

Marriage Migrants and Commercial Marriage Trafficking in South Korea: Mapping the Current Legal Regime and Gaps in Addressing Exploitation

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Abstract

This article analyzes the Republic of Korea's ("Korea") legal efforts to address human trafficking and other forms of exploitation that marriage migrants who immigrate through commercial marriage brokers may encounter. Korea, like Japan and Taiwan, has experienced increasing international marriage migration since the 1990's, facilitated partly by commercial marriage brokers. Unfortunately, unscrupulous brokers, as well as international criminal organizations, have exploited this route to traffic workers and even unwilling brides into the country. In response, Korea implemented comprehensive regulations on marriage brokers in 2008, and has amended them twice to date. However, no assessments of these regulations, nor the relevant legal structures of human trafficking, marriage, and criminal laws, exist in English. Filling this critical knowledge gap, this article employs a model of legal analysis the author previously developed in the Taiwanese and Japanese contexts. It first introduces available data on marriage migration to Korea, including "pull factors" driving demand, as well as the vulnerabilities to exploitation marriage migrants face. It then examines the relevant legal regimes that cover marriage migration and human trafficking, including marriage broker regulations, and relevant trafficking, marriage and criminal laws. Where gaps in addressing the identified vulnerabilities exist, recommendations for either legal revisions or improvements in enforcement are made.

Key Words: Human trafficking, Marriage migration, Korea, Legal analysis

I. Introduction

The Republic of Korea has experienced increasing immigration over the last twenty years. Like Taiwan and Japan, the country's growing wealth has brought demographic changes that leave certain groups of men with few local marriage prospects. As traditional cultural imperatives to marry remain, men are compelled to look further afield for potential brides. Meeting this demand is a marriage broker industry that is legal and now regulated.

At the same time, the demand for brides, and the broad right to employment inherent in a spouse visa, makes international marriage migration an attractive route for human traffickers.

Criminal organizations are now exploiting the increasing immigration flows to traffic low skilled workers, and even brides, into the country.

To date, there has been no assessment of how well Korea's legal system responds to human trafficking through commercially brokered marriages, a route which I label "commercial marriage trafficking."¹ This is due in part to the newness and rapid changes of marriage broker laws; established in 2008, they have been amended twice, in 2010 and 2012. Meanwhile, human trafficking law focuses largely on sex trafficking, creating a distinct blind spot in the legal response to other forms of exploitation.

This article will examine how the Korean legal system regulates marriage migration, and its ability to respond to commercial marriage trafficking. Part I briefly summarizes human trafficking as defined under international law, the concept of marriage migration and the definition of commercial marriage trafficking. Part II gives a snapshot of marriage migration on the ground in Korea, focusing on demographics, "pull" factors that drive demand for foreign spouses, and the vulnerabilities such immigrants face once they enter the marriage. Finally, Part III assesses Korea's legal response to human trafficking, particularly via marriage migration. Examinations of marriage broker law, marriage law, and other relevant laws are included, with an eye towards how the legal system mitigates or exacerbates marriage migrants' vulnerabilities to exploitation.

1. For a more in-depth treatment of the concept of commercial marriage trafficking, see Douglas MacLean, *Commercial Marriage Trafficking: Uncovering a Growing New Form of Transnational Human Trafficking, and Shaping International Law to Respond*, 19 U.C. DAVIS J. INT'L L. & POL. 68 (2012).

A. Research Methodology

Research for this article was conducted in late 2011, followed by in-person interviews with a senior ranking official at the Ministry of Gender Equality and Family, as well as with members of a human rights law firm in the summer of 2013. The Ministry is tasked with enforcing marriage broker laws, while the latter serves as legal and policy advocates for marriage migrants and other exploited groups. The initial research focused on relevant Korean laws that were translated into English. Where relevant law was solely in Korean, the author worked with Korean legal scholars to translate and properly understand the law.² Secondary source materials were primarily used to outline the current situation of marriage migrants in the country and the challenges they faced, which provides context for the legal analysis and recommendations that the article offers. The analytical structure is informed by the author's previous work on marriage migration at the UN Interagency Project on Human Trafficking in Bangkok. The article received initial review and feedback from two native Korean-speaking legal researchers who were trained in and are familiar with the Korean legal system.

B. Research Limitations

The author lacks Korean language ability, and thus the analysis is confined to English translations. Lacking direct experience with the Korean legal system, the analysis is necessarily limited to the law as it exists on the books. As such, the article focuses on the implications of the theoretical contours of the system. Actual enforcement (or lack thereof), relevant court cases, and official interpretative materials were not available in English. Finally, there is an acute lack of data on marriage migration patterns, experiences with marriage brokers, and even the prevalence of forced marriage or human trafficking through this migration stream. Additional research is necessary to assess the law in practice, and to understand the extent of the various patterns of exploitation that exist.

