

Use and Abuse of Trafficking Discourse in Japan

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Abstract

Global human rights norms function as resources for state and civil society by facilitating or hindering mobility, ensuring the protection of migrants, promoting equal treatment, and providing remedies for human rights violations. While these global norms have inspired numerous actors and set standards, the internalization of such global norms is left to national political mechanisms. This paper examines the translation and appropriation of trafficking discourse in Japan and discusses its implications. The research questions addressed are as follows: (1) How has the trafficking discourse been translated and appropriated in Japan? (2) What are the policy implications concerning trafficking discourse? and (3) What has been concealed by this appropriation of trafficking discourse? The research utilized government documents, particularly police and immigration reports, as well as annual reports on trafficking. These documentary sources were supplemented by interviews with police and immigration officers, migrants, and civil society actors. The formation of a trafficking discourse represents a shift from perceiving migrant women as 'criminals' to seeing them as 'victims of trafficking.' Since the associated domestic institutions are embedded within abolitionist and criminal justice approaches, the agency of migrants has not been considered. The trafficking discourse legitimizes border control and securitization under the name 'prevention' while concealing other forms of exploitation conducted via legal labor migration channels. Trafficking must be situated within the labor migration continuum, and a safe, orderly migration corridor must be established. This stance, along with ensuring labor rights for both Japanese and migrants—particularly among women—is the best track to approach the issue of human trafficking.

Keywords

Gender; migration; policy; trafficking

Introduction

Although international laws and conventions have significantly influenced and shaped state policies, the conditions under which the state internalizes global norms and the depth of compliance and the mechanism for adaptation remain contentious. Post-war human rights regimes, and international law more generally, have had a tremendous impact on the enforcement of global norms through transnational legal processes (Koh, 1998). Global norms function as resources for state and civil society by facilitating or hindering mobility, ensuring the protection of migrants and other workers, promoting equal treatment, and providing remedies for human rights violations. While these global norms have inspired numerous actors as well as set standards, the internalization of these global norms is left to national political mechanisms.

International anti-trafficking policies have moved onto the global agenda in recent decades, inviting states to join the action in multiple ways. Two instruments have guided this move with different significance: the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (hereafter, known as the Palermo Protocol); and the Trafficking in Persons (TIP) report published by the U.S. State Department. The year 2020 marks the twentieth anniversary of the Palermo Protocol, and even though substantial developments in policy and academic fields have been seen, critical challenges lie ahead. These challenges range from definitions on what constitutes 'trafficking,' 'exploitation,' and 'forced labor' to actual policy implementation on the ground (Ford et al., 2012; Kempadoo, 2016).

In 2002 Japan signed the Palermo Protocol, but the Japanese government did not begin to take measures until 2004 after the TIP Report classed Japan in its Tier 2 Watch List, the lowest level among the G8 countries (Fujimoto, 2017; Sasaki, 2012). This paper examines the Japanese government's anti-trafficking efforts as a case study on how international agendas are translated and appropriated at national levels. The discourse on human trafficking in Japan is predominantly framed as having a strong association with the sexual exploitation of migrant women. The formation of trafficking discourse, from the shift of perceiving migrant women as 'criminals' to seeing them as 'victims of trafficking,' will be elaborated on by examining police and immigration reports. The research questions that have been addressed are: (1) How has the trafficking discourse been translated and appropriated in Japan? (2) What are the policy implications concerning trafficking discourse? and (3) What did the appropriation of trafficking discourse conceal?

Japan revised its immigration law in 2018 to open the labor market to 14 occupations (e.g., construction, manufacturing, cleaning, agriculture, and long-term care) in order to supplement a shrinking labor force. The Japanese government expected to receive 340,000 laborers within the first five years. Although labor migration is expected to increase, regardless of the temporary suspension due to COVID-19, Japan's legal labor migration channels do not necessarily guarantee safety or orderliness, and migrants risk being indebted or becoming undocumented. Limiting the definition of trafficking to sexual exploitation overlooks the bigger picture. It allows the state to legitimize the securitization of border

control while concealing other forms of exploitation conducted under legal labor migration channels. In order to identify exploitative forms of labor, trafficking must be situated within the continuum of labor migration.

Three approaches to trafficking

The issue of trafficking has been acknowledged in various international treaties. The Palermo Protocol first defined human trafficking and called for effective action to prevent trafficking, punish traffickers, and protect victims. Article 3 of the Trafficking Protocol describes the three critical elements that constitute trafficking as follows:

1. The *activities* of human trafficking (recruitment, transportation, harboring, receipt of persons);
2. The *means* of human trafficking (force, coercion, abduction, fraud, deception, abuse of power, or a position of vulnerability);
3. The *purpose* of human trafficking (exploitation, prostitution of others, sexual exploitation, forced labor or services, slavery, or practices similar to slavery).

The term 'trafficking' is highly contested and ambiguous; however, there is no agreed-upon definition among academics and policymakers (Kempadoo, 2016). Legal scholars argue that the term is poorly defined and requires a valid legal definition (Schauer & Wheaton, 2006). Although the Palermo Protocol has helped position the issue of human exploitation on the international political agenda, it did not provide a clearly-defined road map. It, therefore, left the status quo unchanged (Gallagher, 2012). Similarly, the TIP report, which categorizes countries into tiers by evaluating the countries' efforts in enforcing laws against trafficking, has been criticized for the Tier classification system's imperfections and lack of efficacy (Wooditch, 2011). These challenges are accelerated by a lack of reliable data and difficulty in systematically conducting research, which adds to the complexity and confusion in understanding the issue (Andrees & van der Linden, 2005; Kempadoo, 2016; Musto, 2009; Parreñas et al., 2012). Thus, trafficking represents "a conceptual blueprint upon which pressing state issues and dominant ideologies are mapped and contested" (Musto, 2009, p. 283).

