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HOW JAPAN'S RECENT EFFORTS TO REDUCE SEX TRAFFICKING CAN BE IMPROVED THROUGH INTERNATIONAL HUMAN RIGHTS ENFORCEMENT MECHANISMS: FULFILLING JAPAN'S GLOBAL LEGAL OBLIGATIONS

*Kerry E. Yun**

I. INTRODUCTION

As the Japanese economy developed in the 1970's, numerous Japanese men traveled to Southeast Asia on "sex tours."¹ After international criticism of this practice, Japanese organized crime syndicates began to systematically import Southeast Asian women into Japan, as if sex is just another commodity traded according to international supply and demand.² These women, generally from poor developing countries, naively think they can improve their lives through income earned as waitresses or dancers abroad. Instead, they are frequently lied to, coerced, and tricked by brokers, agents, pimps and others who take away their passports, force them into prostitution to pay off inflated "debts", imprison them, and treat them as sex slaves. The wealth disparity between Japan and many of its developing Asian neighbors, compounded by the high demand for sexual services by Japanese men, fosters the marketplace that results in sex trafficking. There are an estimated 150,000 foreign women in prostitution in Japan currently,³ presumably many of them are sex trafficking victims.

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¹ Kevin Yamaga-Karns, *Pressing Japan: Illegal Foreign Workers Under International Human Rights Law and the Role of Cultural Relativism*, 30 TEX. INT'L L. J. 559, 562 (1995).

² Japan is a source country for sex trafficking. Victims originate in Southeast Asia, Latin America and Eastern Europe and are brought to Japan by organized crime networks in those regions with connections to the Japanese mafia. SPECIAL ACTION PROGRAMME TO COMBAT FORCED LABOR, HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN JAPAN (International Labor Office 2005) [hereinafter ILO REPORT] at 2, *available at* <http://www.ilo.org/public/english/region/asro/Tokyo/downloads/r-japantrafficking.pdf>, (last visited Mar. 5, 2006).

³ Coalition Against Trafficking in Women, Japan, *at* <http://www.catwinternational.org/factbook/Japan.php> (last visited Apr. 30, 2006).

Although sex trafficking is a serious problem, Japan has been slow to address it.⁴ Japan signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons⁵ in December 2002. After signing the Protocol, Japan did not take any substantive steps to address sex trafficking until 2004.⁶ In 2004, the U.S. Department of State listed Japan on a watch list for failure to enact sufficient legislation to reduce trafficking.⁷ Subsequently, in June 2005, Japan amended the penal code and the immigration laws to explicitly make trafficking a crime.⁸ On June 8, 2005, the Diet, the Japanese

⁴ The Embassy of Japan in Thailand stated in response to a Human Rights Watch Report in 2000, "we cannot agree. . . [with an NGO recommendation] that the strict immigration policy in Japan itself creates the opportunities for transportation and job placement of illegal immigrants by the organized crime groups in consequence. We think that the underlying causes of illegal immigration and human trafficking is the 'economic differential' and the 'problem of poverty' in the nations of origin." Embassy of Japan in Thailand, Comment to Human Rights Watch Report, Oct. 26, 2000, at <http://embjp-th.org/en/jics/press/2021.htm> (last visited Mar. 7, 2006).

⁵ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, art. 3(a), at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf, (last visited Feb. 7, 2006). [hereinafter Palermo Protocol]. The Palermo Protocol opened for ratification in December 2000, and went into effect on Dec. 25, 2003. United Nations Office on Drugs and Crime, http://www.unodc.org/unodc/en/crime_cicp_signatures.html (last visited Apr. 29, 2006).

⁶ Yoshimo Nagamine, *Prevention of trafficking in persons: Japan prepares introduction of legislation, schemes for protecting and rescuing victims also essential*, Oct. 22, 2004, at http://www.vitalvoices.org/desktopdefault.aspx?page_id=16&news_id=302 (last visited Apr. 29, 2006).

⁷ US State Department, Trafficking in Persons Report, 2005, The Trafficking Victims Protection Act of 2000 ("TVPA") requires the US State Department to submit an annual report to Congress on foreign government efforts to combat trafficking persons. The report classifies foreign government efforts according to the minimum standards for the elimination of trafficking as codified in the TVPA. Countries complying with minimum standards are designated as Tier 1 while those not in compliance are ranked Tier 2, Tier 2 Watch List, and Tier 3 depending on the severity of the problems. State Department Report, 2005 at 28, at <http://www.state.gov/g/tip/rls/tiprpt/2005/> (last visited Apr. 9, 2006). Japan was listed on the tier 2 watch list.

⁸ Japan's Anti-trafficking Initiatives and Developments, Polaris Project, at http://www.polarisproject.jp/polarisproject.jp/trafficking_p3/traffmov_jp_en.htm (last visited May 12, 2006).

legislative body, approved the introduction of the Trafficking Protocol for ratification, but as of yet has not ratified it.⁹

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention Against Transnational Organized Crime, ("Palermo Protocol") contains the currently accepted definition of trafficking and the definition to be used in this paper. Article 3(a) of the Protocol states:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or fraud, of deception, of the abuse of power or of a position of vulnerability or by the giving and receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation or forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁰

The Protocol also makes clear that the consent of a victim to the intended exploitation is irrelevant. Further, "[t]he recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth" above.¹¹ Although trafficking entails all forms of forced labor which affects men, women and children, this paper will focus specifically on trafficking of women for sexual exploitation.

The Protocol's definition clarifies that even where a victim may originally consent to be smuggled or to migrate illegally, "the use of coercion or deception is enough to nullify a victim's consent."¹² While smuggling ends when migrants arrive at their destination, trafficking entails a

⁹ United Nations Office for Drugs and Crime, Trafficking in Persons, Global Patterns, Appendices, Japan (April 2006), at http://www.unodc.org/pdf/crime/trafficking_persons_report_2006-04_appendices.pdf (last visited May 1, 2006).

¹⁰ Palermo Protocol, *supra* note 5, at art. 3(a).

¹¹ *Id.* at art. 3(c). A child is defined as any person under 18 years old. *Id.* at art. 3(d).

¹² ILO REPORT, *supra* note 2, at 4.

continued exploitation of the victims to create illicit profits.¹³ The difference between trafficking and smuggling is frequently unrecognized by law enforcement in Japan. This problem hinders exploited women from receiving help because government authorities are more likely to recognize a trafficked person as a victim, while treating a smuggled person as a criminal. Further, strict Japanese immigration laws enable traffickers to exploit trafficked women by preying on these women's fears of arrest and deportation so that these women are highly unlikely to complain to the police.

What can we expect for women after the passage of these laws and the increased public commitment on the part of the Japanese government to punish traffickers, assist victims and combat trafficking? Japan must fulfill its domestic and international obligations to protect the human rights of sex trafficking victims. Unfortunately, Japanese laws have historically rung hollow for women and minorities, especially foreigners. Article 14 of the Japanese Constitution,¹⁴ promulgated in 1947, provides that "all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin," yet Japanese women are still frequently discriminated against in employment, education, and in the family.

During the economic boom of the 1970's and 1980's in Japan, more women entered the workforce and women's rights became more publicized in Japan. In 1985, Japan ratified the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), after significant international pressure. That year Japan implemented CEDAW through domestic legislation known as the Equal Employment Opportunity Law ("EEO Law"),¹⁵ yet that law provided no sanctions for violation of the law, and as a result changes were slow and erratic. Will the same be true for the domestic violence legislation passed in 2001 and the amendments in 2005 to the criminal code and immigration laws related to human trafficking? Japan signed the Convention Against Transnational Organized Crime, and the

¹³ "What if the victim consents?" UNODC, at http://www.unodc.org/unodc/en/trafficking_victim_consent.html#how (last visited Apr. 7, 2006).

¹⁴ After the Japanese surrender at the end of World War II, the U.S. Occupation Authority essentially governed Japan for nearly seven years. The Occupation Authorities drafted the Japanese Constitution in English in one week and the Diet was politically obligated to adopt it with only minor changes. Fritz Snyder, *The Fundamental Human Rights Compared in Two Progressive Constitutions: Japan and Montana*, 14 INT'L LEGAL PERSP. 30, 32 (Fall 2004). The Constitution has been criticized, but never amended. *Id.*

¹⁵ The EEO Law exhorts employers not to discriminate against women in employment.

Protocol to Prevent Suppress and Punish Trafficking in Persons, in 2002 and 2003, respectively. Nonetheless, the US State Department placed Japan on the tier 2 trafficking watch list in 2004 because the government was not complying with the U.S. statutory minimum standards but was making significant efforts to comply¹⁶ to reduce trafficking and protect victims.¹⁷ Finally, amendments to the criminal code and immigration laws which aim to enhance penalties for traffickers and improve treatment of victims were passed in 2005.

Japan amended its criminal code and immigration laws to improve the prosecution of sex traffickers, the protection of victims and the prevention of trafficking practices; however, establishing this legal framework is only an important first step. Although Japan has taken significant steps to combat sex trafficking, Japan must go even further to fulfill its obligations under international human rights law. For example, Japan still needs to allocate sufficient financial resources to legal and social services for sex trafficking victims, take concrete measures to stem demand within Japan, and develop a strong social commitment to the importance of the human rights of women and minorities.

This paper will start by tracing the modern history of women's status in Japan through analysis of Japanese laws while considering the social, economic and political influences on the development of women's rights in Japan. Then, the next section will discuss Japan's recent steps to combat trafficking, including Japan's Plan of Action and amendments to the criminal and immigration laws. Next, this paper will discuss Japan's international obligations as they relate specifically to trafficking victims' rights in international conventions on gender, gender violence, immigration and trafficking. In addition, this paper will make recommendations on how non-state actors and other governments can use international human rights enforcement mechanisms to address sex trafficking within Japan. Finally, this paper will suggest changes to the Japanese government by highlighting areas in need of additional resources and attention and methods for more effective implementation and monitoring, while sensitively providing support for victims.

¹⁶ State Department Report on Trafficking in Persons (2004), at <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm> (last visited May 13, 2006). Japan was classified as Tier 2 Watch List, "[c]onsidering the resources available, Japan could do much more to protect its thousands of victims of sexual slavery. The government did, however, provide support for international anti-trafficking programs and conferences. Japan must speed its review of anti-trafficking legislation and ensure trafficking-related punishments are commensurate with the severity of the crimes."

¹⁷ State Department Report, *supra* note 7, at 28.

II. HISTORY OF WOMEN'S STATUS IN JAPAN

Although the Japanese Constitution and other laws provide equality between men and women, in reality women continue to be marginalized socially, culturally, economically and politically in Japan. The women's rights movement and citizens' rights movements in general have been weak historically in Japan because of the government's ability to effectively co-opt local community groups for state-supported efforts for rapid industrialization and economic growth. At the turn of the century, the government promoted the ideals "good wife, wise mother" as women's proper role¹⁸ and women's participation in political public meetings¹⁹ or observation of legislative sessions were illegal.²⁰ The Japan Women's Patriotic Association, originally created to console war widows, "quickly became a major force in the government attempt to mold women's roles ever more firmly in support of the state"²¹ with its focus on promotion of "motherhood in the interest of the state."²²

The end of World War II and a new Constitution marked a new era for Japanese women. In December 1945, women were granted full political rights; those over twenty were granted the right to vote and those over twenty five were allowed to run for political office.²³ In the first Diet election in which women could participate in April 1946, 39 of 79 female candidates were elected.²⁴ During the Occupation, the Labor Standards Law was passed in 1947, which guarantees equal wages for equal work and "protects" women from overtime work, night work, holiday work, and dangerous work.²⁵ During the 1970's, the women's liberation movement was portrayed by the media as radical and dangerous because it "attacked wo-

¹⁸ Nolte, Sharon & Sally Anne Hastings, *The Meiji State's Policy Toward Women, 1890-1910*, in RECREATING JAPANESE WOMEN, 1600-1945, 151, 152-3 (Gail Bernstein, ed., 1991).

¹⁹ SHARON SIEVERS, *FLOWERS IN SALT* 52 (1983).

²⁰ *Id.* at 100.

²¹ *Id.* at 114. The association was governed by men and funded by subsidies from the government. *Id.* at 115.

²² Yoshiko Miyake, *Doubling Expectations: Motherhood and Women's Factory Work Under State Management in Japan in the 1930s and 1940s*, in RECREATING JAPANESE WOMEN, 1600-1945, *supra* note 18, at 270-1.

²³ SIEVERS, *supra* note 19, at 191.

²⁴ VERA MACKIE, *FEMINISM IN MODERN JAPAN: CITIZENSHIP, EMBODIMENT AND SEXUALITY* 123 (2003). Six female Diet members participated in the subcommittee which reviewed the draft of the new constitution. *Id.* at 126.

²⁵ LABOR STANDARDS LAW, unofficial translation, available at http://www.jil.go.jp/laborinfo-e/docs/llj_law1-rev.pdf (last visited May 13, 2006). [hereinafter LA-

men's values and the housewife's role."²⁶ Nonetheless, in 1972 Japan passed laws requiring equality between the sexes in all working conditions.²⁷ By 1985, an equal opportunity law was passed prohibiting discrimination against women in the areas of basic training, welfare benefits, retirement and dismissal.²⁸

By the 1990's, Japanese women's NGOs were engaging with women's rights issues on an international scale by participating in the Fourth World Conference on Women in Beijing in 1995. After the Conference, the number of new grassroots organizations increased significantly,²⁹ and those groups pressed for changes in the laws on equal opportunity and domestic violence legislation, and legalization of the birth control pill.³⁰ The Diet was more responsive to these efforts in part because of political changes stemming from a newly implemented electoral system³¹ and the end of nearly fifty years (1955-1993) of dominance by the Liberal Democratic Party ("LDP").³² Prior to this change, the majority of laws were drafted by ministry bureaucrats and voted on (i.e. rubber stamped) by the LDP-controlled

BOR STANDARDS LAW]. Currently these protections have been removed in the name of gender equality, as will be discussed later in this paper.

