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# Evaluating the Criminal Justice Approach to Human Trafficking in Taiwan

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## ABSTRACT

Despite being the dominant global framework driving intervention efforts, there is little evidence that a criminal justice approach decreases rates of human trafficking to any appreciable degree. As such, scholars point out the need to study state-level factors in an effort to understand potential barriers to effective criminal justice interventions. In response, the author conducts an analysis of the criminal justice approach to human trafficking in Taiwan, a country at the geographic epicenter of this global crime which the US recognizes as being a model of best practices in the region. Specifically, the author examines data on 1,342 human trafficking apprehensions and 2,908 prosecutions from 2009 to 2018. Trends in this data are compared with demographic characteristics of 269 victims of trafficking and the results of interviews with immigration officials, police, and legal professionals conducted by other scholars from 2010–2015. The author finds that low conviction rates, relatively minor punishments, and an under emphasis on labor trafficking indicates that the criminal justice approach may have limited efficacy in cases beyond foreign sex trafficking. The author concludes with an exploration of potential immigration reforms that might better situate Taiwan and other similar states to more effectively address this pandemic.

## KEYWORDS

Human trafficking; law; criminal justice; Taiwan; Asia

## Introduction

From 2003 to 2012, national governments spent a combined average of USD 124 million annually on anti-trafficking efforts, primarily in the area of prosecution and enforcement (Ucnikova, 2014). Despite these massive expenditures, and a growing web of national and international laws, there is no evidence suggesting that global rates of human trafficking have decreased (Smith, 2011; Todres, 2011). The persistence of human trafficking in the face of a growing network of international and domestic laws intended to abate it has caused several scholars to question the merits of the criminal justice approach altogether and call for a radical restructuring of anti-trafficking laws (e.g. JHA, 2018; Kangaspunta, 2015; Kempadoo, 2015). Yet, this model continues to dominate the anti-trafficking efforts in all regions of the world.

The continued hegemony of the criminal justice approach to human trafficking despite limited evidence supporting its efficacy raises several important questions. First, what are the reasons for the continued global dominance of this model? Second, since the criminal justice approach is usually implemented and enforced at the national level, what can we learn from more carefully studying state level efforts to implement this approach? Third, what are some viable alternatives to this approach that may be more successfully implemented at the state level?

To begin answering these questions, several scholars argue for the need to pursue more in-depth country level studies, rather than the ambitious macro-level studies that tend to dominate

the field of anti-trafficking, if we are to accurately assess the impact of existing approaches (Gozdziak & Bump, 2008; Russell, 2018; Weitzer, 2014). In addition, others indicate the need for more robust studies on criminal justice efforts in destination countries and note a particular lack of knowledge regarding trafficking in East Asia (Cho, 2015a, 2015b; Lee, 2005; Piper, 2005). To address this gap in scholarship, the author turns to a case-study of Taiwan, a country at the regional epicenter of human trafficking, which the United States officially recognized in 2014 as a source of the best practices in the region, largely due to the fact that Taiwan has closely modeled its trafficking response on the criminal justice approach supported by the US (Cheng & Momesso, 2017).

Specifically, the author evaluates Taiwan's efforts to implement the criminal justice model by examining prosecution and sentencing data for 1,342 human trafficking apprehensions and 2,908 criminal prosecutions from 2009 to 2018. In addition, the author relies upon the valuable contributions of several other scholars (Chen, 2015; Fuchs, 2011; Huang, 2017; Lin, 2010; Shin, 2017; Wang, Wang, Huang, & Su, 2012) who collected demographic characteristics of 269 victims of trafficking in Taiwan and conducted interviews with immigration officials, police, and legal professionals involved in national anti-trafficking efforts for similar study purposes from 2010–2015 in order to compare and contrast trends in their data with the national-level data analyzed here. The author finds that low conviction rates, relatively minor punishments, and an overrepresentation of foreign sex trafficking victims indicates that the criminal justice approach may have limited efficacy in addressing other forms of trafficking. The criminal justice approach appears moderately effective in the most visible forms of trafficking, such as sex trafficking of foreigners and minors, but less visible and ultimately more prevalent forms, such as labor trafficking go largely unpunished.

### ***Global Context of the Criminal Justice Approach***

Few global issues have garnered such rapid and impassioned responses from the international community as human trafficking. In the less than two decades since the United Nations codified human trafficking in international law with the Palermo Protocols, 189 countries have already ratified them. Within that same short time-span, 116 countries adopted or amended national laws to address human trafficking in accordance with the protocol. At the time of its adoption, UN delegates, led primarily by the United States, made a deliberate choice to frame human trafficking as a criminal justice issue and situate it under the auspices of the Office on Drugs and Crime (UNODC), effectively institutionalizing trafficking as primarily a law enforcement issue (Kangaspunta, 2015). The Palermo Protocol adopted the “Three P’s” approach to trafficking promoted by the United States, which views prevention, protection, and prosecution as the three pillars of anti-trafficking efforts. A fourth P, partnerships, was also added to this schema in 2009 at the behest of then US Secretary of State, Hillary Clinton (Lagon, 2015).

However, the greatest emphasis has tended to remain on prosecution, with some aspects of victim protection even predicated upon cooperation with criminal proceedings (Haynes, 2004). In fact, a rights framework ensuring victim protection was only incorporated into the protocol after significant pressure from human rights advocates (JHA, 2018). The US has been the most prominent supporter of the criminal justice approach and, beyond ensuring this paradigm was the model for the Palermo Protocol, has also ardently promoted it via the State Department's annual Trafficking in Persons (TIP) Report, which powerfully shapes the global narrative of and approach to trafficking (Taylor & Isgro, 2018). This name and shame report, which ranks countries on four tiers in regard to their human trafficking efforts, has been widely influential in pressuring countries to address trafficking at the national level primarily through law enforcement and explicitly penalizes or rewards countries for adopting aggressive criminal justice oriented anti-trafficking laws (Chuang, 2014). The United States' hegemony in regard to shaping human trafficking approaches has been particularly impactful on countries that rely heavily on the US for trade, protection, or other forms of patronage, such as Taiwan (Cheng & Momesso, 2017).

