

Trafficked? Filipino Hostesses in Tokyo's Nightlife Industry

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INTRODUCTION

After a few months in Tokyo, I became known as *ate*, meaning big sister, to many of the Filipino contract workers whom I met in the course of my research. Most were in their early twenties, but those older than me, including those who had returned to Japan more than ten times as contract workers and who were now in their late thirties, still called me “big sister.” They did so not necessarily out of respect but because they often forgot their real age, as they consistently have to lie—claiming to be no older than twenty-nine years old—to remain desirable and attractive to customers. One afternoon, I paid a visit to Cindy, one of the contract workers, who was soon returning to the Philippines. I went by to drop off the highly desired *pasalubong* (return gift), a box of ramen and packages of chocolate for her to take home to her family in the Philippines. As soon as I arrived in the apartment that she shared with nine other women, Cindy began to share her anxiety over the unlikelihood of her return to Japan and the grim outlook of her jobless future in the Philippines.

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Cindy had only ever worked as a hostess in Japan, but recent changes in visa requirements for foreign entertainers were closing the door to her possible job renewal, causing the denial of many visas for prospective migrants and return migrants like Cindy. She vaguely understood that the changes were forced on Japan by the United States, but for reasons unknown to her. Figuring I would know, she asked, “*Ate*, why is your government making our lives difficult? Is it because they want us to be caregivers?” Recently, the government of Japan had opened its borders to a limited number of Filipino caregivers for the elderly, but I told her that I did not think that the United States was involved with this bilateral agreement between the Philippines and Japan. Responding then to her question about the role of the United States in tightening visa requirements for entertainers in Japan,¹ I said, “I think they are doing it to protect you.” Cindy responded with a puzzled look, perhaps uncertain how denying her reentry could possibly protect her.

Migrant women workers from the Philippines are located around the world and represent one of the largest labor migrant groups in the world today. They are concentrated in three occupations: domestic services, nursing, and entertainment. “Entertainment” work refers to jobs in the nightlife industry, where women work as performers—singers and dancers—as well as hostesses. As this study will show, contrary to common assumptions, most Filipino women engaged in this kind of entertainment work are not employed as prostitutes.² Of the three occupations most commonly held by migrant Filipino women, entertainers are the least studied group,³ perhaps because migration scholars have been deterred by the common assumption of their inaccessibility as persons purportedly enslaved by organized crime groups.⁴ The 2004 and

1. The government of Japan refers to migrants employed in the nightlife industry as entertainers and accordingly grants them an entertainer visa for entry. An entertainer is technically a professional skilled in the performance arts. GOVERNMENT OF JAPAN, A GUIDE TO JAPANESE VISAS, http://www.mofa.go.jp/j_info/visit/visa/appendix1.html (last visited Mar. 20, 2006).

2. See Mike Douglass, *The Singularities of International Migration of Women to Japan: Past, Present, and Future*, in JAPAN AND GLOBAL MIGRATION: FOREIGN WORKERS AND THE ADVENT OF A MULTICULTURAL SOCIETY 91 (Mike Douglass & Glenda S. Roberts eds., 2003); Takeyuki Tsuda & Wayne Cornelius, *Japan: Government Policy, Immigrant Reality*, in CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE 439 (Wayne Cornelius, Takeyuki Tsuda, Phillip Martin & James Hollifield eds., 2004). Both articles claim that hostesses are mostly prostitutes.

3. Only one study has been conducted on entertainers. Eri Fujieda, *Filipino Women's Migration to Japan's Sex Industry: A Case of Transnational Gender Subjection* (May 2001) (unpublished Ph.D. dissertation, University of Illinois, Urbana-Champaign) (on file with author). There are two dissertations on Filipino wives, both of which indirectly address the plight of entertainers. Lieba Faier, *On Being Oyomesan: Filipina Migrants and their Japanese Families in Central Kiso* (Sept. 2003) (unpublished Ph.D. dissertation, University of California, Santa Cruz) (on file with author); Nobue Suzuki, *Battlefields of Affection: Gender, Global Desires and the Politics of Intimacy in Filipina-Japanese Transnational Marriages* (May 2003) (unpublished Ph.D. dissertation, University of Hawaii, Manoa) (on file with author). In contrast, studies abound on care workers. See, e.g., PEI CHIA-LAN, *GLOBAL CINDERELLAS* (2006); CATHERINE CHOY, *EMPIRE OF CARE* (2003); NICOLE CONSTABLE, *MAID TO ORDER IN HONG KONG* (1997); RHACEL SALAZAR PARREÑAS, *SERVANTS OF GLOBALIZATION* (2001).

4. See Douglass, *supra* note 2. The study claims that entertainment work is a euphemism for prostitution. The study also claims that most entertainers are controlled by organized crime syndicates.

2005 *U.S. Trafficking in Persons Reports (TIP Reports)* released by the U.S. Department of State identified Filipino migrant entertainers in Japan as trafficked persons forced into prostitution.⁵ In response to the 2004 *TIP Report*, Japan tightened its borders, raised the professional standards of foreign entertainers, and prohibited the reentry of Filipino entertainers without two years of training in the performance arts outside of Japan.⁶ As a result, many Filipino entertainers found themselves ineligible to reenter Japan, and the numbers of those entering Japan annually have declined drastically, from nearly 80,000 in 2004 to approximately 8,000 in 2005.⁷

Clearly, the identification of Filipino entertainers as trafficked persons curtailed their flow of labor migration, which supports the contention of feminist migration scholars such as Laura Agustín that the mainstream discourse on trafficking is nothing more than a campaign to stop the international migration of women.⁸ In contrast, government officials in both the United States and Japan view the curtailed migration of entertainers positively. Japanese government officials agree with the logic of the *TIP Reports* and view migration curtailment as the protection of women.⁹ These officials believe that the fact that most previous Filipino entertainers do not meet the new visa requirements attests to their lack of professional training in the performance arts, and accordingly, to the likelihood that in the past they did not do entertainment work on stage but instead did hostess work (i.e., entertaining

5. As the 2004 *TIP Report* states:

On arrival at their destination, victims are stripped of their passports and travel documents and forced into situations of sexual exploitation or bonded servitude. . . . For example, it is reported that Japan issued 55,000 entertainer visas to women from the Philippines in 2003, many of whom are suspected of having become trafficked victims.

U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 14 (2004) [hereinafter 2004 TIP REPORT]. The 2005 *TIP Report* likewise states, "A significant number of the 71,084 Philippine women who entered Japan as overseas performance artists in 2004 are believed to have been women trafficked into the sex trade." U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 178 (2005) [hereinafter 2005 TIP REPORT].

6. IMMIGRATION BUREAU, GOVERNMENT OF JAPAN, AMENDMENT OF THE CRITERIA FOR THE LANDING PERMISSION FOR THE STATUS OF RESIDENCE "ENTERTAINER" (2005), available at http://www.immi-moj.go.jp/keiziban/happyou/pdf/e_kougyou.pdf (last visited Mar. 20, 2006).

7. Interview with government official, Philippine Embassy, in Tokyo, Japan (May 23, 2005).

8. Laura M. Agustín, *Challenging Place: Leaving Home for Sex*, 45 DEVELOPMENT 110 (2002).

9. Interview with government officials, Japan Ministry of Justice, in Tokyo, Japan (Nov. 11, 2005). Japan does not allow the labor migration of "unskilled workers." See Tsuda & Cornelius, *supra* note 2.

customers at a table).¹⁰ Doing hostess work is what makes these women “trafficked,” according to Japanese officials.¹¹

However, Filipino migrant entertainers contest the bases of their identification as trafficked persons by the governments of both the United States and Japan. First, they claim not to be forced into prostitution, and second, they enter Japan knowing that they will engage in hostess work and aware of the illegality of such work for foreigners with the residence status of entertainers. In fact, many do not see the push of the United States to curtail their migration as a form of protection but instead as retaliation against the decision of the Philippines to pull out its troops from the war in Iraq in 2004. In this case, the United States is supposedly punishing the Philippines by endangering the flow of foreign remittances from Japan—the Philippines’s fourth largest source of migrant remittances.¹² Whatever the motives of the United States may be, most hostesses do not welcome the new visa requirements that the Japanese government has implemented in response to the *TIP Reports*. For many hostesses, the denial of their (re)entry translates to the denial of their primary—if not only—source of income.

In this Article, I examine the lives of migrant Filipino hostesses in Japan not just to disprove their false association with prostitution but also to examine the politics behind their categorization in the 2004 and 2005 *TIP Reports* as “trafficked victims” forced into prostitution.¹³ Specifically, I address the impact of the U.S. anti-trafficking campaign on migrant Filipino hostesses, as this campaign has directly shaped immigration laws in Japan, funded local anti-trafficking community organizations in Tokyo, and, as noted earlier, curtailed the migration of hostesses. This Article calls attention to the hegemony of the U.S. anti-trafficking campaign over trafficking as a political issue so as to reclaim the use of the term “trafficked” and rid it of its political stigma among feminists¹⁴ and its association with the campaign of “rescue” presented by the

10. An official report of the Government of Japan notes:

It has been recognized that not a few people who have entered Japan with the status of residence as “entertainer,” have become victims of trafficking in persons, in particular those who have entered the Japan having fulfilled the criteria for landing permission by holding a certificate issued by the Government of the Philippines, which testifies that the holder is an artist, but as a matter of fact do not have capability as an artist.

GOVERNMENT OF JAPAN, JAPAN’S ACTION PLAN OF MEASURES TO COMBAT TRAFFICKING IN PERSONS, 13th Economic Forum in Prague, Czech Rep. 4 (May 23-27, 2005), available at http://www.mofa.go.jp/policy/i_crime/people/action.pdf. I thank Ruri Ito for sharing this document with me.

11. Interview with government officials, *supra* note 9.

12. Media Release, Bangko Sentral ng Pilipinas, *OFW Remittances in November Sustains Double-Digit Growth; First Eleven-Months Reach US\$7.7 Billion* (January 14, 2005), <http://www.bsp.gov.ph/publications/media.asp?id=139>.

13. 2004 TIP REPORT, *supra* note 5.

14. In disagreement with the U.S. anti-trafficking campaign’s construction of “trafficked persons” as those who are without agency, advocates of sex and migrant workers who wish not to deny the agency of subjugated migrants have become suspicious of the concept “trafficked persons” and the identification of various groups, particularly migrant sex workers, as “trafficked persons.” See Kamala Kempadoo, *From Moral Panic to Moral Justice: Changing Perspectives on Trafficking*, in

government of the United States. I do this by questioning the top-to-bottom perspective on trafficking imposed by the United States, and by addressing the need to develop grassroots solutions to the problem of trafficking.

