

# Japan's Border Security Policy to Prevent Trafficking in Persons

— The Impact on Filipino Migrant Women as Potential Victims of Trafficking in Persons —

YONEDA Masumi

## 1. Introduction

Japan signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (hereafter, the Protocol) in December 2002, but has not yet ratified it<sup>1</sup>. Japan established the Inter-Ministerial Liaison Committee (Task Force) for Measures to Combat Trafficking in Persons, consisting of the Cabinet Secretariat, the National Police Agency, the Ministry of Justice, the Ministry of Foreign Affairs, and the Ministry of Health and Labour in April 2004 and the Task Force adopted a National Action Plan for Anti-Trafficking in December 2004. It was revised in

---

1 The reason is that Japan has not yet ratified the United Nations Convention against Transnational Organized Crime. The Government has proposed introduction of a provision stipulating the offence of conspiracy into the Penal Code in order to comply with the Convention. But the Diet has not yet reached an agreement because its introduction may undermine democracy, particularly violate the freedom of thought and expression guaranteed by article 19 and 21 of the Japanese Constitution. The Japan Federation of Bar Associations also expressed opposition to the proposal. On 8 June 2005, the Diet approved the conclusion of the Protocol. The Government explained that after the ratification of the Convention, they would ratify the Protocol as soon as possible. But the prospect is not still promising.

December 2009.

In both of the National Action Plans 2004 and 2009, the Government expresses that it will make all efforts to prevent trafficking in persons (hereafter, TIP). In 2005, it amended the Immigration Control and Refugee Recognition Act<sup>2</sup> and enacted a new article in the Penal Code in order to fight against TIP<sup>3</sup>.

Furthermore, it started stricter checks on the applications of the

---

2 In Article 2 (vii) of the Act, “trafficking in persons” was newly defined according to its definition in the Protocol. And while the Act prohibits a person who has engaged in prostitution, or acting as an intermediary or in solicitation of prostitutes for other persons or provision of a place for prostitution, or any other business directly connected to prostitution from entering in Japan (Article 7. vii), it excluded those who have engaged in these businesses under the control of another due to trafficking in persons from the list and added a person who has committed trafficking in persons or incited or aided such acts on the list (Article 7. vii-2). While Article 24 provides that persons who have committed trafficking in persons or incited or aided such acts (Article 7. iv.c) and a person who engages or has engaged in prostitution, or intermediation or solicitation of prostitutes for others, or provision of a place for prostitution, or any other business directly connected to prostitution may be deported from Japan, it excluded those under the control of another due to trafficking in persons from the list.

Regarding a series of amendment of laws, see “The amendment of Japanese laws and its challenges in the field of anti-trafficking in persons” (YONEDA Masumi, TADA Marie, *CONTEMPORARY LEGAL AND ECONOMIC ISSUES II*, Josip Juraj Strossmayer University of Osijek Faculty of Law Osijek, Croatia, PP.199-210, 2009).

3 It included a new article (article 226-2) into the Penal Code on 22 June 2005. It criminalizes the buying and selling of human beings. The Immigration Control and Refugee Recognition Act was partially amended in which “trafficking in persons” is newly defined according to its definition of the Protocol and the special permission of residence can be given to victims of TIP.

Entertainer visa in 2005. It amended the Ministerial Ordinance to Provide for Criteria Pursuant to Article 7, paragraph (1), item (ii) of the Immigration Control and Refugee Recognition Act<sup>4</sup>. Ministerial Ordinance provided in the section “Entertainer” as follows;

---

4 Article 7, paragraph 1 (ii) of Immigration Control and Refugee Recognition Act provides the following;

Article 7, paragraph (1)

When the application set forth in paragraph (2) of the preceding Article is made, an immigration inspector shall conduct an examination of the said foreign national as to whether or not he or she conforms to each of the following conditions for landing in Japan (With respect to a foreign national who has received re-entry permission pursuant to the provisions of Article 26, paragraph (1) or a refugee travel document pursuant to the provisions of Article 61-2-12, paragraph (1), only the conditions listed in the following items (i) and (iv) are to be applied.).

(ii) The activities stated in the application to be engaged in while in Japan must not be false, and must fall under any of the activities listed in the right-hand column of Appended Table I (activities listed in the right-hand column of item (ii) “Technical Intern Training” of Appended Table I (2) shall be excluded; with respect to the activities listed in the right-hand column of Appended Table I (5) (limited to the part pertaining to d.), the proposed activities must be activities designated by the Minister of Justice in a public notice), or the activities of a person with a status or position listed in the right-hand column of Appended Table II (the position listed in the right-hand column under “Permanent Resident” shall be excluded; with respect to the position listed under “Long-Term Resident,” a proposed position must be a position designated by the Minister of Justice in a public notice), and with respect to those who intend to engage in the activities listed in the right-hand column of Appended Table I (2) and (4) and in the right-hand column of Appended Table I (5) (limited to the part pertaining to b.), the activities shall conform to the conditions provided for by Ordinance of the Ministry of Justice which shall be provided for in consideration of factors including but not limited to the effects on Japanese industry and public welfare.

