

OWED JUSTICE:
Thai Women Trafficked into Debt Bondage in Japan

Human Rights Watch/Asia
Human Rights Watch Women's Rights Division

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I. SUMMARY

In April 1999, the residents at a private women's shelter in Tokyo included two Thai women who had recently escaped from debt bondage in the Japanese sex industry:

Miew¹ had spent more than two months working as a “hostess” in a “dating” snack bar, serving drinks at the bar and accompanying clients to nearby hotels to provide sexual services. She had been recruited from Thailand with the promise of a generous monthly salary, but when she arrived, she was told that she would have to work without any compensation until she paid off a debt of 5 million yen (approximately US\$43,000). Her manager confiscated her passport and warned her that if she tried to escape, she would be followed and caught by Japanese gang members or police. She was housed under constant surveillance in an apartment next door to the bar, where a motion sensitive light outside the door ensured that she could not go outside unnoticed. After working for two months, Miew’s debt had risen to 6 million yen (approximately US\$51,000), as the cost of room, board, and “protection” fees—as well as a hefty fine for giving the snack bar’s telephone number to her parents—well exceeded the amount she had been able to repay.

¹ To protect the identities of the women victims of trafficking and compulsory labor, each has been assigned a randomly selected name which is used consistently throughout the report. While Human Rights Watch generally refers to interviewees by their first and last names, in this case we have chosen to follow the Thai custom of using nicknames.

Thip came to Japan in March 1999, having been promised a job as a waitress in a restaurant where she could save money. But when she arrived she was told that she owed 4.5 million yen (approximately US\$38,500) for the cost of her travel and job placement, and she was put to work in a brothel, where she was kept in a small room and forced to provide sexual services to customers. Thip escaped after working fifteen to sixteen-hour days, every day, for two weeks. The customers paid 12,000 yen (approximately US\$100) for eight-minute sessions, but Thip's share was only 2,000 yen. From this amount, Thip was expected to pay 34,000 yen a day for rent and protection money. This meant that she had to serve eighteen clients each day before any earnings were applied toward her debt.

Miew and Thip are among the thousands of women in Thailand who accept offers to work in Japan each year in the hope of providing a better livelihood for themselves and their families. Some are promised jobs as waitresses or factory workers; others are assured high wages as entertainers or sex workers. But nearly all find themselves saddled with exorbitant debts and forced to work under brutal conditions without compensation until they are released.

Trafficking in persons, the illegal but highly profitable transport and sale of human beings for the purpose of exploiting their labor, is a global human rights phenomenon involving hundreds of thousands of victims each year, including thousands of women trafficked from Thailand into debt bondage in Japan. The intermediaries who arrange these women's travel and job placement use deception, fraud, and coercion to place them into highly abusive conditions of employment, where they must repay outrageously high "debts" before they can earn wages or gain their freedom. While in debt, women are kept under constant surveillance and forced to satisfy all customers and all customer demands. Disobedience can lead to fines, physical violence, and even "resale" into higher levels of debt. Escape from these conditions is difficult and dangerous, and may lead to violent retaliation. Governments have an obligation to combat such abuses. To fail to take all possible action is to be complicit. They must clearly identify and punish rights abuses perpetrated by traffickers, aggressively investigating and prosecuting these crimes. They must also address the precarious legal and social position of trafficked persons, with concrete measures to protect victims' rights and provide them with the incentive and resources to cooperate with law enforcement officials. Such measures include exempting trafficked persons from prosecution for offenses directly resulting from their being trafficked; giving them real opportunities to seek justice

and compensation for abuses they have suffered; ensuring their access to shelter, medical care, and other services as needed; guaranteeing their personal safety; and facilitating their safe and humane repatriation.

Human Rights Watch, in cooperation with local organizations and researchers, has conducted extensive research regarding the trafficking of women from Thailand to Japan. This report is based on interviews conducted in Thailand and Japan over the six year period from 1994 to 1999, during which we documented serious abuses in the course of women's recruitment, travel, job placement, and subsequent employment. Our interviews in 1999 reveal a clear continuation of the abuses we first documented in 1994, indicating that, despite the increased awareness demonstrated by Japanese and Thai officials regarding the abuses trafficked women suffer, these governments have failed as yet to take adequate steps to respond effectively to the problem.

Findings

Trafficking

The trafficking of women from Thailand to Japan occurs within the context of large-scale regional migration in Asia, which has grown dramatically over the last two decades. Since the late 1980s, this has included large flows of both male and female workers from Thailand to Japan.² The vast majority of this migration is illegal, as Japan accepts only a very limited number of legal migrants each year. In practice, the high demand for foreign workers in Japan has fostered the growth of large transnational networks able to bypass legal barriers and facilitate illegal migration into Japan. There is strong evidence that these networks are controlled by powerful organized crime groups, including the Yakuza in Japan and other mafia-like organizations elsewhere. It is these networks that women from Thailand often rely on when they migrate to Japan.

Human Rights Watch interviewed numerous women who had migrated from Thailand to Japan over the past decade, most of whom had worked in "dating" snack bars upon their arrival in the country. They narrated their experiences at length; in some cases, over the course of several meetings. We also interviewed a number of advocates in Japan who are working on behalf of women from Thailand, including lawyers, shelter staff, hotline volunteers, medical professionals, migrants' rights

² Migration from Thailand to Japan peaked in 1993. Since then it has slowed somewhat due to Japan's economic difficulties and its related crackdown on illegal migration, but estimates indicate that there are still many tens of thousands of Thai migrants working in Japan each year.

activists, and others. In addition, we interviewed Japanese government officials as well as officials from the Thai Embassy and Thai Labor Office in Japan. Finally, we met with governmental and nongovernmental representatives in Thailand who are involved in efforts to prevent trafficking in persons and provide assistance to victims.

We found that while Thai women's initial decisions to migrate for work were almost always voluntary, women typically were deceived from the time they made their decisions until their arrival in Japan, and most of the women experienced slavery-like abuses, prohibited under international law, during the course of their travel and job placement. Agents in Thailand assisted women in obtaining passports and other travel documentation, took care of all travel arrangements, hired escorts to accompany the women during their travel, and contacted brokers to receive the women in Japan. These agents routinely deceived women about the terms and conditions of the work they were going to do; none of the women we interviewed understood the amount and calculation of their debt and the conditions under which they would have to repay it when they arrived in Japan. Many of the women were also deceived about the nature of the work: promised jobs as waitresses or factory workers, they were later coerced into engaging in sex work. Upon arrival in Japan, women were delivered to brokers, who contacted employers and arranged the women's job placement. Most of the women were employed as snack bar "hostesses" with duties included entertaining customers at the bar and accompanying customers to nearby hotels to provide sexual services. Women were given no choice over their occupation, employers, or working conditions, and they received no compensation until they repaid extraordinarily large debts assessed against them, far exceeding the cost of their travel to Japan.

Debt Bondage and Forced Labor

Human Rights Watch found that working arrangements for most of the women from Thailand in Japanese snack bars constituted debt bondage or forced labor, practices prohibited under international law. During their recruitment, women were regularly deceived regarding the amount of debt they would incur, the amount of time it would take to repay this debt, the type of work they would have to perform while in debt, and/or the conditions under which they would be compelled to work. This deception was compounded by the wide discretion employers exercised over debt repayment calculations. Employers used arbitrary and non-transparent methods of account-keeping and routinely increased women's debts with a variety of fines and other expenses. Employers also reserved the power to "resell" indebted women into renewed levels of debt, and the threat of "resale" was often used to exact compliance.

While in “debt,” women trafficked from Thailand worked under highly abusive labor conditions. They did not receive any compensation for their labor and had to accept all customers and all customers’ requests. They also faced significant risks to their health with only limited access to health care. Severe punishments for refusing or failing to fully satisfy customers meant that women who were in debt had no power to enforce condom use, heightening their risk of exposure to HIV/AIDS and other sexually transmitted diseases. Women were often compelled to submit to even physically abusive clients, and some were subjected to violence by their employers for alleged infringements or acts of disobedience. Women were also forced to work excessively long hours, in some cases even when ill, and their access to medical care was controlled by their boss or manager. Though medical care might be available if a woman succeeded in maintaining a good relationship with her manager, such care also lengthened the period of debt repayment as the cost of any treatment was added to her debt.

Several of the women we interviewed escaped from this situation, but most repaid their debts—over a period of anywhere from several months to two years—and then continued to work in Japan in order to earn money for themselves and their families back in Thailand. There are a number of reasons why escape is unusual. The nature of debt bondage provides women with strong incentives to acquiesce to their managers’ demands, as the debt period is typically temporary, but all repayment calculations are at their employers’ discretion. Furthermore, escape is difficult and dangerous. Women are kept under near constant surveillance, their passports and other documentation are confiscated, they have little cash, and they are isolated by barriers of language and culture. They are threatened with violent retaliation or “resale” into greater debt if they are caught, and sometimes with retaliation against their family members if they are not. In addition, while Japanese authorities, if contacted, may be willing to facilitate escape attempts, they will also begin deportation procedures, without offering women any opportunity to seek compensation for back wages or damages. Similarly, Thai Embassy officials assist women in returning home to Thailand, but they do not provide women with any assistance in obtaining legal recourse for the abuses they have suffered. Some women find their working conditions so unbearable that they would like to return home, even empty-handed, but most put up with the abuse in hopes of obtaining the money they need to support themselves and their families back home.

Government Responses

The Thai and Japanese governments are well-aware of the abuses described above. Officials from both governments have publicly acknowledged that transnational crime syndicates are involved in trafficking women from Thailand into

Japan, that there are currently tens of thousands of undocumented Thai women working in Japan, and that many of these women face extremely exploitative conditions.³ In fact, the Thai Embassy organized a conference in Tokyo in September 1999 to discuss the abuses faced by Thai women in the Japanese sex industry, and less than four months later, Japan's Ministry of Foreign Affairs sponsored a symposium to discuss the trafficking in persons into Japan, with a focus on trafficking in women and girls from Thailand and other Asian countries into the sex industry. Unfortunately, however, this awareness has not been translated as yet into effective measures to provide women with the means to protect themselves from abuse or to seek redress for violations.

Japan

Japan's restrictive visa policies have created extraordinary opportunities for profit for those who facilitate the illegal migration of women from Thailand and other countries into Japan. Though there is a strong demand for foreign women workers in Japan and a large number of Thai women willing to migrate, opportunities for legal migration are relatively minimal. Crime syndicates in Japan and abroad have seized upon this opportunity, forming transnational trafficking networks that facilitate women's migration and then compel them to work under highly exploitative conditions.

Japanese officials have publicly acknowledged the slavery-like treatment many of these women endure. However, in policy and practice, their response continues to focus on increased efforts to combat illegal migration, targeting both the migrants themselves and those who facilitate such migration, but entirely failing to address the coercion and deception that is often involved. This response has exacerbated trafficked women's vulnerability. As "illegal aliens" and "prostitutes," undocumented Thai women working in the Japanese sex industry are viewed as criminals by the Japanese authorities. They get little sympathy from police, immigration officials, and labor officials, and their access to health care is impeded by Japanese policies that exclude undocumented migrants from health care benefits available to other residents of Japan. When police or immigration officials raid establishments that employ undocumented migrant women, the women are arrested as illegal aliens, detained in immigration facilities, and deported with a five-year ban on reentering the country. This punitive treatment is applied regardless of the conditions under which the women migrated to, and worked in, Japan. Even when

³ See, for example, Sanitsuda Ekachai, "Conference seeks help for Thai victims: These women are not criminals-envoy," *Bangkok Post*, September 28, 1999; "Govt, NGO officials meet on Thai women's problems," *The Daily Yomiuri*, September 28, 1999.

there is clear evidence of trafficking, debt bondage, or forced labor, no effort is made to provide undocumented migrants with an opportunity to seek compensation or justice. If employers or traffickers are prosecuted at all, they are charged with immigration offenses, such as employing or facilitating the employment of illegal aliens; with procuring prostitutes in violation of the Prostitution Prevention Law; or with operating an un-licensed entertainment business. They are almost never prosecuted for the severe human rights abuses they have committed, such as forced labor, illegal confinement, physical violence, and intimidation.

Thailand

Over the last several years, the Thai government has made eradication of the sexual exploitation of women and children a national priority, adopting a variety of measures aimed at preventing and suppressing the trafficking of women into and out of Thailand for sexual purposes. The Ministry of Labor and Social Welfare offers vocational training programs designed specifically for women and girls to expand their educational and employment opportunities in Thailand. Government officials have launched awareness-raising campaigns that warn women of the dangers of sex work and of migration. The Ministry of Foreign Affairs screens the passport applications of girls and women ages fourteen to thirty-six, rejecting the applications of women suspected of being procured into the sex industry. And the National Assembly enacted legislation designed to facilitate the investigation and prosecution of trafficking agents, including the revised Measures in Prevention and Suppression of Trafficking in Women and Children Act, adopted in 1997. In addition to these efforts, the Thai government provides services to women victims of trafficking. In Japan, Thai Embassy officials assist women in obtaining the necessary documentation and funding to return to Thailand, and victims of trafficking are also eligible for rehabilitative services, such as vocational training and shelter care, after they are repatriated.

These government efforts have helped to raise awareness of the abuses migrant women commonly face in Japan and elsewhere, but their effectiveness in reducing women's vulnerability to such abuses has been limited. Laws to crack down on traffickers have proven difficult to enforce in practice, and other preventative efforts have been undermined by preconceptions about proper roles and occupations for women. Vocational training for women emphasizes traditionally female skills, such as sewing and hair dressing, which do not typically lead to well-paying jobs and thus are not seen as likely to lead to a meaningful alternative career. Information campaigns warn women of the dangers of migration, but fail to provide them with any useful information about their rights or the services available to them when abroad, so that women who decide to migrate despite the risks are unable to protect

themselves from exploitation. And the services provided to women victims of trafficking and debt bondage do not include any effort to assist women in seeking back wages or other compensation for the abuses they have suffered.

Finally, the Thai government has abdicated its responsibility for women and girls whose homes are in Thailand, but who lack official Thai citizenship. This problem of denial of citizenship is one affecting hundreds of thousands of people in Thailand. Without Thai citizenship, the vulnerability of such women to trafficking agents is enhanced, both because they are denied access to the same education and employment opportunities as Thai nationals and because they cannot obtain the documents necessary for international travel through legal channels. Even more devastating, once these women leave Thailand it is almost impossible for them to return as the Thai government does not recognize their right of reentry. Consequently, such women who have been trafficked into debt bondage in Japan are obliged to remain in that country in a state of legal and social limbo, separated indefinitely, and perhaps forever, from their homes and families.

Obligations under International Law

Trafficking, debt bondage, and forced labor are practices that are strictly prohibited under international human rights law and treaties binding upon governments. The threat and use of physical force, illegal confinement, and abusive working conditions that women routinely endure also constitute serious abuses of their rights to liberty, security of person, freedom of movement, free choice of employment, fair wages, and safe working conditions. The Japanese and Thai governments are obliged under international law to take concrete steps effectively to prevent and address these human rights abuses and to provide victims with access to justice and compensation. Human Rights Watch found that in the case of women who are trafficked from Thailand to Japan, the Japanese and Thai governments have consistently failed to live up to these obligations.

II. KEY RECOMMENDATIONS

The Japanese and Thai governments have an obligation to take the steps necessary to prevent and punish the trafficking of women from Thailand to Japan and to protect the rights of trafficking victims, ensuring that they have access to redress for the violations they have suffered and preventing further abuses. The two governments should take the specific measures set out below and in doing so should coordinate their responses to ensure that the trafficking of women, and the further human rights abuses which take place in that context, are swiftly and effectively addressed. The international community can also play an important role in setting appropriate standards for states' response to trafficking in women, and in encouraging the Japanese and Thai governments to implement these standards.

The final chapter of this report provides a more detailed discussion of Human Rights Watch's recommendations to the Japanese and Thai governments, coupled with recommendations to other actors in the international community.