From the perspective of national governments, there are compelling reasons for framing human trafficking as a criminal justice issue. It is, by most accounts, the third most profitable criminal enterprise in the world after arms trafficking and the illicit drug trade, garnering an estimated \$150 billion in profits each year (ILO, 2014). As a criminal enterprise, human trafficking is frequently claimed to be associated with numerous other illicit industries and transnational crimes, though the veracity of this linkage is frequently debated (Haynes, 2004; Weitzer, 2014). While its broader relationship to organized crime is contested, human trafficking does frequently involve illegal migration, and without legal documentation trafficking victims often work in illegal industries such as prostitution (Frank & Simmons, 2013). Thus, the criminal justice framing allows states to adopt a borders-based approach focusing upon human trafficking as an issue of security and illegal migration (Gómez-Mera, 2017). Finally, the criminal justice framework fits well with the dominant discourse of anti-trafficking efforts, which places the sexual exploitation of women and children at its center and reinforces global power dynamics of Western protectors rescuing third world victims (Kempadoo, 2015). The very language of the Palermo Protocol emphasizes women and children as being the primary targets and moralizing rhetoric over the protection of women's sexuality has driven much of the global attention on anti-trafficking efforts (Chapkis, 2003). In line with this notion, a criminal justice framework institutionalizes these paternalistic tendencies by situating anti-trafficking efforts in the typically masculinized, patriarchal structures of law enforcement and border security (Jones & Kingshott, 2016).

However, despite the widespread emphasis on this means of dissuading human traffickers, there has been little evidence to show that the criminal justice approach is effective (Harkins, 2017; Smith, 2011). Significantly, claims on the efficacy of human trafficking interventions rely upon the ability to accurately assess the prevalence of trafficking over time. Unfortunately, nearly all reported global statistics on trafficking are based on extrapolations from small sets of somewhat questionable prevalence data, and tend toward exaggeration (Scullion, 2015; Weitzer, 2011). Commonly cited statistics at both the national and global levels vary widely, are rarely transparent about their data sources or collection methods, and tend to lack scientific rigor (Fedina & DeForge, 2017). Thus, it is difficult to reliably assess the claim that any human trafficking interventions are effective in reducing overall prevalence. Even with these limitations in mind, it is still notable that few studies demonstrate any significant reductions in human trafficking prevalence over the past two decades and most agree that the rates of trafficking seem to be increasing, or at least staying the same (Scullion, 2015).

In order to understand the apparent failures of the criminal justice approach to sufficiently abate human trafficking, it is important to examine the most prominent theories of what drives trafficking in the first place and why it is such a persistent global issue. First, it is imperative to clearly define what is meant by human trafficking. This analysis will utilize the most commonly accepted definition of trafficking outlined in the Palermo Protocol, which is as follows:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. (UN, 2000)

Exploitation in turn is defined as “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (United Nations (UN) General Assembly, 2000). Human trafficking in this sense includes a broad range of exploitative practices achieved through myriad forms of coercion and deception.

Two important exceptions are voluntary illegal migration through the use of smugglers, and voluntary prostitution whether in one's home country or as a legal or illegal migrant. Though utilization of human smugglers for the purpose of illegal migration greatly increases vulnerabilities to human trafficking, smuggling does not necessarily equate to trafficking (George, Vindhya, & Ray, 2010). The debate on prostitution versus trafficking is more divisive with many radical feminist

theorists arguing that prostitution in any form is tantamount to exploitation (Gerassi, 2015). Indeed, during the Palermo Protocol's adoption this issue proved so controversial that the UN opted not to define sexual exploitation in the convention, leaving it up to national governments to resolve the question of whether voluntary adult prostitution constitutes trafficking (Mitchell et al., 2017). For the purpose of this analysis, however, adult voluntary prostitution is not considered human trafficking. This distinction, however, does not apply in the case of minors engaged in prostitution, as they cannot legally consent to such work (Mitchell et al., 2017).

The extremely broad definition of trafficking in international law is indicative of the fact that it is an incredibly diverse and varied phenomenon. Thus, a wide array of theories have emerged in an effort to identify some of the universal underlying causes. Human trafficking is most usefully understood as the result of numerous push and pull factors that prompt individuals to engage in risky forms of migration. A recent study by Cho (2015b) identified 70 push factors and 63 pull factors commonly cited in the literature on human trafficking. These diverse components can be distilled into three broad categories: institutional factors, structural factors, and inequality.

With regard to inequality, the most frequently cited root causes are gender inequality, social inequality, and economic inequality both within and between nations (Barner, Okech, & Camp, 2014). These broad categories can be further broken down into smaller components of inequality. Drawing on intersectional feminist understandings of power and oppression, gender inequality, for instance, may include social and cultural practices broadly construed, including formal and informal barriers to employment and income, gendered social and family structures, freedom of movement and social mobility, all mediated by race, ethnicity, class, sexual orientation, nationality, and other intertwined aspects of identity (Gerassi, 2015).

Similarly, structural factors, defined here as environmental considerations largely outside the scope of individual control but important in shaping the lived experience of individuals within a country, influence human trafficking vulnerabilities in complex ways. Several studies indicate that myriad structural factors, including armed conflict, natural disasters, violence in the family, environmental degradation, high unemployment, income levels, globalization, and the status of being a transitional economy, are important in driving human trafficking (George et al., 2010; Jonsson, 2019). These structural factors influence overall quality of life in overlapping ways often with a multiplicative effect (Yea, 2019). For instance a country with already low income levels will be impacted more severely by environmental degradation and natural disaster, causing greater social and economic insecurity and desperation, than in a country with a more robust economy. Globalization also plays a significant and complex role, creating a number of simultaneous pressures that increase vulnerabilities to trafficking, such as rapid urbanization spurred by the decline of traditional livelihoods, the increased demand for low-skilled workers in unregulated or under-regulated manufacturing and export processing centers, and growing inequality due to uneven development (George et al., 2010). Importantly, nearly all such structural factors disproportionately impact women (Barner et al., 2014).