*(i) In cases where the applicant intends to engage in activities related to entertaining through singing or dancing, or through dramatic, theatrical, musical, or comedic performances (hereinafter referred to as “performances”), he/she must fulfill all of the following requirements, except in the cases prescribed in item (ii).*

*(a) The applicant must fulfill any of the following requirements for the activities in which he/she intends to engage; provided, however, that this shall not apply to cases where the applicant’s total remuneration for entertaining (in the case of a group, the group’s total remuneration for entertaining) amounts to 5 million yen or more per day.*

*1. The applicant who is qualified by a foreign national or local government agency or an equivalent public or private organization.*

*2. The applicant must have spent a minimum of 2 years at an educational institution outside Japan majoring in subjects pertaining to the type of activities in which he/she is to engage.*

*3. The applicant must have a minimum of 2 years’ experience outside Japan in the type of activities in which he/she is to engage.*

But “the applicant who is qualified by a foreign national or local government agency or an equivalent public or private organization” listed in (i) (a)1 was deleted at the end of 2004, in the hope of eradicating the vicious cycle of exploitation as well as of reducing the number of victims of TIP. This was because the Government found that many Filipino women holding Entertainer visas have become victims of TIP. Filipino women who were issued an Entertainer certificate by the Philippines government, were authorized by the Japanese Government to enter Japan. But most of them were not fully capable as entertainers. Promoters sent them into bars called “Filipino

pubs” and they were forced to work on completely different and inferior conditions from those in the employment contract. Filipino entertainers legally entering Japan were granted “Entertainer visas” that were valid for 6 month at most. Mr. FUJIMOTO Nobuki, an expert on the issue of Filipino migrant women in Japan states the following<sup>5</sup>;

*As entertainers, they are listed as singers or dancers who are expected to perform in show business. However, in most cases, they sing and dance on a small stage in pubs for a short period of time. In actual fact they work as bar girls; serving drinks, having conversations, and singing as a Karaoke partner for customers. The bars they work at usually open at dusk and close sometime between midnight and dawn.*

This is why the Japanese Government has started stricter checks on the application of the Entertainer visa since 2005. In this paper, I will take note of this policy and will explore the Japanese Government’s border security policy against TIP through considering its impact of the strict application of Entertainer visas on Filipino migrant women.

## **2. The impact of the strict application of Entertainer visas on Filipino migrant women**

In 2005, the Government started to carry out strict identity checks, especially regarding the application of Entertainer visas and careful examination of young women from source countries that are vulnerable to TIP.

---

5 Nobuki Fujimoto, “Amendment of the Ministry of Justice Ordinance regarding “Entertainer Certificate”” (WOMEN’S ASIA 21 Voices from Japan No.15 Summer 2005, p.14). He is a researcher of Asia-Pacific Human Rights Information Center.

Since reviewing the requirements for Entertainer visas in March 2005 and June 2006 in order to reduce the abuse of the procedures by traffickers, the number of new arrivals to Japan with Entertainer visas has dropped about 89.5% from 82,741 in 2004 to 8,608 in 2006 (see Table 1). The large majority of Entertainers are women. Particularly a large number of Filipino women had entered Japan as Entertainers. But the number of new arrivals of Filipino in 2004 which was 147,817 persons has sharply dropped about 38.1% in 2006 to 91,474 persons.

On the other hand, the number of new arrivals of Filipinos with Japanese spouse visas increased from about 5,000 persons in 2004 to about 8,000

**The number of new arrivals of Filipino (Table 1)**

	Status		
	Total	Entertainer visa	Japanese spouse visa
2004	147,817	82,741	5,038
2005	132,745	47,765	5,530
2006	91,474	8,608	8,257
2007	84,198	5,533	6,602
2008	75,651	3,185	5,133
2009	61,100	1,873	3,308
2010	66,120	1,505	2,384
2011	51,006	1,407	2,395

\* The table is made by this author with reference to "The number of foreign new immigrants with the residence status according to the nationality", 2006-2011 (Japanese only).<sup>5</sup>

6 「国籍（出身地）別在留資格（入国別）外国人新規入国者数」平成18年～平成23年より作表。http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri01\_00013.html

persons in 2006. The statistics disaggregated by gender are not released and I cannot give an exact figure of how many of them are women. But I can say from other sources such as NGOs' analysis based on their experiences, that more than the majority are women.