2. Note that unless specific reference to a law's name is necessary for clarity, the author uses the general term "the law" throughout the article to focus attention on the relevant features of the legal system. The footnotes provide specific information on each particular law referenced throughout the text.

II. The International Law of Human Trafficking and the Intersection of Commercial Marriage Brokering

A. The Palermo Protocol

The flagship anti-human trafficking instrument under international law is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol),³ supplementing the United Nations Convention against Transnational Organized Crime. (UNTOC)⁴ Article 3 of the Protocol describes three elements that together constitute “trafficking in persons:”⁵

- 1) **The act:** Recruitment, transportation, transfer, harboring, or receipt of a person,
- 2) **The means:** Through force, coercion, abduction, fraud, deception, or paying a person having control over another,
- 3) **The purpose:** For exploitation, which *at a minimum* includes the exploitation of the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or removal of organs.⁶

3. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, art. 3, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol].
4. United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, art. 2(a), 2225 U.N.T.S. 209 [hereinafter UNTOC].
5. The full definition is the “recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” Palermo Protocol, *supra* note 3, art. 3(a). Note that the means element need not be met if the victim is under the age of 18. *Id.* art. 3(c).
6. Note that the *purpose* rather than the *act* of exploitation constitutes the element, and thus exploitation itself need not have occurred. See UNODC Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, ¶ 33 (United Nations Publications 2004).

Note that there is no explicit mention of marriage in the definition. While promises of marriage used to deceive someone (the means element) into forced sex or other forms of labor (the exploitative purpose element) require only a short interpretive step, marriage itself as a form of exploitation is absent. Although the term “at a minimum” means that the Protocol could include such acts, in practice member states focus more on the items specifically mentioned in the third element, and there is little action, coordinated or otherwise, on criminalizing forced marriages that meet the above elements. In short, while the definition should act as a “floor,” it effectively operates as a “ceiling.”⁷

B. Brokered Marriages and the Connection to Human Trafficking

Commercially brokered marriages have become a visible subset of marriage migration throughout the Pacific Rim. Men, the buyers in all cases examined, who are unable to find wives in their home countries create a demand for marriageable women from abroad.⁸ At the same time, rising economic imbalances domestically and regionally have created a large population of women who are willing (sometimes eagerly) to migrate, and a broker’s offer of a marriage can be a viable avenue to opportunities abroad. Like those who migrate through labor brokers, the experiences of those who use marriage brokers range from generally positive to horrific. The chart below provides an overview of such experiences:⁹

7. See MacLean, *supra* note 1, at 75.

8. Note that while male marriage migrants do exist, the entirety of the literature surrounding marriage migration and exploitation centers on female marriage migrants. No information on marriage brokers who deal with male marriage migrants has been found, either in Korea or in the author’s previous research on Taiwan and Japan. Further research into male marriage migrants will be necessary to determine the extent to which they share similar vulnerabilities to female marriage migrants, and what issues are uniquely their own.

9. This spectrum of experiences is drawn from internal field research conducted from 2009–2010 at the UN Inter-Agency Project on Human Trafficking (UNIAP). See MacLean, *supra* note 1, at 76 n.28. The figure above is developed from a similar model by Lily Phan, then a researcher at UNIAP.

A Spectrum of Experiences in an International Brokered Marriage				
"Successful" marriage to a foreign spouse. No signs of deception or coercion.	No signs of deception or coercion, but culture shock, language barrier, discrimination and limitations on personal freedom	Husband and/or his family mistreats the wife. Verbal and physical abuse. Some incidences of forced labor or sex with the husband. Broker or husband withheld important information about the husband, his living situation, or his expectations for the wife. Bride and/or family did not receive money from the broker as promised.	Forced marriage OR slave-like conditions, including forced labor or performance of sexual service. Husband prevents the wife from leaving.	Broker or husband sells the woman into labor or sexual servitude

The two right-most columns are or should be recognized as human trafficking, with practitioners encountered in the field generally labeling forced marriage as "marriage trafficking." However, with no standard definition of marriage trafficking at the international level, I delineated in previous research a subset of clearly identified exploitative activities as a starting point for building a larger definition of marriage trafficking. This subset, which I label "commercial marriage trafficking," is composed of instances of human trafficking that occur through a brokered marriage. The definition is:

1. The use or promised use of marriage migration across national borders,
2. By a criminal organization, as defined in the UNTOC convention,¹⁰
3. Whose actions meet the act and means elements described in the Palermo Protocol,
4. With an exploitative purpose that includes:
 - a. Marriage as part of a commercial transaction, or
 - b. Other forms of human trafficking, as defined in the Palermo Protocol.