²⁶ Yoshie Kobayashi, *A Path Toward Gender Equality: State Feminism in Japan*, at 101 (2002) (unpublished Ph.D. dissertation, University of Hawaii) (on file with Stanford University Library; copy also on file with author).

²⁷ Hiroko Hayashi, *Japan*, in *WOMEN WORKERS IN FIFTEEN COUNTRIES* 57, 60 (Jennie Farley ed., 1985).

²⁸ CURTIS MILHAUPT, MARK RAMSEYER & MICHAEL YOUNG, *JAPANESE LAW IN CONTEXT: READINGS IN SOCIETY, THE ECONOMY, AND POLITICS* 629 (2001).

²⁹ In fact, approximately 6,000 Japanese women attended the Conference in Beijing. Masumi Yoneda, *Japan*, in *THE FINAL REPORT OF THE FIRST CEDAW IMPACT STUDY* 63 (McPhedran et al eds., 2003), available at <http://www.iwrrp.org/CEDAW/japan.pdf> (last visited Apr. 29, 2006).

³⁰ The birth control pill was not available in Japan until June 1999, after significant criticism of the legalization of Viagra in only six months. Sheryl WuDunn, *Japan, Never on the Pill, Seems Ready to Try It*, N.Y. TIMES, Jun. 3, 1999, at A13.

³¹ T.J. PEMPEL, *REGIME SHIFT: COMPARATIVE DYNAMICS OF THE JAPANESE POLITICAL ECONOMY* 141 (1998). The new electoral system for the House of Representatives replaced multi-member districts with single-member districts. This forced voters to choose one candidate instead of their top four or five choices. *Id.* at 214-15. In addition, some seats are reserved according to "proportional representation" of each political party based on total votes received for each party. *Id.* at 214-15. Each party chooses which of its candidates will fill those seats after the single-member district seats are filled. *Id.*

³² PEMPEL, *supra* note 31, at 141. The Liberal Democratic Party gained a majority of seats in the House of Representatives in 1955 and held majority power because

Diet.³³ In the late 1990's, politicians became more actively involved in drafting legislation after public trust in government decreased after multiple political scandals and the media highlighted the need for administrative reform.³⁴

Other legislative changes during this time include revisions to the EEO Law in 1999, which explicitly prohibit discrimination in recruitment, employment, assignment and promotion.³⁵ At this time the Labor Standards Law was also revised to eliminate "protections" which were discriminatory against women.³⁶ In addition, in December 2000, the Office of Gender Equality was created within the Prime Minister's Office³⁷ to address issues including "women's participation in government, gender consciousness-raising, women's employment, outreach to rural women, reconciling work and family life, care for senior citizens, violence against women, women in the media, health and reproductive rights, women's education, and women's contribution to global society."³⁸ The successes and failures of these laws to improve women's rights will be discussed specifically in the context of trafficking in persons in the next section.

Despite the improvement in women's legal status in Japan, until the Beijing Conference in 1995 the women's movement was focused on gender without adequately addressing intersecting issues of class, race, nationality

of high economic growth until 1993 when the economy stalled and political scandals delegitimized the party. *Id.* at 140-41.

³³ See MARK J. RAMSEYER & FRANCES ROSENBLUTH, JAPAN'S POLITICAL MARKETPLACE 104 (1993) (discussing the theory of the bureaucracy's internalization of LDP preferences when both drafting and implementing legislation and the question of who rules, the Diet or the bureaucracy). Although the Diet has the sole lawmaking authority in Japan, in practice the ministries draft legislation and then sound out Diet members and arrange for the passage of the law. Hiroko Ota, *Sharing Governance, Changing Functions of Government, Business, and NPOs*, in DECIDING THE PUBLIC GOOD 125, 131-2 (Tadashi Yamamoto ed., 1999).

³⁴ Robert Pekkanen, Japan's Dual Civil Society: Members Without Advocates, at 225. (Sept. 2002) (unpublished Ph.D. dissertation, Harvard University) (on file with International Relations/Pacific Studies Library, University of California, San Diego).

³⁵ JOYCE GELB, GENDER POLICIES IN JAPAN AND THE UNITED STATES 59-60 (2003).

³⁶ *Id.* at 50. Women were protected from night work and overtime. *Id.*

³⁷ *Id.* at 123.

³⁸ Mirium Murase, Cooperation Over Conflict: The Women's Movement and the State in Contemporary Japan 145 (2003) (unpublished Ph.D. dissertation, Massachusetts Institute of Technology) (on file with author).

or ethnicity.³⁹ This is because of the sharp cultural divide between Japanese and non-Japanese which socially stigmatizes and blatantly discriminates against the “other.”⁴⁰ Legal resident foreigners and minorities in Japan, including descendents of Korean and Taiwanese colonial subjects, indigenous Ainu and Okinawans, and Buraku “outcasts” face significant legal and social discrimination that impacts employment opportunities, marriage choices and admission to educational institutions.⁴¹ This social stigma exacerbates exploitation of immigrants illegally trafficked into Japan. Migrants are portrayed by police and the media as violent, dangerous and criminal. In fact, the National Police press releases have exaggerated this portrayal by claiming that crimes by foreigners were increasing and were the predominate cause of the nation’s security problems.⁴² Total crimes include the criminal offense of being in Japan illegally in addition to violations of the criminal code (i.e. robbery).⁴³ However, in 2003 foreigners committed only 2.3% of criminal offenses in Japan.⁴⁴ Further, such police statistics reflect only arrests, not convictions.⁴⁵

As discussed previously, the failure to distinguish between trafficking victims and smuggled migrants blocks victims’ access to necessary resources to safely and quickly escape forced labor conditions. A single scenario cannot describe the various experiences of victims trafficked into Japan; however, some victims’ stories have similar threads of coercion, isolation, fear, abuse and alienation. Generally, the victim is an impoverished

³⁹ JENNIFER CHAN-TIBERGHIE, *GENDER AND HUMAN RIGHTS POLITICS IN JAPAN: GLOBAL NORMS AND DOMESTIC NETWORKS* 115-16 (2004).

⁴⁰ Kathianne Hingwan, *Identity, Otherness and Migrant Labour in Japan*, in *CASE STUDIES ON HUMAN RIGHTS IN JAPAN*, 51, 52 (Roger Goodman & Ian Neary eds., 1996).

⁴¹ Chan-Tiberghien, *supra* note 39, at 96.

⁴² UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS REPORT OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, U.N. Doc. E/CN.4/2006/16/Add.2 at 16, *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/G06/103/96/PDF/G0610396.pdf?OpenElement> (last visited May 13, 2006)(*prepared by* Doudou Diene). [hereinafter Special Rapporteur Report on Racism].

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Apichai W. Shipper, *Criminals or Victims? The Politics of Illegal Foreigners in Japan*, 32 *JOURNAL OF JAPANESE STUDIES* 299, 320 (2005).

and uneducated woman from a developing country⁴⁶ who is enticed with promises of high wages abroad as a waitress, domestic servant, or prostitute.⁴⁷ She might travel with a forged passport or fake visa potentially obtained from corrupt immigration officials.⁴⁸ Often, immigration officials in the Tokyo airport can recognize the fate of many victims arriving in Japan, but are complicit nonetheless.⁴⁹ Other means of immigration includes using false marriages or a valid tourist visa.⁵⁰ Once a woman violates immigration laws by entering the country illegally, overstaying her visa, or working without authorization, traffickers are able to control her more easily because she is less likely to go to the police.⁵¹

From the time of recruitment in her home country to the time she escapes her bondage, a victim is controlled by organized crime chains of brokers, agents, pimps, "mama-sans"⁵² and others who pay increasingly large sums for her contract.⁵³ These payments become a victim's "debt" for travel, placement, housing and living expenses.⁵⁴ She is forced to pay off this inflated debt through forced prostitution, known as "debt bondage."⁵⁵ Her employer confiscates her passport and restricts her movement and communication.⁵⁶ She is isolated culturally, linguistically and socially from Jap-

⁴⁶ The three most common source countries are Thailand, the Philippines and Columbia. ILO REPORT, *supra* note 2, at 2.

⁴⁷ K.A. Dinan, OWED JUSTICE: THAI WOMEN TRAFFICKED INTO DEBT BONDAGE IN JAPAN, Human Rights Watch Report, 2000, at Part III, at <http://www.hrw.org/reports/2000/japan/index.htm>. (last visited Jan. 24, 2006)(follow "III.Context" hyperlink). In fact, 80 to 90 percent of female migrants in Japan are sex workers (i.e. "typically hostesses or waitresses who also perform sexual services"). *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at Part IV.

⁵⁰ *Id.* at Part III.

⁵¹ *Id.*

⁵² The mama-san is generally the term for the manager of a group of prostitutes or bar hostesses. The mama-san is sometimes a trafficking victim herself who has become the girlfriend of the bar owner. The mama-san is responsible for setting up "dates" with clients, keeping track of a victim's "debt" and punishing those women who refuse to serve clients, run away, talk back etc. *Id.* at Part IV.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Most women were told they must work to pay off between 3 mil and 5 mil yen (approximately \$25,000 to 40,000). Even those women who knew they would have to repay their travel and living expenses didn't understand the currency exchange and the amount of money it would actually take. *Id.*

⁵⁶ *Id.*

anese society because of her race, economic status and gender. She is emotionally, physically and sexually abused and threatened by pimps and clients.⁵⁷ If she escapes or is arrested, she faces the deportation process which includes language barriers, severe detention facilities and emotional abuse by officer interrogation.⁵⁸ The victim may also fear reprisal for escape, she is still impoverished, and she is ashamed or afraid to return to her country.⁵⁹ These are traumatic, dramatic and violent violations of women's rights in a country the international community praises as an egalitarian, rights-based liberal democracy.

III. DOMESTIC LEGAL FRAMEWORK RELEVANT TO SEX TRAFFICKING

The Japanese Supreme Court held in 1950, that "[i]t should be recognized that any person who stays in Japan is entitled to human rights which he or she should naturally have as a human being *even if his or her entry into the country was illegal*."⁶⁰ This section will discuss the Japanese laws which, in theory, should protect violations of human rights of sex trafficking victims.

In 2005, Japan amended the criminal code and the immigration laws to more directly address sex trafficking. However, prior to these amendments, the Japanese Constitution as well as civil and criminal laws could have been applied to punish traffickers and brokers in Japan. As discussed below, Japan's domestic laws could theoretically address sex trafficking more effectively if they were applied. However, these laws have not been used in the past to combat trafficking because immigration and police focused predominately on deporting illegal immigrants and did not protect victims' rights.⁶¹ Further, many of the criminal sanctions are ineffective de-

⁵⁷ *Id.* at Part III.

⁵⁸ *Id.* at Part IV.

⁵⁹ *Id.*

⁶⁰ HIROYUKI HATA & GO NAKAGAWA, CONSTITUTIONAL LAW OF JAPAN 106 (1997), (citing 4 Minshu 683 (Sup. Ct., G.B., 28 December 1950)). (emphasis added).

⁶¹ Dinan, *supra* note 47, at Part IX. For instance, a statement by the Japanese Embassy in Thailand demonstrates an approach devoid of a strategy to protect the victim's human rights once in Japan, "the crackdown on illegal activity by the crime organization and the educational campaign for the potential victims of human trafficking [in the country of origin] are the most important and essential for the countermeasure of human trafficking." Japanese Embassy in Thailand, Comment to Human Rights Watch Report (Oct. 26, 2000), available at <http://embjp-th.org/en/jics/press/2021.htm> (last visited Mar. 7, 2006).

terrents for perpetrators because the jail sentences are too short and the fines are too small.

A. *Constitution*

The Japanese Constitution is the most important document that provides fundamental rights. The Constitution is the supreme law of the land over all laws and acts of government according to Article 98. Adopted in 1947, the Constitution provides protections for fundamental human rights including liberty, equality without discrimination, and due process rights. These rights are first implicitly mentioned in the Preface to the Constitution which states, “[w]e desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth.”⁶² Japan is certainly in a good position in the international society economically, yet this desire to banish tyranny and slavery does not seem to have effectively eliminated such problems with regards to human trafficking.

In Article 11, the Constitution guarantees these rights to “the people of this and future generations as eternal and inviolate rights.”⁶³ Further, in accordance with Article 13 these freedoms and rights “shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.”⁶⁴ Social responsibility has always been important to Japanese, but perhaps the question is whether illegal immigrants are included in “the people”. This author would argue that the use of *people* instead of *citizens* throughout the Constitution is significant and presumes the authors of the Constitution knew the difference and made an explicit word choice of *people* to create broader rights and protections. Article 14 states that “[a]ll of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.”⁶⁵ This protection is especially relevant to trafficking victims who are mistreated because of their family origin, race and gender. Family origin and race implicitly would include nationality and potentially immigrant status. Using a textualist reading and a human rights contextual understanding, “*all* of the people” should mean *all*, including migrants legal or illegal, whether temporary or long-term. Based on

⁶² KENPO [CONSTITUTION OF JAPAN], *Preface to Constitution of Japan translated in 1 EHS LAW BULL. SER. no AA12 (1947) [hereinafter CONSTITUTION OF JAPAN]*.

⁶³ *Id.* at art. 11.

⁶⁴ *Id.* at art. 13.

⁶⁵ *Id.* at art. 14.

canons of statutory interpretation, the meaningful variation in the Constitution between “the people” and “all of the people” is also a significant word choice by the Constitutional authors because it broadens further the scope of rights and protections. Additionally, Article 18 provides that “[n]o person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.”⁶⁶ Again, certainly the phrase “no person” should be interpreted to include illegal immigrants.