The number of new arrivals of Filipinos with Japanese spouse visas has exceeded the number with Entertainer visas since 2006. But the number of Filipino women who newly entered Japan with Japanese spouse visa itself has gradually decreased since 2006 because the Government is on its guard against the increase of bogus marriages and strengthened the visa screening system. Particularly, it increased the number of visa officials at Japan's diplomatic establishments overseas in the Philippines and Thailand, and conducted more detailed individual interviews to prevent TIP since 2009 in accordance with the National Action Plan 2009.

Then, how about the number of new arrivals of Filipinos with other status of residence? Out of the status of residences other than those with the Entertainer Visa and Japanese Spouse Visa, the number of new arrivals with Short Term Residence (particularly Visiting Relatives and Tourist), Trainee and Long Term Residence are comparatively large. The data is shown below.

From table 2, we find that the number of visas for Visiting Relatives increased in 2005. But this number sharply decreased since 2007 (The data in 2006 is not released). This decrease also shows that the strengthening of the visa screening system has taken effect.

The total number of new arrivals of Filipinos decreased from 147,817 in 2004 to 51,006 in 2011 (see Table 1). That means that the total number has decreased to about 1/3 in seven years. It shows that the door was shut to their inflow.

When we look at the case of Filipino women, did the number of victims of

**The number of new arrivals of Filipino (Table 2)**

	Total of Short Term Residence	Visiting Relatives	Tourist	Trainee	Long Term Residence
2004	51,617	25,055	10,291	3,625	2,983
2005	63,285	40,281	10,457	4,311	3,109
2006	63,171	—	—	4,971	3,410
2007	53,981	27,336	11,140	5,483	4,068
2008	54,678	20,768	15,191	5,678	3,811
2009	45,320	15,478	15,991	4,726	2,854
2010	62,858	15,638	22,085	3,211	2,195
2011	37,407	13,966	10,099	775	2,184

\* "Short Term residence" is comprised of "Tourist", "Business", "Culture Arts and Sciences Activity", "Visiting Relatives" and "Others". The table is made by this author with reference to "The number of foreign new immigrants with the residence status according to the nationality", 2006-2011 (Japanese only).

TIP decrease? We have three kinds of statistics of the victims, the number of victims given protection by National Police Agency (Table 3), the number of victims given protection by the Immigration Bureau (Table 4) and the number of victims given protection at Women's Protection Facilities (Table 5). The victims identified are all women. The numbers include overlap, and the accurate number of victims is not released except for 2011 (Ministry of Foreign Affairs published that the number of TIP victims Japan has given protection was 45.)<sup>7</sup>. But we can find that the total number of victims is decreasing and the number of victims of Filipino women is also decreasing although the most victims are Filipino women. The number of victims with Entertainer visas was large until 2007 and it is decreasing since 2008 (see Table 5).

---

7 <http://www.mofa.go.jp/mofai/gaiko/jinsin/>



**The number of identified trafficking cases and victims protected by National Police Agency (Table 3)**

Year	2004	2005	2006	2007	2008	2009	2010	2011	Total
The Number of Case	79	81	72	40	36	28	19	25	380
The Number of Arrested Persons	58	83	78	41	33	24	24	32	373
The Number of Victims	77	117	58	43	36	17	37	25	470
Philippines	13	40	30	22	7	4	24	3	143
Thailand	48	21	3	4	18	8		12	114
Indonesia		44	14	11					69
Romania		4							4
Taiwan	5	4	10		5	1		1	26
Korea	3	1	1	5			1		11
Australia		1							1
Estonia		1							1
Colombia	5	1							6
Russia	2								2
Laos	1								1
China						1			1
Japan				1			12	4	17
China (Hong Kong)						2			2
Bangladesh						1			1

Source: National Policy Agency (Japanese only)

Japan's Border Security Policy to Prevent Trafficking in Persons

**The number of identified trafficking victims protected by the Immigration Bureau (Table 4)**

	2005		2006		2007	
	D	U	D	U	D	U
Philippines	25	22	19	10	21	1
Thailand	0	17	1	2	0	5
Taiwan	0	0	0	0	0	0
Korea	0	0	0	1	2	0
Bangladesh	0	0	0	0	0	0
China	2	0	0	0	0	0
Indonesia	37	4	0	14	4	7
Colombia	0	4	0	0	0	0
Rumania	4	0	0	0	0	0
Total	68	47	20	27	27	13

