



OFFICE OF INSPECTOR GENERAL

For the Millennium Challenge Corporation

SURVEY OF THE MILLENNIUM CHALLENGE CORPORATION'S POLICIES AND PROCEDURES TO ADDRESS U.S. GOVERNMENT ANTI-TRAFFICKING POLICY

AUDIT REPORT NO. M-000-10-001-S
March 17, 2010

WASHINGTON, DC



*Office of Inspector General
for the Millennium Challenge Corporation*

March 17, 2010

The Honorable Daniel W. Yohannes
Chief Executive Officer
Millennium Challenge Corporation
875 15th Street, NW
Washington, DC 20005

Dear Mr. Yohannes:

This letter transmits the Office of the Inspector General's final report on the Survey of the Millennium Challenge Corporation's Policies and Procedures to Address U.S. Government Anti-trafficking Policy. In finalizing the report we considered your written comments to our draft report and included those comments in their entirety in Appendix II of this report.

The report contained two recommendations for corrective action. We consider management decisions have been reached on both recommendations.

I appreciate the cooperation and courtesy extended to my staff during this audit.

Sincerely,

/s/

Alvin A. Brown
Assistant Inspector General
Millennium Challenge Corporation

cc:

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BACKGROUND

Human trafficking is the fastest-growing criminal industry in the world. The Department of State's Trafficking in Persons (TIP) Report for June 2009 states that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time. According to the Trafficking Victims Protection Act (TVPA) of 2000, Public Law 106-386, the U.S. and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern.

The TVPA of 2000, as amended, defines severe forms of trafficking in persons as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The TVPA of 2000, as amended, establishes the requirement for the Department of State to annually report to Congress the status of severe forms of trafficking in persons by country. This act authorizes the President to withhold aid from countries that fail to meet minimum standards or do not make significant efforts to bring themselves into compliance.

Each year, the Department of State evaluates countries' anti-trafficking efforts and publishes the findings in its TIP Report, which is issued in June. For each country, the TIP Report provides a summary rating that represents perceived actions and commitments the country will take to address trafficking in persons. The ratings, known as Tiers, range from 1 to 3. For purposes of this survey, two ratings are noteworthy:

Tier 2 Watch List rating – A Tier 2 Watch List rating means that the government does not fully comply with the minimum standards but is making significant efforts to do so and that certain other conditions exist.¹

Tier 3 rating – A Tier 3 rating signifies that the government does not fully comply with certain minimum standards and is not making significant efforts to do so.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, was signed into law in December 2008. The TVPRA states that a country which remains on the Special Watch list for 2 consecutive years shall be included on the list of countries to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance (a Tier 3 designation). Furthermore, the Victims of Trafficking and Violence Protection Act of 2000, as amended, states that it is the policy of the United States not to provide non-humanitarian, nontrade-related foreign assistance to such countries.

¹ This survey report also uses the term "Special Watch" to refer to this category. The term "Special Watch" is used when discussing legislation. We use the term "Tier 2 Watch" list because it is used in the State Department's Trafficking in Persons Report. However, both terms are interchangeable.

The President makes a determination no later than 90 days following the release of the TIP Report (i.e., sometime during September) on how the sanctions should be applied. Any sanction would apply in the “subsequent fiscal year.”

Section 232 of the TVPRA requires the offices of Inspectors General at the Department of State, Department of Defense, and the U.S. Agency for International Development to perform work related to identifying contracts with issues regarding human trafficking. The statute directs those Inspectors General to investigate a sample of contracts and submit a report to Congress, by January 15, 2010, on the findings. The TVPRA also amended and provided appropriations for activities instituted under the TVPA of 2000.

The Assistant Inspector General for MCC (AIG/MCC) sent a letter dated November 19, 2009, to MCC’s acting chief executive officer that provided observations made during survey fieldwork. The letter, subsequently provided to the MCC Audit Committee, included two issues that merited attention. One of the issues dealt with a possible situation with MCC compact countries that fail to meet standards defined by the Department of State’s annual TIP Report and consequently receive a Tier 3 rating. The other issue dealt with a possible scenario where the State Department’s anti-trafficking ratings change for a country under compact consideration or an instance where there may already be signed agreement for a MCC program.

SURVEY OBJECTIVE

AIG/MCC conducted the survey to provide information for the USAID/IG’s report to Congress, required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. On January 15, 2010, a letter was sent from the OIG to the Chairman, Committee on Foreign Affairs, U.S. House of Representatives, regarding the results of the survey.

