SEX TRAFFICKING FROM THAILAND TO JAPAN: HUMAN BEINGS OR ILLEGAL GOODS?

KARA PATTERSON†

ABSTRACT

The international sex trafficking market allows traffickers to reap enormous profits from the exploitation of women. Sex trafficking is a complex interplay of several factors, including sexual and economic exploitation, illegal migration, and human rights abuses. Traffickers prey on vulnerable women by promising them high-paying jobs in foreign countries. After being smuggled into a foreign country, many trafficked women find themselves outside the scope of legal protection. This article focuses on sex trafficking between Thailand and Japan, and analyzes existing legal protections for trafficked women in current international and domestic Japanese and Thai law. As sex trafficking objectifies trafficked women as the illegal commodities of the sex trade, the law needs to reconstruct trafficked women as human beings, deserving of both legal and human rights protections in order to effectively combat sex trafficking.

I. INTRODUCTION

It is impossible to describe how horrible and miserable my life was. For six-and-a-half months I was totally controlled by her [mamasan]. Every day I had to go out and sleep with men. I had no physical nor spiritual freedom. She threatened that wherever I escaped to, I would

† Kara Patterson received her BA with Honours in History from St. Thomas University in 2000 and will receive her LL.B. from the University of New Brunswick in May 2003. The author wishes to thank Cailin Morrison for her invaluable guidance and encouragement throughout the writing of this article.
be traced and killed and so would my parents in Thailand. What I did was the only way to set me free from her. There was no other alternative.¹

– Gun, trafficked from Thailand to Japan

One of the most disturbing and pressing matters of international concern is the trafficking of women into the sex industry. The international trafficking trade is a multi-billion dollar enterprise that reaps enormous profits from the exploitation of the human body; where human agency becomes nothing more than a marketable good. Every year, thousands of people are smuggled into a foreign country for the purpose of placing them into slavery-like conditions.² Trafficked persons are placed in debt for the amount of all incurred transportation costs and living expenses, and are forced to work under inhumane conditions to pay off this debt. Trafficked persons are illegal residents in the countries in which they are working. As such, they are denied legal and human rights protections afforded to legal residents. This allows traffickers³ to reap enormous profits from selling persons into slave labour conditions, leaving trafficked persons in a legal limbo, alienated from their home countries and legal protections.

Sex trafficking is a vicious cycle that preys on vulnerable women, placing them in situations of forced economic exploitation, physical oppression, and abuse, while reaping enormous profits for their traffickers. Existing legal and immigration systems continue to fail trafficked women by refusing to acknowledge human trafficking as a human rights issue. Until this changes, trafficked women will remain invisible at law without legal and human rights protection. Human trafficking, paired with the ineffective legal enforcement of anti-trafficking legislation, creates a self-perpetuating system that continuously fails to address the

¹ S. Skrobanek, “Set me free...,” online: New Internationalist <http://www.newint.org/issue305/free.htm> [Skrobanek].
³ The term traffickers in this discussion refers to all persons involved in trafficking and exploiting women, including trafficking agents, procurers, and persons who sexually exploit trafficked women.
roots of the trafficking industry, resulting in an endless cycle of victimization.4

The article will examine the current state of international and domestic protections available to trafficked persons, and illustrate how current laws marginalize trafficked women. The first section will discuss the concept of marginalization and its relation to anti-trafficking laws. Second, the article will describe sex trafficking between Thailand and Japan and show how sex trafficking objectifies trafficked women as the commodities of the sex industry. The third section will discuss current international protections available for women who have been trafficked into the sex trade. The fourth section will analyze Japan’s anti-trafficking legal and policy initiatives, which define trafficked women solely as ‘illegal aliens.’ The fifth section will compare Thailand’s response to the international trafficking problem. The discussion will conclude by illustrating the shortcomings of both international protections and Thai and Japanese domestic law and how they fail to give trafficked women agency. International agreements provide useful guidelines for anti-trafficking initiatives, but states need to implement individual initiatives that will ultimately eliminate the trafficking of women in the first place.

1. Definition of Human Trafficking

Human trafficking is the smuggling of persons for the ultimate goal of exploiting them. Trafficking has several forms. Men, women, and children are trafficked for various forms of forced labour; including, work in manufacturing plants, physical labour, domestic work, and sex work. The term ‘trafficking’ is problematic as its strict definition refers to the act of smuggling people into foreign countries, whereas the exploitation and gross human rights violations generally occur after the person has been smuggled.5 The actual ‘trafficking’ of the person is only the first

---

aspect of human trafficking. Trafficking strips persons of their legal rights by placing them illegally in a foreign country. This facilitates the ultimate purpose of human trafficking: the exploitation of the human body through forced labour. 6

One major area of debate about the proper definition of ‘trafficking’ is the issue of consent. 7 Are persons considered ‘trafficked’ if they consent to being smuggled into a foreign country to work as sex workers? The issue of consent cannot be disregarded in the definition of trafficking, as to do so would remove trafficked persons’ ability to make informed decisions, and would render them perennial victims incapable of autonomy. 8 The issue of consent, if included, could also be used to negate the human rights abuses suffered by trafficked persons if the issue of consent became the deciding factor on whether a person had indeed been ‘trafficked.’ 9 The issue of consent should play a limited role in the prosecution of human trafficking: even if a person consented to being trafficked for the purpose of working in the sex trade, the person did not consent to the denial of all legal and human rights protections. Regardless of whether persons consented to being trafficked into the sex trade or not, they are all subject to similar exploitation and human rights abuses once they arrive at their destination. The key focus of anti-trafficking policies must be the human rights abuses and criminal offences committed against trafficked persons in order to adequately address the true problem of human trafficking. 10 Focusing on the actual trafficking of the person detracts from the core issue of human trafficking: the exploitation and abuses suffered by trafficked persons.