Under this definition, those who use force, fraud or coercion to sell a person into a marriage are commercial marriage traffickers, as are those who "purchase" the victim and prevent her from leaving a marriage. Thus, such

10. UNTOC, *supra* note 4.

husbands are not only complicit in the trafficking, they are also deemed traffickers. At the same time, those who use spouse visas to move a person into forced prostitution or other exploitative labor are also commercial marriage traffickers, as they have used the instruments of marriage migration to accomplish acts already deemed as trafficking of persons under the Palermo Protocol. Including these latter acts under “Commercial Marriage Trafficking” emphasizes the use of marriage migration for a variety of exploitative purposes. This definition will inform the following analysis of migration and the law in Korea.

III. Marriage Migration to Korea—Demographics, Demand, and Vulnerabilities

This part examines the recent history of marriage migration to Korea, providing a demographic snapshot of foreign brides, who make up the vast majority of marriage migrants, as well as their husbands. Social and economic “pull factors” that drive husbands to seek international marriages are then examined, followed by a brief synopsis of the brokerage industry. An analysis of the socio-cultural issues that make marriage migrants vulnerable to exploitation rounds out this part.

A. Demographic Trends

The last two decades have seen an explosion in international marriages in Korea. Accounting for only 1.2% of marriages in 1990,¹¹ these marriages increased more than ten-fold to 13.6% by 2006.¹² All told, approximately 250,000 international marriages were registered between 1990 and 2005.¹³ The trend rose sharply in succeeding years, with more than 238,000 interna-

11. Elisabeth Beck-Gernsheim, *The Marriage Route to Migration: Of Border Artistes, Transnational Matchmaking, and Imported Spouses*, NORDIC J. MIGRATION RES. 60, 63 (2011).

12. Hyun-Sil Kim, *Social Integration and Health Policy Issues for International Marriage Migrant Women in South Korea*, 27 PUB. HEALTH NURSING 561, 562 (2010).

13. *Id.*

tional marriages registered between 2006-2012 alone.¹⁴

Demographically, women represent an overwhelming 80% of marriage migrants,¹⁵ making them the face of international marriage migration. Among these are many from Korean-speaking minorities in other countries, with the Korean-Chinese migration being well documented.¹⁶ Japan, the US, and Uzbekistan also have established Korean communities, although there is no available data in English for the percentage of ethnic Koreans migrating from these countries.¹⁷

Geographically, these brides come from a broad range of poorer neighboring countries. China represents the bulk of the population, and includes both Korean and non-Korean marriage migrants. Those from Vietnam, the Philippines, Mongolia, and Thailand together comprise a substantial number as well. The following chart of marriages registered as of September 2013 shows the eight largest sending nations, which together represent 90% of reg-

14. Korean Statistical Information Service, *Marriage and Divorce Statistics in 2012*, at 2, available at <http://kostat.go.kr/portal/english/news/1/1/index.board> (last visited Nov. 17, 2013). Note that the statistics do not separate *first-time* marriages from *remarriages*. They also do not differentiate between those who migrated to Korea specifically for a marriage and those who married either before or after entering the country. Finally, the statistics do not match the total number of marriages registered over the years, as some percentage of marriage migrants eventually leave the country with their spouse, divorce, or are widowed.

15. *Id.*

16. See Hyun-Sil Kim, *supra* note 12, at 563. Note that statistics quoted in this citation do not entirely agree with those by other researchers. See Hyuk-Rae Kim & Ingyu Oh, *Migration and Multicultural Contention in East Asia*, J. ETHNIC & MIGRATION STUD. 1, 11 (2011). The latter draws from materials published in 2005, while the former draws from materials published in 2006. Additionally, each draws from different government ministries. It is also unclear whether Hyun-Sil Kim defines registered female marriage migrants to include those who have obtained permanent residency or have naturalized.

17. Those from Japan and the US may also come from ethnic Korean communities, and are likely in any case to have a similar socio-economic background with the mainstream of Korean society, making them less likely to face the same challenges that marriage migrants from poorer nations do. As women from the richer countries comprise less than 10% of the recent female marriage migrant population, the issues they face will not be discussed in this article. Note that while Korean speakers from China and Uzbekistan will have a linguistic advantage over brides from other countries, they will face similar cultural barriers and legal vulnerabilities as other foreign brides. These will be discussed in Part II (d) below.

istered marriage migrants.¹⁸

Nationality	Number	% Female
Vietnam	39,573	99.0%
China (non-Korean ethnicity)	35,761	88.7%
China (Korean ethnicity)	26,588	71.5%
Japan	12,108	90.0%
Philippines	9,892	97.1%
Cambodia	4,620	99.7%
United States	2,773	23.1%
Thailand	2,632	97.7%
Mongolia	2,378	96.7%

B. Profile of the Husband and “Pull Factors” for Marriage Migration

Meanwhile, most husbands who seek international marriages come predominately from poorer rural areas¹⁹ or from the lower economic strata in the cities.²⁰ They are often considerably older than their spouses; on average, the husbands are seventeen years older than their wives.²¹ The poverty endemic in this demographic is striking; a government survey in 2006 found that over half of 945 such families surveyed earned less than the minimum wage.²² Although individual men will have varying reasons for pursuing an international marriage, four broad forces appear to motivate many to seek them.