	2008		2009		2010		2011		Total
	D	U	D	U	D	U	D	U	
Philippines	4	2	4	2	26	4	4	9	153
Thailand	5	13	5	13	0	1	2	6	70
Taiwan	2	1	2	0	0	0	0	0	5
Korea	0	0	0	1	1	0	0	0	5
Bangladesh	0	1	0	1	0	0	0	0	2
China	0	0	0	1	0	1	0	0	4
Indonesia	0	0	0	0	0	0	0	0	66
Colombia	0	0	0	0	0	0	0	0	4
Rumania	0	0	0	0	0	0	0	0	4
Total	11	17	11	18	27	6	6	15	313

D = Documented Residence U = Undocumented Residence

Japan's Border Security Policy to Prevent Trafficking in Persons

**The details of Table 4 (Table 5)**

	2005		2006					2007					2008					
	D	U	D		U			D			U		D				U	
	E	—	T	E	IE	T	S	T	E	S	IE	IS*1	T	E	S	DA	IE	IS*2
	68	47	2	18	20	6	1	4	22	1	5	8	4	3	3	1	10	7
Total	68	47	20		27			27			13		8				17	

	2009					2010						2011				
	D				U	D				U		D		U		
	T	S	E	DA	IE	IS*3	T	S	E	L	IE	IS*4	T	S	IE	IS*5
	4	3	3	1	10	7	1	11	5	6	5	1	3	3	1	14
Total	11				17		23				6		6		15	

\* The table was made by this author with reference to data published by the Immigration Bureau.

T = Temporary Visitor, S = Spouse of Japanese National, E = Entertainer  
DA = Designated Activities, IE = Illegal Entry, IS = Illegal Stay

\*1 : 8 persons exceeded the period permitted for temporary visitor and became illegal residents.

\*2 : 7 persons exceeded the period permitted for temporary visitor and became illegal residents.

\*3 : 7 persons exceeded the period permitted for temporary visitor and became illegal residents.

\*4 : 1 person exceeded the period permitted for temporary visitor and became illegal residents.

\*5 : Out of 14 Illegal Stay, 10 persons exceeded the period permitted for temporary visitor and became illegal residents. 4 persons exceeded the period permitted for Entertainer and became illegal residents.

**The number of identified victims protected at Women's Protection Facilities (Table 6)**

	2005	2006	2007	2008	2009	2010	2011	Total
Philippines	64	12	19	11	7	25	11	149
Thailand	4	4	5	22	4	3	10	52
Taiwan	6	2	2	3	1	0	0	14
Korea	1	1	5	0	0	1	0	8
Bangladesh	0	17	0	1	0	0	0	18
China	2	0	0	2	2	0	1	7
Indonesia	40	0	4	0	0	0	13	57
Rumania	0	0	1	0	0	0	0	1
Japanese	0	0	0	0	0	4	0	4
Total	117	36	36	39	14	33	35	310

**The number of marriage and divorces of couples of a Japanese husband and a Filipino women wife (Table 7)**

	Marriage	Divorce
2005	10,242	3,485
2006	12,150	4,065
2007	9,217	4,625
2008	7,290	4,782
2009	5,750	4,714
2010	5,210	4,630
2011	4,297	4,216

Source: Vital Statistics 2011<sup>8</sup>

8 <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001099729>

Table 7 shows the number of marriages and divorces of couples of Japanese husbands and Filipino wives from 2005 to 2011. The number of marriages is decreasing since 2007. This decrease also shows that strengthening of the visa screening system has taken effect. On the other hand, the number of divorces gradually increased until 2008. After peaking in 2008, it gradually decreased. But from 2009 to 2011, the speed of the decrease in number of divorces is slower than that of marriages. Therefore, it may be said that the number of divorces increased relative to marriages.

From these statistics, I conclude that the stricter checks on the applications of Entertainer visas caused the decreasing of the inflow itself of Filipino women while it never caused the increase in marriages with Japanese men. But I must examine further, whether TIP by means of bogus marriages is increasing because the increase in the number of divorces may suggest the possibility of the increase in number of bogus marriages. In the case of TIP by means of bogus marriages, a Japanese man who was asked to enter into a bogus marriage with a Filipino woman often divorce repeatedly several times.

### **3. The increase in the number of bogus marriages and invisibility of TIP victims of Filipino women**

The statistics on the number of Filipinos arrested for bogus marriages has been released since 2009. It shows that the number increased from 25 Filipino women in 2009 to 54 in 2010 and decreased to 44 in 2011. In 2008, the Cabinet Secretariat reported the progress made in the anti-TIP policy and said that the Metropolitan Police Department and the Tokyo Immigration Bureau were promoting cooperation reinforcement to carry out more thorough control of people applying for apparently legal stay including bogus marriages. The Government is aware of the increase in bogus marriages, but is reluctant to

provide protection of TIP victims who arrived through bogus marriages.

