

NOTE

JAPAN'S BATTLE AGAINST HUMAN TRAFFICKING: A VICTIM-ORIENTED SOLUTION

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INTRODUCTION

When Marcela Loaiza was twenty-one, a stranger approached her in her hometown in Colombia and offered her the opportunity to work as a professional dancer in Japan.¹ After Loaiza lost her two jobs due to her daughter's illness, she accepted the "talent scout's" offer to provide for her daughter and mother.² Upon arriving in Japan, three members of the Yakuza mafia received her, promptly took her passport, and informed her that the costs of bringing her to Japan amounted to the equivalent of \$50,000.³ For the following eighteen months, members of the trafficking industry forced her to sell sex on the streets of Tokyo.⁴ She serviced anywhere from fourteen to twenty clients a day, with a Yakuza pimp always checking how much she earned and keeping her on a strict diet.⁵ She shared a three-bedroom flat with six other women from various countries across the world, including Russia, Venezuela, Korea, China, Peru, and Mexico.⁶

Fortunately, Marcela Loaiza escaped to tell her story, but the same does not hold true for thousands of women who remain under the power of their captors in Japan.⁷ Compared to their counterparts in similarly situated countries, Japanese authorities

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1. Anastasia Moloney, "I Had No Idea I'd Been Sex Trafficked": A Terrifying True Story, SALON (Aug. 8, 2014), http://www.salon.com/2014/08/08/i_had_no_idea_id_been_sex_trafficked_a_terrifying_true_story/ [https://perma.cc/W7MD-YQSD].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

face extreme difficulty in combating sex trafficking.⁸ In 2012, forced prostitution in Japan alone, including those trafficked from other countries, comprised of an estimated 54,000 victims in a \$73 billion industry.⁹ Traffickers usually approach the victims in their home countries, trick them into coming voluntarily to Japan, and then force them to work in one of the more than 21,000 sex-related businesses.¹⁰ Many of the victims face regular physical abuse.¹¹

Other countries, such as Australia and Sweden, combat the problem of sex trafficking within their borders more successfully by focusing on a victim-oriented network.¹² Japan's current legal system, however, treats the problem as an immigration issue rather than as a human rights violation.¹³ The international community, including the United Nations and the United States,¹⁴ consistently takes note of Japan's ineffective approach and has called upon Japan to change its laws and ratify the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (U.N. Trafficking Protocol or Protocol).¹⁵

8. See KERRY E. YUN, *How Japan's Recent Efforts to Reduce Sex Trafficking Can Be Improved Through International Human Rights Enforcement Mechanisms: Fulfilling Japan's Global Legal Obligations*, 13 BUFF. HUM. RTS. L. REV. 205, 205–06 (2007).

9. Shihoko Fujiwara, *Sex Trafficking in Japan*, WORLD JUST. PROJECT (Oct. 22, 2012), <https://worldjusticeproject.org/news/sex-trafficking-japan> [<https://perma.cc/9VHW-GQQ2>].

10. See Yun, *supra* note 8, at 225.

11. Jake Adelstein, *Host Clubs: A Hot Bed of Human Trafficking*, JAPAN TIMES (Apr. 5, 2014), <http://www.japantimes.co.jp/news/2014/04/05/national/host-clubs-a-hotbed-of-human-trafficking/#.WYvEzq3MxmA> [hereinafter JAPAN TIMES, *Host Clubs*] [<https://perma.cc/2HUA-JGSW>]. For example, in 2014, a manager of a host club in downtown Tokyo was arrested for violating Japan's prostitution laws. *Id.* Several months before, he had purchased the services of a twenty-year-old girl and forced her into prostitution to pay a debt she purportedly incurred. *Id.* When she tried to run away, the manager of the host club hunted her down, beat her, and threatened to cut off one of her fingers if she did not continue in his service. *Id.*

12. See Andreas Schloenhardt & Mark Loong, *Return and Reintegration of Human Trafficking Victims from Australia*, 23 INT'L J. REFUGEE L. 143, 144 n.106 (2011); Heather Monasky, *On Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, but Not the Victim—Sweden's Sexköpslagen in America*, 37 WM. MITCHELL L. REV. 1989, 1994 (2011).

13. See Kinsey Dinan, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, HUM. RTS. WATCH, III (Sept. 2000), <http://www.hrw.org/reports/2000/japan/index.htm> [<https://perma.cc/8U2L-PFB2>]; Kara Patterson, *Sex Trafficking from Thailand to Japan: Human Beings or Illegal Goods?*, 12 DALHOUSIE J. LEGAL STUD. 175, 193 (2003).

14. Because of the influence of the United States since the conclusion of World War II, Japan has become particularly receptive to U.S. criticism by the U.S. State Department. Yun, *supra* note 8, at 234.

15. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 217–20* (June 2016), <https://www.state.gov/documents/organization/258876.pdf> [hereinafter U.S. DEP'T OF

This Note argues that Japan should implement a victim-oriented approach to combat its sex trafficking industry by utilizing effective techniques employed in Sweden and Australia. This approach will better serve Japan's interest in fighting illegal immigration while simultaneously removing victims from the process of human trafficking in which they are trapped. Furthermore, a victim-oriented approach is better suited to match Japanese cultural attitudes that favor decriminalizing prostitution, and would bring Japan closer to fulfilling international legal obligations under previously ratified treaties and satisfying the requirements of the U.N. Trafficking Protocol.

Part I of this Note briefly provides the international legal context in which to assess countries' success in combating sex trafficking, and discusses the prominence of the sex trafficking issue in Japan and Japan's current legal efforts to fight it. This Part also provides two examples of countries, Australia and Sweden, that have successfully implemented innovative methods to combat sex trafficking. Part II proposes a three-pronged, victim-oriented solution, including amendments to Japan's criminal code to protect rather than punish victims; the creation of a visa system granting victims legal agency and the possibility of repatriation to their home countries; and the ratification of the U.N. Trafficking Protocol to bolster the protections for the victims for whom it is under an international legal obligation to provide. Part III concludes.

I. BACKGROUND

As of 2012, there were approximately two million victims of the sex trafficking industry throughout the world.¹⁶ Of those two million, it is estimated that over eighty percent are female and half are children.¹⁷ Once targeted, the trafficking victims are often forced into prostitution for profit of the trafficker.¹⁸

STATE, TRAFFICKING IN PERSONS REPORT] [<https://perma.cc/6883-DY3W>]; *UN Expert Calls Upon Japan to Boost Action in Combating Human Trafficking*, UN NEWS CENTRE (July 17, 2009), www.un.org/apps/news/story.asp?NewsID=31500 [hereinafter UN NEWS CENTRE, *UN Expert Calls Upon Japan*] [<https://perma.cc/4Z9T-SLX4>].

16. Brent Jones, *U.N.: 2.4 Million Human Trafficking Victims*, USA TODAY (Apr. 4, 2012), <http://usatoday30.usatoday.com/news/world/story/2012-04-03/human-trafficking-sex-UN/53982026/1> (estimating that of 2.4 million victims of human trafficking present, approximately eighty percent were sexually exploited) [<https://perma.cc/F8DT-A4TE>].

17. *Id.*

18. See Yun, *supra* note 8, at 214; Rex Tillerson & Susan Coppedge, *Remarks at the 2017 Trafficking in Persons Report Launch Ceremony*, U.S. DEP'T OF STATE (June 27, 2017), <https://www.state.gov/secretary/remarks/2017/06/272205.htm> [<https://perma.cc/994T-MWGY>].

This Part first provides a brief overview of sex trafficking in international law, focusing on the U.N. Trafficking Protocol. Next, it discusses Japan as it stands in the world of sex trafficking, including the scope of the problem and its current legal efforts to combat it. Finally, it examines the innovative approaches taken in Australia and Sweden, both of which have demonstrated success in their fight against sex trafficking in recent years.