To the Japanese Government

Women trafficked from Thailand to Japan face egregious violations of their basic human rights, and urgent, concrete steps are needed both to reduce their vulnerability to such abuses and to encourage them to seek assistance, protection, and an effective remedy from Japanese law enforcement officials when their rights are violated. Trafficked women must be exempted from penalty for any activities resulting from their being trafficked. They must have the opportunity to seek remedies and redress for the human rights violations they have suffered, including compensation for damages, unpaid wages, and restitution. Their repatriation must be carried out in a safe and humane manner that does not interfere with their ability to seek redress. They must be protected from further violations of their rights and be afforded access to medical care, shelter, and other services as needed. Such steps are necessary to remedy the abuses trafficked women have suffered and to protect them from further traumatization. These measures are also crucial for facilitating the investigation and prosecution of traffickers, thus ensuring that perpetrators are brought to justice and punished, and to deter further abuses.

Actively investigate, prosecute, and punish perpetrators of trafficking in persons and/or servitude, imposing penalties appropriate for punishing the grave nature of the slavery-like abuses involved and for deterring further such abuses. Take measures to ensure that the undocumented immigration status of trafficking victims does

not impede investigation or prosecution of labor law violations and other offenses.

Amend laws, including the immigration law, to exempt victims of trafficking and/or servitude from being prosecuted or otherwise punished for any crimes or illegal status that have resulted directly from these practices. While repatriation may be appropriate, punitive measures, including detention pending deportation, should be waived.

Guarantee victims of trafficking and/or servitude access to redress for abuses they have suffered, facilitating their ability to seek compensation for damages, withheld wages, and restitution.

Protect the safety of victims of trafficking and/or servitude with measures that include strong witness protection provisions and opportunities to seek asylum.

Ensure that victims of trafficking and/or servitude have access to essential public services, including appropriate shelter and medical care.

Amend detention and trial procedures in both the criminal justice system and the immigration control system to ensure that the rights of detainees, as established by international human rights guidelines, are upheld. Facilitate independent monitoring of procedures and conditions, and thoroughly and promptly investigate all allegations of misconduct.

7. Ratify relevant international conventions, including the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; ILO Convention concerning the Abolition of Forced Labour, no. 105; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

To the Thai Government

The Thai government also has a responsibility to protect women in Thailand from trafficking and other human rights violations commonly endured during their migration to Japan. To reduce women's vulnerability to such abuses, the Thai government should strive to improve women's educational and employment opportunities in Thailand, and help prepare women for employment abroad by providing useful information about overseas employment opportunities and about services available to women in destination countries. In addition, Thai officials stationed in Japan, including the Thai Labor Attache, must actively defend the labor rights of *all* migrant workers, irrespective of their immigration status, without discrimination based on sex or occupation. Thailand must also address the widespread problem of "statelessness" among hilltribe and refugee populations in the country. Steps should be taken to facilitate such persons' access to citizenship, and to ensure that all victims of trafficking from Thailand are able return to their homes in Thailand, even when they cannot produce proof of Thai nationality. Finally, one human right cannot be traded for another: efforts to combat trafficking must not discriminate against women and must be consistent with the protection of women's right to freedom of movement and travel.

1. Expand and improve the services available to women trafficked from Thailand to Japan, so as to facilitate their access to compensation and redress in Japan, guarantee their safe repatriation, and ensure that they have access to appropriate social services upon their return to Thailand.
2. Improve law enforcement efforts to prevent and punish the trafficking of persons out of Thailand, including efforts to crack down on official complicity in such crimes.
3. Take steps to reduce women and girls' vulnerability to trafficking by expanding their education and employment opportunities in Thailand and empowering them to protect their rights as workers overseas.
4. Protect women's right to freedom of movement, including international travel.
5. Take steps to address the particular vulnerability of hilltribe and refugee women to trafficking and to facilitate their safe repatriation when trafficking abuses occur.
6. Ratify relevant international conventions, including the Slavery Convention; THE SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY; THE CONVENTION RELATING TO THE STATUS OF REFUGEES; THE PROTOCOL RELATING TO THE STATUS OF REFUGEES; THE CONVENTION ON THE REDUCTION OF

STATELESSNESS; AND THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES. REMOVE RESERVATIONS FROM ARTICLE 7 OF THE CONVENTION ON THE RIGHTS OF THE CHILD, THEREBY RECOGNIZING THE RIGHT OF ALL CHILDREN TO BE REGISTERED IMMEDIATELY AFTER BIRTH AND TO ACQUIRE A NATIONALITY.

To the Japanese and Thai Governments

Bilateral cooperation is vital to prevent trafficking in persons and respond appropriately to the rights and needs of victims. Though representatives of the Thai and Japanese governments have come together to discuss this problem, they have yet to design or implement concrete bilateral measures to address it. We urge them to:

1. Discuss and implement concrete measures to reduce migrant Thai women's vulnerability to labor exploitation in Japan. Such measures could include expanding the opportunities for legal labor migration by women from Thailand to Japan, and conducting awareness-raising activities for migrant Thai women in both Thailand and Japan.
2. Work cooperatively—and in coordination with relevant Japanese and Thai nongovernmental organizations—to ensure the safe and humane repatriation of victims of trafficking, servitude, and other abuses.
3. ESTABLISH A MONITORING BODY, WITH THE FINANCIAL SUPPORT OF BOTH GOVERNMENTS, TO ASSESS THE CROSS-BORDER TRAFFICKING SITUATION; IDENTIFY LOOPHOLES IN EXISTING LAWS; MAKE RECOMMENDATIONS FOR COORDINATING GOVERNMENT POLICIES TO ENHANCE ACCESS TO SERVICES FOR VICTIMS OF TRAFFICKING AND IMPROVE THE EFFECTIVENESS OF LAW ENFORCEMENT EFFORTS; AND MONITOR AND PUBLICLY REPORT ON THE IMPLEMENTATION OF SUCH POLICIES. This body should include representatives from nongovernmental organizations (NGOs) and the Japanese and Thai governments, and should seek input from relevant intergovernmental organizations, such as the International Organization for Migration and the International Labour Organization. The monitoring body should prepare a joint operational plan that both governments are committed to implementing within a reasonable, designated period of time.

III. CONTEXT

The trafficking of women from Thailand into debt bondage in the Japanese sex industry occurs within the context of larger economic and social trends. This chapter begins with an overview of the patterns and characteristics of labor migration between Thailand and Japan, and in the region more generally, to provide a better understanding of some of the forces underlying the movement of women from Thailand to Japan. It also offers a brief description of Japan's large and varied sex industry, and of the role of foreign women within this labor sector. The chapter concludes by introducing the problem of trafficking and the relevant policies and practices of the Japanese and Thai governments.

Labor migration

Regional migration in Asia

Tens of millions of people travel across national borders each year in search of employment. Economic forces in the sending country “push” migrants out when they are unable to find employment in adequately paying jobs; other migrants are “pulled” into the receiving country, usually by rapid economic growth which requires an inflow of cheap, unskilled labor. Migration between Asian countries has grown steadily since the early 1980s, when just over one million Asians were working in other countries in the region, to more than 6.5 million by mid-1997.⁴ Labor migration in modern Asia first became a vast enterprise in the 1970s when countries in the Middle East, in search of both skilled and unskilled labor, encouraged the migration of workers from across Asia.⁵ This massive flow of

⁴ “Toward Regional Cooperation on Irregular/Undocumented Migration,” International Symposium on Migration, Bangkok, Thailand, April 21-23, 1999.

⁵ Philip Guest and Kritaya Archavanitkul, “Managing the Flow of Migration: Regional Approaches,” Institute for Population and Social Research, Mahidol University,

workers has continued to climb steadily since the 1970s. Some workers migrate permanently, but most go overseas only for limited time periods to earn money. Of these workers, some migrate legally, others illegally.

Skilled workers usually have little difficulty maneuvering within the legal framework of migration—passports, visas, and work permits—and are often welcomed, especially in boom periods like the 1970s and 1980s, by countries in desperate need of their skills. Unskilled workers' experience with migration is often quite different. In part this is because avenues for legal labor migration in unskilled labor sectors are limited, prompting many workers to migrate illegally, often recruited by employers and job brokers in receiving countries who are willing to violate immigration restrictions. These “undocumented” migrants are typically excluded from labor law protections and other state services, by law and/or practice. Even when visas are available for unskilled work, there are often large recruiting networks that take advantage of migrants' ignorance and urgent desire to migrate by charging them exorbitant job placement fees and otherwise exploiting them. Furthermore, unskilled work visas are often short term, and renewal may be difficult or impossible. Thus, many workers initially migrate on a contract and then stay on illegally after their contract has expired.⁶

Immigration from Thailand to Japan

Prior to 1980, foreign travel and immigration into Japan was very limited. The number of foreigners entering the country—including both temporary visitors and migrant workers—surpassed one million for the first time in 1980, almost doubling the figure from five years earlier.⁷ This figure has continued to grow since then, exceeding 4.5 million by the late 1990s, with the majority of entrants coming from other Asian countries. The number of foreign nationals registered for long-term residence in Japan has also increased dramatically during this period, nearly doubling from 750,000 in the 1970s to more than 1,400,000 by the mid-1990s. And, even more striking, the number of foreign nationals estimated to be residing illegally in Japan has almost tripled in less than a decade, from 106,000 in 1990 to

⁶ Pasuk Phongpaichit, “The Illegal Economy of Trafficking in Migrants,” in *Voices of Thai Women*, October 1997.

⁷ Japanese National Police Agency White Paper on Crime, 1995. Note that these numbers include temporary visitors (i.e. tourists) as well as labor migrants.

283,000 in 1997.⁸ The vast majority entered the country through legal channels, but traveled on falsified documents or remained in Japan beyond their visa expiration date, and most are believed to be working in violation of immigration regulations.

⁸ Immigration Bureau, Ministry of Justice, Japan, "Immigration." Available: <http://www.moj.go.jp/ENGLISH/IB/ib-01.htm>; [/ib-03.htm](http://www.moj.go.jp/ENGLISH/IB/ib-03.htm); [/ib-11.htm](http://www.moj.go.jp/ENGLISH/IB/ib-11.htm); [/ib-14.htm](http://www.moj.go.jp/ENGLISH/IB/ib-14.htm). February 2000. Note that this is still a very small percentage of Japan's 65 million person workforce.

This increase in migration was, in part, the result of Japanese investment and overseas business activities that created contacts and solidified migration networks. As Japanese companies expanded throughout Asia with joint ventures, relationships were established on both formal and informal levels which encouraged exchanges between Japan and its neighbors. Increased contacts facilitated the mobilization of natural and human resources.⁹ The rise in both legal and illegal migration from the mid-1980s through the early 1990s was also related to the surge in Japan's economy, creating increased demand for unskilled or low skilled labor. With Japan suffering from a labor shortage, migrant workers were willing to take jobs that Japanese no longer wanted, primarily in the construction and service sectors, and the strong appreciation of the yen in the 1980s raised the value of the earnings foreigners could send home.

In addition to Japan's economic boom, the dramatic increase in the migration of Asian women into Japan's sex industry in the 1980s is widely understood as a reaction to the sharp public criticism that Japanese "sex tourism" began to receive around that time. In the late 1960s, "sex tours," primarily to Thailand and other southeast Asian countries, began growing in popularity among Japanese men.¹⁰ By the mid-1970s, package sex tours were being advertised to Thailand, the Philippines, Taiwan, and Korea, and many companies included "weekend sex holidays" overseas as part of employees' yearly bonuses.¹¹ However, by the end of that decade, Japan was facing heavy criticism for such tours, and efforts grew to

⁹ Kiri Morita and Saskia Sassen, "The New Illegal Immigration in Japan, 1980-1992," *IMR*, vol.28(1), 1993, p. 162.

¹⁰ Anchalee Singhanetra-Renard, "Networks for Female Migration Between Thailand and Japan," International Seminar on *International Female Migration and Japan: Networking, Settlement and Human Rights*, December 12-14, 1995, Tokyo, Japan, p. 6.

¹¹ Naomi Hosoda, "The International Division of Labour and the Commodification of Female Sexuality: The Case of Filipino Women in the Japanese Entertainment Industry," thesis submitted to the Department of Political Studies, Queen's University, Ontario, Canada, January 1994, p. 13.

bring foreign women into the sex industry in Japan instead.¹² The following years saw unprecedented numbers of foreign women entering the Japanese sex industry, primarily from other Asian countries.

¹² Ibid., p. 14.

The strong demand for foreign labor in Japan has also been accompanied by policies in several less wealthy countries that encourage workers to migrate abroad in the hope of gaining much-needed foreign currency through remittances, while alleviating unemployment problems at home. Labor exporting policies in the Philippines, for example, are well-known, and over the last few decades, the Thai government has similarly encouraged its nationals to seek employment overseas.¹³

Consistent with migration trends in the rest of Asia, Thai migrants in the 1970s and early 1980s were drawn by the pull of thriving economies in the Middle East, where employment opportunities were more lucrative than those available in Thailand. But in the late 1980s, the destination of unskilled Thai migrants largely shifted from the Middle East to Japan, Singapore, and Taipei. Japanese economic expansion included large-scale investment in Thailand, often through joint ventures with Thai companies, thus fostering close economic ties between the two countries.¹⁴ In 1993, the Thai Ministry of Labor estimated that there were 370,500 Thai nationals working abroad—counting both documented and undocumented migrants—including 100,000 in Japan and 216,000 in other Asian countries. This was an increase from only 6,000 Thai nationals working in Japan, and 16,000 in the rest of Asia, in 1988.¹⁵ And migrant workers sent significant amounts of money back to their families in Thailand. In 1995, remittances from overseas Thai workers

¹³ Aaron Stern, "Thailand's Migration Situation and its Relations with APEC Members and Other Countries in Southeast Asia," Asian Research Center for Migration, Institute of Asian Studies, January 1998, p. 57.

¹⁴ Singhanetra-Renard, "Networks for Female Migration . . .," International Seminar, December 12-14, 1995, Tokyo, Japan, p. 2.

¹⁵ Overseas Employment Administration Office, Thailand's Ministry of Labor, "Estimated Numbers of Thai Workers Abroad, by Country, 1988-1994," *Yearbook of Labor Statistics*.

in Asia totaled roughly US\$1 billion. This included about US\$100 million from Japan alone.¹⁶ Since 1993, migration from Thailand to Japan has slowed somewhat due to Japan's economic difficulties and its related crackdown on illegal migration, but authoritative estimates suggest that there are still tens of thousands of Thai migrants working in Japan each year.¹⁷

Male and female migration patterns

¹⁶ Singhanetra-Renard, "Networks for Female Migration . . .," International Seminar, December 12-14, 1995, Tokyo, Japan, p. 11.

¹⁷ These include both documented and undocumented migrants. Scalabrini Migration Center, *Asian Migration Atlas 1999*. Available: <http://www.scalabrini.asn.au/atlas/amatlas.htm>. February 2000.