According to the newspaper<sup>9</sup>, a Filipino woman (23 years old) was arrested and prosecuted for false entry. She held an original of the electromagnetic notarized deed<sup>10</sup> in March 2011. She worked as a hostess in her hometown and earned monthly 20,000 yen, the average of monthly salary in Philippines. One day, a broker recruited her to work in Japan, and she married a Japanese man under false pretense. She entered Japan in March 2010 on the condition that she could earn 80,000 yen per a month and the period of the contract was 2 years. But her passport was taken away and she was required to pay 4 million yen for the bogus marriage expense. A further 150,000 yen was deducted from her salary, 200,000 yen under the name of debt repayment, and she received only 50,000 yen per month. She said that she wanted to work in Japan to support her family.

The broker had proposed a bogus marriage to about ten Filipino women under similar disguise, and he charged them with a large debt at the stage of entering Japan and made them return to their country after he made them work for a low salary for some years. He was also arrested and prosecuted for the same offense as the arrested woman. A detective commented that the actual situation of their sufferings is becoming invisible because the salary in

---

9 Kobe Shimbun, dated 16th April 2012.

10 The bogus marriage violates article 157 of the Penal Code.  
Article 157(1) provides the following:

A person, who makes a false statement before a public officer and thereby causes the official to make a false entry in the original of a notarized deed, such as the registry or family registry, relating to rights or duties or to create a false record on the electromagnetic record to be used as the original of a notarized deed relating to rights or duties, shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 500,000 yen.

Japan is much higher than that in their country even though they are exploited.

It should be noted that not only the other approximately ten Filipino women but also the arrested woman was not identified as a TIP victim because she was reportedly prosecuted. If the police or the immigration bureau finds a victim, they return her to her country with the cooperation with IOM. Even if her stay was illegal or she had entered Japan with a false passport, she will not be prosecuted. It is the reason that the court will convict her because she is in violation of law such as the Immigration Control and Refugee Recognition Act if she is prosecuted. This runs counter to victim protection. Therefore a victim is not generally prosecuted<sup>11</sup>.

The National Plan 2009 also provides that when a victim of trafficking in persons has committed a crime that was part of such trafficking, the investigative organizations will make efforts to thoroughly consider the situation of the victim while looking at future investigation activities and that in order to prioritize the protection of victims, the Government will thoroughly consider their situation and ensure the stability of their legal status according to their wishes and that if victims are violating the Immigration Control Act by illegally staying in the country, etc., it may grant them special permission to stay. Moreover, the Task Force adopted an agreement titled “the handling method (measures about the recognition of the victim) of TIP case” on 23 Jun 2010. It quotes article 3 of the Protocol and provides that not only the act to

---

11 The Code of Criminal Procedure provides that prosecution shall be instituted by a public prosecutor (article 247) and that the prosecutor can decide not to prosecute him or her, where prosecution is deemed unnecessary owing to the character, age, environment, gravity of the offense, circumstances or situation after the offense (article 248). According to Ms. YOSHIDA Yoko, a lawyer and one of co-representatives of JNATIP reports that there is one case in which a victim entered Japan with a false passport was prosecuted and convicted.

which the offense of buying or selling of human beings stipulated in article 226-2 of the Penal Code is applied, a wider act comes under TIP.

Article 226-2 provides as follows;

- (1) *A person who buys another shall be punished by imprisonment with work for not less than 3 months but not more than 5 years.*
- (2) *A person who buys a minor shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.*
- (3) *A person who buys another for the purpose of profit, indecency, marriage or threat to the life or body, shall be punished by imprisonment with work for not less than 1 year but not more than 10 years.*
- (4) *The preceding paragraph shall apply to a person who sells another.*
- (5) *A person who sells or buys another for the purpose of transporting him/her from one country to another country shall be punished by imprisonment with work for not less than 2 years.*

However, it actually identifies them as victims only when they were found to be under the control of others and the control over them was transferred from one person to another person. It understands the buying and selling of human beings as a transfer of control over a person with value. The court also supports such an understanding. For example Tokyo high court reversed the judgment of Tokyo district court and declared the accused not guilty on 13 July 2000.<sup>12</sup> It interpreted the terms 'selling another' as follows;

'Selling another' stipulated in article 226-2 paragraph 4 in the Penal Code is to actually hand over the unlawful 'control' over a person to a buyer with value. Therefore, it is firstly required that a seller put a victim under his or her

---

12 事件番号平21(う)992号



control. And in order to say that he or she put a victim under his or her control, it is required that a seller influences a victim physically or mentally. In order to say so, it is required that a seller put a victim under the circumstance in which he or she can control a victim's mind and that a victim finds it difficult to escape from the control although it does not need to put a victim under control perfectly.

