense)                      | N/A   |
| Criminal Code §240(3)              | A person who for profit or for the purpose of causing an abducted person to submit to an obscene act or to sexual intercourse commits the offense specified in one of the two preceding paragraphs.<br><br>(Attempt applicable) | 6 months to 5 years<br><br>(Reduced for Attempt offense)                | Under TWD 500,000<br><br>(Reduced for Attempt offense)                  |
| Criminal Code §241(1)              | A person who forcibly abducts a male or female who is under the age of 20 from their family or from another who has custody.<br><br>(Attempt applicable)  | 1 year to 7 years<br><br>(Reduced for Attempt offense)                  | N/A   |
| Criminal Code §241(2)              | A person who for profit or for the purpose of causing an abducted person to submit to an obscene act or to have sexual intercourse commits an offense specified in the preceding paragraph.<br><br>(Attempt applicable)         | 3 to 10 years<br><br>(Reduced for Attempt offense)                      | Under TWD 2,000,000<br><br>(Reduced for Attempt offense)                |
| Criminal Code §241(3)              | Abduction of a male or female person under the age of 16 shall be considered as forcible abduction.<br><br>(Attempt applicable)   | Same as the preceding two offenses<br><br>(Reduced for Attempt offense) | Same as the preceding two offenses<br><br>(Reduced for Attempt offense) |

<sup>99</sup> Criminal Code, Chapters 17 and 26, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>100</sup> Criminal Code, Articles 240–243, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>101</sup> Criminal Code, Articles 298–299, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

| Early and Forced Marriage Offenses |  | Imprisonment  | Amount of Fine  |
|------------------------------------|--|---|---|
| Criminal Code §242(1)              | A person who transports an abducted person specified in one of Articles 240 and 241 beyond the territory of the Republic of China.<br>(Attempt applicable)   | 7 years to life imprisonment<br><br>(Reduced for Attempt offense) | N/A   |
| Criminal Code §243(1)              | A person who for profit or for the purpose of causing an abducted person specified in Article 240 or 241 to submit to an obscene act or to sexual intercourse, receives or harbors such an abducted person, or causes that person to be concealed.<br><br>(Attempt applicable) | 6 months to 5 years<br><br>(Reduced for Attempt offense)          | Under TWD 15,000<br><br>(Reduced for Attempt offense) |
| Criminal Code §298(1)              | A person who forcibly abducts a female person for the purpose that she marry him or another.<br><br>(Attempt applicable)   | Under 5 years<br><br>(Reduced for Attempt offense)                | N/A   |
| Criminal Code §298(2)              | A person who forcibly abducts a female for profit or for the purpose of causing her to commit an obscene act or to submit to sexual intercourse.<br><br>(Attempt applicable)   | 1 year to 7 years<br><br>(Reduced for Attempt offense)            | Under TWD 30,000<br><br>(Reduced for Attempt offense) |
| Criminal Code §299(1)              | A person who transports a forcibly abducted person specified in Article 298 beyond the territory of the Republic of China.<br><br>(Attempt applicable)   | More than 5 years<br><br>(Reduced for Attempt offense)            | N/A   |

### 3.3.5. Debt bondage

The HTPA specifies debt bondage as one of the major means of committing human trafficking offenses. Articles 31, 32(2), and 34(2) of the HTPA list debt bondage as one means for sexual exploitation, labor exploitation, and organ trafficking.<sup>102</sup>

| Debt Bondage Offenses |  | Imprisonment   | Amount of Fine   |
|-----------------------|--|--|--|
| HTPA §31              | Anyone using such means as debt bondage to force a person into sexual transactions for profit.<br><br>(Attempt applicable)           | 6 months to 5 years<br><br>(Reduced for Attempt offense) | Under TWD 3,000,000<br><br>(Reduced for Attempt offense) |
| HTPA §32(2)           | Anyone using such means as debt bondage to subject a person to labor to which pay is not commensurate with the work duty for profit. | Under 3 years<br><br>(Reduced for                        | Under TWD 1,000,000                                      |

<sup>102</sup> HTPA, Articles 31, 32(2), and 34(2), available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

| Debt Bondage Offenses |   | Imprisonment                                       | Amount of Fine   |
|-----------------------|---|--|--|
|                       | (Attempt applicable)  | Attempt offense)                                   | (Reduced for Attempt offense)                            |
| HTPA §34(2)           | Anyone using such means as debt bondage to subject a person to organ harvesting for profit.<br><br>(Attempt applicable) | 5 to 12 years<br><br>(Reduced for Attempt offense) | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |

**3.3.6. Any other relevant offenses**

Article 31 of the HTPA defines sexual exploitation as a human trafficking offense.<sup>103</sup> Beyond that, sexual exploitation often serves as an element or aggravating element for several human trafficking–related offenses in the Criminal Code, including Articles 240(3), 241(2), 243(1), 296-1(2), and 298(2).

| Sexual Exploitation Offenses |  | Imprisonment   | Amount of Fine   |
|------------------------------|--|--|--|
| HTPA §31                     | Anyone using such means as debt bondage or another person’s inability, ignorance, or helplessness to force that person into sexual transactions for profit.<br><br>(Attempt applicable)  | 6 months to 5 years<br><br>(Reduced for Attempt offense) | Under TWD 3,000,000<br><br>(Reduced for Attempt offense) |
| Criminal Code §240(3)        | A person who for the purpose of causing an abducted person to submit to an obscene act or to sexual intercourse commits the offense specified in Article 240(1) or 240(2) of the Criminal Code.<br><br>(Attempt applicable)                                      | 6 months to 5 years<br><br>(Reduced for Attempt offense) | Under TWD 500,000<br><br>(Reduced for Attempt offense)   |
| Criminal Code §241(2)        | A person who for the purpose of causing an abducted person to submit to an obscene act or to have sexual intercourse commits an offense specified in Article 241(1) of the Criminal Code.<br><br>(Attempt applicable)  | 3 to 10 years<br><br>(Reduced for Attempt offense)       | Under TWD 2,000,000<br><br>(Reduced for Attempt offense) |
| Criminal Code §243(1)        | A person who for the purpose of causing an abducted person specified in Articles 240 or 241 to submit to an obscene act or to sexual intercourse, receives or harbors such an abducted person or causes that person to be concealed.<br><br>(Attempt applicable) | 6 months to 5 years<br><br>(Reduced for Attempt offense) | Under TWD 15,000<br><br>(Reduced for Attempt offense)    |
| Criminal Code §296-1(2)      | The servitude offense in Article 296-1(1) was committed for the purpose of making a person engage in sexual intercourse or an obscene act.<br><br>(Attempt applicable)   | More than 7 years<br><br>(Reduced for Attempt offense)   | Under TWD 500,000<br><br>(Reduced for Attempt offense)   |

<sup>103</sup> HTPA, Article 31, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

| Sexual Exploitation Offenses |  | Imprisonment   | Amount of Fine  |
|------------------------------|--|--|---|
| Criminal Code §298(2)        | A person who forcibly abducts a female for the purpose of causing her to commit an obscene act or to submit to sexual intercourse.<br><br>(Attempt applicable) | 1 year to 7 years<br><br>(Reduced for Attempt offense) | Under TWD 30,000<br><br>(Reduced for Attempt offense) |

### 3.3.7. Extraterritorial application of the offenses

Pursuant to Article 5(1)(9) of the Criminal Code, Taiwan courts generally have jurisdiction over slavery and servitude offenses in Articles 296 and 296-1 of the Criminal Code committed both within and outside the territories of Taiwan.

Furthermore, Article 42 of the HTPA provides that “[t]his Act is applicable outside the territory of the ROC to the crimes stated in Articles 31 to 34.”<sup>104</sup> Thus, Taiwan courts also generally have jurisdiction over human trafficking–related crimes specified in Articles 31 to 34 of the HTPA committed both within and outside the territories of Taiwan.

Additionally, pursuant to Articles 7 and 8 of the Criminal Code, Taiwan courts have jurisdiction over serious criminal offenses that were committed outside the territory of Taiwan by nationals or by aliens against nationals, unless the conduct is not an offense in the place where it occurred.<sup>105</sup> “Serious criminal offense” means one that is punishable for not less than three years of imprisonment pursuant to Article 7 of the Criminal Code.<sup>106</sup> Therefore, courts in Taiwan have jurisdiction over some human trafficking–related offenses, such as Articles 297, 299, and 242 of the Criminal Code.

## 3.4. Human Trafficking/Smuggling-Related Criminal Offenses

### 3.4.1. International and domestic trafficking/smuggling of people

#### 3.4.1.1 Human trafficking as an offense

The HTPA established the definitions of “human trafficking” and “offenses of human trafficking.” However, the elements of the various human trafficking offenses may also overlap with criminal offenses found in different statutes. Articles 296-1, 297, and 299 of the Criminal Code set forth the criminal punishments for human trafficking.

| Human Trafficking Offenses |  | Imprisonment   | Amount of Fine    |
|----------------------------|--|--|-------------------|
| Criminal Code §296-1(1)    | The perpetrator trades in or mortgages humans without aggravating circumstances.<br><br>(Attempt applicable) | More than 5 years<br><br>(Reduced for Attempt offense) | Under TWD 500,000 |

<sup>104</sup> HTPA, Article 42, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>105</sup> Criminal Code, Articles 7 and 8, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>106</sup> Criminal Code, Article 7, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.



| Human Trafficking Offenses |  | Imprisonment   | Amount of Fine  |
|----------------------------|--|--|---|
| Criminal Code §296-1(2)    | The purpose of trading in or mortgaging humans is to make a person engage in sexual intercourse or an obscene act.<br><br>(Attempt applicable)   | More than 7 years<br><br>(Reduced for Attempt offense)                                     | Under TWD 500,000<br><br>(Reduced for Attempt offense)                  |
| Criminal Code §296-1(3)    | The two preceding offenses are conducted through the use of violence, threats, intimidation, control, drugs, hypnosis, or another means.<br><br>(Attempt applicable)   | Increasing the two preceding penalties up to one-half<br><br>(Reduced for Attempt offense) | Increasing the fine up to one-half<br><br>(Reduced for Attempt offense) |
| Criminal Code §296-1(4)    | A person who arranges, accepts, or conceals a traded or mortgaged person.  | 1 year to 7 years  | Under TWD 300,000   |
| Criminal Code §296-1(5)    | A public official who harbors a person who commits one of the offenses specified in the four preceding paragraphs.   | Increasing the penalty above up to one-half  | Increasing the fine up to one-half                                      |
| Criminal Code §297         | A person fraudulently causes another to leave the territory of the Republic of China for the purpose of gain.<br><br>(Attempt applicable)  | 3 to 10 years<br><br>(Reduced for Attempt offense)   | Under TWD 300,000<br><br>(Reduced for Attempt offense)                  |
| Criminal Code §299         | A person who forcibly abducts a female for the purpose that she marry that person or another, for the purpose of gain, or for the purpose to cause her to commit an obscene act or to submit to sexual intercourse, and who transports the forcibly abducted person beyond the territory of the Republic of China.<br><br>(Attempt applicable) | More than 5 years<br><br>(Reduced for Attempt offense)                                     | N/A   |

**3.4.1.2 Smuggling of people as an offense**

Illegally transporting people overseas is not necessarily human trafficking. The intention and knowledge of the person being transported are relevant to the question of whether the transport is “human trafficking” within Article 2 of the HTPA. If the illegally transported person consents or even asks for the transportation, that person and the person conducting the transporting will not be criminally liable for human trafficking. However, such persons may be deemed to be engaged in the criminal offense of smuggling pursuant to Articles 73 and 74 of the Immigration Act, respectively.