This Article is divided into six discussions. I begin, in Part I, with a discussion of my methodology. Part II describes the migration process of hostesses with a vignette of one migrant contract worker whom I call Kay. I use her story as a springboard to explain the labor migration of Filipino hostesses in Japan. Part III then explains, again using the case of Kay, the work conditions of hostesses, which, as I show, do not necessarily entail prostitution. Part IV situates the labor and migration of Filipino hostesses in the mainstream discourse on trafficking espoused by the U.S. Department of State in its annual *TIP Report*. The mainstream view of Filipino migrant hostesses as trafficked persons uses a top-to-bottom perspective that misidentifies the nature of their work. Migrant Filipino contract workers in Japan *are* trafficked, but not for the reasons claimed by the government of the United States.¹⁵

Part V then illustrates the inapplicability of the solution enforced by the United States and implemented by the Japanese government to combat the trafficking of Filipino migrant hostesses. Because it uses a top-to-bottom perspective, this solution does not address the current situation of migrant Filipino contract workers, but actually increases their vulnerability to trafficking. I conclude the Article with a discussion of the feminist critique of the current anti-trafficking discourse and call for feminists to reclaim trafficking from its current usurpation as a political issue by the government of the United States. In so doing, I argue that we need to reject the universal solution imposed by the U.S. government to combat all forms of trafficking, and instead need to develop multiple strategies and action plans to fight trafficking in the twenty-first century.

I. METHODOLOGY

I conducted field research in Tokyo for eight months in 2005. There I met many Filipino migrant hostesses, sixty-one of whom I interviewed. I met them in clubs that I visited frequently as a customer, in churches on Wednesday afternoons or Sundays, in the Filipino restaurants scattered throughout Tokyo at three o'clock in the morning, or, if I was lucky, at three o'clock in the afternoon, and also, but more rarely, on city streets. I arrived in Tokyo in the first week of April intending to pursue a research project on Filipino migrant hostesses. Although I did not have any first-hand knowledge about this

TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS vii (Kamala Kempadoo ed., 2005). For further discussions on the discourse of "anti-trafficking" as an "anti-migrant" and "anti-feminist" campaign, see Agustín, *supra* note 8, and Nandita Sharma, *Travel Agency: A Critique of Anti-Trafficking Campaigns*, 21.3 REFUGEE 53 (2003).

15. 2005 TIP REPORT, *supra* note 5, at 6.

community, I entered Tokyo armed with plenty of negative assumptions fed to me by media and government reports on this much talked about group.¹⁶ Discussions—though empirically unsubstantiated—flared on sensationalism. They were reported to be “trafficked,” “forced prostitutes,” and controlled by organized crime.¹⁷

The lack of solid information on Filipino migrant hostesses fuels this sensationalism. Perhaps deterred by the common assumption of their inaccessibility as trafficked persons “essentially kept as slaves” by organized crime syndicates, migration scholars have yet to conduct field research in Japan about this group of workers.¹⁸ The few studies that document their lives are based on interviews conducted with return migrants in the Philippines.¹⁹ A few dissertations have been written on Filipino brides of Japanese men, a group which includes former hostesses,²⁰ perhaps because there are more brides than hostesses or because they are more accessible to outsiders than hostesses. For instance, they are concentrated in rural areas of Japan and do not all work the night shift.

Overall, very little is known about the migration and settlement of Filipino hostesses in Japan. Considering their large number, the absence in the literature of an empirically-grounded study on Filipino hostesses is surprising. In 2000, there were 144,871 Filipinos in Japan, making them the fourth largest migrant ethnic group in the country.²¹ Until recently, Filipino hostesses constituted the majority, sixty percent, of migrant hostesses in Japan, outnumbering their counterparts from Korea, Russia, Thailand, and China.²² According to the government officials I interviewed, only Koreans and Filipinos were severely impacted by recent changes in immigration policies for foreign entertainers in Japan. They witnessed a drastic decline in their numbers²³ due to the disqualification for reentry of experienced Korean and Filipino entertainers.²⁴

16. See, e.g., Douglass, *supra* note 2; Tony McNicol, *The Show's Over*, JAPAN TIMES, Apr. 26, 2005, available at <http://www.japantimes.co.jp/cgi-bin/fl20050426zg.html>; Norimitsu Onishi, *Japan, Easygoing Till Now, Plans Sex Traffic Crackdown*, N.Y. TIMES, Feb. 16, 2005, at A3; *Costly Crackdown*, JAPAN TIMES, Dec. 7, 2004, available at <http://www.japantimes.co.jp/cgi-bin/fl20041207zg.html>.

17. Douglass, *supra* note 2.

18. *Id.* at 104. Note that Filipino feminist scholars depart from the woman-as-victim view of Filipino workers in Japan as their research establishes that the experiences of women range from those who are “deceived, exploited, and ashamed” to those who are “economically, and sometimes socially, rewarded.” See Fujieda, *supra* note 3, at 17.

19. Fujieda, *supra* note 3.

20. See, e.g., Faier, *supra* note 3; Suzuki, *supra* note 3.

21. Tsuda & Cornelius, *supra* note 2, at 442–43.

22. NANA OISHI, WOMEN IN MOTION 35 (2005).

23. Interview with government officials, *supra* note 9.

24. No specific restrictions were imposed on any country, which makes Filipino promotion agencies confident that the migration stream of entertainers from the Philippines will increase in a few years. Interview with representatives of two promotion agencies, in Manila, Philippines (Aug. 9, 2005). But the number of qualified entertainers has dwindled because experienced entertainers face difficulties

Influenced by sensationalist media reports,²⁵ I entered Japan with the assumption that migrant hostesses maintain intimate sexual relations with customers: I assumed that hostess work was synonymous with prostitution. Previous studies, although not based on grounded empirical data, claimed that hostess work is a euphemism for prostitution.²⁶ However, I soon learned from experience that this was a false assertion. I worked as a hostess for close to three months in a low class bar, which according to anthropologist Anne Allison (who herself had conducted ethnography in a high class bar in Roppongi) would be a place where sex is more likely to occur, where conversations would likely "veer repeatedly into sexual terrain," and where men would "touch or grab the hostesses' bodies, and a hostess may return a touch in kind."²⁷ I chose to work in a "cheap" hostess bar where forced prostitution, if it did occur among migrant Filipino hostesses, would likely take place.

Elaborating on the gradations of intimacy in the hierarchy of hostess bars in Japan, Allison explains that "the more expensive and classy the club, the less the possibility of sex with one of the women; and conversely, the sleazier and cheaper the club, the greater the chance."²⁸ I worked in a Philippine pub, meaning a pub that exclusively employs Filipino hostesses, located in a seedier area of Tokyo than Roppongi²⁹ amidst pachinko parlors, soap lands (where men are offered a full service bath), and pink salons (where men are serviced with masturbation). With its inexpensive cover charge of 3000 yen (approximately U.S. \$25)³⁰ an hour, my field research site attracted low- to mid-level salaried men, working class men such as painters and carpenters, and members of organized crime syndicates. To put this in perspective, a higher class bar like that where Allison had worked more than a decade earlier charged U.S. \$80-120 an hour and accordingly only attracted mid- to high-level salaried men with

in proving they have two years of paid experience outside of Japan. Interview with government officials, *supra* note 9.

25. I quote one example of a sensationalist media report that appeared in the web-based newsletter *Migration News*:

One researcher found that 95 percent of the women working in karaoke and hostess bars "were forced to engage in sex" with clients. Japan issues about 40,000 "entertainer visas" a year to Filipinos who are meant to be professional singers and dancers, but researchers say that few of them confine themselves to singing and dancing.

Japan, Korea, MIGRATION NEWS, http://migration.ucdavis.edu/MN/more.php?id=2982_0_3_0 (last visited Mar. 20, 2006).

26. Douglass, *supra* note 2.

27. ANNE ALLISON, NIGHTWORK: SEXUALITY, PLEASURE AND CORPORATE MASCULINITY IN A TOKYO HOSTESS CLUB 8-9 (1994).

28. *Id.* at 131.

29. Located in central Tokyo, Roppongi is known for its restaurants, nightclubs, and expensive residential units that house mostly foreign businessmen and their families.

30. One U.S. dollar is approximately 118 yen. To convert currencies see Markets & Data: Currencies, ECONOMIST (2006), <http://www.economist.com/markets/currency/fullconverter.cfm> (last visited Mar. 27, 2006). All currency conversions in this Article are approximate.

corporate accounts to cover their expenses.³¹ For this essay, I draw primarily from my interviews and use my work experience as supplementary data, but I will use the exemplary story of one young woman whom I call Kay to relay the experiences of Filipino migrant hostesses in Japan.³²

II. THE STORY OF KAY'S MIGRATION

Kay is a twenty-year-old Filipino woman who, for the second time in less than two years, is under contract to work for six months as an entertainer in a Philippine pub located in a working class district of Tokyo. She first came to Japan at the end of 2003 after a neighbor who had recently returned from Japan urged her to visit a placement agency. Being attractive, Kay was told that she would be a shoo-in in the otherwise highly selective process of labor migration to the nightlife industry of Japan. After she was assured that her job would not entail prostitution, but only mild flirtations with customers at a table, Kay jumped at the chance to work in Japan. Without family connections to aid her in getting a job and having completed only one year of college, Kay did not have many labor market options in the Philippines. Without a bachelor's degree, she is unlikely even to secure a job as a sales clerk in a department store in the Philippines, a job that pays no more than 100 pesos a day (U.S. \$1.95). Prior to her migration, Kay actually had not worked but stayed idle at home, spending most of her days watching television or going to the mall with friends. Kay could have attended school, but she admits that she did not have much motivation to study. Thus, for Kay, migrating to Japan seemed like her best hope to show her family that she could amount to more than a college dropout.

According to Kay and her co-workers, the minimum age requirement for Filipino migrant entertainers in Japan is twenty-one years old.³³ Kay, who first worked in Japan at the age of nineteen, circumvented this Philippine government criterion by using the legal identity of her sister. Keen on financially contributing to her family, Kay did not want to wait for another two years before she would be eligible to work as an entertainer in Japan and therefore did not hesitate to comply with the suggestion that she use forged

31. ALLISON, *supra* note 27, at 9.

32. All information about Kay is taken from an interview I conducted with her. Interview with Kay, in Tokyo, Japan (July 17, 2005).

33. According to a position paper by the Development Action for Women Network (DAWN) and ten other non-governmental organizations, however, the minimum age requirement for Filipino entertainers was lowered in 2001 to eighteen years old. Position Paper by 11 Filipino NGOs on Japan's New Immigration Policy, Uphold the Dignity and Integrity of the Filipino Artist and Stop the Trafficking of Women to Japan! (Jan. 26, 2005), *available at* http://www.vitalvoices.org/desktopdefault.aspx?page_id=208. One explanation for this discrepancy may be that women overstate their age in order to avoid closer scrutiny during the emigration process. For policies of the Philippine government regarding labor emigration, see Philippine Overseas Employment Administration, <http://www.poea.gov.ph/> (last visited Mar. 20, 2006).

documents. Working in Japan at risk of immediate deportation, Kay carries a passport and an alien registration card with her sister's name. With her entry made illegal by her "fake" identity, Kay tries to avoid drawing any attention from authorities. Because of this, she is more vulnerable in the workplace and less likely to report poor labor conditions. But Kay is not alone among those with forged documents. Among her twenty-four coworkers, there are a handful of underage hostesses.