Scholars within Japan are divided on whether the constitutional rights and liberties apply to non-citizens. Some scholars maintain that the constitution is a document based on the agreement and political will of the people of the state and therefore, only such people are entitled to those rights unless explicitly granted by statute.⁶⁷ In contrast, most scholars take the contrary view that these rights and liberties protect both citizens and non-citizens.⁶⁸ This position is supported by the Preamble of the Constitution, which states “[w]e recognize that all peoples of the world have the right to live in peace, free from fear and want.”⁶⁹

The Japanese Supreme Court has also explicitly recognized the human rights of illegal aliens in Japan.⁷⁰ In 1950, the Japanese Supreme Court held “[i]t should be recognized that any person who stays in Japan is entitled to human rights which he or she should naturally have as a human being even if his or her entry into the country was illegal.”⁷¹ Again, in 1978, the Court affirmed the rights of aliens in holding “[i]t should be understood that all rights and liberties guaranteed by the provisions of Chapter III of the Constitution,⁷² except those deemed to be guaranteed only to Japanese nationals from the nature of the right, are equally applied to aliens staying in our country.”⁷³ The rights which are reserved to nationals include the right to vote and participate in the political process, run for office, and to be employed by government for certain civil servant positions.⁷⁴

The Constitution also provides every person the right of access to the courts according to Article 32, and specifically allows suit for redress

⁶⁶ *Id.* at art. 18.

⁶⁷ Hata & Nakagawa, *supra* note 60, at 105.

⁶⁸ *Id.*

⁶⁹ *Id.* at 106.

⁷⁰ *Id.*

⁷¹ *Id.* (citing 4 Minshu 683 (Sup. Ct., Dec. 28, 1950)).

⁷² Chapter III, The Rights and Duties of the People, includes Articles 10 through 40. CONSTITUTION OF JAPAN, *supra* note 62.

⁷³ Hata & Nakagawa, *supra* note 60, at 106, (quoting 32 Minshu 1223, Sup. Ct., Oct. 4, 1978).

⁷⁴ *Id.* at 106.

for damage by any illegal act of a public official in Article 17.⁷⁵ Potentially, these rights could be used to sue corrupt police or immigration officials who were complicit or contributed to violations of trafficking victims' rights. Under the State Redress Law, the national and local government must indemnify public officials for negligent or intentional acts in their exercise of public authority.⁷⁶ However, the Japanese government will not take responsibility for reparations if the country of origin of the victim does not provide mutual recognition of such reparation rights.⁷⁷

Article 34 protects due process rights by prohibiting detention without adequate cause, and requiring that after arrest a person must be informed of charges and granted immediate privilege of counsel.⁷⁸ Article 37 specifies the right to a speedy and public trial by an impartial tribunal including assistance of counsel at the state's expense.⁷⁹ These due process rights should protect trafficking victims during arrest and deportation proceedings.

B. Civil Laws

1. Labor Laws

The Labor Standards Law ("LSL") was passed in 1947. It prohibits forced labor⁸⁰ and intermediate exploitation,⁸¹ and requires compensation of a debt prior to establishing a working relationship with wages.⁸² Conviction of forced labor entails between one to ten years in prison or a fine of 200,000 to 3,000,000 yen, the equivalent of \$1,700 to \$25,000.⁸³ The International Labor Organization states that "trafficking for labor or sexual exploitation is internationally regarded as a form of forced labor."⁸⁴ Violation of the prohibition against intermediary exploitation is less than one year in

⁷⁵ CONSTITUTION OF JAPAN, *supra* note 62, at art. 17, 32.

⁷⁶ Morrison & Foerster, LLP, Memorandum, at [http://www.vitalvoices.org/files/docs/Japanese%20Trafficking%20Law%20Research%20\(clean%20version\).pdf](http://www.vitalvoices.org/files/docs/Japanese%20Trafficking%20Law%20Research%20(clean%20version).pdf) (last visited Apr. 28, 2006).

⁷⁷ *Id.*

⁷⁸ CONSTITUTION OF JAPAN, *supra* note 62, at art. 34.

⁷⁹ *Id.* at art. 37.

⁸⁰ LABOR STANDARDS LAW *supra* note 25, at art. 5.

⁸¹ *Id.* at art. 6.

⁸² *Id.* at art. 17.

⁸³ The exchange rate on Jan. 1, 2006 was 117 yen per dollar according to <http://www.x-rates.com/cgi-bin/hlookup.cgi>, (accessed Apr. 8, 2006). This exchange rate will be used throughout this paper.

⁸⁴ ILO REPORT, *supra* note 2, at 48.

prison or a fine of less than 500,000 yen, about \$4,200. Agents, brokers, and others in the trafficking chain are guilty of intermediary exploitation. Forcing an employee to use earnings to pay a debt instead of receiving wages is commonly used in trafficking and is known as "debt bondage."⁸⁵ Violators face less than six months in prison or a fine of less than 300,000 yen, about \$2,500.⁸⁶ The use of this law in prosecuting trafficking and forced prostitution is problematic because first, the law is not enforced frequently in cases of trafficking due to lack of "corroborating evidence."⁸⁷ Second, with the high profitability of trafficking and forced prostitution, even several thousand dollars in monetary sanctions do not act as appropriate deterrents to violators since most simply pay the fine and continue their illegal activities.⁸⁸ Further, most victims have been unable or uninterested in staying in Japan to be witnesses in criminal investigations because they are afraid or threatened, or they are repatriated or deported before trial.⁸⁹

The Employment Security Law, passed in 1947, is another labor law which could be used to prosecute traffickers. Article 63 prohibits employment services or placement services which make use of physical violence, threat or detention or any other means to unduly restrict a person's

⁸⁵ Dinan, *supra* note 47, at Part I. If a victim is disobedient, the employer sometimes increases a victim's debt with fines, while physical violence and "resale" of the contract to another employer are also common. *Id.*

⁸⁶ ILO REPORT, *supra* note 2, at 48.

⁸⁷ Kara Patterson, *Sex Trafficking from Thailand to Japan: Human Beings or Illegal Goods?*, 12 DALHOUSIE J. LEGAL STUD. 175, 193 (2003). The victim must provide the names of more than one client and those clients must sign a statement admitting they bought sex from the victim before the police begin an investigation under this law. This is in conflict with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, under which a "person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted." United Nations Division for the Advancement of Women, Report of the Expert Working Group Meeting, *Trafficking in Women and Girls*, November 2002, at <http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/Finalreport.PDF> (last visited Apr. 28, 2006).

⁸⁸ Keiko Ohtsu, *The Reality and Law Governing Non-Japanese Women Living in Japan*, 11 WOMEN'S ASIA 21: VOICES FROM JAPAN 19, 23 (Summer 2003), available at <http://www.ajwrc.org/english/sub/voice/11.pdf> (last visited Mar. 3, 2006).

⁸⁹ Not only are many victims afraid to be witnesses, most trafficking victims are so isolated culturally and linguistically in Japan that they want to return to their home country as soon as possible, although some do want to stay in Japan for economic or personal reasons. Those who want to stay face significant hurdles in their transition from illegal over-stayer to legal resident. Dinan, *supra* note 47, at Part VIII.

psychological or physical freedom. . . . or with the aim of forcing a person to do work that is harmful to public health or to public morality.⁹⁰ Violation is punishable by sanctions of between one and ten years imprisonment or a fine between 200,000 and 3,000,000 yen (between \$1,700 and \$25,000). Certainly, trafficking victims face physical violence and restricted freedom and are forced to perform sexual services which expose them to high risk of sexually transmitted diseases, rape and other violence. Unfortunately, like the LSL discussed above, the Employment Security Law is sporadically enforced in trafficking cases, and sanctions are not strong enough deterrents. For example, a notorious trafficker, Koichi Hagiwara, known for his habit of videotaping victims while he tortured and degraded them, served less than two years in prison for violated labor laws.⁹¹ In another case, the Tokyo High Court found a Japanese person guilty of violations of the Employment Security Law and the Immigration Code for buying a Thai woman from a broker, taking away her passport, confining her to an apartment and forcing her to engage “in a job inimical to public health, i.e., prostitution.”⁹²

The Equal Employment Opportunity Act (“EEO Act”), was passed in 1985 to address employment discrimination, and amended in 1999 to prohibit sexual harassment in the workplace. It requires that employers ensure a comfortable environment for all employees; also, employers must respond to any disadvantageous treatment resulting from refusing a sexual advance.⁹³ Sexual harassment is one of many problems trafficking victims face; yet, because of their marginalized position this law is rarely applied to their circumstances. In fact, women with entertainer visas are treated as “non-workers” for purposes of Japanese labor laws, and therefore they must file complaints with the Immigration Bureau if their contracts are violated.⁹⁴

⁹⁰ EMPLOYMENT SECURITY LAW, art. 63, unofficial translation by Japan Institute of Labor, *available at* http://www.jil.go.jp/laborinfo-e/docs/llj_law10.pdf (last visited May 13, 2006) [hereinafter EMPLOYMENT SECURITY LAW].

⁹¹ CATHERINE MAKINO, JAPAN INSTALLS TRAFFIC SIGNAL FOR SEX TRAFFIC, WOMEN’S ENEWS (Jul. 18, 2005), *at* <http://womensenews.org/article.cfm/dyn/aid/2378/context/archive> (last visited Mar. 5, 2006).

⁹² Morrison & Foerster, *supra* note 76, at 3.

⁹³ Gelb, *supra* note 35, at 59-60.

⁹⁴ Dinan, *supra* note 47, at Part III.

2. Gender Equality

The Basic Law on Gender Equality (“Basic Law”) was passed in 1999.⁹⁵ This law is the first to put women’s rights in an international context. For example, Article 7 “states that national efforts towards gender equality will have to consider international developments and be conducted in harmony with efforts of the international community.”⁹⁶ The Basic Law creates a Commission for Gender Equality which includes an Experts Committee on Violence against Women that addresses issues such as trafficking for sexual exploitation.⁹⁷ However, the policies in the Basic Law are purely recommendations, which then must be followed with the implementation of legislation.⁹⁸ The Domestic Violence Law, passed in 2001, and the 1999 amendment of the EEO Act to prohibit sexual harassment are examples of implementing legislation under the Basic Law.⁹⁹

3. Human Rights Education

In 1995, during the UN Decade for Human Rights Education (1995-2004), Japan created the Headquarters for the Promotion of Human Rights Education.¹⁰⁰ Japan also passed the Law on Promotion of Human Rights Education in 2000. The law creates an annual reporting requirement on the measures taken to promote human rights education and increase human rights awareness.¹⁰¹ This law focuses on several groups including women, children, foreigners, the disabled and HIV patients.¹⁰² The law helps to conceptualize human rights as multifaceted instead of fractured into rights of women, minorities, foreigners and so on.¹⁰³ As a result, information about women’s rights in Japan increased in published research, news, government reports and other publications.¹⁰⁴

⁹⁵ The Cabinet Office, *FY 2004 Annual Report on the State of Formation of a Gender-Equal Society and Policies to be Implemented in FY 2005 to Promote the Formation of a Gender-Equal Society* (May 2005), at http://www.gender.go.jp/english_contents/index.html, (last visited Feb. 27, 2006).

⁹⁶ ILO REPORT *supra* note 2, at 43.

⁹⁷ *Id.*

⁹⁸ Murase, *supra* note 38, at 146.

⁹⁹ Yukako Yanagimoto, *The Basic Law for a Gender-Equal Society and Us*, 11 WOMEN’S ASIA 21: VOICES FROM JAPAN, *supra* note 88, at 5.

¹⁰⁰ Chan-Tiberghien, *supra* note 39, at 72.

¹⁰¹ *Id.* at 87 (citing to art. 7).

¹⁰² *Id.* at 72.

¹⁰³ *Id.* at 73.

¹⁰⁴ *Id.* at 74.

C. Criminal Laws

In addition to civil laws protecting migrant women's rights, there are numerous criminal laws that protect women's rights as well. Such laws include laws related to crime, immigration, prostitution and entertainment, child prostitution, domestic violence, and organized crime.

1. Criminal Code

The penal code applies to crimes by Japanese nationals inside Japan and outside its borders.¹⁰⁵ It criminalizes most steps of the trafficking chain, and because of its extraterritorial nature, it could be used to prosecute acts by Japanese recruiters, agents and brokers in source countries as well as in Japan.¹⁰⁶ Each link in the trafficking chain could be prosecuted under the penal code. Articles 155, 157 and 158 prohibit falsification of documents, alteration of official documents and use of such documents, respectively. These prohibitions could be applied to agents and immigration officials who falsify and use forged passports and visas.¹⁰⁷ Articles 224, 225 and 226 prohibit abduction and kidnapping of minors, abduction and kidnapping for commercial purpose, and abduction and kidnapping for transport outside Japan respectively. However, there is no parallel provision for abduction and kidnapping for transport into Japan. In addition, Article 227 prohibits the receipt of an abducted person. Trafficking victims usually have their passports confiscated and are forcefully transported and sold within Japan for commercial purposes and therefore should be protected by these provisions.

Forced acts of indecency are illegal under Article 176 of the Penal Code, as is forced indecency leading to death (Article 181). Article 177 prohibits rape, while quasi-forced indecency and quasi-rape¹⁰⁸ are criminalized in Article 178. Other relevant provisions include protections against coercion in Article 223, threat in Article 222, and confinement in Articles 220 and 221. Attempted sexual assault, attempted rape and attempted statu-

¹⁰⁵ Keihou [PENAL CODE], translated in, 2 EHS LAW BULL. SER. NO. PA (1947) [hereinafter PENAL CODE OR CRIMINAL CODE].

¹⁰⁶ Dinan, *supra* note 47, at Part IX.

¹⁰⁷ It is unknown whether these laws have been applied in this way.