Kempadoo (2016) argued that there are three conceptual frameworks to approach trafficking: abolitionist, criminal justice, and transnational feminist. In its contemporary form, the abolitionist approach advocates abolishing prostitution and ending violence against women and is based upon the perception that women should be rescued from oppressive circumstances. This approach results in intense policing of local communities, control of borders, and increased surveillance limiting women's mobility. The criminal justice approach focuses on trafficking as synonymous with other international crimes involving drugs, weapons, or people. The Palermo Protocol, which supplements the U.N. Convention on Transnational Organized Crime, is grounded in this approach, with heightened protection over national security and prioritizing the criminalization of traffickers over protecting victims. Finally, the transnational feminist approach emerged through a convergence of third-

world feminists and sex worker's rights activists from developed nations. It claims to separate the trafficking of women from prostitution. This approach contextualizes trafficking within the intersection of global capitalism with the gendered state, and wherein migrant women are forced to enter the precarious labor market that includes sex work.

While the abolitionist and criminal justice approaches have no regard for women's subjectivity and agency, the transnational feminist approach places migrant women and sex workers as agents. Japan's trafficking approach has been developed through a convergence of international pressures and domestic institutions, combining the abolitionist and criminal justice approaches while neglecting the subjectivity of women who are goaded into the gendered and precarious labor market.

Methodology

This study reviewed the Japanese government's trafficking documents, including policy papers, action plans, reports from immigration and police agencies, and state policies and action plans for anti-trafficking measures. Supplementary information was used from interviews conducted during consecutive fieldwork between 2010 to 2020 with various stakeholders, including international organizations, police, and immigration officers in Japan, migrants, recruitment agencies, and civil society. The data of this paper was derived from interviews with two international organizations, namely the International Labour Organization (ILO) and the International Organization for Migration (IOM) in Tokyo, Manila, Hanoi, and Jakarta, and four police and immigration officers in Tokyo. I either wrote to them directly or was introduced to the most appropriate person and then visited their office. Regarding the migrants, nine Filipino entertainers or care workers I met during language, and care work training in Manila, Fukuoka, and Tokyo were interviewed in their workplace or restaurants and coffee shops. Five agencies working in this field for more than five years in Manila and Tokyo were selected through snowball sampling and were interviewed in their office or restaurants and coffee shops. Regarding the civil society, the information was obtained through participant observation during various events.

Who are the 'victims' of trafficking in Japan?

The issue of trafficking existed before the ratification of the U.N. Protocol but did not surface as a policy agenda until the 2000s. Immigration policy in Japan is restrictive, and feminized jobs available in other countries, e.g., domestic workers and care workers, were not an option until the late 2000s. Before this time, entertainment visas were the only available working visa for low-skilled female workers. The entertainment visa was intended for professional performers, but it became a de facto channel for many migrant women to work as hostesses in bars and night clubs. The entertainment industry in Japan accounted for 1% to 3% of the total GDP, bringing enormous revenue to the state for capital accumulation (International Labor Organization, 2005).

In the early 1990s, several criminal cases occurred whereby migrant women in the

entertainment industry murdered their employers. These cases, supported by civil society, shed new light on the plight of Asian women working as entertainers and revealed the inhumane conditions into which migrant women were forced (Saito, 2006). However, instead of regulating the entertainment industry to assure decent working conditions and protection for workers, Japanese immigration authorities often cracked down on clubs, detained the women for conducting 'illegal activity,' and subjected them to deportation. Migrant women who overstayed to earn meager salaries were penalized as 'illegal migrants' or punished under the 'Prostitution Prevention Law' (Okamura & Ogasawara, 2005). The criminalization of Asian women, who may or may not have been working as 'sex workers,' reflects Japan's patriarchal gender order that punishes sex workers rather than the men who acquired the women as sexual commodities. Parreñas' (2011) ethnographic work within Tokyo's night clubs found that contrary to the dominant narrative of trafficking in which women are forced into prostitution, the Filipino women working in the entertainment industry were well aware of their job and its associated risks when they decided to migrate to Japan. Moreover, although forced prostitution may exist, having sex with customers is counterproductive to migrant women's long-term benefit, since once they have sex, their relationship will come to an end. As Sanghera (2016, p.11) stated, "not all victims of trafficking are prostitutes; nor are all prostitutes victims of trafficking."

The number of migrant women working under entertainment visas increased steadily throughout the 1980s and 1990s, with the state being complicit since they came to Japan as legal migrants. However, the international community saw this as 'sexual exploitation' and acted. The U.N. Treaty Bodies' concluding observations mentioned the exploitation of Asian women through sex tourism, abuse of migrant women in the sex industry, and mail-order brides, and for that reason urged the Japanese government to undertake an appropriate study and initiate necessary policy measures (U.N. Committee on the Elimination of Discrimination Against Women, 1994, paras. 576-577). Likewise, concerns over lack of a comprehensive action plan to prevent and combat trafficking (Committee on the Rights of the Child, 1998), lack of sufficient information and systematic monitoring, and insufficient punishment for perpetrators were repeatedly stated (U.N. Committee on the Elimination of Discrimination Against Women, 2003, paras. 363-364). Nevertheless, the Japanese government failed to act even though the international community had repeatedly pointed out the lack of human rights protection.