1. Few Marriage Prospects among Local Women

Korean women born in the countryside have been migrating to the cities

18. Korea Immigration Service, *Current Status of Spouses of Korean Nationals by Domestic Region and Country of Origin* (September 2013). (Korean language)

19. Beck-Gernsheim, *supra* note 11.

20. Sealing Cheng, *Sexual Protection, Citizenship and Nationhood: Prostituted Women and Migrant Wives in South Korea*, J. ETHNIC & MIGRATION STUD. 1, 12 (2011).

21. Danièle Bélanger & Tran Giang Linh, *The Impact of Transnational Migration on Gender and Marriage in Sending Communities of Vietnam*, 59 CURRENT SOC. 59, 75 (2011).

22. Hyun-Sil Kim, *supra* note 12, at 565.

for education and career opportunities since the 1990's.²³ Women in the cities have continued the migration trend, leaving Korea for school, work, or even marriage.²⁴ Those remaining are less likely to “marry down” into the demographic groups of men mentioned above, exacerbating these men’s difficulties in finding a bride locally.²⁵

2. Cultural Pressures to Marry

Like other cultures in the region, Korean society strongly emphasizes a patrilineal family line, putting pressure on any male children to eventually marry and have sons.²⁶ At the same time, a husband’s wife is expected to take care of his parents when they become elderly. Fewer Korean women of marriageable age today are willing to shoulder such responsibilities, further decreasing these men’s marriage prospects.²⁷ Men thus face heavy social pressure to get married, particularly in the more traditional rural areas of the country.²⁸

3. Aggressive Marketing of Foreign Brides

The traditional social pressures and the bride shortage have forced men to look abroad. Marriage brokers have answered this demand, conducting “massive” advertising campaigns in both rural and urban areas.²⁹ One researcher noted that “billboards advertising marriage to foreigners dot the countryside, and flyers are scattered on the Seoul subway.”³⁰ Marriage brokers often promote women from neighboring countries as more traditional, and thus desirable; for example, many agencies have portrayed Vietnamese brides as being

23. Cheng, *supra* note 20, at 9.

24. Kim & Oh, *supra* note 16, at 2.

25. Kim & Oh, *supra* note 16.

26. Danièle Bélanger, Hye-Kyung Lee & Hong-Zen Wang, *Ethnic Diversity and Statistics in East Asia: ‘Foreign Brides’ Surveys in Taiwan and South Korea*, 33 ETHNIC & RACIAL STUD. 1108, 1112 (2010).

27. *Id.*

28. *Cf. id.* at 1112-13.

29. Beck-Gernsheim, *supra* note 11.

30. *Id.*

“docile, submissive and pure.”³¹

4. Official Encouragement of International Marriages

In addition to the demographic trends previously described, Korea has also faced a precipitous decline in its fertility rate; from 6.2 children per woman in 1960, to just 1.6 a generation later in 1990.³² The figure stood at 1.08 in 2005, nearly half the rate needed to maintain the current population.³³

The government is well aware of both its rural population and overall fertility decline. In addition to macro-level policy and laws aimed at increasing the birth rate,³⁴ the government has promoted support for “multicultural families,” i.e. international marriages, in a way not seen in countries facing similar demographic problems, such as Japan and Taiwan.³⁵ At the same time, the government has regulated marriage brokerage services in an effort to raise the quality of the industry and protect (mostly) potential husbands, while also implementing “multicultural family” support statutes, aimed (mostly) at helping brides adjust to life in Korea.

Finally, local governments have directly encouraged brokered marriages. Some have provided subsidies for families seeking a bride for their adult son(s),³⁶ or even supported marriage tours, where Korean husbands travel abroad for arranged meetings with eligible women.³⁷ Local government initiatives, such as the “Farmers and Fishermen Bachelors’ Marriage Project,” supported by 60 local governments in 2007, have also helped to increase the

31. Bélanger & Linh, *supra* note 21.

32. Kim & Oh, *supra* note 16, at 4.

33. *Id.*

34. Cheng, *supra* note 20.

35. Cheng, *supra* note 20, at 8-9. For example, the government designed a regional development plan focused in agricultural and fishing areas that included provisions to raise the number of marriage migrants who received customized agricultural education. Cheng, *supra* note 20, at 12-13 (the “Five-Year Plan for Regional Development of Agricultural and Fishing Villages and Improvement of Quality of Life in Agricultural, Forestry and Fishery Sectors”). About 1,200 such migrants were targeted for the program in 2009, with a projected maximum of 5,000 by 2014. Cheng, *supra* note 20, at 12-13.