Specifically, the survey addressed the following objective:

- Does the Millennium Challenge Corporation have policies and procedures in place to address U.S. policy against trafficking?

SURVEY FINDINGS

We found that the Millennium Challenge Corporation (MCC) had instituted a process to address, identify, and guard against forced labor, child labor, and other forms of trafficking in persons. We also noted that MCC contracts included clauses that would allow the contracts to be terminated if trafficking in persons occurred. However, OIG believes that MCC should establish written policies and procedures to strengthen the area of trafficking in persons. Our first recommendation relates to the issue of developing a policy for countries being rated as Tier 2 Watch, which we feel is especially timely because of the uncertainty, time, and resources involved in moving programs forward for those countries rated Tier 2 Watch in 2009. Recent MCC guidance contained clauses that would allow MCC to terminate its compacts if trafficking in persons occurred. Our second recommendation relates to MCC's policy on addressing human trafficking should consider the implications for developing programs where a country receives a Special Watch list designation.

Although we were told that MCC was not subject to the U.S. anti-trafficking laws, MCC chose to comply with the spirit of the laws. The survey also identified areas where MCC could improve its internal controls when developing policies and procedures related to country projects where trafficking could be a risk. These issues are discussed below.

MCC TAKES STEPS TO COMPLY WITH U.S. GOVERNMENT POLICY ON TRAFFICKING IN PERSONS

As part of this assessment of foreign aid and human trafficking, in general, the survey reviewed the U.S. Government laws on the subject. See the Background section for discussion of the laws. The survey also reviewed the Department of State's Trafficking in Persons (TIP) Report, and we also held discussions with MCC's Office of General Counsel. An official in that office stated that MCC is not subject to U.S. anti-trafficking laws. However, MCC guidance contained clauses that would allow MCC to terminate its compacts if trafficking in persons occurred.

MCC's Summary of Selected Legal Provisions in a Compact in its *Fiscal Year 2007 Guidance for Eligible Countries, Chapter 39* (undated), contains a section titled *Suspension or Termination of the Compact*. Paragraph (i) states that MCC may suspend or terminate the compact or MCC funding if it determines that "any MCC funding or its proceeds is applied to support individuals or organizations associated with sex trafficking or prostitution."

MCC's *Standard Bidding Documents: Procurement of Large Works* (undated) provides guidance for use by the Millennium Challenge Account² entities receiving funding from MCC for projects involving large works. Large works are defined as construction contracts having a value of U.S. \$10 million or greater. The guidance requires that large works contracts contain the following subclauses related to trafficking:

- Subclause G3, *Compliance with Terrorist Financing Statutes and Other Restrictions*, of the General Provisions of Compact, states that "other restrictions on the Contractor shall apply with respect to drug trafficking, terrorism, sex trafficking, [and] prostitution"

² Millennium Challenge Accounts (MCAs) are the entities created by the compact recipient government to implement the compact program. The MCAs are responsible for almost all overseas contracting actions.

- Subclause 6.13, *Prohibition of Child Labor*, of the Conditions of Particular Application states that “the contractor shall not employ any child to perform work that is economically exploitative, or is likely to be hazardous to, or interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.”

The survey found that MCC provides clauses that address trafficking in compacts and contract guidance. Four compacts (Cape Verde, Georgia, Honduras, and Nicaragua) valued at \$795.3 million, with large works infrastructure projects, specifically road projects, were selected for review because (1) they contained large labor forces which increased the risk of child or forced labor trafficking and (2) these activities were further along than activities for other compacts. A fifth compact (Ghana, value \$547 million) was listed as Tier 2 Watch in the 2009 TIP Report. A review of the five compacts found that the termination and suspension clause (section 5.4) states “MCC may suspend or terminate this Compact or MCC Funding ... if MCC determines in its sole discretion that: Any MCC Funding or Program Assets are applied (directly or indirectly) to the provision of resources and support to individuals and organizations associated with terrorism, sex trafficking or prostitution.”