What was the reason that trafficking did not become a policy agenda item, despite the existing international pressure? Douglass (2000, p. 92) provided a demand-driven explanation of the feminization of migration in Japan, noting that women enter sex work as a matter of free choice for economic reasons within the intersection of class, gender, and race that places migrants into the category of "other" who are not worthy of attention. Gender, race, and class constitute the device that state complicity acts upon in creating hierarchy within the society.

Formulation of trafficking discourse in Japan

By the late 1990s, the government was aware that migrant women were being cheated or exploited by unscrupulous brokers and employers. However, the conceptualization of 'human trafficking' as a policy agenda came about, albeit slowly, only after the ratification of

the U.N. Protocol in 2002 (Saito, 2006). While the U.N. Protocol did not have much enforcement to propel the Japanese government to be fully committed to joining the bandwagon of a global anti-trafficking campaign, pressure from the United States ended up pushing the Japanese government to act swiftly (Sasaki, 2012). In 2000, the U.S. enacted the Trafficking Victims Protection Act (TVPA), and then published the first Trafficking in Persons (TIP) report in 2001, ranking countries by their compliance with U.S. anti-trafficking standards. Japan ranked as Tier 2 from 2001 to 2003 but fell to the Tier 2 Watch List in 2004. The majority of the G8 countries are listed as Tier 1, except Japan and Russia. Countries on the Special Watch List are reevaluated in an interim assessment to be submitted to the U.S. Congress.

The 2004 TIP report stated:

“Japan is a destination country for Asian, Latin American, and Eastern European women and children trafficked for the purposes of forced labor and sexual exploitation. Japan’s trafficking problem is large, and Japanese organized crime groups (yakuza) that operate internationally are involved. The Japanese Government must begin to fully employ its resources to address this serious human rights crime within its borders” (U.S. Department of State, 2004, p. 96).

The report also emphasized that “Japan issued 55,000 entertainer visas to women from the Philippines in 2003, many of whom are suspected of having become trafficking victims” (U.S. Department of State, 2004, p. 14). The 2004 TIP report created an explicit link between prostitution and human trafficking, which mainly targeted Filipinos working as entertainers. Foreseeing that the TIP report could cause considerable damage to U.S.-Japan diplomatic relations, along with shame, the Japanese government had no choice but to act swiftly. An action plan to tackle trafficking was developed that same year, emphasizing the need for strict monitoring and border control of illegal migrants (Cabinet Secretariat, 2004). New technologies were introduced, such as biometric passports with an embedded integrated circuit (IC) chip, which contains biometric information used to authenticate the identity of the Japanese passport holders, and a Machine Readable Visa (MRV) system installed in all airport terminals and ports to detect falsified documents. Secondly, the plan indicated that it would tighten control over Filipinos who arrive as entertainers by checking their credentials to see whether they are ‘authentic professionals.’ Within this policy shift, the government made it a condition for the entertainers to have more than two years of professional education as a dancer or singer or experience working in another country as a performing artist.

After more than 20 years since the flow of entertainers began, migrant women, particularly Filipinos, suddenly became a target of the new policy agenda. The ‘skill question’ made it challenging for Filipinos to continue working, as most did not qualify. However, this new policy was based on two erroneous assumptions: first, if migrant women were professional enough to qualify as ‘genuine’ entertainers, they would not become victims of trafficking; and secondly, trafficking would only happen to sex workers, which was not the case. The strict conditions for the entertainer visa applications from the Philippines led to an increasing number of false marriages (Fujimoto, 2017). As studies point out, the tightening of border

control further marginalizes the already vulnerable migrant women (Fujimoto, 2017; Kempadoo, 2016; Sanghera, 2016).

The impact of the anti-trafficking discourse can be seen in the police and immigration reports, as these are the only bodies that can identify cases of trafficking. The National Police Agency's White Paper (2003) covered at length crimes committed by migrants, including the characteristics of organized crime classified by nationality, number of arrests and cases, and association with Japanese gangsters. The criminal cases conducted by migrants introduced in the report were robbery, selling drugs, producing counterfeit credit cards, and smuggling.

The 2003 White Paper introduced cases of foreign crime as follows:

In May 2002, the leader of a gangster group was collecting money from foreign prostitutes. In exchange, they were monitoring police raids, helping them to escape from the police, and assisting them to find customers on the street. Three street prostitutes were arrested under the Prostitution Prevention Law, and three Japanese gangsters were arrested for supporting prostitution (National Police Agency, 2003, p. 172).

The White Paper recognized the relationship between Japanese gangsters and foreign prostitutes. Yet, the coercion, deception, abuse of power, and exploitation that might have happened between the two groups were not problematized. The foreign prostitutes were simply viewed as 'criminals' for violating the Prostitution Prevention Law.

However, the same Paper stated in 2004:

Recently, criminal organizations are making profit by conducting organized trafficking through deceiving and threatening women and child(ren), and sending them to other countries. These cases are severe violations of human rights, and the response is attracting international attention (National Police Agency, 2004).