Finally, institutional factors, defined here as factors shaped primarily by government policies and national laws, also play an important role in encouraging or mitigating human trafficking. Though similar to structural factors in so far as they can powerfully shape the lived experience of individuals and are largely outside their control, they differ in that they are the direct providence of national and local government and their concomitant agents/institutions. In this regard, several specific factors are linked to human trafficking, including the overall level of government corruption, the rule of law, and the strictness of immigration laws (Cho, 2015b; Jonsson, 2019). Recently, Jonsson (2019) convincingly demonstrated that police corruption is a strong predictor of human trafficking flows out of origin countries, even when controlling for other domestic factors commonly thought to drive trafficking. Similarly, in her analysis of 70 push and 63 pull factors, Cho (2015b) found that the increased rule of law and control of corruption significantly decreased rates of trafficking from origin countries, while higher crime rates increased trafficking rates. Notably, in both studies, the same

institutional factors did not seem to be important components in deterring human trafficking in destination countries (Cho, 2015b; Jonsson, 2019).

These studies indicate that, while institutional factors such as law enforcement and government policy are important in driving trafficking victims out of the country, they do not seem to be significant factors in abating human trafficking in destination countries. These studies, however, are overviews of general global patterns and do not substantively examine the country-level factors that may be responsible for this apparent lack of impact regarding criminal justice efforts to address trafficking in destination countries. A more in-depth study of legal efforts on the ground in a destination country is therefore important, particularly since law enforcement remains the dominant paradigm for addressing human trafficking in both source and destination countries.

### **Why Taiwan?**

Taiwan has a long history of human trafficking and in that time has developed the political support, institutional capacity, and judicial resources necessary to effectively implement a criminal justice approach to human trafficking, thus making it a useful case in which to test the application of this framework. Nearly twenty years before human trafficking was even defined in international law, a genuine effort to address the trafficking of young aboriginal girls into prostitution was already underway in Taiwan (Ho, 2016). By the 1990s, this had become a prominent issue of national concern, as shown by a high-profile demonstration in Taipei to support anti-child trafficking legislation, which included government officials, legislators, celebrities, and more than 10,000 citizens (Ho, 2016). Though Taiwan was a little slow to expand its understanding of human trafficking beyond the sexual exploitation of children, it has, in recent years, made a concerted effort to conform to international definitions of trafficking (Cao, Huang, & Sun, 2014). Shortly after the return of the Kuomintang (KMT) to power in 2008, Taiwan expanded its legal definition of human trafficking with the Human Trafficking Prevention and Control Act (HTPCA) in 2009. This move by President Ma Ying-jeou was at least in part due to the US government's insistence that Taiwan update its human trafficking laws as well as some internal political pressure to improve the treatment of migrants, the momentum for which had begun under the Democratic Progressive Party's (DPP) rule from 2000–2008 (Cheng & Momesso, 2017). The passage of the HTPCA at least assuaged the US State Department, which upgraded Taiwan to a Tier One ranking in 2010, which it has retained each year since (US Department of State, 2018). Since the DPP retook control of the government under President Tsai Ing-wen, evidence thus far indicates that her administration intends to continue the DPP's previous agenda on human rights, including trafficking prevention efforts (Cheng & Momesso, 2017).

In addition to these demonstrations of political support, Taiwan has built the institutional and legal capacity to successfully address human trafficking as a criminal justice issue. The National Police Agency began implementing policies aimed at identifying and prosecuting human traffickers as early as 1995, and in 2007 Taiwan established the National Immigration Agency (NIA) to assist with efforts to address international trafficking (Cao et al., 2014). Moreover, since the passage of the HTPCA in 2009, Taiwan has prosecuted roughly 100 cases of human trafficking annually, with well over 100 convictions overall, indicating that Taiwan also has the judicial will and capacity to try human traffickers under national law (US Department of State, 2018). In 2011, the national government began providing regular trainings for law enforcement personnel, labor inspectors, prosecutors, and judges on anti-trafficking laws and victim identification (Chen, 2014). These efforts have resulted in Taiwan's recognition as a top performing country in regard to anti-trafficking initiatives not only by the US Government, but also by the independently operated 3P Anti-trafficking Policy Index, which, since 2011, began ranking Taiwan's prosecution efforts as a 5, the highest score in this category (Cheng & Momesso, 2017; Cho, 2015a).

Finally, Taiwan is a useful case-study because there is a notable demand for human trafficking, and cases of trafficking have been reported in nearly all major industries including manufacturing, caregiving, domestic work, farming, construction, fishing, and commercial sex (Chen, 2014; Yea, 2019). Over the past several decades, Taiwan has undergone economic and demographic shifts that have increased the



demand for migrant workers both legal and illegal (Wang, 2011). Though the overall prevalence of human trafficking in Taiwan remains unknown, by the end of 2015, Taiwan's migrant worker population was more than half a million (Huang, 2017). A combination of relatively restrictive migration policies, and strict rules for changing employers once in Taiwan has created a notable demand for illegal workers (Cao et al., 2014). At least 20,000 undocumented migrants were thought to be living in Taiwan in 2015, though given the difficulty in tracking illegal migration this number could be substantially higher (Huang, 2017). In addition to undocumented workers entering Taiwan illegally, at least 23,000 documented migrant workers once in Taiwan fled from their designated workplaces in 2015, potentially becoming illicit workers elsewhere in the country (Huang, 2017). Given this demand and diversity of human trafficking, Taiwan provides a representative case-study as a trafficking destination in Asia.

Considering these factors, an analysis of Taiwan's success in addressing human trafficking through traditional criminal justice interventions will reasonably shed light on the limitations of this approach more generally. Like many other countries in the Asian region, Taiwan's human trafficking protocols are heavily influenced by the US and the UN. Thus, Taiwan's national laws closely resemble those advocated by the UN and the US (Chen, 2014; Cheng & Momesso, 2017). The legal framework established by the HTPCA is what JHA (2018) refers to as a quasi-curative model, which though heavily emphasizing prosecution and criminalization also provides fairly substantial victim protection measures. In this sense, Taiwan is a model of what the UN and the US consider "best practices," and a useful case-study in terms of analyzing the efficacy of these widely adopted guiding principles for anti-trafficking efforts worldwide.