36. Bélanger et al., *supra* note 26.

37. Beck-Gernsheim, *supra* note 11, at 64.

number of marriage migrants.³⁸

C. The Role of Marriage Brokers in Korea

Commercial marriage brokers are legal and regulated. The regulatory system is a recent development, however, coming into effect only in 2008, following reports of widespread abuse and even deaths of foreign spouses at the hands of husbands with violent tendencies or histories of mental instability.³⁹ While the regulations on the industry will be discussed in the legal analysis, it is important to note that commercially brokered marriages also reportedly take place “off the books,” via acquaintances, relatives and other unregistered channels.⁴⁰ As in other receiving countries, marriage migrants who have settled in Korea may either field requests for available Korean bachelors from those back home or vice versa. The extent to which these transactions are monetary ones is unclear, but there is a strong possibility that a grey market of individual marriage brokers operating informally through their contacts in both their home country and Korea does exist.

D. Vulnerabilities to Commercial Marriage Trafficking

Currently, there is neither data nor even estimates available on the rate at which marriage migrants may be trafficked, whether into forced marriages or into forced sexual labor.⁴¹ Anecdotal evidence supports the existence of such trafficking,⁴² but statistically accurate information is still to be obtained. With

38. Cheng, *supra* note 20, at 12-13.

39. See e.g., *Another Vietnamese Bride Killed by S. Korean Husband*, YONHAP NEWS AGENCY, May 24, 2011, available at <http://english.yonhapnews.co.kr/national/2011/05/24/32/030200000AEN20110524006400315F.HTML>.

40. Note that only those cases that involve friends, relatives, and others working as a broker for profit are considered here. Free introductions by friends or relatives are not considered, nor are those cases that follow patterns of traditional matchmaking. For an explanation on the distinction between traditionally arranged marriages and more traditionally brokered ones, see Part I.d.i *The commodified nature of commercially brokered marriages* on this page.

41. Advocates within the last two years however have argued that female marriage migrants are vulnerable to human trafficking. See Cheng, *supra* note 20, at 14.

42. Interview with Gong-Gam Human Rights Center (Seoul, Korea) (July 12, 2013). Notes on file with author.

a lack of data from the field, this analysis therefore takes a broader look at three clear vulnerability factors that marriage migrants face, particularly in terms of sale into forced marriage.⁴³

1. The Commodified Nature of Commercially Brokered Marriages

Unlike traditionally arranged or brokered marriages, where successful unions between not only husband and wife, but also their families, is the goal, commercial marriage brokers are driven by profit. The economic imbalance between Korea and most source countries means that the Korean husband is likely to be the paying customer, incentivizing the broker to act more as an advocate for the man than as a neutral liaison between the potential couple. Female marriage migrants are thus more vulnerable to treatment as a mere commodity “to be sold for the highest price with little, if any, gain for themselves.”⁴⁴ More practically, Korea’s new marriage broker laws are modeled after consumer protection laws, which are product-focused. With the husband most often being the client and thus the “consumer,” the law clearly exacerbates the commodified nature of commercially brokered marriages.⁴⁵

Other signs of commodification include some brokers offering “warranties” if the bride does not meet the husband’s expectations,⁴⁶ while some husbands view themselves as the “buyer” and thus empowered to make demands on their newly obtained wife, including bearing children and remaining home to act as a domestic worker.⁴⁷ He may prevent her from obtaining outside em-

43. There is little published analysis on the extent to which marriage migrants are trafficked into forced sex through fraudulent promises of marriage or sold by their husbands into prostitution. Specific risk factors for sex trafficking must therefore await studies of victims who have entered the country through brokered marriages.

44. Jackie Jones, *Trafficking Internet Brides*, 20 INFO. & COMM. TECH. L. 19, 25 (2011).

45. Cheng, *supra* note 20, at 9. The scope of what agencies offer to customers can read like a full-service warranty. By 2006, over 70% of matchmaking agencies offered six- to twelve-month “sales warranties,” which included phone counseling, home visits, and Korean language instruction. Brokers promised to supply a former husband with a new bride if a divorce occurs within the time period, although profit-conscious companies reportedly encourage prospective husbands to sign agreements promising they will not invoke their warranties. Cheng, *supra* note 20, at 9.

46. Cheng, *supra* note 20, at 9.

47. Bélanger & Linh, *supra* note 21.

ployment or indeed from even leaving the house,⁴⁸ if not through force, then potentially through threats of divorce and deportation. Finally, official domestic violence (DV) statistics suggest further power imbalances in the home. For instance, one government survey found that nearly one in three female marriage migrants interviewed reported experiencing verbal abuse; more than one in four reported physical abuse; slightly less than a quarter reported sexual abuse; and just under one in five described having been threatened.⁴⁹ These statistics may be significantly underreported.⁵⁰

Such behavior underscores the sense of ownership held by some husbands and their families. While such acts alone do not necessarily constitute exploitation, let alone commercial marriage trafficking, it suggests a degree of vulnerability to control that could rise to such a level in the worst cases.