After 2004, the National Police Report began mentioning trafficking cases almost every year (Figure 1). Although the cases were introduced briefly in just one or two sentences, they represented how the police framed and understood trafficking.

Figure 1: Cases of Trafficking Mentioned in the National Police Agency's White Paper

Year	Case
2004	A Japanese broker who was forcing Columbian women to work in strip shows was arrested. Twenty-four strip theaters were raided, and 68 Columbian women were protected. Some had been forced into prostitution.
2005	A Russian woman was forced into prostitution by a Japanese gangster in collaboration with a Russian woman.
2006	Two Indonesian women were trafficked by Indonesian men to a Taiwanese employer in Japan and forced into prostitution.
2007	A Thai woman who runs a restaurant in Japan bought two Indonesian women and forced them into prostitution.
2008	A Taiwanese woman who runs a restaurant in Japan bought a Thai woman and forced her into prostitution.
2009	A Taiwanese woman who runs a restaurant bought a Chinese woman and forced her into prostitution.
2010	The Action Plan of 2009 was created (no cases mentioned).
2011	A restaurant owner arranged a false marriage with a Filipino woman and forced her to work as a hostess. Five Filipinos were working under the same conditions.
2012	A Thai woman who owns a restaurant bought a woman (nationality not disclosed) and sold her to another restaurant to work as a prostitute.
2013	No cases mentioned
2014	A Japanese owner of a sex shop deceived a Filipino woman by saying she could earn a lot of money in Japan. He arranged a false marriage, confiscated her passport, and threatened her to work in the sex industry.
2015	A Japanese trafficking broker deceived three Filipino women, and when they tried to escape, they were threatened and locked up.
2016	No cases mentioned
2017	A Japanese trafficking broker deceived a Thai woman into debt and forced her into prostitution.
2018	A Japanese gangster deceived a Cambodian woman into working in a snack bar.
2019	The Japanese owner of a sex shop abducted a girl (presumably under 18) and deceived her into working there.

Note: National Police Agency, 2004-2019

The language of criminality was radically transformed between 2003 and 2004. Foreign prostitutes were simply seen as 'criminals' in 2003, but beginning in 2004 were represented as 'victims of trafficking.' Before 2003, migrants were represented as a threat to law and order, with crime looming large through transnational networks that had to be controlled and contained for the sake of securing safe neighborhoods (National Police Agency, 2003). The White Paper (2003) associated migrants with various categories of 'illegality' constituting a threat to security, ranging from overstaying visas, drugs, terrorism, and organized crime. Maintaining social order was repeatedly emphasized by describing crime and criminality from unknown outside sources as uncannily associated with foreigners.

In 2004, however, the discourse on trafficking grounded in the language of international law and U.S. diplomacy was inserted abruptly into the Paper. The recurring pattern of text running through all cases was that of 'woman' and 'forced prostitution,' which represented the trafficking frame as understood by the police agency (Figure 1). This focus was not surprising, as article 2(a) stated that the purpose of the Protocol was to "pay particular attention to women and children." There was no clue regarding whether cases listed in Figure

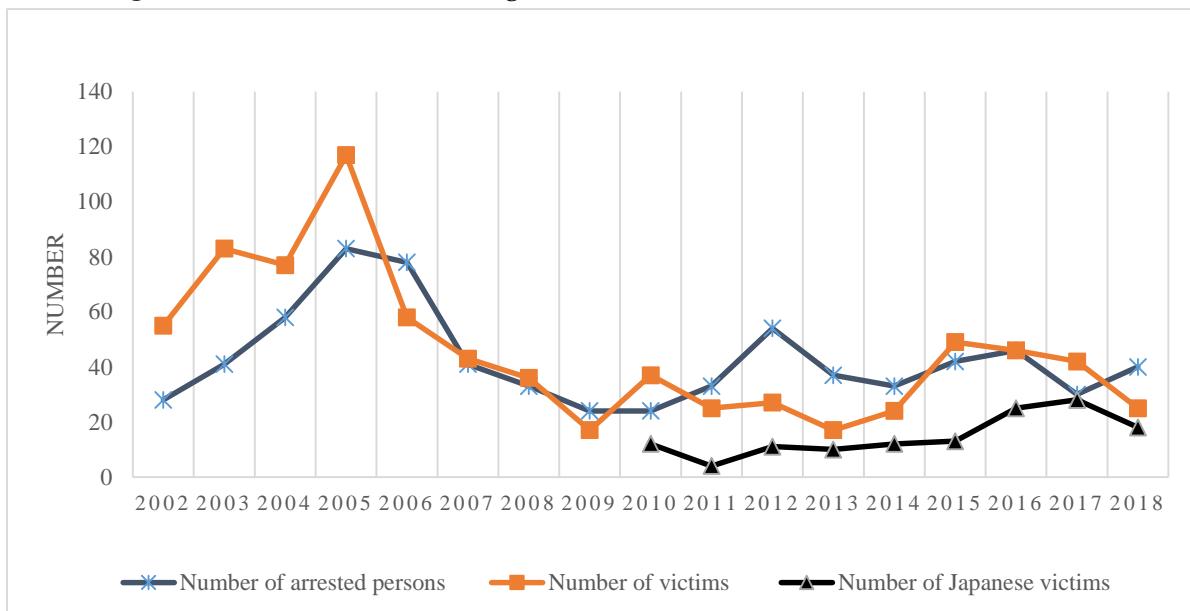
1 were 'representative' due to methodological limitations, but it is safe to conclude that these are ideal cases for the police to demonstrate that they were working diligently.