Since the dramatic increase in migration into Japan in the 1980s, both male and female migration have followed fluctuations in the Japanese economy, increasing steadily from 1986 through 1992, and then gradually decreasing as Japan slid into recession.¹⁸ Profiles of male and female migrants differ markedly, however. Female Asian migrants are typically younger than their male counterparts. Although males comprise a larger share of the migrants in most age groups, in the fifteen to twenty year-old bracket, women and girls outnumber men and boys by five to two.¹⁹ For males, the largest single migrant group is the forty to forty-nine year old age group; seventy percent of all female migrants to Japan are between twenty and twenty-four years old.²⁰

Another difference in male and female migration is the type of work they seek. Male migrants are typically employed in occupations that the Japanese have labeled “3K” work—*kitsui*, *kitanai*, and *kiken*, or, in English, “3D” work—difficult, dirty, and dangerous. These include construction work, factory jobs, and other types of manual labor. Japanese Ministry of Justice statistics on the occupations of undocumented male migrants apprehended in 1995 indicated that 37.4 percent were construction workers, 25.2 percent were production workers, and 9.5 percent were manual laborers. The remaining 27.9 percent were employed in the service industry, as cooks, bartenders, or domestic servants.²¹ Some migrant women also work in factories, but the vast majority are employed in the service industry, typically providing entertainment—often including sexual services—to Japanese men. According to the Japan Immigration Association’s statistics, 46.5 percent of female illegal migrants apprehended in 1993 were working as hostesses or in direct prostitution,²² with 22.9 percent in other service work.²³ And the Ministry of

¹⁸ Noriyuki Suzuki and Phannee Chunjitkaruna, “Thai Migrant Workers in Japan,” paper presented at the International Workshop on Research Project on Thai Migrant Workers in Southeast and East Asia, Chulalongkorn University, Bangkok, Thailand, August 5-7, 1998.

¹⁹ Mizuho Matsuda, “Women from Thailand,” *AMPO Japan-Asia Quarterly Review*, vol. 23., no. 4, 1992.

²⁰ Japan Immigration Association, *Statistics on Immigration Control 1994* (Tokyo: 1994).

²¹ The National Police Agency, “White Paper of the Police,” 1996, pp. 308-309, quoted in International Organization for Migration, *Trafficking in Women to Japan for Sexual Exploitation: A Survey on the Case of Filipino Women* (Geneva: IOM, 1997), p. 7.

²² The duties of a “hostess” in a Japanese bar generally include flirting with customers and serving drinks and snacks; in some establishments, customers can also pay to take “hostesses” to nearby hotels for sexual services.

Justice's 1995 arrest statistics show that 36.9 percent of undocumented female migrants were working as hostesses, 15.3 percent as waitresses, 8.1 percent as domestics, 4.8 percent as cooks, and 3.4 percent as prostitutes. Only 18.3 percent were employed as production workers or manual laborers; 13.2 percent are listed as "other."²⁴

²³ Japan Immigration Association, *Statistics on Immigration Control 1994* (Tokyo: 1994).

²⁴ The National Police Agency, "White Paper of the Police," 1996, pp. 308-309, quoted in International Organization for Migration, *Trafficking in Women to Japan for Sexual Exploitation: A Survey on the Case of Filipino Women*, (Geneva: IOM, 1997), p. 7.

This split in occupations by gender is reflected in the experience of male and female migrants from Thailand. An estimated eighty to ninety percent of female migrants work as sex workers in Japan, typically as hostesses or waitresses who also perform sexual services for clients.²⁵ Others work in bars or restaurants but do not engage in sex work, and a few work in factories. Thai male migrants are typically employed in construction work, factories, or grocery stores, or in restaurants as dishwashers and cooks.²⁶ There are also some Thai men working as “hosts,” providing sexual services to female clients in bars that target migrant Thai women.²⁷

Visa policies—skilled and unskilled

²⁵ A Thai Embassy official in Japan provided this estimate in “40,000 Thai women work as prostitutes in Japan,” *The Nation*, September 9, 1994. See also “A multi-million baht business,” *Bangkok Post*, Sunday, August 18, 1996; Presentation by Yayori Matsui at the Asian Women’s Human Rights Conference, Waseda University, 1995.

²⁶ See Phongpaichit, “The Illegal Economy . . .,” *Voices of Thai Women*, vol. 16, October 1997; “Over 40,000 Thais Suffer in Japan,” *Bangkok Post*, January 3, 1997 (summary of research conducted by Suriya Samutkupt and Pattana Kitiarsa).

²⁷ Human Rights Watch interview with Suriya Samutkupt, Professor of Anthropology, Institute of Social Technology, Suranaree University of Technology, Nakhon Ratchasima province, Thailand, April 27, 1999.

Japanese immigration policies reveal a strong bias against foreigners, reflecting a deep-seated commitment in Japan to maintaining a homogeneous society. This commitment is perhaps most clear in Japanese nationality policies, which make it virtually impossible for a person born to non-Japanese parents—including second and third generation descendants of Korean nationals drafted to Japan during World War II—to acquire Japanese citizenship. The same bias was reflected in the 1990 revisions to Japan's Immigration Control and Refugee Recognition Act (hereinafter, the Immigration Control Act). These revisions were adopted in the context of a severe national shortage in unskilled labor, but, while categories of skilled labor visas were expanded, the general prohibition on unskilled labor migration was reinforced. As one immigration officer explained to Human Rights Watch, "Japanese public opinion does not accept giving visas for unskilled labor,"²⁸ and the Immigration Bureau's web site explains that "[n]ot only do foreign nationals working illegally badly influence market for labor in Japan [sic], they cause various problems concerning customs, security, etc."²⁹ New provisions in 1990 for cracking down on illegal migration included, for the first time, sanctions on those employing and contracting illegal workers, in addition to penalties for the migrants themselves. When Japan's economy began slipping into recession in 1992, foreigners were among the first to be targeted.³⁰ They were identified as a source of the country's economic difficulties, and crackdowns on illegal migrants were carried out by both immigration and police officers, leading to mass raids and dramatically increased arrests for immigration offenses.³¹

²⁸ Human Rights Watch interview, Tokyo, Japan, April 15, 1999.

²⁹ Immigration Bureau, Ministry of Justice, Japan, "Immigration." Available: <http://www.moj.go.jp/ENGLISH/IB/ib-11.htm>. February 2000.

³⁰ Japan's real economic growth rate dropped from 3.8% to 1.0% from 1991 to 1992, and then sunk to .3% in 1993. (International Department, Bank of Japan, "Comparative Economic and Financial Statistics: Japan and other Major Countries," August 31, 1998.)

³¹ "Cracking Down on Foreign Workers; Government Exploits Recession Fears: an

interview with Kobayashi Kengo," *AMPO Japan-Asia Quarterly Review*, vol. 25, no.1, 1994.

At the same time, the 1990 immigration law revisions attempted to address the serious labor shortage by greatly expanding the availability of visas for second and third generation Japanese emigrants, or *Nikkeis*. This led to a dramatic surge in immigration by ethnic Japanese, particularly from Brazil and Peru, and, by 1992, the number of *Nikkeis* in Japan had risen to more than 150,000.³² Two other exceptions to the prohibition on unskilled labor migration have also been made. One is the “entertainer visa,” mentioned above. This visa allows foreigners to work in the entertainment industry in Japan for a limited period—typically three months, with the possibility of renewing for an additional three months—under contract with a Japanese employer. While such visas are theoretically available to both male and female applicants, they are granted primarily to women, and, as a result of an agreement between the Japanese and Philippine government, they have been issued disproportionately to women from the Philippines.³³ Officially classified as “guests,” rather than as workers, “entertainers” are excluded from labor law protections, and, although immigration regulations provide detailed instructions regarding wages and job responsibilities for migrants in this category, the regulations are violated with virtual impunity.³⁴

³² Montse Watkins, “‘Coming Back’ to Japan: The Nikkei Workers,” *AMPO Japan-Asia Quarterly Review*, vol. 23, no. 4, 1992, p. 31.

Further evidence of these restrictive policies is seen in Japan’s highly restrictive asylum policies. Though Japan is a signatory to the Refugee Convention and purports to follow the provisions of that Convention, it has approved a strikingly small percentage of asylum applications. In the seven years from 1982 to 1988, Japan approved 192 out of 814 applications for refugee status, and in the following eight years, from 1989 to 1996, Japan approved seventeen out of 514, including only one approval per year in 1994, 1995, and 1996. (Japan Civil Liberties Union, “1998 Report Concerning the Present Status of Human Rights in Japan (Third Counter Report),” October 1998.) In 1998, the number of persons granted refugee status reached a high of sixteen, but this figure fell to eleven in 1999. (“Takuya Asakura, “Asylum said in short supply here,” *Japan Times*, December 24, 1999.)

³³ Pipat Lertkittisusk, “Japan rights groups reach out to Thai counterparts,” *Bangkok Post*, July 9, 1990. In 1996, Japan issued a total of 53,952 entertainer visas. More than a third of these visas were issued to migrants from the Philippines, who accounted for more than 78 percent of total number of “entertainers” admitted from Asia. Only 176 entertainer visas were issued to Thai nationals; the vast majority of Thai entrants entered Japan on temporary visitor visas. (Japan Immigration Association statistics, “The Number of New Entrants Classified by Nationality/Area of Origin and Status of Residence (Purpose of Entry), 1996.” Available: <http://www.netlaputa.ne.jp/~nakaiofc/Status2.html>. December 1999.)

³⁴ Ma. Rosario P. Balleascas, *Filipino Entertainers in Japan: An Introduction*,

Another option available to unskilled migrants seeking work in Japan is the “trainee” visa.³⁵ According to Immigration Bureau statistics, the number of foreign trainees admitted to Japan quadrupled in the decade following the introduction of these visas in 1982.³⁶ In 1992, 43,627 foreigners were accepted into Japan on trainee visas, including more than 38,000 from other Asian countries.³⁷ The trainee visa program operates under the auspices of the Japan International Training Cooperation Organization (JITCO), which was set up under the joint auspices of the Ministries of Foreign Affairs, Justice, International Trade and Industry, and Labor. Trainees enter the country under contract with an employer who is required to

(Quezon City: The Foundation for Nationalist Studies, 1992).

³⁵ Skilled laborers may also enter Japan on trainee visas, but the great majority are issued to unskilled migrants (Morita and Sassen, “The New Illegal Immigration . . .” *IMR*, vol. 28 (1), p. 153).

³⁶ Kenichi Furuya, “Labor Migration and Skill Development: Japan’s Trainee Program,” *Asian Migrant*, vol. viii, no. 1, January-March 1995, p. 8.

³⁷ Immigration Control Association, “Summarized Statistics on Immigration Control,” quoted in Kenichi Furuya, “Labor Migration and Skill Development: Japan’s Trainee Program,” *Asian Migrant*, vol. viii, no. 1, January-March 1995, p. 9.

provide opportunities for skills development, both through classroom activities and on-the-job training. Again, these laborers are not officially categorized as “workers,” but many employers have taken advantage of the policy by using it to bring over unskilled foreign workers, while providing little or no actual training.³⁸

³⁸ See Morita and Sassen, “The New Illegal Immigration . . .,” *IMR*, vol. 28 (1); Furuya, “Labor Migration and Skill Development . . .,” *Asian Migrant*, vol. viii, no. 1.

The demand for unskilled migrant labor in Japan has continued to outstrip legal limits on the supply, and the majority of unskilled migrant workers in the country are undocumented.³⁹ Typically these workers enter Japan through legal channels, though often with falsified documentation, on a tourist or transit visa, and then overstay their visa expiration date and engage in activities outside their visa status. Others sneak into Japan, bypassing immigration controls entirely, and thus enter the country without any documentation at all.

Only a very small number of work visas have been made available to Thai nationals, so the great majority of migrant Thai workers in Japan are undocumented. The Japanese government estimates their numbers based on the number of persons with Thai passports who have entered Japan on temporary visitor visas and then overstayed their visa expiration dates. From 1991 to 1994, Japanese government statistics indicate that Thai nationals constituted the largest group of overstayers, with a total of more than 32,000 Thai overstayers in 1991 and almost 47,000 by the end of 1994.⁴⁰ In 1997, Japanese government statistics showed that at nearly 40,000, Thai overstayers continued to represent a significant percentage of the undocumented migrants in Japan (fourteen percent), though their numbers had been surpassed by Korean (eighteen percent) and Filipino (fifteen percent) nationals.⁴¹

³⁹ In November 1999, the Mission for the Revitalization of the Asian Economy, which was set up by the Japanese Prime Minister Keizo Obuchi in response to the Japanese economic recession, observed that Japan needed to accept a much wider range of foreign workers in the country (BBC World Service, "Japan 'must open up to foreigners,'" November 17, 1999).

⁴⁰ Immigration Bureau, Japan's Ministry of Justice, "Foreigners staying without legal documents by country of origin," March 1996. Note that the number of Thai overstayers peaked in mid-1993 at 55,383, and then began to gradually decline.

⁴¹ Immigration Bureau, Japan's Ministry of Justice, "Change in Number of Illegal Overstayers by Nationality (Place of Origin)," January 1, 1997.

Moreover, many believe that the actual number of undocumented Thai migrants in Japan is much higher than the Japanese Immigration Bureau statistics indicate. The Counsellor at the Thai Embassy in Tokyo, for example, told Human Rights Watch that there were approximately eighty thousand Thai “overstayers” in Japan in 1995, including about thirty thousand who either entered with Malaysian or Singaporean passports, or entered Japan illegally by boat.⁴²

Criminal networks

⁴² Human Rights Watch interview with Udom Sapito, Counsellor, Royal Thai Embassy, Tokyo, Japan, May 19, 1995.

The wide gap between the demand for unskilled foreign labor and the legal opportunities for migration under Japanese immigration policy has encouraged the development of a large underground business in procuring illegal foreign labor.⁴³ Typically, women in Thailand are recruited by relatives, friends, or other acquaintances, who promise them high-paying jobs in Japan and introduce them to trafficking agents. The agents then make arrangements for the women's travel and job placement, obtaining the necessary documentation, contacting job brokers in Japan, and hiring escorts to accompany the women on their trip. When the women arrive in Japan, job brokers receive them and deliver them to employers.

⁴³ See International Organization for Migration, "Trafficking in Migrants: IOM Policy and Activity" (Geneva, May 1997) for a general discussion of how the "unabated demand for migration, coupled with stricter entry controls or requirements, has provided entrepreneurs with a potential for profit."

The agents, brokers, and employers in these operations often have ties to powerful organized crime syndicates. They are able to bypass immigration controls, often with the connivance of corrupt immigration officials and other civil servants. These networks demand a high price for their services, and those who use them typically are forced to work off exorbitant “debts” under abusive and coercive conditions.⁴⁴ Many migrants are unable to distinguish in advance between legal and illegal work opportunities, and thus may not realize that they are dealing with underground agents and brokers—or mafias—until after they have been cheated, incurred heavy debts, and arrived illegally in Japan.⁴⁵ In other cases, operators of Japanese entertainment businesses—often Thai nationals who have lived in Japan for extended periods of time—recruit women themselves, either directly or through Thai contacts. But in these cases too, women often arrive in Japan saddled with enormous debts and vulnerable to serious human rights abuses.⁴⁶

⁴⁴ See Pasuk Phongpaichit, Sungsidh Piriyarangsarn, and Nualnoi Treerat, *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy* (Chiang Mai: Silkworm Books, 1998), p. 166; Yayori Matsui, “Trafficking in Asian Women and Prostitution in Japan,” *Asia-Japan Women's Resource Center Newsletter*, no. 1, August 1995, pp. 29-31; Pisan Manawapat, “From sex, exploitation to finally crime in Japan,” *The Nation*, January 16, 1993.

⁴⁵ “Villagers cheated through offers of work in Japan,” *Bangkok Post*, October 2, 1995. Human Rights Watch similarly found that women migrating from Thailand typically did not understand the legal implications of their migration decisions until after they had arrived in Japan or had committed themselves to going.

⁴⁶ See “Prostitution ring broken in Shinjuku,” *Asahi Shimbun* (English version), August 12, 1999; “Three Thai arrested for arranging prostitution in Japan,” *Kyodo New International Inc.*, August 16, 1999; “Over 40,000 Thais Suffer in Japan,” *Bangkok*

Post, January 3, 1997; Chitraporn Vanaspong, "A multi-million baht business," *Bangkok Post*, August 18, 1997, p. 4.