2. Precarious Residency Status

A marriage migrant's legal status in Korea depends upon her marriage until she obtains permanent residency or naturalization, both of which generally require a minimum of two-year residence and the husband's cooperation in changing residency status.⁵¹ Some families are less than cooperative in helping the foreign wife apply for citizenship,⁵² and the husband and his family can control her movements for as long as she remains on a spouse visa. Fears that the marriage migrant may escape might also encourage the husband or his family to confiscate her passport. Depriving an individual of personal identification is one of the key methods of control in almost any trafficking situation.⁵³

At the same time, a foreign wife may feel compelled to stay. Marriage migrants are often under pressure from their families back home to send remit-

48. Bélanger & Linh, *supra* note 21.

49. Hyun-Sil Kim, *supra* note 12, at 563 (citing survey of 948 marriage migrants).

50. Hyun-Sil Kim, *supra* note 12, at 564.

51. This is detailed further in the analysis on immigration and naturalization law. *See infra* Part III.e Immigration Law (pp. 25-26).

52. *See* Hyun-Sil Kim, *supra* note 12, at 564. ("In some cases, the spouse or his family members may be passive and even uncooperative when it comes to helping the female migrant obtain citizenship.")

53. Bélanger & Linh, *supra* note 21.

tances.⁵⁴ The social stigma of a failed marriage may make foreign wives feel pressured to attempt to please their husbands so that they are not sent back. Residency issues can also impact a wife's ability to seek help; interviews among marriage migrants revealed that those who had experienced DV had not notified the police because they often desired to maintain their marriage or had concerns about their residency status.⁵⁵

3. Language and Cultural Barriers

Unless they are arriving from one of the Korean-speaking communities abroad, a different language, compounded with the culture differences all migrants face, can place the wife at the mercy of her new family. Lack of information about available services in Korea, either prior to or after departure, and potential negative experiences with the government in her home country, may dissuade her from seeking help should she find herself in a coercive or abusive situation.⁵⁶ Furthermore, families are often reluctant to let the bride work outside the home, at least in the first few years of residency, and especially before and after childbirth.⁵⁷ Such seclusion prevents the development of support networks with others from her home country, as well as connections with locals in her new community. Wives can thus find themselves isolated from the outside world, leaving them open to abuse and even exploitation.⁵⁸

Although the three vulnerabilities described above are not an exhaustive listing, they provide an overview of some of the key issues that marriage migrants can face.⁵⁹ We now turn to an examination of how Korea's legal sys-

54. Bélanger & Linh, *supra* note 21, at 67.

55. These three reasons alone comprised forty percent of survey responses. *See* Hyun-Sil Kim, *supra* note 12, at 564.

56. Fear of police and not knowing where to seek help comprised 20% of responses to a survey of wives who revealed they had not reported domestic violence. *See* Hyun-Sil Kim, *supra* note 12, at 564.

57. Bélanger et al., *supra* note 26, at 1114-15.

58. Cheng, *supra* note 20, at 13.

59. These vulnerabilities are also common to marriage migrants in other destinations, including Taiwan and Japan. For an examination of some of the vulnerabilities mentioned above, *see e.g.* Hong Xoan Nguyen Thi & Graeme Hugo, *Marriage Migration Between Vietnam and Taiwan: A View from Vietnam* 1, *Female Deficit in Asia* (2005) (Sing.) (describing the commodified nature of marriage migrants from Vietnam to Taiwan); Juna Saihan, 周緣化

tem addresses these vulnerabilities, as well as instances of human trafficking within the marriage migration route.

IV. Korean Law and Commercial Marriage Trafficking

As with the broader crime of human trafficking, the term commercial marriage trafficking is a composite criminal act, occurring at the intersection of multiple areas of law. This part thus examines six different areas of law: human trafficking, marriage brokers, marriage law, mandated services for marriage migrants, immigration law, and divorce law. Each section is further divided into a description of the law, prefaced where necessary with a brief explanation of how the particular area of law relates to commercial marriage trafficking, and a subsequent analysis that appraises the laws' strengths and weaknesses in addressing potential exploitation.

A. Human Trafficking and Related Laws

Despite being an early signatory to the UN Convention on Transnational Organized Crime and the Palermo Protocol, Korea has yet to ratify either instrument.⁶⁰ Until 2013, domestic human trafficking law did not include all of the elements contained in the Palermo Protocol's definition of human trafficking. Instead, relevant law was divided into an act punishing "sexual traffic"⁶¹ and a separate act on preventing such traffic and protecting victims.⁶² As the term implies, these laws focus solely on commercial sexual exploitation.