Interestingly, between 2005 to 2012, the identified cases listed both the trafficker and the victim as foreigners—as if these trafficking cases took place outside of the 'imagined community' of 'we Japanese' (Anderson, 1991). Such acts could not have been possible, however, without Japanese collaborators. The report emphasized that preventing trafficking is an 'international issue' and that the police will work closely with immigration authorities to tighten border control, strengthen control over unscrupulous employers and brokers, provide early protection for victims, and attempt to identify the status of trafficking within Japan and abroad (National Police Agency, 2009). The police report made a strong connection between trafficking, entertainment, and sex work. Besides, most of the cases identified migrant women as victims.

Similarly, in the immigration report of 2003 and 2004, the term 'trafficking' was only mentioned in a few paragraphs concerning the ratification of the Palermo Protocol (Ministry of Justice, 2003, 2004). However, from 2005 onward, the Immigration Bureau started to publish the report in English, including a lengthy description of trafficking. The 2005 report (Ministry of Justice, 2005) explained the state measures for anti-trafficking, including the amendment of the Immigration and Refugee Control Act, which exempts from deportation those who are forced to work in the sex-related business. The common phrase 'trafficking is a severe violation of human rights' became new jargon and found its way into the immigration-related vocabulary. In the immigration report, the term 'human rights' was used together with 'trafficking' more frequently than 'detention' or 'illegal.' Yet, the discourse on universal human rights never took root in the context of immigration institutions, as opposed to the consistent prevalence of the term 'illegal migrants' who overstay. In the 2005 immigration report, the term 'human rights' was mentioned 20 times, 'trafficking' 93 times, and 'illegal' 273 times.

In 2002, the U.N. High Commissioner for Human Rights issued a report titled Recommended Principles and Guidelines for Human Rights and Human Trafficking to the U.N. Economic and Social Council (Office of the High Commissioner for Human Rights, 2002). The principles and guidelines stated that the 'human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and protect, assist and provide redress to victims—thereby assuring policymakers the primacy of human rights.' As the implementation was left to the state discretion (Ford, 2012, p. 8), a human rights-centered approach remained mere rhetoric within Japan's immigration bureaucracy.

The International Labor Organization (2005) was critical of the immigration report for emphasizing the criminal aspects of international organized crime groups that smuggle women into Japan illegally for sexual exploitation. "There is extremely little information on the victims, indicating that there is still too little attention given to the human aspect of such crimes" (p. 38).

Figure 2: Number of Trafficking Cases

Note: National Police Agency, 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019

The data in Figure 2 reveal the disjunction between the international trafficking discourse and national institutions meant to tackle trafficking. The police took the abolitionist approach by undertaking surveillance within the community and demonizing sex workers, while immigration took the criminal justice approach by strengthening border control and criminalizing 'illegal migrants.' To what extent have these institutions transformed themselves in accordance with international trafficking discourse?

The introduction of such trafficking discourse brought about a major shift from a paradigm of prostitution to one of trafficking (Schauer & Wheaton, 2006). In the prostitution paradigm, women were treated as criminals selling sexual services, so they were arrested when found, and those with undocumented status would be deported. In the trafficking paradigm, however, migrant women were identified as victims and called for their protection. This shift triggered the universal human rights discourse—even if rhetorical—as a point of reference. However, in order to operationalize the trafficking paradigm, the parameters need to be set. Frontline officers must also be well-informed, well-trained, and capable of distinguishing between the two paradigms when identifying victims.

In 2015, the National Police Agency (2015b) issued a notice to the head of the prefectural police to collaborate with the government's anti-trafficking action plan by considering the unique nature of trafficking. The notice stated:

- The victim is, at the same time, suspected of the crime committed as part of the trafficking, including illegal entry, illegal work, false marriage, etc.
- In the beginning, it is not clear whether they are the victim of trafficking. In many cases, suspects who were arrested due to a related criminal case were later revealed through investigation to have been victims. If that is the case, it is necessary to release

them while continuing the investigation, so that they can be protected by women centers or NGOs. Measures must be taken on the basis of their victimhood.

The entanglement of legality and illegality, and distinguishing between criminals and victims, was a daunting task. This was especially true if one was trained under an abolitionist approach to criminalizing prostitutes or a criminal justice approach to criminalize illegal migrants. Triggered by anti-trafficking discourse, the definition of crime and criminality seemingly shifted from seeing migrant entertainers as “deceitful,” “sly,” and “fallacious” women from developing countries seducing Japanese men for monetary gain (Satake & Danoy, 2006, p. 81) toward a perception of them as trafficking ‘victims.’ However, the drastic shift from ‘illegal migrants’ to ‘victims of trafficking’ required a radical change in paradigms, even as the same police and immigration institutions remained in charge. Sasaki (2012) argued that once a person was labeled as a ‘criminal’ associated with ‘illegality’ and ‘prostitution,’ it will be a formidable task to prove that they were victims. Furuya (2010) also stated that the victim might be charged for violating the Prostitution Prevention Law or the Immigration Law, and be arrested or detained.