Chuang, “Debate”, supra note 4 at 82.

Chuang, “Debate”, supra note 4 at 83-94 contains an excellent discussion of the consent issues involved in the international definition of human trafficking.

Chuang, “Debate”, supra note 4 at 85.

Chuang, “Debate”, supra note 4 at 84.

Thus, the problem of human trafficking is not merely an organized crime or illegal migration problem; it is a complex human rights problem. Human trafficking is an ongoing exploitative cycle that involves issues of poverty, migration, human rights abuses, and the criminal acts of the traffickers. An effective anti-trafficking policy will take these intertwined factors into account by providing legal and human rights protections for trafficked persons. The cornerstone of a successful anti-trafficking strategy is to provide a competent forum for trafficked persons to have their abuses heard and prosecuted in a court of law.\(^{11}\)

2. Agency and the Law: The Objectification of the Trafficked Woman

One of the primary reasons that sex trafficking continues to thrive is an inadequate legal response that does not target the underlying reasons why sex trafficking occurs. Instead of penalizing the traffickers who profit from the exploitation of other human beings, all too often the laws target trafficked women themselves. Trafficked women are first objectified through sex trafficking as the commodity of the sex industry. Many legal systems reflect and compound this objectification by further reducing trafficked women to the illegal goods of the sex industry. Between sex trafficking and inadequate legal measures, some legal systems alienate trafficked women as outlaws, beyond the scope of any legal protections.

Sex trafficking objectifies trafficked women in a number of ways.\(^{12}\) First, traffickers treat trafficked women as the tool of their purposes: Traffickers smuggle trafficked women into foreign countries to sexually exploit them for profit. Trafficked women are the goods that reap enormous financial profits for the traffickers. Second, traffickers treat trafficked women as lacking in independence and autonomy. Traffickers deny trafficked women independence and autonomy by controlling

\(^{11}\) Ibid. at 2, 7-12.

\(^{12}\) M. C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999) at 218-23 [Nussbaum]. Nussbaum lists seven ways to objectify a human being as a thing. The two most prevalent modes of objectifying human beings are by denying the person's autonomy and subjectivity.
every aspect of their lives. Third, traffickers exploit and abuse trafficked women without concern for their well being, thus denying their subjectivity. Fourth, traffickers treat women as objects by buying and selling them to other traffickers, and again by offering them as objects for sale in the sex industry. The value of the trafficked women to their traffickers is solely their market value.

As sex trafficking objectifies trafficked women as the product of the sex market, the appropriate legal response is to reconstruct trafficked women as human beings with full legal protections. Many legal systems accept this image of trafficked women as the goods of the sex trade, and fashion anti-trafficking measures around this fallacy. Laws that target trafficked women as criminals and illegal aliens legally objectify trafficked women as illegal goods. The law often demands that they be locked up and deported. The effect of these measures is that the law denies trafficked women's subjectivity by refusing to acknowledge the exploitation and human rights abuses suffered at the hands of their traffickers. Laws that do not punish traffickers also deny trafficked women's subjectivity by implying that the traffickers' exploitative and abusive acts are legally acceptable. Such laws also render detained trafficked women legally inert: despite the fact that trafficked women are victims of exploitation and crime, the law denies them agency and the right to take legal action against their traffickers.

Laws that target trafficked women as criminals and/or illegal aliens are attempting to solve the problem by banning the product from the market, rather than combating the existence of the market itself. This approach will never succeed in combating sex trafficking as it aims to punish the victims, not the perpetrators. The fundamental problem of sex trafficking is not the illegal migration of trafficked women, but the criminal and human rights violations committed by traffickers. Until laws acknowledge and prosecute the offences committed against traf-

\[\text{13 Further discussion of sex trafficking and the objectification of trafficked women will follow.}\]
\[\text{14 Global Alliance, supra note 10 at 1.}\]
\[\text{15 See Japan's Immigration Control and Refugee Recognition Act, online: Japan Ministry of Justice } \langle http://www.moj.go.jp/ENGLISH/IB/ib-19.html\rangle \text{ [Immigration Act]. This will be discussed in Part IV.}\]
\[\text{16 Nussbaum, supra note 12 at 218.}\]
\[\text{17 Nussbaum, supra note 12 at 218.}\]
\[\text{18 Global Alliance, supra note 10 at 8 and 11.}\]
ficked women, sex trafficking will continue to flourish. Laws that treat trafficked women as criminals and/or illegal aliens contribute to, rather than combat, sex trafficking.\(^\text{19}\)

In order for the law to provide an effective response to combat sex trafficking, it needs to challenge the perception of trafficked women as the illegal goods of the sex trade. The law needs to reconstruct trafficked women as human beings with legal agency.\(^\text{20}\) The only way to combat sex trafficking is to include trafficked women as active participants in the legal system, rather than to exclude them as illegal goods.\(^\text{21}\) The first step is to remove the stigma of illegality from trafficked women. States need to create a unique legal status in domestic law that recognizes trafficked women’s subjectivity by acknowledging their experiences of exploitation and abuse.\(^\text{22}\) A unique legal status that does not automatically lead to detainment and deportation of trafficked women will allow them the opportunity and autonomy to bring complaints against their abusers.\(^\text{23}\) Second, states must recognize trafficked women’s subjectivity by implementing strict anti-trafficking legislation that criminalizes all aspects of trafficking, and ensure that these laws are consistently enforced.\(^\text{24}\) Enacting strict penalties for trafficking offences will manifest the intolerability of human rights abuses involved in sex trafficking.\(^\text{25}\) Third, laws must provide agency for trafficked women to bring charges against their traffickers. States must give trafficked women the ability to voice their abuses and to act as witnesses in a court of law if they so desire.\(^\text{26}\)

\(^{19}\) Jordan, \textit{supra} note 5 at 4.