Finally it said that the alleged victims could freely act while the accused watched them and that they did not try to escape<sup>13</sup>. In the case the newspaper reported, she also did not try to escape because she wanted to work. Therefore, she would not be identified as a victim although she was taken away her passport and suffered labour exploitation. Such an understanding is not consistent with the definition of TIP under the Protocol<sup>14</sup>. According to article 3

---

13 The court recognized that they freely opened the refrigerator and drank some bears and coaxed him to give them a cigarette and got a prepaid card for an international call from him and made a telephone call to their country while the accused watched them.

14 Article 3 (a) and (b) of the Protocol provides the following:

*(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*

*Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery, servitude or the removal organs;*

*(b) The consent of a victims of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*

Article 5(1) of the Protocol provides the following:

(b) of the Protocol, the fact that she did not try to escape and continued to work is not irrelevant. If a broker transfers her or an owner of a pub received her by means of fraud for the purpose of exploitation, he or she shall be punished for an offense against TIP according to article 5.

The case is just the tip of an iceberg<sup>15</sup>. It is true that the number of Filipino migrant women entered into Japan has decreased dramatically since the Government started to carry out strict identity checks, especially for the application of Entertainer visas in 2005. But unless the demand for Filipino women as hostess decreases, the Government will not be able to effectively prevent them from TIP because traffickers will be able to find more sophisticated tricks. However, can we really reduce the demand? We can easily find a lot of bars whose selling point are foreign hostesses. The police seem to tacitly allow them.

#### 4. Conclusion

Foreigners can enter Japan and stay here with a status of residence. Under the Immigration Control and Refugee Recognition Act, there are 27 kinds of status of residence. They are Diplomat, Official, Professor, Artist, Religious Activity, Journalist, Investor/Business Manager, Legal/Accounting Services, Medical Services, Researcher, Instructor, Engineer, Specialist in

---

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.*

- 15 The National Police Agency reports similar cases as a typical example of the bogus marriage (「来日外国人犯罪の検挙状況」(H22 確定値), p.18 及び<sup>8</sup> (H23 確定値)、p.15), “The report on crimes committed by foreigners in Japan who were arrested in 2000 and 2001”. [www.npa.go.jp/sosikihanzai/kokusaisousa/.../H22\\_rainichi.pdf](http://www.npa.go.jp/sosikihanzai/kokusaisousa/.../H22_rainichi.pdf), [www.npa.go.jp/sosikihanzai/kokusaisousa/.../H23\\_rainichi.pdf](http://www.npa.go.jp/sosikihanzai/kokusaisousa/.../H23_rainichi.pdf) (Japanese only)

Humanities/International Services, Intra-company Transferee, Entertainer, Skilled Labor, Technical Intern Training, Cultural Activities, Temporary Visitor, Student, Trainee, Dependent, Designated Activities, Permanent Resident, Spouse or Child of a Japanese, Spouse or Child of Permanent Resident and Long-Term Resident.

The statistics disaggregated by gender are not released and I cannot give an exact figure of how many of them are women. But most of potential TIP victims are included in Entertainer, Temporary Visitor, Spouse of a Japanese (see Table 5). The number of people illegally overstaying was approximately 92,000 at the time of January 1, 2010 and has since been declining consistently. Taking a look at this number by nationality, the Republic of Korea accounted for 23.6% of the total with 21,660, followed by China with 12,933 nationals (14.1%), the Philippines with 12,842 nationals (14.0%) and others. Looking at the statuses of residence just before illegally overstaying, the status of residence of Temporary Visitor for 63,169 foreign nationals (68.8%) accounted for the most<sup>16</sup>.

The 4th Basic Plan for Immigration Control was formulated in 2010. It points out that concerns are growing over increasing instances of illegal stay under the guise of legal residency, in which foreign nationals fraudulently get residence permits on the grounds such as being spouses or students. And it says that a considerable number of illegal foreign residents are continuing to hide in Japan and that, in order to maintain the law and order of Japanese society and to proceed more actively with the appropriate acceptance of foreign nationals, the following measures will be taken to further reduce the number of illegal foreign residents through the promotion of measures against

---

16 Basic Plan for Immigration Control, the 4th edition, pp.15-16.

[http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan\\_nyukan40.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan40.html)

illegal residents such as measures at the border for strict immigration inspections and flexible detection, and that in addition, with regard to recent concern about the increase in the number of false residents working illegally in Japan under the guise of legitimate residency by falsifying their status or activities through fake marriages and fake study, the Government will be exposing the reality of the situation and reinforcing countermeasures<sup>17</sup>. In order to expose the reality of the situation and take effective measures to protect TIP victims, the statistics disaggregated by gender is indispensable.