| Smuggling of People Offenses |  | Imprisonment                                       | Amount of Fine      |
|------------------------------|--|--|---------------------|
| Immigration Act §73          | A person who exchanges, hands over certificates, or uses other illegal means at airports or seaports, in order to use an aircraft, a vessel, or any other means of transport to carry people not to be transported to the Republic of China or any countries according to any contracts. | Under 5 years<br><br>(Reduced for Attempt offense) | Under TWD 2,000,000 |

| Smuggling of People Offenses |  | Imprisonment  | Amount of Fine   |
|------------------------------|--|---------------|------------------|
|                              | (Attempt applicable)   |               |                  |
| Immigration Act §74          | A person who enters or exits the Republic of China without permission or breaks an exit ban. | Under 3 years | Under TWD 90,000 |

**3.4.2. International and domestic trafficking in children**

Although Articles 240 to 243 of the Criminal Code, Article 33 of the HTPA, and the CYSEPA penalize trafficking in children, the introduction and relevant parts of the CYSEPA are discussed in Sections 3.5. and 3.6. to highlight their roles as to sex-related offenses.

| Trafficking in Children Offenses |   | Imprisonment  | Amount of Fine  |
|----------------------------------|---|---|---|
| Criminal Code §240(1)            | A person who abducts a male or female under the age of 20 from their family or from another who has custody of the male or female.<br><br>(Attempt applicable)  | Under 3 years<br><br>(Reduced for Attempt offense)                      | N/A   |
| Criminal Code §240(2)            | A person who abducts a married male or female from their family.<br><br>(Attempt applicable)  | Under 3 years<br><br>(Reduced for Attempt offense)                      | N/A   |
| Criminal Code §240(3)            | A person who for profit or for the purpose of causing an abducted person to submit to an obscene act or to sexual intercourse commits the offense specified in one of the two preceding paragraphs.<br><br>(Attempt applicable) | 6 months to 5 years<br><br>(Reduced for Attempt offense)                | Under TWD 500,000<br><br>(Reduced for Attempt offense)                  |
| Criminal Code §241(1)            | A person who forcibly abducts a male or female under the age of 20 from their family or from another who has custody of the male or female.<br><br>(Attempt applicable)   | 1 year to 7 years<br><br>(Reduced for Attempt offense)                  | N/A   |
| Criminal Code §241(2)            | A person who for profit or for the purpose of causing an abducted person to submit to an obscene act or to have sexual intercourse commits an offense specified in the preceding paragraph.<br><br>(Attempt applicable)         | 3 to 10 years<br><br>(Reduced for Attempt offense)                      | Under TWD 2,000,000<br><br>(Reduced for Attempt offense)                |
| Criminal Code §241(3)            | Abduction of a person under the age of 16 shall be considered as forcible abduction.<br><br>(Attempt applicable)  | Same as the preceding two offenses<br><br>(Reduced for Attempt offense) | Same as the preceding two offenses<br><br>(Reduced for Attempt offense) |
| Criminal Code §242               | Perpetrator transports a person under the age of 20 who is abducted or forcibly abducted from that person’s   | 7 years to life imprisonment  | N/A   |

| Trafficking in Children Offenses |  | Imprisonment                                       | Amount of Fine   |
|----------------------------------|--|--|--|
|                                  | family or from another having the custody over that person beyond the territory of the Republic of China.<br><br>(Attempt applicable)  | (Reduced for Attempt offense)                      |  |
| HTPA §33                         | Anyone recruiting, transporting, delivering, receiving, harboring, hiding, brokering, or accommodating another person under the age of 18 to subject that person to labor exploitation or underpayment for profit.<br><br>(Attempt applicable) | Under 7 years<br><br>(Reduced for Attempt offense) | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |

**3.4.3. Victim harboring**

Victim harboring as an offense in Taiwan is not a general rule in all human trafficking offenses. Instead, victim harboring can be found in Article 243 of the Criminal Code, Articles 33 and 34 of the HTPA, and Articles 32 to 34 of the CYSEPA with various constitutive elements and penalties. That being said, the main idea of victim harboring remains the same—one is either assisting in human trafficking offenses or furthering the plight of victims.

| Victim Harboring Offenses |   | Imprisonment   | Amount of Fine   |
|---------------------------|---|--|--|
| Criminal Code §243(1)     | A person who for the purpose of gain or for the purpose of causing an abducted person specified in Article 240 or 241 to submit to an obscene act or to sexual intercourse, receives or harbors such an abducted person, or causes the abducted person to be concealed.<br><br>(Attempt applicable)             | 6 months to 5 years<br><br>(Reduced for Attempt offense) | Under TWD 15,000<br><br>(Reduced for Attempt offense)    |
| HTPA §33(1)               | Anyone recruiting, transporting, delivering, receiving, harboring, hiding, brokering, or accommodating another person under 18 years of age to subject that person to labor exploitation or underpayment for profit.<br><br>(Attempt applicable)  | Under 7 years<br><br>(Reduced for Attempt offense)       | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |
| HTPA §34(3)               | Anyone recruiting, transporting, delivering, receiving, harboring, hiding, brokering, or accommodating a person under 18 years of age to subject that person to organ harvesting for profit.<br><br>(Attempt applicable)  | More than 7 years<br><br>(Reduced for Attempt offense)   | Under TWD 7,000,000<br><br>(Reduced for Attempt offense) |
| CYSEPA §32(3)(4)          | Any person who arranges for, hands over, accepts, transports, or harbors the victim of the offenses set forth in the preceding two paragraphs or causes the victim to be hidden. The same rule shall apply to those who arrange the handover, acceptance, transport, and harboring.<br><br>(Attempt applicable) | 1 year to 7 years<br><br>(Reduced for Attempt offense)   | Under TWD 3,000,000<br><br>(Reduced for Attempt offense) |
| CYSEPA §33(3)(4)          | Any person who arranges for, hands over, accepts, transports, or harbors the victim set forth in the preceding two paragraphs or causes the victim to be  | 3 to 10 years<br><br>(Reduced for                        | Under TWD 5,000,000                                      |

| Victim Harboring Offenses |   | Imprisonment                                       | Amount of Fine   |
|---------------------------|---|--|--|
|                           | hidden. The same rule shall apply to those who arrange the handover, acceptance, transport, and harboring.<br><br>(Attempt applicable)  | Attempt offense)                                   | (Reduced for Attempt offense)                            |
| CYSEPA §34(3)(4)          | Any person who arranges for, hands over, accepts, transports, or harbors the victim set forth in the preceding two paragraphs or causes the victim to be hidden. The same rule shall apply to those who arrange the handover, acceptance, transport, and harboring.<br><br>(Attempt applicable) | 3 to 10 years<br><br>(Reduced for Attempt offense) | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |

**3.4.4. Extraterritorial application of human trafficking and smuggling offenses**

Refer to Sections 3.2.2. and 3.3.7.

**3.4.5. International and domestic organ trafficking**

Organ harvesting in Taiwan is nearly impossible due to the Human Organ Transplant Act’s strict restrictions. However, it is still necessary to prevent Taiwan citizens from harvesting organs overseas.<sup>107</sup> Article 34 of the HTPA is aimed at such organ harvesting.

| Organ Trafficking Offenses |  | Imprisonment   | Amount of Fine   |
|----------------------------|--|--|--|
| HTPA §34(1)                | Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person’s will to subject that person to organ harvesting for profit.<br><br>(Attempt applicable) | More than 7 years<br><br>(Reduced for Attempt offense) | Under TWD 7,000,000<br><br>(Reduced for Attempt offense) |
| HTPA §34(2)                | Anyone using such means as debt bondage or abusing another person’s inability, ignorance, or helplessness to subject that person to organ harvesting for profit.<br><br>(Attempt applicable)   | 5 to 7 years<br><br>(Reduced for Attempt offense)      | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |
| HTPA §34(3)                | Anyone recruiting, transporting, delivering, receiving, harboring, hiding, brokering, or accommodating a person under 18 years of age to subject that person to organ harvesting for profit.<br><br>(Attempt applicable)                 | More than 7 years<br><br>(Reduced for Attempt offense) | Under TWD 7,000,000<br><br>(Reduced for Attempt offense) |

**3.5. Online Exploitation of Children Offenses**

When it comes to online exploitation of children, Taiwan courts primarily refer to the CYSEPA instead of the Criminal Code. As Article 1 of the CYSEPA states, “This Act is enacted to prevent all forms of sexual

<sup>107</sup> See the legislative explanation of Article 2 of the HTPA, available at: <https://db.lawbank.com.tw/FLAW/FLAWDOC01.aspx?lsid=FL047749&lno=2>.

exploitation of children and youths and ensure their healthy physical and mental development.”<sup>108</sup>Articles 36 and 38 of the CYSEPA forbid conduct, such as creating or distributing illegal content, that could be online exploitation of children. Additionally, Article 40 of the CYSEPA punishes conduct that may expose children to the risk of exploitation.

| Online Exploitation of Children Offenses |   | Imprisonment  | Amount of Fine   |
|--|---|---|--|
| CYSEPA §36(1)                            | Any person who films a child or youth engaging in sexual intercourse or obscene acts, or produces pictures, photographs, films, videotapes, compact disks, electronic signals, or other objects that show a child or youth engaging in sexual intercourse or obscene acts.<br><br>(Attempt applicable)  | 1 year to 7 years<br><br>(Reduced for Attempt offense)  | Under TWD 1,000,000<br><br>(Reduced for Attempt offense) |
| CYSEPA §36(2)                            | Any person who, through recruitment, seduction, shelter, arrangement, assistance, or other means, films a child or youth engaging in sexual intercourse or obscene acts, or produces pictures, photographs, films, videotapes, compact disks, electronic signals, or other objects that show a child or youth engaging in sexual intercourse or obscene acts.<br><br>(Attempt applicable)   | 3 to 7 years<br><br>(Reduced for Attempt offense)       | Under TWD 3,000,000<br><br>(Reduced for Attempt offense) |
| CYSEPA §36(3)                            | Any person who, by means of violence, coercion, drugs, fraud, hypnosis, or other means violating the free will of the child or youth concerned, films a child or youth engaging in sexual intercourse or obscene acts, or produces pictures, photographs, films, videotapes, compact disks, electronic signals, or other objects that show a child or youth engaging in sexual intercourse or obscene acts.<br><br>(Attempt applicable) | More than 7 years<br><br>(Reduced for Attempt offense)  | Under TWD 5,000,000<br><br>(Reduced for Attempt offense) |
| CYSEPA §36(4)                            | For any person who commits the offenses set forth in the preceding three paragraphs with the intent to make profits.<br><br>(Attempt applicable)  | Increasing the preceding three penalties up to one-half | Increasing the preceding three penalties up to one-half  |
| CYSEPA §38(1)                            | Any person who distributes, broadcasts, sells, publicly displays, or by other means shows others the pictures, photographs, films, videotapes, compact disks, electronic signals, or other objects that show a child or youth engaging in sexual intercourse or obscene acts.   | Under 3 years   | Under TWD 5,000,000                                      |
| CYSEPA §38(2)                            | Any person who possesses the things in the preceding paragraphs with the intent to distribute, broadcast, sell, or publicly display the same.   | Under 2 years   | Under TWD 2,000,000                                      |
| CYSEPA §40(1)                            | Any person who, by means of promotional materials, publications, broadcast, television, telecommunication, the Internet sources, or other methods, distributes, sends, publishes, or posts messages that are deemed to be sufficient to seduce, arrange, suggest, or cause a child  | Under 3 years   | Under TWD 1,000,000                                      |

<sup>108</sup> CYSEPA, Article 1 (emphasis added), available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.

| Online Exploitation of Children Offenses |  | Imprisonment  | Amount of Fine      |
|--|--|---------------|---------------------|
|  | or youth to be subjected to the conditions set forth in Subparagraphs 1 to 3, Paragraph 1 of Article 2. <sup>109</sup> |               |                     |
| CYSEPA §40(2)                            | Any person who commits the offense set forth in the preceding paragraph with the intent to make profits.               | Under 5 years | Under TWD 1,000,000 |