\(^{20}\) Global Alliance, \textit{supra} note 10 at 8.

\(^{21}\) Global Alliance, \textit{supra} note 10 at 11.

\(^{22}\) Global Alliance, \textit{supra} note 10 at 8.

\(^{23}\) Global Alliance, \textit{supra} note 10 at 12.


\(^{25}\) Ibid.

\(^{26}\) Global Alliance, \textit{supra} note 10 at 8 and 11.
II. CASE STUDY: THAI WOMEN TRAFFICKED TO JAPAN

Despite Thailand’s recent economic expansion and industrialization, the majority of Thailand’s population remains agrarian and relatively poor. The women of the hilltribe populations in northern Thailand and Thailand’s numerous refugee women are particularly vulnerable.27 These women are among Thailand’s most poverty stricken, and lack fundamental citizenship protections, including the right to education and the right to freedom of movement.28 Northern provinces such as Chiang Rai severely lack educational and employment opportunities.29 As a result, many Thai women leave home to enter the sex trade in order to support their families:

I had divorced my Thai husband when I was four months pregnant and now my son was three years old and I had to raise him by myself and was finding it difficult to make enough money. My parents asked me not to go, but I thought if I went for just one year I could make money for my family and son.30

– Pot

Thailand’s economic expansion through free trade has had a negative rather than positive impact on the economic situation of rural women. As the value of unskilled work continues to decrease, women occupy the majority of unskilled positions and have few, if any, employment rights. Many Thai women either have no employment or work in underpaid and undervalued positions.31 Many women have little to no access to education and vocational training, thus they remain outside the scope of gainful employment:32

27 Northern Thailand is home to a number of hilltribe populations. The hilltribes are agrarian peoples who migrated south from China to Thailand and other Southeast Asian countries over 100 years ago. Despite the hilltribes’ presence in Thailand for generations, many hilltribes are not recognized as Thai citizens and lack rights to education and employment training. “Hilltribes in the North,” online: Welcome to Chiangmai & Chiangrai <http://welcome-to.chiangmai-chiangrai.com/hiltribe.htm>; T. Thongpao, “Unjust treatment of hilltribes,” The Bangkok Post (23 May 1999), online: The Bangkok Post http://search.bangkokpost.co.th/bkkpost/1999/may1999/bp19990523/230599_news22.html> [Thongpao].
29 Thongpao, supra note 27.
Nuch is the youngest of four children. She went to school until she was twelve years old, finishing the fourth grade, and then went to work as a farmhand for about 30 baht (US$1.20) per day. When she was fifteen years old she went to Bangkok to work as a maid, earning 400 baht (US$16) per month. She returned to her village after only a month because she was homesick, but over the next twelve years she went back and forth to Bangkok several times looking for work. She spent two weeks there selling Thai sweets, several months working as a nanny, three years working in a shop, and three months sharpening knives.33

Extreme poverty is a crucial factor in the trafficking industry: many women are seeking ways to support themselves and their families, and are therefore susceptible to traffickers’ offers of high-paying jobs. Many Thai women accept traffickers’ offers despite the fact that most are aware that they will be working the sex trade.34

These numerous factors combine to create a situation of vulnerability for many Thai women. Economic, social, and legal conditions in Thailand marginalize a large portion of Thai society, leaving many women without the means to earn a living and to support their families. Many women choose to accept traffickers’ offers as an act of self-preservation and autonomy, as a way of placing themselves within the labour market.35

1. Sex Trafficking from Thailand to Japan

I was told by an acquaintance to work at his restaurant in Japan. I decided to accept his offer as I thought my family might improve their life if I sent them my salary. Soon after my arrival in Japan, I realized that I was sold. My life since then has been like that of an animal.36

— Gun

35 Nussbaum, supra note 12 at 278.
36 Skrobanek, supra note 1.
Sex trafficking between Thailand and Japan is well organized. Trafficking agents operate out of both Thailand and Japan, and approach vulnerable Thai women with offers of high-paying jobs in Japan.\textsuperscript{37} The trafficking agents often use deception or coercion to induce women to trust them, concealing the large level of debt the women are about to incur and the conditions in which they will pay back this debt.\textsuperscript{38} The cost of travel plus the agent’s fee becomes the women’s debt bondage on arrival in Japan, usually amounting to over US $23,000.\textsuperscript{39} The local agents, once they have successfully recruited women, then sell them to procurers in Japan. The procurers add the cost of buying the women to their total debt.\textsuperscript{40} Agents traffic the overwhelming majority of Thai women entering Japan.\textsuperscript{41}

Once the women arrive in Japan, the women are isolated and powerless. The women are taken to work at ‘snack bars,’ where patrons can purchase drinks, snacks, and women. The employers seize the women’s identification and travel documents, inform the women of their exorbitant debts, and of how they are going to pay off that debt: by sexually servicing men. The women are at all times unaware of the exact amount of their debt or when they will be released.\textsuperscript{42} The snack bars are usually managed by ‘mamasans.’\textsuperscript{43} The mamasans control every aspect of trafficked women’s lives, including their finances, working conditions, and contacts with people:


\textsuperscript{38} Dinan, *supra* note 28; Vanaspong, *supra* note 37. The agents arrange air travel and necessary documentation, which is usually fraudulent and therefore more expensive. Further increasing the women’s debt is the fact that usually trafficked persons take an indirect route from Thailand to Japan. The indirect routes are to avoid Japanese airport restrictions against persons coming from Thailand.