The extensive involvement of the Japanese Yakuza⁴⁷ in facilitating illegal immigration, including the procurement of women from Thailand and other countries into the Japanese sex industry, is well-known and documented.⁴⁸ Japanese and Thai police exchange information on Yakuza activities in an effort to stem the flow of Thai women into Japan, and Japanese police officers are consistently quoted in the press blaming the Yakuza for both the surge in illegal migration into Japan generally, and, more specifically, the flow of Thai women into the sex industry.⁴⁹ The Yakuza's ties to criminal groups in migrants' countries of origin, including Thailand, China, Hong Kong, Korea, Taiwan, the Philippines, Russia, Colombia, and Mexico, have also been well-documented.⁵⁰ Arrests of Thai agents accused of sending women to Japan to engage in sex work have revealed links to Yakuza members in Japan, and there have been credible reports of ties between ethnic Chinese crime syndicates operating in Thailand and the Yakuza.⁵¹ Criminal

⁴⁷ "Yakuza" refers to long-standing organized crime groups in Japan that are now officially known as "Boryokudan."

⁴⁸ See Phongpaichit, Piriyaarangsarn, and Treerat, *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy*, p. 166; Donald Wilson, "The Sinking Sun," *The Sunday Nation*, September 4, 1994, pp. C1, C3; Matsui, "Trafficking in Asian Women and Prostitution in Japan," *Asia-Japan Women's Resource Center Newsletter*, no. 1, pp. 29-31; David E. Kaplan and Alec Dubro, *Yakuza: The Explosive Account of Japan's Criminal Underworld* (Reading, Massachusetts: Addison-Wesley Publishing Company, Inc., 1986).

⁴⁹ See Sonni Efron, "In Japan, a Thriving Business in Illegal Immigrants," *International Herald Tribune*, February 4, 1997, pp. 1, 10; "Japanese, Thai police to discuss crime crackdown," *Bangkok Post*, March 6, 1995; "Crackdown helping to cut down prostitution in Japan," *Bangkok Post*, December 14, 1994;

⁵⁰ See Michael Vatikiotis, Sachiko Sakamaki, and Gary Silverman, "On the Margin: Organized crime profits from the flesh trade," *Far East Economic Review*, December 14, 1995; "Hokuriku Special: Illegal immigrants find new gateway," *Japan Times*, April 19, 1999; Gregory Gross, "Mexican women forced to be sex slaves: Taken to Japan, they were victimized by organized crime," *San Diego Union-Tribune*, May 3, 1996, p. A-1; "Crackdown helping to cut down prostitution in Japan," *Bangkok Post*, December 15, 1994; "Japan: the Illusion of Immigration Control," in Wayne, Cornelius, Philip Martin and James Hollifield [eds.], *Controlling Immigration a Global Perspective*, 1994; Human Rights Watch interview with Rutsuko Shoji, Director, HELP Asian Women's Shelter, Tokyo, Japan, April 8, 1999.

⁵¹ See Chitraporn Vanaspong, "A multi-million baht business," *Bangkok Post*, August 18, 1996, p. 4; "Girls pack up and quit Japan," *Bangkok Post*, August 9, 1996; "Yakuza links may have led to flesh trade gang leader's killing," *The Nation* (Bangkok, Thailand), March 8, 1995, p. A5; "Three men arrested for supplying prostitutes," *Bangkok Post*, February 9, 1994, p. 6; Hiroshi Komai (translated by Jens Wilkinson), *Migrant*

syndicates in Thailand are involved in sending women to other parts of the world as well, including the United Kingdom, France, the United States, Australia, and South Africa.⁵²

Workers in Japan, (London: Kegan Paul International, Ltd., 1995), p. 78; Vatikiotis, Sakamaki, and Silverman, "On the Margin . . .," *Far East Economic Review*; Phongpaichit, Piriyarangsan, and Treerat, *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy*, p. 166; Wilson, "The Sinking Sun," *The Sunday Nation*; Matsui, "Trafficking in Asian Women and Prostitution in Japan," *Asia-Japan Women's Resource Center Newsletter*, no. 1, pp. 29-31; David E. Kaplan and Alec Dubro, *Yakuza: The Explosive Account of Japan's Criminal Underworld* (Reading, Massachusetts: Addison-Wesley Publishing Company, Inc., 1986).

⁵² See R. Robin McDonald, "Human Contraband: Asian women expected jobs, not prostitution," *The Atlanta Constitution*, August 31, 1999, p. C8; "U.S. Says Asian Women

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Government policies

Held In Prostitution Scheme," *Reuters*, August 20, 1999; Andrew Drummon, "Flesh Market: More and more Thai women are being tricked into prostitution by global traffickers," *Bangkok Post*, May 23, 1999; "France bids adieu to 40 vice girls," *Bangkok Post*, April 7, 1999; "Thai sex slaves working in SA," *Bangkok Post*, September 6, 1994.

Foreign women employed in the Japanese sex industry are part of an enormous undertaking, with estimated gross annual earnings of between four and ten trillion yen (US\$33.6 billion - 84 billion), approximately one to three percent of Japan's GNP.⁵³ The wide range in estimates may in part reflect different decisions about what types of enterprises to include, as Japan has a large and varied sex entertainment industry, with both legal and illegal components. "Prostitution," narrowly defined as the sale of sexual intercourse on a repeated basis, was prohibited in Japan for the first time in 1958, under the Prostitution Prevention Law. A wide range of sexual acts, however, have remained outside the purview of prohibitions on prostitution, and businesses involving the sale of such services are regulated under the Law on Control and Improvement of Amusement Businesses (hereinafter, the Entertainment Businesses Law).

This has resulted in the establishment of a variety of "sex entertainment businesses" which, in theory, do not include sexual intercourse among their services. These include "image clubs," where role playing and oral sex are the norm; "pink sarons,"⁵⁴ which are similar to the image clubs without the role playing; and "SM Clubs," where customers can engage in activities such as cross-dressing and anal sex. These businesses fall under Japan's Entertainment Businesses Law, which regulates the types of services they may provide, specifies detailed reporting requirements, establishes zoning restrictions, and sets minimum age levels for clients and employees. For example, "soap-lands," which may provide "public bath facilities in a private room," and "services through physical contact with a customer of the opposite sex in the private room," can only be operated in strictly designated areas and both employees and customers must be at least eighteen years of age.⁵⁵ There are also a number of businesses that routinely include sexual intercourse, but evade legal sanctions by arranging for sexual activities to occur off-premises, making anti-prostitution provisions difficult to enforce. These include telephone services and "dating" snack bars where women accompany customers to hotel rooms

⁵³ See "Weekend Economic Forecast," Asahi Newspaper, April 6, 1991; HELP Asian Women's Shelter, "An Alternative Report (Non-Governmental) To the United Nations," 1993; and "Women From Across the Sea: Migrant Workers in Japan," published by Asian Women's Association, Tokyo Japan 1988, p.45, respectively. The dollar figures have been calculated using the average yen-dollar exchange rate for the nine year period from 1990-1998: 119 yen to the U.S. dollar. Average yearly rates fluctuated between 94 and 145 yen to the U.S. dollar during that period.

⁵⁴ This term is taken from the English expression, "pink saloon."

⁵⁵ Entertainment Businesses Law, Article 4, 4-1. See the "Japanese Government Response" chapter for a more detailed description of this law.

to perform sexual services.⁵⁶ Finally, a number of brothels continue to operate throughout the country. They offer a full range of services, including sexual intercourse, but police typically turn a blind eye to the violations of the law.⁵⁷

Role of foreign migrants

⁵⁶ SWEETLY (Sex Workers! Encourage, Empower, Trust and Love Yourselves!) publication.

⁵⁷ Human Rights Watch interview with Momocca Momocco, founder of SWEETLY (Sex Workers! Encourage, Empower, Trust and Love Yourselves!), Kyoto, Japan, April 12, 1999.

There are an estimated 150,000 non-Japanese women employed in the Japanese sex industry, primarily from other Asian countries such as Thailand and the Philippines.⁵⁸ These women are typically employed in the lower rungs of the industry. Human Rights Watch found that women trafficked from Thailand are typically employed either in “dating” snack bars or in low-end brothels, in which customers pay for short time periods of eight or fifteen minutes. Abuses are common as job brokers and employers take advantage of foreign women’s vulnerability as undocumented migrants: they cannot seek recourse from the police or other law enforcement authorities without risking deportation and potential prosecution, and they are isolated by language barriers, a lack of community, and a lack of familiarity with their surroundings. Compounding the difficulty and danger of escape, women in “debt” are kept under constant surveillance, their wages are withheld, and their passports and other documentation are confiscated, depriving them of proof of identity. In addition, the Yakuza is heavily involved in the operation of many of these establishments; bar and brothel owners are often Yakuza members themselves, or else pay protection money to the Yakuza in exchange for assistance both in “disciplining” women who disobey orders or attempt to escape

⁵⁸ “Prostitution in Asia Increasingly Involves Trafficking,” *Trafficking in Migrants*, no. 15, June 1997.

and in evading police and immigration raids.⁵⁹ As one Japanese sex worker—and

⁵⁹ The Yakuza's involvement in the procurement and employment of foreign women in the Japanese sex industry is well-documented. See Vatikiotis, Sakamaki, and Silverman, "On the Margin . . .," *Far East Economic Review*; Matsui, "Trafficking in Asian Women and Prostitution in Japan," *Asia-Japan Women's Resource Center Newsletter*, no. 1,

sex workers' rights activist—explained to Human Rights Watch, “Foreign sex workers are kept isolated, without information about Japan, and their passports are

pp. 29-31; Alexandra Black, “Japan: Foreign Women Workers Forced into Flesh Trade,” an Inter Press Service Feature, September 16, 1994; Wilson, “The Sinking Sun,” *The Sunday Nation*; “Japanese ordeal ends for girl in tearful reunion,” *The Nation*, April 8, 1994; Pisan Manawapat, “From sex, exploitation to finally crime in Japan,” *The Nation*, January 16, 1993; “MPD: Thai Women Help Businessmen Close Deals,” *The Daily Yomiuri*, October 10, 1992, p. 3.

Human Rights Watch interviews with women from Thailand who worked in the Japanese sex industry—including one woman who was the manager of a snack bar—as well as with women's shelter staff and other advocates in the field consistently confirmed that Yakuza members operate some sex establishments directly, while providing protection and disciplinary services to others.

confiscated. Japanese women are too knowledgeable about their rights, so owners use foreigners. Other Asian woman, in particular, are viewed as controllable by Japanese men."⁶⁰

⁶⁰ Human Rights Watch interview with Momocca Momocco, founder of SWEETLY (Sex Workers! Encourage, Empower, Trust and Love Yourselves!), Kyoto, Japan, April 12, 1999.

The brokers and employers involved in recruiting foreign women into Japan derive enormous profits from their earnings. Even at the lower end of the sex industry, fees are significant, and brokers and employers take a large cut by entirely withholding wages from women in debt and taking up to fifty percent of the fees from non-indebted women. Women from Thailand who work in “dating” snack bars reported that clients were charged fees of 20,000 to 30,000 yen (US\$170-250⁶¹) for two hours and 30,000 to 50,000 yen (US\$250-340) for a full night. While in debt, the women typically worked seven nights a week, servicing between one and three clients a night, and all of their earnings went to their employer. Using conservative figures, a noted Thai economist estimated the gross annual income generated by Thai sex workers in Japan as 310,500 million yen (US\$3.3 billion).⁶²

Trafficking

⁶¹ These dollar amounts were calculated using the average yen-dollar exchange rate over the nine year period from 1990-1998.

⁶² Phongpaichit, Piriyaarangsana, and Treerat, *Guns, Girls, Gambling, Ganja: Thailand's Illegal Economy and Public Policy*, p. 171. This amount was calculated for 1995 using an estimated 23,000 Thai sex workers, an average fee per client of thirty thousand yen, and an average rate of 1.5 clients per day, 300 days per year. The dollar figure was calculated using the average exchange rate for 1995. (Note that due to a miscalculation, the book cites a total of 3,105,000 million yen (one decimal point too many), but the figures used to make this calculation are those noted in this footnote.)

A Global Problem

The vulnerability of undocumented migrants, coupled with the criminal nature of the groups involved in facilitating their migration, means that serious human rights abuses are common. This is particularly true in the case of women's migration into sex work. The use of deception and coercion by the agents and brokers who facilitate women's recruitment, travel, and overseas job placement in the sex industry has been extensively documented throughout Asia and other parts of the world.⁶³ This problem of trafficking in women has been on the international agenda for the last one hundred years, but efforts to clearly define the scope of the problem and to adopt concrete measures to remedy it have met with little success.⁶⁴

⁶³ See "Prostitution in Asia Increasingly Involves Trafficking," *Trafficking in Migrants*, no. 15, June 1997.

⁶⁴ Human Rights Watch understands that a definition of trafficking should include all acts related to the recruitment, transport, transfer, sale, or purchase of human beings by force, fraud, deceit, or other coercive tactic, for the purpose of placing them into conditions of forced labor or practices similar to slavery, in which labor is extracted through physical and/or non-physical means of coercion, including blackmail, fraud, deceit, isolation, threat or use of physical force, or psychological pressure. For a more detailed discussion of the definition of the term, see the "International Legal Standards on Trafficking" chapter.

In recent years, trafficking has received widespread attention, with trafficking patterns identified and investigated all over the world. The *Asia Migrant Bulletin*, for example, has documented the trafficking of migrants from the Philippines, Thailand, China, Indonesia, Burma, Sri Lanka, Bangladesh, India, Nepal, and, more recently, from other Asian countries such as Vietnam, Laos, Cambodia, and Fiji. Migrants from these countries have been trafficked to Japan, Taiwan, Hong Kong, Macau, Malaysia, Singapore, Thailand, India, and further to Australia, the Middle East, Europe, and the United States.⁶⁵ The International Organization for Migration (IOM) publishes a quarterly newsletter entitled "Trafficking in Migrants" that has included accounts of trafficking from all over the world, including Southeast Asia, East Asia, South Asia, the Middle East, Western Europe, Eastern Europe, South America, Central America, and North America.⁶⁶ The global scale of the trafficking problem was also highlighted at the Beijing Women's NGO Forum in September 1995.

⁶⁵ *Asia Migrant Bulletin*, July-December, 1995, Volume III, No. 3&4.

⁶⁶ See *Trafficking in Migrants*, no. 10 (March 1996) - no. 19 (July 1999).

Despite the increased attention, the actual extent of trafficking, both in terms of the number of persons trafficked and in terms of the profits made by traffickers, is still not known. In part this is because international attention has focused largely on the problem of trafficking of women for prostitution, often with the assumption that all migration into sex work is by definition coercive. However, other definitions acknowledge that men, women, and children are trafficked into a wide variety of labor sectors, including domestic labor, factories, construction, and criminal activity, including smuggling.⁶⁷ And some have stressed the fact that many women voluntarily decide to migrate for sex work and not all fall victim to trafficking abuses in the process.⁶⁸ Estimating the magnitude of trafficking operations is also difficult because of the illegal nature of the activity, and documenting the number of women trafficked can be particularly difficult because the victims often end up in informal—or illegal—labor sectors. One IOM study estimated that up to four million persons are trafficked internationally each year—with those involved in the trade making a profit of up to \$7 billion—but this study defined trafficking to include all facilitation of illegal migration for a profit, whether or not elements of coercion or deception are involved.⁶⁹

Into the Japanese sex industry

The trafficking of women into the sex industry in Japan has been a significant problem for many years. It first received attention in the late 1970s and early 1980s, when women from the Philippines began migrating to Japan in large numbers, often falling victim to gross abuses in the process. In 1981, the governments of Japan and the Philippines officially acknowledged the demand for Filipina “entertainers” in Japan, and agreed to facilitate the process of issuing “entertainer visas” to women from the Philippines. Over the course of the next decade, the number of entertainer visas issued to applicants from the Philippines increased from about nine thousand to more than forty thousand per year.⁷⁰ The evidence suggests that these visas have improved women’s position vis-a-vis agents,

⁶⁷ 1998 Regional Conference on Trafficking in Women Report, Nov. 3rd - 4th, Bangkok, Thailand.