### 3.6. Child Sex Tourism Offenses

Due to its economic prosperity, Taiwan is sometimes a destination country for adults and children trafficked for sexual exploitation. Women and girls are occasionally trafficked from China and Southeast Asian countries, such as Indonesia and Vietnam, through false marriages with Taiwanese men and fake employment offers.<sup>110</sup> The awareness of child prostitution as a problem arose in Taiwan in 1987 and resulted in a law that focused on sexual transactions with children and child pornography. This law was renamed the CYSEPA in 2017. Although the CYSEPA does not directly target child sex tourism as an offense, its broad application makes child sex tourism a crime alongside the Criminal Code. Taiwan’s statutes against child sex tourism can be found in Articles 227, 233, and 242 of the Criminal Code and Articles 31 to 35, 42, and 45 of the CYSEPA.

| Child Sex Tourism Offenses |  | Imprisonment                                       | Amount of Fine |
|----------------------------|--|--|----------------|
| Criminal Code §227(1)      | A person who has sexual intercourse with a male or female under the age of 14.<br><br>(Attempt applicable)       | 3 to 10 years<br><br>(Reduced for Attempt offense) | N/A            |
| Criminal Code §227(2)      | A person who commits an obscene act against a male or female who is under the age of 14.                         | 6 months to 5 years                                | N/A            |
| Criminal Code §227(3)      | A person who has sexual intercourse with a male or female who is 14 to 16 years old.<br><br>(Attempt applicable) | Under 7 years<br><br>(Reduced for Attempt offense) | N/A            |
| Criminal Code §227(4)      | A person who commits an obscene act against a male or female who is 14 to 16 years old.                          | Under 3 years                                      | N/A            |

<sup>109</sup> *Id.*, Article 2. Article 2 states: “The term ‘child or youth sexual exploitation’ herein shall refer to any of the following behaviors:

1. Causing a child or youth to engage in sexual intercourse or obscene acts in exchange for monetary or other considerations;
2. Using a child or youth to engage in sexual intercourse or obscene acts for others to watch;
3. Filming a child or youth engaging in sexual intercourse or obscene acts, or producing pictures, photographs, films, videotapes, compact disks, electronic signals or other objects that show a child or youth engaging in sexual intercourse or obscene acts;
4. Causing a child or youth to act as a host/hostess in a bar or club or engage in acts associated with tour escort and singing or dancing companion services that involve sexual activities.

The term ‘victims’ herein shall refer to children or youths who were, or allegedly were, sexually exploited.”

<sup>110</sup> *Taiwan Executive Summary 2016*, ECPAT International, at 1, available at: [https://www.ecpat.org/wp-content/uploads/2016/04/exsum\\_a4a\\_eap\\_taiwan\\_1.pdf](https://www.ecpat.org/wp-content/uploads/2016/04/exsum_a4a_eap_taiwan_1.pdf).



| Child Sex Tourism Offenses |   | Imprisonment  | Amount of Fine  |
|----------------------------|---|---|---|
| Criminal Code §233(1)      | A person who for the purpose of inducing a male or female who is under the age of 16 to make an obscene act or sexual intercourse with another induces, retains, or arranges them.  | Under 5 years   | Under TWD 15,000  |
| Criminal Code §233(2)      | A person who commits the offense prescribed in the preceding paragraph for the purpose of profits.  | 1 year to 7 years   | Under TWD 150,000   |
| Criminal Code §242(1)      | A person who transports an abducted person specified in one of Articles 240 and 241 beyond the territory of the Republic of China.<br><br>(Attempt applicable)  | 7 years to life imprisonment<br><br>(Reduced for Attempt offense) | N/A   |
| CYSEPA §31(2)              | Any person age 18 or older who engages in sexual intercourse or obscene acts with a minor aged 16 or over and under the age of 18 in exchange for consideration.  | Under 3 years   | Under TWD 100,000   |
| CYSEPA §32(1)              | Any person who, through seduction, shelter, recruitment, arrangement, assistance, or other means, causes a child or youth to engage in sexual intercourse or obscene acts in exchange for consideration.<br><br>(Attempt applicable)  | 1 year to 7 years<br><br>(Reduced for Attempt offense)            | Under TWD 3,000,000<br><br>(Reduced for Attempt offense)  |
| CYSEPA §32(2)              | Any person who commits the §32(1) offense with the intent to make profits.<br><br>(Attempt applicable)  | 3 to 10 years<br><br>(Reduced for Attempt offense)                | Under TWD 5,000,000<br><br>(Reduced for Attempt offense)  |
| CYSEPA §32(3)(4)           | Any person who arranges for, hands over, accepts, transports, or harbors the victim of the offenses set forth in the preceding two paragraphs or causes the victim to be hidden. The same rule shall apply to those who arrange the handover, acceptance, transport, and harboring.<br><br>(Attempt applicable) | 1 year to 7 years<br><br>(Reduced for Attempt offense)            | Under TWD 3,000,000<br><br>(Reduced for Attempt offense)  |
| CYSEPA §33(1)              | Any person who, by means of violence, coercion, intimidation, control, drugs, hypnosis, or other means violating the free will of the child or youth concerned, causes the child or youth to engage in sexual intercourse or obscene acts in exchange for consideration.<br><br>(Attempt applicable)            | More than 7 years<br><br>(Reduced for Attempt offense)            | Under TWD 7,000,000<br><br>(Reduced for Attempt offense)  |
| CYSEPA §33(2)              | Any person who commits the §33(1) offense with the intent to make profits.<br><br>(Attempt applicable)  | More than 10 years<br><br>(Reduced for Attempt offense)           | Under TWD 10,000,000<br><br>(Reduced for Attempt offense) |
| CYSEPA §33(3)(4)           | Any person who arranges for, hands over, accepts, transports, or harbors the victim set forth in the  | 3 to 10 years   | Under TWD 5,000,000                                       |

| Child Sex Tourism Offenses |   | Imprisonment   | Amount of Fine   |
|----------------------------|---|--|--|
|                            | preceding two paragraphs or causes the victim to be hidden. The same rule shall apply to those who arrange the handover, acceptance, transport, and harboring.<br><br>(Attempt applicable)  | (Reduced for Attempt offense)  | (Reduced for Attempt offense)  |
| CYSEPA §34(1)              | Any person who hands over or accepts another person through trade, pledge, or other means with the intent to cause a child or youth to engage in sexual intercourse or obscene acts in exchange for considerations. The same rule shall apply to those who commit such an offense by fraud.<br><br>(Attempt applicable) | More than 7 years<br><br>(Reduced for Attempt offense)   | Under TWD 7,000,000<br><br>(Reduced for Attempt offense)   |
| CYSEPA §34(2)              | Any person who commits the offense set forth in the preceding paragraph by means of violence, coercion, intimidation, control, drugs, hypnosis, or other means violating the free will of the child or youth concerned.<br><br>(Attempt applicable)   | Increasing the penalties set forth in the preceding paragraph by one-half<br><br>(Reduced for Attempt offense) | Increasing the penalties set forth in the preceding paragraph by one-half<br><br>(Reduced for Attempt offense) |
| CYSEPA §34(3)(4)           | Any person who arranges for, hands over, accepts, transports, or harbors the victim set forth in the preceding two paragraphs or causes the victim to be hidden. The same rule shall apply to those who arrange the handover, acceptance, transport, and harboring.<br><br>(Attempt applicable)                         | 3 to 10 years<br><br>(Reduced for Attempt offense)   | Under TWD 5,000,000<br><br>(Reduced for Attempt offense)   |
| CYSEPA §34(6)              | Any person preparing to commit the offenses specified in §34(1) and §34(2).   | Under 2 years  | N/A  |
| CYSEPA §35(1)              | Any person who, through recruitment, seduction, shelter, arrangement, assistance, exploitation, or other means, causes a child or youth to engage in sexual intercourse or obscene acts for others to watch.<br><br>(Attempt applicable)  | 1 year to 7 years<br><br>(Reduced for Attempt offense)   | Under TWD 500,000<br><br>(Reduced for Attempt offense)   |
| CYSEPA §35(2)              | Any person who, by means of violence, coercion, drugs, fraud, hypnosis, or other means violating the free will of the child or youth concerned, causes a child or youth to engage in sexual intercourse or obscene acts for others to watch.<br><br>(Attempt applicable)  | More than 7 years<br><br>(Reduced for Attempt offense)   | Under TWD 3,000,000<br><br>(Reduced for Attempt offense)   |
| CYSEPA §35(3)              | For any person who commits the offenses set forth in the preceding two paragraphs with the intent to make profits.<br><br>(Attempt applicable)  | Increasing the penalties set forth in the preceding two paragraphs by one-half                                 | Increasing the fine set forth in the preceding two paragraphs by one-half                                      |

| Child Sex Tourism Offenses |  | Imprisonment  | Amount of Fine   |
|----------------------------|--|---|--|
|                            |  | (Reduced for Attempt offense)   | (Reduced for Attempt offense)  |
| CYSEPA §42(1)              | For any person who transports a victim into or out of the Taiwan area with the intent to commit the offenses specified in §32 to §36 or the latter part of Paragraph 1 of §37.<br><br>(Attempt applicable)   | Increasing the penalties set forth in each article by one-half<br><br>(Reduced for Attempt offense)                 | Increasing the fine set forth in each article by one-half<br><br>(Reduced for Attempt offense)                 |
| CYSEPA §45(2)              | Any person who, through recruitment, seduction, shelter, arrangement, assistance, exploitation, or other means, causes a child or youth to act as a host/hostess in a bar or club or to engage in acts associated with tour escort and singing or dancing companion services that involve sexual activities. The same rule shall apply to those who commit such an offense by fraud.<br><br>(Attempt applicable) | Under 1 year<br><br>(Reduced for Attempt offense)   | Under TWD 300,000<br><br>(Reduced for Attempt offense)   |
| CYSEPA §45(3)              | Any person who, by means of violence, coercion, drugs, fraud, hypnosis, or other means violating the free will of the child or youth concerned, causes a child or youth to act as a host/hostess in a bar or club or to engage in acts associated with tour escort and singing or dancing companion services that involve sexual activities.<br><br>(Attempt applicable)   | 3 to 5 years<br><br>(Reduced for Attempt offense)   | Under TWD 1,500,000<br><br>(Reduced for Attempt offense)   |
| CYSEPA §45(4)              | Any person who commits the offenses set forth in the preceding two paragraphs with the intent to make profits.<br><br>(Attempt applicable)   | Increasing the penalties set forth in the preceding two paragraphs by one-half<br><br>(Reduced for Attempt offense) | Increasing the fine set forth in the preceding two paragraphs by one-half<br><br>(Reduced for Attempt offense) |

## 4. TAIWAN’S SUPPLY CHAIN REPORTING LEGISLATION

### 4.1. Introduction

No legislation specifically requires companies to report human trafficking issues arising in their supply chains. However, since 2014, the Taiwan government has enacted several administrative guidelines and ordinances requiring CSR initiatives pursuant to the Securities and Exchange Act. Those CSR initiatives incorporate the fundamental concept of reporting human trafficking in supply chains, such as, for example, the “Annual Reports of Public Companies” and “CSR Reports of Certain Listed Companies.” Therefore, supply chain reporting of human trafficking issues is reframed under a more general effort to promote CSR initiatives in Taiwan.

## 4.2. Supply Chain Reporting in Public Companies' Annual Reports

Regulations under the Securities and Exchange Act, which refer to nonbinding CSR guidelines, require public companies' annual reports to include information on CSR issues arising in their supply chains. First, Articles 26 and Article 28 of the CSR Principles for Listed Companies on November 7, 2014 set forth nonbinding CSR guidelines governing the environmental and social impact of listed companies' suppliers. Article 26 of the CSR Principles for Listed Companies encourages listed companies to address the environmental and social impact of their supply chains as well as their suppliers:

“TWSE/GTSM listed companies are advised to assess the impact their procurement has on society as well as the environment of the community that they are procuring from, and **shall cooperate with their suppliers to jointly implement the corporate social responsibility initiative.**” (Paragraph 1);

“TWSE/GTSM listed companies **are advised to establish supplier management policies and request suppliers to comply with rules governing issues such as environmental protection, occupational safety and health or labor rights.** Prior to engaging in commercial dealings, TWSE/GTSM listed companies are advised to **assess whether there is any record of a supplier's impact on the environment and society, and avoid conducting transactions with those against corporate social responsibility policy.**” (Paragraph 2); and

“When TWSE/GTSM listed companies enter into a contract with any of their major suppliers, the content should include terms stipulating mutual compliance with corporate social responsibility policy, and that **the contract may be terminated or rescinded any time if the supplier has violated such policy and has caused significant negative impact on the environment and society of the community of the supply source.**”<sup>111</sup> (Paragraph 3).