\textsuperscript{39} Vanaspong, *supra* note 37. The usual debt is over one million Thai baht. Often agents and procurers charge interest on the owed debt, see Chuang, *supra* note 4 at 70.

\textsuperscript{40} Chuang, “Debate”, *supra* note 4 at 70.

\textsuperscript{41} Chuang, “Debate”, *supra* note 4 at 70.

\textsuperscript{42} Dinan, “Trafficking”, *supra* note 34.

\textsuperscript{43} Dinan, “Trafficking”, *supra* note 34; Vanaspong, *supra* note 37. The mamasans are often Thai women and/or illegal immigrants married to Japanese bar owners, pimps and Yakuza members.
I did not have any money to send home unless a client gave me a good tip. I just wanted to pay off my debt and get enough money to go home. But the mama was always swearing at me for saving money. The mama threatened me, saying that if I made any trouble she'd sell me again and double my debt. During the first three months I was never allowed out of the apartment except with the mama or a client. Even after three months I was allowed out only along with others and was warned not to make any friends.\textsuperscript{44}

– Pot

The trafficked women are severely isolated in Japan. As trafficked persons from another country, the women cannot speak Japanese upon arrival and are thus entirely dependent on their exploiters for survival.\textsuperscript{45} Their exploiters attempt to remove all elements of independence and autonomy from trafficked women’s lives to keep their products and sources of income immobile.

Sex trafficking objectifies trafficked women as the commodity in the sex trade. Sex trafficking eradicates trafficked women’s lives and dignity, and instead equates their worth solely with their market value. Unfortunately, existing international and Japanese domestic law provide few legal protections to challenge the view of trafficked women as the illegal goods of the sex industry.

### III. International Protections

A number of general human rights documents exist on the protection of women’s rights, including those of trafficked women, such as the Convention for the Elimination of All Forms of Discrimination Against Women\textsuperscript{46} and the 1949 UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others.\textsuperscript{47} These

\textsuperscript{45} Chuang, “Debate”, supra note 4 at 69-70.
documents contain only basic statements of women’s human rights and do not provide any true protections for women who have been trafficked. The basic problem lies in the nature of international agreements: many countries have not signed or ratified the documents, and international law provides no governing body or enforcement measures to ensure that State Parties abide by their obligations under these agreements.48

In 2000, the UN introduced the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) in response to the ineffectiveness of existing international protections and the increasing market for international human trafficking.49 The Trafficking Protocol has not yet come into force, as only twenty of the requisite forty nations have ratified the Protocol.50 Thailand is a signatory to the Trafficking Protocol, but has not ratified it. Japan has not yet signed the Protocol.

The Trafficking Protocol attempts to be comprehensive in its aims to “prevent, suppress and punish” human trafficking, and includes provisions that address the specific migration rights and protection measures of illegal migrants caught in the web of international trafficking. The Trafficking Protocol’s status as the Optional Protocol to the Convention Against Transnational Organized Crime, however, is indicative of the limited scope of the Protocol’s protections: the UN Office for Drug Control and Crime Prevention (ODCCP), a law enforcement body, not a human rights body, prepared the final text of the Trafficking Protocol. Accordingly, the Trafficking Protocol’s human rights protections are considerably weaker than its law enforcement provisions.51

The Trafficking Protocol’s attachment as the Optional Protocol to the Convention Against Transnational Organized Crime impliedly

51 Jordan, supra note 5 at 3-4.
characterizes the international problem of human trafficking as primarily a criminal problem, rather than as a separate human rights issue. While transnational organized crime networks are often responsible for large-scale trafficking in persons, they are only one factor among other equally important factors, such as poverty and human rights abuses. The UN is implying and implementing a one-dimensional approach to the multi-faceted problem of human trafficking.

1. The Trafficking Protocol’s Protections for Trafficked Women

Articles 6 and 7 of the Trafficking Protocol address the legal and social protections that State Parties should provide to trafficked persons. Art. 6(2) states:

Each State Party shall ensure that its domestic and administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders...

Art. 6(6) states: ‘Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.’

Art. 6 is significant, as it outlines legal protections for trafficked persons in a manner that addresses the criminal and human rights offences committed against them. Such an approach would treat traf-
fucked women as human beings with subjectivity, by providing a forum for recognizing their complaints of abuse. The law cannot treat trafficked women as ‘illegal goods’ when it appreciates that trafficked women suffer from criminal and human rights abuses. This approach also recognizes trafficked women as autonomous human beings with the capacity to initiate legal proceedings against their abusers. The ability of trafficked women to have their abuses prosecuted and potentially compensated acknowledges their rights and creates remedies for violations of these rights. Trafficked women would thereby be recognized as human beings, as victims of criminal and human rights abuses, instead of as illegal goods. The law would give trafficked persons agency by providing them with the power to take action against their abusers.