Kay is a very attractive, slim woman with large hazel eyes and prominent cheekbones. A soft-spoken woman, she projects a shy and innocent image. It was thus not surprising to hear that she was immediately selected to go to Japan during her first audition. Promotion agencies regularly hold auditions in the Philippines where a representative from a club in Japan, who is called a promoter, selects a handful of applicants out of approximately 200 prospective migrants. This representative makes his decision based not on the artistic talents of the prospective migrant but instead on her physical beauty. A candidate literally parades in front of a Japanese promoter with a number pinned on her chest and stands in front of the promoter before twirling around to showcase her physical features.³⁴

The Japanese promoter who selects the prospective migrant in Manila is the official employer of the hostess and is responsible for ensuring she meets the entry requirements for Japan.³⁵ The promoter, who receives at least U.S. \$2000 per month from the club owners for every contract worker he assigns to a club,³⁶ is the one who finds an eligible place of employment for the hostess,³⁷ picks her up at the airport when she arrives in Japan, escorts her to the club where she had been registered to work at the Office of Immigration, and then takes her back to the airport at the end of her six-month contract. To minimize the risk of a contract worker fleeing a club or finding another place of employment independent of the Japanese promoter or the promotion agency in the Philippines, the promoter usually holds onto the worker's legal and travel documents, which include the migrant's proof of qualifications as a professional entertainer. According to my interviewees, during the entire duration of her migration, the contract worker usually has only an alien registration card as proof of legal residency in Japan.

Working in tandem with the promoter from Japan is a promotion agency in the Philippines. The agency in the Philippines ensures that contract workers like Kay meet the requirements of the Philippine Overseas Employment

34. I attended an audition in Manila on August 20, 2005.

35. These requirements include, but are not limited to, proper certification of professional eligibility, proof of insurance, and verification of place of employment. See GOVERNMENT OF JAPAN, *supra* note 1, for a description of the visa requirements for entertainers.

36. Interview with club owner, in Tokyo, Japan (Oct. 5, 2005).

37. Not all clubs are eligible to hire foreign entertainers. For instance, eligibility is restricted to clubs with a stage, five full-time employees, and an operator with three years of experience working with foreign entertainers. GOVERNMENT OF JAPAN, *supra* note 1.

Agency for prospective migrant entertainers. Before March 15, 2005,³⁸ prospective migrant hostesses such as Kay who wished to work in Japan had to obtain a medical clearance (required of all migrant workers leaving the Philippines and not just those going to Japan), complete a one-day pre-deployment seminar (also required of all migrant workers), complete six months of training in singing or dancing (which included ballet and modern dance), obtain a passport, and, finally, secure an Artist Record Book which certified her artistic skills in the performance arts, i.e., singing or dancing (solo or group). This certification was obtained not only by showing proof of training but through a formal examination with professional artists in the Philippines. The Technical Education and Skills Development Authority (TESDA) of the Philippine government administers the exam, which requires basic knowledge of Japanese culture and language, usually customary greetings. Migration is not expensive because the cost of travel to Japan is paid for by the club owner. The prospective migrant only has to pay for the costs of a passport (1000 pesos, or U.S. \$19), the POEA seminar (200 pesos, or U.S. \$3.89), the medical checkup from a medical agency certified by the government (800 pesos, or U.S. \$15.60), the TESDA exam (200 pesos, or U.S. \$3.89), and finally the cost of performance arts training. For her training Kay had to pay 13,000 pesos, roughly U.S. \$253, which she borrowed from her talent manager and later repaid without interest after she returned from Japan for the first time.

Like most contract workers, Kay has a talent manager. This manager walked Kay through the bureaucratic maze of the migrant pre-deployment process from the Philippines. For her efforts in training and completing the paper work for Kay's departure to Japan, this manager receives fifty percent of all of Kay's wages and will do so for the next six years. As a second-time contract worker, Kay is paid 120,000 yen (U.S. \$1019) per month, 20,000 yen (U.S. \$170) more per month than she received as a first-time contract worker. This amount is significantly less than the 200,000 yen (U.S. \$1700) per month legal minimum wage of foreign entertainers,³⁹ but it approaches the average salary received by the Filipino contract workers in the Japanese nightlife industry that I interviewed.

However, Kay receives significantly less than her already below-minimum-wage salary. She only takes home 60,000 yen (U.S. \$509) per month, because fifty percent of her income goes to her manager. Japanese promoters sometimes pay managers directly, but also give this responsibility to hostesses. Although some managers only charge 10,000 yen to 20,000 yen (U.S. \$85-170) per month for every contract worker whose entertainment career they manage,

38. Changes in migration policies for entertainers took effect on March 15, 2005. IMMIGRATION BUREAU, *supra* note 6.

39. GOVERNMENT OF JAPAN, *supra* note 1.

Kay does not mind the huge cut obtained by her manager, without whom Kay thinks she would still be in the Philippines with few opportunities.

Clearly, Kay's migration was not a simple process of going from Point A to Point B. Instead, Kay signed a contract with a manager who took her to a promotion agency, which then showcased her to a promoter who placed her in a club in Japan. Each party received a portion of her wages every step of the way. According to a club owner I interviewed in Tokyo, a club pays at least U.S. \$1700 (approximately 200,000 yen) per month for a first-time contract worker in Japan.⁴⁰ If Kay receives only 60,000 yen (U.S. \$509) per month and her manager similarly receives 60,000 yen, it seems that the promoter and the promotion agency divide the remaining 80,000 yen (U.S. \$679) of Kay's monthly wage from the club. Notably, some clubs circumvent the promoter by directly hiring in the Philippines. In these cases, the clubs still pay the hostess less than the minimum wage, a practice they justify by deducting housing and food costs from the hostess' salary. However, clubs are supposed to provide free housing and food to their migrant employees. Sometimes promoters are able to extract a larger fee from clubs by placing contract workers such as Kay in a club other than the club where they have been registered to work by the Office of Immigration. Usually clubs where migrants are illegally booked are ineligible to hire foreign entertainers and thus willingly pay an additional commission to promoters.⁴¹ These cases, referred to as "flying bookings" in the community, leave hostesses vulnerable to immediate deportation for not working in their registered place of employment.

More than the risk of being a "flying booking," Kay's most grave concern as a trafficked person is her position of indenture, one that she shares with most, if not all, migrant contract workers employed in the nightlife industry of Japan. Prior to migration, Kay signed a legal contract with her manager that binds her to return to work as an entertainer in Japan at least five times in the next six years. It would cost Kay 200,000 pesos (U.S. \$3893) to be released from this contract. For example, if she wished to marry and settle permanently in either Japan or the Philippines before she fulfilled five six-month contracts to work as an entertainer in Japan, she would have to pay her manager the 200,000 pesos. The validity of this contract is questionable because it puts the contract worker in a form of debt bondage to the manager.⁴²

40. Interview with club owner, *supra* note 36.

41. For a description of the requirements, see GOVERNMENT OF JAPAN, *supra* note 1, at 37.

42. I follow the definition of debt bondage provided by Janie Chuang, who states: In order to control trafficked women, traffickers often subject their victims to debt bondage, a slavery-like practice banned under customary international law, and defined as: "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."

Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 70 (1998).

In addition to the contract, managers often take other precautionary measures to ensure their control over the migrant worker. They do this by holding onto all of her travel documents, such as her passport and Artist Record Book, while in the Philippines. By retaining her travel documents, Kay's manager dissuades Kay from turning to another manager or promotion agency while in the Philippines, perhaps one who would take a smaller percentage of her earnings the next time she works in Japan. Kay could probably report her passport and Artist Record Book as stolen, and then use replacement documents to seek work in Japan independent of her manager. However, Kay is afraid to contest her relationship with her manager and is convinced that failure to fulfill her contract would lead to her imprisonment in the Philippines. As she told me during our interview, "I signed a contract. And if I don't finish the contract, I will be put in prison. That is what it says in the paper. That I will be put in prison if I do not finish the contract."

Kay is not only in a relationship of debt bondage with her manager. She also maintains an indentured relationship with her promotion agency in the Philippines. Kay signed a contract with her promotion agency in which she incurs a large fee of 200,000 pesos (U.S. \$3893), one that the agency will try to collect from her family in the Philippines if she breaches her contract in Japan. Kay cannot quit or flee the club prior to the end of her six-month contract without going into debt. Kay can contact the Philippine Embassy in Tokyo and report contract violations, for example, her job duties as a hostess.⁴³ This option would free Kay of any debt to her promotion agency (but not her manager in the Philippines), but Kay would have to pay for her return ticket to the Philippines. Ironically, she probably could not even afford to cover her return ticket, because there is a high likelihood that she would leave Japan without ever having been paid, although she is legally entitled to her back wages.⁴⁴ Like other contract workers, Kay does not receive her wages until the end of her contract, literally at the airport, and usually after she checks in for her return flight to the Philippines. The withholding of her wages by promoters (who are paid in advance by club owners) not only deters her from quitting prior to the end of her six-month contract, but it also puts her and others like her at risk of

43. Notably, Kay cannot contest her salary because she signed a contract that sets her wages at 200,000 yen per month minus monthly deductions for housing and food. While housing and food are understood by Kay to be courtesy of the club, they are used by promoters to justify the below-minimum-wage salary that they pay contract workers. For example, the standard contract that promoters file at the Philippine Embassy in Tokyo lists a food deduction of 50,000 yen (U.S. \$425) per month, but women only receive 15,000 yen (U.S. \$127) from the clubs.

44. Promoters can avoid paying entertainers simply by disappearing, which does happen, according to the women I interviewed. A lawsuit could be filed against the promoter in Japan but this is a prolonged process that entertainers wish to avoid. They would rather return to the Philippines immediately to try to book another contract to work in Japan. Additionally, the women I interviewed and worked with said that clubs sometimes declare bankruptcy and shut down to avoid paying their workers, then reopen a few months later under a new name.

never getting paid or being unable to contest any questionable wage deductions imposed on them.⁴⁵

If Kay flees the club without reporting her situation to government representatives, she has the option of becoming an undocumented worker in Japan. She would receive a salary of at least 1000 yen (U.S. \$8.50) per hour, which is significantly more than what she currently earns as a migrant contract worker. Yet she would still have to pay her manager and promotion agency the exorbitant fine they impose of 200,000 pesos (U.S. \$3893) each. This was the case for many of the undocumented workers whom I interviewed. While they are likely to earn more than they would as contract workers, part of their monthly salary goes to repaying debts to their former promotion agencies and managers in the Philippines. If they do not clear these debts, their families in the Philippines will be harassed and intimidated with constant threats. Families—like those of my interviewees—are threatened with lawsuits and bothered with the nuisance of constant disruptions in their daily routine.

Government officials told me during an interview that the Japanese government does not penalize promoters and clubs if migrant entertainers decide to leave a club before the end of their contract,⁴⁶ but representatives of promotion agencies whom I interviewed in Manila claim that the government does, and that the agencies share the penalties incurred by the promoter for entertainers who escape their place of employment before the end of their contract.⁴⁷ Rather than penalties from the government, promoters most likely have to pay back to clubs the advance payment that they received for the labor of the migrant worker. Promoters then pass this burden onto the promotion agency in the Philippines, which passes it onto the contract worker. This system, and not government fines, explains why promotion agencies impose a stiff penalty of 200,000 pesos (U.S. \$3893) on migrant hostesses who escape their clubs.