### **Method of Analysis**

In order to evaluate the effectiveness of this criminal justice approach and its possible limitations, the present analysis responds to the calls of Weitzer (2011, 2014) and others for more micro-level studies of trafficking by conducting a case-study of the criminal justice approach to trafficking in Taiwan (Gozdziak & Bump, 2008). Additionally, it aims to address the relative knowledge gap in terms of studies of human trafficking destination countries (Piper, 2005; Russell, 2018), to answer calls for more studies on trafficking in East Asian countries in general (Lee, 2005), and in Taiwan, specifically (Chen, 2014). To evaluate the efficacy of Taiwan's criminal justice approach in its current form and assess some of the national level barriers to its successful implementation, the author compiles several data sets on apprehension and prosecution data released by Taiwan's NIA. The author then disaggregated the data to the individual case level assigning a random case id to each, before running a series of descriptive analyses to gain a better sense of overall trends in apprehensions and conviction rates broken down by apprehending agencies, type of trafficking, and case outcomes.

In order to ensure comparability between cases and conditions, my analysis begins with the passage of the HTPCA in 2009 and takes into account all data released by the NIA up to the writing of this paper. In total, the NIA published data on 1,342 human trafficking apprehensions between 2009 and 2018, which resulted in 2,908 criminal prosecutions of human traffickers in the same time period (NIA 2018). Since the NIA was only formed in 2007, this represents nearly all of the data collected and released by this organization. In some cases, not all information released by the NIA was complete, therefore the most comprehensive analyses of disaggregated data were limited to 1,065 apprehensions occurring from 2009 to 2016 and 1,214 prosecutions occurring from 2013 to 2018; however, analysis of aggregated data was still possible for all available cases in the 2009–2018 period. The author then compared this descriptive analysis of apprehension and prosecution trends with the demographics of 269 human trafficking victims in Taiwan as reported by Fuchs (2011) and Huang (2017), as well as the results of interviews of immigration officials, police, and legal professionals involved in anti-trafficking efforts in Taiwan conducted by several scholars from 2010–2017 (Chen, 2015; Lin, 2010; Shin, 2017; Wang et al., 2012). While supplementing our data analyses with the work of other scholars may raise concerns about the applicability of their work to this study, it is

important to note that these works were specifically selected due to their substantial overlap with our own study objectives, namely to identify gaps and shortcomings with Taiwan's legal framework for addressing human trafficking. Thus, this study is indebted to the work of these other scholars and uses their valuable findings only as a means of comparing, contrasting, and, where appropriate, supplementing, our own national-level findings. In this way, it is possible to gain a fairly comprehensive picture of where criminal justice efforts to address trafficking appear to be successful, and where there appear to be notable disconnects between enforcement and the realities of trafficking in Taiwan.

### ***Evidence of Overemphasis on Sex Trafficking***

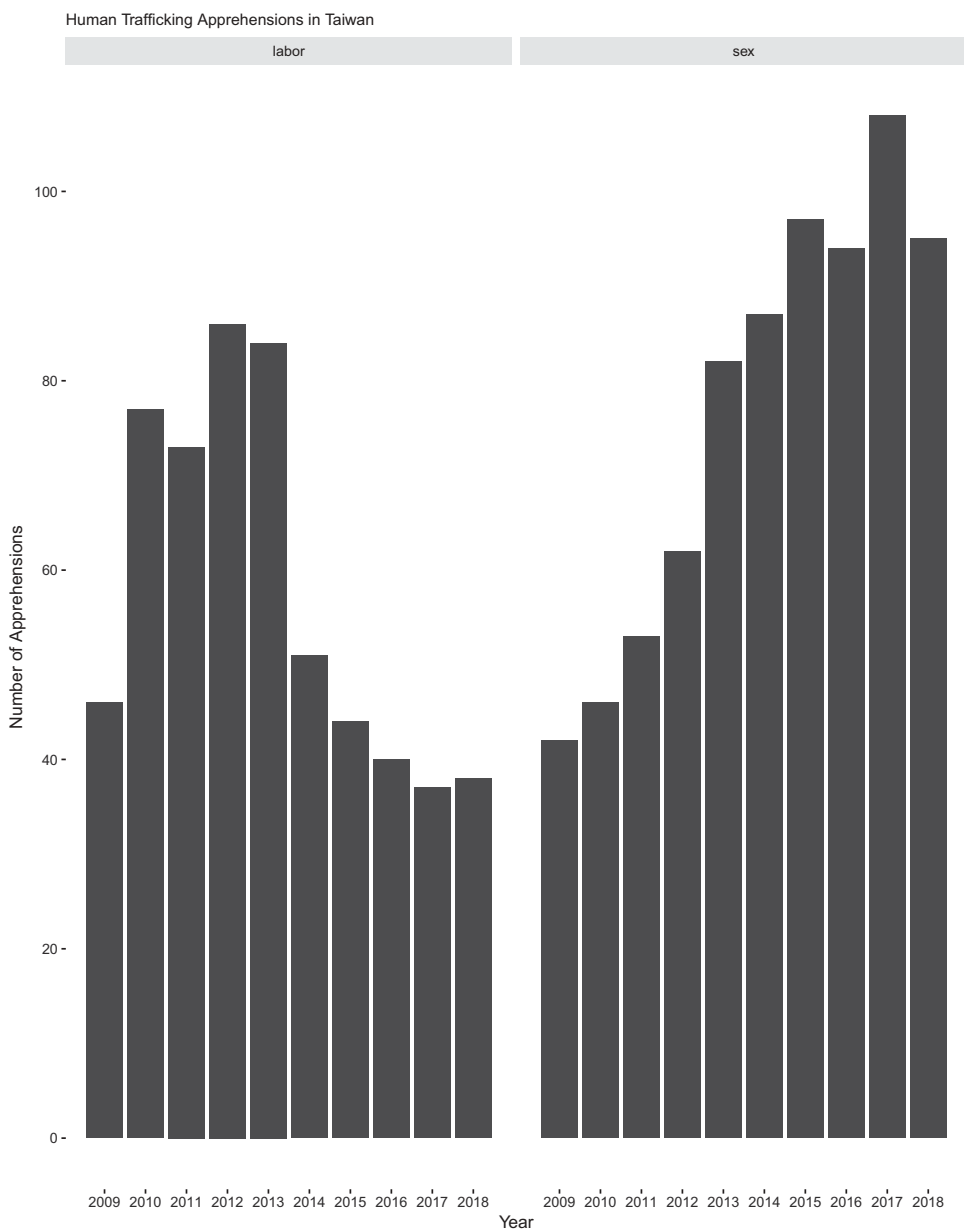
Though robust data on human trafficking victims is notoriously hard to collect (Yusran, 2018), several recent studies in Taiwan provide a reasonably good understanding of the nature of human trafficking in this context. By most accounts, labor trafficking makes up at least 50% of human trafficking cases in Taiwan (Fuchs, 2011; Huang, 2017; Shin, 2017). In two studies accounting for 269 identified victims of trafficking in Taiwan between 2009 and 2012, only 41% were trafficked for purposes of sexual exploitation or prostitution (Fuchs, 2011; Huang, 2017). This is consistent with reports from the Taiwanese government and other scholars that manufacturing, commercial fishing, caregiving, and domestic work make up the largest portion of trafficking in Taiwan (Chen, 2014; US Department of State, 2018).