Art. 7 of the Trafficking Protocol addresses the issue of the legal status of trafficked persons. Trafficked persons are often legally characterized as illegal aliens on account of their illegal entry and presence in the foreign country. Art. 7 requests that State Parties consider creating a separate legal status for trafficked persons. Art. 7(1) calls upon States to “consider...in appropriate cases” permitting trafficking victims to remain within its territory, temporarily or permanently. Art. 7(2) requires that State Parties give appropriate consideration to humanitarian and compassionate factors. This article builds on the legal protections of article 6: if trafficked women are detained and deported as illegal aliens, they cannot bring their complaints before the courts. Trafficked women are the key witnesses against trafficking offenders. If the key witness is arbitrarily detained and deported, the case against her offenders will be difficult if not impossible to prosecute. Creating a unique legal status for trafficked persons is necessary to enable them to take legal action against their abusers.

Art. 7’s concept of a unique legal status for trafficked persons is significant as it acknowledges the complex circumstances of the trafficked person. While trafficked persons are illegal aliens in the sense that they are illegally resident in a foreign country, the term ‘illegal

55 Nussbaum, supra note 12 at 218.
56 Nussbaum, supra note 12 at 218.
57 Trafficking Protocol, supra note 5 at Art. 7(1).
58 Trafficking Protocol, supra note 5 at Art. 7(2).
59 Jordan, supra note 5 at 27.
alien’ does not accurately describe the trafficked person. As stated above, human trafficking involves smuggling persons into foreign countries for the purpose of exploiting them through forced labour. Categorizing trafficked persons as illegal aliens allows the law to address the means of human trafficking only: the smuggling of persons. It ignores the purpose of human trafficking: the exploitation of trafficked persons for profit. The majority of trafficking offences occur after the person has been smuggled.\(^60\)

Articles 6 and 7 are crucially significant as they identify the need to give trafficked persons agency to take legal action against their abusers. These provisions are of limited scope, however, as the human rights protections are expressed in weak language.\(^61\) Articles 6 and 7 require State Parties to implement or consider these protections ‘in appropriate cases.’\(^62\) The provisions fall short of creating legal rights of trafficked persons to take legal action against their abusers. Ultimately, State Parties may opt to comply or not comply with these protections, depending on their individual interpretation of what constitutes ‘appropriate circumstances.’ The \textit{Trafficking Protocol} fails trafficked women by leaving legal and human rights protections for trafficked persons to State Parties’ discretion. Without creating positive duties on State Parties to implement these protections, there is no guarantee that trafficked persons’ abuses will be acknowledged at law.

The \textit{Trafficking Protocol} is a unique instrument in that it is the first international agreement to recognize the particular circumstances of trafficked persons.\(^63\) The \textit{Trafficking Protocol}, however, is doomed to fail in its objective to “prevent, suppress and punish” human trafficking, as it does not require State Parties to provide trafficked women legal recourse against their traffickers.\(^64\) Providing trafficked persons with access to legal recourse is the key to combating human trafficking.\(^65\) Human trafficking objectifies trafficked women as the product of the sex trade.

\(^{60}\) Global Alliance, \textit{supra} note 10 at 8.
\(^{61}\) Jordan, \textit{supra} note 5 at 2.
\(^{62}\) \textit{Trafficking Protocol}, \textit{supra} note 5 at Arts. 6(2), 6(3), 7(1).
\(^{63}\) Nelson, “Legal Approaches”, \textit{supra} note 48 at 569-70.
\(^{64}\) Corrigan, “\textit{Brakes}”, \textit{supra} note 24 at 210. Corrigan states that all international anti-trafficking treaties should provide reporting and individual complaint mechanisms.
\(^{65}\) Global Alliance, \textit{supra} note 10 at 2.
If the law, in contrast, treats trafficked persons as active participants in the legal system, this will directly counter their objectification at the hands of their traffickers. Providing trafficked persons with actionable rights and remedies acknowledges their autonomy and subjectivity as human beings. Anti-trafficking schemes that do not allow trafficked persons agency to take action against their abusers deny the exploitative nature of human trafficking. Only by allowing trafficked persons to voice their abuses can legal systems effectively prosecute traffickers. Without consistent legal consequences for traffickers, the abuses of trafficked persons will remain unactionable. Traffickers will continue to reap enormous profits from the exploitation of human beings, so long as their actions do not attract serious legal punishment. Without guaranteeing trafficked persons the right to have their cases heard in a court of law, the law will continue to facilitate human trafficking. The law will continue to fail trafficked women.

IV. Japan’s Response: Banning Illegal Goods

Japan has publicly professed a commitment to combating human trafficking, but has taken few active steps to fulfill this commitment. Japan’s official position is that human trafficking is solely an illegal migration problem, originating outside Japan in less developed countries. This one-dimensional standpoint allows Japan to deny its role in human trafficking as a major destination for trafficked women. It also

66 Nussbaum, supra note 12 at 218.
68 Dinan, “Trafficking”, supra note 34. Japan’s Senior State Secretary used the example of Japan’s participation in the drafting process of the UN’s Convention against Transnational Organized Crime as evidence of its commitment to combating human trafficking; however, Japan to date is not a signatory to this Convention or the Trafficking Protocol.
allows Japan to avoid implementing an anti-trafficking policy that challenges the objectification of trafficked women as the goods of the sex industry. By deporting all trafficked women as illegal aliens, Japan is attempting to solve the problem by banning the goods from the market. Rather than addressing the underlying causes of sex trafficking, Japanese law perpetuates the objectification of trafficked women.