A. *The U.N. Trafficking Protocol: Sex Trafficking in International Law*

Entered into force in 2003, the U.N. Trafficking Protocol is the most recent, binding legal instrument addressing sex trafficking in international law.¹⁹ As of 2017, 171 countries have ratified the Protocol.²⁰ Before its introduction, countries relied on other somewhat loosely related treaties to fight sex trafficking in international law, including the International Convention on Civil and Political Rights (ICCPR), the Convention on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Labor Organization Convention Concerning Forced or Compulsory Labor (ILO Convention).²¹ Countries continue to rely on these treaties to effectively address civil rights issues, but none of them address sex trafficking directly like the U.N. Trafficking Protocol.²²

The Protocol requires acceding parties to adopt specific criminal laws against the sex trafficking industry.²³ The Protocol treats sex

19. G.A. Res. 55/25, annex II, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime (Nov. 15, 2000) entered into force on Dec. 25, 2003 [hereinafter U.N. Trafficking Protocol]; Schloenhardt & Loong, *supra* note 12, at 149.

20. *A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en (last visited Aug. 28, 2017) [<https://perma.cc/LJ2B-PNQY>]. As discussed in Section B of this Part, Japan has thus far failed to ratify the Protocol or amend Japanese laws in accordance with its guidelines. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

21. See Yun, *supra* note 8, at 235–36.

22. *Id.*

23. See U.N. Trafficking Protocol, *supra* note 19, art. 5; Monasky, *supra* note 12, at 2019; Angela Bortel et al., *Sex Trafficking Needs Assessment of the State of Minnesota*, THE ADVOCATES FOR HUMAN RIGHTS 3 (Oct. 2008), http://www.theadvocatesforhumanrights.org/uploads/report_final_10_13_08.pdf [<https://perma.cc/UA86-MGNP>]; see also Schloenhardt & Loong, *supra* note 12, at 164 (“[The Protocol] emphasizes that the repatriation process commands a measure of international cooperation and interdependency in the movement towards multilateral convergence.”).

trafficking not as an immigration problem, but rather as a form of organized crime with thousands of victims.²⁴ Accordingly, the laws enacted by local governments should embody the three stated purposes of the Protocol: (1) to prevent and combat trafficking in persons, paying particular attention to women and children; (2) to protect and assist victims of trafficking, with full respect for their human rights; and (3) to promote cooperation among States to meet these objectives.²⁵

The U.N. Trafficking Protocol emphatically represents a victim-oriented approach by the United Nations.²⁶ This can first be observed in the Protocol's expansive definitions of "trafficking in persons" and of "exploitation" that purposefully encompass each of the various crimes affecting the victims of trafficking.²⁷ The Protocol provides as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. "Exploitation" shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁸

Notably, the Protocol dictates that the trafficked victim's consent at the time of the victim's recruitment is irrelevant—an issue that was much debated during the Protocol's drafting.²⁹ In doing so, the Protocol acknowledges that those tricked into leaving their home countries still represent victims of trafficking despite their initial acquiescence to enter the destination country.³⁰

The U.N. Trafficking Protocol additionally stands as the only binding international agreement to address repatriation of human

24. See Patterson, *supra* note 13, at 179; Kara Siddharth, *Designing More Effective Laws Against Human Trafficking*, 9 NW. U. J. INT'L HUM. RTS. 123, 126 (2011).

25. See U.N. Trafficking Protocol, *supra* note 19, art. 2.

26. See Schloenhardt & Loong, *supra* note 12, at 167–68.

27. See Yun, *supra* note 8, at 207.

28. U.N. Trafficking Protocol, *supra* note 19, art. 3.

29. Elizabeth F. Defeis, *Protocol to Prevent, Suppress and Punish Trafficking in Persons—A New Approach*, 10 ILSA J. INT'L & COMP. L. 485, 488 (2004).

30. *Id.*

trafficking victims.³¹ It recognizes that a functional and safe repatriation system is essential for removing barriers that hinder victims from escaping forced exploitation.³² Specifically, the Protocol dictates that, when determining whether a person is suitable for repatriation to her home country, the state should consider the safety of the trafficking victim and whether she has assisted in the criminal proceedings (against the one who perpetrated the crime against her) in the host state.³³

B. *Sex Trafficking in Japan*

This Section explains Japan's situation and international obligation to promote the rights of trafficked victims, details the origin and general situation of the victims, discusses how Japanese cultural attitudes can hinder the fight against trafficking, and presents Japan's legal efforts thus far.

1. Japan's Trafficking Problem in the International Community

The international community consistently ranks Japan low on its ability to combat sex trafficking compared to other similarly situated countries.³⁴ Despite protests by the United Nations, Japan remains the only G8 nation³⁵ that has failed to ratify the U.N. Trafficking Protocol.³⁶ Additionally, the U.S. Department of State (State Department) ranks Japan as a country with either a "Tier 2" rating or a "Tier 2 - Watch List" rating—a rating system established under the United States Trafficking Victims Protection Act of 2000

31. Schloenhardt & Loong, *supra* note 12, at 149. The author further notes that the Protocol, although binding, lacks considerable enforcement provisions in this area. *Id.* at 153.

32. *Id.* at 149–53.

33. U.N. Trafficking Protocol, *supra* note 19, art. 6, 8; Schloenhardt & Loong, *supra* note 12, at 149–150.

34. See Yun, *supra* note 8, at 206; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

35. Zachary Laub, *The Group of Eight (G8) Industrialized Nations*, COUNCIL ON FOREIGN RELATIONS (Mar. 3, 2014) <http://www.cfr.org/international-organizations-and-alliances/group-eight-g8-industrialized-nations/p10647> ("The Group of Eight (G8) refers to the group of eight highly industrialized nations—France, Germany, Italy, the United Kingdom, Japan, the United States, Canada, and Russia—that hold an annual meeting to foster consensus on global issues like economic growth and crisis management, global security, energy, and terrorism.") [<https://perma.cc/ZPV2-2GRK>].

36. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15. In 2009 specifically, Joy Ngozi Ezeilo, the Special Rapporteur on Trafficking in Persons for the United Nations, called upon Japan to ratify all relevant international treaties regarding sex trafficking, including the U.N. Trafficking Protocol. UN NEWS CENTRE, *UN Expert Calls Upon Japan*, *supra* note 15. She noted that Japan is "clearly affected as a destination country" for human trafficking. *Id.*

(TVPA)—for failing to fulfill its obligations to combat human trafficking.³⁷ Specifically, the State Department criticizes Japan for its light punishments for traffickers, its failure to provide victims with protective services or the means to bring charges against abusers, the continuance of paid-for dating industries,³⁸ and its lack of a comprehensive human trafficking law.³⁹

Although Japan has not ratified the U.N. Trafficking Protocol, it remains obligated under international law to promote the human rights of trafficked victims because of other treaties it has ratified.⁴⁰ The CEDAW, ratified by Japan in 1985, states that all parties “shall take all appropriate measures, including legislation [] to suppress all forms of traffic in women and exploitation of prostitution of women.”⁴¹ The ICCPR, ratified in 1979, provides the right to be free of torture and other forms of cruel and unusual treatment.⁴² The ILO Convention, ratified in 1932, requires all members to combat the use of forced or compulsory labor.⁴³

Japan's highest legal authorities, in conjunction with international law, already provide a legal basis that compels Japan to promote rights for victims of human trafficking.⁴⁴ The Constitution of Japan specifically refers to international conventions, stating that

37. See Yun, *supra* note 8, at 209, 235. In 2000, the United States introduced the United States Trafficking Victims Protection Act of 2000 as a framework for its national human trafficking laws and fulfilled its obligations under the U.N. Trafficking Protocol. Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 7101 (2000) [hereinafter TVPA]. In addition to enacting local laws to combat sex trafficking issues within the United States, the TVPA requires the State Department to submit an annual report regarding foreign governments' actions against trafficking to “spur foreign governments to take action to counter all forms of [trafficking in persons].” *U.S. Government Funded Anti-Trafficking Program*, U.S. DEP'T STATE, <https://2001-2009.state.gov/g/tip/c12606.htm> (last visited Aug. 28, 2017) [<https://perma.cc/H4TC-X9DM>]. The rankings run from best to worst: Tier 1, Tier 2, Tier 2 – Watch List, and Tier 3. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT*, *supra* note 15, at 39.

38. *Enjo kosai*, or “paid-for-dating,” is an industry in which adult Japanese males pay for dates or conversation with high school girls. Alastair Wanklyn, *Japan Short on “Minimum Standards” on Human Trafficking: US State Department*, JAPAN TIMES (July 1, 2016), <http://www.japantimes.co.jp/news/2016/07/01/national/japan-fails-meet-minimum-standards-human-trafficking-u-s-state-department/> [<https://perma.cc/YQ8S-XUTB>].

39. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT*, *supra* note 15.

40. See Yun, *supra* note 8, at 235–36.

41. Convention on the Elimination of All Forms of Discrimination Against Women, art. 6, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force on Sept. 3, 1981) [hereinafter CEDAW].

42. International Convention on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force on Mar. 23, 1976) [hereinafter ICCPR].

43. International Labor Organization Convention Concerning Forced or Compulsory Labor art. 1, June 28, 1930, 39 U.N.T.S. 55 (entered into force on May 1, 1932) [hereinafter ILO Convention].

44. See Yun, *supra* note 8, at 215–17.

“treaties concluded by Japan and established laws of nations shall be faithfully observed.”⁴⁵ It further guarantees that the rights established within it apply to all people in Japan, not just its citizens.⁴⁶ Additionally, the Supreme Court of Japan explicitly stated that all peoples have certain inalienable human rights, regardless of whether their entry into the country was illegal.⁴⁷ However, these authorities only provide a general framework.⁴⁸ Japan has not implemented comprehensive laws directly addressing sex trafficking that would either fulfill its current international legal obligations or satisfy requirements under the U.N. Trafficking Protocol should Japan ratify it.⁴⁹

2. The Peril of the Sex Trafficking Victim in Japan

An estimated 54,000 women and children in Japan are victims of forced prostitution.⁵⁰ Of the thousands trafficked from abroad, they are spread between approximately 21,000 businesses, including bathhouses, snack bars, hostess clubs, and massage parlors.⁵¹ The business owners, and often the entire trafficking operation, are frequently part of or intertwined with the Japanese mafia, known as the Yakuza.⁵² Partially because of this connection, the businesses usually have the resources and organization to provide the appearance of legitimacy and thus remain legally acceptable.⁵³

The victims in Japan usually hail from impoverished countries in Southeast Asia, Latin America, and Eastern Europe.⁵⁴ Traffickers target women⁵⁵ in their home countries that come from low-

45. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 98.2 (Japan), *translated in The Constitution of Japan*, PRIME MINISTER OF JAPAN AND HIS CABINET, http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (last visited Aug. 28, 2017) [hereinafter *Constitution of Japan*] [<https://perma.cc/3AQ7-9MN9>].

46. *Id.* pmb1.

47. HIROYUKI HATA & GO NAKAGAWA, *CONSTITUTIONAL LAW OF JAPAN* 106 (1997).

48. *Id.*

49. *See* Fujiwara, *supra* note 9.

50. *See id.*

51. Jun Hongo, *Law Bends Over Backwards to Allow “Fuzoku”*, JAPAN TIMES (May 27, 2008), <http://www.japantimes.co.jp/news/2008/05/27/reference/law-bends-over-backward-to-allow-fuzoku/> [<https://perma.cc/PD3W-3N8Q>]; Yun, *supra* note 8, at 205, 225.

52. INTERNATIONAL LABOR OFFICE: SPECIAL ACTION PROGRAMME TO COMBAT FORCED LABOR, HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN JAPAN 8 (2005) [hereinafter *ILO Report*].

53. *Id.*

54. *Id.* at 2.

55. This Note focuses on women who are victims of sex trafficking. Although there are instances in which men are also tricked into moving abroad for work opportunity, there are relatively few of them and they more often are subjected to forced labor rather than *sexual* exploitation. *See* Statens Offentliga Utredningar [SOU] 2010:49 *Forbud mot*

income households with little educational or working opportunities.⁵⁶ The traffickers promise high wages and job opportunities in Japan.⁵⁷ With coaching from the traffickers to bypass immigration officers, the victims often enter the country illegally with forged passports.⁵⁸ They become trapped into “debt bondage” when the traffickers demand that the victims pay off exorbitant fees in exchange for, *inter alia*, “transportation costs.”⁵⁹ As payment is practically impossible, the traffickers are then able to force the women into prostitution to compensate for their “debt.”⁶⁰ They are often threatened, physically beaten, and punished if they attempt to escape.⁶¹

When the reality of their situations emerges, the victims of trafficking find themselves trapped with a lack of options or avenues of escape.⁶² They usually cannot speak Japanese.⁶³ If they own a passport or immigration papers, their captors usually withhold them.⁶⁴ Few, if any, governmental or private organizations appear openly available to assist them.⁶⁵

kop av sexuell tjinst: En utvärdering 1999–2008 31 [Prohibition Against Purchase of Sexual Service: An Evaluation 1999–2008] [government report series] (Swed.) [hereinafter *Sweden's Evaluation on Prohibition*].

56. Yun, *supra* note 8, at 213–14.

57. *Id.*

58. Dinan, *supra* note 13, at III; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

59. Dinan, *supra* note 13, at III; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15; see also *Debt Bondage*, ANTI-SLAVERY INT'L, <https://www.antislavery.org/slavery-today/debt-bondage/> (last visited Aug. 28, 2017) (“Debt bondage, also called bonded labour or debt slavery, is the most common form of modern slavery. Despite this, it's the least known. Debt bondage occurs when a person is forced to work to pay off a debt. They are tricked into working for little or no pay, with no control over their debt. Most or all the money they earn goes to pay off their loan. The value of their work becomes invariably greater than the original sum of money borrowed. They face coercion, violence, intimidation if they try to leave.”) [<https://perma.cc/G2MR-WAUB>].

60. Dinan, *supra* note 13, at IV.

61. See *id.*; JAPAN TIMES, *Host Clubs*, *supra* note 11.

62. See Dinan, *supra* note 13, at IV.

63. *Id.*

64. *Id.*

65. Jake Adelstein, *Japan's Human Trafficking Problems Not Resolved: U.S. State Department*, JAPAN SUBCULTURE RES. CTR. (June 20, 2012), <http://www.japansubculture.com/japans-human-trafficking-problems-not-resolved-us-state-department/>; see also Dinan, *supra* note 13, at III (noting that Japan lacks organizations to which victims can report to gain safe harbor from their persecutors, and it lacks prosecutorial options for the victims to use against them) [<https://perma.cc/TE23-QYAK>].

3. The Role of Japanese Culture

The sex trafficking victims' perilous situation is further compounded by pervasive traditional and cultural attitudes in Japan, especially towards foreign migrants and prostitutes.⁶⁶ These attitudes create a series of "asymmetric relationships" in Japan that greatly contribute to the unfortunate normalization of Japanese men paying for sex from trafficked women.⁶⁷ Specifically, these relationships include those between (1) men and women, (2) rich and poor, and (3) nationals and foreigners.⁶⁸ The media portrays foreigners, in particular, as dangerous and violent—a stereotype that the Japanese population largely adopts.⁶⁹

The normalization and acceptance of prostitution persists partially as a result of the practice's deep historical roots in feudal society.⁷⁰ The Japanese government under the Tokugawa Shogunate formally institutionalized prostitution in the seventeenth century, and it remains substantially engrained in modern culture.⁷¹ The country only began to criminalize the practice after its defeat in World War II and the United States' subsequent pressure for it to conform to modern prostitution laws.⁷² Thus, despite its present illegality, prostitution's normalization, especially when the prostitute is a foreign migrant, steadily remains in place in Japan.⁷³ A recent study estimated that between twenty and forty percent of Japanese men have paid for sex.⁷⁴ In an interview, the former Director of the Immigration Bureau of Japan stated, "[s]ome men even said I was out of my mind to try to do something about human trafficking. They claimed it was part of Japanese culture to have sex with foreign women. They were addicted to the parlors. I

66. See Tomoya Kamino, *Japanese Law and Policy Against Human Trafficking*, in GENDER & LAW IN JAPAN 79–82 (Miyoko Tsujimura & Emi Yano eds., 2007).

67. *Id.* at 83.

68. *Id.* at 83–84.

69. See Yun, *supra* note 8, at 213 ("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.")

70. See Andrew D. Morrison, *Teen Prostitution in Japan: Regulation of Telephone Clubs*, 31 VAND. J. TRANSNAT'L L. 457, 474–75 (1998).

71. Matthew Unangst, *History of Prostitution in Japan and the Japanese Government's Role*, WASH. ST. U. (Feb. 22, 2017) (citing Kazuhiro Oharazeki, *Anti-prostitution Campaigns in Japan and the American West, 1890–1920: A Transpacific Comparison*, 82(2) PAC. HISTORICAL REV. 175, 175–214 (2013)).