Given the high rates of labor trafficking in Taiwan, we would expect to see a roughly equal split of apprehensions across sex and labor trafficking if the criminal justice approach is an effective tool for identifying human trafficking. However, this is not the case. While apprehension rates of suspected labor trafficking cases outpaced those of sex trafficking cases from 2009 to 2013, since 2014 that trend has dramatically reversed as shown in Figure 1. Despite the best evidence suggesting that labor trafficking is equally if not more prevalent than sex trafficking in Taiwan, overall apprehensions were 25 percent lower for labor trafficking over the past nine years as compared to sex trafficking.

There are many reasons why the identification of labor trafficking might be more difficult, particularly when labor trafficking in Taiwan frequently occurs in sectors that are difficult for the state to monitor effectively, such as in private homes as caregivers and domestic workers or on commercial fishing vessels at sea (Yea, 2019). Though Taiwan has invested heavily in training local law enforcement and other first responders on the identification of human trafficking victims, studies in the US context have shown that law enforcement personnel are frequently unable to identify victims of trafficking even after receiving training on the subject (Farrell & Pfeffer, 2014; Mapp, Hornung, D'Almeida, & Juhnke, 2016). Indeed, in a national survey of Taiwanese law enforcement, prosecutors, and lawyers, one of the most commonly cited challenges to addressing human trafficking was the identification of victims (Wang et al., 2012).

Given the difficulty of identifying human trafficking victims, law enforcement personnel often develop and disseminate formal and informal heuristics to help with the process of identification. For example, Chen (2015) interviewed 13 NIA officers who were responsible for determining whether or not the marriage visas of Chinese migrants coming to Taiwan were legitimate or if they might be either voluntary sex workers or victims of trafficking. In her study, she found that NIA agents lacked uniform training in administering visa interviews and household visits, and had thus developed and shared common techniques for identifying fraudulent marriages, many of which were highly subjective such as checking the couples bedroom and closets to look for obvious evidence of cohabitation and sexual intimacy (Chen, 2015). Similarly, among the legal professionals interviewed by Lin (2010), all agreed that women who had been raped or held captive as part of their sexual exploitation and children under 18 who were forced to work or were involved in sex work should be considered victims of trafficking, while there was much more disagreement or confusion about whether or not other types of circumstances, such as unpaid, unsafe, or exploitative working conditions, or more subtly coerced forms of sexual exploitation constituted human trafficking.





**Figure 1.** Human trafficking apprehension inTaiwan.

These observations conform with many studies in the US as well, which show that among law enforcement there is often an overemphasis on investigating and identifying cases of sex trafficking, due to a frequent conflation of human trafficking solely with forced prostitution or the sexual exploitation of minors (Farrell & Pfeffer, 2014; Jones & Kingshott, 2016). Jones and Kingshott (2016) note that the male-dominated profession of law enforcement tends to produce an institutional framework privileging the male perspective, which may in turn lead to paternalistic attitudes toward protecting women in prostitution. This may be particularly true in the case of Taiwan, where more than 90% of police officers are men (Cao et al., 2014). In addition, Taiwan’s history of public attention on the issue of sex trafficking may make law enforcement and other officials even more prone to focusing on sex trafficking.

Indeed, Ho (2016) argues that Taiwan's historic emphasis on the sexual exploitation of women and children as a social and moral project has tended to obfuscate other forms of trafficking. Similarly, Chen (2017) notes that police officers are often instructed to crackdown on the more visible forms of the "body-selling" sector in Taiwan, such as brothels and call-girl services, while the more discrete forms of prostitution disguised as other forms of upper class entertainment catering to elite clientele are often left untouched. This further indicates that the policing of sex workers in Taiwan is, in many ways, a moral project focused on eliminating the most obvious and egregious forms of sexual exploitation. This in turn helps to explain the disproportionate levels of sex trafficking apprehensions and the underrepresentation of labor trafficking cases. Though these facts still cast significant doubt on the ability of law enforcement to detect and identify many types of labor exploitation and therefore the overall efficacy of a criminal justice-based approach in regard to less egregious or less visible forms of trafficking.