Hundreds of promotion agencies in the Philippines work with promoters from Japan in placing migrant Filipino entertainers in various clubs all over Japan. Many are fly-by-night operations, but some are legitimately certified by the Philippine Overseas Employment Agency. For example, PARADA (Philippine Association of Recruitment Agencies Deploying Artists, Inc.) has 263 official members.⁴⁸ Most promotion agencies are located in Manila, but some offices have opened elsewhere in the Philippines, including the southern region of Davao and the northern region of Pampanga. These agencies work with local talent managers and tap into a larger pool of prospective migrants.

45. While problems with unpaid wages are not unheard of, Kay did not have such problems with her wages the last time she worked in Japan.

46. Interview with government officials, *supra* note 9.

47. Interview with representatives of two promotion agencies, *supra* note 24.

48. See Philippine Association of Recruitment Agencies Deploying Artists, <http://www.paradaph.com/members.php> (last visited Mar. 20, 2005).

Not all promotion agencies charge migrant contract workers exorbitant fees to go to Japan, but most penalize entertainers if they renege on their contract. This penalty system technically places the entertainer in an indentured position vis-à-vis the promotion agency in the Philippines. It indicates that migrant entertainers do not own their labor; the promoter and promotion agency do. Both of these entities expect to be repaid for the money advanced by the club for a contract worker's uncompleted labor.

As I noted earlier, the cost of her training was the largest expense Kay incurred to go to Japan. Prior to her first departure, Kay accumulated approximately 37,000 pesos (U.S. \$720) in debt to her manager, a relatively small amount compared to other contract workers but significantly larger than the Japanese government's estimated cost of migration for entertainers to Japan. Kay does not know the specific breakdown of her debt, but she carries a defeatist attitude about it. Kay, like most other hostesses I met in Japan, considers herself legally accountable for this debt, regardless of its potentially questionable origins. Kay's debt is less than that of other contract workers because she did not have to pay for housing while training to become an entertainer; the cost of singing lessons was her largest expense. Of my interviewees, those who had to pay for housing while training and auditioning in Manila accrued up to 200,000 pesos (U.S. \$3893) of debt to their managers or promotion agencies even before departure. According to two managers I interviewed in Manila, food and housing expenses for prospective migrants usually total less than 2,000 pesos (U.S. \$39) per month.⁴⁹ Many managers and promotion agencies overcharge prospective migrants, and some compound their bills with as much as 100% interest.

As illustrated by Kay's migration, meeting the requirements for an entertainer visa forces the prospective migrant worker into debt. The irony is that many women never put their learned skills as entertainers into practice. Many Philippine pubs do not require migrant workers to sing or dance on stage. This is the case in Kay's pub. For the most part, the migrant entertainers leave the Philippines knowing that they will be expected to do hostess work once in Japan. However, migrants who enter Japan with the residency status of entertainer cannot legally do hostess work. They are only allowed to entertain customers by performing on stage, because Japan restricts the entry of labor migrants to skilled professionals.⁵⁰ Nevertheless, since her arrival in Japan, Kay has worked mostly as a hostess, entertaining customers at their tables rather than onstage.

49. Interview with a talent management team, in Makati, Philippines (Aug. 5, 2005).

50. Tsuda & Cornelius, *supra* note 2.

III. KAY AT WORK

Hostess work involves care work, sex work, entertainment work, and boundary work. Kay first cares for her customer by paying attention to all of his needs: serving his drinks, lighting his cigarettes, and feeding him—sometimes with her hands. Second, she performs sex work by intimating a relationship of sexual intimacy between them. She holds his hands, massages him, holds his thigh, allows him to put his arm around her shoulder, and vocalizes her physical attraction for him, whether real or not. Third, she entertains him on stage and at his table with singing, dancing, and lively conversation. Finally, she performs boundary work, which imposes a limit to the intimacy between herself and a customer. It often involves the careful deflection of a customer's sexual advances in a way that avoids blatant rejection and therefore will not threaten his patronage of the club.⁵¹

Living in Japan for six months without a salary discourages workers such as Kay from escaping the club. It is difficult to imagine that hostesses such as Kay work without pay for the entire duration of their migration. How do migrant workers such as Kay manage to survive in Tokyo without a salary for six months? Like other migrant hostesses, Kay's life in Tokyo is divided between home and work. This minimizes her living expenses. With only two days off in a month, she works almost every day from seven o'clock in the evening to four o'clock in the morning in a low-status pub that attracts working class and low-salaried men. She wakes up at around three o'clock in the afternoon, when she starts calling customers to ask them to visit her at the club. Around four o'clock, she showers if the bathroom she shares with her nine housemates is available. She eats a light meal: usually rice supplied by the club and a piece of chicken, which she purchases for 100 yen (U.S. \$0.85) from the convenience store down the street from her apartment building. At six o'clock she meets a customer for a dinner date or stays in the apartment until seven o'clock, when she has to go down to the club, which is located on the second floor of the building adjacent to her apartment.

If visited at the club by a customer that night, Kay finishes work by four o'clock in the morning. If not, she is penalized and has to stay a half-hour longer to clean the facility. She told me that cleaning duties are usually light, shared by the others without customers for the night, and include cleaning the bathroom and wiping the glass walls around the club. Out of solidarity, the other hostesses usually wait for the penalized hostesses until they are finished cleaning. Afterward they all retreat to the apartment upstairs together. Before they go to sleep, the women usually share a meal that one of them prepares. At

51. Women have to hide negative emotions such as disgust and irritation when with customers. For instance, when a customer grabbed my breast I had to hide my annoyance and laugh it off so as not to lose his business.

first, each woman contributed 1000 yen (U.S. \$8.50) every ten days to cover groceries. In the last month, however, one of the hostesses was able to find a customer willing to purchase all of the groceries for the house. Usually they cooked only easily-prepared dishes such as fried eggs, fried ham, or fried hot dogs. They all go to sleep at around seven o'clock in the morning. Every day this cycle begins again.

Although her wages are withheld for the complete duration of her migration, Kay does not stay penniless in Tokyo. She augments her earnings with bonuses and tips. In her club, each contract worker is assigned a quota that they must meet every ten days. Those who do are financially rewarded and those who do not are penalized. According to representatives of local non-governmental organizations, this system pushes migrant hostesses into prostitution because the quota system pressures them to lure customers to a club, and sex supposedly is the most enticing bait for customers.⁵² Yet Kay's story tells us that the quota system does not necessarily lead migrant entertainers to prostitution.

The quota system in clubs is based on the number of customer requests (*shimei*) that a hostess receives, as well as her number of dates with customers (*dohan*). In the club, hostesses rotate from table to table every thirty minutes. If a customer wishes a woman to stay with him and not to move to another table, he can request her company. A *shimei* or request equals one point in the quota system. A request costs the customer 2000 yen (U.S. \$17). He can also avoid the rotation and request a particular hostess sit with him immediately. The fee of 2000 yen is in addition to the cover charge of the club, which in Kay's club costs 12,000 yen (U.S. \$102) for two hours.⁵³

In a *dohan*, a club dispatches the hostess to go on a date with a customer inside or outside the club. A *dohan* costs a customer 5000 yen (U.S. \$42). Usually a woman has to be back in the club by nine o'clock in the evening if she goes on a *dohan* outside the club. She is likewise rotated to another table at nine o'clock in the evening if the customer chooses to have the *dohan* inside the club. A *dohan* generates three points for a hostess. If the customer spends an additional 10,000 yen (U.S. \$85) on food, then the hostess gets an extra point.

For her salary of 60,000 yen (U.S. \$509) per month, Kay must generate eighteen points every ten days. First-time contract workers, since they earn less, usually have a smaller quota of fifteen points. If a hostess meets or exceeds the

52. Representatives of non-governmental organizations discussed this issue with me while I was doing fieldwork as a hostess in Tokyo.

53. A survey I conducted of over 100 clubs indicates that the cover charge for Philippine hostess bars in Tokyo that primarily employ contract workers ranges from 3000 yen (U.S. \$25) for ninety minutes to 20,000 yen (U.S. \$169) for two hours. Customers do not expect sex. Instead, the cover charge gives them unlimited consumption of the house whiskey and access to the flirtations of a young woman.

quota she receives a commission of 1000 yen (U.S. \$8.50) for every point. If she does not, she only receives 500 yen (U.S. \$ 4.75) per point. Thus, eighteen points would earn Kay 18,000 yen (U.S. \$153). But seventeen points would only generate 8500 yen (U.S. \$72) in commission.

In addition to her commission, Kay and the other women in her club receive a 5000 yen (U.S. \$42) food allowance every ten days. If they reach thirty points in ten days, then they receive an additional bonus of 10,000 yen (U.S. \$85). Kay has reached thirty points from regular visits of more than one customer. If a hostess is short of the quota, she can sometimes ask a customer the favor of giving her a *dohan* (i.e., add 5000 yen (U.S. \$42) to his tab) so she can fulfill her quota. But reaching a quota does not free hostesses from other penalties, which reduce their commission. For instance, a weight gain of one kilo within ten days costs the women 5000 yen (U.S. \$42) and a weight gain of two kilos costs 10,000 yen (U.S. \$85). Women also have no sick leave. Missing a night of work costs them 8000 yen (U.S. \$68).

But hostesses can make up their loss in penalties with tips. Some customers have given Kay as much as 10,000 yen (U.S. \$85) after one night's visit. Others have given her even larger amounts as gifts, such as 50,000 yen (U.S. \$425). Most customers know that migrant contract workers like Kay do not get paid until the end of their six month contract. Customers in Philippine pubs tend not to be first-time visitors but are instead "veterans" who have frequented such clubs since they boomed in the early 1980s. These customers also know that the hostesses come from impoverished families in the Philippines who depend on their remittances from Japan. From sympathy to chivalry to paternal benevolence, customers are motivated to "help" hostesses such as Kay financially. But customers are not altruistic. They usually expect something in return for their gifts. Sex outside of the club is often, but not always, what they expect in return for showering hostesses with large amounts of cash.

Kay has received plenty of tips from customers. As a first-timer, she was able to send as much as 50,000 yen (U.S. \$425) every two weeks to the Philippines. This amount has significantly raised the living standards of her family, allowing them to purchase household appliances and to increase their leisure activities to include weekly dinner outings. In short, Kay's remittances have secured a middle-class lifestyle for her family. Now in her third month during her second stint in Japan, she has been able to send 30,000 to 50,000 yen (U.S. \$255-425) every two weeks. She received most of this money as gifts from customers. Because of all of the money Kay has generated from customers, it was hard for me not to assume that she had slept with at least one of them. But Kay swore to me that she has not, even screaming after I asked her point blank if she had had sex with any of her customers. Almost shouting at me, she stated: "*Ate*, I don't want to. [She screams.] It's not like they are my boyfriend."

So how did Kay get customers to give her such exorbitant gifts if she did not sleep with any of them? Hostess work is a game in which customers try to get the hostess into bed by luring them with material benefits, from help with meeting their quotas to cash and in-kind presents. Hostesses in turn try to maximize these gains by promising future sex. Sex is always a risk. Sex does not necessarily guarantee greater returns because one can "love them and leave them" as Kay had told me. Thus Kay feels that promising sex yields more returns than actually engaging in sex.