⁶⁸ Jo Doezema, “Loose Women or Lost Women? The re-emergence of the myth of “white slavery” in contemporary discourses of ‘trafficking in women,’” presented at the ISA Convention, Washington, D.C., February 17-21, 1999.

⁶⁹ International Organization for Migration, “Trafficking in Migrants: IOM Policy and Activities” (Geneva, May 1997).

⁷⁰ Hosoda, “The International Division of Labour . . .,” thesis submitted to the Department of Political Studies, Queen’s University, Ontario, Canada, p. 14.

brokers, and employers, making them less vulnerable to abuse and exploitation in the workplace than migrant women who enter Japan on tourist or transit visas.⁷¹

⁷¹ Human Rights Watch interview with Rutsuko Shoji, Director, HELP Asian Women's Shelter, Tokyo, Japan, April 8, 1999. In *Filipino Entertainers in Japan: An Introduction*, Ballescas also finds that Filipina women working in Japan on entertainer visas enjoy somewhat better conditions than those with tourist visas.

There are limits, however, to the advantages Filipina women possess. Many continue to enter Japan on tourist visas, unable to obtain one of the still limited number of entertainer visas. This problem has been exacerbated by the heightened application requirements imposed by the Philippines government in the 1990s,⁷² which were adopted in response to reports of serious abuses of Filipina women working in Japan on entertainer visas.⁷³ Moreover, peculiarities in the regulations

⁷² There is some evidence that policies of the Japanese and Philippine governments to discourage women from coming to Japan as entertainers—including stricter visa requirements by the Japanese Immigration Office and stiffer conditions imposed on women leaving to work as entertainers by the Philippines' labor department—have pushed an increasing number of Filipina women into abusive marriages with Japanese nationals. (Luz Rimban, "Rights: Marriage is Ticket to Living in Japan," *Inter Press Service*, January 1998. Available: <http://www.oneworld.org/ips2/jan98/japan.html>. October 1999.)

⁷³ The exploitation of Filipina entertainers in Japan received widespread attention after Maricris Sioson, a twenty-two-year-old Filipina entertainer, died in Japan on September 14, 1991. Her death certificate indicated that she died of hepatitis, but when an autopsy was performed in the Philippines, at her family's request, Dr. Arizala of the Philippine National Bureau of Investigation found that she had suffered severe blows to the head and two stab wounds, one in the thigh and one in the genital area. Dr. Arizala determined that though she was suffering from the early stages of hepatitis, her death was due to traumatic head injuries. Appeals were made to the Japanese government to investigate her death, but the Japanese

governing entertainer visas significantly reduce their effectiveness in protecting the women's rights. The most obvious problem is that while Filipinas who enter Japan on entertainer visas have the right to work, they are officially classified as "non-workers" and are not covered by Japanese labor laws.⁷⁴ Consequently, any appeals for violation of their contracts, which are frequent, must be directed to immigration authorities rather than labor officials, and enforcing labor standards is not an Immigration Bureau priority.⁷⁵ One study of Filipina workers in the Japanese entertainment industry found that even those women with entertainer visas, or "contract workers," are commonly subjected to labor violations and other abuses by their employers. Nonetheless, the study concluded that the contract workers generally suffered less abuse, both in terms of financial exploitation and other rights violations, than their non-contract worker counterparts from the Philippines.⁷⁶

police continued to insist that she died of natural causes. (Equality Now, "Japan: The Death of Maricris Sioson," *Women's Action 4.1*, December 1993.)

⁷⁴ Ballecas, *Filipino Entertainers in Japan: An Introduction*, p. 9.

⁷⁵ Human Rights Watch interview with Rutsuko Shoji, Director, Asian Women's Shelter HELP, Tokyo, April 8, 1999.

⁷⁶ Ballecas, *Filipino Entertainers in Japan: An Introduction*.

Trafficking of women from Thailand into Japan's sex industry reached large-scale proportions in the late 1980s, and remains an egregious problem more than a decade later. No effort has been made by the Japanese and Thai governments to regularize the migration of Thai women, as in the case of Filipina migrants discussed above, even though the evidence suggests that such measures could reduce their vulnerability to abuse. Japanese economic recessions in the 1990s, coupled with an increase in the enforcement of immigration law, have had a dampening effect on migration flows, and, according to Japanese government statistics, the number of female Thai "overstayers" has been gradually declining from a high of almost 30,000 in 1993.⁷⁷ However, even by official Japanese government estimates, the number of female overstayers from Thailand continues to exceed 20,000,⁷⁸ and as pointed out above, this excludes the numerous women from Thailand who have entered the country on non-Thai passports. Moreover, our research indicates that the abuses new entrants commonly suffer at the hands of their traffickers and initial employers in Japan remain largely unchanged.

⁷⁷ This fits the general pattern of undocumented migration in Japan. According to Japanese government estimates, the number of foreign nationals illegally residing in Japan peaked at 297,000 in 1993, and had fallen to 283,000 by 1997, the last year for which such statistics were available at the time of this publication. (Ministry of Justice, Japan, "Estimated number of illegal stays by foreign nationals." Available: <http://www.moj.go.jp/ENGLISH/IB/ib-11.htm>. February 2000.)

⁷⁸ The most recent statistics available from the Japanese government at the time of this publication were for January 1997, at which time there were an estimated 22,574 Thai women overstaying their visas in Japan. (Immigration Bureau, Ministry of Justice, Japan, "Change in illegal stays by country of origin," March 1997.)

IV. PROFILES

In this chapter, Human Rights Watch profiles four women who were trafficked from Thailand into servitude in Japan. Human Rights Watch interviewed numerous women who recounted similar experiences, and in the chapters that follow, we describe and analyze the common patterns and abuses that emerged through our research. Yet, to fully relay the gravity of this issue, and its impact on the women affected, we can do no better than to begin by repeating here the stories of individual women, as told to Human Rights Watch. In these testimonies, women describe their experiences from the time of their recruitment in Thailand through their release—or escape—from debt bondage in Japan. While each woman's story is unique, their testimonies are typical of many others gathered by Human Rights Watch. They also reflect some of the key variations we noted in women's accounts.

Pot⁷⁹

Pot was recruited to work in Japan in 1990 when she was twenty-seven years old.

⁷⁹ Human Rights Watch and FOWIA interview, Ibaraki prefecture, Japan, June 1, 1995.

To protect the identities of the women victims of trafficking, each has been assigned a randomly selected name which is used consistently throughout the report. While Human Rights Watch generally refers to interviewees by their first and last names, in this case we have chosen to follow the Thai custom of using nicknames.

A friend I knew from the market in Nakhon Sawan told me about the opportunity to work in factories in Japan. 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. I didn't realize what kind of work I was going to do until I was on my way to Japan, and I didn't realize I was in debt for 380 bai [3.8 million yen; US\$26,000]⁸⁰ until I arrived at the snack.⁸¹ I was told by the recruiters in Thailand that I would work in a factory and would get fifty percent of my salary until my debt was paid off. I was angry and freaked out about my situation.

After describing the good job opportunities in Japan, Pot's friend introduced her to an agent in Bangkok who made the arrangements for her travel. First, he helped her obtain her travel documents. She applied for and received her own passport, but the agent took care of all of the paperwork and negotiations with the officials. Then he took Pot to get her Japanese visa. "The agent told me to go to a certain window at the visa section at the Japanese Embassy. I got my visa without anyone asking me any questions or having to talk at all because the agent filled out all the forms for me." The agent also gave Pot money for clothing, but Pot sent most of it to her family instead. The day Pot's visa arrived, the agent put her in a hotel room at the Central Hotel in the Ladprao area of Bangkok and would not let her go out. Pot recalled:

It was a big room and four or five other women going to work in Japan were also kept there. I was surprised to be locked up because I was not allowed any chance to say goodbye to my family, even over the phone. I heard the agents talking about the price for each woman being between 150-160 bai [1.5-1.6

⁸⁰ Here and below, to convert Japanese yen into U.S. dollars, we use the average exchange rate for the relevant year and then round off. Where the year cannot be easily determined from the context, a footnote will specify which year's average rate was used.

⁸¹ Snack bars, often referred to simply as "snacks," will be described in greater detail in the next chapter. In brief, they are common venues where Japanese go for relaxation and conversation. Many do not involve sexual exchanges, but in the establishments women referred to as "dating" snack bars, clients are allowed take the hostesses out of the bar for sexual services.

million yen; US\$10,000-11,000], but I couldn't really understand what they were talking about and did not realize that we were being sold into prostitution. I was feeling suspicious but still wasn't clear about what was going on. I stayed at the hotel for several days. During that time, I saw that if a woman did not get approved for a Japanese visa, then the agent exchanged her real passport for a false one.

Two weeks after her initial decision to go to Japan, Pot was put on a flight to South Korea with four other women from the hotel room and a Thai man nicknamed Dee. Dee told them which immigration officer to go to at the airport. "In hindsight I believe that the immigration officer at Don Muang airport in Bangkok knew what I was going to do in Japan better than I did at the time, as the officer was buddy-buddy with my escort and just kept smiling at me and the other Thai women as he stamped our passports." When Pot got to South Korea she was put in a room with fifty other Thai women and seven or eight men. "Most of the women were under twenty years old and from the north of Thailand. All fifty women were guarded, controlled, and watched by the men at all times. I knew that there was something wrong and began talking to the other Thai women there. This is where I learned that all of the women were going to work in prostitution, because some of the women had worked in prostitution before and knew that they were going to do so in Japan. I didn't know what to do. I just thought that once I got to Japan I would change my job immediately."

All fifty Thai women were put on the same flight to Narita airport, just outside Tokyo. The men who were accompanying them went through immigration control first, and then waited near the immigration officers to give explanations when needed. A few of the women were not allowed into Japan, but most were. From the airport, Dee put Pot and several of the other Thai women into a van with a Khmer woman named Chan, who was from one of the refugee camps close to the Thai border with Cambodia. Chan brought the women to Tokyo, and spent the next five days taking them to different places around the city. "Chan was trying to sell me and the others like cattle. Then, on the fifth day, a Thai woman bought me and took me to another woman named Chan in Ibaraki prefecture who paid 380 bai [3.8 million yen; US\$26,000] for me. I had known since Korea that I was being sold as a prostitute, but I didn't realize until I got to the snack that this 380 bai that I was bought for was to be my debt."

There were ten to twenty women working at the snack at any given time. Pot worked there for nearly three months and then was sent—still in debt—to another

city in Ibaraki to work as a telephone service girl.⁸² After two months there, she was sent back to the snack bar where she worked for another three months.

⁸² Working for a telephone service is similar to working in a 'dating' snack bar, except that customers arrange 'dates' by telephone, rather than at a bar.

In all, I worked for eight months to pay back my debt and I had calculated that I must have paid it back long ago, but the mama⁸³ kept lying to me and said she didn't have the same records as I did. During these eight months, I had to take every client that wanted me and had to work everyday, even during my menstruation. The mama also made me and the other women work for her during the day and wouldn't allow us to eat much saying we would get too fat. I was like a skeleton during that time. While I was in "fact" [under contract, or in debt], the mama paid for everything except for my health care and birth control pills. This was all added to my debt. I tried to keep track of my own records quietly, but I didn't know all the additional expenses that the mama was adding to my debt. And I did not want the mama to know I was keeping track for fear that she would get angry.

While she was in debt, Pot worried about her family back in Thailand. "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." Some of the clients were abusive too. "Once a Yakuza member took me out for the night. He brought me to a hotel room and first injected himself with heroin and then tried to force me to inject. I refused and struggled. He beat me until I was almost dead. Then he took a rubber band out and strapped it around my arm and was just about to inject me when he passed out. I tried to move and after some time was able to get out of the hotel and fled back to my apartment. I didn't dare tell anybody what happened or seek medical help for my injuries."

Despite the terrible conditions, Pot did not try to escape. "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. . . . I tried to be cooperative with the mama and not make any troubles for myself." After paying off her debt, Pot continued to work at the snack bar for

⁸³ Managers at the snack bars are typically women referred to as "mama" or "mama-san" by the hostesses.

another year, trying to save enough money to return home. While she was working there, she met a man who asked her to marry him, and she agreed. When they went to register the marriage, the official resisted. "The provincial official asked me how I could register as an 'overstayer.' I had already found out how it was done so I explained it to him. Then the official claimed my documents were fake. I explained that if they were fake, I would not have tried to come here to register legally." Eventually, she and her husband were successful.

Kaew⁸⁴

Kaew lives in a village in Chiang Rai province in northern Thailand. She has three sons and was married to an abusive husband, who drank too much and was either unable or unwilling to work. In May 1992, Kaew went to Japan on a ninety day tourist visa, hoping to earn enough money to care for her children. "I had three kids, my husband drank, and we had no money," Kaew explained, "so I had to do something." Several years earlier, Kaew had traveled to southern Thailand, to the city of Hat Yai in Songkhla province, to work as a sex worker. "I went back and forth several times trying to make money, leaving my children with my mother." Next she tried working in Singapore. She met a man there who asked her to move in with him, but he did not give her enough money to send home to her children, so she left and returned to her village. Again, she tried to reconcile with her husband, but he was still violent and drinking heavily. Finally, she left him, and moved into her parents' house with her children. A few months later, someone in the village asked her if she wanted to go to Japan, and she agreed. That person told her about an agent in Bangkok.

When she arrived in Bangkok, she was taken to an apartment with about thirty other women from northern and northeastern Thailand. They were all told to undress, and a woman examined their busts, stomachs, hips, and vaginas. Kaew was thirty-one years old, well above the average age of new recruits for the Japanese sex industry. But she looked young, and "the agent in Bangkok decided I was beautiful enough to go to Japan, though I had to get a nose job first and they kept messing it up; they had to do it four times to get it right. The agent wanted me to get my eyes done too, but I refused. Other women got plastic surgery for their breasts, eyes, or other body parts. Women who were not beautiful enough were given a bus ticket home to their village."

⁸⁴ Human Rights Watch and FOWIA interviews, Chiang Rai province, Thailand, September 13, 1997, October 4, 1997, and April 25, 1999.

Kaew was given 100 baht (US\$4) a day while she waited in Bangkok with other women who were going to Japan. She waited in Bangkok for seven months because the agent used her to get passports and visas for the other girls.

They used me because I was older, so it was easier for me. I got five passports for other women—each time getting married to change my surname. If I think about it now, [the agents] were very, very clever. They could even make birth certificates; they could do everything. They were so clever, and in Japan [the brokers] are even more clever.

After seven months, I threatened to go home because I wasn't making any money, so they sent me to Japan. My escort was a Western man named Gary. He took the women to Japan one-by-one. He had many passports and worked with the airline. He had a visa that allowed him to go back and forth between Japan and Thailand through his banana business. He was handsome and dressed up and spoke Thai. I told the immigration officials that I was going to visit a banana factory in Japan to see how it worked and I had a letter from the company in Thailand. Gary had 150 bai [1.5 million yen; US\$12,000] with him. Gary and I were separated by the immigration officers at the airport and asked questions about the company, but we had prepared before.

I had practiced for two or three nights before I left, and learned to write my new name in English.

At Narita airport, someone was waiting for me and took the clothes and jewelry that they had given me to wear. The person took me to the mama's house in Tokyo. There were lots of women there and people came to choose women and buy them. I was bought on the third day, and told that my price was 380 bai [3.8 million yen; US\$30,000]. After three or four days of working at the snack bar, I realized how much 380 bai was.

Kaew explained that she had understood there would be some debt for the airplane ticket and other expenses, but she had never been told how high her debt would be, and she was shocked at the amount. "The other girls said to me, 'that's a lot of debt and you're old; you'll never pay it off.' Then I prayed that it would only take six or seven months to pay it off, and I went with all of the clients I could. . . . The mama said to me, 'don't let your period come, or you'll never finish paying your

debt.” So Kaew also took contraceptive pills daily, though she had been sterilized at age twenty-one, so that she would not menstruate and could work every day.⁸⁵ She got her mother to send the pills from Thailand, so that she would not have to buy them from her mama and increase the level of her debt.