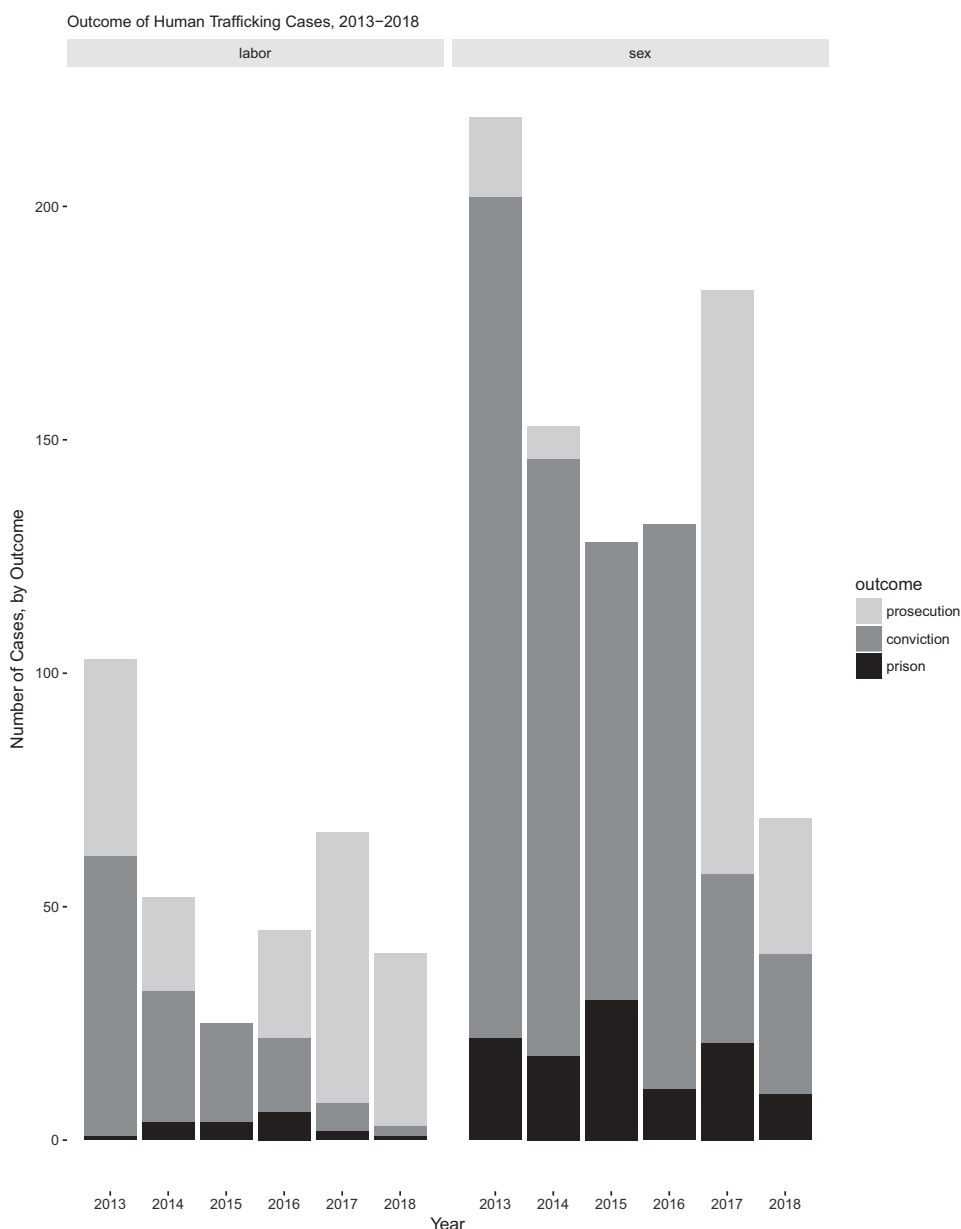
### ***Evidence of Low Conviction Rates***

Still, the apprehension of suspected traffickers is only the first step. The arguably more important factor when assessing the efficacy of anti-trafficking laws is the prosecution and conviction rate of human traffickers. As JHA (2018) notes, prosecution and conviction rates are a commonly accepted tool for evaluating the efficacy of criminal laws. While it is important to acknowledge that laws are dynamic and their implementation relies on interpretation by numerous actors from police officers to prosecutors and judges, truly effective laws must limit the amount of subjectivity they introduce and be relatively uniform in their enforcement (JHA, 2018). Therefore, if prosecution and conviction rates under a given criminal law are low, but there is good evidence that the crime occurs with moderate to high prevalence, as with human trafficking in Taiwan, this strongly suggests either limited capacity in the criminal justice system, state corruption, or fundamental problems with the law itself (Kangaspunta, 2015). As Taiwan has demonstrated its capacity and political will to punish human traffickers under the HTPCA, in this case low conviction rates most strongly indicates some fundamental shortcomings of the legal code itself.

Indeed, the data on prosecution and conviction rates in Taiwan, as well as interviews with legal professionals involved in anti-trafficking efforts, provide credible evidence in support of the claim that the criminal laws against trafficking are notoriously difficult to implement effectively. At first glance, conviction rates of traffickers as determined by guilty sentences passed down by the court appear to be reasonably high in Taiwan. Of the 2,908 individuals prosecuted for human trafficking between 2009 and 2018, a total of 1,942 individuals were found guilty of criminal actions (NIA, 2018). This represents a conviction rate of 66.8%. However, the data presented by the NIA is misleading in this regard, as they do not specify under what criminal laws the defendants were found guilty. According to the penalties outlined under the HTPCA in Articles 31–34, all human trafficking offenses carry the minimum penalty of prison sentences ranging from a minimum of six months to over seven years (HTPCA, 2009). Thus, any guilty verdicts under human trafficking laws would result in prison sentences, except in cases where traffickers voluntarily confess and provide information leading to the arrest of other principal offenders as outlined in Article 37 (HTPCA, 2009).

With this in mind, prison sentences should roughly match conviction rates if individuals prosecuted for human trafficking cases were indeed found guilty under human trafficking laws specifically. However, as Figure 2 demonstrates, this is clearly not the case. Of the 2,908 individuals prosecuted for human trafficking from 2009 to 2018, only 282 actually received any time in prison (National Immigration Agency, 2018), indicating that less than 10% of those prosecuted for trafficking were found guilty under human trafficking laws specifically. This is consistent with the findings of Huang (2017) who found that out of 553 human trafficking cases prosecuted from 2009 to 2012, only 48, or 8.7%, were actually convicted under human trafficking laws.

The low conviction rate of 9.7% using human trafficking laws suggests that these laws are difficult to make convictions under. Several other scholars have indeed found support for this theory via interviews of police officers, prosecutors, and other legal professionals working on anti-trafficking



**Figure 2.** Outcome of human trafficking cases, 2013–2018.

issues in Taiwan (Chen, 2015; Lin, 2010; Shin, 2017; Wang et al., 2012). For instance, Lin (2010) found that many police officials expressed frustration about what they considered to be unclear legal definitions of trafficking, citing vague or subjective clauses such as what constitutes “unreasonable pay” or how to determine whether acts were coerced. Similarly, some police officials disagreed about whether or not withholding of legal documents (such as passports or work visas) alone was enough to constitute trafficking (Lin, 2010).