¹⁰⁸ Quasi-rape is where an individual is unable to offer knowledgeable consent because of mental or physical limitations. Milton Diamond, *Pornography, Rape and Sex Crimes in Japan*, 22 INTERNATIONAL J. OF LAW AND PSYCHIATRY 1, 1. 1999, available at http://www.hawaii.edu/pcss/online_articles/pornography/prngrphy_rape_jp.html, (last visited Apr. 28, 2006). This does not explicitly include legal capacity to consent (i.e. statutory rape).

tory rape are prohibited by Article 179¹⁰⁹ and complicity to acts described in Articles 176 to 179 is illegal according to Article 180. In addition, assault and aggression are criminalized under Articles 204 to 208. Trafficking victims are frequently subject to these prohibited acts.

2. Immigration Control and Refugee Recognition Act

The law that is most frequently applied to trafficking victims is the Immigration Control and Refugee Recognition Act ("Immigration Act" or "ICRRA") passed in 1951.¹¹⁰ Many trafficking victims enter the country on 90-day tourist visas that do not allow employment. Sometimes victims' visas and/or passports are forged in order to circumvent efforts to reduce trafficking.¹¹¹ The law states that any person using, transferring, or lending altered travel documents and those who have arranged for use of altered travel documents face deportation and as of 2004 were not permitted to reenter Japan for one, five or ten years depending on the cause for deportation.¹¹²

The law also provides sanctions for anyone who facilitates the employment of or hires illegal immigrants, but these sanctions are less frequently enforced. Facilitation of work for illegal immigrants is punishable by less than three years in prison or a fine of less than 2,000,000 yen, about \$17,000. Further, the "use, keeping under control or procurement of persons for the purpose of making them work illegally is forbidden" by sanctions of less than three years in prison or fine up to 2,000,000 yen.¹¹³ The strictest sanctions are for activities related to smuggling persons for purpose of using them in illegal work prohibited under Article 74, and punishable by one to ten years in prison and fines from 1,000,000 to 10,000,000 yen, between \$8,500 and \$85,000. In comparison to civil fines for the Employment Security Law and the Labor Standards Law, these fines are significantly higher, and they could be a more significant deterrent to traffickers.¹¹⁴

¹⁰⁹ *Id.* The legal definition of statutory rape under the criminal code will be discussed infra in the section on Rights of Children.

¹¹⁰ Immigration Control and Refugee Recognition Law, translated in 2 EHS LAW BULL. SER. no. XB (2005). [hereinafter IMMIGRATION LAW].

¹¹¹ Dinan, *supra* note 47, at Part IV.

¹¹² IMMIGRATION LAW, *supra* note 110, at art. 24(3), 5(9).

¹¹³ ILO REPORT, *supra* note 2, at 42-43.

¹¹⁴ The risk and deterrent equation is determined by the market value of the victim. The U.S. CIA has calculated that traffickers earn an aggregate total of approximately \$250,000 per woman. Dina Francesca Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect Victims of Trafficking and to Secure the Prosecution of Traffickers*, 26 HUM. RTS. Q. 221, 223 (2004).

Another provision of the Immigration Act which is problematic for trafficking victims is Article 5(7) which prohibits the entry of any person “who engages in or has engaged in prostitution or procuring persons for prostitution, or any other business connected to prostitution.”¹¹⁵ Engaging in prostitution and procuring persons for prostitution are also grounds for deportation.¹¹⁶ Prohibiting entry or deporting those who procure persons for prostitution might protect victims if the victim has not been a prostitute and immigration officials recognize the woman was forcefully coerced into prostitution. Generally, however, immigration officials do not examine whether the woman was forced into prostitution, but simply deport her.¹¹⁷ In addition, prohibiting entry or deporting women who have been, or will be, engaged in sex work is especially troublesome due to the difficulty in differentiating smuggling from trafficking. When a woman withdraws her consent because of coercion (i.e. her employer forces her to take clients against her will), the woman becomes a trafficking victim regardless of her initial intent. Once forced into prostitution and debt-bondage, her human rights have been violated and she must be treated as a victim, not degraded as a criminal. This is especially necessary because Article 46 of the Immigration Law places the burden of proof on the suspected illegal immigrant to prove she is not in violation of the Immigration Law and therefore, should not be deported.¹¹⁸

With this background of strict immigration rules, the law makes an allowance for Filipino “entertainers” who can receive a special visa status as entertainers who have certifications in cultural arts such as traditional songs and dances of the Philippines, but who are in practice “bar girls” who sit next to and flirt with customers, pour drinks, and frequently leave the bar with customers for a “date” at a nearby sex hotel.¹¹⁹ There is a requirement for qualification as an entertainer by a foreign government agency, but nonetheless 133,103 Filipinos entered Japan on entertainer visas in 2003.¹²⁰

¹¹⁵ IMMIGRATION LAW, *supra* note 110, at art. 5(7).

¹¹⁶ *Id.*

¹¹⁷ Dinan, *supra* note 47, at Part VIII.

¹¹⁸ IMMIGRATION LAW, *supra* note 110, at art. 46.

¹¹⁹ Nobuki Fujimoto, Amendment of the Ministry of Justice Ordinance Regarding “Entertainer Certificate,” 15 Women’s Asia 21: Voices from Japan 14, 15 (Summer 2005), *supra* note 88.

¹²⁰ ILO REPORT, *supra* note 2, at 39.

3. Prostitution and Other Sexual Services

Even though prostitution is illegal in Japan, it is widespread and controlled by organized crime. The Law on the Prohibition on Prostitution was passed in 1956.¹²¹ The law focuses on the criminal responsibility of the prostitute and pimp, but does not sanction the buyer of sex. The definition of prostitution is vaginal intercourse for money or other compensation¹²² and does not include other sexual services.¹²³ Article 3 criminalizes prostitution and acting as an accomplice to prostitution. Solicitation and facilitation of prostitution is illegal according to Article 5; sanctions for women include “imprisonment of less than 6 months or a fine of 10,000 yen” (\$85) or being “put in Women’s Guidance Homes for guidance and rehabilitation.”¹²⁴ The implications of these sanctions are very problematic for women’s well-being and rights. The prohibitions “most relevant to trafficking is Article 6 which punishes the act of being an intermediary or broker to prostitution with sanctions less than two years in prison or less than 50,000 yen fine” (\$425);¹²⁵ coercing a person into prostitution, taking the gains of person in prostitution, inducing a person into prostitution by advance payment or providing a place for prostitution with sanctions ranging from three to ten years in prison and/or a fine of between 100,000 and 300,000 yen (\$850 to \$2,500).¹²⁶ As with other laws discussed above, the criminal sanctions simply are not strong enough to deter traffickers or deter buyers of these services.

The Law on Control and Improvement of Amusement Entertainment Businesses regulates all other sexual services where there is no vaginal penetration. This has been described as the “ejaculation business”¹²⁷ and includes more than 21,000 businesses in 2001 including bath houses with “private rooms,” strip clubs, sex hotels, “snack bars,” pornographic theaters and peep shows.¹²⁸ These services are not illegal, but are restricted to cer-

¹²¹ ILO REPORT, *supra* note 2, at 46, *citing* Law on the Prohibition of Prostitution, Law No. 118 of 24 May 1956.

¹²² Dinan, *supra* note 47, at Part IX.

¹²³ Oral sex, masturbation, anal sex, and other non-vaginal sexual services are regulated by the Entertainment Business Law.

¹²⁴ ILO REPORT, *supra* note 2, at 46.

¹²⁵ *Id.* at 47 (*citing* art. 6).

¹²⁶ *Id.* (*citing* art. 7 to 13).

¹²⁷ Chan-Tiberghien, *supra* note 39, at 41.

¹²⁸ Ministry of Foreign Affairs of Japan, FIFTH PERIODIC REPORT ON IMPLEMENTATION OF CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, art. 6.2(1)(a) (2002), *available at* http://www.mofa.go.jp/policy/human/women_rep5/index.html, (last visited Mar. 5, 2006).

tain areas and require special licenses from the government and are evidence of the high demand for a diversity of sexual services by Japanese men.¹²⁹ In many cases, women work as hostesses at “snack bars” and “date” clients by leaving the bar with the client to have sex in a nearby sex hotel to get around the law prohibiting prostitution.¹³⁰

4. Protection of Children

Another law which is highly relevant to protection of trafficking victims is the Law Punishing Acts Related to Child Prostitution and Pornography, passed in 1999. Prior to this law, Article 176 of the Penal Code established the age of consent at thirteen years old. Article 176 reads,

[a] person who, through violence or intimidation, commits an indecent act upon a male or female person of not less than thirteen (13) years of age shall be punished with imprisonment at forced labor for not less than six months nor more than seven years. The same shall apply to a person who commits an indecent act upon a male or female person under thirteen (13) years of age.¹³¹

By contrast, the new child prostitution law defines a child as a person under 18 years of age.¹³² Under this law, it is illegal to be an accomplice to child prostitution, to solicit or procure child prostitutes, or to produce, possess, carry, import or export materials containing child pornography.¹³³ Sanctions for violation are up to seven years in prison and up to a 10,000,000 yen fine (\$85,000).¹³⁴ Trafficking of children for prostitution or pornography is punishable by one to ten years in prison.¹³⁵ Women who are trafficked abroad are frequently under 18, and sometimes even sold by their parents. This law demonstrates the increased value of children with its higher fine, which is more likely to deter traffickers. The law also provides that a Japanese national who transports a child that has been “abducted, kidnapped, sold or bought in a foreign country” is punishable by imprisonment of not less than

¹²⁹ ILO REPORT, *supra* note 2, at 47.

¹³⁰ Dinan, *supra* note 47, at Part III.

¹³¹ Interpol, National Laws, Legislation of Interpol Member States on Sexual Offenses Against Children, Japan at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaJapan.asp> (last visited May 13, 2006).

¹³² ILO REPORT, *supra* note 2, at 4.

¹³³ *Id.*, citing art. 4 to 7.

¹³⁴ *Id.*

¹³⁵ *Id.*

two years.¹³⁶ However, the prison sentences are still low compared to other countries.¹³⁷ In one case, two Japanese junior high school girls were coerced into prostitution to pay off debts, and two suspects were charged with violations of the Child Welfare Act.¹³⁸ By 2001, in cooperation with international investigations, nine Japanese individuals were arrested associated with three cases of child prostitution abroad by Japanese citizens.¹³⁹ Japan also hosted the “Second World Congress Against Commercial Exploitation of Children” in December 2001.¹⁴⁰ In addition, the Child Abuse Prevention Law was passed in 2000 which defines child abuse and sexual abuse for the first time.¹⁴¹ As a result of the police crackdown on child prostitution, the police reported 112 cases of child prostitution and child pornography in the first half of 2005.¹⁴² Since 1999, the police have recorded 623 victims.¹⁴³

5. Gender Violence and Stalking

The Law for the Prevention of Spousal Violence and the Protection of Victims was passed in 2001.¹⁴⁴ The law defines violence as “illegal acts that threaten the spouse’s life or physical condition.”¹⁴⁵ Even though the law only applies to spousal violence, the preamble alludes to the importance

¹³⁶ *Id.* Importantly, “[i]gnorance of the age of the child is not a mitigating circumstance, unless the perpetrator can prove that this ignorance is not imputable to his/her negligence.” *Id.*

¹³⁷ US Sentencing Guidelines provide that promoting a commercial sex act with a minor including transporting and trafficking a minor for such act starts at 51 months in prison and can escalate to 292 months if aggravating circumstances are found (i.e. the minor is less than 12 years old, the defendant is the victim’s parent or legal guardian and other factors). U.S. SENTENCING GUIDELINES MANUAL, §2G1.3 (2005), at <http://www.ussc.gov/2005guid/gl2005.pdf> (last visited May 12, 2006).

¹³⁸ ILO REPORT, *supra* note 2, at 51-52. The outcome of these charges is unknown, but the ILO Report speculates, “the victimizers, even if convicted, are likely to be released on probation or be given a token monetary fine.” *Id.* at 52.

¹³⁹ Ministry of Foreign Affairs of Japan, *supra* note 128.

¹⁴⁰ *Id.* at art. 6.2(1)(b).

¹⁴¹ Chan-Tiberghien, *supra* note 39, at 51.

¹⁴² Japan’s Anti-trafficking Initiatives and Developments, Polaris Project, *supra* note 8.

¹⁴³ *Id.*

¹⁴⁴ LAW FOR THE PREVENTION OF SPOUSAL VIOLENCE AND THE PROTECTION OF VICTIMS [hereinafter, SPOUSAL VIOLENCE LAW], tentative translation, at <http://www.gender.go.jp/dv/sv.pdf> (last visited Mar. 3, 2006).

¹⁴⁵ Gelb, *supra* note 35, at 78.

of eliminating violence against all women. It provides, “we must establish measures to prevent spousal violence and protect victims. Such action will be in line with the efforts taken by the international community to eradicate violence against women.”¹⁴⁶

The law provides that if social service and medical staff detect “injuries or medical conditions resulting from spousal violence” they may notify a women’s center or the police without infringing on confidentiality of professional secrecy.¹⁴⁷ The law promotes cooperation among counseling centers, support centers, prefectural police and welfare offices.¹⁴⁸ In addition, the law requires prompt processing of complaints¹⁴⁹ and prompt rulings by court.¹⁵⁰ The law grants six month protective orders and requires that perpetrators must vacate the home for a period of two weeks.¹⁵¹ Violation of such orders carries a sentence of up to one year in prison or up to 1,000,000 yen in fines (\$8,500).¹⁵² However, unfortunately, this law does not have criminal sanctions for spousal violence *per se*; the law only provides remedies for violations of protective orders and encourages support of victims.¹⁵³

The law explicitly addresses immigrant women in stating,

[i]ndividuals responsible for the protection of victims . . . shall. . . give due consideration to the psychological and physical conditions of the victims, their environments, and respect the human rights of these victims regardless of their nationality, whether or not they are disabled, etc., taking due care to protect their safety and maintain their privacy.¹⁵⁴

The law also provides that “[s]tate and local government should undertake training and educational activities to deepen understanding of human rights of victims. . . .”¹⁵⁵ However, the law is focused on a spouse or de facto spouse,¹⁵⁶ which makes it applicable only to those victims of trafficking who have married or are living with a boyfriend but not divorced women.