Moreover, the Economic Partnership Agreement (EPA) between Japan

**The number of new arrivals of Filipino by status of residence in 2011 (Table 8)**

Total	Diplomat Official	Professor	Artist	Religious Activity	Journalist	Investor/ Business Manager	Legal/ Accounting Services
51,006	803	26	0	29	0	5	0
Medical Services	Researcher	Instructor	Engineer	Specialist in Humanities/ International Services	Intra-company Transferee	Entertainer	Skilled Labor
0	7	22	354	91	641	1,407	53
Technical Intern Training 1号イ	Technical Intern Training 1号ロ	Technical Intern Training 2号イ	Technical Intern Training 2号ロ	Cultural Activities	Temporary Visitor	Student	Trainee
571	3,184	0	0	15	37,407	285	775
Dependent	Designated Activities	Spouse or Child of a Japanese	Spouse or Child of Permanent Resident	Long-Term Resident			
345	221	2,395	186	2,184			

17 Ibid., p29.

and Philippines has also come into effect since 2008 and Japan has accepted more than 1,300 candidates for nurses and care workers from the fiscal year 2009 to the fiscal year 2012. The candidates are required to have experience as a nurse for 3 years (candidates for nurses) and have graduated a university, and been authorized as care workers by the Government of Philippines, or have graduated a nursing school (candidates for care workers). After entering Japan, they must undergo training of Japanese language and of nursing or care working and finally they must pass the national examination for nurses or care workers. The candidates for nurses are permitted to stay in Japan for 3 years and for care workers for 4 years. The examination is in Japanese and the same examination that other Japanese candidates take. The examination is very difficult, 1,149 applicants (including Indonesian) took it and 66 passed by 2011. 415 took it and 47 passed in 2012. The success rate is 11.3%. The number of successful applicants in 2011 was 16 (the pass rate is 4%).

In this way, Japan accepts only high skilled foreigners or experts having their special field and unskilled foreigners have no chance to work in Japan, and they often become the prey of traffickers. Women comprise the majority of them. What categories and how many foreign workers Japan accepts is the matter that falls within the national jurisdiction for which Japan can freely decide. In principle, Japan will not accept unskilled foreign workers officially at least for some time although actually Japan accepts many unskilled workers as “trainees” or “technical intern trainings”<sup>18</sup>. But there are no authorized “trainee” positions for hostesses.

As mentioned before, in Japan there is a great demand for sex-related

---

18 Not so many Filipinos enter Japan as a trainee (Table 2). It should be also noted that NGOs and TIP Reports issued by USA criticize that the “Trainee” system of Japan is used as a cover for TIP for the purpose of labour exploitation.

industry including bars and pubs where hostesses service customers. Some customers like foreign women, especially Filipino women. Unless the Government works out a resolute policy to decrease the demand, it will remain a cat-and-mouse game.

Although the border security policy against TIP should strengthen, the Government should appropriately find victims of TIP and protect them. It should be noted that the Task Force adopted another agreement titled “the handling method (measures about the protection of the victim) of TIP case” on 1st July 2011. It says that recently the trick of TIP becomes more sophisticated and invisible, giving an example that brokers have a victim marry a Japanese in disguise. And it says that when a TIP victim has committed a crime that was part of such trafficking, the investigative organizations should make efforts to thoroughly consider the situation of the victim while looking at future investigation activities. The Government should make this agreement known to everybody in the investigative organizations.

Once undocumented foreigners including those with bogus marriage enter Japan, the Government has an obligation to protect them from all forms of violation of their human rights including trafficking in persons because Japan is a State Party of main international human rights treaties. For example, article 8 of International Covenant on Civil and Political Rights provides that no one shall be held in slavery and that slavery and the slave-trade in all their forms shall be prohibited and that no one shall be held in servitude. The Human Rights Committee adopted the concluding observations of Japan in 2008 after it considered the 5th periodic report of Japan. It says as follows<sup>19</sup>,

*The Committee is concerned about the lack of statistical data on the*

---

19 CCPR/C/JPN/CO/5, para. 23.

*(estimated) number of persons trafficked to and in transit through the State party, the low number of prison sentences imposed on perpetrators of trafficking-related crimes, the decreasing number of trafficking victims protected in public and private shelters, the lack of comprehensive support for victims, including interpretation services, medical care, counselling, legal support for claiming unpaid wages or compensation and long-term support for rehabilitation, and the fact that special permission to stay is only granted for the period necessary to convict perpetrators and that it is not granted to all victims of trafficking (art. 8).*

*The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through its territory, review its sentencing policy for perpetrators of trafficking-related crimes, support private shelters offering protection to victims, strengthen victim assistance by ensuring interpretation, medical care, counselling, legal support for claiming unpaid wages and compensation, long-term support for rehabilitation and stability of legal status to all victims of trafficking.*