Victim recognition and protection measures were issued in 2010 and 2011, and the IOM Handbook on Direct Assistance to Victims of Trafficking was translated and distributed to police officers across the country. However, noted from interviews with four frontline officers working for IOM, police, and immigration from November 2019 to March 2020, confusion remained among frontline officers regarding operationalizing these definitions. The U.N. Special Rapporteur on Trafficking noted that “police officers on the ground encounter difficulties in identifying victims,” and felt that the definition needed improvement (United Nations, 2010, p. 12, para 48). Although aware of domestic violence but not of trafficking cases, one community police officer I interviewed said that “these matters are handled by people at headquarters.” A former immigration officer in charge of trafficking said that efforts to identify ‘trafficking’ were not made proactively on the ground. Although he had worked in the anti-trafficking office, he was not familiar with the trafficking guidelines and said, “Maybe they were piled up among numerous documents.” Although the number of immigration staff increased from 1,740 in 1990 to 5,432 in 2019 (Ministry of Justice, 2017), immigration officers were neither well informed nor motivated to identify victims proactively. With limited resources to handle an increasing number of applications and implement border controls, the definition of the Palermo Protocol does not help frontline officers to identify the victims entangled within the domain of legality and illegality.

Without a clear understanding of who are the victims, the frontline staff cannot function, and there is no reliable data nor effort to investigate the scope and extent of trafficking that is taking place. While the number of foreigners is increasing, the number of trafficking cases remains stable, and more Japanese than foreigners have recently been identified (Figure 2).

The National Police Agency’s White Paper does not provide details about the victims, but it does mention that cases reported by NGOs have revealed that Japanese youth (often under 18 years of age) are forced into prostitution and non-consensual pornography and are forced to perform in adult videos. NGOs are not involved in identifying trafficking victims, and because of privacy concerns, do not disclose data, including how many such persons have

used their shelters.

Wrong assumptions and flawed policies

The design and implementation of the anti-trafficking campaign are flawed in several respects. First, the Protocol and TIP report take a strong position of punishing the organized criminal syndicates, but their role might be exaggerated (Sandy, 2012). Studies suggest that the brokers responsible for the recruitment and transportation of women are neither organized nor part of a criminal syndicate but often comprise a diverse network of ordinary people (Sanghera, 2016). The narrow focus on merely targeting criminal syndicates is far from the complex reality of migrant women's experience. However, it serves to justify the 'war on trafficking' lead by the state by creating a clear image of an absolute evil while strengthening border control and securitization.

Secondly, upon ratification of the U.N. Protocol, the penal code was revised, and a Trafficking Law was established in 2005. The number of arrests was low from 2015 to 2019, with just four cases identified as 'trafficking-related' charges among 151 cases. However, in many cases, prosecutions were not based on the trafficking law, but prostitution prevention or immigration laws (Council for the Promotion of Measures to Combat Trafficking in Persons, 2019). Yoneda (2014) pointed out that even though the women shouldered debt and were forced into prostitution, the court hardly admitted the establishment of illegal domination and transfer that constituted crimes under the Trafficking Law. Yoneda illustrated the court case of two Chinese women who came to Japan through a broker assuming the debt of approximately 800,000 Japanese yen (US\$8,421) each and were transferred to the owner of a snack bar where the women were forced into prostitution. While the Chiba District Court ruled the case as trafficking, the Tokyo High Court ruled against it, saying that the two women came to Japan of their own free will and had the freedom to leave if they wished to do so. In reality, the two women could not speak Japanese, did not know whom to turn to for assistance, and did not have money. The High Court, however, revoked the ruling of the Chiba District Court, stating that the passports of these women had not been confiscated, and they were talking casually with the snack bar owner, so the women were not forced into prostitution. Yoneda (2014) argued that the definition of 'trafficking' was too narrow, and it was hard to prove what constitutes illegal domination and transfer when the judge was biased against the victims. The civil society claimed that the court prohibitively required high evidential standards that could not be met to adequately bring about law enforcement (U.S. State Department, 2018, p. 245). The women's agency was complex and diverse, attesting that even though the two women talked casually with the snack bar owner, this did not mean that they were not coerced or dominated. If the definition of trafficking is based on the judge's subjective impression, then applying the law will be based on what the judge perceives as an 'ideal victim.'

Thirdly, the anti-trafficking campaign assumed that the victim has a clear notion of what constitutes victimhood. However, studies pointed out that the victim is often not aware of what they are going through and has difficulty voicing their experience articulately (Yea, 2016). This is accelerated by the cultural notion of filial piety or supporting the family, which is the primary motivation for migrant women to work in Japan. In the Philippines, one aspires

to become the *panalo* (winner) and successor with a high income, comfortable life, large properties, and higher consumption (Ballescas, 2003). There is a strongly-lingering moral obligation, particularly for daughters, who are told to support their families, and one cannot return home without fulfilling this duty. To be identified as a victim of trafficking, which may lead to repatriation, constitutes a failure wherein one will become a *talo* (loser), accompanied by the failure to save money. Home can be an empty signifier if the conditions that forced women to leave remain unchanged (Lindquist, 2013). Many migrant women simply wish to continue to work under less exploitative and decent working conditions (Parreñas, 2011). The case of those working in the entertainment industry results from migrants' lack of accessibility to regular channels of employment. Given the stigma of working as a prostitute abroad, repatriation brings shame and humiliation not only to the woman but to the whole family (Sangera, 2016). If this background is considered, then the advantage of being recognized as a victim is limited.