¹⁴⁶ *Id.*

¹⁴⁷ SPOUSAL VIOLENCE LAW, *supra* note 144, at art. 6

¹⁴⁸ *Id.* at art. 9.

¹⁴⁹ *Id.* at art. 9.2.

¹⁵⁰ *Id.* at art. 13.

¹⁵¹ Gelb, *supra* note 35, at 78.

¹⁵² *Id.*

¹⁵³ *Id.* at 79.

¹⁵⁴ SPOUSAL VIOLENCE LAW, *supra* note 144, at art. 23.1.

¹⁵⁵ *Id.* at art. 23.2.

¹⁵⁶ *Id.* at art. 1.3.

Unfortunately, violence against women has been “politically equated with or reduced to domestic violence with its nearly exclusive focus on Japanese families, thus marginalizing other issues such as trafficking and prostitution.”¹⁵⁷

The law provides prefectural and municipality spousal violence counseling and support centers which include services such as medical and psychological, temporary protection of victims, assistance with housing, employment and navigation of social systems, and which generally promote victim's self-reliance.¹⁵⁸ Trafficked victims in sham marriages or those who stay to marry Japanese men could use this law, though most men in those situations abuse with impunity because they assume their wives do not know Japanese and therefore cannot get help.¹⁵⁹ The Diet also passed the Anti-Stalking Law in 2000, which established a national police taskforce in each prefecture.¹⁶⁰ The taskforce can issue “binding verbal cautions to suspected stalkers.”¹⁶¹

6. Organized Crime

Laws related to organized crime include the Law on Prevention of Unjust Acts by Boryokudan (Organized Crime), and the Law on Punishment of Organized Crimes, Control of Crime Proceeds (1999). In accordance with these laws, the government keeps records of membership in organized crime groups and does surveillance.¹⁶² The law requires groups to register and also restricts certain activities. In 2004, there were 24 registered groups with membership of around 85,000.¹⁶³ The government is also authorized to confiscate and collect crime related and money laundering profits.¹⁶⁴ The provisions on money laundering also cover profits from immigrant smuggling, assisting illegal employment of foreigners, and as-

¹⁵⁷ Chan-Tiberghien, *supra* note 39, at 87.

¹⁵⁸ SPOUSAL VIOLENCE LAW, *supra* note 144, at art. 3.

¹⁵⁹ Rutsuko Shoji, *Twenty Years of “Human Trafficking,” Experiences at the Women’s Shelter, HELP*, 15 *Women’s Asia 21: Voices from Japan* 4, 8 (Summer 2005). An immigrant married to a Japanese national must still apply for a special spousal visa to have legal status, and many do not realize this and are still considered illegal. They are also highly likely to suffer from domestic violence without recourse to police for fear of deportation. Ohtsu, *supra* note 88, at 20.

¹⁶⁰ Chan-Tiberghien, *supra* note 39, at 51.

¹⁶¹ *Id.*

¹⁶² ILO REPORT, *supra* note 2, at 45-6.

¹⁶³ *Id.* at 46.

¹⁶⁴ *Id.*

sisting illegal entry.¹⁶⁵ The Diet is also currently considering a law regarding conspiracy.¹⁶⁶

IV JAPAN'S RECENT EFFORTS TO ADDRESS SEX TRAFFICKING

A. *National Action Plan to Combat Trafficking*

In response to increased international and domestic pressure, the Japanese government published an Action Plan of Measures to Combat Trafficking in Persons in December 2004, which adopts the definition of trafficking set forth in the Palermo Protocol. The plan of action includes five basic areas of focus: ratify the Protocol on Trafficking, strengthen immigration policies, punish offenders, protect victims, and raise awareness.¹⁶⁷ The Palermo Protocol has not been ratified.¹⁶⁸ However, in accordance with the Action Plan, recent legal revisions include criminalizing conduct that infringes liberty and creating special residency status for victims. The government also plans to crackdown on criminal employers and brokers. Further, the government hopes to use electronic chips and machine-readable visa systems in combination with intelligence collected from victims to better identify forged travel documents.¹⁶⁹ In addition, with the reduction of the number of entertainer visas, immigration officials will ensure that entertainer residence status is not misused. The plan also addresses false marriages. The Immigration Bureau also attempts to raise awareness through educational efforts at points of entry including hanging posters in airports.¹⁷⁰

Measures to prevent illegal employment and prostitution are also key parts to the Plan of Action. Immigration officials are tasked with prosecuting such employers. In addition, public awareness in Japan and abroad is part of the plan to "encourage business owners" to comply.¹⁷¹ The govern-

¹⁶⁵ *Id.*

¹⁶⁶ After the Diet passes the law on conspiracy, it will be able to ratify the U.N. Convention on Organized and Transnational Crime, as well as the Protocol on Trafficking. E-mail from Aisa Kiyosue, Board Member, Asia-Women's Resource Center in Tokyo, to Kerry E. Yun, Student, Georgetown University Law Center (May 9, 2006, 05:38 EST) (on file with author).

¹⁶⁷ Japan's Action Plan of Measures to Combat Trafficking in Persons, Dec. 2004, Unofficial Translation, available at http://www.mofa.go.jp/policy/i_crime/people/action.html (last visited Mar. 13, 2006).

¹⁶⁸ Email from Aisa Kiyosue, *supra* note 166.

¹⁶⁹ Japan's Action Plan, *supra* note 167, at 3.

¹⁷⁰ *Id.* at 13.

¹⁷¹ *Id.* at 3.

ment media relations efforts include multiple radio broadcasts and newspaper and magazine articles in 2005, as well as publishing one million copies of leaflets for victims in English, Spanish, Tagalog, Thai, Chinese and Russian, and printing 28,000 posters, which are distributed at airports, counseling centers and immigration offices.¹⁷²

The government intends to focus on sex-related businesses in prosecuting cases of illegal employment, and it will consider amending the regulations for such businesses. The Action Plan provides that women's counseling centers will provide consultation, temporary protection and other services for victims of trafficking regardless of age or nationality.¹⁷³ The Women's Centers will cooperate with private shelters. Further, the government will "take a flexible approach to repatriation at government expense."¹⁷⁴ The National Women's Education Center will also participate by researching and developing teaching materials to raise awareness.¹⁷⁵ The Plan includes wide-scale training of prosecutors, immigration officials, coast guard officials, visa officers and women's counselors as well as distribution of manuals for such officials.¹⁷⁶

B. Recently Amended Laws

As part of the Plan of Action, the Diet passed amendments to the criminal code and the immigration law in June 2005. In addition, the Law Punishing Acts Related to Child Prostitution and Pornography was revised in 2004. Although the Constitution and previous laws discussed above could be interpreted to prohibit trafficking, abduction, forced labor and prostitution, the police and prosecutors were more focused on reducing the number of illegal immigrants instead of investigating and punishing the brokers, agents, pimps, club owners and others responsible for trafficking the immigrants. However, the Plan of Action explicitly addresses trafficking and acknowledges the need for improved services for victims, increased prosecution for traffickers and more effective prevention measures.

¹⁷² Japanese Ministry of Foreign Affairs, Recent Actions Japan has taken to combat TIP, at http://www.infojapan.org/policy/i_crime/people/action0508.html (last visited Apr. 9, 2006).

¹⁷³ *Id.* at 8.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 6.

1. Trafficking Explicitly Illegal Under Criminal Code

In June 2005, the Diet passed revisions to the criminal code, which explicitly prohibit trafficking. The penalty for buying humans is between three months and five years in prison, with increased punishment to one year to ten years for buying humans for profit-making, obscene acts and removal of organs.¹⁷⁷ The penalty for selling humans is between one and ten years in prison; further, transporting victims to other countries is punishable by two or more years in prison.¹⁷⁸ In July 2005, the police arrested a bar hostess for trafficking a thirteen year old Thai girl and for selling her into prostitution.¹⁷⁹ This was the first arrest under the revised law.¹⁸⁰ In October 2005, two women were arrested for trafficking an Indonesian women.¹⁸¹

2. Temporary Resident Status Visa for Victims

Article 50(3) of the Immigration act was also amended to include a procedure by which the Minister of Justice may decide to provide temporary resident visas for a person “who resides in Japan under the control of another due to trafficking in persons.”¹⁸² In addition, Article 5(7) which restricts entry to those who have engaged in prostitution was amended to provide an exception for those who were engaged in sex work ‘under the control of another due to trafficking in persons.’¹⁸³ Furthermore, the law restricts entry to those who have committed trafficking.¹⁸⁴ Similarly, engaging in prostitution is grounds for deportation with an exception for those under the control of another due to trafficking.¹⁸⁵

3. Reduction of “Entertainer” Visas

In addition, the government has increased the skills and training required to receive an entertainer visa.¹⁸⁶ In 2005, there were more than

¹⁷⁷ Japan’s Anti-trafficking Initiatives and Developments, Polaris Project, *supra* note 8.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² IMMIGRATION LAW, *supra* note 110, at art. 50(3).

¹⁸³ *Id.* at art. 5(7).

¹⁸⁴ *Id.* at art. 5(7)-2.

¹⁸⁵ *Id.* at art. 5(7).

¹⁸⁶ Amendment of the Criteria for the Landing Permission for the Status of Residence “Entertainer”, at http://www.vitalvoices.org/desktopdefault.aspx?page_id=224 (last visited Mar. 5, 2006).

80,000 Filipino women holding entertainment visas, which have been severely criticized for enabling exploitation and trafficking.¹⁸⁷ The Action Plan requires a “substantial examination as to whether a person has any capability as an artist.”¹⁸⁸ The foreign agency qualification requirement was removed because of corruption and the high likelihood of trafficking. Bars and nightclubs with more than five employees must now create a several meter distance between show stage and customer.¹⁸⁹ Filipino non-profits support these changes as necessary to combat corruption although there has been significant debate in the Philippines because the income remittance from women in Japan is substantial.¹⁹⁰ However, it is unclear how many women are able to send money to their families in the Philippines.

C. Impact of NGOs and Foreign Governments

The revisions to these laws were brought about through influence of domestic and international NGOs, the United Nations and the U.S. State Department. Private women's shelters in Japan have been serving immigrants and domestic violence victims and have also been active in lobbying for better laws and enforcement of victims rights.¹⁹¹ For example, House in Emergency of Love and Peace (“HELP”) was formed as a temporary shelter by the Japan's Women's Christian Temperance Union in 1986.¹⁹² HELP has sheltered more than 3,500 women and 800 children since opening.¹⁹³ Although initially Japanese women were only negotiating for rights on behalf of Japanese women, now they are beginning to negotiate on behalf of all women within Japan and globally.

The government has cooperated with NGOs in holding trafficking symposiums. For example, in December 2004 the “First Contact Point Meeting for Trafficking in Persons” was held to network between the government, embassies in Japan, international organizations and Japanese non-profits. In February 2006, the Ministry of Foreign Affairs with the IOM and Japan Network Against Trafficking in Persons held the “International Sym-

¹⁸⁷ *Id.*

¹⁸⁸ Japan's Action Plan of Measures to Combat Trafficking in Persons, *supra* note 167, at 4.

¹⁸⁹ Shoji, *supra* note 159, at 6.

¹⁹⁰ Development Action for Women Network (DAWN): Why We Support Japan's New Immigration Policy on Entertainers, Jan. 11, 2005, at http://www.cyberdyaryo.com/commentary/c2005_0111_01.htm (last visited Mar. 5, 2006).

¹⁹¹ Shoji, *supra* note 159, at 4.

¹⁹² *Id.*

¹⁹³ Ohtsu, *supra* note 88, at 19.

posium on Trafficking in Persons” which included panel discussions on the importance of international cooperation and women’s empowerment.¹⁹⁴

The United States has a very close relationship with Japan due to the security treaty between them.¹⁹⁵ As such, Japan is especially receptive to the U.S. State Department’s request for cooperation in the “war on terror.”¹⁹⁶ The Trafficking Victims Protection Act of 2000 requires the U.S. State Department to submit an annual report regarding foreign government actions against trafficking in persons. The purpose of the report is to raise awareness and “spur foreign governments to take effective actions to counter all forms of trafficking in persons.”¹⁹⁷ The report ranks countries as tier 1, tier 2, tier 2 special watch list, and tier 3. The government of a Tier 1 country “fully compl[ies] with the Act’s minimum standards.” Tier 2 describes “countries whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards.” However, some countries making such efforts to comply are classified as tier 2 special watch list for one or more reasons of the following reasons: “the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or a country is making significant efforts to comply with minimum standards based on commitments to take additional future steps over the next year.”¹⁹⁸

¹⁹⁴ Japanese Ministry of Foreign Affairs, at http://www.infojapan.org/policy/i_crime/people/sympo0602.html (last visited Apr. 9, 2006).

¹⁹⁵ Article 9 of Japan’s Constitution renounces war, where “land, sea, and air forces, as well as other war potential, will never be maintained.” CONSTITUTION OF JAPAN, Article 9, *supra* note 62. Instead, Japan is reliant on the U.S. military for security under the Japan-US Security Treaty of 1951, and subsequently, Japan-US Security Treaty of 1960. Japanese Ministry of Foreign Affairs, at <http://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html> (last visited May 12, 2006).

¹⁹⁶ Many Japanese non-profits have been incredulous about Japan’s sudden promises to address trafficked victim’s human rights. One stated, “it is difficult to believe that our government which has forcibly deported UN-mandated refugees will seriously consider protecting the human rights of foreign women,” because the focus is actually about the implications of organized crime funding terror. Hisako Motoyama, *Trafficking in Persons: What is the Issue and For Whom?*, in 15 WOMEN’S ASIA 21: VOICES FROM JAPAN, *supra* note 119, at 1.