A review of nine road contracts, total value \$221.5 million, for the five compact countries found that the contracts contained clauses related to trafficking, for example:

- Cape Verde’s contract (value \$1.3 million) contained a *Contractor Representations and Covenant* clause, which stated that the contractor affirms and agrees that it has never engaged or participated, and will not engage or participate in, drug trafficking, terrorism, sex trafficking, and prostitution.
- Contracts for Georgia (value \$98 million), Ghana (value \$42 million), Honduras (value \$39.3 million), and Nicaragua (value \$40.9 million) contained subclause G3, *Compliance with Terrorist Financing Statutes and Other Restrictions*, of the “General Provisions of Compact” section. Subclause G3 states that “other restrictions on the Contractor shall apply with respect to drug trafficking, terrorism, sex trafficking, [and] prostitution”
- Ghana’s and Nicaragua’s road contracts contained sub-clause 6.13, *Prohibition of Harmful Child Labor*, of the “Conditions of Particular Application” section. Subclause 6.13 states that “the contractor shall not employ any child to perform work that is economically exploitative, or is likely to be hazardous to, or interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.”

The survey found that MCC also addresses trafficking early in its compact development phase. For instance, during the compact development phase, MCC’s Environmental and Social Assessment (ESA) division addressed trafficking in its November 2008 initial Social and Gender Report on Moldova. The report stated that although rehabilitating roads does not pose a threat in creating new opportunities for human trafficking, “the severity of the situation in the country and the negative social and economic impacts of human trafficking impact the vulnerable and impoverished beneficiary populations that MCC projects are designed to assist.” The report further stated that the roads rehabilitation projects are expected to have primarily positive social impacts on reducing human trafficking.

MCC NEEDS TO DEVELOP FORMAL POLICY AND WRITTEN PROCEDURES

MCC does not have formal policy and written procedures that define how trafficking is addressed throughout compact development and over the life of compact implementation. Nor does MCC have a written policy that addresses how MCC will comply with the U.S. policy against trafficking.

According to internal controls established by the Government Accountability Office (GAO)³, management is responsible for developing the detailed policies, procedures, and practices to fit their agency's operations and to ensure that they are built into and are an integral part of operations. Effective internal control helps in managing change caused by shifting environments and evolving demands and priorities. An essential component of an organization's management is the effectiveness and efficiency of operations.

An MCC official stated that MCC does not anticipate developing a specific policy on trafficking, as it is covered by the policies and guidelines mentioned in the supplemental information to the MCC Board of Directors, *Policy on Suspension and Termination*, and *Guidelines for Environmental and Social Assessment*. However, according to the same official, "MCC is currently working to formally document its *approach* to considering trafficking in persons in both country selection and program design." This demonstrates that MCC is inconsistent in its approach on developing a policy, in that other MCC officials indicated they were not planning to develop a policy.

Throughout the selection and development phases, MCC needs to know the potential status of the country as it relates to trafficking in persons. A Department of State official stated that it is the department's policy not to disclose tier ratings in advance of the TIP Report being issued. For example, MCC learned of Moldova's Tier 3 rating when staff visited the country during the compact development phase. In the case of Niger (threshold agreement signed in March 2008), MCC learned of Niger's Tier 3 rating after reading the 2009 TIP Report. For MCC to manage accountable and efficient foreign aid programs, it needs timely, critical information related to trafficking ratings issued by the Department of State.

MCC General Counsel stated that MCC does not have policies and procedures in writing because MCC is not subject to the anti-trafficking laws. However, MCC is complying "in spirit." As noted above, when MCC was developing a compact with Moldova in 2008, Moldova was rated a Tier 3 country. The TVPA of 2000 states that Tier 3 countries should not receive U.S. foreign assistance. MCC sent a letter to the Prime Minister in July 2008 stating that Moldova's Tier 3 rating jeopardized MCC's ability to continue working with the country in developing and signing a compact. Further, if Moldova maintained the Tier 3 rating, MCC would not move forward on compact development, even if the U.S. did not impose sanctions. This demonstrated that MCC was complying with the "spirit" of the TVPA by notifying Moldova's prime minister that MCC would not continue compact development.

MCC again complied in "spirit" with the TVPA when notified Niger of its plan to cease further program development due to Niger's Tier 3 rating. Niger was rated as a Tier 3 country in the June 2009 TIP Report. MCC has a threshold program with Niger for \$23 million. MCC sent a letter to the President of Niger in September 2009 stating that MCC was concerned with the country's Tier 3 rating and that MCC may suspend or terminate the program if a country's actions are inconsistent with MCC's eligibility criteria. MCC also stated that contracts for new

³ GAO AMID-00-21.3.1, *Standards for Internal Control in the Federal Government* (November 1999).

work would not be authorized until Niger improves its anti-trafficking efforts. On December 9, 2009, the MCC Board of Directors voted to suspend MCC's threshold program with Niger. The Board decided that MCC will proceed with an orderly wind-down of Niger's threshold program.