Furthermore, pursuant to Article 28 of the CSR Principles for Listed Companies, a listed company must disclose information regarding its CSR activities, including its major suppliers' management and performance with respect to major environmental and social issues:

“TWSE/GTSM listed companies shall disclose information according to relevant laws, regulations and the Corporate Governance Best Practice Principles for TWSE/GTSM listed Companies and shall fully disclose relevant and reliable information relating to their corporate social responsibility initiatives to improve information transparency.”<sup>112</sup>

“Relevant information relating to corporate social responsibility which TWSE/GTSM listed companies shall disclose includes: ... 5. Disclosure of information on major suppliers' management and performance with respect to major environmental and social issues.”<sup>113</sup>

The “Regulations Governing Information to be Published in Annual Reports of Public Companies” (**Annual Reports Regulation**), a mandatory ordinance enacted on January 22, 2020, incorporates the CSR Principles for Listed Companies. Article 10(4)(E) of the Annual Reports Regulation provides that:

<sup>111</sup> CSR Principles for Listed Companies, Article 26 (emphasis added), available at: <https://twse-regulation.twse.com.tw/m/en/LawContent.aspx?FID=FL052368>.

<sup>112</sup> *Id.*, Article 28, Paragraph 1.

<sup>113</sup> *Id.* at Paragraph 2, subparagraph 5.

“The corporate governance report shall include the following: ... 4. The state of the company’s implementation of corporate governance: ... E. The state of the company’s performance of social responsibilities, **any variance from the Corporate Social Responsibility Best Practice Principles for TWSE/TPEX Listed Companies, and the reason for any such variance ...**”<sup>114</sup>

Therefore, since 2020, the Annual Report of each public company listed in Taiwan must report the company’s variance from the CSR Principles for Listed Companies, including its performance and disclosure regarding the environmental and social impact of its supply chains. Human trafficking is one dimension of the CSR social issues arising from a public company’s supply chains.

### 4.3. Supply Chain Reporting in Listed Companies’ CSR Reports

In Taiwan, certain listed companies are also required to prepare a CSR report each year. This report presents a company’s positive social CSR impact, but it also needs to present negative social impacts, such as human trafficking issues in its supply chain. Article 3 in both the substantially identical Rules Governing CSR Reports by TWSE-listed Companies and the Rules Governing CSR Reports by TPEX-listed Companies requires listed companies to prepare and file those CSR Reports. Those two Rules describe the CSR reporting requirements:

A listed company [TWSE-listed or TPEX-listed company] which meets the requirements under Article 2 of the Rules shall prepare an annual corporate social responsibility report for the preceding year by **referring to the Global Reporting Initiatives (GRI) Standards published by the GRI**, Sector Disclosure and other applicable rules according to its sector features. In the report, **the company shall disclose its identified material economic, environmental and social topics, management approach, topic-specific disclosure, and its reporting requirements, which shall, at a minimum, meet the core option of the GRI Standards.**

The corporate social responsibility report mentioned in the preceding paragraph shall include relevant environmental, social and corporate governance risk assessments and lay out the performance indicators to manage the material topics identified.

In the corporate social responsibility report, a listed company shall disclose what Content Index of the GRI Standards corresponds to the contents of the report and specify in the report whether the topic-specific disclosures have been assured or verified by a third party.

The topic-specific disclosure referred to in Paragraph 1 shall be evaluated and disclosed by adopting the standards in compliance with the rules of the competent authorities. If the competent authorities have not promulgated the applicable standards, the company shall adopt the approach of evaluation commonly used in practice.”<sup>115</sup>

<sup>114</sup> Annual Reports Regulation, Article 10(4)(E) (emphasis added), available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400022>.

<sup>115</sup> Rules Governing CSR Reports by TWSE-listed Companies, Article 3 (emphasis added), available at: <https://twse-regulation.twse.com.tw/m/en/LawContent.aspx?FID=FL075209>; Rules Governing CSR Reports by TPEX-listed Companies, Article 3 (emphasis added), available at: <http://eng.selaw.com.tw/LawArticle.aspx?LawID=FL082123&ModifyDate=1090102>.

Disclosure 414-2 of the GRI Standards requires the company’s report to identify the “negative social impacts in the supply chain and actions taken.”<sup>116</sup> Disclosure 414-2 of the GRI Standards also provides that:

The reporting organization shall report the following information:

- a) Number of suppliers assessed for social impacts.
- b) Number of suppliers identified as having significant actual and potential negative social impacts.
- c) Significant actual and potential negative social impacts identified in the supply chain.
- d) Percentage of suppliers identified as having significant actual and potential negative social impacts with which improvements were agreed upon as a result of assessment.
- e) Percentage of suppliers identified as having significant actual and potential negative social impacts with which relationships were terminated as a result of assessment, and why.

Although these standards do not specifically mention human trafficking issues, they in theory seem to fit within the scope of the “negative social impacts” that CSR reports must address, though human trafficking issues have generally not been addressed in CSR reports of listed Taiwan companies.

#### 4.4. Taiwan Nation Action Plan on Business & Human Rights

The Taiwanese government announced the “Taiwan Nation Action Plan on Business & Human Rights” (**Human Rights Action Plan**) on December 10, 2020.<sup>117</sup> In the Human Rights Action Plan, the government intends not only to expand the scope of businesses subject to a compulsory requirement to prepare CSR reports, but also to advocate for businesses to disclose nonfinancial information, including “important environmental, social and governance (ESG) topics, such as the use of consumer information, the use of energy, waste handling, labor conditions, environmental protection, forced evictions, indigenous land rights, gender equality and consumer protection measures.”<sup>118</sup> The Human Rights Action Plan will continue to encourage reporting of supply chain human trafficking issues through CSR initiatives.

## 5. FORCED LABOR: OVERVIEW OF TAIWAN’S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

Victims of trafficking and forced labor can seek civil remedies pursuant to employment laws through out-of-court settlements, court-led mediations, and civil claims in court. Pursuant to the Labor Incident Act (**LIA**),

<sup>116</sup> *GRI 414: Supplier Social Assessment*, Global Reporting Initiative Standards (2016), available at: <https://www.globalreporting.org/standards/media/1029/gri-414-supplier-social-assessment-2016.pdf>.

<sup>117</sup> *Taiwan Announced Taiwan Nation Action Plan on Business & Human Rights for the First Time: Balancing the Economic Growth and Democracy/Human Rights to Upgrade Industries’ Competitiveness in Global Market*, Executive Yuan (10 Dec. 2020), available at: <https://www.ey.gov.tw/Page/448DE008087A1971/de53d248-0b06-4b3e-8554-77068fee1a74>.

<sup>118</sup> *Taiwan Nation Action Plan on Business & Human Rights: Implementation of the United Nations Guiding Principles on Business & Human Rights (UNGPs)* (10 Dec. 2020), at 14–15, available at: <https://www.ey.gov.tw/File/F04E95A8CF2204D3?A=C>.

the labor professional court (**Labor Court**) or a special focus division in a court handles “labor cases,” which cover a wide range of civil disputes in an employment relationship.<sup>119</sup> Therefore, victims of forced labor and trafficking may seek civil remedies in a Labor Court, where their barriers to litigation are reduced.<sup>120</sup>

The LIA also allows the court to mediate labor cases before litigation, unless otherwise stipulated.<sup>121</sup> Hence, the victims of forced labor and trafficking have the option to participate in a court-led mediation before filing a lawsuit.

In addition, victims of forced labor and trafficking can also seek remedies, such as compensation through out-of-court settlements.<sup>122</sup>

## 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

Several employment-related laws may apply to forced labor or human trafficking:

### 5.2.1. Labor Standards Act (LSA)

The LSA is the main employment-related law. It provides minimum standards for working conditions and protects workers’ rights and interests.<sup>123</sup> It also expressly prohibits forced labor.<sup>124</sup>

### 5.2.2. Employment Service Act (ESA)

The ESA promotes employment of nationals and enhances social and economic development.<sup>125</sup> It provides certain protection for employees and prohibits employers from certain acts when employing employees, including but not limited to withholding job applicants’ belongings or collecting a bond from job applicants or employees.<sup>126</sup>

### 5.2.3. Occupational Safety and Health Act (OSHA)

The OSHA protects workers’ safety and health and aims to prevent occupational accidents.<sup>127</sup> It imposes obligations on employers to achieve those purposes.<sup>128</sup>

<sup>119</sup> Labor Incident Act (**LIA**), Articles 2 and 4, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010064>.

<sup>120</sup> See, e.g., LIA, Articles 35–38, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010064>.

<sup>121</sup> LIA, Article 16, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010064>.

<sup>122</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 535 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>123</sup> LSA, Article 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>124</sup> LSA, Article 5, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>125</sup> ESA, Article 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>.

<sup>126</sup> ESA, Article 5, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>.

<sup>127</sup> Occupational Safety and Health Act (**OSHA**), Article 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>128</sup> Refer to Sections 5.3.5. and 5.4.



#### 5.2.4. Civil Code

Taiwan is a civil law jurisdiction. The Civil Code may regulate matters relating to forced labor and trafficking that employment laws do not cover.

#### 5.2.5. Labor Incident Act (LIA)

The LIA is a procedural law, enacted to ensure expeditious, proper, professional, effective, and equal treatment of labor cases.<sup>129</sup> It also regulates how labor disputes should proceed and be handled.

Generally, the LSA, ESA, and OSHA will apply to protect victims of forced labor or human trafficking in employment-related issues.<sup>130</sup> Further, the Civil Code may apply to matters not covered by employment laws, such as remedies for tort or unjust enrichment claims.

In addition, Article 2 of the LIA covers civil disputes between victims of forced labor or human trafficking and their employers. The LIA's protections and procedures, such as court-led mediation before litigation, will apply to those disputes.<sup>131</sup>

According to past Taiwan court judgments, victims of forced labor or human trafficking can bring claims for monetary compensation pursuant to the LSA, such as failure to pay minimum wage or overtime wages.<sup>132</sup> In addition, victims can bring tort claims for compensatory damages against their employers,<sup>133</sup> or, pursuant to the Civil Code, unjust enrichment claims against those who benefited from the forced labor.<sup>134</sup>

<sup>129</sup> LIA, Article 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010064>.

<sup>130</sup> However, migrant household caregivers are not subject to the LSA. See Q&As for Minimum Wages, Ministry of Labor, available at: <https://www.mol.gov.tw/topic/3067/5990/5999/14488/>.

<sup>131</sup> 2019 Republic of China (Taiwan) Trafficking in Persons Report, Ministry of Interior (Oct. 2020), at 41, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>; see also LIA, Article 16, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010064>.

<sup>132</sup> LSA, Articles 21, 22, 24, 30, 38, and 39, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>. See also Taiwan Taipei District Court Year 101 Lao Su Zi No. 56 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPDV,101,%E5%8B%9E%E8%A8%B4,56,20121211,1>; Taiwan High Court Tainan Branch Court Year 105 Shang Yi Zi No. 110 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TNHV,105,%E4%B8%8A%E6%98%93,110,20161115,1> (both with no subsequent judgments).