As customers are not altruistic, those who think Kay is their girlfriend give more tips than others. She has about four men who think that she is their girlfriend, though she has never had sex with any of them. She admits to having kissed them, but she describes these kisses as only pecks on the lips. Being only twenty years old, it is not hard for Kay to portray an image of innocence and virginity. Yet Kay has a problem at the moment. All of her customers, her alleged boyfriends, are now demanding sexual intimacy, and, because Kay is not giving into pressure, she is losing them one by one. Much to the chagrin of the club management, she is currently having difficulty meeting her quota.

As a second-time contract worker at this same club, Kay was asked to return here due to the high volume of sales that she reached as a first-time contract worker.⁵⁴ But the customers who helped her meet her quota the first time around are now demanding the payment that Kay made them believe they were due—the sex that Kay promised them the last time she was in Japan. The club management, which is not happy with her diminished sales, is putting pressure on Kay to sleep with at least one of them. As Kay describes:

They told me that even if I let them have sex with me just one time, then I will see the result that they will take me on a *dohan* every day. They will go to the club every day. . . . I really cry when they take me in for a meeting. The other day, I became deaf from the screams of my manager. I was so upset that I could not breathe. I was just crying and crying. I could not take it anymore.

What did he say that made you cry?

Where are your people? Why don't you have any people? You are a request here, aren't you? You were a request here because you had many people [as a first-timer]. Well, where are they? I told them that they are asking me for sex. And he asked me why I don't do it, even if only one time. That is what he told me. But *ate*, I really can't do it. I can't. [She looks at me as if asking for my reassurance.]

Well, why do it if you can't, right?

Yes.

54. Kay avoids having to go through another audition by being requested to return, i.e., offered another contract, at the club.

At the time of my interview, Kay had three more months to go before the end of her contract. Although Kay had not wanted to have sex with any of her current customers, she is not closed to the possibility of sex. If ever sexually attracted to any of her customers, Kay may eventually change her mind and find herself wanting to have sex with one of them.

For Kay, her relationship with her customers is one of courtship. She views their gifts as part of a courtship ritual for which customers should not expect anything in exchange except for the promise of romance. But courtships do not last. Some customers even put a time limit on courtship. One of Kay's customers told her that he would visit her every night for thirty days but if she did not sleep with him at the end of the thirty days he would stop coming altogether. Sure enough he stopped visiting after thirty days. He left hoping that she would miss his material gifts—from the boxes of jewelry from Tiffany's to the cash presents to the multiple *dohan* and *shimei* he extended to help Kay meet her quota. In contrast, Kay held onto the hope that she could string him along for a few more weeks. Undesired sex with this man, whom Kay described as old, fat, and bald, was not worth it for Kay. She figures that she can get another customer who will do the same as this suitor. At the end of the interview, Kay vowed to me that she will never sleep with any of her customers if she does not have an ounce of feelings for him. Kay told me that sleeping with men just for money is not worth the job security of being requested to return to this club for a third time. She would rather take the risk of parading herself once again in front of a promoter in the Philippines to secure yet another six-month contract to entertain men—but in another venue in Japan.

IV. TRAFFICKED? FILIPINO HOSTESSES IN THE NIGHTLIFE INDUSTRY OF JAPAN

The United States assumes that Filipino migrant entertainers are trafficked persons because it believes they are forced into prostitution while working as hostesses in Japan. They are in fact trafficked, but, as suggested by Kay's story, their trafficking is due to their conditions of migration rather than to their work conditions once they have arrived in Japan. What is trafficking? And how do Filipino entertainers such as Kay fit the definition of trafficked persons? Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, defines trafficking in persons as the following:

[T]he 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 services, slavery or practices similar to slavery, servitude or the removal of organs ⁵⁵

Responding directly to the protocol of the United Nations, the government of the United States spearheaded a campaign to combat trafficking globally with a "model zero-tolerance standard" against severe forms of trafficking,⁵⁶ which the government generally defines as the following:

[A] sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁵⁷

The U.S. Department of State suspects that Filipino migrant entertainers are trafficked persons because it supposes the migration of entertainers to be a backdoor entrance into prostitution.⁵⁸ In the 2004 *TIP Report*, the government of the United States asserted that the "Abuse of 'Artistic' or 'Entertainer' Visas" is a vehicle "used by traffickers to bring victims to Japan." It further states, "On arrival at their destination, victims are stripped of their passports and travel documents and forced into situations of sexual exploitation or bonded servitude."⁵⁹ Moreover, the United States believes that the *yakuza* (Japanese organized crime groups) are largely responsible for the trafficking of foreign entertainers.⁶⁰ This Part questions the categorization by the United States government of Filipino entertainers as trafficked persons. It establishes that, while their conditions of migration and employment fit the U.N. and U.S. definitions of trafficked persons, they are not trafficked under the conditions the United States government suspects.

The United States has called attention to the migration of Filipino entertainers, but not because of their relationship of indenture with managers and promotion agencies in the Philippines. Rather, it claims that Filipino entertainers are not only involved with sexual prostitution, which Kay's story calls into question, but "forced into situations of . . . bonded servitude."⁶¹ Notably, the United States assumes that Filipino entertainers are in a

55. UNITED NATIONS, PROTOCOL TO PREVENT, SUPPRESS & PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME Art. 3(a) (2000).

56. *Enforcing U.S. Policies Against Trafficking in Persons: How is the Military Doing?: An Issue Forum Jointly Convened by the Commission on Security and Cooperation in Europe & the H. Armed Services Comm.*, 108th Cong. 9 (2004) (statement of Joseph E. Schmitz, Inspector General).

57. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §103, 114 Stat. 1466, 1470 (2000) (codified as amended at 22 U.S.C. § 7101-7110 (2000)).

58. 2004 TIP REPORT, *supra* note 5, at 14.

59. *Id.* at 14, 96.

60. *Id.* at 96; 2005 TIP REPORT *supra* note 5, at 132.

61. 2004 TIP REPORT, *supra* note 5, at 14.

relationship of debt bondage with club owners, and not with managers or promotion agencies in the Philippines. As the 2005 *TIP Report* describes:

Many workers around the world fall victim to debt bondage as they assume an initial debt as part of the terms of employment. . . . [T]hey are kept in that labor or service while the debt grows, the terms of service mutate, and the employer-employee relationship becomes exploitative. Such workers are forced to work long beyond a reasonable amount of time for their debt to be repaid.⁶²

Kay's story suggests that many Filipino migrant contract workers are in a position of debt bondage. However, they do not maintain a relationship of bonded servitude with their employers—the club owners. Notably, the entertainers' debt to managers in the Philippines does not grow exponentially or continuously. At most the debts are doubled by the manager, but only in the rarest of cases are debts compounded with interest. According to most of my interviewees, managers lend money without interest.

As described earlier, prostitution is not part of the job of entertainers. Some clubs even ban the formation of sexually intimate relations between entertainers and customers.⁶³ The government of Japan as well as locally-based social workers would argue against this assertion and say that the *dohan* is a backdoor to prostitution, if not a form of prostitution in itself.⁶⁴ Workers such as Kay, however, *do not* consider a *dohan* a form of prostitution. Sex is not part of a *dohan* and entertainers like Kay can refuse to go on a *dohan*, although not without being penalized. Without a doubt, the *dohan* should be a choice and not a requirement for hostesses. Some entertainers strive to attain the commission from a *dohan* while others consider the additional income not to be worth the vulnerability of being alone with a customer outside the club. A *dohan* is frequently described by entertainers as an emotionally draining experience of having continuously to reject a customer's sexual advances. But this is not always the case. For instance, Kay once took a customer to church to attend mass during a *dohan*. This *dohan* would certainly call into question the Japanese government's assumption that a *dohan* leads to prostitution. Undeniably, however, to be alone with a customer outside of the club poses increased risks of sexual harassment for the hostesses. For this reason alone, clubs should not require migrant hostesses to go on a *dohan* but instead make it optional. Clubs could also make it a policy for hostesses only to go on a *dohan* accompanied by another co-worker. In the current system, customers have the option of bringing along a second *dohan* for an additional charge of 2000 yen (U.S. \$17) from the club. This generates one point for the accompanying hostess.

62. 2005 TIP REPORT, *supra* note 5, at 16.

63. ALLISON, *supra* note 27. This is the case for some of the clubs where my interviewees worked, and was also the case for the club where Anne Allison conducted her field research.

64. GOVERNMENT OF JAPAN, *supra* note 9, at 1-2.

Some clubs ban the formation of sexually intimate relations between hostesses and customers because they worry about the reputation of the club. According to many of the club owners I met, once one entertainer sleeps with a customer, then the customer and all of his friends tend to assume that they will be able to sleep with other workers in the club. This expectation imposes more unwanted sexual advances on other hostesses. Sleeping with a customer may also result in a loss of business as customers may move onto another club that offers them the newer challenge and excitement of pursuing another set of entertainers. Hence, sexual intimacy is not always good for business. This opinion of club owners was seconded by many hostesses I interviewed.

However, as Kay's experience illustrated, some clubs do push hostesses to become sexually intimate with customers if it appears lucrative for the club. In Kay's club, it is not policy for entertainers to sleep with customers, but Kay is facing a slight form of coercion—specifically bullying and intimidation—to become more intimate with her customers. Kay is not, however, being forced into prostitution, which makes the view of her as a trafficked person on the basis of forced prostitution questionable.

The claims of forced prostitution in the *TIP Reports* are more believable when they are made with the assertion that the *yakuza* control and maintain responsibility for the trafficking of Filipino entertainers.⁶⁵ The United States repeatedly asserts that physical threats constantly loom over entertainers such as Kay, even if they become undocumented workers. As the 2004 *TIP Report* describes the situation of entertainers, including many from the Philippines, "On arrival at their destination, victims are stripped of their passports and travel documents and forced into situations of sexual exploitation or bonded servitude. Having overstayed or otherwise violated the terms of the visa, victims are coerced by the exploiters with threats to turn them over to immigration authorities."⁶⁶

It can be assumed that such threats would come from the *yakuza*, since the *TIP Reports* also repeatedly claim the *yakuza* "are involved" in the problem of trafficking.⁶⁷ However, migrant hostesses, including Kay, are not always controlled by organized crime syndicates. Moreover, from personal experience I know that the *yakuza* do not always force migrant hostesses into prostitution, because I worked as a hostess in a *yakuza*-owned establishment while doing fieldwork.

Yet, in other ways, Kay does qualify as a trafficked person as defined by the United Nations because she has technically been "recruited" through the "abuse of power" for the purpose of "exploitation."⁶⁸ By exploitation, I mean

65. 2005 *TIP REPORT*, *supra* note 5, at 132; 2004 *TIP REPORT*, *supra* note 5, at 96.

66. 2004 *TIP REPORT*, *supra* note 5, at 14.

67. *Id.* at 96.

68. UNITED NATIONS, *supra* note 55.

her position of indenture vis-à-vis *not* the club in Japan but the middlemen who brought her to the club, including her manager in the Philippines, the promotion agency in the Philippines, and the promoter in Japan. Each of these parties owns Kay's labor. For at least six years Kay will be in a relationship of debt-bondage with her manager in the Philippines and is without the freedom to refuse to work in Japan.