MCC does not have defined standards on anti-trafficking for managing compacts from the development through implementation phases. Formal policy and written procedures would allow MCC to manage its programs more effectively and identify what anti-trafficking actions it would take.

Because MCC is willing to comply "in spirit" with anti-trafficking provisions, MCC should develop a policy and procedures on anti-trafficking. A formal written document would show that MCC is taking a comprehensive and thorough approach over the course of the program cycle. Therefore, we are making the following recommendation:

Recommendation No. 1: We recommend that the acting Vice President for the Department of Policy and International Relations develop a formal policy and written procedures on anti-trafficking that at a minimum includes:

- *Defining how Millennium Challenge Corporation will address the issue of trafficking in development and implementation phases;*
- *Defining how Millennium Challenge Corporation will comply with U.S. Government anti-trafficking policies;*
- *Identifying actions Millennium Challenge Corporation should take when a country's tier rating declines;*
- *Identifying how Millennium Challenge Corporation will monitor countries' tier ratings and anti-trafficking efforts; and*
- *Identifying how Millennium Challenge Corporation will coordinate with the Department of State on receiving information on countries' anti-trafficking efforts and tier ratings.*

MCC'S INCREASED RISK AS A RESULT OF A 2008 AMENDMENT TO THE TVPA

MCC does not have policy and written procedures in place related to anti-trafficking that address the special circumstances surrounding any country which the Department of State rates as Tier 2 Watch for 2 consecutive years. Such policy and written procedures do not exist because the MCC's Office of General Counsel stated that MCC is not subject to the anti-trafficking laws. However, MCC is complying "in spirit."

The TVPA of 2000 was amended in 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) to add a provision related to countries that are identified on a Special Watch list (also referred to as Tier 2 Watch by the Department of State) relating to trafficking in persons for 2 consecutive years. The provision states that a country remaining on the Special Watch list for 2 consecutive years shall be included on the list of countries to which the minimum standards are applicable but whose governments do not fully comply and are not making significant efforts to bring themselves into compliance. Further, TVPA of 2000, as amended, states that it is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to such countries. Therefore, the identification of a country in any year as a Tier 2 Watch raises questions about what the policy and practice should be during any period a country appears on this list as well as when it receives the designation for a second time.

The team identified seven countries listed as Tier 2 Watch List countries in the 2009 TIP Report that are eligible for, or have received, a threshold or compact. They are Ghana, Guyana, Lesotho, Moldova, Nicaragua, the Philippines, and Senegal. Currently:

- A compact with Moldova, valued at \$262 million, was just signed on January 22, 2010.
- The Philippines is compact eligible.
- Guyana has signed a threshold agreement with MCC for \$6.7 million.
- Ghana (value \$547 million), Lesotho (value \$362.6 million), Nicaragua (value \$175 million), and Senegal (value \$540 million)⁴ have signed compacts.

A second designation for any of the countries on the Special Watch list relating to trafficking in persons would signify that the country is not fully complying with the minimum standards and is not making significant efforts to bring itself into compliance. This is the Tier 3 designation used by the Department of State. Unless waived by the President for up to 2 years, the MCC could face a decision on whether to apply sanctions. This is a challenging position for MCC and its Board of Directors. Together, they may consider the options available given countries' status and MCC's stance that the TVPA does not apply to MCC's foreign aid programs.

According to an official with MCC's Office of General Counsel, MCC is not required to impose sanctions. However, MCC and its Board of Directors may choose to do so. Should MCC decide not to impose sanctions, the Board should consider whether such an action is in compliance with U.S. Government policy for such countries receiving nonhumanitarian, nontrade assistance. MCC and the Board of Directors could benefit from developing policy and written procedures to guide continued program development for a country designated as Special Watch. Actions taken to date reflecting the situations in Moldova and Niger provide examples of actions MCC has taken to address a Tier 3 rating.

MCC could face the risk of investing substantially in a country program that the Department of State has designated as Tier 2 Watch for 2 consecutive years. The table below shows that a total of \$178.2 million has already been disbursed for Ghana, Lesotho, and Nicaragua as of June 30, 2009.