<sup>133</sup> Civil Code, Article 184, Paragraph 1, Article 185, Paragraph 1 and Article 195, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000001>; see also Taiwan High Court Year 102 Su Yi Zi No. 98 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV,102,%E8%A8%B4%E6%98%93,98,20140715,9>; Taiwan Hsinchu District Court Year 102 Zhu Bei Jian Zi No. 287 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=CPEV,102,%E7%AB%B9%E5%8C%97%E7%B0%A1,287,20131226,1>; Taiwan Kaohsiung District Court Year 107 Fong Jian Zi No. 210 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=FSEV,107,%E9%B3%B3%E7%B0%A1,210,20181101,1>; Taiwan Tainan District Court Year 108 Su Zi No. 425 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TNDV,108,%E8%A8%B4,425,20190731,2> (all with no subsequent judgments).

<sup>134</sup> Civil Code, Article 179, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000001>; see also Taiwan High Court Tainan Branch Court Year 105 Shang Yi Zi No. 110 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TNHV,105,%E4%B8%8A%E6%98%93,110,20161115,1> (no subsequent judgments); Taiwan Ciaotou District Court Year 107 Lao Su Zi No. 46 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=CTDV,107,%E5%8B%9E%E8%A8%B4,46,20190131,1> (to which the appeal

### 5.3. Statutory Rights

The LSA, OSHA, ESA, and Civil Code set forth the statutory rights of victims of human trafficking and forced labor. These rights include multiple minimum standards, certain claims available in relation to human trafficking or forced labor, and safeguards for the well-being of workers.

#### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

Under the LSA, workers are entitled to a number of minimum standards:

■ **National Minimum Wage:** The LSA provides that a worker shall be paid the wages as determined through negotiations with the employer, but those wages cannot fall below the government's National Minimum Wage.<sup>135</sup>

■ **Minimum overtime wages:** According to the LSA, employers shall pay their workers overtime wages. The amount of the overtime wages depends on the length of overtime work and whether the worker is required to work on rest days. Overtime can range from at least an additional one-third of the regular hourly rate to an additional one and two-thirds of the regular hourly rate.<sup>136</sup>

■ **Working hours of the workers:** As set by the LSA, the standard regular working time shall not exceed eight hours a day or 40 hours a week.<sup>137</sup> However, a labor union or a government-designated labor-management conference may agree to flexible working hours.<sup>138</sup> The LSA also sets a minimum standard for rest time (refer to Section 5.3.6.).

■ **Minimal number of rest days, paid holidays, and leaves:**<sup>139</sup> In addition, the LSA also specifies that, in principle, workers shall have two regular days off every seven days, with one day as regular leave and the other one as a rest day. Employers that have adjusted their workers' regular working time in accordance with the LSA may adjust those days off. The LSA also grants workers leaves for national holidays. Moreover, the LSA grants leaves to workers based on how long they have worked for the same employer or business entity, ranging from three to 30 days.

#### 5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

The LSA permits a worker who has entered into a labor contract because of the employer's misrepresentation to file a claim for termination of the labor contract without advance notice and for

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was dismissed by Taiwan High Court Kaohsiung Branch Court Year 108 Lao Shang Zi No. 12 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=KSHV,108,%E5%8B%9E%E4%B8%8A,12,20200429,1>.

<sup>135</sup> LSA, Article 21, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>136</sup> LSA, Article 24, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>137</sup> LSA, Article 30, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>138</sup> *Id.*

<sup>139</sup> LSA, Articles 36 to 38, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

severance pay.<sup>140</sup> The worker may also file a civil tort claim for compensatory damages under the Civil Code.<sup>141</sup>

While not stated in employment-related regulations, the courts may determine whether an arrangement between victims and perpetrators of forced labor and human trafficking is an employment relationship, which then would give those victims workers' rights under the LSA.<sup>142</sup>

### 5.3.3. Claims available in relation to unlawful deductions, loans, and debt bondage

The LSA requires employers to pay workers directly their full wages unless an applicable law or agreement provides otherwise.<sup>143</sup> When employers make unlawful deductions, workers may terminate their labor contracts without advance notice and file a claim for severance pay.<sup>144</sup> Those workers may also file civil claims for unpaid salary pursuant to the LSA or for unjust enrichment under the Civil Code against employers.<sup>145</sup>

In addition, the ESA also prohibits employers from withholding the belongings or collecting a bond from employees. Pursuant to Taiwan court precedents, employees are able to sue employers which violate the LSA for compensatory damages or unjust enrichment under the Civil Code.<sup>146</sup>

<sup>140</sup> LSA, Article 14, Paragraph 1, Subparagraph 1 and Paragraph 4, and Article 17, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>; see also Taiwan High Court Taichung Branch Court Year 104 Lao Shang Yi Zi No. 3 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TCHV,104,%E5%8B%9E%E4%B8%8A%E6%98%93,3,20150520,1> (no subsequent judgments).

<sup>141</sup> Civil Code, Article 184, Paragraph 1, Article 185, Paragraph 1 and Article 195, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000001>.

<sup>142</sup> See, e.g., Supreme Court Year 81 Tai Shang Zi No. 347 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPSV,81,%E5%8F%B0%E4%B8%8A,347,19920227,1>, and Supreme Court Year 92 Tai Shang Zi No. 2361 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPSV,92,%E5%8F%B0%E4%B8%8A,2361,20031031>.

<sup>143</sup> LSA, Article 22, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>144</sup> LSA, Article 14, Paragraph 1, Subparagraph 5 and Paragraph 3, and Article 17, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>145</sup> See Taiwan High Court Year 105 Lao Shang Zi No. 94 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV,105,%E5%8B%9E%E4%B8%8A,94,20170221,1>; Taiwan High Court Year 99 Lao Shang Zi No. 11 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV,99,%E5%8B%9E%E4%B8%8A,11,20110310,2>; Taiwan High Court Year 99 Lao Shang Yi Zi No. 97 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV,99,%E5%8B%9E%E4%B8%8A%E6%98%93,97,20120724,3> (all with no subsequent judgments); Taiwan Taoyuan District Court Year 99 Lao Su Zi No. 14 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TYDV,99,%E5%8B%9E%E8%A8%B4,14,20101220,1> (subsequently settled by the parties).

<sup>146</sup> ESA, Article 5, Paragraph 2, Subparagraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>; see also Taiwan Taoyuan District Court Year 107 Jian Shang Zi No. 185 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TYDV,107,%E7%B0%A1%E4%B8%8A,185,20190326,1>; Taiwan Yunlin District Court Year 107 Liu Jian Zi No. 108 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TLEV,107,%E5%85%AD%E7%B0%A1,108,20180903,1> (both with no subsequent judgments).

#### 5.3.4. Remedies

The remedies for victims of forced labor and human trafficking generally include termination of employment and monetary compensation. For claims pursuant to the LSA, the remedies include terminating the labor contract and monetary compensation for unpaid salary or severance pay; for claims under the Civil Code, such as tort and unjust enrichment, the remedy is monetary compensation.

#### 5.3.5. *The well-being of workers: Preventing work-related psychosocial risks and promotion of workers' health*

The OSHA is the main regulation for preventing work-related psychosocial risks and promoting workers' health. It obligates employers to provide necessary safety and health equipment and measures to prevent injuries and to adopt measures to protect workers' physical and mental health.<sup>147</sup> For more details regarding the OSHA, refer to Section 5.4.

#### 5.3.6. *The well-being of workers: Rest time*

The LSA sets a minimum standard requiring a break for at least 30 minutes after working four continuous hours. The employer may reschedule a break in the event of a rotation system or work of a continuous or urgent nature.<sup>148</sup>

#### 5.3.7. *The well-being of workers: Freedom to change jobs and right to leave*

Generally, no regulation prohibits a worker's freedom to change jobs or right to leave.<sup>149</sup> However, the ESA prohibits foreign workers from engaging in certain types of work or from shifting to a new employer or new work unless specific requirements are met and approved by the competent government authority.<sup>150</sup>

### 5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness

The OSHA guarantees laborers the right to a safe workplace. Employers must take necessary measures or install necessary equipment to protect laborers from occupational accidents. The machinery, equipment, tools, and materials used for or during work must be designed, manufactured, imported, or constructed in a manner to prevent occupational accidents.<sup>151</sup> The OSHA further regulates three particular aspects to ensure a safe workplace:

**Safety and Health Facilities:** Employers shall have necessary safety and health equipment and measures to prevent risk of injuries from listed hazardous activities, natural disasters, and illnesses

<sup>147</sup> OSHA, Article 6, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>148</sup> LSA, Article 35, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>149</sup> Yu-Fan Chiu & Ting-Yu Sung, *A Study on Employment Transfer Regulations of Migrant Workers* (2020), at 38-39, available at: <https://lawreview.nctu.edu.tw/wp-content/uploads/2021/02/%E5%85%A8%E6%96%87%E9%82%B1%E7%BE%BD%E5%87%A1%E3%80%81%E5%AE%8B%E5%BA%AD%E8%AA%9E.pdf>.

<sup>150</sup> ESA, Article 53, Paragraph 4 and Article 59, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>.

<sup>151</sup> OSHA, Article 5, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

resulting from repetitive operations or exceptional workload.<sup>152</sup> In addition, employers shall, or laborers may on their own accord, halt work and withdraw to safe locations when a potential imminent danger appears. In such circumstances, employers shall not dismiss, reassign, refuse to pay wages to, or unfavorably treat laborers.<sup>153</sup>

**Safety and Health Management:** Employers shall provide laborers with all necessary safety and health education and training to prevent accidents and enact appropriate safety and health work rules.<sup>154</sup> They shall also prevent laborers under the age of 18 and pregnant female laborers from performing listed dangerous or harmful work.<sup>155</sup> Businesses shall inform contractors of workplace hazards and the required safety and health measures and shall inspect workplaces.<sup>156</sup>

**Supervision and Inspections:**<sup>157</sup> The competent government authority and labor inspection agencies may inspect workplaces. Laborers may also file complaints for violations of the OSHA or relevant regulations. Those employers which fail or refuse to conform to the regulations or for which there is a concern for occupational accidents may be notified to suspend work. When an occupational accident occurs, the employer shall conduct necessary rescue operations and investigations and provide an analysis and record of the accident.

#### 5.4.1. *Whether compensation is available*

Compensation associated with workplace injuries or illness is available pursuant to the LSA, the Labor Insurance Act, and the Act for Protecting Worker of Occupational Accidents.<sup>158</sup> Furthermore, the Civil Code allows victims of injuries or illness to claim for compensatory damages against their employers based on torts or their employment agreements.<sup>159</sup> Note that under these regulations, victims may recover compensation for all losses they suffered in occupational accidents but not duplicative compensation for the same losses.<sup>160</sup>

#### 5.4.2. *Whether criminal sanctions are applicable*

The OSHA authorizes imprisonment, detention, and fines against employers violating regulations requiring the maintenance and management of safety and health facilities and measures.<sup>161</sup> When an occupational

<sup>152</sup> OSHA, Article 6, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>153</sup> OSHA, Article 18, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>154</sup> OSHA, Articles 32 and 34, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>155</sup> OSHA, Articles 29 and 30, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>156</sup> OSHA, Articles 26 and 27, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>157</sup> OSHA, Articles 36, 37, and 39, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>158</sup> LSA, Article 59, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>; Labor Insurance Act, Article 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0050001>; Act for Protecting Worker of Occupational Accidents, Articles 6, 7, and 8, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060041>.

<sup>159</sup> Civil Code, Articles 184, 191, 192, 193, 194, 195, and 487-1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000001>.

<sup>160</sup> Supreme Court Year 107 Tai Shang Zi No. 267 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ro=3&q=415e1792892fdee3edce32311f8f078c&gy=jcourt&gc=TPS&sort=DS&ot=in>.