There is no policy evaluation conducted by the government or a third party regarding the efficacy of state efforts to eradicate trafficking. The number of reported cases (Figure 2) remains more or less the same, and there is no reliable data to verify the cases. The state monopolizes the narrative on anti-trafficking, and the agency of women continues to be deprived. Responding to the TIP report, Filipino entertainers were defined as passive 'victims' to serve the needs of the Japanese state to demonstrate its anti-trafficking campaign efforts for its American masters. Soon after the 2004 TIP Report, the Immigration report started to be published in English.

What does the state trafficking discourse conceal?

Trafficking in Japan has been stereotypically represented as sexual exploitation; wherein migrant women are forced into prostitution. Such cases have indeed occurred, but this stereotypical representation overlooks the larger picture in two ways. Firstly, the U.N. definition of trafficking is much broader than sexual exploitation, and includes forced labor and enslavement. However, the protocol does not provide a standard definition of exploitation, nor is the concept ever defined in international law (Goździak & Vogel, 2020). Exploitation is a difficult concept to define. More trafficking cases are being tried under immigration violations in Europe and the United States, with very few cases of severe convictions for human trafficking (Goździak & Vogel, 2020). This is ironic because the Palermo Protocol was initially conceived to control exploitative forms of migration that supersede state control over its borders (Gallagher, 2012).

The ILO Forced Labour Convention [No. 29] (1930) defined forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Article 2). However, this definition poses challenges since the kind of penalty and the notion of consent that qualifies as forced labor are not specified. The distinction between voluntary and forced migration is difficult to identify unless the person is trapped within clearly exploitative conditions (Sanghera, 2016). If that is the case, we should see trafficking and labor migration as a continuum instead of a binary since migrants often do not have a choice and are voluntarily forced into specific jobs abroad.

Andrees and van der Linden (2005) used the following critical question in their study on forced labor: Have you been free to change or leave your employment at any given time? In light of this key question, all migrant entertainers and other forms of labor migration in Japan will be identified as 'forced labor.' Several visa categories do not allow migrants to change their employers. One of them is the Technical Internship Trainee Program (TITP), a legal migration program that sustains sectors suffering from a labor shortage, including agriculture, construction, and long-term care.

In Japan, 70% of the employers investigated by the Labor Inspection Office in 2018 have violated the labor laws (Ministry of Health, Labour and Welfare, 2018). Even though abuse happens in the workplace under the TITP, a lack of language proficiency, unfamiliar geography, and employers' control significantly decreases migrants' bargaining power and makes it extremely difficult for workers to negotiate their labor rights. As the number of TITP workers, which may or may not include trafficking victims, increased from 151,477 in 2012 to 274,225 in 2017, those who become undocumented also increased from 2,005 to 7,089, respectively (Ministry of Justice, 2018). The pre-departure process in the sending country, together with control and surveillance in Japan, prompts some TITP workers to become undocumented (Belanger et al., 2011). Weak enforcement of regulations, corruption, and a precarious and gendered labor market are the factors that increase migrants' vulnerability.

Shipper (2008) stated that TITP workers from Southeast Asia are situated at the lower ranks of the Japanese government's racialized and legalized hierarchy. If that is the case, then how can one distinguish between legality and illegality within the complex reality fueled by gender, racial, and class stereotypes within this context? How can one identify a victim when their victimhood is constructed and embedded within the entangled domain of legality and illegality? Without well-trained and gender-sensitive front-line officers, the two bodies, namely police, and immigration, tasked to identify trafficking will never be able to function correctly.

The TIP Report (2020) stated that despite reports on forced labor, not a single case of TITP was identified as trafficking. The TIP Report also emphasized the need to train the officers in related offices on victim identification, strengthen links with NGOs, increase employer inspections, and punish recruitment agencies if they charge excessive fees (p. 282).

The U.N. Special Rapporteur on Trafficking in Persons during a visit to Japan in July 2009, pointed out that the country's anti-trafficking effort focused solely on women and sexual exploitation and had to take into account other forms of exploitation (U.N. Expert on Trafficking in Persons Ends Visit to Japan, 2009). The list of immediate concerns included the non-ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; a lack of comprehensive definitions of trafficking in national legislation; unclear identification procedures; a lack of appropriate shelters and resources; and abuse of labor migrants. However, improvements have not been made even though more than ten years have passed since the recommendation.

Civil society has been advocating the abolishment of TITP as a form of forced labor, associating the program with trafficking. In 2017, the state introduced new laws and

institutions to strengthen oversight and control over TITP employers. The TIP report's repeated criticism of TITP as a form of forced labor might have played a role. Japan's annual report on trafficking repeatedly explains the state's effort against trafficking by using the same phrase, "However, the international community remains strongly concerned about measures to combat trafficking in persons, and Japan's efforts in this area have also drawn the attention of the international community" (Council for the Promotion of Measures to Combat Trafficking in Persons, 2015 to 2020, p.3). This hints at the influence of the TIP report. If that is the case, just like the United States where "the TIP report is the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking" (Trafficking in Persons Report, 2020, para. 1), Japan's trafficking efforts are also meant to serve diplomatic purposes rather than a commitment to universal human rights including protection of migrants. The overemphasis on sexual exploitation against migrant entertainers not only criminalizes sex work as a form of labor but obscures the more extensive exploitation conducted under legal labor importation.