される中国人女性の結婚移民 [*Marginalized Chinese Women Who Married Japanese Men*], 2009 International Marriage from the Perspective of Women's Human Rights, in *Asia-Pacific Human Rights Review* (2009) (Japan). (Japanese language)

60. See United Nations Treaty Collection, Databases, Multilateral Treaties Deposited with the Secretary-General, Status of Treaties, Chapter XXVIII, 12, 12.a. (status of ratification for UNTOC and Palermo, respectively), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en.

61. Act on the Punishment of Acts of Arranging Sexual Traffic, Act. No. 10697, May 23, 2011 (S. Kor.) [hereinafter Trafficking Punishment Act].

62. Act on the Prevention of Sexual Traffic and Protection, etc. of Victims Thereof, Act. No. 10258, Apr. 15, 2010 (S. Kor.).

They thus intersect with commercial marriage trafficking only when the victim is coerced into prostitution, either by the broker or by the husband.

Following the author's legal research in 2011, the criminal code was amended in 2013 to include more comprehensive provisions on kidnapping, enticement and buying and selling of people, the latter of which can be translated as human trafficking. Unfortunately, the law has yet to be translated into English. Further, as the law has been in effect for only several months at the time of writing,⁶³ interpretation of the law's provisions and its impact on human trafficking are yet to be seen. Based on preliminary translations, the greatest impact on the issues discussed in this article is the criminalization of acts of abduction, enticement, sale or purchase of another, provided the purpose is for exploitation of labor, of prostitution, or of sexual exploitation generally.⁶⁴ The definition of exploitation does not appear to be listed in the law, making its interpretation key to these provisions' effectiveness in practice.

Turning to the law as it existed at the time of research, prostitution, pimping, and related recruitment activities are criminalized.⁶⁵ The term "sexual traffic" is a term of art meaning prostitution, but includes only the person performing sexual labor.⁶⁶ Pimping is addressed under "arranging sexual traffic," which includes transactions where the performer is either willing or coerced.⁶⁷ It also includes those who provide a place for prostitution to occur.⁶⁸

Human trafficking meanwhile is discussed only as "human traffic aimed for sexual traffic."⁶⁹ The term "human traffic" is not defined, but merely delin-

63. The revisions went into effect on June 6, 2013. Criminal Act, Act. No. 10259, Apr. 5, 2013 (S. Kor.).

64. *Id.* arts. 288(2), 289(3). (The former addresses abduction or enticement of another; the latter addresses sale or purchase of another.)

65. See Trafficking Punishment Act, *supra* note 61, arts. 4(1)-(4).

66. Trafficking Punishment Act, *supra* note 61, art. 2(1). ("Sexual traffic" is defined as performing a sex act "for an unspecified person or becoming a partner thereof in return for receiving or promising to receive money, valuables or other property gains.") Note that prostitution includes not only sexual intercourse, but also other forms of sexual stimulation. See Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶1.(a)-(b).

67. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶2.(a).

68. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶2.(b)-(c). Minor distinctions between providing a place for prostitution and providing funds, buildings, or land knowing that prostitution will take place are also made in these two subsections, but are not relevant to this article.

69. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶3.

creates categories of actors: middlemen who recruit, move, and hide individuals destined for forced sex,⁷⁰ and those who transfer such individuals under their “control and management” to other people.⁷¹ This latter term includes acts of coercion, cases where individuals receive payment for prostitution but are subsequently prevented from leaving,⁷² and instances where the broker or agent has taken the victim’s passport in exchange for securing employment.⁷³

“Victims of sexual traffic” are those who are coerced into acts of prostitution through force or deception,⁷⁴ and those subjected to “human traffic aimed at sexual traffic.”⁷⁵ Those deemed victims are not criminally liable for acts of prostitution they have committed.⁷⁶

Foreign victims receive explicit protections. Detention or deportation orders can be halted when the victim’s testimony is required for trial, when the victim attempts to obtain compensation, or when circumstances related to her “condition” merit.⁷⁷ Shelters and other relevant services are available for the duration of their stay.⁷⁸ Victims must be informed of their right to sue for compensation.⁷⁹ They can reside legally in the country, and make use of shelters and other services while the suit is underway.⁸⁰

Those who directly coerce an individual into an act of prostitution face imprisonment with labor of up to ten years⁸¹ or a fine of up to 100 million Won

70. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶3.(d).

71. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶3.(a),(d).

72. Trafficking Punishment Act, *supra* note 61, art. 2(2) ¶1.

73. Trafficking Punishment Act, *supra* note 61, art. 2(2) ¶2.

74. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶4.(a).

75. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶4.(d). Note that coercion is not required if the victim is a juvenile or is mentally incompetent. *See* Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶4.(b).

76. Trafficking Punishment Act, *supra* note 61, art. 6(1).

77. *See* Trafficking Punishment Act, *supra* note 61, arts. 11(1)-(2).