72. *Id.* (citing Mamoru Iga, *Sociocultural Factors in Japanese Prostitution and Prostitution Prevention Law*, 4 J. SEX RES. 127–46 (1968)).

73. *Id.*; Yun, *supra* note 8.

74. Nevin Thomson, *Is Japan Having Sex?*, GLOBALVOICES (Feb. 28, 2016), <https://globalvoices.org/2016/02/28/is-japan-having-sex/> [<https://perma.cc/6B63-3Q5C>].

received phone calls from politicians and anonymous threats on my life.”⁷⁵ Such general acceptance further hinders efforts for the victims of sex trafficking, whose problems remain unacknowledged by Japanese society.⁷⁶

4. Japan's Present Legal Efforts in Combating Sex Trafficking

Japan currently possesses no comprehensive law addressing the issue of sex trafficking.⁷⁷ Rather than addressing it as a crime and a violation of the victim's human rights, Japan treats sex trafficking as an immigration problem, relying upon a loose combination of immigration, labor, and outdated prostitution laws.⁷⁸

These laws, in practice, penalize the victim of sex trafficking, but leave the trafficker relatively unaffected.⁷⁹ For example, the Law on the Prohibition on Prostitution, passed in 1956, does not sanction the buyer of sex, but rather only the prostitute herself with a sentence of up to six months in prison.⁸⁰ The Immigration Control and Refugee Recognition Act—although the most frequently utilized and effective law in Japan's current legal arsenal against sex traffickers⁸¹—can similarly result in substantial prison time for the trafficked victim.⁸²

75. Catherine Makino, *Japan Installs Caution Signal for Sex Traffic*, WOMEN'S ENEWS (July 18, 2005), <http://womensenews.org/2005/07/japan-installs-caution-signal-sex-traffic/> [https://perma.cc/Y2AG-G472].

76. See Kamino, *supra* note 66.

77. See generally Yun, *supra* note 8, at 215–30 (discussing the ineffectiveness of Japan's policies that address sex trafficking).

78. *Id.* at 220, 235–38.

79. See Patterson, *supra* note 13, at 179; Keiko Ohtsu, *The Reality and Law Governing Non-Japanese Women Living in Japan*, 11 WOMEN'S ASIA 21, 23 (2003). For example, in 2015, one-third of convicted human traffickers paid fines rather than serve a prison sentence. Alastair Wanklyn, *Japan Short on "Minimum Standards" on Human Trafficking: US State Department*, JAPAN TIMES (July 1, 2016), <http://www.japantimes.co.jp/news/2016/07/01/national/japan-fails-meet-minimum-standards-human-trafficking-u-s-state-department/> [https://perma.cc/859W-KJPR].

80. *Sexuality, Poverty and Law Programme: Japan*, INTERACTIONS FOR GENDER JUST., <http://spl.ids.ac.uk/content/japan> (last visited Aug. 28, 2017) [https://perma.cc/6MLW-YET6]; Baishun Bōshihō [Law on the Prohibition of Prostitution], Law No. 118 of 1956 (Japan) [hereinafter Law on Prohibition]. The Law on the Prohibition of Prostitution penalizes the intermediary or broker to prostitution with less than two years in prison or a \$425 fine, and those who coerce a person into prostitution with a three-to ten-year sentence or a fine of up to \$2,500. Yun, *supra* note 8, at 225. Crimes in connection with prostitution, such as coercion, forced labor, and debt bondage, also usually result in less than six months in jail or a penalty under \$2,500. *Id.*

81. Yun, *supra* note 8, at 223.

82. *Id.* at 223–24; Shutsunyūkoku Kanrioyobi Nanmin Ninteihou [Immigration Control and Refugee Recognition Act], Cabinet Order No. 319 of October 4, 1951, *amended by* Act No. 79 of 2009 (Japan), *translation at* <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&id=1934&re=&vm=02> [https://perma.cc/AS2D-4G7C]. Upon a finding

For victims of sex trafficking already in Japan, this system only penalizes and deports them back to their own country rather than providing any meaningful assistance.⁸³ The traffickers, on the other hand, can usually pay the fine off from their lucrative businesses and continue relatively unaffected.⁸⁴ Furthermore, even though prostitution remains technically illegal, the thousands of businesses that provide a platform for prostitution, including massage parlors and snack bars, usually are not.⁸⁵ Thus, despite the businesses' ties to organized crime and their generally accepted purpose of providing prostitution to Japanese males, the victims still receive little help from the law.⁸⁶

After decades of criticism for its lack of a comprehensive human trafficking law, Japan demonstrated moderate improvements in its efforts.⁸⁷ First, although Japan's immigration laws negatively affect trafficked persons, the government utilizes them with partial success, managing to slow trafficking through criminal prosecutions⁸⁸ and building constructive relationships with the victims' home countries.⁸⁹ Second, Japan issued the National Plan of Action in 2009 to combat human trafficking.⁹⁰ The National Plan of Action

of using fake documents to enter the country or that the person engaged in prostitution while in Japan, victims of sex trafficking may face up to ten years in prison or may simply be deported without any investigation of whether she was forced into prostitution. Yun, *supra* note 8, at 223.

83. See Dinan, *supra* note 13, at III; Ohtsu, *supra* note 79, at 23.

84. See Dinan, *supra* note 13, at III; Ohtsu, *supra* note 79, at 24.

85. Yun, *supra* note 8, at 225–26.

86. See Dinan, *supra* note 13, at III. These services, which technically only offer conversation, bathing or entertainment for the buyer, are permitted to remain legal due to the government's narrow definition of "prostitution." Hongo, *supra* note 51. However, they are legally limited to certain geographic areas and those who qualify for special licenses. See Yun, *supra* note 8, at 226.

87. See Japan's 2009 Action Plan to Combat Trafficking in Persons: Ministerial Meeting Concerning Measures Against Crimes Japan, INTERMINISTERIAL LIAISON COMMITTEE (Dec. 2009), http://www.mofa.go.jp/j_info/visit/visa/topics/pdfs/actionplan0912.pdf [hereinafter Japan 2009 Action Plan] [<https://perma.cc/F8ND-XT6C>]; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

88. See Yun, *supra* note 8, at 223–24. The Immigration Control Act implements stricter fines and punishments than the prostitution or labor laws even though it deals with the same issues for foreign workers. *Id.* For example, it imposes up to a three-year prison sentence for those who facilitate the employment of illegal immigrants or control them for the purpose of making them work illegally. *Id.* It further may penalize up to ten years for any person who smuggles persons for the purpose of making them perform illegal work. *Id.*

89. See MINISTRY OF FOREIGN AFFAIRS, JAPAN, JAPAN'S ACTIONS TO COMBAT TRAFFICKING IN PERSONS: A PROMPT AND APPROPRIATE RESPONSE FROM A HUMANITARIAN PERSPECTIVE, http://www.mofa.go.jp/policy/i_crime/people/pamphlet.pdf [hereinafter Japan's Humanitarian Response] [<https://perma.cc/3A3X-E8HS>].

90. See Japan 2009 Action Plan, *supra* note 87.

is a government program that purports to follow the U.N. Trafficking Protocol “in order to promote integral and comprehensive government-wide action to combat the transnational organized crime of trafficking in persons.”⁹¹ The initiative, although illustrative of Japan’s intent, fails to constitute a binding legal instrument and receives criticism for failing to sufficiently address the problems experienced by victims.⁹² Third, in June 2014, the Japanese government established the Law Enforcement Task Force Against Trafficking in Persons (Task Force), a specific unit to focus on human trafficking.⁹³

C. Australia’s Success in Combating Sex Trafficking

Over the past fifteen years, Australia has demonstrated considerable success in assisting victims of human trafficking.⁹⁴ This Section presents Australia’s current sex trafficking situation and explains the Support for Victims of People Trafficking Program.

1. Australia’s Success in Combating Sex Trafficking as Recognized by the International Community

In its efforts to fight sex trafficking, Australia ratified the U.N. Trafficking Protocol, successfully updated its criminal code to parallel the Protocol’s suggested regulations, and initiated several other programs to assist in its efforts.⁹⁵ The State Department ranks Australia a “Tier 1” country.⁹⁶ Its reports find that although Australia’s government has room for improvement, its government-funded support program, English language training, visa application process, and other programs fulfill the country’s international legal obligations.⁹⁷ Additionally, it appropriately maintains strong criminal enforcement against traffickers.⁹⁸

91. *Id.* at 1.