Despite Japan’s public stance against human trafficking, Japan has not implemented specific anti-trafficking measures. Instead, Japan claims that its strict immigration policy is the key to curbing human trafficking. Treating sex trafficking as a problem of illegal immigration means that Japan is addressing only the literal problem of sex trafficking: the actual smuggling of women into Japan. This approach fails to recognize the ultimate purpose of sex trafficking: the smuggling of women into Japan for the purpose of sexually exploiting them for profit.

Japan’s Immigration Control and Refugee Recognition Act imposes deportation as the penalty for all immigration offences. Japan’s Immigration Act does not create a separate legal status for trafficked women, and instead it arbitrarily detains and deports all trafficked women as illegal aliens. Art. 5 specifically targets women trafficked into the sex trade by barring “[a]ny person who engages or has engaged in prostitution” from entering Japan legally. Japan’s Immigration Act fails to provide trafficked women with agency on two levels. First, Art. 5 legally marginalizes trafficked women by automatically barring them from obtaining legal resident status due to their participation in the sex trade. This objectifies trafficked women as illegal sex commodities. It does not acknowledge the subjectivity of trafficked women, as abuses committed against them are not recognized as crimes. Commercial sex objects are by nature exploitable, and therefore merit no legal protection against exploitation. Second, even if Japanese policy did recognize trafficked women’s experiences of exploitation and abuse

70 Ibid.; see also Dinan, “Trafficking”, supra note 34.
71 Immigration Act, supra note 15.
73 Immigration Act, supra at note 483. The Immigration Act creates a special status for refugees, excluding them from the penalties for illegal entry and overstaying their visas, but trafficked persons are not given a similar status.
74 Immigration Act, supra note 15 art. 5.
as criminal acts, the current law denies them the ability to bring charges against their abusers. Trafficked women are automatically detained and deported without acknowledgment of their experiences. The sole purpose of immigration policy is to ban the illegal goods of the sex industry, not to investigate allegations of criminal offences. 75

When the Japanese police came around I knew that I had overstayed my visa and that the mama had my passport. I never dared to run away or even considered running to the police without my documents. Without my documents I was sure I would be arrested and jailed. . . . 76

— Pot

The real problem is not the lack of appropriate anti-trafficking legislation in Japan, but the lack of enforcement of existing laws. Japan’s Penal Code provides for a number of criminal offences that could be enforced against traffickers. 77 The criminal offences for receiving sold or kidnapped persons could be applied against traffickers. Threatening a person to perform an involuntary act is also a criminal offence that could be used to lay charges against persons who force trafficked women into sexual exploitation. 78 The problem is that Japanese immigration policy reduces trafficked women’s agency to the illegal goods of the sex market by detaining and deporting them, rather than recognizing them as victims of exploitation and abuse who deserve legal protections.

One of the driving factors behind the lack of criminal law enforcement against traffickers is police corruption and its close connections with organized crime syndicates. 79 The police’s conduct towards trafficked women is particularly problematic. When a foreign woman approaches the police for help, the police’s first response is to ask about her immigration status. If the woman seeking help is an illegal migrant,

75 Dinan, supra note 28 at <http://www.hrw.org/reports/2000/japan/9-response-japan.htm>. Immigration official Makiyoshi Uehara stated: “We don’t have the power to do anything about [the traffickers]...”


79 Dinan, supra note 28 at <http://www.hrw.org/reports/2000/japan/9-response-japan.htm>. Often police are supporters of the business owners, either as customers, or as sources of protection. The Yakuza often pay police officials to protect their business premises, or exchange information regarding other crimes such as drug trafficking in exchange for not being targets of police raids.
she is immediately sent to immigration. This practice illustrates how Japanese policy completely denies trafficked women agency, as even police will not validate their complaints of criminal offences committed in Japan. Trafficked women have no agency to voice their abuses or to bring charges against their abusers. Trafficked women’s abuses will remain invisible at Japanese law so long as it insists on objectifying trafficked women as illegal goods.

Japan has further objectified trafficked women in its response to criticisms of the lack of legal protections for trafficked women. Japan has ‘demonstrated’ its commitment to combating human trafficking by providing statistics that ‘show’ that Japan’s strict immigration policy has reduced the number of illegal aliens entering Japan. By reducing the number of illegal aliens, this in turn has reduced the number of persons being trafficked into Japan. Japan’s official position of targeting trafficked women as the means of combating human trafficking objectifies trafficked women by treating them as the tool of Japan’s purpose. Japan is using its crackdown against trafficked women to counter international criticisms of non-existent anti-trafficking measures. Japan’s response is ironic, as it publicly confirms the inadequacy of Japan’s so-called anti-trafficking measures.

Despite the existence of legislation that could be used as a framework to target traffickers and exploiters, police and immigration policies create a vicious circle that continually denies trafficked women agency in the Japanese legal system. The sole concern of both police and immigration officials is a woman’s immigration status, and not the alleged crimes committed against her. As Japanese law treats traf-

80 Dinan, supra note 28 at <http://www.hrw.org/reports/2000/japan/9-response-japan.htm>. Current police policy requires that women prove that prostitution took place before they can lay charges under the Prostitution Prevention Act. The women must produce a list of their clients’ names, then the clients must sign a statement admitting that they had bought sex from the women. The name of one client is not enough for the police to initiate an investigation: in case police requested that the woman laying a complaint bring the names of thirty customers before police would commence an investigation.