MCC Investments in Countries Rated Tier 2 Watch in June 2009
(as of September 30, 2009)

Country	Compact Value (\$ millions)	Disbursed (\$ millions)	Committed (\$ millions)
Ghana	\$547.0	\$85.6	\$342.0
Lesotho	\$362.5	\$16.9	\$73.7
Nicaragua	\$174.7	\$75.7	\$98.1
Total	\$1,084.2	\$178.2	\$513.8

In addition, MCC suspended Niger's threshold program in December 2009. As of September 30, 2009, about \$7.2 million was disbursed under Niger's program.

If the Department of State rates these countries as Tier 2 Watch in its 2010 TIP Report, then MCC's Board of Directors may consider suspending or terminating the compacts. Since MCC

⁴ Senegal has not entered into force yet, which is the point in time when a compact comes into full force and effect, and its term begins.

has already invested about \$178.2 million, and has committed about \$513.8 million, then depending on the course of action taken by MCC, these funds may be at risk. Prematurely ending planned projects is inefficient because of the loss of investments and failure to achieve results. The opportunity to safeguard resources in an uncertain future is important where MCC is making large investments with multi-year phases. For MCC to manage its resources effectively, it should consider how it will address continuing investments when there are certain “unknowns” in the future ratings assigned under the Special Watch list provisions. MCC’s policy on addressing human trafficking should consider the implications for developing programs where a country receives a Special Watch list designation. Therefore, we are making the following recommendation:

Recommendation No. 2: We recommend that the acting Vice President for the Department of Policy and International Relations develop written guidance on actions it plans to take when countries are designated as Special Watch for the first year and subsequent consecutive years.

CONCLUSIONS

The absence of a formal policy and written procedures on the issue of trafficking presents MCC management and its Board of Directors with challenges in implementing its programs. Those challenges are significant. They include decisions on whether to sanction or continue a program in the face of serious trafficking evaluations issued by the Department of State.

Congress has demonstrated by the provisions of the TVPRA of 2008, which directed Inspectors General to investigate contracts, that there is a need for an in-depth review of contracts implemented overseas. Greater focus on overseas contracts means that agencies must continually focus on the risks to their programs that are associated with human trafficking.

MCC has an opportunity to formalize its processes and procedures that would safeguard its programs. It is timely because TVPRA of 2008 shows an increasing emphasis on holding agencies accountable for their programs. MCC has the opportunity to improve the economy and efficiency of its operations by developing sound controls over its programs concerning the issue of trafficking.

MCC management would strengthen its response to U.S. Government policy on human trafficking by having a policy, written procedures, and internal controls that address its operations both in Washington, DC and overseas. The congressional interest in trafficking and the need to promote efficiency and economy in program management support a more defined, written approach to the subject of trafficking.

EVALUATION OF MANAGEMENT COMMENTS

The MCC provided written comments to our draft report, contained in a memorandum dated March 2, 2010, and is included in Appendix II. In its response, MCC agreed with the two recommendations in the draft report. MCC included two documents, *MCC and Trafficking in Persons* (an external public document) and *MCC's Approach to Trafficking in Persons (TIP) – Guidance for MCC Staff*. The external public document is also included in Appendix II.

In response to Recommendation No. 1, MCC agreed with the recommendation and stated that since its policy regarding the issue of trafficking is covered by a variety of existing MCC policies and procedures, a statement of its approach to trafficking was developed referring to those policies. *MCC and Trafficking in Persons* will serve as a publication on the MCC's external Web site and as guidance for MCC staff. A second document, *MCC's Approach to Trafficking in Persons (TIP), Guidance for MCC Staff*, provides background on the legal framework that governs MCC's approach on TIP and describes how MCC uses TIP ratings and engages with the Department of State's Office to Monitor and Combat Trafficking in Persons. This document will soon be available to all MCC staff via MCC's intranet. We did not include this document in Appendix II, as it was for internal distribution only. The OIG considers a management decision was made.

In response to Recommendation No. 2, MCC agreed with the recommendation and stated that the documents developed in response to the survey, identified in Recommendation No. 1, along with MCC's current document titled *Policy on Suspension and Termination*, sufficiently governs MCC's response when countries experience a decline in their TIP ratings, including when they are designated as Special Watch for the first year and subsequent consecutive years. The OIG considers a management decision was made.

SCOPE AND METHODOLOGY

Scope

The Office of Inspector General conducted this survey of the Millennium Challenge Corporation's (MCC) policies and procedures on addressing U.S. policy against trafficking in persons. While this was not an audit, we still planned and performed the survey to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our survey objective. Our survey objective was to determine if MCC has policies and procedures in place to address U.S. policy against trafficking in persons. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. The scope of this survey included the period June 2005 through September 2009.