Kay also maintains an indentured relationship with the promotion agency and promoter that booked her hiring in Japan, because quitting prior to the end of her six-month contract will result in the forfeiture of the advance wages that they (and not she) received for her labor.⁶⁹ The fact that Kay agreed to these conditions of indenture does not make her migration acceptable, as her human and labor rights are violated in the process of migration. Moreover, Kay was deceived by promotion agencies into thinking that Japanese promoters would amass significant government fines if she escaped her club. Without question, her relationship of indenture with various middlemen brokers technically makes her a trafficked person. The social welfare officer in the Philippine Embassy in Tokyo told me that entertainers such as Kay cannot get out of their trafficking situation or free themselves of the debt imposed by their managers and promotion agencies. When I asked why not, she gave a response that resonated with Kay's "[T]hey signed a contract."⁷⁰

Finally, the sub-par work conditions Kay faces, while inhumane, technically do not make her a trafficked person. These human rights violations include working long hours—from seven o'clock in the evening to four o'clock in the morning—without any breaks, doing the unpaid labor of corresponding with customers outside of work hours, and cleaning the club if she is without customers for the evening. Instead, it is the fact that Kay performs her job under "forced labor" conditions because she will be heavily penalized if she quits prior to the end of her contract that make her a trafficked person. Hence, fairer working conditions would not remove Kay from the category of trafficked person because her indentured relationship to various middle-men brokers would still stand.

In suggesting that the inhumane working conditions of Filipino migrant hostesses do not make them trafficked persons, I do not mean to imply that these conditions are acceptable. Their work conditions—for instance their unpaid hours and wage penalties—are deplorable. Conditions in hostess bars that employ Japanese women do not mirror those in Philippine pubs. As one of my interviewees told me, "Do you think that Japanese hostesses would be asked to clean toilets? I don't think so."⁷¹ Outside the purview of trafficking

69. According to my interviewees, migrant entertainers receive a one-month salary advance prior to their departure rather than the six-month advance received by the promoter.

70. Interview with government official, *supra* note 7.

71. Interview with "Jane," Tokyo, Japan (June 8, 2005). See also ALLISON, *supra* note 27, for a description of work conditions in hostess bars that employ Japanese women.

there is a need in Japanese society to ensure fair labor conditions in hostess bars that employ migrant entertainers, including but not limited to the elimination of penalties, the guarantee of paid holidays, and the provision of fair housing conditions. The work of hostesses does not make migrant workers such as Kay trafficked persons, contrary to the assertion of the Japanese government, which insists on only allowing the migration of skilled professional entertainers. It is important to emphasize that many migrant hostesses, including Kay, willingly come to Japan knowing that they will be working primarily as hostesses and not as entertainers. However, awareness of one's conditions of employment as a hostess prior to migration does not make the severe labor rights violations that most of them confront acceptable, tolerable, or humane.

Conditions of trafficking have been institutionalized in the labor migration process, because stringent requirements imposed by Japan and the Philippines have made prospective migrants dependent on managers and promotion agencies. When I asked hostesses why they do not negotiate with clubs directly, they told me that it is not possible. Yet they were unable to explain to me why this is the case. Indeed, there are some migrants who are able to negotiate with a promoter in the Philippines without a manager. These women are ironically described in the community as "free." However, these women cannot work solely with the (non-Philippine national) promoter because they must still negotiate their labor contracts through the Philippine-run promotion agency that holds a Special Power of Attorney on behalf of the Japanese promoter. What this means is that only the promotion agency can do business in the Philippines on behalf of the promoter, including the negotiation of contracts with prospective migrants (whether free or not).⁷² The standard labor contract that migrant hostesses sign with promotion agencies includes a penalty clause for those who do not complete their six-month contract. "Free" workers do not have to give a percentage of their wages to a manager. However, they are not actually free, because they would still be faced with a fine if they wished to leave their job before the end of their contract. The Philippine government requirement that prospective migrants sign contracts with the locally-based promotion agency rather than the Japanese promoter, ironically intended to assure that Philippine labor laws are upheld in labor migration, engenders their trafficking. The buffer of managers and promotion agencies that stands between contract workers and hostess clubs makes it nearly impossible for migrant contract workers to enter Japan except as trafficked persons.

72. Interview with representatives of two promotion agencies, *supra* note 24.

V. THE U.S. ANTI-TRAFFICKING CAMPAIGN AND ITS UNIVERSAL SOLUTION TO
TRAFFICKING

This Part illustrates how the universal solution posed by the United States to combat trafficking has globally spread to shape both local anti-trafficking efforts in Tokyo and the policies of the government of Japan. It explains how the United States imposes a universal and top-to-bottom solution to combat trafficking across the globe. This “one size fits all” approach calls for the prevention of trafficking, prosecution of traffickers, and protection of trafficked persons via their rescue, rehabilitation, and reintegration into society.⁷³ In fact, the United States pressures other countries to implement this solution by threatening to give them a low tier ranking in its annual *TIP Report*.⁷⁴ A low tier ranking results not only in social ostracism but also in the denial of economic aid from the United States. Not surprisingly, the solution posed by the government of Japan follows the U.S. template for combating trafficking. This Part demonstrates that this top-to-bottom solution does not adequately address the current situation of the trafficking of entertainers, but instead aggravates the conditions of trafficking for Filipino hostesses.

At the turn of the twenty-first century, the United States declared war on what it perceived to be the two greatest threats to democracy—terrorism and human trafficking. Unlike the war on terrorism, the war on trafficking did not gain momentum overnight, but did so slowly, through a series of hearings sponsored by both Republicans and Democrats that called attention to the forced labor, debt bondage, and coerced migration of over 700,000 individuals, mostly women and children, throughout the world. Tugging at the heartstrings of lawmakers were examples of the abuse and torture of sex workers and indentured domestic servants both inside and outside the United States.⁷⁵ In reaction to stories of abuse, terror and torture, the United States Senate and Congress enacted, with overwhelming bipartisan support, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).⁷⁶ This Act, also referred to in Senate hearings as the Sexual Trafficking Victims Protection Act, passed nearly unanimously by a vote of 371-1.⁷⁷

73. 2005 TIP REPORT, *supra* note 5, at 5, 15.

74. In the *TIP Report*, tier rankings are determined by the level of compliance by governments with the minimum standard established by the United States to combat trafficking. 2004 TIP REPORT, *supra* note 5, at 28.

75. *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the U.S. Commission on Security and Cooperation in Europe*, 106th Cong. (1999).

76. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466 (2000) (codified as amended at 22 U.S.C. §§ 7101-7110 (2000)).

77. See National Immigration Law Center, *Congress Passes Violence Against Women Act of 2000*, 14 IMMIGRANTS' RIGHTS UPDATE 6 (2000), available at <http://www.niilc.org/immilawpolicy/obtainlpr/oblpr038.htm> (last visited Mar. 31, 2006).

VTVPA was implemented to “combat trafficking in persons” in general, but most especially aims to combat the trafficking of women and children forced or coerced to perform sex acts.⁷⁸ The primary aim of the recently declared U.S. “war on traffickers” is the abolition of these severe forms of trafficking around the world. The overwhelming amount of money the U.S. allocates to counter-trafficking programs illustrates the commitment of the United States to fighting human trafficking. Since 2000, the United States has provided more than \$295 million to support various anti-trafficking programs in over 120 countries. Additionally, the Bush administration has awarded \$35 million in grants to 36 local groups that provide hands-on support to survivors of trafficking in the United States.⁷⁹ Notably, the monetary commitment of the United States is applauded by progressives and conservatives alike. Endorsers of VTVPA include, among others, feminist Gloria Steinem, the women’s organization Equality Now, the conservative women’s groups Beverly LaHaye Institute and Concerned Women for America, the conservative group Family Research Council, as well as the Religious Action Center of Reform Judaism and the National Association of Evangelicals.⁸⁰ Interestingly, these strange bedfellows have opposite views on women’s rights, with some advocating a more traditional division of labor between the sexes and others vehemently opposed to it. These differences are swept under the rug when these groups come together in their common fight against the trafficking of women and children.

Since the passage of VTVPA, the U.S. Department of State has been required to submit an annual report to the U.S. Congress—the *TIP Report*—which describes the efforts of foreign governments to eliminate human trafficking. Foreign governments in turn have been pressured to submit records and reports on their anti-trafficking activities to the United States. According to the U.S. Department of State,

[The TIP Report] is intended to raise global awareness and spur foreign governments to take effective actions to counter all forms of trafficking in persons—a form of modern day slavery. . . . A country that fails to take significant actions to bring itself into compliance with the minimum standards for the elimination of trafficking in persons receives a negative “Tier 3” assessment in this Report. Such an assessment could trigger the withholding of non-humanitarian, non-trade-related assistance from the United States to that country. In

78. Victims of Trafficking and Violence Protection Act of 2000, § 102.

79. President George W. Bush, Remarks at the National Training Conference on Human Trafficking (July 16, 2004), <http://www.whitehouse.gov/news/releases/2004/07/print/20040716-11.html> (last visited Mar. 20, 2006).

80. H.R. REP. NO. 145-123 (2000); HEIDE SEWARD & ANNE STOVER, CONCERNED WOMEN FOR AMERICA, THE 2002 TRAFFICKING IN PERSONS (TIP) REPORT (2002), <http://www.beverlylahayeinstitute.org/articledisplay.asp?id=2058&department=BLI&categoryid=reports> (last visited Mar. 27, 2006).

assessing foreign governments' efforts, the TIP Report highlights the "three P's"—prosecution, protection, and prevention. But a victim-centered approach to trafficking requires us equally to address the "three R's"—rescue, rehabilitation, and reintegration.⁸¹

According to VTVPA, foreign countries must prohibit and punish severe forms of trafficking, and demonstrate sustained efforts to eliminate trafficking.⁸² If countries fail to comply with these basic requirements—in other words, fail to implement the three-Ps campaign—they receive a Tier 3 ranking and become ineligible to receive "nonhumanitarian, non-trade-related foreign assistance."⁸³ This means countries become ineligible for development assistance from international agencies such as the International Monetary Fund.⁸⁴ The denial of aid as a means of deterring trafficking ironically seems to aggravate one of its central causes—poverty. If punishment occurs in the form of denial of aid, the country is put at a greater risk of poverty, which will then heighten the economic desperation of individuals and in turn push them to willingly take the risk of being trafficked in order to find employment. Regardless, the United States maintains this policy.

For richer countries not in need of foreign aid, like Japan, a low ranking in the annual *TIP Report* translates to political ostracism and exclusion from the international community. Richer countries with a Tier 3 ranking become ineligible to partake in cultural exchanges with the United States. As stated in VTVPA:

[I]n the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance ⁸⁵

Whether due to pressure or in agreement with the goals of the government of the United States, the government of Japan has designed a solution that follows the three Ps and three Rs models of the United States. On March 15, 2005, Japan imposed new visa requirements for migrant entertainers from the Philippines⁸⁶ in response to the recommendation by the U.S. Department of State that the Japanese government impose higher scrutiny of visa requirements and implement greater screening procedures "for repeat applicants and

81. 2005 TIP REPORT, *supra* note 5, at 5.