<sup>161</sup> OSHA, Articles 40 and 41, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

accident causes severe harm or death, employers may also be charged under the Criminal Code with criminal negligence constituting negligent battery or involuntary manslaughter.<sup>162</sup>

## 5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

### 5.5.1. Access to justice

The HTPA makes local governments responsible for “investigation of human trafficking cases, referral of criminal cases, [and] identification and protection of the personal safety of human trafficking victims” by integrating related departments and cooperating with the NIA and judicial authorities.<sup>163</sup>

Once reported and identified as a victim of human trafficking, the victim can file a claim for government protection and shelter.<sup>164</sup> In addition, the government or designated non-governmental organizations must provide the victim with necessary assistance, including interpretation assistance, legal assistance, and a representative to accompany the victim during questioning (interrogation) throughout the investigation or trial.<sup>165</sup> The offender bears the cost of such assistance, but the government will pay those costs in advance for the victim’s convenience.<sup>166</sup>

Moreover, under the Legal Aid Act, victims or possible victims in a human trafficking case are also eligible for low-priced legal aid including legal consultation, document drafting, representation in litigation, mediation, and settlement, and other necessary services.<sup>167</sup>

Once the judicial organ considers it unnecessary to continue the victim’s assistance in the investigation and trial, the government can coordinate with relevant institutions to safely send the victim back to their original country as soon as possible.<sup>168</sup>

### 5.5.2. Practical issues associated with enforcing social legislation

The Taiwan government is dedicated to improving treatment of laborers (especially foreign laborers) by protecting their fundamental rights, employment rights, and living rights.<sup>169</sup> To protect laborers’

<sup>162</sup> Criminal Code, Articles 276 and 284, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>163</sup> HTPA, Article 4, Subparagraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>164</sup> HTPA, Article 15, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>165</sup> HTPA, Article 17, Subparagraphs 3, 4, and 6, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>; Regulations Governing Prevention against Transnational Trafficking in Persons and Protection of Victims, Article 12, Subparagraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080175>.

<sup>166</sup> HTPA, Article 18, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>. For further reference, please see Guidelines for Protection and Sheltering and Paying Expense In Advance for Human trafficking Victims with Work Permits and Possible Human trafficking Victims (持工作簽證之人口販運被害人與疑似人口販運被害人安置保護及費用墊付處理要點), available at: <https://laws.moi.gov.tw/FLAW/FLAWDAT0202.aspx?id=FL050087>.

<sup>167</sup> Legal Aid Act, Article 14, Paragraph 1, Subparagraph 3, and Article 4, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030157>.

<sup>168</sup> Regulations Governing Prevention against Transnational Trafficking in Persons and Protection of Victims, Article 12, Subparagraph 6, and Article 20, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080175>.

<sup>169</sup> *Report on Protection of the Right for Foreign Workers in Taiwan*, Ministry of Labor (Jan. 2021), at 3–4, available at: <https://ws.wda.gov.tw/Download.ashx?u=LzAwMS9VcGxvYWQvMzAwL3JlbGZpbGUvOTAyMS8xMjMxOC9iOWM3MWU4ZS1kODQ3LTRkNTctOTU1Ni1kYjBkZTI0ZDVlNDIucGRm&n=UkVQT1JU1E9OIFBST1RFQ1RJT04gT0YgVEhFIFJlR0hUUyBjTiBUQUlXQU4gLS>



fundamental rights, the government strictly prohibits employers or employment agencies from withholding laborers' credentials or a portion of their salaries to prevent laborers from "disappearing."<sup>170</sup> Foreign laborers generally enjoy the same labor law protections as local citizens,<sup>171</sup> and foreign laborers may also enroll in the Labor Insurance and the National Health Insurance programs.<sup>172</sup>

There are several barriers, both on a practical level and legislative level, for victims to claim access to justice and other social rights.

**Access to Justice:** It is sometimes difficult to identify the victims of forced labor or human trafficking. Only the police and prosecutors can formally identify victims, while the Ministry of Labor, the Fisheries Agency, the NIA, and other relevant stakeholders must follow complex notification procedures to report possible victims.<sup>173</sup> Additionally, authorities and NGOs have noted that court personnel at times hinder effective prosecution of labor trafficking crimes by perceiving those cases as labor disputes.<sup>174</sup>

**Other Protections of the Social Rights for Laborers:** The LSA does not protect migrant domestic workers, who account for most foreign laborers in Taiwan.<sup>175</sup> Moreover, a domestic worker protection bill that would mandate hours of rest, days off, and annual leave for these laborers has been long-stalled and has yet to pass.<sup>176</sup> While the ESA requires employment agencies to report abuses committed by their clients against migrant workers or face severe fines,<sup>177</sup> it also bans employers and employment agencies from withholding passports, work permits, or any identity documents of migrant domestic workers and fishermen without their consent.<sup>178</sup> These

[BNaW5pc3RyeSBvZiBMYWJvck9jdG9iZlGmTKsIDlwMDHvvlhSZXZpc2VklGlulEphbnVhcnksIDlwMjHvvlIPbiBQcm90ZWN0aW9uIG9mIHROzSBSaWdodHMgZm9yIEZvcvVpZ24gV29ya2VycyBpbjBUYWI3YW4ucGRm.](https://www.mol.gov.tw/eng/LawClass/LawAll.aspx?pcode=N0090001)

<sup>170</sup> ESA, Article 40, Paragraph 1, Subparagraphs 3 and 4, Article 54, Paragraph 1, Subparagraphs 8 and 10, and Article 57, Subparagraph 8, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>.

<sup>171</sup> *Report on Protection of the Right for Foreign Workers in Taiwan*, Ministry of Labor (Jan. 2021), at 3, available at: <https://ws.wda.gov.tw/Download.aspx?u=LzAwMS9VcGxvYWQvMzAwL3JlbGZpbGUvOTAyMS8xMjMxOC9iOVM3MWU4ZS1kODQ3LTrkNTctOTU1Ni1kYjBkZTI0ZDVlNDIucGRm&n=UkVQT1JUIE9OIFBST1RFQ1RJT04gT0YgVEhFIFJRR0hUUyBTiBUQUiXQU4gLSBNaW5pc3RyeSBvZiBMYWJvck9jdG9iZlGmTKsIDlwMDHvvlhSZXZpc2VklGlulEphbnVhcnksIDlwMjHvvlIPbiBQcm90ZWN0aW9uIG9mIHROzSBSaWdodHMgZm9yIEZvcvVpZ24gV29ya2VycyBpbjBUYWI3YW4ucGRm>.

<sup>172</sup> *Id.* at 31.

<sup>173</sup> HTPA Article 9, Paragraphs 1 and 2, and Article 11, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>; Reporting Process of Possible Human Trafficking Cases for National Immigration Agency of Ministry of the Interior (內政部移民署辦理疑似人口販運案件通報作業流程), available at: <https://www.immigration.gov.tw/media/6653/%E5%85%A7%E6%94%BF%E9%83%A8%E7%A7%BB%E6%B0%91%E7%BD%B2%E8%BE%A6%E7%90%86%E7%96%91%E4%BC%BC%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%A1%88%E4%BB%B6%E9%80%9A%E5%A0%B1%E4%BD%9C%E6%A5%AD%E6%B5%81%E7%A8%8B.pdf>.

<sup>174</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 534 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>175</sup> *Id.* at 535.

<sup>176</sup> *Id.*

<sup>177</sup> ESA Article 40, Paragraph 1, Subparagraph 19, and Article 67, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>.

<sup>178</sup> ESA Article 40, Paragraph 1, Subparagraph 4, Article 54, Paragraph 1, Subparagraphs 8 and 10, and Article 57, Subparagraph 8, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>.



protections are insufficient to deter forced labor, because employers are reportedly able to threaten migrant workers into “voluntarily” turning over their identity documents.<sup>179</sup>

According to government data,<sup>180</sup> the number of cases prosecuted has declined by more than half from 2008 to 2020.

| Year | Cases Prosecuted | Persons Indicted | Type of Cases      |         |                     |         |
|------|------------------|------------------|--------------------|---------|---------------------|---------|
|      |                  |                  | Labor Exploitation |         | Sexual Exploitation |         |
|      |                  |                  | Cases              | Persons | Cases               | Persons |
| 2008 | 165              | 601              | 40                 | 106     | 113                 | 452     |
| 2009 | 118              | 335              | 35                 | 102     | 83                  | 233     |
| 2010 | 115              | 441              | 41                 | 110     | 76                  | 346     |
| 2011 | 151              | 437              | 72                 | 179     | 80                  | 259     |
| 2012 | 169              | 458              | 34                 | 57      | 136                 | 408     |
| 2013 | 127              | 355              | 84                 | 246     | 46                  | 103     |
| 2014 | 102              | 184              | 21                 | 52      | 88                  | 153     |
| 2015 | 63               | 148              | 12                 | 25      | 52                  | 127     |
| 2016 | 64               | 166              | 17                 | 44      | 50                  | 128     |
| 2017 | 87               | 248              | 19                 | 66      | 68                  | 182     |
| 2018 | 71               | 113              | 24                 | 40      | 47                  | 73      |
| 2019 | 71               | 122              | 14                 | 22      | 57                  | 100     |
| 2020 | 78               | 132              | 18                 | 31      | 63                  | 105     |

Source: 2018 Republic of China (Taiwan) Trafficking in Persons Report; 2019 Republic of China (Taiwan) Trafficking in Persons Report (2019 MOI Report); Cases Prosecuted and Persons Indicted for TIP-Related Cases Handled by District Courts’ Prosecutor’s Offices from 2008 to 2020.

Note: Starting in June 2009, certain cases were registered under more than one type, if applicable. Therefore, the total number of cases may not be equal to the sum of the different types.

Therefore, the threat of prosecution to perpetrators, though visible, is not likely to deter offenders.

Apart from the government, plenty of actors safeguard access to justice for victims of human trafficking. For instance, the Legal Aid Foundation has set up Legal Aid for Victims of Human Trafficking programs since 2008, providing legal aid to eligible victims under the Legal Aid Act. In 2019, it approved all 94 applications for legal aid under the program.<sup>181</sup> Furthermore, NGOs, such as the Taipei Women’s Rescue Foundation

<sup>179</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 535 (2021), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/TIP\\_Report\\_Final\\_20210701.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/TIP_Report_Final_20210701.pdf).

<sup>180</sup> 2018 Republic of China (Taiwan) Trafficking in Persons Report, Ministry of Interior (Nov. 2019), at 14–15, available at: <https://www.immigration.gov.tw/media/52111/2018%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A%E8%8B%B1%E6%96%87.pdf>; 2019 Republic of China (Taiwan) Trafficking in Persons Report, Ministry of Interior (Oct. 2020), at 15–16, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>; Cases Prosecuted and Persons Indicted for TIP-Related Cases Handled by District Courts’ Prosecutor’s Offices from 2008 to 2020, Ministry of Interior, available at: <https://www.immigration.gov.tw/media/61229/109-12%E6%A1%88%E4%BB%B6%E6%95%B8%E7%B5%B1%E8%A8%88%E8%A1%A8-97.pdf>.

<sup>181</sup> 2019 Republic of China (Taiwan) Trafficking in Persons Report, Ministry of Interior (Oct. 2020), at 42, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>.

and ECPAT Taiwan, accompany victims or possible victims during questioning (interrogation) throughout the investigation or trial and advise them on their rights.<sup>182</sup>

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

The LSA defines “worker” to mean a person who is hired by an employer to work for wages. However, according to several Taiwan court opinions, the definition of “worker” under the LSA is not limited to the person acquiring Taiwan’s employment permit. Victims who breach migration laws or visa conditions can still bring claims under employment laws.<sup>183</sup> For instance, human trafficking victims can bring their civil disputes against employers pursuant to the LIA.<sup>184</sup>

According to the HTPA, once identified as a victim of human trafficking, a person is not subject to criminal sanctions under migration laws, and the government must provide the victim with protection and shelter, as well as a temporary visitor permit for no more than six months.<sup>185</sup> However, during the process of identification, the HTPA allows the government to detain a possible victim who does not have a valid visitor (or resident) permit.<sup>186</sup> Although segregated detention differs from criminal detention, the government still seriously interferes with a person’s physical freedom, as justices of the Constitutional Court have pointed out.<sup>187</sup>

### 5.6.2. *Rights/remedies available under applicable migration law and regulations*

According to the Immigration Act, victims can claim for physiological assistance and psychological treatment, shelter, language, and legal consultation services, personal protection for safety, and a Temporary Visit Permit, as well as an employment permit, during the investigation or trial.<sup>188</sup>

<sup>182</sup> Taipei Women’s Rescue Foundation, available at: <https://www.twrf.org.tw/info/category/18>; ECPAT Taiwan, available at: <https://www.ecpat.org.tw/Service.aspx?ID=51>.