92. *Id.*; Yun, *supra* note 8, at 250–51.

93. *Training Related to Combating Human Trafficking: Japan*, LIBR. CONGRESS (Mar. 18, 2016), <http://www.loc.gov/law/help/human-trafficking/japan.php#> [hereinafter *Training Combating Human Trafficking*] [<https://perma.cc/FTM4-JZD2>]. The Task Force is comprised of members from the National Police Agency; the Ministry of Justice; the Supreme Public Prosecutors Office; the Ministry of Health, Labour and Welfare; and the Japan Coast Guard. *Id.*

94. See Marianna Leishman, *Human Trafficking and Sexual Slavery: Australia’s Response*, 27 AUSTL. FEMINIST L.J. 193, 199 (2007).

95. See *id.* at 197.

96. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT*, *supra* note 15, at 80–82.

97. *Id.*

98. *Id.*

Australia faces a similar problem to Japan regarding sex trafficking.⁹⁹ The victims, from low-income countries such as Thailand or China, are tricked into coming to Australia with promises of work opportunities.¹⁰⁰ The traffickers teach them how to get past immigration officials, deprive them of their passports, and then keep them in confinement.¹⁰¹ As a result, the victims become trapped in prostitution through a similar system of “debt bondage.”¹⁰² They usually cannot speak English and find themselves unable to navigate the country or the court system.¹⁰³

Prior to 2003, Australia, like Japan, also treated the problem as an issue of immigration and observed similar problems.¹⁰⁴ Rather than helping the trafficked persons, it deported them back to their home countries as soon as they were identified, without significant consequences for the traffickers.¹⁰⁵ However, Australia deliberately switched to a victim-oriented approach that grants legal agency to trafficking victims.¹⁰⁶ It modified its criminal code to focus on assisting those trafficked while punishing the traffickers as criminals, fulfilling its obligations under the U.N. Trafficking Protocol.¹⁰⁷

2. Support for Victims of People Trafficking Program

In addition to amending its criminal code to treat trafficking as a crime rather than an immigration problem, Australia established an effective support system for the trafficked persons called the Support for Victims of People Trafficking Program.¹⁰⁸ Chief among the program’s goals is to provide (i) a visa application pro-

99. See *supra* Part I.B.2.

100. See Leishman, *supra* note 94, at 196.

101. *Id.*

102. Elaine Pearson, *Australia*, in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN 32, 35 (2007), https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaaw_2007.pdf [<https://perma.cc/49EM-ZNVA>].

103. See Leishman, *supra* note 94, at 203.

104. See Aderajew Teshome, *Australia’s Response to Human Trafficking*, 30 U. TAS. L. REV. 51, 61 (2011).

105. *Id.*

106. See Schloenhardt & Loong, *supra* note 12, at 144.

107. See Teshome, *supra* note 104, at 60 (“[T]he Australian Government’s response to human trafficking mirrors that of the UN in the sense that it is primarily tailored on the criminal platform.”).

108. *Id.*

cess for victims to safely remain in Australia, and (ii) a repatriation process to safely return them to their home country.¹⁰⁹

a. The People Trafficking Visa Framework

A visa granted under the government's Support for Victims of People Trafficking Program allows foreign nationals to remain lawfully in Australia for varying lengths of time with access to social services.¹¹⁰ It further provides entry to its Return and Reintegration Scheme to assess the possibility and safety of the victim returning to her home country.¹¹¹ Australia consistently receives praise for its visa system and its assistance to victims of human trafficking.¹¹²

There is a two-stage visa process for victims of trafficking in Australia.¹¹³ First is the Bridging F Visa.¹¹⁴ It grants an unlawful citizen (and possibly an immediate family member) ninety days of temporary citizenship in Australia if she is identified as a suspected victim of human trafficking and assigns her an individual case manager.¹¹⁵ The second stage, the Referred Stay Visa, is a permanent visa that one becomes eligible for upon being granted a Bridging F Visa.¹¹⁶ To receive the Referred Stay Visa, the suspected victim must either demonstrate that she would be in danger in her home country or that she has cooperated closely with the police in their investigation of the trafficker.¹¹⁷

Although Australia's Support for Victims of People Trafficking Program now correctly recognizes the perilous situation of trafficking victims, it only recently overcame an issue with its visa system that placed an excessive burden on the victims themselves.¹¹⁸ Before 2016, to qualify for the Bridging F Visa and Referred Stay Visa, the system required the victim to cooperate with police action against the alleged trafficker.¹¹⁹ If they failed to, which occurred

109. *Id.*

110. *Visas for Victims*, U. QUEENSL., <https://law.uq.edu.au/research/research-activities/human-trafficking/visas> (last visited Aug. 28, 2017) [<https://perma.cc/3USL-2XWV>].

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* When granted, the suspected victim's care, safety (from the trafficker), and welfare are considered paramount. *Id.* In this regard, it acts like a witness protection program. See Schloenhardt & Loong, *supra* note 12, at 150.

116. *Visas for Victims*, *supra* note 110.

117. *Id.*

118. See Leishman, *supra* note 94, at 200–01.

119. *Id.*

frequently because of concerns for safety or lack of communicative ability, the visa system remained unavailable to them.¹²⁰ The new visa framework, however, solves this problem.¹²¹ The Bridging F Visa no longer requires any cooperation to receive it.¹²² Rather, the Bridging F Visa stage serves as an intermediary time period, giving the victim time to cooperate with the government social workers to decide their best option.¹²³ If the victim wishes to remain in Australia permanently, the victim may receive the Referred Stay Visa if she either assists the government with the prosecution of the trafficker or if she demonstrates that there exists danger in her country of origin.¹²⁴ In implementing this change, Australia witnessed a rise in the application for permanent visas from victims and further convictions of traffickers.¹²⁵

b. The Return and Reintegration Scheme

Through the Return and Reintegration Scheme under the People Trafficking Program, victims may enter a process to safely return to their home countries.¹²⁶ The Return and Reintegration Scheme consists of four parts: (1) a personalized assessment of the immediate safety and welfare of the victim, (2) the notification to the victim of her rights under the scheme and process of repatriation (including the requirement that the victim must consent to all parts), (3) the assignment of an individual case manager to assess the victim's situation, and (4) the physical process of repatriation.¹²⁷ Foreign embassies, hospitals, immigration officials, and non-governmental organizations can all refer potential victims to the program to trigger the process.¹²⁸ In focusing on assisting trafficked persons through a repatriation program, Australia motivates

120. *Id.*

121. *Visas for Victims, supra* note 110.

122. *Id.*

123. *Id.*

124. *Id.*

125. *See* Leishman, *supra* note 94, at 200–01.

126. *See* Schloenhardt & Loong, *supra* note 12, at 157–63.

127. *Id.* at 159–60.

128. TRAFFICKING IN PERSONS: THE AUSTRALIAN GOVERNMENT'S RESPONSE: JANUARY 2004–APRIL 2009, THE ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE 29 (2009), <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommitteeJanuary04April09.pdf> [hereinafter Trafficking in Persons: The Australian Government's Response] [<https://perma.cc/8PSC-2R5X>].

them to come forward with confidence that they can escape their perilous situation.¹²⁹

The Return and Reintegration Scheme, along with other international voluntary return programs in which Australia participates, has had substantial success.¹³⁰ The International Organization for Migration found that from 2011 to 2014, 2,405 people returned to their home country through a voluntary reintegration program.¹³¹ Data further suggest that over ninety percent of those who entered into the Return and Reintegration Scheme were victims of sexual exploitation.¹³² Notably, the scheme proved significantly more successful for victims whose origin countries actively participated in the process, such as Thailand.¹³³ In other countries, such as Malaysia and South Korea, which exerted less effort to assist the return and reintegration process, the program somewhat faltered.¹³⁴

D. *Sweden's Prostitution Model and the Effect Against Sex Trafficking*

Sweden successfully combats human trafficking within its borders by focusing on assisting rather than punishing victims using its novel prostitution laws.¹³⁵ This Section presents Sweden's efforts to fight sex trafficking in the international community, explains Swedish prostitution laws and their relationship to trafficking, and discusses the model's effect on Sweden and its surrounding countries.