82 Embassy of Japan, supra note 69.

83 Nussbaum, supra note 12 at 218.
ficked women as illegal goods, they are legally barred from having their allegations of abuse heard and acted upon. As a result, the traffickers often go unpunished due to the absence of charges against them, and instead the women bear the brunt of the punitive measures without recognition of their abuses suffered in Japan. Giving trafficked women legal agency to bring charges against their traffickers and abusers is the key to combating sex trafficking. Current policy insists on punishing trafficked women for their involvement in the sex industry, rather than focusing on bringing the true criminals – the traffickers and abusers – to justice.

By targeting trafficked women as the root of the problem of human trafficking, Japanese policy presents a one-dimensional and therefore ineffective response. So long as acts of trafficking and forced sexual exploitation go unpunished, Japanese law is implying that these acts are not serious offences. It implies that trafficked women, as illegal goods of the sex market, do not merit legal protections. Traffickers are therefore free to reap enormous profits from the sexual exploitation of women with little risk of legal consequences. This approach fails trafficked women as it perpetuates, rather than combats, human trafficking. It fails to penalize traffickers and exploiters, and instead penalizes the trafficked women themselves. Japan allows sex trafficking to continue to be a high-profit low-risk activity for traffickers. By not taking active measures against the purpose of sex trafficking – the forced sexual exploitation of trafficked women – Japanese law is facilitating rather than combating sex trafficking.

V. ANTI-TRAFFICKING INITIATIVES IN THAILAND

Thailand is a developing country with considerably less financial resources than Japan, yet Thailand has taken several initiatives to counter sex trafficking. Currently, Thai legislation does not conform to interna-

86 Corrigan, “Brakes”, supra note 24 at 211.
87 Corrigan, “Brakes”, supra note 24 at 211.
tional standards, but it has taken steps to improve legal protections for trafficked women. The existing initiatives are significant because they represent the crucial first steps toward providing trafficked Thai women full legal rights.

Thai law has taken steps to enact harsher punishments for trafficking offences. Recent amendments to the Thai Penal Code criminalize trafficking a person for the purpose of an indecent sexual act. A similar amendment to the Prevention and Suppression of Prostitution Act increased penalties against procurers and customers. Thailand also enacted the Measures in Prevention and Suppression of Trafficking in Women and Children Act, which created the offences of attempting and conspiring to commit trafficking-related offences. These provisions are significant because they acknowledge the criminal nature of offences committed against trafficked women. By criminalizing all acts associated with sex trafficking, Thailand provides trafficked women with agency to bring criminal charges against their traffickers.

Thailand has also implemented legislation to encourage trafficked women to report trafficking crimes. The Trafficking Act contains a provision that requires courts to protect the identity of trafficked persons who testify as witnesses during court proceedings. The Thai legislature has also been debating the Witness Protection Bill, designed to protect witnesses in drug and human trafficking cases to aid in the prosecution. Witness protection provisions encourage trafficked women to report trafficking crimes by reducing the risk of negative

88 Trafficking, supra note 34; see also Dinan, supra note 28 at <http://www.hrw.org/reports/2000/japan/10-response-thailand.htm> for a detailed explanation of these amendments.


91 Thailand Trafficking Act, supra note 90 at s. 12.

consequences for those who chose to testify. Witness protection policies recognize the sensitive and dangerous nature of trafficking crimes and the potential repercussions against trafficked women who take action against their traffickers. If trafficked persons do not feel secure enough to bring complaints against their traffickers, the chances of prosecuting the traffickers will significantly decrease.

The *Penal Code* confers extraterritorial jurisdiction on Thai courts in prosecuting trafficking offences. This provision provides trafficked women with a venue in Thailand to take legal action against their traffickers, even when the trafficking offences were committed outside Thailand. Creating extraterritorial jurisdiction for trafficking offences provides trafficked women with an alternative legal venue to the country in which the offences were committed. Trafficked women who have been deported back to Thailand from other countries, such as Japan, can still bring criminal charges against their traffickers. Deportation back to Thailand does not necessarily preclude legal recourse against traffickers.

Despite Thailand’s efforts to implement anti-trafficking measures that reflect international standards, the current state of Thai law also continues to marginalize many Thai women. Under the *Prostitution Act*, the act of prostitution is illegal. The recent amendments reduced the penalties against women engaged in prostitution, but this does not prevent trafficked women from being detained as criminals. If a trafficked woman was arrested on charges of prostitution, the possibility of her bringing a legal action against her traffickers decreases.

The *Trafficking Act*, which aims to prevent and suppress trafficking, allows officials to conduct bodily searches and to detain suspected trafficking victims for up to ten days. This is arbitrary detention, as it allows officials to restrict women’s liberty and interfere with their

---

93 Global Alliance, *supra* note 10 at 8.
95 This provision could also prove to be problematic. In granting extraterritorial jurisdiction, the Thai court could have problems locating witnesses and other forms of evidence if the crime it was trying had been entirely committed in another country.
97 Dinan, “Trafficking”, *supra* note 34, and *Trafficking Act*, *supra* note 90 at ss. 9 and 10.
bodily integrity on suspicion that a woman may have been trafficked. This provision could undermine other measures that encourage trafficked women to report their abuses, as it treats suspected trafficked women more like criminals than as victims of crimes.98

Thai immigration policy also routinely denies young unemployed Thai women visas and passports in an attempt to ‘protect’ them from becoming involved in sex trafficking.99 This policy blatantly denies women’s autonomy and freedom of movement. Should a young Thai woman with few employment prospects decide to leave Thailand in search of a better job, Thai immigration officials can override her decision by supposedly acting in her best interests.100 This policy is also self-defeatist, as it could have the exact opposite effect: it could increase the woman’s vulnerability to trafficking if she cannot leave the country legally.