Additionally, in focus groups with prosecutors, lawyers, and police, Wang et al. (2012) report that many legal professionals found certain clauses of the HTPCA extremely difficult to prove in a court of law. In particular, they identified several portions of the law that make it difficult to prove human

trafficking, including the stipulation that victims were kept “in a state of vulnerability that results in his or her inability to seek help from others” and that the victims were being trafficked “primarily for the purpose of profit making” (Wang et al., 2012). The former clause, they argued, made it difficult to prove that a victim was actually experiencing trafficking, as they had to establish vulnerability and show there were limitations on the victim’s ability to move freely or seek help (Wang et al., 2012). While in the case of the latter, it meant they had to show that the motive of exploitation was to turn a profit in order to prove guilt under trafficking laws (Wang et al., 2012).

It is important to remember that exploitation happens on a spectrum and often times the point at which an exploitative working situation crosses into the legal definition of trafficking can be unclear. For instance, Shin (2017) found that in Taiwan, migrant domestic workers or caregivers are often asked by employers to work longer hours or more days than their contracts stipulate, but it is often unclear when or if such situations become trafficking, particularly since those employers are not exploiting workers for profit in such cases. Significantly, there was no such confusion or ambiguity when it comes to cases of trafficking children or women who were subjected to more violent forms of sexual exploitation, as the legal definitions around such types of exploitation and the types of evidence needed to prove such exploitation are much more clear cut (Lin, 2010; Wang et al., 2012). This trend is also reflected in the data, as Figure 2 shows that the proportion of conviction rates and prison sentences are significantly higher for sex trafficking cases than for labor trafficking. The disproportionate levels of prosecution and conviction for sex trafficking cases combined with overall low conviction rates under human trafficking laws further indicate that the HTPCA may not be an effective enforcement mechanism.

### ***Evidence of Minimal Sentencing***

In addition to low conviction rates, the NIA data analyzed here indicates that punishments for human trafficking tended to be minimal and are likely insufficient to effectively dissuade human traffickers. Of the small portion of those actually convicted under human trafficking laws, only 23.7% received more than a year in prison, and only 2.1% in total received sentences greater than 5 years. In another study of trafficking cases tried by the Judicial Yuan, Huang (2017) similarly found that the penalties for those convicted under human trafficking laws were typically minimal, with only 17.8% of those convicted receiving one or more years in prison (Huang, 2017). This means that individuals prosecuted as suspected human traffickers have less than a 2.5% chance of serving more than one year in prison and only a 0.2% chance of serving more than five years in prison on average. While the likelihood of prosecution depends heavily on the circumstances, there is evidence that average rates of conviction and severity of sentencing factor into the rationale of criminals, such as human traffickers, to continue their illicit activities or not on account of the relative risks versus the potential rewards (Frank & Simmons, 2013).

Haynes (2004) argues that in order for prosecution-oriented models to effectively deter human trafficking, they must demonstrably increase the likelihood of prosecuting traffickers. Similarly, Frank and Simmons (2013) argue that traffickers are rational, profit-driven criminals, and thus, in order to be deterred, the potential costs of punishment must outweigh the potential opportunity of financial gain. Based on these metrics, it seems exceedingly unlikely that Taiwan’s approach to human trafficking provides sufficient deterrence. This is particularly true when policing of a crime is high, but actual risks of conviction and punishment are low. For instance, Akee, Basu, Bedi, and Chau (2014) demonstrate via economic modeling that increased law enforcement can actually increase human trafficking, as such pressure on the commercial sex market can increase the amount buyers are willing to pay and thus increase the profits of traffickers. Combined, these studies suggest high levels of enforcement with low levels of conviction might actually provide the strongest incentives for human traffickers. Based on the NIA data analyzed here, these are exactly the conditions in Taiwan, suggesting that low conviction rates and minimal sentences under the current criminal justice approach may actually contribute to higher levels of human trafficking long-term rather than effectively dissuading it.

## Conclusion

The shortcomings in Taiwan's prosecution-oriented model for addressing human trafficking are not unique to Taiwan. Though the above analysis indicates that the language of Taiwan's anti-trafficking laws likely need some revision to facilitate higher conviction rates, and that enforcement mechanisms around labor trafficking or less visible forms of sexual exploitation need to be improved, many countries with similar anti-trafficking laws suffer from persistently low conviction rates (Jones & Winterdyk, 2018b; Smith, 2011). Except in the most egregious instances, trafficking is often difficult to prove in a court of law based on current legal definitions, particularly when coercion and deception are the primary means of exerting control over victims (Frank & Simmons, 2013). Similarly, law enforcement in many countries express difficulty accurately identifying victims of trafficking, which leads to a disproportionate emphasis on sex trafficking since prostitution is a more visible crime (Jones & Kingshott, 2016; Mapp et al., 2016). Related to this over emphasis on prostitution and sex trafficking, there is a tendency to criminalize victims of sex trafficking as well, and several studies note the lack of effective victim protection in anti-trafficking laws more broadly, emphasizing the need for reform efforts in this regard across countries (Hales, 2018; Jones & Winterdyk, 2018a).

Like Taiwan, most countries in the Asia-Pacific region have adopted similar criminal justice frameworks largely modeled on the Palermo Protocol to address human trafficking (Yusran, 2018). To its credit, Taiwan has made notable efforts to move beyond just prosecution to incorporate more comprehensive measures for victim protection. Thus, the deficiencies of the HTPCA pointed out above are not intended as an outright indictment of Taiwan's efforts to address human trafficking. In many ways, the Taiwanese government is not solely responsible for these failings. The Ma regime introduced and implemented the HTPCA under severe pressure from the US and in an explicit effort to improve its ranking in the annual TIP report (Chen, 2014; Cheng & Momesso, 2017). As a country heavily reliant on the United States for trade and security, such pressure from the US government gave Taiwan few options but to update its anti-trafficking protocols in accordance with the prosecution focused model aggressively promoted and disseminated by the US (Cheng & Momesso, 2017). Thus, the shortcomings of Taiwan's approach to human trafficking is arguably evidence that this model as a whole may need to be re-examined. Though caution should be exercised when extrapolating from a single case-study, the apparent shortcomings of this model in Taiwan, a country well-positioned to implement this approach effectively, at least casts doubt upon the criminal justice model promoted so heavily by the US.