Secondly, by highlighting the risk and fear of transnational organized crime, it becomes easier for the state to legitimize its securitization and border control. In 2013, foreseeing the 2020 Tokyo Olympics, the government adopted a cabinet decision on Creative Strategy to "Make Japan the Safest Country in the World" (Prime Minister of Japan and His Cabinet, 2013). The Ministerial Meeting on Anti-Crime under the Prime Minister's office became the responsible body for designing trafficking policies, together with anti-terrorism, drugs, child abuse, and fraud. An annual ten-minute meeting is held that endorses the yearly report on trafficking measures. The report emphasizes the prevention of trafficking as strengthening border control by establishing an intelligence center within the immigration body, sharing information, creating a database of passengers, tightening control over illegal stayers, and cracking down on fraudulent brokers and networks. Biometric authentication has been introduced in border control using fingerprints and face recognition for morphological analysis, while the association between migration and security has been strengthened. Framed by the abolitionist and criminal justice approach, all government documents on trafficking emphasize the words 'illegal,' 'falsified,' and 'crime,' while less emphasis has been made upon protecting migrants. The association of trafficking and sexual exploitation invites the powerful but misleading image of the masculine state to protect the weak, poor, and disempowered women who fell into the criminals' hands. Many grey areas exist, and the migrants' lived experiences are situated within a continuum, rather than the binary oppositions of legality versus illegality, victim versus perpetrator, and illegal migrants versus human trafficking victims.

New forms of gendered labor

While the Japanese government's anti-trafficking action demonstrated the 'will to comply' with the standards set by the U.S. government, little has been done to increase the protection of migrants, and recent changes indicate more diverse and alarming challenges to trafficking. Responding to its aging population, the government opened up several channels to accept migrant workers in long term care and domestic work. After banning Filipino entertainers in the 2000s, sending agencies in the Philippines are now back deploying women as care workers. One former entertainer from the Philippines who applied to work as a care worker had been educated as a nurse in the Philippines but was frustrated with her salary, so she came to Japan

and worked for six years as an entertainer. Upon returning to the Philippines, she again applied to work as a long term care worker in a care facility in western Japan. When I interviewed her in February 2016 in Manila, I asked her if it was different to work as an entertainer than a care worker. She replied:

"To work as an entertainer and to work as a care worker is almost the same. In the pub, most of my customers are old, so I help them stand up from the sofa and bring them to the toilet. I do the same thing in the care facility. We also do karaoke and dance".

This indicates a similar emotional and physical engagement required for both entertainers and care workers to fulfill the needs and desires of the Japanese. It also reflects the gender and racial stereotype of Asian women providing tender loving care, having a warm heart, and entertaining spirit to help both the pub and the care facility sustain their business. Parreñas (2003) coined the term 'New International Division of Reproductive Labor,' where migrant women cross borders to cater to the care deficit in the Global North. The new global reproduction system is emerging, wherein domestic and care workers are invited amidst changing forms of global capitalism, and where we already see exploitative cases that will qualify as trafficking (Fujimoto, 2015; Sasaki, 2020). The locus of vulnerability has shifted from the pub to the care facility. Still, the actors and institutions remain the same: sending agencies in the Philippines, migrant women, and Japanese police and immigration.

The continuous flow of migrant women through different occupational categories within a similarly gendered labor market manifests parallel dynamics between the state and society. Research on Filipino entertainers shows that the Japanese males in the pub feel that their masculinity has been enhanced when they are treated warmly by the Filipino entertainers (Satake & Da-anoy, 2006, p. 38). This coincides with the Japanese state being led by predominantly older male politicians, whose masculinity is enhanced when they rescue 'poor,' 'helpless,' and 'innocent' Asian women from fraudulent brokers. However, one thing has changed during recent decades: the dependency of Japanese society upon its migrant workers. Amidst a declining population, the whole society will collapse without an adequately regulated labor migration channel, sustainable through ensuring decent working conditions and strengthening human rights protection.

Conclusion

This paper examined how the international agenda on trafficking is interpreted and enacted in Japan's policies and institutions, and discussed the implications and what is concealed therein. Anti-trafficking, which has become a global norm, has been interpreted as equivalent to forced sex, thereby bringing about a drastic paradigm change from criminalizing migrant women to seeing them as victims of trafficking. However, this shift was not necessarily accompanied by the organizational change that undertakes investigation and identification within the contested and often contradictory human rights protection domain and illegality. The two leading institutions to identify victims, namely the police and immigration officers,

are neither trained nor resourced to undertake this task, and there is hardly any evaluation of the efficacy of anti-trafficking efforts. Human rights language has entered immigration policy, but overuse of the term 'illegal' suggests that securitization looms large and did not fundamentally transform the border control regime's rootedness in a criminal justice approach. Instead, securitization paved the way to justify border control under the name of 'prevention of trafficking.'

Reducing 'trafficking' to 'sex work' misses the more considerable exploitation taking place under legal labor importation channels, and trafficking must be situated within the labor migration continuum. The transnational feminist approach has not actively sought to find out where voices of migrants, especially women, continue to be concealed, which is an issue where researchers and civil society have a role to play. Civil society and researchers should align further with global norms, especially those of the human rights regime, as resources to ground their advocacy and enhance migrants' protection. Anti-trafficking discourse should also be capitalized upon to shift the state's dominant criminal justice discourse into a transnational feminist approach to build a more just society. After all, to establish a safe, orderly, and regular migration corridor, and to ensure labor rights for both Japanese and migrants, particularly among women, is the quickest and best track to approach the issue of human trafficking.

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