The boss would tell me to go with a man, and I couldn't refuse. Girls were beaten if they didn't agree, and the owner was close to the Yakuza so he knew how to fight. Women were also fined for coming back late, fighting with each other, or not agreeing to sit with a client, so I did what I was told. Other women were beaten so badly they had to take days off; I wasn't beaten or given fines because I obeyed.

Some clients were good, and some were abusive. . . . I had up to three clients a night because I needed to pay off my debt, and after six months the mama said I had paid off 250 bai [2.5 million yen; US\$20,000]. I kept track in a notebook and this sounded about right—I was paying back about 40 or 50 bai [400,000-500,000 yen; US\$3000-4000] per month, and I could have paid off the rest of the debt soon. But while I was working, I met a man who was a friend of the owner. He came to the snack bar often, but he never took women out, he just talked to them. I had to talk to him, and at first I was upset because I knew he wasn't going to pay to take me out, but then he gave me tips just to sit and talk. He told the owner that he liked me and asked to buy out my contract, and the owner agreed since it was his friend. Usually, they didn't allow men to buy women out.

So he paid the 130 bai [1.3 million yen; US\$10,000] that I owed and set me up in an apartment. He gave me money, and I also continued to work at the same snack bar, but I wasn't in debt so I

⁸⁵ The pills were designed to be taken in twenty-eight day cycles, with twenty-one days of pills followed by seven days off (or seven days of placebos) to allow for menstruation. Contraceptive pills, or oral contraceptives, are designed to prevent pregnancy and/or regulate menstruation. They are not designed to prevent menstruation.

earned money. Women working without debt still had to go with a customer if he picked her out, but I didn't have to try flirting and all anymore because I wasn't so worried about money. On Tuesdays, I spent the day with my boyfriend, and the other days I worked. I continued to work there for almost two years after my debt was paid, and then I was arrested.

Kaew's snack bar was in Nagano prefecture, about three hours west of Tokyo by train.

All of the local police came to the snack bar, just like in Thailand, and they were very nice—there were no problems. But then police came from Tokyo. They were cleaning up in preparation for the Olympics in Nagano, and an undercover police officer from Tokyo came to the snack bar. She said she was a tour operator from Tokyo—there were a lot of tours from Tokyo—and that she wanted to see the women. When the women lined up, the officer took out her ID and arrested us all. I always kept 10 bai [100,000 yen; US\$980⁸⁶] in my pocket to pay for my ticket to Thailand in case I was arrested and deported, so I had that with me. I also had my passport—the mama had kept it while I was in debt, but after my contract was paid I carried it at all times. I gave my money and passport to the officer, and she let me get my stuff, and then I was taken to jail [an immigration detention facility in Tokyo]. Five days later I returned to Thailand. I didn't have to stay long because I had my passport and enough money for the trip home. . . . When I left, I just got onto the plane like other passengers. There were twenty-four of us arrested together at the snack bar, and we were sent back to Thailand in groups of three or four.

Now Kaew is back in her village in Thailand. She worries that her sons are embarrassed about the work she did while they were growing up.

Whenever I think too much, I get sad. But then I remember when I could only feed my children rice and soup. My husband

⁸⁶ This U.S. dollar amount was calculated using the average yen-dollar exchange rate in 1994.

didn't help, so my kids had to stay with my mother while I went to earn money. That guy was physically abusive too. He would come home drunk and beat me. I tried to work it out with him. But things never changed. The oldest son knows everything I did. He remembers before, knows the choices I've made. I worry that my children will be embarrassed by me, by the fact that I was a prostitute. But I tell my kids: "I had many men on my chest and I cried, but I closed my eyes and thought of my kids." I don't know if they really listen or if it's in one ear and out the other.

Asked what she would say to other women who wanted to go to Japan, Kaew replied,

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. If you talk to different women, you will get very different stories. Some women start to gamble, spend their money on hosts, and drink. It gets difficult to remember why you're there, for the young especially. Some are less obedient than me, so they have problems. 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.

Chan⁸⁷

Chan grew up in the province of Korat (now called Nakhon Ratchasima), in northeast Thailand. She went to school through the eighth grade, but was unable to find a job with a decent salary, so she eventually decided to go to Japan. Chan was twenty-three years old at the time. She had known the recruiters for a long time through her aunt, and, with their help, Chan applied for her passport and a Japanese

⁸⁷ Human Rights Watch and FOWIA interview, Bangkok, Thailand, March 2, 1995.

visa. She told the Japanese Embassy that she was a nurse and was going to stay with a family in Japan who had lived previously in Thailand. Then the recruiter introduced Chan to the agent, who paid the recruiter 30,000 baht (US\$1,200). The agent told Chan that her debt would be about 800,000 baht (US\$32,000), but that she would be able to pay it back in about three months.

Chan left for Japan in December 1993. The week before she left, she stayed with the agent in the Ladprao area of Bangkok, where she met other Thai women who were also going to Japan. Chan was escorted to Japan by a Thai woman, and after they passed through immigration at Narita airport, this woman introduced her to a broker. The broker took Chan to a snack bar in Chiba prefecture; the mama was a Thai woman and her husband was a Japanese man with Yakuza connections. Chan said that the mama was very strict. "Although I knew about the debt before I left," she explained, "I was lied to about the conditions and the fact that I would have to pay extra for everything and have it added to my debt."

Chan was housed in an apartment with three other Thai women. The mama, who lived in the same building, confiscated Chan's passport and return plane ticket to Thailand. Every night the women had to be ready for the van that came to pick them up at 7 p.m., and then they worked until 2 a.m. They were expected to help with the running of the snack bar, entertaining guests and serving clients, and they were not given any days off. "We weren't exactly forced to take clients, but we were pressured and if we didn't cooperate our life could be made very difficult. So, everyone learned to do as they were instructed. I had to take clients from the first day. I had never done this type of work before and had to serve about three or four clients every night. The mama told us we had to work hard to pay off our debts within five months or she would sell us again. We were forced to take birth control pills with no days off, so I never had my period." Each month, 100,000 yen (US\$980⁸⁸) was added to Chan's debt for her expenses. She knew this included 30,000 yen (US\$290) per month for housing, but she did not know how the rest of the money was divided. Chan was also penalized if her weight exceeded fifty-four kilograms (119 pounds), and once a month, the women were tested for AIDS and charged 10,000 yen (US\$100) for the test. Once, while Chan was working, immigration officers raided the snack bar. But a telephone call received just before the raid warned those there so that most of the women, including Chan, were able to run out; the others, however, were arrested.

After Chan had been at the snack bar for two months a client showed her where the Thai Embassy was and explained how she could escape. Chan went into the

⁸⁸ This U.S. dollar amount was calculated using the average yen-dollar exchange rate in 1994.

embassy to begin the process of preparing her documents to return home, but she did not dare escape then, because she did not want to get the client in trouble. About a month later, another client left Chan to take a taxi back to her apartment. Instead, she took the taxi to Tokyo and surrendered herself to the Japanese immigration authorities. The next day, Chan went to the Thai Embassy, where officials called her snack bar, demanding Chan's passport and money for her return trip home.

Chan was deported in February 1994. After she got back to Thailand, an agent followed her to her home in Korat, asking for the rest of the debt. "I was afraid so I left my family's home and came to Bangkok. I am still afraid that they are following me even though one year has passed. I am afraid that if they catch up with me they will kill me. I heard in Japan that that is what they do to those who don't repay their debt. I know that is why very few women dare to escape. Everyone I knew stayed and finished their debt. But I couldn't stay in Japan because I don't like to be bossed around."

Nuch⁸⁹

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. During her last trip to Bangkok, she spent a month working as a maid, and then got a job at a diamond shop. After two years there, her salary had reached 3,500 baht (US\$140) per month, with four days off each month.

While she was working at the diamond shop in 1992, an acquaintance told her that she should go to work in Japan and introduced her to a dress-maker, who then brought Nuch to an agent. "The agent told me she could find a job for me in a Thai restaurant in Japan and that I could make several tens of thousands a month. The agent agreed to pay for all of my expenses, saying that I could pay her back once in Japan." Then Nuch met another agent, an older Thai man named Lek. He explained that she would have to pay back 380 bai (3.8 million yen; US\$30,000), and she agreed. "I didn't know anything about exchange rates or different

⁸⁹ Human Rights Watch and FOWIA interview, Bangkok, Thailand, March 3, 1995 and March 26, 1995.

currencies so I didn't know how much [380 bai] was, but it didn't sound like a lot. I asked him how long it would take me to pay it back, and the agent said five months." Nuch and her roommate decided to go to Japan together. Nuch's roommate was only eighteen years old, and she didn't want to ask her parents for permission to go to Japan so she had to use a false passport.⁹⁰ Nuch was twenty-seven years old at the time, so the agent took her to get her real passport. Then Lek and his wife took Nuch to get her Japanese visa. She told the embassy officials that she was going on holiday, and a week later she received her visa.

Nuch left for Japan on March 26, 1992. Lek's wife went with her. "I didn't carry my own passport to go through Thai immigration. The wife gave both of our passports to immigration and talked to them. I arrived in Japan at night. At Narita airport immigration, the wife told me to go to a specific line and she went in another one. She went through first and then came to help me. The wife spoke Japanese and got me through. Then we took a taxi to a hotel in Tokyo. The wife told me I would work at a Thai restaurant that belonged to a Thai woman." The next morning, a Japanese man came to the hotel to get Nuch and took her to an apartment in Tokyo. There were three or four other Thai women at the apartment, and many Thai men as well. Everyone slept in the same room, and Nuch was told that a Thai woman named Ice was the 'boss.' "Ice told me I was to stay here and that I shouldn't speak Thai outside the apartment. Ice told me I couldn't escape and not to even try."

Nuch stayed in the apartment for two days without going out and did not talk to anyone. She thought it was strange that the women worked all night, but she did not ask any questions. After two nights, Nuch was told to pack up her things and get dressed. Two other Thai women were told to do the same. "Another woman took the three of us. We traveled all day by train. Once off the train, I was separated from the others and brought straight to a snack bar. I was very cold because I had no winter clothes. The snack bar was very small and had only four other Thai women there. They worked and slept at the snack shop. The mama was a Taiwanese woman." Nuch stayed there for two nights, and nobody came to the restaurant. She still did not understand that she was to work as a prostitute.

After two days, the Japanese man who had picked her up at the hotel in Tokyo the morning after she arrived in Japan came to the snack bar to get her. During the next two weeks, this man took Nuch to different apartments and restaurants. Nuch

⁹⁰ Persons under twenty years old must have their parents' permission to get a passport in Thailand.

said she was not forced to stay with him, but she had no passport or money, nor any idea where else to go. Finally, Nuch was taken to a snack bar that was owned by a Thai woman and her Japanese husband, a member of the Yakuza. The other Thai women at the snack bar told Nuch that she would have to prostitute herself. "They told me there was no way out and I would just have to accept my fate. The snack bar had many customers who I saw drinking alcohol and singing. I was told I had to go to sit with them. I knew then what had happened to me. That first night I had to take several men, and after that I had to have at least one client every night." Nuch said that the mama didn't actually "force" her to take clients, but she found clients for her, and Nuch always accepted them because she did not think she could refuse. During her time at the snack bar, Nuch never saw a doctor, nor received any health check-ups.

Nuch did not keep track of her debt. The mama bought her clothing, birth control pills, and medicine when she was sick, and added these expenses to her debt, but did not tell Nuch how much was added. After two months, the mama told Nuch she had paid off 20 bai (200,000 yen; US\$1600). Around that time, Nuch went out one day with a male Thai acquaintance. When she returned, the mama told her to get her bags packed. The same Japanese man that had picked Nuch up at the hotel in Tokyo and then eventually taken her to this snack bar, came to get her and brought her to Tokyo to see Ice.

When I first got to the apartment a Thai man slapped my face and said 'they told you not to meet other Thai.' Then Ice took me into another room. There Ice beat me, mostly by kicking me everywhere, while I sat in a chair. Ice beat me for over an hour saying 'I told you not to speak to any Thai.' I couldn't fight back because there were many men outside the room. When Ice finished she took a visa photo of me and forced me to write a contract. I said I couldn't write, but Ice forced me to write the contract by telling me each letter in Thai. I was forced to write that 'if I try to escape again, I agree to be killed,' and then Ice forced me to sign it. Then Ice photocopied it and said she would give a copy to the next mama I was sent to work for. Ice then asked me, 'do you want to go into a brothel where you'll never come out or pay back a debt of 700 bai [7 million yen; US\$55,000]. I didn't know what a brothel was, but it didn't sound good so I agreed to having my original debt doubled.

Ice sent Nuch to work at another snack bar, where she worked for the next seven months. This time she kept better track of how much she earned. "I had to take all the clients that were introduced to me and was never given a day off. I was given birth control and charged 1,000 yen [US\$8] per month. The only money I ever had was the tip money I saved. With the tip money, I had to buy my own food, except for rice, with the other women." While Nuch worked at this snack bar, the mama took her and the other women to a hospital for blood tests on two occasions. The first time, the mama talked to the doctor and told Nuch that there was no problem. The second time, one of the other Thai woman from Nuch's snack bar, who had been working their long and could speak a lot of Japanese, heard the doctor tell the mama that Nuch was blood positive. "The Thai woman told me that blood positive just means that you have to get some injections. The mama told me 'never mind, it's a minor problem.' The mama never took me to see the doctor again."

A few weeks later, Nuch was taken to a house in Nagano to have her blood checked again, and then she was taken to see Ice. Ice threw away Nuch's house registration, letters from her mother, and any other papers or documents she found. Then she gave Nuch her passport with a new visa saying she had just arrived in Japan. Two days later, Nuch was taken to a snack bar in Niigata prefecture. The mama there was Taiwanese and had a Japanese husband and two teen-age daughters. Ice reminded Nuch not to tell anyone that she had ever been to Japan before and told her to not to tell anyone, especially the clients, that she was Thai. The other Thai women working at this snack bar explained to Nuch that Japanese men do not like Thai women because they think they have AIDS. Nuch was told that her debt was 380 bai (3.8 million yen; US\$30,000).

Nuch described this snack bar as "very strict." "Once I slipped and said I was from Thailand. The client asked the mama if it was true that I was from Thailand. It was a big problem. The mama's daughter slapped me, and the Japanese husband of the mama told me, 'if you tell another person you are Thai again you will have a name, but no body.' This meant he would kill me and only my name would be left. The mama's daughter slapped me again another time, when I was told to serve a very rude, drunk and dirty client whom I had been forced to have sex with several times before and couldn't stand it. She slapped me because I wasn't eager enough to take this particular client."

Nuch lived above the snack bar with the seven other Thai women who worked at the snack bar. "We were watched at all times. When we had to go out with clients, the mama hired taxis to wait for us at the hotel and bring the women back. There was never any chance to escape." They also worked extremely long hours, without any days off. "We worked at the snack bar from 6 p.m. to 3 a.m., and at 9

a.m. we were woken up to clean the house and the snack bar before lunch. After lunch we worked in the field out behind the snack bar until dinner. We were given birth control pills and told not to take the white pills (for the week to have a period). So we never had our periods while working there. We worked and took clients everyday.”

A few weeks after Nuch began working there, the mama found out that Nuch had been in Japan before. “I asked another Thai woman to help me write a letter to send to my mother. It had been a long time since I had written to my mother. I had never told my mother what I was forced to deal with or the details of my life. I just wanted to tell my mother that I was well and everything was okay. But, while I was telling the other Thai woman what to write, I slipped and said ‘sorry I haven’t written to you for a long time. I have moved to another restaurant.’ The Thai woman who was transcribing the letter asked me for more details. I told her then that I got sick and my blood was positive. Then this Thai woman went and told the mama—to get some extra points by telling on me.” The mama and her daughter told Nuch to take off her clothes and checked her for sores. Then they told her she would have to work extra hard in order to pay off her debt quickly, and the mama told the cashier to give Nuch a lot of clients.