If evidence suggests that the criminal justice framework in Taiwan may be ineffective, what then are viable alternatives to this approach? One frequently advocated alternative is immigration reform. Some scholars view the field of human trafficking as being at a crossroads between continuing down the path of criminal justice efforts or shifting to a migration centered approach to trafficking (Chuang, 2014). There are indeed compelling reasons to consider this approach. Under the current criminal justice model, human trafficking is often misconstrued as illegal migration leading to the criminalization of labor trafficking victims as undocumented migrants (Bernat & Zhilina, 2010). In addition, overly restrictive immigration laws may actually lead to an increased risk of trafficking, as more individuals pursue illegal forms of migration with the help of smugglers or traffickers.

Thus, advocates for a migration-centered approach to trafficking argue for the need to reform immigration laws in order to reduce vulnerabilities to trafficking in the course of migration. There are certainly areas of migration reform that might lessen vulnerabilities to trafficking in Taiwan. Like many destination countries, the majority of trafficking victims enter Taiwan legally, either with valid work permits or student/tourist visas (Chen, 2014; Fuchs, 2011; Lin, 2010; Yea, 2019). In most cases, legal entry is facilitated through the use of private employment agencies or brokers, often paying exorbitant fees or becoming indebted to those facilitating their migration process (Chen, 2014; Yea, 2019). Though this is a legal path of migration, it is severely under-regulated and greatly increases vulnerabilities to trafficking (Chuang, 2014). In such cases, the brokers may control passports, visas, and other documents, or use debt accrued in the immigration process as a means of coercing individuals to work in conditions substantially

different from promised or to force them into prostitution or other illicit forms of work (Chen, 2014; Yea, 2019). Reform in this area may indeed prove useful in regulating third-party facilitation of immigration and better documenting and protecting migrant laborers.

Similarly, Cheng and Momesso (2017) point out that the strict control of migrants in Taiwan has paradoxically led to increased risks of human trafficking even for those entering Taiwan legally. The strictness and inflexibility of Taiwan's migration system authorizes tight control over the lives of migrant workers with few methods of redress and limited protection of rights if they find themselves in exploitative or unsafe working conditions. Even in cases where migrants enter the country on legal working visas, the status of their work permits are tied to a single employer (Wang, 2011). Thus, migrant workers have limited agency over their working relationships and employers exercise a large amount of control over their employees' ability to remain in the country. Even in cases of abuse or exploitation, many migrants feel they are unable to report such circumstances due to the legitimate fear that this might result in the termination of their working visas and deportation back to their countries of origin (Chen, 2014; Huang, 2017). This inability to seek redress without risking deportation encourages many migrant workers to simply flee their legal employers in cases of abuse or exploitation, at which point they are deemed to have violated their visas. Once in the legal category of "runaway workers," such migrants face even greater insecurity as they risk censure and deportation for violating their visas and thus become even more vulnerable to traffickers (Cheng & Momesso, 2017). From 2009 to 2015 alone, government agencies found 89,352 missing foreign workers who had violated their visas, and many more remained working illegally at high risk of being trafficked due to the lack of legal recourses available to them (NIA, 2017).

It is thus likely that immigration reform could address at least some of the vulnerabilities to trafficking of foreign nationals by increasing human rights protections of migrants, monitoring migrant labor contracts and working conditions more closely, and providing mechanisms for complaint or redress with options for changing employment rather than facing immediate deportation. As Gómez-Mera (2017) points out, despite the proliferation of NGOs and other private entities engaged in anti-trafficking, states are still the primary actors when it comes to adopting and implementing national-level interventions. As such, any viable state-based anti-trafficking efforts must conform to the priorities and interests of the state. Given that migration often falls under the auspices of national security, Taiwan and other states have a vested interest in minimizing illegal border crossing. Thus, reforms that allow more flexibility and protections for migrant workers might actually reduce illicit forms of migration. On one hand, this will require a reexamination of neoliberal economic development policies that tend to limit migrant workers' rights (Chuang, 2014). On the other hand, if Taiwan and other nations are serious about decreasing rates of human trafficking and protecting those most vulnerable to trafficking, comprehensive immigration reform focusing on extending and protecting the rights of migrants would likely go a long way toward reducing human trafficking.

A serious consideration of shifting the dominant framework to address human trafficking is particularly timely given the recent passage of UNODC Resolution 9/1, which mandates review of the implementation of UN Convention against Transnational Organized Crime and its associated protocols, including the Palermo Protocol (UNODC, 2018). This review mechanism provides a framework and timeline for assessing the impact and efficacy of the Palermo Protocols and in the process will open a considerable dialogue regarding the criminal justice approach to human trafficking. It is therefore an exceptionally apt time to consider a move away from criminal justice initiatives toward an immigration-based model. It is also important to note that one need not necessarily displace the other completely. Comprehensive immigration reforms could easily occur alongside prosecution efforts, and considering such a shift at this time does not necessarily mean throwing out the Palermo Protocols entirely. But, as the review process unfolds, it is worth considering alternatives to the prosecution-based model, particularly if it is not serving victims of trafficking.

As demonstrated in the case of Taiwan, numerous barriers exist to addressing human trafficking via the criminal justice approach alone. Bolstering existing criminal justice efforts with immigration



reform that prioritizes the protection and security of migrant workers would help address many of the gaps and shortcomings in the current system. While some adjustments are still necessary to the legal framework of the HTPCA, and further research and discourse is needed to critically examine the merits of the criminal justice approach altogether, the recent passage of the mechanism for review provides some hope for sparking comprehensive reform. As this review unfolds, Taiwan and similarly situated states would be wise to consider careful reform to their immigration laws to prioritize the protections and labor rights of migrant workers. Such a shift is imperative if the enthusiastic global response to human trafficking truly seeks to end this egregious form of exploitation.

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