In planning and performing this survey, we obtained an understanding of MCC's implementation and monitoring of anti-trafficking activities. This effort resulted in our review of five compacts, valued at \$1.3 billion, to determine whether MCC included clauses addressing trafficking. We selected four compacts with large works infrastructure projects, specifically road projects that were well underway, because they contained large labor forces, which may have the greatest risk of trafficking. We also included a fifth compact because it was designated as a Tier 2 Watch list country in the Department of State's 2009 Trafficking in Persons (TIP) Report. For the five compacts, we reviewed nine road contracts totaling \$221.5 million to determine whether the contracts had clauses addressing trafficking. MCC is currently managing \$6.9 billion in compacts. Our survey work represented 19 percent of the total compact funding.

We conducted the survey at MCC headquarters in Washington, DC from September 11 to November 12, 2009. We interviewed MCC officials in the Office of General Counsel as well as Procurement, Compact Development, and Compact Implementation departments. We also interviewed staff from the World Bank and the Department of State's Office to Monitor and Combat Trafficking in Persons. We consulted staff of the USAID/OIG Office of Legal Counsel. We reviewed U.S. Government policy on anti-trafficking and MCC's Board of Directors meeting minutes for November and December 2006, and for June 2009. We also reviewed the Department of State's TIP Reports for 2005 through 2009.

To reach our conclusions on whether MCC has policies and procedures in place that address U.S. policy against trafficking, we interviewed MCC officials, and reviewed compacts and contracts. We used these interviews to help assess actions MCC had taken to address trafficking in compacts. We also examined documentation from MCC that supported those actions taken.

Methodology

To answer the survey objective, survey steps were established to determine the following:

- Whether MCC had policies and procedures in place that addressed anti-trafficking, and
- Whether MCC was taking action against countries that did not make significant efforts to fully comply with minimum standards of anti-trafficking policy.

To gain an understanding of MCC's ongoing and planned activities, as well as actions taken to address the U.S. policy against trafficking, we:

- Reviewed the six laws identified on the Department of State's Web site maintained by the Office to Monitor and Combat Trafficking in Persons;
- Interviewed MCC staff to gain an understanding of whether MCC was complying, or is subject to comply, with U.S. Government policy against trafficking;
- Conducted a detailed examination of U.S. Government anti-trafficking policy and MCC's enacting legislation;
- Contacted Department of State officials to determine how they share countries' trafficking information with MCC;
- Reviewed country compacts, contracts, MCC Board of Directors meeting minutes, and Department of State TIP Reports; and
- Attended a symposium on USAID Anti-trafficking Programs: Moving Forward with a Decade of Experience in September 2009.

MANAGEMENT COMMENTS



Memorandum

Date: March 1, 2010

To: Alvin Brown, Assistant Inspector General
Millennium Challenge Corporation

From: Dennis Nolan, Acting Deputy Vice President /s/
Millennium Challenge Corporation
Department of Administration and Finance

Subject: MCC Management Response to the Draft Survey of Millennium Challenge Corporation's Policies and Procedures to Address U.S. Government Anti-trafficking Policy

The MCC appreciates the opportunity to respond to the draft *Survey of Millennium Challenge Corporation's Policies and Procedures to Address U.S. Government Anti-trafficking Policy* dated February 2, 2010. We are pleased your findings recognized that MCC has instituted processes in programs with partner countries to identify, address, and guard against risks of human trafficking. MCC's responses to the two recommendations in the draft Survey are discussed below.

Recommendation No.1: We recommend that the acting Vice President for the Department of Policy and International Relations develop a formal policy and written procedures on anti-trafficking that at a minimum includes:

- Defining how the Millennium Challenge Corporation will address the issue of trafficking in development and implementation phases;
- Defining how the Millennium Challenge Corporation will comply with the U.S. Government anti-trafficking policies;
- Identifying actions the Millennium Challenge Corporation should take when a country's rating declines,
- Identifying how the Millennium Challenge Corporation will monitor countries' tier ratings and anti-trafficking efforts; and
- Identifying how Millennium Challenge Corporation will coordinate with the Department of State on receiving information on countries' anti-trafficking efforts and ratings.

MCC Response: MCC agrees with the recommendation to document the policies and procedures that govern its approach on Trafficking in Persons (TIP). However, MCC does not believe that a stand-alone policy is necessary on TIP because TIP issues are covered by a number of existing MCC policies and procedures. Consistent with your recommendation, MCC has formally documented its *approach* to TIP for publication on MCC's external website, and as internal guidance for MCC staff.