¹⁹⁷ U.S. Dep’t of State, Trafficking in Persons Report (2005), at <http://www.state.gov/g/tip/rls/tiprpt/2005/>, at 5 (last visited Apr. 9, 2006).

¹⁹⁸ *Id.* at 28.

Using the tiered rating system, Japan was ranked as tier 2 in 2003¹⁹⁹ but was downgraded to tier 2 watch list in June 2004. By July 2004, Japan decided to write the Action Plan as summarized above.²⁰⁰ The 2005 State Department report notes Japan's improvement as it was moved off the watch list and returned to tier 2.²⁰¹

V. JAPAN'S INTERNATIONAL OBLIGATIONS TO VICTIMS: ENFORCEMENT AND APPLICATION

In Part A, this section will briefly discuss the position of international law in the Japanese legal system. Then, it will list the treaties Japan has ratified and other international human rights documents that are relevant to sex trafficking victims. Next, Part B will discuss the mechanisms to enforce these rights. Finally, in Part C, the paper will analyze Japan's compliance with its human rights obligations for each particular group of rights.

A. *Japan's Legal Obligations Under International Law*

In addition to domestic laws as described above, Japan is obligated to promote the human rights of trafficked victims under international law as incorporated into the Japanese legal system by Article 98.2 of the Japanese Constitution which states, "[t]he treaties concluded by Japan and established laws of nations shall be faithfully observed."²⁰² If there is a conflict between a statute and a treaty, the court should give priority to the treaty.²⁰³ The authority of treaties under the Japanese Constitution will be extremely important in the next section analyzing Japan's compliance with its international human rights obligations.

Japan has ratified or acceded to the majority human rights instruments relevant to trafficking. The Diet ratified both the International Convention on Civil and Political Rights (ICCPR)²⁰⁴ and the International

¹⁹⁹ *Id.*

²⁰⁰ Aisa Kiyosue, *Actions Taken By the Japanese Government Regarding Trafficking in Persons*, 15 WOMEN'S ASIA 21: VOICES FROM JAPAN, 9, 10, *supra* note 119, at 10.

²⁰¹ U.S. Dep't of State, *supra* note 7, at 132.

²⁰² CONSTITUTION OF JAPAN, *supra* note 62, at art. 98.2

²⁰³ Hata & Nakagawa, *supra* note 60, at 40. In fact, the Japanese representative to the Human Rights Committee confirmed in a 1981 report to the Committee that "treaties are deemed to have a higher status than domestic law." U.N. GAOR Hum. Rts. Comm., 14th Sess., 324th mtg. at 2, U.N. Doc. CCPR/C/SR.324 (1980).

²⁰⁴ International Convention on Civil and Political Rights, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967). Adopted by the General Assembly of the United Nations on Dec. 16, 1966 (G.A. Res. 2200, 21 GAOR, Supp. 16, UN Doc. A/6316, at 52);

Convention on Economic, Social and Cultural Rights (ICESCR)²⁰⁵ in 1979.²⁰⁶ In 1985, Japan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Further, Japan ratified the Convention on the Rights of the Child (CRC) in 1994. Japan acceded to the Convention on Elimination of All Forms of Racial Discrimination (Convention on Racial Discrimination) in 1995. It also acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) in 1999.²⁰⁷ Japan signed the Convention on Transnational Organized Crime²⁰⁸ in 2002 and the Optional Protocol on Trafficking in 2003; however, these important documents still have not been ratified yet.²⁰⁹ Japan also ratified the International Labor Organization (ILO) Convention Concerning Forced or Compulsory Labor in 1932,²¹⁰ but did not sign the ILO Convention Concerning the Abolition of Forced Labor.²¹¹

Japan has not yet signed or ratified the Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, which entered into force in 2003. In addition, Japan has not yet ratified the First Optional Protocol of the ICCPR, which provides jurisdiction in Article 1 for “the Committee to receive and consider communications from

entered into force on Mar. 23, 1976. Ratified by Japan in 1979. [hereinafter ICCPR].

²⁰⁵ International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, 6 I.L.M. 360 (1967). Adopted by the General Assembly of the United Nations on Dec. 16, 1966. Ratified by Japan in 1979. [hereinafter ICESCR].

²⁰⁶ Hata & Nakagawa, *supra* note 60 at 102-3. The ICCPR is widely held to be self-executing, while the ICESCR is not self-executing in Japan. *Id.*

²⁰⁷ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/39/46, entered into force June 26, 1987. [hereinafter Convention Against Torture].

²⁰⁸ UN Convention Against Transnational Organized Crime, entered into force Sept. 29, 2003, A/55/383, available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf (last visited May 1, 2006).

²⁰⁹ The Japanese Diet is considering a law on conspiracy, which if passed will allow Japan to ratify both the Convention on Organized Crime and the Trafficking Protocol, Email from Aisa Kiyosue, *supra* note 166.

²¹⁰ Convention Concerning Forced or Compulsory Labor, entered into force in 1932; ILO Database, at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited May 1, 2006). [hereinafter ILO Convention on Forced Labor].

²¹¹ Convention Concerning the Abolition of Forced Labor, entered into force in 1957; ILO Database, at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last visited May 1, 2006).

individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”²¹²

Japan also voted in favor of the Universal Declaration of Human Rights (Universal Declaration) in the U.N. General Assembly in 1948. Other relevant international documents that obligate Japan include the Declaration on the Elimination of Violence Against Women and a Resolution on Violence Against Women Migrant Workers, which were adopted by the U.N. General Assembly in 1993.²¹³ In addition, in accordance with the Beijing Declaration and Platform for Action, Japan has implemented National Plan of Action within the Council for Gender Equality, which became a cabinet level bureau in 2001.²¹⁴

B. Enforcement of Obligations

Many of the international conventions discussed in the next section explicitly provide that the signatories shall adopt appropriate domestic legislation and establish legal protection of these rights as provided in the convention. For example, Articles 2 and 3 of CEDAW provide that states shall agree to pursue a policy to eliminate discrimination against women and take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”²¹⁵ Further, CEDAW has reporting requirements for member states to provide information to the CEDAW Committee on the

²¹² Optional Protocol to the International Covenant on Civil and Political Rights, art. 1, at <http://www.hrweb.org/legal/cpr-prot.html> (last visited Apr. 28, 2006).

²¹³ Declaration on the Elimination of Violence Against Women, G.A. A/RES/48/104, (Dec. 20, 1993), [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendocument) (last visited Apr. 28, 2006); Resolution on Violence Against Women Migrant Workers, G.A. A/RES/48/110, (Dec. 20, 1993), <http://www.un.org/documents/ga/res/48/a48r110.htm> (last visited Apr. 28, 2006).

²¹⁴ Response to the Questionnaire to Government on Implementation of the Beijing Platform for Action. <http://www.gender.go.jp/index2.html> (last visited Apr. 28, 2006) (follow “Strengthening the organization for creating a gender-equal society” hyperlink).

²¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter CEDAW), art. 3, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force on Sept. 3, 1981), available at <http://www.ohchr.org/english/law/pdf/cedaw.pdf> (last visited Nov. 15, 2006.)

measures that states have taken to give effect to the provisions in the Convention.²¹⁶

The First Protocol to the ICCPR provides a complaint mechanism for individuals; however, Japan has not ratified that Optional Protocol. Other means of enforcing Japan's legal obligations include pressure from other governments and non-state actors such as NGOs.²¹⁷ One interesting effort is the Asian Human Rights Charter drafted by an NGO, the Asian Human Rights Commission, based in Hong Kong.²¹⁸ In conjunction with the African Charter, and the Inter-American Charter, this Asian Human Rights Charter can be used as a model to create a regional human rights body in Asia.

C. Application of International Human Rights Instruments to Sex Trafficking

This section will describe the instruments that make up the international human rights framework relevant to sex trafficking and analyze Japan's law and policies discussed above in light of these international legal obligations. These rights and freedoms include the right to be free from discrimination based on gender or race, the right to be free from slavery, forced labor or exploitation, the right to be free from cruel, inhuman or degrading treatment, the right to wages and safe working conditions, the right to choose an occupation, the right to bodily integrity and health, the right to be free from physical, emotional and psychological violence, the right to travel, the rights and protections of children, the right to fair process in administrative and other legal proceedings, and the right to free and consensual marriage.

²¹⁶ Article 17 establishes the Committee on the Elimination of Discrimination Against Women and procedures for naming members of the Committee. CEDAW, art. 17. Article 18.1 provides that states submit "a report on the legislative, judicial and administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the process made in this respect." CEDAW, art. 18.1.

²¹⁷ See *supra* section IV.C for more information about the role of NGOs and foreign governments to influence Japanese domestic laws.

²¹⁸ Vitit Muntarbhorn, *Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter?* 8 TRANSNAT'L L. & COMTEMP. PROBS. 407, 413 (Fall 1998). Asian Human Rights Commission, Asian Human Rights Charter, at http://material.ahrchk.net/charter/mainfile.php/eng_charter/ (last visited Apr. 29, 2006).

1. Protection Against Discrimination

The right to be free from gender and race-based discrimination is provided in CEDAW²¹⁹ and the Convention on Racial Discrimination.²²⁰ CEDAW defines discrimination against women as

any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²²¹

The convention seeks to modify social and cultural practices to achieve equality between men and women.²²² CEDAW undertakes to ensure women equal rights regarding political and public life including education,²²³ employment,²²⁴ health care,²²⁵ and marriage.²²⁶ To implement these rights, states agree under Article 2 of CEDAW to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”²²⁷

In accordance with CEDAW reporting requirements, Japan's Fifth Report was submitted in 2002 and addresses the following relevant issues: violence against women, prostitution and the ‘entertainment’ businesses, stalking, sexual harassment, migrant sex work and trafficking.²²⁸ The statistical index to the report indicates that only 36 people were arrested for “making a person prostitute.”²²⁹ The report identifies 65 cases of forced

²¹⁹ CEDAW, *supra* note 215.

²²⁰ Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1960, 660 U.N.T.S. 195, *available at* <http://www1.umn.edu/humanrts/instreet/dlcerd.htm> (last visited Nov. 15, 2006).

²²¹ CEDAW, *supra* note 215, at art. 1.

²²² *Id.* at art. 5(a).

²²³ *Id.* at art. 10.

²²⁴ *Id.* at art. 11.

²²⁵ *Id.* at art. 11.1(f) and art. 12.

²²⁶ *Id.* at art. 16.

²²⁷ *Id.* at art. 2.

²²⁸ Ministry of Foreign Affairs of Japan, *supra* note 128. This is the most recent report Japan has submitted.

²²⁹ *Id.* at Statistical Annex 47, *available at* http://www.mofa.go.jp/policy/human/women_rep5/047.html, (last visited Apr. 9, 2006).

prostitution of foreign women in 2001.²³⁰ That year, 347 immigrant women were deported for prostitution.²³¹ The report provided examples of arrests of brokers participating in debt bondage schemes as well.²³² Although Japan's efforts to arrest brokers and pimps and to recognize 65 cases of forced prostitution are important, the data on the number of immigrant women deported for prostitution is disturbing because many of those deported for prostitution could also have been victims of trafficking and forced prostitution. Deportation for prostitution disproportionately targets women in violation of CEDAW's prohibition of "any distinction, exclusion or restriction made on the basis of sex."²³³

The ICESCR,²³⁴ the ICCPR,²³⁵ and the Convention on the Rights of the Child²³⁶ provide that states must guarantee the protection of the rights of those conventions without regard to sex, race, national or social origin or other status and ensure the equal right of men and women to the rights of the conventions.²³⁷ Similarly, the Universal Declaration provides that all humans are born equal,²³⁸ and are entitled to rights without regard to race, sex, language, national or social origin or other status.²³⁹ ICCPR and the Universal Declaration provide that all persons are entitled to equal protection of the law.²⁴⁰ ICCPR provides similar protections for children: every child is entitled to protection under the status of a minor regardless of race, sex, national or social origin or birth.²⁴¹ Further, in the Convention on Ra-

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ CEDAW, *supra* note 215, at art. 1.

²³⁴ ICESCR, *supra* note 205, at art. 2.2.

²³⁵ ICCPR, *supra* note 204, at art. 2.1.

²³⁶ Convention on the Rights of the Child, G.A. Res. 44/25, art. 2, 44 U.N. GAOR Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989);. Parties "shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

²³⁷ ICCPR, *supra* note 204, at art. 3; ICESCR, *supra* note 205, at art. 2.2.

²³⁸ Universal Declaration of Human Rights, G.A. Res. 217 A (III), art. 1, U.N. GAOR, (Dec. 10, 1948).

²³⁹ *Id.* at art. 2.

²⁴⁰ ICCPR, *supra* note 204, at art. 26; Universal Declaration, *supra* note 238, at art. 7.

²⁴¹ ICCPR, *supra* note 204, at art. 24.1.

cial Discrimination, paragraphs 50 and 54 explicitly recognize migrant women as victims of racism.²⁴²

Japan continues to have problems meeting its international obligations to eliminate racial discrimination. For example, in 2004, the Immigration Bureau implemented an anonymous reporting system whereby citizens can report any "suspected illegal migrant"; however, this directly contributes to racial profiling based on linguistic and racial characteristics.²⁴³ In addition, female sex trafficking victims experience a "highly sexualized form of racism."²⁴⁴ These women are further subjected to degradation based on their class and nationality in Japan where "the idea of hierarchy of civilizations or cultures has been deeply entrenched."²⁴⁵

2. Right to be Free from Slavery, Forced Labor or Exploitation

Sex trafficking and debt bondage are forms of slavery, forced labor and exploitation, and are prohibited explicitly in CEDAW, the ILO Convention on Forced Labor and the Palermo Protocol. CEDAW requires that "[s]tates parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."²⁴⁶ The ILO Convention on Forced Labor obligates parties to suppress the use of forced or compulsory labor, namely "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."²⁴⁷ The UN Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others entered into force in 1949, and also prohibits trafficking.