It should be also noted that Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The Committee on the Elimination of Discrimination against Women adopted the concluding observations of Japan in 2009 after it considered the 6th periodic report of Japan. It says as follows<sup>20</sup>;

*While welcoming the efforts undertaken by the State party to combat human trafficking, such as its establishment of the Anonymous Reporting Model Project, the Committee remains concerned about the persistence of trafficking in*

---

20 CEDAW/C/JPN/CO/6, paras. 39-40.

*women and girls, the exploitation of prostitution, and the lack of measures aimed at rehabilitating women victims of trafficking. While noting with satisfaction the sharp decrease in the granting of entertainment visas, the Committee is concerned at information suggesting that internship and trainee programmes could be used for the purposes of forced labour and sexual exploitation. The Committee is further concerned that prostitutes are subject to prosecution under the Anti-Prostitution Law, while their clients do not face punishment.*

*The Committee requests the State party to take further measures to protect and support victims of trafficking and address the root cause of trafficking by increasing its efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as to take measures for the rehabilitation and social integration of women and girls who are victims of exploitation of prostitution and trafficking. The Committee calls on the State party to take appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution. It also urges the State party to take measures to facilitate the reintegration of prostitutes into society and provide rehabilitation and economic empowerment programmes for women and girls exploited in prostitution. The Committee requests the State party to continue to monitor the issuance of visas for internship and trainee programmes closely. The Committee calls upon the State party to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.*

The strict application of Entertainer visas was effective to decrease the inflow of unskilled Filipino women. Next step is to find a victim and to suitably treat her as a victim. Particularly, when a TIP victim has committed a crime, it is very important to consider whether it was part of such trafficking or not.



## 人身取引を防止するための日本の国境警備政策 — 潜在的被害者としてのフィリピン移住女性への影響 —

米 田 眞 澄

日本は2004年から人身取引対策を開始しているが、「興行ビザ」を取得して入国した外国人、とりわけフィリピン女性が人身取引の被害にあっていることが問題となり、2006年6月1日より「興行ビザ」に関する基準省令が改正され、「興行ビザ」を取得するための基準が厳格化された。これによって、フィリピン女性の新規入国数は激減した。

しかし、近年では、フィリピン女性は、日本人男性との偽装結婚により入国し、入国前に聞いたものとは全く異なる劣悪な労働条件の下で、フィリピンパブなどで働かされる傾向にある。この場合、女性は、電磁的公正証書原本不実記載の罪の容疑で逮捕されるが、人身取引の被害者として認定されずに、後に検察官によって起訴されている。

彼女たちが人身取引の被害者として認定されないのは、彼女たちが、ブローカーまたはフィリピンパブの雇用主によって不法な支配下に置かれていたとまではみなされないからである。ここでいう「不法な支配下」とは、被害者に対し物理的又は心理的な影響を及ぼし、その意思を左右できる状態に被害者を置き、自己の影響下から離脱することを困難にさせることを言うというのが裁判所の判断である。また、被害者が、そのような支配下にあったか否かは、被害者の行動の自由が制約されていたか、被害者は逃げたい、あるいは逃げようとしたが逃げられない状態にあったかが大きなポイントとなる。

来日したフィリピン女性たちは、日本で働くことを望んでいるため、来日前に聞いていた労働条件よりも悪い労働条件であっても、その場から逃げずに、がまんして働くのが実情である。しかしながら、人身取引防止議定書は、被害者が搾取に合意していたか否かにかかわらず、搾取を目的に、詐欺や欺罔といった手段によって人を移送したり、受け取ったりすれば、人身取引として処罰するように締約国に義務づけている。したがって、日本の被害者認定は、議定書に沿っているとはいえない。日本は、人身取引の被害者の発見と適切な保護を行うようにしなければならない。

日本は、未熟練の外国人労働者は受け入れないというのが基本政策であるが、実際は、「研修」「技能実習」といった合法的形態で、多くの未熟練外国人労働者を受け入れている。しかしながら、ホステスとしての受け入れは、いかなる形でも認めていない。日本は、今後、偽装結婚の取り締まりを強化していこうだろうが、外国人ホステスの需要は依然として高いため、人身取引を行うブローカー等は、必ず抜け道を見つけ、あらたな手口を発明するだろう。

人身取引防止のために国境警備を強化することは必要であるが、いったん非正規外国人労働者が日本に入国したならば、彼ら、彼女らが人身取引の被害にあわないように保護する義務が日本にはある。日本が締結している主要な国際人権条約（たとえば、自由権規約第8条、女性差別撤廃条約第6条）は、日本に人身取引の被害者を適切に保護する義務を課している。