82. Victims of Trafficking and Violence Protection Act of 2000, § 110.

83. *Id.*

84. *Id.* Note that the United States has created an exception to keep providing aid "notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking" if it is "in the national interest of the United States." *Id.*

85. Victims of Trafficking and Violence Protection Act of 2000, § 110.

86. McNicol, *supra* note 16.

sponsors.”⁸⁷ Since the release of the annual *TIP Report*, Japan has scored no higher than a Tier 2 ranking. Yet, in 2004, Japan’s ranking dipped to the Tier 2 Watch List, slightly above the dreaded Tier 3 ranking.⁸⁸ The *TIP Report* explicitly calls attention to the migration of Filipino entertainers as a central reason for the low ranking of Japan.

The most relevant change in policy concerning foreign entertainers revises the process for evaluation of the artistic skills of entertainers. The Philippine government is no longer permitted to certify the entertainers they deploy to Japan as artists. This change comes in direct response to the recommendation of the United States that Japan impose closer scrutiny of visa requirements. As the government of Japan notes:

It has been recognized that not a few people who have entered Japan with the status of residence as “entertainer,” have become victims of trafficking in persons, in particular those who have entered the Japan having fulfilled the criteria for landing permission by holding a certificate issued by the Government of the Philippines, which testifies that the holder is an artist, but as a matter of fact do not have capability as an artist. Given this situation, the paragraph below the description of the activities of entertainers—“The applicant who is qualified by a foreign national or local government agency or an equivalent public or private organization” —will be deleted from the [law].⁸⁹

This change in policy has resulted in more stringent landing and residency examinations, with the most striking change being the extension of the training required for “overseas performance artists” from six months to two years. This change makes it nearly impossible for experienced entertainers to reenter Japan, because those with past experience in Japan are not given an exemption.⁹⁰ Since this change, there has been a drastic decline in the number of eligible entertainers entering Japan from the Philippines, which the government considers to be indicative of the lack of artistic skill of most contract workers hired in the past.⁹¹

In its implementation of an anti-trafficking platform, the government of Japan responded to the accusation that the entertainers they permitted to enter were supposedly prostitutes by implementing more stringent criteria for evaluating the professional skills of foreign entertainers. Increased professionalism, according to the government, translates into a lower likelihood of prostitution.⁹² However, the longer training required of entertainers actually translates not so much into the validity of their professional status but rather, as demonstrated by the experiences of someone like Kay, to a longer duration of

87. 2005 TIP REPORT, *supra* note 5, at 14.

88. 2004 TIP REPORT, *supra* note 5, at 96.

89. GOVERNMENT OF JAPAN, *supra* note 10, at 4.

90. IMMIGRATION BUREAU, *supra* note 6.

91. Interview with government officials, *supra* note 9.

92. *Id.*

training under the control of managers in the Philippines. This, in turn, translates into a greater likelihood of indenture, because migrant hostesses like Kay often come from the poorest of the poor in the Philippines and cannot afford the professional training required of prospective migrant entertainers. Thus, the solutions posed by Japan do not necessarily prevent trafficking, but instead they place prospective migrants even further in debt and thus increase the conditions that make them trafficked.

In addition to the higher standards imposed on foreign entertainers, to raise its ranking in the *TIP Report* Japan also passed an anti-trafficking law and increased the prosecution of traffickers. Since the release of the 2004 *TIP Report*, Japan has reported the investigation of seventy-nine cases of human trafficking, the arrest of fifty-eight trafficking suspects (up by seventeen from the previous year) and twenty-three brokers (nearly three times greater than the previous year), and the rescue of seventy-seven survivors of trafficking (down by six from the previous year), with the largest number of these victims entering from Thailand, followed by the Philippines, Colombia, and Taiwan.⁹³ Additionally, the government has implemented measures to prevent illegal employment, by increasing the raids of nightlife businesses.⁹⁴ The government has also amended criminal laws to target traffickers and likewise has revisited programs for protecting trafficking survivors.⁹⁵ In its efforts to combat the trafficking of women, Japan does not focus on the protection of foreign entertainers, but instead on prevention and prosecution.

In reward for its efforts, Japan was taken off the Tier 2 Watch List and placed back in the Tier 2 category in the 2005 *TIP Report*.⁹⁶ The U.S. Department of State explicitly lauded Japan for its decision to curtail Filipino migration, which suggests that Japan is unlikely to ease its rules for Filipino entertainers. As the latest *TIP Report* states, "During the reporting period, the government undertook major reforms to significantly tighten the issuance of entertainer visas to women from the Philippines, a process used by traffickers to enslave thousands of Philippine women in Japan each year."⁹⁷ For the U.S. Department of State, the curtailment of Filipino migration is considered a preventive measure against trafficking. Interestingly, the U.S. State Department explicitly describes the Philippines—and not the other countries sending entertainers, such as Thailand, another significant source of trafficked women in Japan—as a "major source of trafficking victims" in Japan.⁹⁸ Perhaps this is because of the greater number of migrant entertainers from the Philippines.

93. *Human-trafficking at Record 79 Cases but Number More Likely in Thousands*, JAPAN TIMES, Apr. 15, 2005, available at <http://www.japantimes.co.jp/cgi-bin/nn20050415a3.html>.

94. GOVERNMENT OF JAPAN, *supra* note 10, at 6.

95. *Id.* at 6-11.

96. 2005 *TIP REPORT*, *supra* note 5, at 42.

97. *Id.* at 132.

98. *Id.* at 133.

The United States imposes a universal solution that conflates the experiences of all trafficked persons.⁹⁹ Yet, this solution—as demonstrated by its implementation by the government of Japan—does not adequately address the situation of all trafficked persons. Still, the United States pressures both rich and poor countries to put into action its universal solution. Moreover, it distributes funds to local organizations that will implement its program. One such organization is the Polaris Project of Japan, which receives ninety-five percent of its funding from the anti-trafficking funds of the United States.¹⁰⁰

This local organization based in Tokyo is in a constant, but generally unsuccessful, search for migrant hostesses to “rescue” from hostess bars. Since its inception in 2004, the Polaris Project of Tokyo has rescued only one woman, because, according to its local coordinator, women who need rescue do not know about their organization.¹⁰¹ Polaris Project does not search for migrant hostesses to rescue but instead advertises a hotline phone number for trafficked persons through local community events and organizations as well as local publications. It has released flyers announcing its search for trafficked persons in various foreign languages including English, Thai, Tagalog, and Spanish. The assistance that the Polaris Project primarily extends to trafficked persons is “rescue,” but without the provision of alternative means of income. The rescued person receives temporary shelter and money to cover repatriation expenses to the Philippines and is provided with counseling by a Filipino social worker. Yet, the fact that the Polaris Project has only rescued one woman since its inception indicates that they have spent thousands of dollars *waiting* to “rescue” migrant women workers. Instead of waiting, the Polaris staff could perhaps invest their time and energy in conducting a study that identifies the actual problems of their constituents—the foreign migrant entertainers of Japan.

This organization seems to assume that it knows the problems facing foreign entertainers. For example, in its training manual for crisis volunteers, the group recommends that hotline phone operators use leading questions such as “Were you forced to have sex?” or “Did they ever intimidate or scare you or others?”¹⁰² These questions already assume the conditions of trafficking. They assume trafficking takes place in the workplace. These questions do not assume that trafficking could happen prior to the arrival of hostesses in the workplace, in the actual process of their migration to Japan, which is the case for Filipino migrant hostesses.

99. For example, conflation of prostitution and forced prostitution occurs in trafficking discourse, thus ignoring the problems that face the latter group. See Chuang, *supra* note 42.

100. Interview with coordinator of Polaris Project of Tokyo, in Tokyo, Japan (May 27, 2005).

101. *Id.*

102. *Polaris Project Hotline Manual for Volunteers* 7 (Polaris Project, Tokyo, Japan) (on file with author).

Despite not fully understanding the conditions of employment of migrant hostesses (as they do not necessarily entail forced prostitution), the Polaris Project implemented an aggressive campaign to identify trafficked persons, one that risks aggravating the emotional conditions of those they search to protect. For example, it recommends that hotline volunteers use emotionally loaded words such as “intimidated,” “distracted,” “abused,” and “mistreated” when talking to callers.¹⁰³ This suggests a certain degree of insensitivity to trafficked persons. Without a doubt, using terms such as “torn” and “distracted” could easily aggravate the emotional stress of a trafficked person “forced into prostitution.”¹⁰⁴ Instead of blindly assuming the need to rescue migrant workers from hostess bars, perhaps the Polaris Project could utilize its funds to conduct a survey of the workers they want to rescue. Doing so would enable them to develop a local solution that would directly address the problems of trafficked persons such as Kay.

At the moment, aside from the Polaris Project, only the Philippine Embassy works on the situation of trafficked persons from the Philippines. More migrant workers have approached the Philippine Embassy than the Polaris Project. In 2004, for example, two groups of migrant workers complained at the Embassy of being pressured to have sex with customers.¹⁰⁵ Both groups asked to be repatriated back to the Philippines. As they are returning to the Philippines under the protection of the government, this option relieves migrant workers of the penalty imposed by their promotion agency. However, it does not free them from their contractual obligation to fulfill five labor contracts on behalf of their talent managers in the Philippines.¹⁰⁶

It is not just the Polaris Project and the U.S. government that need to study and identify the needs of trafficked persons. The governments of Japan and the Philippines could also benefit from a fact-finding project. In an official report released by the government of Japan on the trafficking of persons, the government says it will try to recognize trafficking victims and understand their situations.¹⁰⁷ In so doing, the government suggests its lack of sufficient information on the current situation of trafficked entertainers. Not surprisingly, the top-to-bottom solutions posed by the government of Japan do not adequately address the conditions that make entertainers vulnerable to trafficking. As this Part has demonstrated, the solutions that the Japanese

103. *Id.* at 4-6.

104. *Id.* at 4.

105. Interview with government official, Philippine Embassy, in Tokyo, Japan (May 25, 2005).

106. Aside from the Polaris Project, no other organization specifically works on protecting trafficked persons among Filipinos in Japan. Numerous service organizations exist for Filipino migrant women in Japan (including trafficked persons), but mostly wives of Japanese men and not trafficked persons have utilized their services. Hence, all the non-profit organization representatives whom I interviewed identified domestic violence, and not trafficking, as the largest problem facing the Filipino community of Japan. This does not mean, however, that trafficking is not a problem facing members of the community.

107. GOVERNMENT OF JAPAN, *supra* note 10, at 8.

government poses place hostesses at greater risk of being trafficked to Japan. Extending the professional training required of entertainers from six months to two years, for example, only places hostesses at greater vulnerability to debt bondage to middle-men brokers in the Philippines. Likewise, the government of the Philippines has also not adequately addressed the trafficking situation of migrant entertainers, responding to the problem by increasing prosecution of traffickers.¹⁰⁸ Interestingly, migrant contract workers generally do not perceive themselves as trafficked persons, even if they admit to being in a relationship of debt-bondage with their managers. This tells us that educating migrant hostesses about their human and labor rights, specifically concerning the illegality of indentured servitude, is a more effective alternative than the rescue approach.¹⁰⁹ Knowledge of human and labor rights does not guarantee that hostesses will speak up, but it does enable them to weigh whether demanding such rights would be worth risking their jobs and salaries.¹¹⁰

Returning to Kay, the universal solution of “rescue,” “rehabilitation,” and “reintegration” would not adequately address her problems. First, she does not want to be rescued and removed from her only means of livelihood, which is to work as a hostess in Japan. Notably, she rejected the other and more common choice for prospective Filipino migrants: foreign domestic work.¹¹¹ Kay considers domestic service more dangerous and physically challenging than hostess work. According to Kay, working in the private space of an employer’s home would make her more vulnerable to physical abuse.