129. See Schloenhardt & Loong, *supra* note 12, at 143 ("The proper observance of appropriate rehabilitation and reintegration mechanisms guarantees, in general terms, the long-term safety and wellbeing of victims and their community whilst simultaneously re-securing human rights and safeguarding against re-victimisation, reprisal or retaliation. Furthermore, a holistic victim-oriented return and reintegration approach can inform and enhance the policy based focus on prevention, protection, and prosecution—rather than detach from them and dilute their value."); see also *id.* at 154 (noting that a "significant fraction" of those trafficked to Australia are victims of "re-victimization," when women become forced back into the cycle from which they temporarily broke free).

130. See Schloenhardt & Loong, *supra* note 12, at 148.

131. ASSISTED AND VOLUNTARY RETURN AND REINTEGRATION: AT A GLANCE 2015, INT'L ORG. FOR MIGRATION 36 (2015), https://www.iom.int/sites/default/files/our_work/DMM/AVRR/AVRR-at-a-glance-2015.pdf [<https://perma.cc/6CSR-QSHZ>]. This stands in stark contrast to Japan, which returned eleven people over the same period. *Id.*

132. Trafficking in Persons: The Australian Government's Response, *supra* note 128.

133. See Schloenhardt & Loong, *supra* note 12, at 148.

134. *Id.*

135. See Monasky, *supra* note 12, at 1997 (2011); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15, at 354–56.

1. Sweden's Success in Combating Sex Trafficking as Recognized by the International Community

Sweden is internationally recognized for successfully combating sex trafficking.¹³⁶ It ratified the U.N. Trafficking Protocol and is ranked a "Tier 1" country.¹³⁷ Specifically, the State Department praised Sweden's low instances of trafficking crimes, its Swedish language training for suspected victims, and its assistance in helping those in the sex industry escape from it.¹³⁸ Furthermore, the country maintains appropriate criminal enforcement against the traffickers, and effectively utilizes its prostitution laws.¹³⁹

Sweden's success partially stems from the government's recognition that the majority of its prostitutes are victims of sex trafficking.¹⁴⁰ Those trafficked into Sweden originally come from Eastern Europe, West Africa, and Asia.¹⁴¹ Upon arrival, traffickers force them into prostitution, where physical and mental abuse ensue.¹⁴²

2. The Nordic Model for Combating Sex Trafficking

Sweden's legal framework for addressing prostitution, the "Nordic Model,"¹⁴³ decriminalizes the selling of sex, and instead criminalizes the buying of sex.¹⁴⁴ Sweden relies on these prostitution laws to combat both prostitution *and* sex trafficking.¹⁴⁵ The Swedish government recognizes the link between the two and chooses not to distinguish between them because of their close relation.¹⁴⁶

136. See Monasky, *supra* note 12, at 2033.

137. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15, at 354–56.

138. *Id.*

139. *Id.*

140. See Yun, *supra* note 8, at 205, 214; *Sweden's Evaluation on Prohibition*, *supra* note 55, at 31.

141. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15, at 354–56.

142. See *Sweden's Evaluation on Prohibition*, *supra* note 55, at 36. Although the reason exceeds the scope of this Note, the prostitutes in Sweden appear to experience more violence on a regular basis compared to those in Australia and Japan. Monasky, *supra* note 12, at 2030–31. Such violence occurs from both pimps/traffickers and customers. *Id.* at 2030.

143. For the purposes of this Note, "Nordic Model" indicates the practice of partial decriminalization of prostitution. Originally called the "Swedish Model," the "Nordic Model" terminology became prevalent when Sweden's neighboring countries emulated its laws. See Monasky, *supra* note 12, at 1997 n.45.

144. BROTTSBALKEN [BrB] [PENAL CODE] 6:11 (Swed.).

145. See Monasky, *supra* note 12, at 2030 ("Sweden prioritizes prosecutions of sex purchasers mainly for the purposes of sex trafficking prosecutions.")

146. *Id.*; *Sweden's Evaluation on Prohibition*, *supra* note 55, at 31.

Such recognition manifests itself in the Swedish legal terminology.¹⁴⁷ For example, anybody who “induces another person to undertake or endure a sexual act by serious abuse of that person’s dependency on the perpetrator . . . [or] by unlawful coercion” is in violation of Swedish laws.¹⁴⁸ These laws purposefully focus on all those that demand that the sex trafficking industry exists, including traffickers, pimps, and buyers of sex.¹⁴⁹ By utilizing broad definitions that encompass all the businesses and crimes to which traffickers subject their victims, the Swedish government acknowledges the link between trafficking and prostitution and can appropriately and legally assist the victims.¹⁵⁰

By only partially decriminalizing the act, the Swedish government emphasizes that the goal of its legal fight against the sex trafficking industry is to punish the trafficker and the purchaser rather than those trafficked.¹⁵¹ The Swedish Ministry of Labour has stated, “it is not reasonable to punish the person who sells a sexual service. In most cases, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives.”¹⁵² The Nordic Model thus provides those tricked into the sex trafficking industry an incentive to reach out to the authorities without fear of imprisonment.¹⁵³

3. The Nordic Model’s Effect

The Nordic Model led to an overall decrease in prostitution and human trafficking in Sweden.¹⁵⁴ A government study after ten years of the program’s existence found that street prostitution fell by fifty percent in that time, and that the numbers of prosecutions for the buyers and facilitators of sex substantially increased.¹⁵⁵ The report further noted that attitudes in Sweden changed significantly

147. See *Sweden’s Evaluation on Prohibition*, *supra* note 55, at 31.

148. BROTTSBALKEN [BrB] [PENAL CODE] 6:2–3 (Swed.).

149. See *Sweden’s Evaluation on Prohibition*, *supra* note 55, at 31. Monasky further discusses an email she received from a former victim of sex trafficking, which stated that “prostitution” is essentially the end point for all “sex trafficking.” See Monasky, *supra* note 12, at 2000 n.67. The email further notes that “separating [the two] is dangerous.” *Id.*; Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of a Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1192 (2004).

150. See Monasky, *supra* note 12, at 1997–2000.

151. See Ekberg, *supra* note 149, at 1187, 1191.

152. *Id.* at 1188.

153. *Id.* at 1189.

154. See Monasky, *supra* note 12, at 2028, 2030; *Sweden’s Evaluation on Prohibition*, *supra* note 55, at 27–28, 34.

155. See *Sweden’s Evaluation on Prohibition*, *supra* note 55, at 10, 27–28, 34.

to favor the partial decriminalization since the implementation of the law.¹⁵⁶ In 2013, police stated that the amount of overall prostitution had dropped by two-thirds, with one officer estimating that about 1,000 prostitutes remained compared to 2,500 in 2005.¹⁵⁷

To replicate Sweden's success, many surrounding countries have adopted its legal framework for prostitution in recent years.¹⁵⁸ These countries include Norway, Iceland, Finland, Northern Ireland, and France.¹⁵⁹ Each of them face immigration and trafficking challenges similar to those of Sweden and cite its model as an example.¹⁶⁰

II. ANALYSIS

Japan's efforts in its fight against sex trafficking remain relatively ineffective.¹⁶¹ Thousands of women and girls, like Marcela Loaiza, remain trapped in a system from which they cannot escape because of a lack of power in their situation.¹⁶² Their captors deprive them of their passports and have close links with the Yakuza.¹⁶³ With little to no Japanese language ability, they find themselves at the mercy of those who regularly abuse them.¹⁶⁴ They have limited knowledge of the Japanese governmental procedures and support systems, and even if they are fully aware, the available systems are inadequate.¹⁶⁵

To help solve this problem, Japan must implement a series of laws specifically designed to help the victims of sex trafficking based on the Australian and Nordic Models. These laws would provide a victim-oriented legal framework, switching the initial inquiry from whether the victim arrived illegally to whether she was captured and how she can be freed. Japan must stop treating the problem of prostitution as a mere consequence of faulty immigra-

156. *Id.* at 29–31, 37.

157. Hazel Thompson, *Prostitution: Why Swedes Believe They Got It Right*, *GUARDIAN* (Dec. 11, 2013), <https://www.theguardian.com/global-development/2013/dec/11/prostitution-sweden-model-reform-men-pay-sex> [<https://perma.cc/ZYP8-3CC6>].