So Nuch continued to work and after three months had paid off about 100 bai (1 million yen; US\$8000⁹¹). Two of the Thai women at the snack bar had been there nearly two years and had not yet finished paying back their debts. Another Thai woman had been there one and a half years and was also still paying back her debt. Nuch was never taken to see a doctor, and while the snack bar provided condoms and told the clients to use them, they seldom did. “In all my time in Japan only about ten clients ever used condoms and even then they broke a couple of times. I did not know about AIDS then or what ‘blood positive’ meant.”

After about three months, a group of five Japanese men came into the snack bar. They appeared much neater than the usual clients. These men asked Nuch where she was from in Japanese, and she told them she was from Malaysia. Then they asked her something in Malaysian, but she could not answer. The five men came to the snack bar on three different occasions, and then one morning, the police came to arrest the women. “They asked me and the others in Thai if we wanted to go home, and if so to get our clothes. Only myself and one other woman got our clothes. Everyone was arrested, the mama, her husband, the two Taiwanese friends, and the seven Thai women. One Thai woman had just finished off her debt after

⁹¹ This U.S. dollar amount was calculated using the average yen-dollar exchange rate in 1992.

two years and was about to be paid for the first time for twenty clients. She was especially upset.”

Nuch was taken to a police station and questioned. The police told her they would help her to get home, but instead she was detained for the next several months in solitary confinement, though she never understood why. While she was in jail, a doctor tested her blood three times, but did not tell her anything. Eventually, Nuch was transferred to an immigration detention center, where she was held until the Thai Embassy issued her travel documents. In March 1993, Nuch went to the airport with the Japanese immigration officers and ten other Thai nationals. Upon arrival at Don Muang airport in Bangkok, the ten Thais were taken to the immigration office in the airport. Nuch was taken to a shelter where she has been living ever since. She understands now that she has HIV/AIDS.

V. INTERNATIONAL LEGAL STANDARDS ON TRAFFICKING IN WOMEN

TRAFFICKING, DEBT BONDAGE, FORCED LABOR, AND OTHER ABUSES COMMONLY SUFFERED BY WOMEN DURING THEIR MIGRATION FROM THAILAND TO JAPAN, AND THEIR SUBSEQUENT EMPLOYMENT IN JAPAN, CONSTITUTE VIOLATIONS OF THESE WOMEN'S HUMAN RIGHTS. THESE RIGHTS ARE ENUMERATED IN INTERNATIONAL CONVENTIONS THAT JAPAN AND THAILAND HAVE ACCEDED TO OR RATIFIED, THEREBY COMMITTING THEIR GOVERNMENTS TO TAKE THE STEPS NECESSARY TO UPHOLD THESE RIGHTS AND TO PROVIDE REDRESS WHEN VIOLATIONS OCCUR.⁹² BY ALLOWING PERPETRATORS TO EXPLOIT MIGRANT WOMEN WITH VIRTUAL IMPUNITY —AND BY FAILING TO CHECK CORRUPTION AMONG GOVERNMENT OFFICIALS WHO FACILITATE THESE CRIMES—THE JAPANESE AND THAI GOVERNMENTS FAIL TO LIVE UP TO THEIR INTERNATIONAL OBLIGATIONS AND EXACERBATE WOMEN'S VULNERABILITY TO ABUSE.

⁹² Under Article 2 of the International Covenant on Civil and Political Rights (ICCPR), states have the obligation to protect the rights of all individuals in their territory and to ensure that any person whose rights have been violated has access to an "effective remedy." Japan ratified on June 21, 1979. Thailand acceded on October 29, 1996.

TO THE EXTENT THAT THE FAILURE TO PROTECT THE HUMAN RIGHTS OF MIGRANT WOMEN FROM THAILAND REFLECTS DISCRIMINATION ON THE BASIS OF GENDER, RACE, NATIONALITY AND/OR IMMIGRATION STATUS, IT ALSO AMOUNTS TO A VIOLATION OF THE PROHIBITION OF DISCRIMINATION IN THE PROTECTION OF HUMAN RIGHTS, AS ESTABLISHED UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).⁹³ THE HUMAN RIGHTS COMMITTEE, THE INTERNATIONAL TREATY BODY RESPONSIBLE FOR MONITORING STATES' COMPLIANCE WITH THE ICCPR, HAS MADE IT CLEAR THAT HUMAN RIGHTS APPLY REGARDLESS OF NATIONALITY OR STATELESSNESS, AND THAT STATES HAVE A RESPONSIBILITY TO GUARANTEE BASIC HUMAN RIGHTS EQUALLY FOR BOTH CITIZENS AND ALIENS.⁹⁴ WOMEN'S RIGHT TO EQUAL ENJOYMENT OF HUMAN RIGHTS HAS BEEN REAFFIRMED BY THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (WOMEN'S CONVENTION).⁹⁵ WHEN GOVERNMENTS FAIL TO EFFECTIVELY PREVENT OR RESPOND TO ABUSES —AS IS TRUE IN THE CASE OF TRAFFICKING IN WOMEN FROM THAILAND TO JAPAN—IT CONSTITUTES A VIOLATION OF SPECIFIC OBLIGATIONS THAT THE STATES HAVE UNDERTAKEN UNDER THE TERMS OF THAT CONVENTION. FINALLY, MANY OF THE ABUSES DOCUMENTED IN THIS REPORT ARE PROHIBITED UNDER JAPANESE AND THAI DOMESTIC LEGISLATION,⁹⁶ AND GOVERNMENTS HAVE AN OBLIGATION TO EXERCISE DUE

⁹³ ICCPR, Article 2(1): "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

⁹⁴ Human Rights Committee, General Comment 15, "The position of aliens under the Covenant" (Twenty-seventh session, 1986), in which the Committee explained: "In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant."

⁹⁵ Women's Convention, Article 3: "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." Ratified by Japan on June 25, 1985. Acceded to by Thailand on August 9, 1985.

⁹⁶ See the "Japanese Government Response" and "Thai Government Response" chapters for a discussion of relevant domestic legislation.

DILIGENCE IN ENFORCING THEIR LAWS, PROVIDING ALL PERSONS WITH EQUAL PROTECTION UNDER THE LAW AND EQUAL ACCESS TO LEGAL REMEDIES FOR VIOLATIONS.⁹⁷

Trafficking in women—a human rights violation

⁹⁷ ICCPR, Article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

General Assembly resolution 48/104 of 20 December 1993, the Declaration on the Elimination of Violence against Women, notes States’ responsibility to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”

See also: Committee on the Elimination of All Forms of Violence Against Women, “Violence Against Women,” General Recommendation No. 19 (eleventh session, 1992), U.N. Document CEDAW/C/1992/L.1/Add.15, in which the Committee observed, “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

Trafficking in persons is condemned under international human rights law with provisions that place an explicit obligation upon states to take steps to stop this practice. The Women's Convention directs states to "suppress all forms of traffic in women and exploitation of prostitution of women."⁹⁸ Trafficking in children is further condemned in the CONVENTION ON THE RIGHTS OF THE CHILD⁹⁹ (CHILDREN'S CONVENTION), WHICH REQUIRES STATES PARTIES TO "TAKE ALL APPROPRIATE NATIONAL, BILATERAL AND MULTILATERAL MEASURES TO PREVENT THE ABDUCTION OF, THE SALE OF OR TRAFFIC IN CHILDREN FOR ANY PURPOSE OR IN ANY FORM."¹⁰⁰ Finally, the 1949 Convention on the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others, denounces "the traffic in persons for the purpose of prostitution."¹⁰¹

⁹⁸ Article 6.

⁹⁹ Ratified by Japan on April 22, 1994. Acceded to by Thailand on March 27, 1992.

¹⁰⁰ Articles 34 and 35, respectively.

¹⁰¹ Note that the primary focus of this convention is not trafficking, but prostitution. The term "trafficking" is not defined in the document, nor is any distinction made between coercive and non-coercive practices on the part of persons involved in the prostitution of others. Human Rights Watch believes that a key defining element of the human rights abuse of "trafficking in persons" is the coercive and slavery-like nature of the practice.

“Trafficking” has been used in international legal instruments to refer to the movement of, and trade in, human beings, usually in connection with slavery, prostitution, and/or sexual exploitation. However, none of these documents articulates a clear definition of the term, so a precise legal meaning has yet to be established. In recent years, increased attention to the global problem of trafficking in persons has led to a widespread push to develop a working definition of trafficking that encompasses the full nature and scope of the abuse. Further impetus for such efforts was provided by the United Nations’ decision to draft a convention against transnational organized crime, supplemented by an optional protocol on trafficking in persons. To this end, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (Ad Hoc Committee) was established by General Assembly resolution in December 1998, with a mandate to draft the convention and the trafficking protocol by the end of 2000. In February 2000, the Office of the United Nations High Commissioner for Human Rights (UNHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), and the International Organization for Migration (IOM) submitted a joint statement to the Ad Hoc Committee recommending the following definition of trafficking: “the recruitment, transportation, transfer or harboring or receipt of any person for any purpose or in any form, including the recruitment, transportation, transfer or harboring or receipt of any person by the threat or use of force or by abduction, fraud, deception, coercion or abuse of power for the purposes of slavery, forced labor (including bonded labor or debt bondage) and servitude.” They noted that “servitude” should be understood in this context to include “practices that have been defined elsewhere as ‘contemporary forms of slavery,’ such as forced prostitution.”¹⁰² The United Nations High Commissioner for Human Rights, Mary Robinson, also submitted an “Informal Note” to the Ad Hoc Committee explaining that, in describing the purposes for which persons are trafficked, the committee should drop the “imprecise and emotive” term “sexual exploitation,” and refer instead to trafficking for “forced labor and/or bonded labor and/or servitude,” terms that explicitly include coercion and can be applied to any type of labor or service.¹⁰³ Human Rights Watch

¹⁰² Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, “Note by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children’s Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons,” February 22, 2000. A/AC.254/27/Corr.1 (A/AC.254/27 was originally submitted on February 8, 2000 but UNHCR was omitted from the title).

¹⁰³ Ad Hoc Committee on the Elaboration of a Convention against Transnational

understands that a definition of trafficking should include all acts related to the recruitment, transport, transfer, sale, or purchase of human beings by force, fraud, deceit, or other coercive tactic, for the purpose of placing them into conditions of forced labor or practices similar to slavery, in which labor is extracted through physical and/or non-physical means of coercion. Such coercion may include blackmail, fraud, deceit, isolation, threat or use of physical force, or psychological pressure. We support the evolving international consensus that trafficking must be understood to apply to all labor sectors, including, but not limited to, the sex industry, while being limited to those instances in which some form of coercion is present. This consensus reflects the recognition that persons “trafficked” for various types of employment endure similar violations, as well as the conviction that distinguishing between voluntary and coercive acts is crucial to maintaining respect for the ability of women to purposefully and voluntarily migrate for work.¹⁰⁴ The United Nations Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, adopted a definition of trafficking that incorporates both of these elements in a report released in February 2000. The report dealt with human rights violations suffered by women during both voluntary migration and trafficking, with trafficking in persons defined as “the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including abuse of authority), or debt bondage, for the purpose of: (ii) placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).”¹⁰⁵

OTHER RELEVANT STANDARDS FOR COMBATING TRAFFICKING IN WOMEN

The United Nations High Commissioner for Human Rights has pointed out that trafficking in persons is not a single event, but a series of actions involving a variety of

Organized Crime, “Informal note by the United Nations High Commissioner for Human Rights,” June 1, 1999. A/AC.254/16.

¹⁰⁴ The Global Alliance Against Trafficking in Women (GAATW), a Bangkok-based NGO, has been one of the leading organizations worldwide in documenting the global phenomenon of trafficking in women and articulating a working definition of the term. Its definition fulfills all of these criteria.

¹⁰⁵ Commission on Human Rights, “Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44,” E/CN.4/2000/68, 29 February 2000, paragraph 13.

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actors and abuses.¹⁰⁶ Combating trafficking in women requires policies and practices designed to prevent and provide redress for all of the human rights violations involved, thus deterring further abuses and encouraging victims to turn to law enforcement officials when violations occur.

FORCED LABOR, SERVITUDE, AND PRACTICES SIMILAR TO SLAVERY

Women trafficked from Thailand are subjected to a range of slavery-like practices during their travel, job placement, and employment in Japan, practices clearly condemned under international law. The women we interviewed described being “bought” and “sold” by agents, brokers, and employers. They spoke of their purchase “price,” and explained that the person who “bought” them demanded strict obedience, using a variety of coercive tactics to ensure their acquiescence. The slavery-like nature of these practices was illustrated perhaps most clearly by the fact that employers and brokers maintained the power—and believed it was their right—to “resell” women at their discretion.

¹⁰⁶ “Message from the High Commissioner, Mary Robinson, to the Asia-Pacific Symposium on Trafficking in Persons,” Tokyo, Japan, January 20, 2000.

UNDER THE ICCPR, JAPAN AND THAILAND HAVE AN OBLIGATION TO TAKE THE STEPS NECESSARY TO PREVENT ALL FORMS OF SLAVERY, THE SLAVE-TRADE, SERVITUDE, AND FORCED OR COMPULSORY LABOR, AND THEY MUST PROVIDE REMEDIES FOR THE VICTIMS WHEN VIOLATIONS OCCUR.¹⁰⁷ SLAVERY AND THE SLAVE-TRADE ARE DEFINED UNDER THE SLAVERY CONVENTION AS, RESPECTIVELY, "THE STATUS OR CONDITION OF A PERSON OVER WHOM ANY OR ALL OF THE POWERS ATTACHING TO THE RIGHT OF OWNERSHIP ARE EXERCISED" AND "ALL ACTS INVOLVED IN THE CAPTURE, ACQUISITION OR DISPOSAL OF A PERSON WITH INTENT TO REDUCE HIM TO SLAVERY; ALL ACTS INVOLVED IN THE ACQUISITION OF A SLAVE WITH A VIEW TO SELLING OR EXCHANGING HIM; ALL ACTS OF DISPOSAL BY SALE OR EXCHANGE OF A SLAVE ACQUIRED WITH A VIEW TO BEING SOLD OR EXCHANGED, AND, IN GENERAL, EVERY ACT OF TRADE OR TRANSPORT IN SLAVES." SEVERAL PRACTICES SIMILAR TO SLAVERY ARE ELABORATED UNDER THE SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY. THIS CONVENTION CONDEMNES DEBT BONDAGE, SERFDOM, COMPULSORY MARRIAGE, AND THE PLEDGE OF A CHILD'S LABOR TO ANOTHER PERSON BY THE CHILD'S GUARDIAN AS INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY. ACCORDING TO THE CONVENTION, "A PERSON OF SERVILE STATUS" MEANS A PERSON IN THE CONDITION OR STATUS RESULTING FROM ANY OF THE FOLLOWING PRACTICES:

(a) DEBT BONDAGE, THAT IS TO SAY, THE STATUS OR CONDITION ARISING FROM A PLEDGE BY A DEBTOR OF HIS PERSONAL SERVICES OR OF THOSE OF A PERSON UNDER HIS CONTROL AS SECURITY FOR A DEBT, IF THE VALUE OF THOSE SERVICES AS REASONABLY ASSESSED IS NOT APPLIED TOWARDS THE LIQUIDATION OF THE DEBT OR THE LENGTH AND NATURE OF THOSE SERVICES ARE NOT RESPECTIVELY LIMITED AND DEFINED;

(b) SERFDOM, THAT IS TO SAY, THE CONDITION OR STATUS OF A TENANT WHO IS BY LAW, CUSTOM OR AGREEMENT BOUND TO LIVE AND LABOR ON LAND BELONGING TO ANOTHER PERSON AND TO RENDER SOME DETERMINATE SERVICE TO SUCH OTHER PERSON, WHETHER FOR REWARD OR NOT, AND IS NOT FREE TO CHANGE HIS STATUS;

(c) ANY INSTITUTION OR PRACTICE WHEREBY:

¹⁰⁷ ARTICLE 9 PROVIDES: "NO ONE SHALL BE HELD IN SLAVERY; SLAVERY AND THE SLAVE-TRADE IN ALL THEIR FORMS SHALL BE PROHIBITED," "NO ONE SHALL BE HELD IN SERVITUDE," "NO ONE SHALL BE REQUIRED TO PERFORM FORCED OR COMPULSORY LABOR." Ratified by Japan on June 21, 1979. Acceded to by Thailand on October 29, 1996.