Thailand is a developing country with considerably less resources than its highly industrialized neighbour Japan, yet Thailand has made enormous efforts to combat the problem of human trafficking. Thailand has implemented legislative reforms to allow for the punishment of traffickers by providing trafficked Thai women agency to voice their ordeals and have their abuses tried and investigated in a court of law.101 While Thailand continues to struggle with its own problems of human trafficking, it has taken vital steps to reduce the objectification of trafficked women and to increase their visibility at law by acknowledging and promoting their legal and human rights as part of the overall solution to combating human trafficking.

98 Global Alliance, supra note 10 at 8.
99 Dinan, “Trafficking”, supra note 34.
VI. CONCLUSION

If states such as Japan and Thailand can continue to implement legislation and policies that do not comply with internationally accepted norms, how can the international protections enshrined in the Trafficking Protocol and other enactments be effective? Certainly, Japan’s treatment of trafficked women as illegal aliens who must be immediately deported seems to be proof that internationally recommended protections are mere rhetoric, pleasant to acknowledge but easily dismissed. This, however, is not the case. While international instruments such as the Trafficking Protocol have inherent flaws and limitations, this does not negate their usefulness. The Trafficking Protocol is a statement of the international community’s position on the intolerability of human trafficking and provides general guidelines on how states should proceed in taking measures to combat this problem. The Trafficking Protocol need not have come into force to inform the international community of its aims and recommended procedures to effectively combat human trafficking.102

No international agreement dealing with the problem of human trafficking can hope to be comprehensive. Each state has its own unique circumstances that create a specific market for trafficking: some states are nations of origin, some are transit countries, some are destination countries, while some are combinations of all three. Thailand is a country of origin, destination, and transit, while Japan is a destination country, receiving a large number of Thai women.103 Thailand’s uneven industrialization has contributed to an increasing economic disparity that has left women financially marginalized. Thailand also is home to a large number of long-term refugees and the hilltribe peoples, popula-

102 Compare this with the United Nations Declaration on Human Rights (UNGA Res. 217(III), UN GAOR. 3rd Sess., Supp. No. 13, at 71, UN Doc. A/810 (1948)), an unenforceable international agreement that outlines the minimum standards of human rights for all states. The UNDHR is a persuasive and internationally recognized document. While not all states conform to these minimum standards, they are used as the human rights objective for all states. While it will take some time before the Trafficking Protocol is accepted as customary international law, this does not detract from the document’s status as the international statement of the minimum standards for anti-trafficking measures. H. M. Kindred, International Law Chiefly as Interpreted and Applied in Canada, 6th ed. (Toronto: Emond Montgomery, 2000) at 772-73.

tions that frequently lack citizenship protections and economic opportunities. These populations are vulnerable to trafficking due to their marginalized position within Thailand. An effective anti-trafficking scheme must take these factors into account.

The situation in Japan is different. Japan is a highly industrialized nation, and is the largest trafficking destination country in the Asia-Pacific region. At first glance, Japan’s approach to the problem of human trafficking as a purely immigration issue seems logical. Impoverished illegal aliens are finding their way into Japan in search of a higher standard of living than they had at home. Japan’s response has been to close its borders and to impose criminal and deportation sanctions as a deterrent. Japan has taken a one-dimensional approach by targeting the easiest and most vulnerable persons: the trafficked women. Instead of examining the factors that created this hugely profitable industry within its borders, Japan prefers to place the blame outside its borders, on the ‘problem of poverty’ in the nations of origin. Blame is a backward-looking concept, which denies all responsibility, instead of acknowledging one’s own factors that contribute to the situation. The Japanese government needs to accept its role in the grand scheme of human trafficking by implementing and enforcing legislation that specifically targets the traffickers and exploiters who allow for the trafficking and sex industries to thrive in Japan.

'It's all good luck or not. It was good luck that I had a good snack bar, and bad luck that I got arrested, and good luck that I found a good boyfriend…. The snack bar next door to me was run by the Yakuza so it was worse. Some women are killed or followed if they escape, or even if they are arrested. Some are followed to Thailand, so many don’t go back to their families right away, but wait. Now I want to go back to Japan to visit, but only legally. When I was in Japan, I had no rights because the job was illegal. I’d like to go back to see, independently. I’m trying to go legally, with a passport, so that I’m allowed to be there. “— Kaew

---

105 Embassy of Japan, supra note 69.
106 Young, supra note 32 at 151.
Sex trafficking succeeds because of endless cycle of marginalization and objectification. Internal factors such as poverty and the denial of citizenship rights economically and legally marginalize certain women, such as the hilltribe and refugee populations in Thailand. Many women are vulnerable to traffickers' offers of high-income employment in foreign countries, as they have few options at home. Sex trafficking further marginalizes women by reducing them to the product of the sex industry. Traffickers buy and sell trafficked women into forced sexual exploitation. Many states treat trafficked women as the source of the problem by branding them as criminals and illegal aliens. This approach is tantamount to banning trafficked women from all legal protections by objectifying them as the contraband of the sex trade. In order to break this cycle of marginalization and exploitation, the law must recognize the full extent of trafficked women's circumstances. By acknowledging that trafficked women are victims of criminal and human rights abuses, the law can then begin to provide effective remedies against trafficking offences. By challenging the construct of the trafficked women as the objects of the sex industry, the law will provide trafficked women agency to take legal action against their abusers, and to regain control of their lives. Until both international and domestic laws directly challenge the marginalization and objectification of trafficked women, trafficked women will remain perennial victims.