Most recently, the Palermo Protocol on Trafficking, which defines trafficking, is part of the Convention on Organized Crime.²⁴⁸ The purpose

²⁴² Convention on Race, *supra* note 220.

²⁴³ Special Rapporteur Report on Racism, *supra* note 42, at 16.

²⁴⁴ *Id.*

²⁴⁵ John Lie, *The Discourse of Japaneseness*, in JAPAN AND GLOBAL MIGRATION: FOREIGN WORKERS AND THE ADVENT OF A MULTICULTURAL SOCIETY 70, 76 (Mike Douglass & Glenda S. Roberts eds., 2000).

²⁴⁶ CEDAW, *supra* note 215, at art. 6.

²⁴⁷ ILO Convention on Forced Labor, *supra* note 210, at art. 1, 2.1.

²⁴⁸ Article 1.1 of the Protocol states that it should be interpreted together with that convention. Some NGOs are concerned that the UN has framed the issue as more about transnational crime than about violence against women. Kiyosue, *supra* note 200, at 10. Indeed, the Protocol is organized under the U.N. Office for Drug Control and Crime Prevention which is a law enforcement body and not a human rights body. Patterson, *supra* note 87, at 186.

of the Protocol is to prevent trafficking and protect victims.²⁴⁹ The Palermo Protocol sets forth a number of requirements states must meet, such as maintaining victim confidentiality, assisting victims to make statements during prosecution of traffickers, providing physical, psychological and social recovery for victims, taking into account the age, gender and special needs of victims, ensuring physical safety of victims, and offering victims means to obtain compensation for damages under the legal system.²⁵⁰ Article 5 provides that states shall take legislative action to implement the obligations of the Palermo Protocol. In anticipation of ratification of the Palermo Protocol, Japan has begun this process with revisions of the criminal and immigration codes as discussed above.

The protocol provides that the domestic legal system should allow victims the opportunity to seek compensation for damages.²⁵¹ Aliens in Japan can file civil charges for breach of contractual obligations.²⁵² However, for an alien subject to deportation, participating in a civil suit is not grounds for an extension of temporary residency status under Immigration Act, Article 50-1.²⁵³ Further, illegal immigrants are not entitled to state-subsidized legal assistance in civil cases.²⁵⁴

The protocol encourages states to implement assistance for victims by providing housing, counseling in a language the victim understands, and medical assistance.²⁵⁵ These services are currently provided by foreign embassies in Japan and non-governmental organizations. To tackle prevention, Article 9.2 encourages states to conduct research and media campaigns. To ensure that victims receive necessary services and opportunity for civil redress, the Protocol also encourages states to implement a temporary resident

²⁴⁹ Palermo Protocol, *supra* note 5, at art. 2, 9.

²⁵⁰ *Id.* at art. 6. In contrast, the Protocol against the Smuggling of Migrants by Land, Air and Sea (Protocol on Smuggling) only requires migrants be accorded humane treatment and freedom from violence. Protocol against the Smuggling of Migrants by Land, Air and Sea, at http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf (last visited May 1, 2006). As such, this provides nations with an additional incentive to label illegal immigrants as having been smuggled rather than trafficked.

²⁵¹ Palermo Protocol, *supra* note 5, at art. 6.6.

²⁵² Vital Voices, *supra* note 76, at 4.

²⁵³ *Id.*

²⁵⁴ *Id.* at 5.

²⁵⁵ Palermo Protocol, *supra* note 5, at art. 6.3.

status program.²⁵⁶ Japan has amended the immigration code to allow discretionary approval of this type of temporary resident status.²⁵⁷

Freedom from forced labor is Constitutionally and statutorily protected, but not well-enforced. Japan historically has been more focused on prosecuting victims than protecting them, as is evidenced by police quotas that encourage reporting illegal immigrants, while turning a blind eye to traffickers and pimps.²⁵⁸ Issues of corruption and bribery of police are also common. The National Police Agency uncovered 29 cases of trafficking between January and June 2005, compared to 24 cases between January and June 2004.²⁵⁹ Although this improvement in recognition of trafficking is important, considering the tens of thousands of trafficking victims in Japan, this small number seems insignificant. Japan Network Against Trafficking in Persons complained that the government's efforts have not yet "made a dent."²⁶⁰ To better prosecute traffickers, in July 2005 Japan began compiling a human trafficking database of traffickers and victims' accounts to assist investigators in finding offenders.²⁶¹

3. Right to be Free from Violence, Cruel, Inhuman or Degrading Treatment

Various international documents obligate Japan to protect women against domestic and other violence by state or private actors. Article 5 of the Convention Against Torture, Article 5 of the Universal Declaration, and Article 7 of the ICCPR provides the right to be free from torture, other cruel, inhuman or degrading treatment.²⁶² Further, Article 3 of the Universal Declaration, and Article 9 of the ICCPR protect the right to liberty and security of person. In addition, the Declaration on the Elimination of Violence Against Women summarizes women's rights in other international conventions and reaffirms "the urgent need for the universal application to women of rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings."²⁶³

²⁵⁶ *Id.* at art. 7.1

²⁵⁷ IMMIGRATION LAW, *supra* note 110, at art. 50(3).

²⁵⁸ Dinan, *supra* note 47, at Part IX.

²⁵⁹ Makino, *supra* note 91.

²⁶⁰ *Id.*

²⁶¹ Japan's Anti-Trafficking Initiatives and Developments, *supra* note 8.

²⁶² Convention Against Torture, *supra* note 207, at art. 5. Universal Declaration, *supra* note 238, at art. 5. ICCPR, *supra* note 204, at art. 7.

²⁶³ Declaration on the Elimination of Violence Against Women, *supra* note 213, at Preamble.

Recently, the Japanese government has taken some steps to improve the status of female victims of violence. In 1996, the National Policy Agency (“NPA”) instituted a policy focusing on victims of sex crimes to improve officer training in sex crime investigation, to recruit and train more female officers, to create hotlines and add in-house counseling services for victims.²⁶⁴ However, the NPA admitted in 1997, “[w]e have not made enough effort to develop techniques to investigate sex crimes whereby victims are taken into consideration, to train detectives specializing in sex crimes or to improve the system so that victims may report to the police more easily.”²⁶⁵ The extent these measures have been applied to trafficking victims is questionable because of the police policy to immediately refer suspected illegal immigrants to the Immigration Bureau. The Vision of Gender Equality, published by the Prime Minister’s Office acknowledges that “[e]fforts are required to abolish violence against women against not only Japanese women, but also foreign women.”²⁶⁶ In addition, Japan passed the Spousal Violence Law in 2001; and although spousal violence is not a criminal act per se, a violation of a protective order does carry criminal sanctions.²⁶⁷ This law only protects a spouse or de facto spouse and does not do enough to address gender violence more broadly.

4. Rights to Wages, Safe Working Condition and Free Choice of Occupation

Women have the right to wages, safe working conditions and free choice of occupation under CEDAW, the ICCPR, the ICESCR, the Convention Against Racial Discrimination and the ILO Conventions against forced labor. CEDAW addresses these rights in Article 6 (elimination of traffic in women), 11(a) (elimination of discrimination and right to work) and 11(c) (right to free choice of profession, right to training and advancement). In addition, the ICESCR requires in Article 6 the right to work, and in Article 7 it requires the right to fair wages, healthy working conditions and reasonable working hours. Article 11 of the ICESCR also protects the right to an adequate standard of living. The Convention on Racial Discrimination similarly protects the right to work, free choice of employment, equal pay, just and favorable remuneration, and the right to training in Article 5(e). The

²⁶⁴ Chan-Tiberghien, *supra* note 39, at 48.

²⁶⁵ *Id.* at 47.

²⁶⁶ *Id.* at 42.

²⁶⁷ Gelb, *supra* note 35, at 79.

ILO Convention on Forced Labor requires states to eliminate forced or compulsory labor where the laborer does not participate voluntarily.²⁶⁸

Japan's fifth report to the CEDAW Committee asserts that

if it is evident in the deportation process that deportees have not received wages or have industrial injuries the Immigration Bureau gives consideration to the fact and helps them, to the extent possible, to have a proper remedy by contacting the employer or reporting the case to the Labor Standards Inspection Office²⁶⁹

However, as a practical matter, most women do not in fact have any means to follow-up on unpaid wages. This is problematic because victims are being deported and helped "to the extent possible," but it is unclear what that means. Contacting a trafficker and *asking* for wages probably will not be enough pressure, and women may be fearful of reprisal. Further, the government has consistently failed to recognize that a woman who was a prostitute would not choose debt bondage as a way to finance her employment expenses. Japanese laws protect many of these rights to work and wages, but immigration policy priorities override immigrant rights in this area.

5. Right to Bodily Integrity and Health

The right to bodily integrity and health is protected in Article 11(f) of CEDAW, and in Articles 7(b), 10.3, 12.1 and 12.2 of the ICESCR. Further, the Convention Against Racial Discrimination provides the right to public health and medical care in Article 5. In addition, the Declaration on the Elimination of Violence Against Women reaffirms the rights to the "highest standard attainable of physical and mental health" in Article 3(f).²⁷⁰

For trafficked victims, the Japanese government is not ensuring these rights. Pimps and mama-sans control trafficked women in need of treatment by restricting healthcare access or violating confidentiality in sexually transmitted disease testing.²⁷¹ Illegal immigrants cannot participate in Japan's national medical insurance program and therefore frequently cannot afford treatment or STD testing.²⁷² In fact, many immigrant women seeking

²⁶⁸ ILO Convention on Forced Labor, *supra* note 210, at art. 1.

²⁶⁹ Ministry of Foreign Affairs of Japan, *supra* note 128.

²⁷⁰ Declaration on the Elimination of Violence Against Women, *supra* note 213.

²⁷¹ Dinan, *supra* note 47, at Part IV.

²⁷² Hisano Nikura, *Report From a Women's Shelter for Migrant Women in Japan: Violence Against Trafficked Women and the Situation Around People Living with*

HIV treatment are rejected or receive insufficient treatment.²⁷³ As a result, these victims face severe consequences including debilitating diseases and even death.

6. Right to Travel

Article 12 of the ICCPR and Article 5(d) of the Convention Against Racial Discrimination protects the right to travel. Further, the Convention on Refugees, and the Convention on Migrant Rights and the Universal Declaration also protect this right. When the traffickers take victims' passports and restrict their movement within Japan, and the Japanese government deports victims and prohibits them from reentry into Japan for a number of years, these actions restrict women's right to travel. For women who have children with Japanese men, this reentry barrier is especially problematic. Nonetheless, Japan has not signed the International Convention on Protection of the Rights of all Migrant Workers and Members of Their Families. One reason is because the cultural perception is that discrimination against migrant workers is "reasonable discrimination."²⁷⁴

7. Rights of Children

In 1994, Japan ratified the Convention on the Rights of the Child.²⁷⁵ In 2005, it also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography without reservation to either agreement.²⁷⁶ In accordance with these instruments, Japan must prohibit sale of children, child prostitution and child pornography and make such crimes extraditable offenses for the purposes of all existing and future extradition treaties between parties.²⁷⁷ The optional protocol also requires proper procedures for child adoption and requires international cooperation in prosecution of violations and vic-

HIV/AIDS, 14 WOMEN'S ASIA 21: VOICES FROM JAPAN 36, 52 (2005), at <http://ajwrc.org/english/sub/voice/14-2.pdf> (last visited Apr. 30, 2006).

²⁷³ *Id.*

²⁷⁴ Chan-Tiberghien, *supra* note 39, at 113.

²⁷⁵ Ministry of Foreign Affairs of Japan, Human Rights, at http://www.mofa.go.jp/policy/un/pamph2000_archive/human.html (last visited Apr. 9, 2006).

²⁷⁶ Office of the United Nations High Commissioner for Human Rights, at <http://www.unhchr.ch/tbs/doc.nsf/887ff7374eb89574c1256a2a0027ba1f/e86a6df28fa0ce79c1256997002c1136?OpenDocument> (last visited Apr. 9, 2006).

²⁷⁷ Office of the United Nations High Commissioner for Human Rights, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, art. 1, 5 (2002), at <http://www.ohchr.org/english/law/pdf/crc-sale.pdf> (last visited Apr. 9, 2006).

tim counseling.²⁷⁸ State parties must amend legislation as necessary to comply with the provisions of the protocol, and undertake awareness-raising activities, education and training to prevent child prostitution, sexual exploitation and forced labor.²⁷⁹ In addition, Article 10.3 of the ICESCR provides that children should be protected from economic and social exploitation, and “[t]heir employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.”²⁸⁰

Despite Japan's ratification of these important agreements, it still faces problems with child prostitution and exploitation, most frequently through “compensated dating,” telephone clubs, and snack bars. Compensated dating, euphemistically described as young Japanese girls who exchange sex with older men for designer handbags or other expensive gifts, is not viewed by many Japanese as prostitution because it is “mostly practiced voluntarily by teenage school girls.”²⁸¹ Telephone clubs and snack bars are frequently staffed by trafficking victims at least some of whom are undoubtedly under age. Japan's Fifth Periodic Report to CEDAW stated that the National Police Agency investigated 1,562 cases of child prostitution and child pornography in 2001.²⁸² However, these statistics do not indicate whether victims were immigrants or Japanese or whether the law is being enforced effectively to protect both Japanese and non-Japanese children. Thus, there must be better collection of statistics to monitor the effectiveness of Japanese enforcement of this international obligation.