158. Monasky, *supra* note 12, at 2033.

159. Mary Ann Peters, *Nordic Key to Beating Exploitation of Sex Workers*, *CNN* (Apr. 18, 2016), <http://www.cnn.com/2016/04/18/opinions/prostitution-nordic-model-peters/index.html> [<https://perma.cc/B7X3-T3YD>].

160. *See* Monasky, *supra* note 12, at 2033.

161. *See* Yun, *supra* note 8, at 206.

162. *See* Fujiwara, *supra* note 9; Yun, *supra* note 8, at 205.

163. *See* ILO Report, *supra* note 52, at 8, 12, 16, 23.

164. *See id.* at 12.

165. *See* Adelstein, *supra* note 65, at 3–4.

tion laws.¹⁶⁶ Kara Siddharth, author and noted advocate against human trafficking, writes the following:

In order to protect individuals and adequately prosecute offenders, a much more comprehensive and fully resourced human rights response to survivor care and protection is required These human rights protections begin with the presumption that the individual is [the] victim, as opposed to an offender who has violated migration or anti-prostitution laws, which often results in the individual's deportation¹⁶⁷

As the current legal framework allows the sex trafficking industry to flourish, altering and amending Japan's laws represents a crucial step in the other direction.¹⁶⁸ Because Japan remains one of the richest and most prominent destination countries for sex trafficking,¹⁶⁹ success in Japan would substantially weaken the industry in the entire Southeast Asia region. Fortunately, Japan's Constitution and Supreme Court established a framework to implement human rights-based laws for trafficked victims, guaranteeing inalienable human rights regardless of whether the person is Japanese or in Japan legally.¹⁷⁰

An effective change to Japan's legal framework must favor the victim rather than the trafficker. Japan should (1) amend its criminal code, especially its prostitution laws, (2) provide the victims of trafficking with legal agency through its immigration laws, allowing them repatriation to their home country or providing an option for permanent residence in Japan in certain circumstances, and (3) ratify the U.N. Trafficking Protocol and fulfill its obligations under international law.

A. Amendments to Japan's Criminal Code

1. Japan Should Adopt the Nordic Model and Establish a Comprehensive Sex Trafficking Law

Japan must make pointed and calculated changes to its prostitution and criminal laws to remedy the problem.¹⁷¹ First and foremost, it should withdraw its outdated Law on the Prohibition of

166. See Dinan, *supra* note 13, at III.

167. Siddharth, *supra* note 24, at 143.

168. See Yun, *supra* note 8, at 208–09; see also Monasky, *supra* note 12, at 1996 (citing Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 647 (2009)) (“In order to abolish sex trafficking, countries must target reform at the domestic, personal sphere.”).

169. See Yun, *supra* note 8, at 205.

170. See Constitution of Japan, *supra* note 45; HATA, *supra* note 47, at 106.

171. See *supra* Part I.B.4 of this Note (discussing shortcomings of the current Japanese prostitution and criminal laws).

Prostitution and implement a new prostitution law that follows the Nordic Model of partial decriminalization.¹⁷² It should punish the traffickers who run the businesses and who facilitate the transactions with mandatory prison sentences of at least ten years.¹⁷³ The new law should further penalize the purchasers of sex with substantially stronger fines of at least \$10,000, or prison sentences of two years for repeat offenders.¹⁷⁴ Japan should adopt the Swedish model and impose no prison sentence or fine on those who sell sex.¹⁷⁵ This will better protect those trafficked for the purpose of sexual exploitation by allowing them to seek help from the Japanese authorities without risking imprisonment.¹⁷⁶

Second, the Japanese government should implement a criminal and legal framework that specifically addresses sex trafficking and is distinct from its immigration laws to ensure better protection for sex trafficking victims.¹⁷⁷ Defining the laws' terms broadly to purposefully encompass all crimes the traffickers commit would assist the government in its enforcement by allowing it more breadth and flexibility in its prosecutions, just as the government in Sweden has done.¹⁷⁸ "Trafficking" should encompass not only those forced from their home country, but also those who initially consented to immigrate but were deceived and forced into sexual exploitation.¹⁷⁹ "Trafficker" should have the same definition as "pimp" in new prostitution laws, so that no ambiguity is left as to who should be prosecuted.¹⁸⁰

Establishing a comprehensive criminal law on sex trafficking based on the Nordic Model would weaken the sex trafficking industry in Japan by assisting the victims while discouraging the traffickers.¹⁸¹ Those forced into prostitution would have less fear seeking help from the police when attempting to leave or escape from their captors.¹⁸² They instead could find safety in governmental authorities like the victims in Sweden.¹⁸³ Additionally, a sex

172. See ILO Report, *supra* note 52 (criticizing the Law on the Prohibition of Prostitution); BROTTSBALKEN [BRB] [PENAL CODE] 6:11 (Swed.).

173. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

174. See *id.*

175. See BROTTSBALKEN [BRB] [PENAL CODE] 6:11 (Swed.).

176. See Eckberg, *supra* note 151, at 1192.

177. See *supra* Part I.B.4; U.N. Trafficking Protocol, *supra* note 19, art. 5.

178. See Monasky, *supra* note 12; U.N. Trafficking Protocol, *supra* note 19, art. 3.

179. U.N. Trafficking Protocol, *supra* note 19, art. 3.

180. See Monasky, *supra* note 12, at 2009.

181. See *supra* Part I.D.

182. See Ekberg, *supra* note 151, at 1204.

183. *Id.*

trafficking law that focuses on punishing the facilitators of the industry would greatly deter traffickers who, under the current legal framework, usually walk away relatively unscathed.¹⁸⁴

2. Concerns of Japanese Cultural Resistance to the Nordic Model are Overstated

Japan's history and cultural outlook could make a change in its criminal punishment of the traffickers difficult.¹⁸⁵ Specifically, the normalization of prostitution and the generally negative view of migrants in Japan could hinder the effectiveness of a comprehensive sex trafficking law based on the Nordic Model.¹⁸⁶

However, the victim-oriented solution proposed in this Note would actually fit comfortably with Japan's culture because of, not in spite of, Japan's deep-seated history of normalized prostitution.¹⁸⁷ Japan only criminalized prostitution due to heavy pressure from the United States after hundreds of years of its legality.¹⁸⁸ However, the complete prohibition should not remain in effect today.¹⁸⁹ Whereas Sweden's population underwent a substantial change in mindset to favor partial decriminalization, decriminalization in Japan would have less social stigma to overcome.¹⁹⁰ Moreover, it would lift some of the modern day concealment on an activity that up to forty percent of Japanese men engage in.¹⁹¹

Fighting Japan's negative views on migrants and prostitutes may prove more difficult to overcome, but a change in its criminal code would still be beneficial.¹⁹² The State Department noted that a major problem in Japan's fight against trafficking is the population's lack of awareness, both because of their minimal education about the subject and the lack of prosecutions against the industry.¹⁹³ A comprehensive sex trafficking law punishing the traffick-

184. See Patterson, *supra* note 13, at 179. Although it exceeds the scope of this Note, Japan could likely influence surrounding, similarly situated countries (such as South Korea and Taiwan) in the same way that Sweden has done because of Japan's influence in the Southeast Asian region. See Monasky, *supra* note 12, at 2008 (discussing Iceland's and Norway's adoption of the Nordic Model); Yun, *supra* note 8, at 205 (describing Japan as the epicenter of the Asian sex industry).

185. See Kamino, *supra* note 66, at 81–84.

186. See *id.*

187. See Morrison, *supra* note 70.

188. *Id.*

189. *Id.* at 495.