MCC has produced two documents which we enclose for your review. The first document, *MCC and Trafficking in Persons*, is a public document that articulates MCC's approach on TIP and describes a number of MCC policies and procedures governing MCC's management of TIP issues. MCC's approach on TIP is directed by the legislation shaping MCC's selection process and MCC's Policy on Suspension and Termination, as well as by procedures outlined in MCC's Environmental and Social Assessment Guidelines and Procurement Guidelines. The public document also describes MCC's approach for management of TIP issues when determining eligibility for MCC assistance, during compact development and program design, and during compact implementation. Pending review by the MCC Board of Directors and the Department of State's Office to Monitor and Combat Trafficking in Persons, this document will soon be available on MCC's public website.

The second document, *MCC's Approach to Trafficking in Persons: Guidance for MCC Staff*, provides background on the legal framework that governs MCC's approach on TIP and describes how MCC uses TIP ratings and engages with the Department of State's Office to Monitor and Combat Trafficking in Persons. This document will soon be available to all MCC staff via MCC's intranet.

Recommendation No 2: We recommend that the acting Vice President for the Department of Policy and International Relations develop written guidance on actions it plans to take when countries are designated as Special Watch for the first year and subsequent consecutive years.

MCC Response: MCC agrees with the OIG's recommendation to provide written guidance for countries designated as Special Watch. As both of the documents cited above describe, MCC's existing *Policy on Suspension and Termination* governs MCC's response when countries experience a decline in their TIP ratings, including when they are designated as Special Watch for the first year and subsequent consecutive years.

Please let me know if you have further questions or concerns.

Enclosures:

MCC and Trafficking in Persons

MCC's Approach to Trafficking in Persons: Guidance for MCC Staff

MCC and Trafficking in Persons

The Millennium Challenge Corporation (MCC) takes seriously concerns related to our partner countries and human trafficking—both in connection with considering countries for eligibility to receive Millennium Challenge Account (MCA) funding and with addressing risks associated with countries already implementing MCC programs. This paper highlights MCC’s current approach for addressing and proactively managing risks related to trafficking in persons (TIP). MCC’s approach will evolve as a better understanding is gained of the process for TIP ratings and the associated risks for our partner countries.

MCC’s mission to “reduce poverty through economic growth” is not designed to directly address TIP or to explicitly target anti-trafficking investments. However, MCC investments aim to enhance economic opportunities and increase incomes, two factors that could help reduce the need for people to pursue activities that could make them susceptible to TIP risks.

Some governments of MCC’s partner countries are recognized as inadequately addressing human trafficking issues. In addition, some MCC programs involve activities that could indirectly pose a risk for TIP. MCC uses the following approach to address concerns and minimize risks:

1. Consider TIP when making **country eligibility** decisions.
2. Address TIP during **compact design and implementation** as a potential unintended and indirect socioeconomic impact that could be associated with project activities.
3. Proactively **engage with knowledgeable stakeholders**, including the Department of State, other U.S. government agencies, donors, nongovernmental organizations, and contractors, to learn from their experiences and best management practices to refine MCC’s approach to TIP.

Addressing TIP in Country Eligibility

MCC has consistently emphasized the importance of taking proactive measures to address TIP concerns when evaluating policy performance and eligibility. As such, MCC considers a country’s commitment to preventing and combating human trafficking when determining a country’s eligibility for a Millennium Challenge Compact or for threshold program assistance. MCC has formally integrated the U.S. Department of State’s *Trafficking in Persons Report*⁵ into its selection process; specifically, MCC uses the World Bank’s *Rule of Law* indicator in its selection process, which is an aggregate indicator that considers human trafficking as one of its factors. By law, a country that is determined to be Tier 3⁶ and has had sanctions applied cannot be included on MCC’s annual candidate country list. For high-risk TIP countries, MCC’s Board of Directors reviews supplemental information on TIP rankings and TIP-related practices, such as changes to regulations, enforcement and monitoring requirements, and provisions made to protect victims of trafficking.

⁵ The Department of State is required by law to submit annually to the U.S. Congress a report on foreign governments’ efforts to eliminate severe forms of trafficking in persons (TIP Report).

⁶ Each year, the State Department’s TIP Report includes tier rankings for all countries. The possible country ratings are: Tier 1 (best), Tier 2, Tier 2 Watch, and Tier 3 (worst). A ranking of Tier 3 triggers sanctions, unless such sanctions are waived by the President.