<sup>183</sup> LSA, Article 2, Subparagraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>; Taiwan High Court Year 99 Lao Shan Tsu No. 31 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ro=0&q=5d6adb80e42ebb56f81600bde94d57ef&gy=jcourt&gc=TPH&sort=DS&ot=in>; Taiwan High Court Taichung Branch Court Year 100 Lao Shan Yi Tsu No. 10 Civil Judgment, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ro=0&q=4808d987d8d3418635fc071a0f20aa5c&gy=jcourt&gc=TCH&sort=DS&ot=in>.

<sup>184</sup> LIA, Article 2, Paragraph 1, Subparagraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010064>; 2019 Republic of China (Taiwan) Trafficking in Persons Report, Ministry of Interior (Oct. 2020), at 41, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>.

<sup>185</sup> HTPA, Article 15, Paragraph 1, and Article 16, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>186</sup> HTPA, Article 14, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>187</sup> The Judicial Yuan Interpretation No. 708, available at: <https://cons.judicial.gov.tw/jcc/zh-tw/jep03/show?expno=708>.

<sup>188</sup> Immigration Act, Article 42 and Article 44, Paragraphs 1 and 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132>.

Furthermore, when testifying during investigations by prosecutors or trials, victims are eligible for protection pursuant to the Witness Protection Law, and they are relieved or exempted from liability for violating other criminal or administrative laws, if any.<sup>189</sup>

When a human trafficking case is closed, victims can request safe return to their original country as soon as possible.<sup>190</sup>

## 5.7. Employment Laws and Child Labor

According to the LSA, a “child worker” means a worker over 15 years old but less than 16 years old.<sup>191</sup> However, the LSA, the Protection of Children and Youths Welfare and Rights Act, and the CYSEPA generally protect workers less than 18 years old.<sup>192</sup> The regulations and criminal offenses for child labor cover three aspects: minimum age for employment, limited types and hours of work, and additional prohibition of sexual exploitation.

### 5.7.1. *Minimum age for employment*

Generally, the LSA prohibits employing any person under the age of 15, and employers face criminal sanctions.<sup>193</sup> Exceptions are made for persons who have graduated from junior high school or who are authorized by the competent government authority to do work that will not harm the worker’s mental and physical health,<sup>194</sup> such as child actors. Employers are still subject to certain requirements for working hours, working days, and applying for a permit, or they will face criminal sanctions.<sup>195</sup>

### 5.7.2. *Limited types and hours of work*

In accordance with the LSA and the OSHA, employers hiring child workers or workers less than 18 years old need to prevent them from doing potentially dangerous or hazardous work.<sup>196</sup> Furthermore, the child workers’ daily working hours and working period are limited.<sup>197</sup> Employers violating these regulations are subject to criminal liabilities.<sup>198</sup>

<sup>189</sup> Immigration Act, Article 43, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132>.

<sup>190</sup> Immigration Act, Article 44, Paragraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132>.

<sup>191</sup> LSA, Article 44, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>192</sup> LSA, Article 44, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>; The Protection of Children and Youths Welfare and Rights Act, Article 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050001>.

<sup>193</sup> LSA, Article 45, Paragraph 1, and Article 77, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>194</sup> LSA, Article 45, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>; OSHA, Article 29, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001>.

<sup>195</sup> Regulations Governing the Determination Criteria and Inspection of No Harm to Mental and Physical Health in Article 45 of the LSA, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030025>.

<sup>196</sup> LSA, Article 44, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>197</sup> LSA, Articles 47 and 48, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

<sup>198</sup> LSA, Article 77, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>.

### 5.7.3. Additional prohibition of sexual exploitation

According to the CYSEPA, the sexual exploitation of child workers or workers less than 18 years old subjects employers to additional criminal sanctions, separate from the Criminal Code’s penalties.<sup>199</sup> Sexual exploitation includes participating in sexual intercourse or obscene acts in exchange for monetary or other consideration or for others to watch, film, or produce things showing such activities and providing tour escort and singing or dancing companion services consisting of sexual activities.<sup>200</sup>

Child labor is uncommon in Taiwan. According to the National Statistical Bureau,<sup>201</sup> there were only 831 “child workers” (*i.e.*, over 15, but under 16 years of age) in 2020.

| 2018  |      |        | 2019  |      |        | 2020  |      |        |
|-------|------|--------|-------|------|--------|-------|------|--------|
| Total | Male | Female | Total | Male | Female | Total | Male | Female |
| 1,118 | 705  | 413    | 858   | 380  | 478    | 831   | 721  | 111    |

Source: Table 20, Employed Person over Fifteen but Less Than Sixteen Years Old (Child Worker) in Taiwan.

However, no official statistics report the total number of workers under 18 years old. The Taiwan Alliance for Advancement of Youth Rights and Welfare estimates conservatively that 5,000 teenagers under 15 years old work part-time each year.<sup>202</sup>

## 6. GOVERNMENT PROCUREMENT RULES

### 6.1. Overview

The Government Procurement Act of Taiwan (**GPA**) generally regulates the procedures and requirements of government procurement. It does not directly address human trafficking. However, model contracts include an article prohibiting contractors and subcontractors from violating the HTPA.

### 6.2. Taiwan’s Model Contracts

Government agencies, public schools, and government-owned enterprises must adopt the government’s model contracts.<sup>203</sup> The government considers international and domestic customs when setting the essential requirements and contents for the model contracts.<sup>204</sup> Moreover, the model procurement

<sup>199</sup> Criminal Code, Articles 296-1, 231, 231-1 and 233, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>.

<sup>200</sup> CYSEPA, Articles 2, 31–36, and Article 45, Paragraphs 2 and 3, available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.

<sup>201</sup> Table 20, Employed Person over Fifteen but Less Than Sixteen Years Old (Child Worker) in Taiwan, available at: <https://www.stat.gov.tw/ct.asp?xitem=37200&ctNode=517&mp=4>.

<sup>202</sup> The Joint Declaration of Taiwan Alliance for Advancement of Youth Rights and Welfare, Children’s Right Alliance Taiwan, Taiwan Alliance for Social Welfare, and Union of Student Participant’s Rights for Cooperative Education and Internship, Taiwan Alliance for Advancement of Youth Rights and Welfare (22 May 2020), available at: <https://www.youthrights.org.tw/news/1499>.

<sup>203</sup> Government Procurement Act, Article 63, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030057>.

<sup>204</sup> *Id.*

contracts make one party responsible for the damage caused to the other party by erroneous execution, falsity, or poor management.<sup>205</sup> Consequently, if a contractor or subcontractor violates the HTPA clause in a model contract leading to termination, rescission, or suspension of the contract, it may be liable to the government entity for its compensatory damages.

### 6.2.1. Model contract for construction work procurement

The provision to enhance the protection of human rights and prevent human trafficking in government procurement was first included in the model contracts set by the Public Construction Commission of Executive Yuan in January 2014. The relevant article, Article 9, Paragraph 12, of the latest Model Contract for Construction Work Procurement, published on July 1, 2021, states:

“The Contractor and its subcontractor shall not have the following circumstances in performing the contract: **employing persons who are not allowed to engage in the work (including illegal foreign workers)**, supplying properties from illegal sources, using illegal vehicles or facilities, providing untruthful certificates, **violating Human Trafficking Prevention Act, ...**”<sup>206</sup>

The Model Contract further sets forth the effects of breaching this article:

“If the Entity anticipates defects from the Contractor’s performance of the contract or in the event of other breaches of contract, the Entity may notify the Contractor to carry out improvements within a time-limit.”<sup>207</sup>

“If the Contractor does not carry out improvements or actions as notified within the aforementioned time-limit, the Entity may take the following measures: ... 2. Terminate or rescind the contract and demand compensation for damages.”<sup>208</sup>

“In the event that any of the following circumstances arose from the Contractor’s performance, the Entity may notify the Contractor in writing to terminate or rescind a part or all of the contract, and no compensation shall be paid to the Contractor for losses thus incurred: ... 13. Where the Contractor is seriously in breach of the laws, regulations or other provisions of the contract.”<sup>209</sup>

“In the event that the Contractor does not perform the contract in accordance with the contract, the Entity may notify the Contractor at any time to suspend part or all of work until the non-compliance has been rectified. The Contractor shall not request to extend

<sup>205</sup> Government Procurement Act, Article 63, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030057>.

<sup>206</sup> Model Contract for Construction Work Procurement, Article 9, Paragraph 12 (emphasis added), available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>207</sup> Model Contract for Construction Work Procurement, Article 9, Paragraph 17, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>208</sup> Model Contract for Construction Work Procurement, Article 9, Paragraph 18, Subparagraph 2, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>209</sup> Model Contract for Construction Work Procurement, Article 21, Paragraph 1, Subparagraph 13, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

the time-limit of the performance under the contract or increase the consideration due to such suspension.”<sup>210</sup>

### 6.2.2. Application to other types of model contracts for government procurement

These five provisions listed in the Model Contract for Construction Work Procurement can also be found in other model contracts for government procurement, such as the Model Contract for Property Procurement published on January 15, 2020,<sup>211</sup> the Model Contract for Service Procurement published on June 30, 2020,<sup>212</sup> the Model Contract for Dispatched Service Procurement published on January 30, 2020,<sup>213</sup> and the Model Contract for Information Service Procurement published on April 9, 2021.<sup>214</sup> The types of model contracts mentioned here are not exhaustive.

## 7. RESTITUTION AND VICTIM COMPENSATION

### 7.1. Overview

Human trafficking victims may seek economic support from the government and NGOs. For restitution and compensation for human trafficking victims, however, government intervention is necessary. Victims may seek compensation from the Human Trafficking Victim Compensation Fund, file a civil action against the perpetrator of human trafficking, claim restitution, or seek assistance from the Ministry of Labor’s hotline.

### 7.2. Victim Compensation Funds

The MOI established a Human Trafficking Victim Compensation Fund (**Human Trafficking Fund**) to compensate victims and their families.<sup>215</sup>

**Source of Funds:** Funds for the Human Trafficking Fund come from the criminal proceeds or the interests of the actors committing crimes under the HTPA.<sup>216</sup>

<sup>210</sup> Model Contract for Construction Work Procurement, Article 21, Paragraph 8, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>211</sup> Model Contract for Property Procurement, Article 8, Paragraphs 13 and 18 and Paragraph 19, Subparagraph 2 and Article 17, Paragraph 1, Subparagraph 13, and Paragraph 7, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>212</sup> Model Contract for Service Procurement, Article 8, Paragraphs 8 and 11 and Paragraph 12, Subparagraph 2 and Article 16, Paragraph 1, Subparagraph 15 and Paragraph 7, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>213</sup> Model Contract for Dispatched Service Procurement, Article 8, Paragraphs 7 and 8 and Paragraph 9, Subparagraph 2, and Article 16, Paragraph 1, Subparagraph 13 and Paragraph 7, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>214</sup> Model Contract for Information Service Procurement, Article 8, Paragraph 6, Subparagraph 11, Paragraph 15 and Paragraph 16, Subparagraph 2, and Article 18, Paragraph 1, Subparagraph 16 and Paragraph 7, available at: <https://www.pcc.gov.tw/cp.aspx?n=99E24DAAC84279E4>.