190. See Sweden's Evaluation on Prohibition, *supra* note 55, at 37.

191. See Thompson, *supra* note 74.

192. See *supra* Part I.B.4.

193. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

ers and buyers of sex would address these root causes by simultaneously notifying the buyers that they are participating in a global sex trafficking industry, and increasing the number of criminal prosecutions in the news.¹⁹⁴

B. *Japan Should Provide Victims of Sex Trafficking with Legal Agency and Repatriation Ability*

To better assist the victims of sex trafficking, Japan must adopt a sex trafficking law to offer the victims legal agency, giving them a unique legal status in the country.¹⁹⁵ Specifically, Japan should implement a dual-approach like Australia's that provides victims safe harbor from their traffickers and the ability to return home.¹⁹⁶ Both aspects, the visa framework and a repatriation program, should be managed and enforced by Japan's Law Enforcement Task Force, which already possesses the requisite resources and legal authority to successfully manage the process.¹⁹⁷

The Japanese government should establish a multistep system to provide trafficked victims with legal agency. First, the Task Force should create a system for identifying victims similar to Australia's system.¹⁹⁸ Foreign embassies, hospitals, immigration officers, and other organizations should all possess the capability of referring suspected victims to the Task Force.¹⁹⁹

Second, the Task Force should implement a visa system similar to Australia's People Trafficking Visa System with the goal of allowing the victims safe repatriation to their home country.²⁰⁰ A temporary visa, similar to Australia's Bridging F Visa, should grant those trafficked ninety days of temporary citizenship.²⁰¹ During this time, the trafficked victim should be taken away from her place of employment (e.g., massage parlor, hair salon, etc.), which often acts as a legal cover for forced prostitution.²⁰² Once identified and confirmed as a victim of sex trafficking, the victim may be moved to a repatriation program like that of Australia's.²⁰³ From there, the

194. See *Sweden's Evaluation on Prohibition*, *supra* note 55.

195. See Schloenhardt & Loong, *supra* note 12.

196. See *Visas for Victims*, *supra* note 110; Schloenhardt & Loong, *supra* note 12.

197. See *Training Combating Human Trafficking*, *supra* note 93.

198. See *Trafficking in Persons: The Australian Government's Response*, *supra* note 128.

199. *Id.*

200. See *Visas for Victims*, *supra* note 110; Schloenhardt & Loong, *supra* note 12.

201. See *Visas for Victims*, *supra* note 110.

202. See Hongo, *supra* note 51.

203. See Leishman, *supra* note 94, at 203.

Task Force will inform the victim of her rights and assign her an individual case manager.²⁰⁴ The case manager may then initiate the process of repatriation.²⁰⁵

Finally, if the trafficked victim does not wish to return to her home country, she should be able to apply for and receive a permanent visa.²⁰⁶ This visa would be similar to Australia's Referred Stay Visa, and would use identical conditions.²⁰⁷ Victims would need to either provide assistance with the prosecution of the alleged trafficker, or show that they would be in danger in their home country.²⁰⁸ The Task Force should prefer the former option, which would provide a further disincentive for the trafficker.²⁰⁹

Establishing a successful system of legal agency through visas rather than punishing the victims would empower victims and weaken the sex trafficking industry.²¹⁰ Specifically, it would resolve the victims' central dilemma of choosing whether to remain under the power of their captors or risk going to the police.²¹¹ Whereas Japan currently possesses few governmental programs to assist victims, the multistep visa and repatriation framework would encourage them to seek help with the understanding that they would remain safe and perhaps have the opportunity to return to their home country.²¹² The traffickers, meanwhile, would lose some advantage and control over those they trafficked.²¹³ With the Japanese government's protection and the possibility of returning home available, the traffickers' strategy of depriving the women of their passports becomes relatively ineffective.²¹⁴ Furthermore, if the Task Force can complete the process regularly, a repatriation system in Japan may even emerge as one more successful than that of Australia.²¹⁵ While Australia struggles because of lack of cooperation with the victims' home countries,²¹⁶ Japan already substan-

204. *Visas for Victims*, *supra* note 110.

205. *See* Leishman, *supra* note 94, at 203.

206. *Visas for Victims*, *supra* note 110.

207. *Id.*

208. *See* Leishman, *supra* note 94, at 199.

209. *See* Schloenhardt & Loong, *supra* note 12.

210. *See supra* Part I.C.2.

211. *See supra* Part I.C.2.

212. *See supra* Part I.C.2.

213. *See* Leishman, *supra* note 94, at 199.

214. *Id.*

215. *See supra* Part I.C.2.

216. *See* Schloenhardt & Loong, *supra* note 12, at 148.

tially coordinates with these countries and maintains a productive working relationship addressing the issue of human trafficking.²¹⁷

Implementing a visa and repatriation system would not require a repeal of the Immigration Control and Refugee Recognition Act, which thus far demonstrated the most positive results in punishing traffickers and limiting their ability to traffic others into Japan.²¹⁸ No repeal is necessary because the visa system would supplement Japan's fight against its unwanted, illegal immigration.²¹⁹ Providing independent legal agency to victims would relieve them of the immigration law's harsh effects, motivating them to come forward and assist with government investigations.²²⁰

C. *Japan Should Fulfill Its International Legal Obligations and Ratify the U.N. Trafficking Protocol*

Japan should lead by example, like the rest of the G8 nations, and ratify the U.N. Trafficking Protocol.²²¹ Establishing a legal framework drawn from the Swedish and Australian legal strategies fulfills the Protocol's requirement that acceding parties adopt laws that directly address sex trafficking and focus on assisting its victims.²²²

The adoption of these laws specifically would satisfy the stated goals of the Protocol.²²³ First, an effective change to Japan's criminal and immigration laws to assist the victim while simultaneously increasing the penalty and risk for the traffickers would fulfill the Protocol's first goal—to *prevent* the trafficking of women.²²⁴ Importantly, the broad terminology drawn from the Nordic Model, intentionally recognizing the powerlessness of the trafficked person's situation, appropriately mirrors the expansive definitions in the Protocol.²²⁵ Next, the establishment of a visa system that grants victims legal agency and safe harbor adequately works towards fulfilling the Protocol's second goal—to *protect* and assist the victims currently trapped within the country.²²⁶ Moreover, the repatriation program drawn from Australia's Return and Reintegration

217. See Japan's Humanitarian Response, *supra* note 89.

218. See Yun, *supra* note 8, at 223.

219. *Id.*

220. See Schloenhardt & Loong, *supra* note 12, at 144–45.

221. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, *supra* note 15.

222. See Schloenhardt & Loong, *supra* note 12, at 145; Monasky, *supra* note 12.

223. See U.N. Trafficking Protocol, *supra* note 19, art. 2.

224. *Id.*

225. See Yun, *supra* note 8; Monasky, *supra* note 12, at 1997.

226. See U.N. Trafficking Protocol, *supra* note 19, art. 2; *Visas for Victims*, *supra* note 110.

Scheme would appropriately advance both suggested aspects put forth by the Protocol: the safety of trafficking victims and their assistance in criminal proceedings against their captors.²²⁷ Finally, Japan's multilateral cooperation with victims' home countries fulfills the Protocol's third stated goal—to promote *cooperation* among States to meet the Protocol's first two objectives.²²⁸ Japan already began to build constructive relationships with the countries from which most victims migrate, and its efforts would only improve with the implementation of the repatriation program.²²⁹

Moreover, even if Japan continues to refrain from ratifying the Protocol, it remains obligated under international law to promote the human rights of trafficking victims.²³⁰ Its obligations under the ICCPR, CEDAW, and the ILO Convention require the Japanese government to actively combat the trafficking and exploitation of women, torture and other forms of cruel and unusual punishment, and forced or compulsory labor.²³¹ Furthermore, Japan's Constitution demands that its government faithfully follow the terms of such international treaties of which it remains a member.²³² A legal change to a victim-oriented approach to human trafficking will fulfill Japan's obligation under these treaties, as well as under the Protocol.²³³

CONCLUSION

Japan should amend its laws to create a victim-oriented framework to combat its issue of sex trafficking. The victims in Japan, tricked into leaving their home country, need to have access to resources that can assist them. Accordingly, Japan should first amend its prostitution laws to follow Sweden's example. Second, the government should emphasize assistance to the victims, providing them with a workable visa system and the capability of repatriation. Doing so would not only provide those trafficked with tangible options, but also supplement Japan's current efforts in its fight against trafficking. Finally, such a change would also fulfill its obligation under previously ratified treaties of international law and would allow it to ratify the U.N. Trafficking Protocol.

227. Schloenhardt & Loong, *supra* note 12.

228. See U.N. Trafficking Protocol, *supra* note 19, art. 2.

229. See Patterson, *supra* note 13, at 196.

230. See Yun, *supra* note 8, at 230.

231. ICCPR, art. 7; CEDAW, art. 3; ILO Convention, art. 1.

232. Constitution of Japan, *supra* note 45, art. 98.

233. See *supra* Part I.A–B.1.