Addressing TIP in Compact Design and Implementation

MCC's *Policy on Suspension and Termination* governs cases of decline in the TIP rating of a partner country (*i.e.*, any country that is eligible for, developing, or implementing an MCC compact or threshold program). In the case of such declines, MCC analyzes what triggered the change to determine whether it reflects a significant policy reversal or a pattern of actions inconsistent with MCC's selection criteria. Consistent with its *Policy on Suspension and Termination*, MCC will provide warnings to countries that show a pattern of behavior inconsistent with MCC's selection criteria. If such warning letters are not acted upon, MCC may partially or fully suspend or terminate a country's eligibility to continue developing or implementing a compact or threshold program.

MCC recognizes that some of the activities that it finances could indirectly and unintentionally contribute to adverse socioeconomic impacts, including human trafficking. Consequently, MCC addresses TIP, along with other potential project-related adverse socioeconomic and environmental impacts, during program design and implementation. Human trafficking, like other major socioeconomic impacts, should be *prevented* if at all possible, *mitigated* where the risk remains, and *monitored* systematically to verify the effectiveness of preventive measures.

Project Development: MCC assesses proposed compact projects to determine which projects could be most susceptible to TIP risks, for example:

- During large-scale construction works, contractors and workers move in and out of areas, may cross or approach regional and international borders, and may knowingly, or unknowingly, contribute to transport of persons vulnerable to TIP offenses.
- Large-scale linear projects (*e.g.*, roads, railroads, pipelines) may contribute to easier access to, and transport of, potential victims of human trafficking.
- The establishment of worker camps for infrastructure projects in proximity to borders or vulnerable communities can contribute to a higher risk of TIP.

For such projects, MCC works with its partner countries to ensure that TIP risks are identified early as part of the integrated environmental and socioeconomic impact assessment (ESIA) process. ESIA outputs are then used to optimize project design and to define any mitigating and monitoring measures needed during project construction and subsequent operations.

Project Implementation: MCC has modified bidding documents for construction projects to help identify and reduce TIP risks, including: raising contractors' awareness; requesting contractors' input on TIP risks; and, where appropriate, requiring contractors to embed TIP prevention and mitigation in their existing management systems (*e.g.*, quality, health, safety and security systems). Thus, where TIP issues are identified in project development, MCC requires a commitment from contractors that they not engage in or allow TIP, have "zero tolerance" for TIP with workers and sub-contractors, and report any suspicion of TIP incidents. During project implementation, MCC's environmental and social assessment staff engages in oversight of and collaboration with the country's accountable entity implementing the compact to ensure that potential TIP issues and risks are being appropriately monitored.

Specific examples of MCC's focus on TIP in compact development and implementation include:

- In Lesotho, MCC and MCA-Lesotho⁷ have modified standard bidding documents to ensure that contractors are aware of and engaged in addressing TIP concerns during the construction of a dam and other water and sanitation projects throughout the country.
- In Mongolia, MCC and MCA-Mongolia³ included language for TIP in the technical specifications of the construction bidding documents and management plans associated with the construction of a road in the southern Gobi near the border with China. MCA-Mongolia also will proactively engage and coordinate with nongovernmental organizations to assess TIP risks and mitigation strategies in the region.
- In Namibia, MCC's due diligence analysis, as well as Department of State's 2008 TIP Report, highlighted potential human trafficking around cattle outposts. To address concerns associated with the livestock activity of the compact's agriculture project, Namibia's compact included a requirement that the Government of Namibia conduct a baseline assessment of human trafficking, with a particular focus on identifying any instances of trafficking of children to provide labor at cattle posts. The government has since launched an awareness campaign with a special emphasis on human trafficking and has approved the development and implementation of a national strategy to address trafficking in persons and related issues.

Summary

MCC is committed to working with partner countries to ensure that appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the projects that MCC funds. MCC has adopted a risk-management approach that includes incorporating TIP into determining country eligibility for MCC funding, evaluating activities susceptible to TIP during compact development and design, and analyzing TIP as a possible unintended indirect socioeconomic effect during compact implementation. For those countries and projects at risk for TIP, MCC works with countries' accountable entities and other stakeholders to develop appropriate mitigation measures. Finally, MCC has incorporated lessons learned and stakeholder input into eligibility, development, and implementation processes to continually refine and strengthen MCC's TIP strategy.

⁷ The accountable entity implementing the compact program.

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