Second, she is not in need of rehabilitation as she has not faced severe emotional trauma from her work as a hostess. While the moral stigma associated with her job may create the need for some rehabilitation, Kay has managed the emotional stress brought on by the public misunderstanding of her job as a hostess. Moreover, she turns to her housemates to deal with the emotional stress of entertaining unwanted sexual advances at work. Although professional assistance could perhaps help her manage her stress, she would not accept such help if those assisting her intended to “rescue” her and thereby remove her from her only source of income.

108. Raul Gonzalez, *Statement on the 2005 Trafficking in Persons Report of the U.S. State Department* (June 6, 2005), http://www.doj.gov.ph/news_06-07-05.html (last visited Mar. 20, 2006).

109. In my interviews, some experienced entertainers told me stories about making complaints regarding deplorable working conditions to the Philippine Embassy. These women were able to negotiate for back wages from the promoter as well as their return ticket to the Philippines. In some cases, a promoter placed them in another club with better working conditions. It is unlikely that hostesses who complain will work with the same promotion agency or promoter for future bookings in Japan. Those hostesses who admitted to me that they had complained in the past were able to return to Japan, but they did so under contracts with different promoters and promotion agencies.

110. Hostesses I spoke to were often well aware of “illegal” job conditions such as the *dohan*, the long hours, and the “off the clock” job duties, but they did not think complaining about these conditions would be worth the risk of losing their income.

111. Two-thirds of migrant women workers from the Philippines are domestic workers, suggesting that greater networks are in place for prospective migrants to pursue this type of employment. See Parreñas, *supra* note 3, at 1.

Third, Kay would like the opportunity to reintegrate into the labor market of the Philippines, but only if the opportunities available to her mirrored her earnings in Japan. Unfortunately, they do not and thus Kay currently has no desire to reintegrate into Philippine society. As far as Kay is concerned, the universal solutions of rescue, rehabilitation, and reintegration do not improve her current situation.

It seems apparent that solutions that decrease the control of Kay's manager over her migration could benefit her more than reintegration. First, it should be made illegal for managers to sign a long-term contract with migrant workers without a release clause. Second, there should be a limit imposed on the fees charged by managers and promotion agencies. Third, the government of Japan should recognize the labor market demand for hostesses in the nightlife industry. Seen as an immoral occupation, recognizing hostess work as a legitimate employment option for migrant workers is likely to face disapproval from the U.S. State Department and result in a low tier ranking for Japan in the annual *TIP Reports*. But the elimination of the professional qualification requirements for entertainers such as Kay and the recognition of the labor market demand for hostesses in the nightlife industry would not only reduce the debt that migrant hostesses such as Kay accrue prior to deployment, but it would also reduce their dependency on talent managers.

Instead of rescue, Kay could also benefit from improved working conditions. Kay would like to see, for example, the implementation of shorter hours, higher wages, an optional *dohan*, and the elimination of penalties. Kay would also like the option of being able to quit her job without fines and penalties.

The solutions that I have proposed, from better working conditions to the elimination of middlemen in the migration process, contrast with the universal solution advocated by the United States government, legally enacted by Japan, and implemented locally by the Polaris Project of Japan. These solutions call not for the elimination of the labor and migration of entertainers but for improving their conditions of labor and migration. These solutions are empirically-grounded, recognize the needs of Kay as both a contract worker and trafficked person, and avoid the moral judgments of the United States against hostess work. They offer a grounded perspective on trafficking that emphasizes "the trade and exploitation of labor under conditions of coercion and force" that we concretely see in the case of migrant Filipino entertainers in Japan.¹¹²

112. Kempadoo, *supra* note 14, at viii (emphasis omitted).

CONCLUSION: REVISITING FEMINIST CONCERNS OVER TRAFFICKING

Trafficking is a severe problem that affects hundreds of thousands of people globally, including those whose lives I examined in Japan. Yet, as noted earlier, some feminists have become wary of the anti-trafficking position because of its usurpation as a political campaign by the United States. This essay has followed sociologist Kamala Kempadoo's suggestion to revisit the hegemonic control of the United States over the discourse on anti-trafficking.¹¹³ Indeed, closely looking at the situation of migrant Filipino entertainers in Japan shows the inapplicability of the U.S. anti-trafficking solution. As Kay's story illustrates, the morally dogmatic and paternalistic stance that calls for hostess rescue fails to address their situation. Her story calls attention instead to the need for more nuanced anti-trafficking solutions, particularly solutions with a bottom-to-top perspective that would address the self-identified concerns of trafficked persons like Kay.

The emphasis on prosecution and prevention in the U.S. war on trafficking¹¹⁴ has left many feminists wary. Some feminists criticize American anti-trafficking efforts as a backlash against the independent migration of women.¹¹⁵ According to Laura Agustín, it is no coincidence that the heightening of the anti-trafficking campaign, which discourages the migration of women, coincides with the rise in women's migration resulting from globalization.¹¹⁶ Lynellyn Long similarly observes:

When trafficking becomes an issue, it may be used to control women's and girls' bodies—and is often based on a politics of fear rather than empowerment. The threat of trafficking is used to remind all girls and women that if they do not behave in certain socially acceptable ways and particularly if they are too mobile, they place themselves at great risk.¹¹⁷

Prevention efforts for the most part discourage women's migration with various campaigns by warning them of "dangers of sexual and other abuse should they cross the border."¹¹⁸ By discouraging women's migration, the anti-

113. *Id.* at xxiv-xxv.

114. See, e.g., *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the U.S. Commission on Security and Cooperation in Europe*, *supra* note 75, at 23.

115. Agustín, *supra* note 8; Ana Lopez Lindstrom, 'Il y a 50.000 Prostituées Marocaines de Luxe dans la Côte Espagnole': A Necessary Myth, in *TRANSNATIONAL PROSTITUTION: CHANGING GLOBAL PATTERNS* 156 (Susanne Thorbek & Bandana Pattanaik eds., 2002); Lynellyn Long, *Anthropological Perspectives on the Trafficking of Women for Sexual Exploitation*, 42 *INTERNATIONAL MIGRATION* 1, at 5 (2004).

116. Agustín, *supra* note 8, at 111.

117. Long, *supra* note 115, at 25.

118. Nora V. Demleitner, *The Law at a Crossroads: The Construction of Migrant Women Trafficked into Prostitution*, in *GLOBAL HUMAN SMUGGLING* 257, 270 (David Kyle & Rey Koslowski eds., 2001).

trafficking campaign of the United States imposes its moral boundaries of gender: Women should stay inside and not outside the home.

Secondly, feminists question the American anti-trafficking campaign's moral policing of women's sexuality. Notably, VTVPA is as much an anti-prostitution act as it is an anti-trafficking act. As such, it is perhaps not surprising that VTVPA has not had any effects on the migration of Filipino domestic workers. VTVPA has only affected the flow of Filipino entertainers to Japan. The 2004 *TIP Report* claims that "[p]rostitution [f]uels [t]rafficking."¹¹⁹ For the most part, the law conflates migrant sex work with trafficking, ridding women of their agency to choose sex work as a profession. As the bill's author Representative Christopher Smith notes, "[VTVPA] emphatically rejects the principle that commercial sex should be regarded as legitimate form of 'work.'"¹²⁰ Agreeing with Representative Smith, conservative women's groups in the United States, including the Beverly LaHaye Institute and Concerned Women for America, criticized the 2002 *TIP Report* for giving Tier 1 rankings to Germany and the Netherlands simply because sex work is legal in these countries.¹²¹

Due to the stronghold the U.S. anti-trafficking campaign has on our understanding of trafficking as a political issue, feminists such as Laura Agustín¹²² and Nandita Sharma¹²³ have avoided the use of the category "trafficked persons" to describe subjugated women migrants. They equate the concept of anti-trafficking with the discouragement of women's migration and sex work. I did the same when first thinking about migrant hostesses in Japan. I faced a dilemma of whether to think of Kay's current situation as one of a migrant or a trafficked person. I hesitated to call her a trafficked person because of the stronghold that the U.S. hegemonic construction of the term has over our understanding of trafficked persons. Following the definition imposed by the United States, a trafficked person is one who is without agency and in need of rescue. Hence, in a public lecture that I delivered in Ochanomizu University in Tokyo, I disagreed with the categorization of hostesses such as Kay as trafficked persons and insisted on the construction of them as migrants with

119. 2004 *TIP REPORT*, *supra* note 5, at 15.

120. 147 CONG. REC. E2179, E2179 (2001) (statement of Rep. Smith).

121. Concerned Women for America, *supra* note 80. Although migrant sex workers in the Netherlands are not without their problems (for instance foreign sex workers do not qualify for work-based visas), the legalization of the profession has increased the protection of women. The Netherlands recognizes that sex work would not disappear even if criminalized. For a general discussion of the social rights and tolerance for sex workers in the Netherlands, see WENDY CHAPKIS, *LIVE SEX ACTS: WOMEN PERFORMING EROTIC LABOR* (1997). For a short description of nations with a regulatory system for prostitution, see Marjan Wijers, *Women, Labor, and Migration: The Position of Trafficked Women and Strategies for Support*, in *GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION* 69, 73 (Kamala Kempadoo & Jo Doezema eds., 1998).

122. Agustín, *supra* note 8.

123. Sharma, *supra* note 14.

severe structural constraints.¹²⁴ I had accepted without question the U.S. discourse on trafficking and assumed that labeling them as trafficked persons would unavoidably translate to my support for their rescue and return to the Philippines.

Yet, I could not feel completely satisfied with the term “migrant” when referring to the situation of contract workers such as Kay. The term “migrant” does not completely capture their experience of migration, specifically their position of indenture including the long-term control of managers over their labor, the absence of a release clause in their contracts with managers and promotion agencies, and the heavy penalties that they are saddled with if they choose to terminate their job prior to the end of their contract. These subjugations are not mirrored in most other labor migrant communities. This fact pushed me towards reclaiming the term “trafficked” from the hegemonic control of the United States and using it to describe the current situation of migrant hostesses like Kay.

Trafficking is a term that feminists need to reclaim. We need to recognize that the multiple forms of trafficking in existence in the twenty-first century require multiple solutions to combat trafficking. Not all trafficked persons are in need of rescue, rehabilitation, and reintegration. Anti-trafficking campaigns should advocate for improved conditions of labor and migration in many different ways rather than calling for an end to labor migration. At the moment, the solutions for the trafficking of migrant Filipino entertainers to Japan—from their rescue to their curtailed entry—are no more than a call for an end to their migration. Trafficked persons such as Kay need greater control of their migration and labor rather than restrictions that discourage and make difficult their labor migration to Japan. The only way to successfully design policies to aid trafficked persons is to use a bottom-to-top approach that takes into account different groups’ experiences of trafficking.

124. Rhacel Salazar Parreñas, *The U.S. War on Trafficking*, Address at Ochanomizu University Institute for Gender Studies, Tokyo, Japan (July 19, 2005) (transcript available at the Institute for Gender Studies, Ochanomizu University).