In the first prosecution since Japan modified the criminal code to make trafficking an explicit crime, a Tokyo District Court sentenced a 24 year-old Thai hostess named Phinkaew to three years in prison for conspiring with the mother of a 13 year-old girl and her 17 year-old sister to sell the children into sexual slavery for approximately \$19,000 each in 2002; however, the sentence was suspended because the women had a “subordinate role in the crime.”²⁸³ Nonetheless, the judge said, “[t]he victimized children suffered significant damage physically and mentally. The responsibility for the crime should not be taken lightly.”²⁸⁴ The mother of

²⁷⁸ *Id.* at art. 3.5, 10.

²⁷⁹ *Id.* at art. 8.

²⁸⁰ ICESCR, *supra* note 205, at art. 10.3.

²⁸¹ Chan-Tiberghien, *supra* note 39, at 66.

²⁸² Ministry of Foreign Affairs of Japan, *supra* note 128.

²⁸³ Vital Voices, Thai Walks Free in Japan's First Trafficking Case, Dec. 9, 2005, at http://www.vitalvoices.org/desktopDefault.aspx?page_id=320 (last visited Apr. 28, 2006).

²⁸⁴ *Id.*

the girls is in jail in Thailand, and the alleged pimp is being charged with forcing the younger girl to have sex with men; however the man who bought the girls from Phinkaew is at large.²⁸⁵ It is unknown from the news article whether the court addressed the fact that the victims here are children and should be protected more stringently. To address the underlying economic hardships in source countries, Japan created the “Japan’s Children Support Plan for Tsunami Victims” to protect children and prevent trafficking with a contribution of \$86 million.²⁸⁶

8. Right to Fair Process in Administrative and Legal Proceedings

The right to fair process includes the right to counsel before and during judicial and administrative hearings and the right to a speedy trial. Translation and interpretation services are also important in these circumstances to make these rights meaningful. Article 14.3(a) and (f) of the ICCPR requires that a defendant be informed of charges against him or her in a language s/he understands, and “to have the free assistance of an interpreter if [s]he cannot understand or speak the language used in the court.”²⁸⁷ In addition, Article 16 provides that “everyone shall have the right to recognition everywhere as a person before the law.”²⁸⁸ This provision, in combination with the protections in the Japanese Constitution discussed above, affirms rights for illegal immigrants as well as citizens of Japan.²⁸⁹

Currently, the procedures in immigration detention facilities do not comply with these obligations. First, a suspected illegal immigrant is only allowed to speak Japanese in the detention facility, even when consulting an attorney.²⁹⁰ Next, most immigrants do not have access to an attorney during detention, but only during trial. Further, defendants face long periods of detention and poor conditions.²⁹¹ Although Constitutional provisions protect the right to access to the courts, the right to be informed of charges, and

²⁸⁵ *Id.*

²⁸⁶ Ministry of Foreign Affairs of Japan, The Recent Actions Japan has taken to combat Trafficking in Persons, at http://www.infojapan.org/policy/i_crime/people/action0508.html (last visited Apr. 9, 2006).

²⁸⁷ ICCPR, *supra* note 204, at art. 14.3(a), (f).

²⁸⁸ *Id.* at art. 16.

²⁸⁹ See textual analysis of Constitution of Japan, *supra* pp. 3-13.

²⁹⁰ Dinan, *supra* note 47, at Part VIII.

²⁹¹ *Id.*

the immediate privilege of counsel,²⁹² there are not laws which implement these rights for immigrants in administrative proceedings.²⁹³

9. Right to Free and Consensual Marriage

CEDAW and the ICCPR protect a woman's right to free and consensual marriage. Article 9 of CEDAW protects a woman's right to change or retain her nationality on marriage, and to have equal rights with men in determining the nationality of her children. Article 16 of CEDAW, Article 23 of the ICCPR and Article 16 of the Universal Declaration also provide the equal right to marry and to freely choose a spouse. The current immigration laws prevent trafficking victims from staying in Japan to marry a Japanese man, even if the victim has a child with a Japanese man.²⁹⁴ If the woman entered Japan illegally and is deported, she is not allowed to re-enter Japan for a certain number of years. This infringes on her rights to have a family and to marry.

VI. RECOMMENDATIONS

A. *Use of International Human Rights Mechanisms*

International human rights instruments discussed above obligate Japan to protect victims of trafficking. In compliance with these international obligations, Japan must submit timely and detailed reports to the CEDAW Committee and provide meaningful responses to concerns expressed in shadow reports. Further, Japan is currently not willing to allow complaints to be brought against it before the UN Human Rights Commission under the Optional Protocol of the ICCPR.²⁹⁵ Japan has claimed its intent to be more responsive and accountable for human rights violations; however, Japan should demonstrate this intent by accepting jurisdiction of the UN Human Rights Commission and ratifying the First Optional Protocol to the ICCPR.

In addition, there is a need for an Asian Regional Human Rights Body. The NGO Asian Charter can be used as a model.²⁹⁶ Japan must also work with other governments to prosecute organized criminal networks and money laundering in order to eradicate the infrastructure traffickers use to exploit women. Japan must also ratify the Convention on Transnational Organized Crime, the Trafficking Protocol, and the Migrants Convention.

²⁹² CONSTITUTION OF JAPAN, *supra* note 62, at art. 32 and 34.

²⁹³ Dinan, *supra* note 47, at Part VIII.

²⁹⁴ *Id.*

²⁹⁵ Japan has not ratified the Optional Protocol to the ICCPR.

²⁹⁶ See generally Muntarbhorn, *supra* note 218, at 413.

Once Japan has ratified these important instruments, Japan can use the Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto to review Japan's legislation and other measures to combat sex trafficking.²⁹⁷ Japan will have an opportunity to demonstrate its progress when the International Rapporteur for Trafficking makes an official visit to Japan in 2006.

B. Changes in Domestic Laws and Programs

To fulfill its international obligations, Japan must amend domestic legislation and actively implement programs to address all facets of the trafficking problem. The Plan of Action and amended laws provide a skeletal framework for addressing prevention of trafficking, protection of victims and prosecution of traffickers. However, there are still significant measures which are required under Japan's international legal obligations to reinforce this skeletal framework. The failure to give all three goals (prevention, protection and prosecution) equal focus is simply providing a temporary bandage and not a cure to the systemic problem. For example, the government has been criticized for intensifying "a crackdown on the 'crimes' while ignoring the societal problems and those who are victimized."²⁹⁸

One of the most drastic problems with Japan's efforts is that the issues of supply and demand in trafficking are barely addressed. Supply factors include regional conflicts, oppression by families, lack of economic and educational opportunity, responsibility for care of family members, and other problems women face in developing countries.²⁹⁹ These factors create the "feminization of immigration" in which women are more likely to travel abroad in search of opportunities and become more likely to be exploited.³⁰⁰ For example, even though the revised Immigration Law has reduced the number of entertainer visas, there are still a large number of women who seek to go abroad for reasons explained above, and therefore, they will still be at risk for exploitation.³⁰¹ Demand is equally problematic. The former Director of the Immigration Bureau, who was active in reforming the laws, stated, "[s]ome men even said I was out of my mind to try to do something

²⁹⁷ United Nations Office on Drugs and Crime, Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (2004), available at http://www.unodc.org/unodc/en/organized_crime_convention_legislative_guides.html#_Legislative_guide_for_1 (last visited May 1, 2006).

²⁹⁸ Motoyama, *supra* note 196, at 3.

²⁹⁹ *Id.* at 2.

³⁰⁰ *Id.*

³⁰¹ Fujimoto, *supra* note 119, at 14-15.

about human trafficking. They claimed it was part of Japanese culture to have sex with foreign women. They were addicted to the parlors. I received phone calls from politicians and anonymous threats on my life."³⁰² The Plan of Action does not sufficiently address the cultural and social stigmas faced by non-Japanese women, or the systemic degradation and abuse of women in the sex industry.

The criminal code currently includes sanctions on violators; however, the legislature must amend the law to provide explicit punitive damages for wages for unpaid work, or compensation for infliction of emotional and physical abuse. For example, the Asia-Japan Women's Resource Center is pushing for a victims' protection law to explicitly recognize human rights of victims.³⁰³ In addition, during administrative and legal proceedings, victims need improved access to attorneys and interpreters. Also, the Diet must amend Article 46 of the Immigration Law, which places the burden of proof on the suspect, to put the burden on the government to prove that the suspect is not a trafficking victim. Detention facilities and police offices need more interpreters on staff to take witness statements and explain procedures to victims. In addition, the criteria to receive special residence permission under Article 50 are unclear, and the Immigration Bureau and Ministry of Justice must publish standards for receiving such permission and include an appropriate appeals process.

Changes to police procedure and training are also necessary. The police quota for reporting illegal immigrants should be replaced with a quota for referring possible traffickers or pimps. It is also necessary to train police officers and judges in appropriate treatment of the victim. The World Health Organization has published ethical and safety recommendations for interviewing trafficking victims that can be used as a model for police, immigration officials and non-government organizations.³⁰⁴ Official recognition of victims should be done by professionals who understand the harms of trafficking in persons. Instead, currently, police, immigration officers or women's counselors make a determination of victim status. The Action Plan states that "police will pay thorough consideration to the position of the victim," yet if police use interrogation methods and require "corroborate-

³⁰² Women's eNews, "Japan Installs Caution Signal for Sex Traffic," July 18, 2005, available at <http://www.womensenews.org/article.cfm/dyn/aid/2378/context/archive> (last visited Mar. 5, 2006).

³⁰³ Kiyosue, *supra* note 200, at 13.

³⁰⁴ World Health Organization, WHO Ethical and Safety Recommendations For Interviewing Trafficked Women, (2003), at <http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf> (last visited Apr. 28, 2006).

tion” of victims stories, women may not receive victim status.³⁰⁵ Officers and judges also need cultural sensitivity training to adjust their attitudes toward non-Japanese. In addition, the police and immigration agents need more training in the details of the new laws in order to bring appropriate charges against traffickers and to better target investigations. Further, the criminal code should be strengthened to provide stiff penalties for bribery and corruption of government officials such as immigration and visa officials that enable trafficking in persons. The government should also aggressively prosecute those men who buy sexual services from trafficking victims to reduce the profitability of forced prostitution.

Further, the Diet must amend the spousal abuse law to encompass violence against women more broadly (i.e. women who are not married) to cover divorced women, as well as women who suffer physical abuse by their employers. In addition, the Diet should amend the spousal abuse law to encompass emotional and psychological violence as well. There is also a need to train hospital social workers to ensure emergency medical exams for non-residents.³⁰⁶

Not only do Japanese laws and policies need additional adjustments, Japan needs to create an independent complaint mechanism for oversight over police conduct and government implementation of laws related to trafficking and organized crime. In April 2004, the Inter-Agency Task Force was formed to coordinate between the Ministry of Foreign Affairs, the National Police Agency and the Ministry of Health, Labor and Welfare. This group aims at strengthening penalties and law enforcement concerning trafficking in persons and providing protection and aid to trafficking victims;³⁰⁷ however, the organization could also act as an oversight instrument to ensure compliance by government agents.

Another huge gap in Japan’s efforts to combat trafficking in persons is the neglect of financial resources for social services. In 2005, the government only allocated \$100,000 to private shelters and \$160,000 to the International Organization for Migration for victim repatriation efforts.³⁰⁸ According to one advocate, the current shelters are “up to their ears” with current domestic violence counseling efforts and the additional trafficking victims would swamp the few centers currently operating.³⁰⁹ First, the government should increase funding for public and private shelters and other

³⁰⁵ Kiyosue, *supra* note 200, at 12.

³⁰⁶ *Id.*

³⁰⁷ ILO REPORT, *supra* note 2, at 45.

³⁰⁸ Recent Actions Japan has taken to combat Trafficking in Persons, *supra* note 286.

³⁰⁹ Kiyosue, *supra* note 200, at 11.

support services including legal services, housing services, and interpretation and translation services. Shelters need additional staff who are specialized in the needs of trafficking victims. Private shelters are often simple two room apartments paid for by individual women who do not receive tax benefits or government grants.³¹⁰ In addition, the non-profit laws need to be changed to improve tax benefits so that private shelters and other civil society groups can make meaningful and relevant contributions at the grassroots level.

The media can also play a role in combating trafficking. First, the media can focus on efforts to change Japanese cultural perception of gender, prostitution and illegal immigrants. The media in developing countries can target migrants by distributing information about rights while abroad, location of that nation's embassy in Japan, and details on how to apply for new travel documents if necessary. Further, airports can post signs in Thai, Tagalog, Vietnamese and other languages with contact phone numbers of embassies and shelters. Japanese non-government organizations have been successful by putting stickers with shelter phone numbers and other information in victim's native languages in phone booths in areas of high density of trafficked victims.³¹¹ Similar efforts can be made in other locations.

VII. CONCLUSION

The institutional and legal framework described in this paper is an important start in Japan's efforts to combat trafficking in persons and to fulfill Japan's international obligations to women. However, significant problems are not addressed adequately, including the need for more effective measures to stem supply and demand of trafficking victims, to recognize victims' rights, to provide medical care and compensatory damages to victims, to provide better cultural and psychological training for police, immigration officers and interpreters, to allocate more financial resources for social services and non-profit centers, and to target xenophobic, racist and misogynistic attitudes in Japanese society. Trafficking in persons must be attacked from all angles to effectively promote health, economic development and safety for women around the world. Japan must honor its obligations under international human rights law to ensure all women's rights in Japan. As Japan implements and modifies its Plan of Action, we can hope that soon the skeletal framework will be improved with the necessary tools to effectively address this global problem of sex trafficking.

³¹⁰ Takehiko Kambayashi, *A Defender of Japan's Battered Women*, CHRISTIAN SCIENCE MONITOR, Feb. 4, 2004, available at <http://www.csmonitor.com/2004/0204/p11s01-lifp.html> (last visited Mar. 5, 2006).

³¹¹ ILO REPORT, *supra* note 2, at 28.