<sup>215</sup> HTPA, Article 3, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>; Regulations Governing the Transfer of Seized Proceeds of Human Trafficking Crime and Compensation of Victims (**HTF Regulations**), Article 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>216</sup> HTPA, Article 35, Paragraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

**Compensation, Qualification, and Maximum Compensation Amount:** The Human Trafficking Fund offers three types of compensation. For each type of compensation, this Table shows the relevant information for victim qualification, disqualification, and maximum amounts:

| Type <sup>217</sup> | Surviving Dependent Compensation  | Serious Injury Compensation   | Compensation for Non-Pecuniary Loss   |
|---------------------|---|---|---|
| Qualification       | Surviving dependents of victims who died in a human trafficking crime. <sup>218</sup><br>The parents, spouse, and children of the deceased victim have the first priority to receive the compensation. Following them would be the victim’s grandparents, grandchildren, and siblings. <sup>219</sup> | Victims who were seriously injured in a human trafficking crime. <sup>220</sup>   | Victims who were psychologically injured in a human trafficking crime. <sup>221</sup> |
| Maximum amount      | Funeral expenses: No more than TWD 300,000 for a deceased victim. <sup>222</sup><br>Legal support for the victim’s family: No more than TWD 1,000,000 for a deceased victim. <sup>223</sup>   | Medical expenses: No more than TWD 400,000 <sup>224</sup><br>For inability to work or the increased dependence in life: No more than TWD 1,000,000 <sup>225</sup> | No more than TWD 400,000 <sup>226</sup>   |
| Disqualification    | The qualified surviving dependents intentionally or negligently cause the victim’s death; <sup>227</sup> or<br>The qualified surviving dependents cause the death of the other qualified with the   | N/A   | N/A   |

<sup>217</sup> HTF Regulations, Article 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>218</sup> HTF Regulations, Article 3, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>219</sup> HTF Regulations, Article 4, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>220</sup> HTF Regulations, Article 3, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>221</sup> HTF Regulations, Article 3, Paragraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>222</sup> HTF Regulations, Article 7, Paragraph 1, Subparagraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>223</sup> HTF Regulations, Article 7, Paragraph 1, Subparagraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>224</sup> HTF Regulations, Article 7, Paragraph 1, Subparagraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>225</sup> HTF Regulations Article 7, Paragraph 1, Subparagraph 4, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>226</sup> HTF Regulations, Article 7, Paragraph 1, Subparagraph 5, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>227</sup> HTF Regulations, Article 5, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.



| Type <sup>217</sup>                              | Surviving Dependent Compensation   | Serious Injury Compensation | Compensation for Non-Pecuniary Loss |
|--|--|-----------------------------|-------------------------------------|
|  | priority superior or identical to them. <sup>228</sup>   |                             |                                     |
| Reasons to deduct or refuse the compensation     | The victim’s harm is attributable to the victim; <sup>229</sup><br>The compensation is considered inappropriate by the common perception of the society given the relationship between the victim, the victim’s family, and the actor; <sup>230</sup> or<br>The qualified surviving dependent has already received the compensation from other sources. <sup>231</sup>   |                             |                                     |
| Reasons for the compensation paid to be returned | The person later received other indemnities or circumstances indicate that the compensation should be reduced; in such event, the person shall return the compensation up to the amount received or entitled to. <sup>232</sup><br>The person who received compensation is later found not entitled to victim compensation; in such event, the person shall return the compensation received in full. <sup>233</sup><br>The person who received compensation receives victim compensation under false premises or by illicit means; in such event, the person shall return the compensation received in full plus interest incurred from the date of receipt. <sup>234</sup> |                             |                                     |

**Process to Obtain Compensation**

Step 1: File a written application to the MOI, Executive Yuan,<sup>235</sup> stating:<sup>236</sup>

- (a) Basic information (e.g., name, gender, birthday, ID number, occupation, residence);
- (b) Type of the compensation applied for;
- (c) Facts and reasons;
- (d) Relationship with the victim;
- (e) Payment method; and
- (f) Whether the applicant has received compensation from other source(s).

Step 2: Follow further instructions (if any).

<sup>228</sup> HTF Regulations, Article 5, Paragraphs 2, 3, Subparagraph 5, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>229</sup> HTF Regulations, Article 6, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>230</sup> HTF Regulations, Article 6, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>231</sup> HTF Regulations, Article 9, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>232</sup> HTF Regulations, Article 10, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>233</sup> HTF Regulations, Article 10, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>234</sup> HTF Regulations, Article 10, Paragraph 3, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>235</sup> HTF Regulations, Article 12, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>236</sup> HTF Regulations, Article 13, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

- (a) If the information in the application is incomplete, the MOI will request supplementation. If the applicant refuses to make the requested supplementation or does not make requested revisions in a timely manner, the MOI may reject the application.<sup>237</sup>
- (b) The MOI may request the applicant to state its opinion, provide documents, or receive a medical examination. If the applicant refuses, the MOI may reject the application.<sup>238</sup>

Step 3: Wait for the result or follow further instructions. The MOI will issue its decision within three months after receipt of the written application.<sup>239</sup>

### 7.3. Potential Compensation Through Civil Lawsuits

Victims may also turn to the courts for civil compensation. According to the Judicial Yuan, four civil cases brought by victims of human trafficking claiming compensation were pending in district courts in 2019.<sup>240</sup>

**Legal Basis:** According to public information, claims for civil compensation usually focus on torts (*i.e.*, Articles 184, 185, and 195 of Taiwan Civil Code).<sup>241</sup>

**Legal Aid:** Because the victims of human trafficking usually cannot afford attorneys for court proceedings, the Legal Aid Foundation, a foundation established in accordance with the Legal Aid Act,<sup>242</sup> initiated a long-term “Legal Aid for Victims of Human Trafficking Program” in 2008. Under this program, if victims of human trafficking legally stay in Taiwan and meet the Legal Aid Act’s requirements for legal aid, the Legal Aid Foundation may designate attorneys to assist those victims in court and mediation proceedings.<sup>243</sup> In 2019, 94 victims of human trafficking received legal aid and all applications for legal aid were granted.<sup>244</sup>

<sup>237</sup> HTF Regulations, Article 13, Paragraph 2, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>238</sup> HTF Regulations, Article 14, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>239</sup> HTF Regulations, Article 13, Paragraph 3 and Article 15, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080183>.

<sup>240</sup> *2019 Republic of China (Taiwan) Trafficking in Persons Report*, Ministry of Interior (Oct. 2020), at 30-31, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>.

<sup>241</sup> Taiwan Kaohsiung District Court Civil Judgment of Year 108 Su-Zi No. 469, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ro=287&q=3d78bd1b6279e3021021eedff1289cf4&gy=jcourt&gc=KSD&sort=DS&ot=in>; Taiwan Qiaotou District Court Civil Judgment of Year 107 Lao-Su-Zi No. 46, available at: <https://law.judicial.gov.tw/FJUD/data.aspx?ro=31&q=a029612ce6a99ede465c5fb361c0cbcc&gy=jcourt&gc=CTD&sort=DS&ot=in>.

<sup>242</sup> Legal Aid Act, Article 3, Paragraph 1, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030157>.

<sup>243</sup> *2019 Republic of China (Taiwan) Trafficking in Persons Report*, Ministry of Interior (Oct. 2020), at 42, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>.

<sup>244</sup> *Id.*

## 7.4. Other Resources or Supporting Systems for Compensation

### 7.4.1. Restitution

Article 35 of the HTPA requires convicted offenders of crimes under the HTPA to return their criminal proceeds to the victims.

### 7.4.2. 1955 hotline

In 1955, the Ministry of Labor established a hotline principally for counseling migrant laborers. According to the 2019 MOI Report, the 1955 hotline handled 18,121 cases and assisted migrant laborers with recovery of over TWD 550 million in unpaid wages.<sup>245</sup>

## 8. TAIWAN'S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

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### 8.1. Overview

The HTPA requires multidisciplinary cooperation to combat human trafficking in general. The CYSEPA addresses those approaches to deal with child sexual exploitation. Different national departments and institutions are requested to cooperate to eradicate human trafficking.

### 8.2. Multidisciplinary Cooperation Approach Provided by Relevant Law

#### 8.2.1. HTPA

The HTPA provides for certain multidisciplinary cooperation approaches:

■ The governments of municipalities and counties (cities) shall coordinate specialized operations brigades or service centers of the NIA and may request assistance from judicial authorities if necessary.<sup>246</sup>

■ The central government authority shall organize other related government authorities, local governments, and non-governmental organizations to conduct activities related to human trafficking prevention and control, and to cooperate with international governmental bodies or NGOs to eradicate human trafficking.<sup>247</sup>

Article 5 of the HTPA lists the related central competent authorities and their divisions:<sup>248</sup>

- (a) Judicial competent authority, *i.e.*, Ministry of Justice;

<sup>245</sup> 2019 Republic of China (Taiwan) *Trafficking in Persons Report*, Ministry of Interior (Oct. 2020), at 40, available at: <https://www.immigration.gov.tw/media/59464/%E6%88%91%E5%9C%8B2019%E5%B9%B4%E9%98%B2%E5%88%B6%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E6%88%90%E6%95%88%E5%A0%B1%E5%91%8A-%E8%8B%B1%E6%96%87.pdf>.

<sup>246</sup> HTPA, Article 4, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>247</sup> HTPA, Article 6, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>248</sup> HTPA, Article 5, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

- (b) Health affairs competent authority, *i.e.*, Ministry of Health and Welfare.
- (c) Labor affairs competent authority, *i.e.*, Ministry of Labor;
- (d) Coast guard competent authority, *i.e.*, Coast Guard Administration;
- (e) Mainland affairs competent authority, *i.e.*, Mainland Affairs Council;
- (f) Foreign affairs competent authority, *i.e.*, Ministry of Foreign Affairs; and
- (g) Other human trafficking prevention and control measures planned and implemented by the related competent authorities in accordance with their functions and powers.

The HTPA also specifies some cooperation between the national departments or institutions:

■ Judicial police departments shall dispatch officers to protect any social worker or other relevant professional who is assisting in the investigation of human trafficking cases and trial;<sup>249</sup>

■ When any suspected human trafficking victim is in need of medical treatment, the judicial police shall immediately inform the local health department and escort the victim to the local medical facility to receive treatment and to be screened for designated infectious diseases;<sup>250</sup> and

■ The competent authorities and labor affairs competent authorities at all levels shall, either by themselves or by designated non-governmental organizations, provide human trafficking victims or suspected victims under protection and shelter with:<sup>251</sup>

- (a) Protection for personal safety;
- (b) Necessary medical assistance;
- (c) Interpretation assistance;
- (d) Legal assistance;
- (e) Psychological advice and counseling;
- (f) A representative to accompany the victim when questioned (interrogated) throughout the investigation or trial;
- (g) Necessary financial assistance; and
- (f) Other necessary assistance.

### 8.2.2. CYSEPA

The CYSEPA also sets forth a multidisciplinary cooperation approach:

■ The authorities in charge of industries or businesses related to interior affairs, legal affairs, education, national defense, culture, economy, labor, transportation, and communication shall

<sup>249</sup> HTPA, Article 8, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>250</sup> HTPA, Article 12, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

<sup>251</sup> HTPA, Article 17, available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>.

make utmost efforts to help with and carry out educational campaigns when their duties involve the prevention of child and youth sexual exploitation.<sup>252</sup>

The national departments or institutions are to cooperate in several ways:

- (a) The central competent authorities of legal affairs and interior affairs shall appoint dedicated subsidiary agencies to direct and supervise all district prosecutor offices and police departments in investigating the crimes defined in the CYSEPA.<sup>253</sup>
- (b) Internet platform providers, online application service providers, and telecommunications companies shall, upon becoming aware of any suspicious criminal activities or learning about those activities through the Institute of Watch Internet Network, other institutions, or the competent authorities, first remove the information in question, and then notify police departments, retain the relevant data for at least 90 days, and provide the data to the judicial authorities and police departments for investigation purposes.<sup>254</sup>
- (c) The central education authority and the central competent authority shall jointly work in coordination with the competent authority at the municipality or city/county level to establish transition schools that offer placements to victims.<sup>255</sup>

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<sup>252</sup> CYSEPA, Article 3, Paragraph 2, available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.

<sup>253</sup> CYSEPA, Article 5, available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.

<sup>254</sup> CYSEPA, Article 8, available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.

<sup>255</sup> CYSEPA, Article 22, Paragraph 1, available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050023>.