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.¹⁰⁸

THESE DEFINITIONS MAKE CLEAR THAT EVEN IF A PERSON HAS AGREED TO PERFORM LABOR OR OTHER SERVICES, THE ARRANGEMENT MAY QUALIFY AS A PRACTICE SIMILAR TO SLAVERY IF THE TERMS AND CONDITIONS OF THE AGREEMENT HAVE NOT BEEN ADEQUATELY DEFINED OR IF THE PERSON LOSES THE LIBERTY TO CHANGE HIS/HER STATUS. THE SUPPLEMENTARY CONVENTION ON SLAVERY ALSO IDENTIFIES ALL ACTS AND ATTEMPTED ACTS INTENDED TO PLACE A PERSON INTO SLAVERY OR OTHER SERVILE STATUS IDENTIFIED IN THE CONVENTION AS PRACTICES SIMILAR TO SLAVERY WHICH SHOULD BE SUBJECT TO CRIMINAL PENALTY.¹⁰⁹

AS PARTIES TO THE INTERNATIONAL LABOR ORGANIZATION (ILO) CONVENTION 29 CONCERNING FORCED OR COMPULSORY LABOR, JAPAN AND THAILAND HAVE MADE AN ADDITIONAL COMMITMENT TO "SUPPRESS THE USE OF FORCED OR COMPULSORY LABOR IN ALL ITS FORMS WITHIN THE SHORTEST POSSIBLE PERIOD."¹¹⁰ THIS CONVENTION DEFINES forced or compulsory labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said

¹⁰⁸ Articles 1, 7(b).

¹⁰⁹ Article 6.

¹¹⁰ Article 1.

person has not offered himself voluntarily,” and SPECIFICALLY PROHIBITS “FORCED OR COMPULSORY LABOR FOR THE BENEFIT OF PRIVATE INDIVIDUALS, COMPANIES OR ASSOCIATIONS.”¹¹¹

THE MOST COMMON ABUSE THAT HUMAN RIGHTS WATCH DOCUMENTED IN THE TRAFFICKING OF WOMEN FROM THAILAND TO JAPAN WAS DEBT BONDAGE. Women were forced to work without wages until they repaid extraordinarily high “debts,” amounts exponentially exceeding any costs incurred through their travel to Japan. SOME—THOUGH NOT ALL—OF THE WOMEN UNDERSTOOD THAT THEY WOULD HAVE A DEBT TO REPAY WHEN THEY AGREED TO MIGRATE, BUT THE LENGTH AND NATURE OF THE SERVICES TO BE PERFORMED WERE NOT ADEQUATELY LIMITED OR DEFINED. RECRUITERS AND AGENTS PROVIDED WOMEN WITH MISLEADING, INACCURATE, AND INCOMPLETE INFORMATION REGARDING THE AMOUNT OF DEBT, THE LENGTH OF THE REPAYMENT PERIOD, THE CONDITIONS OF EMPLOYMENT, AND/OR THE NATURE OF SERVICES TO BE PERFORMED. AFTER THE WOMEN ARRIVED IN JAPAN, THEY HAD NO CONTROL OVER THE TERMS OR CONDITIONS OF THEIR EMPLOYMENT. A WOMAN’S INITIAL DEBT WAS TYPICALLY BASED ON THE “PRICE” NEGOTIATED BY HER BROKER AND EMPLOYER, AND HER EMPLOYER THEN ENJOYED FULL CONTROL OVER HER WORKING CONDITIONS AND DEBT REPAYMENT CALCULATIONS. IN ADDITION, MANY OF THE WOMEN WE INTERVIEWED INDICATED THAT THE VALUE OF THEIR LABOR WAS NOT “REASONABLY ASSESSED” AND “APPLIED TOWARDS THE LIQUIDATION OF THE DEBT.” RATHER, EMPLOYERS AUGMENTED DEBTS WITH ARBITRARY EXPENSES, FINES, AND DISHONEST ACCOUNT KEEPING, AND EVEN MAINTAINED THE POWER TO “RESELL” WOMEN INTO HIGHER LEVELS OF DEBT BEFORE THEIR INITIAL DEBT WAS PAID OFF.

¹¹¹ Ratified by Japan on November 21, 1932 and by Thailand on February 26, 1969. Note also that in Japan, “in the field of labor law, it is generally accepted that the ratified conventions of the ILO have legal effect at national level. . . . In several cases, including a few Supreme Court decisions, the Courts have declared or implied that a legislative provision which contravenes one of the ILO conventions is null and void.” (Dr. R. Blanpain [ed.], *International Encyclopedia for Labor Law and Industrial Relations*, vol. 7, p.52).

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HUMAN RIGHTS WATCH ALSO DOCUMENTED A NUMBER OF OTHER COERCIVE TACTICS THAT WERE USED TO CONTROL WOMEN DURING THEIR TRAVEL, JOB PLACEMENT, AND EMPLOYMENT. THESE INCLUDED THE THREAT AND USE OF PHYSICAL HARM AGAINST THE WOMEN AND/OR THEIR FAMILY MEMBERS, STRICTLY ENFORCED RULES AGAINST GOING OUTSIDE WITHOUT PERMISSION AND AN ESCORT, AND OTHER FORMS OF INTIMIDATION AND ISOLATION. WHEN AGENTS, BROKERS, AND EMPLOYERS USED SUCH TACTICS TO EXTRACT LABOR OR TO PLACE WOMEN INTO A STATE OF SERVITUDE, THEY ACTED IN VIOLATION OF THE PROHIBITIONS AGAINST FORCED OR COMPULSORY LABOR, PRACTICES SIMILAR TO SLAVERY, AND SERVITUDE. MANY OF THESE TACTICS THREATEN TO VIOLATE OTHER PROTECTED RIGHTS AS WELL, SUCH AS THE WOMEN'S RIGHT TO LIFE; TO FREEDOM FROM CRUEL, INHUMAN OR DEGRADING TREATMENT; TO LIBERTY AND SECURITY OF PERSON; AND TO FREEDOM OF MOVEMENT AND FREEDOM TO CHOOSE HER RESIDENCE.¹¹²

¹¹² ICCPR, Articles 6(1), 7, 9(1), 12(1).

THERE IS ALSO A COMPONENT OF SEX DISCRIMINATION IN THE ACTS OF VIOLENCE INFLICTED ON TRAFFICKED WOMEN. IN 1992, THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF VIOLENCE AGAINST WOMEN (CEDAW), ESTABLISHED TO MONITOR COMPLIANCE WITH THE WOMEN'S CONVENTION, EXPLAINED THAT THE GENERAL PROHIBITION AGAINST GENDER DISCRIMINATION "INCLUDES GENDER-BASED VIOLENCE—THAT IS, VIOLENCE WHICH IS DIRECTED AGAINST A WOMAN BECAUSE SHE IS A WOMAN OR WHICH AFFECTS WOMEN DISPROPORTIONATELY. IT INCLUDES ACTS WHICH INFLICT PHYSICAL, MENTAL, OR SEXUAL HARM OR SUFFERING, THREATS OF SUCH ACTS, COERCION OR OTHER DEPRIVATIONS OF LIBERTY."¹¹³ THE COMMITTEE ALSO NOTED: "STATES MAY ALSO BE RESPONSIBLE FOR PRIVATE ACTS IF THEY FAIL TO ACT WITH DUE DILIGENCE TO PREVENT VIOLATIONS OF RIGHTS OR TO INVESTIGATE AND PUNISH ACTS OF VIOLENCE, AND TO PROVIDE COMPENSATION."¹¹⁴

Labor rights violations

HUMAN RIGHTS WATCH ALSO DOCUMENTED VIOLATIONS OF WOMEN'S LABOR RIGHTS IN JAPAN THAT WERE THE DIRECT RESULT OF TRAFFICKING. THESE ABUSES CONSTITUTE VIOLATIONS OF BOTH JAPANESE DOMESTIC LEGISLATION (SEE THE "JAPANESE GOVERNMENT RESPONSE" CHAPTER FOR A DISCUSSION OF JAPANESE LABOR LAWS) AND INTERNATIONAL HUMAN RIGHTS LAW. TO PROVIDE ADEQUATE REDRESS FOR TRAFFICKED PERSONS AND TO DETER FURTHER VIOLATIONS, JAPAN MUST TAKE THE STEPS NECESSARY TO PREVENT THESE ABUSES, PUNISH OFFENDERS, AND COMPENSATE VICTIMS. THE THAI GOVERNMENT SHOULD ALSO ADOPT MEASURES AIMED TO PROTECT ITS NATIONALS FROM LABOR RIGHTS ABUSES BOTH AT HOME AND ABROAD AND TO FACILITATE THAI WOMEN'S ABILITY TO SEEK COMPENSATION FOR LABOR RIGHTS VIOLATIONS SUFFERED IN JAPAN.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) RECOGNIZES THE RIGHT TO FAIR WAGES, REASONABLY LIMITED WORKING HOURS, AND REST DAYS.¹¹⁵ IN VIOLATION OF THESE

¹¹³ Committee on the Elimination of All Forms of Violence Against Women, "Violence Against Women," General Recommendation No. 19 (eleventh session, 1992), U.N. Document CEDAW/C/1992/L.1/Add.15.

¹¹⁴ Ibid.

¹¹⁵ Article 7(a)(d). Ratified by JAPAN ON JUNE 21, 1979. ACCEDED TO BY THAILAND ON SEPTEMBER 5, 1999.

NOTE THAT PERSONS UNDER THE AGE OF EIGHTEEN YEARS OLD ARE ALSO ENTITLED TO FURTHER LABOR PROTECTIONS

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STANDARDS, THE WOMEN WE INTERVIEWED WERE GIVEN NO COMPENSATION AT ALL FOR MONTHS OR LONGER, WHILE THEY WORKED EXCESSIVELY LONG HOURS—WITHOUT DAYS OFF FOR REST OR, IN SOME CASES, EVEN ILLNESS—to PAY OFF ILLEGAL AND ARBITRARILY INFLATED “DEBTS.” THE ICESCR ALSO PROVIDES THAT ALL WORKERS HAVE A RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS.¹¹⁶ DESPITE THIS GUARANTEE, WOMEN REPORTED THAT THEIR SAFETY AND HEALTH WERE JEOPARDIZED BY EMPLOYERS WHO LIMITED AND, IN SOME CASES, DENIED THEM ACCESS TO HEALTH SERVICES AND MEDICATION; COMPELLED THEM TO ACCEPT PHYSICALLY ABUSIVE CLIENTS; AND COERCED THEM INTO PERFORMING SEXUAL SERVICES WITHOUT CONDOMS, EXPOSING THEM TO THE RISK OF CONTRACTING HIV AND OTHER SEXUALLY TRANSMITTED DISEASES.

UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD (see Articles 32 and 34), RATIFIED BY JAPAN ON APRIL 22, 1994 AND ACCEDDED TO BY THAILAND ON MARCH 27, 1992.

¹¹⁶ Article 7(b).

KEPT UNDER CONSTANT SURVEILLANCE AND THREATENED WITH RETALIATION IF THEY TRIED TO ESCAPE, WOMEN FROM THAILAND WORKING IN DEBT BONDAGE IN THE JAPANESE SEX INDUSTRY HAD LITTLE CHOICE BUT TO ACCEPT THESE CONDITIONS. MOREOVER, EVEN WHEN THEY WERE RELEASED FROM DEBT—OR DETAINED BY JAPANESE OFFICIALS—THEY WERE NOT GIVEN ANY OPPORTUNITY TO SEEK REDRESS. AS STATED ABOVE, THE ICCPR REQUIRES THAT STATES GUARANTEE ALL PERSONS EQUAL PROTECTION UNDER THE LAW. CONSEQUENTLY, TRAFFICKED WOMEN MUST HAVE THE SAME ACCESS TO JAPANESE LABOR LAW PROTECTIONS AS ALL OTHER PERSONS IN JAPAN. THOUGH THE WOMEN'S IMMIGRATION STATUS DID NOT PERMIT THEIR EMPLOYMENT UNDER JAPANESE IMMIGRATION LAWS, THIS DOES NOT AFFECT THEIR LABOR RIGHTS VIS-À-VIS THEIR EMPLOYERS—ACCORDING TO EITHER INTERNATIONAL LAW OR JAPANESE DOMESTIC LAW—AND SHOULD NOT HAVE AFFECTED THEIR ABILITY TO SEEK COMPENSATION IN JAPAN FOR WORK THEY HAD DONE.¹¹⁷ IN ADDITION, AS PARTIES TO THE ICESCR, JAPAN AND THAILAND HAVE UNDERTAKEN TO UPHOLD THE RIGHTS PROVIDED UNDER THIS COVENANT WITHOUT DISCRIMINATION BASED ON SEX, NATIONALITY OR OTHER STATUS.¹¹⁸ THE JAPANESE

¹¹⁷ AS NOTED ABOVE, THE LABOR RIGHTS ESTABLISHED UNDER ICESCR APPLY TO ALL, WITHOUT DISCRIMINATION BASED ON NATIONALITY OR OTHER STATUS. AND THOUGH FEW STATES HAVE RATIFIED THE INTERNATIONAL CONVENTIONS THAT DEAL EXPLICITLY WITH THE RIGHTS OF UNDOCUMENTED MIGRANT WORKERS, THESE INSTRUMENTS HAVE EMPHASIZED THE IMPORTANCE OF THIS PRINCIPLE. ILO Convention 143 (the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment) states: "Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits." AND, ACCORDING TO THE MIGRANTS' CONVENTION, WHILE STATES SHOULD TAKE STEPS TO ELIMINATE THE EMPLOYMENT OF MIGRANTS IN AN IRREGULAR SITUATION, "THE RIGHTS OF MIGRANT WORKERS VIS-À-VIS THEIR EMPLOYER ARISING FROM EMPLOYMENT SHALL NOT BE IMPAIRED BY THESE MEASURES." THE JAPANESE GOVERNMENT RECOGNIZES THIS STANDARD IN PRINCIPLE AND DOES NOT MAKE LEGAL DISTINCTIONS REGARDING WORKERS' LABOR RIGHTS BASED ON THEIR IMMIGRATION STATUS, BUT IN PRACTICE, WE FOUND THAT UNDOCUMENTED WOMEN TRAFFICKED FROM THAILAND HAD LITTLE ACCESS TO JAPANESE LABOR RIGHTS PROTECTIONS.

¹¹⁸ Article 2(2): The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 2(3) allows developing countries some discretion with regard to the rights of non-nationals: "[d]eveloping countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." However, this exception does not apply to the highly developed country of Japan.

The nature of states' obligation to guarantee the rights provided under ICESCR was elaborated by the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, (Maastricht, January 22-26, 1997). This document is not binding, but provides good guidance for the implementation of the covenant. According to the Maastricht Guidelines,

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GOVERNMENT'S FAILURE TO PROSECUTE LABOR RIGHTS VIOLATIONS ENDURED BY TRAFFICKED WOMEN ALLOWED EMPLOYERS TO CONTINUE UNJUSTLY TO ENRICH THEMSELVES AND THUS ENCOURAGED THE CONTINUED EXPLOITATION OF THE WOMEN.³⁵⁹

"any discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant" (Article 11).