78. Trafficking Punishment Act, *supra* note 61, art. 11(3).

79. Trafficking Punishment Act, *supra* note 61, art. 11(4).

80. *See* Trafficking Punishment Act, *supra* note 61, art. 11(5).

81. Note that penalties throughout Korean laws examined use the construction “less than” rather than “up to.” Explanations throughout the article use the latter for ease of readability.

(US\$90,000).⁸² However, those who merely confine an individual in order to coerce them into prostitution face only a maximum of three years imprisonment with labor.⁸³ Those involved in moving potential victims, in other words those engaged in “human traffic aimed at sexual traffic,” receive the same penalty.⁸⁴ Members of criminal organizations or gangs face higher penalties for all of the acts stipulated in the law.⁸⁵

Finally, exploitation unrelated to sex trafficking was mentioned only briefly in other areas of the law until 2013. Still in effect are labor law provisions that apply only to forced labor situations in employer-employee relationships.⁸⁶ Elsewhere, penalties for forced marriage address both the seller and the buyer. For instance, the criminal code at the time stipulated a penalty of up to five years imprisonment for those who kidnap another through force or enticement for the purpose of marriage,⁸⁷ while those who receive a person kidnapped for marriage faced prison time of up to seven years.⁸⁸ These pen-

82. Trafficking Punishment Act, *supra* note 61, art. 18(1). Based on an exchange rate of 1060.8 Korean Won to 1 U.S. Dollar on Nov. 1, 2013. See Bloomberg Exchange Rates, available at <http://www.bloomberg.com/quote/USDKRW:CUR>. All U.S. dollar figures cited hereafter use this exchange rate.

83. Trafficking Punishment Act, *supra* note 61, art. 18(3) ¶1.

84. Trafficking Punishment Act, *supra* note 61, art. 18(3) ¶1.

85. See e.g., Trafficking Punishment Act, *supra* note 61, art. 18(3) ¶4.

86. The Labor Standards Act prevents employers from forcing workers to perform work “against his/her own free will through the use of violence, intimidation, confinement, or any other means by which the mental or physical freedom of the worker might be unduly restricted.” Labor Standards Act, Act. No. 10339, June 4, 2010, art. 7 (S. Kor.).

87. Criminal Act, Act. No. 10259, Apr. 15, 2010, art. 291 (S. Kor.). The English version of the statute uses the word “inveiglement,” but Korean lawyers I have conferred with suggest the meaning is closer to enticement. How a person is enticed into marriage is unclear, and research into relevant court decisions is needed to determine the scope of the term. On the one end, it could simply amount to disingenuous promises that the broker has no ability to keep, such as the ability to work in Korea and send remittances home, even when the husband has no intention of letting the wife do so (or indeed whether such work opportunities exist for those with little to no Korean language skills near the husband’s home). At the other end, enticement may imply more direct deception, such as the broker promising that the husband is rich and in good health when in fact the opposite is true, although such deceptive practices are already addressed under the marriage broker management act. See *infra* note 122.

88. Criminal Act, *supra* note 87, art. 292(2).

alties have increased under the 2013 revisions.⁸⁹

1. Analysis

Ironically, while human trafficking law does not mention marriage as a form of exploitation, the criminal code's provisions on forced marriages even before the 2013 revisions directly addressed the key point of commercial marriage trafficking, namely the act of marriage. As mentioned before, the exploitative purpose of a forced marriage is to use the woman's ability to marry, enabling a broker to profit from the marriage, while the buyer obtains a bride, whom he can force to perform domestic labor as well as sexual labor. However, no research in English exists to assess whether the law has been applied to coerced or fraudulently brokered marriages.

Otherwise, Korean law prior to 2013 was essentially blind to acts of human trafficking that fell outside of sex trafficking. While marriage migrants sold into forced prostitution would be protected under the law, those sold into forced marriages were not. The lack of provisions on forced labor outside of an employer-employee relationship excluded domestic servitude, which by default is any and all labor performed in a forced marriage. Similarly, arguments that acts of sex within a forced marriage should qualify as an act of sexual traffic were and continue to be unlikely to be effective, as the law defines the client in "sexual traffic" to be an "unspecified person,"⁹⁰ something a husband almost assuredly is not. The lack of payment or non-monetary consideration, as seen in prostitution, would also be an impediment to applying the law on "sexual traffic."⁹¹

As a result, victims of commercial marriage trafficking who are sold into a marriage will likely be unable to access services for victims of sexual traffic, and will instead have to rely on whatever help they can find while attempt-

89. Finally, note that criminal act revisions now prescribe a sentence of one to ten years for this crime. See Criminal Act (as revised in 2013), *supra* note 63, art. 288(1). Those who buy or sell a person (i.e. traffic) for the purpose of marriage receive the same penalty. Criminal Act (as revised in 2013), *supra* note 63, art. 289(2). Finally, those who receive a person kidnapped, enticed or bought or sold for the purpose of marriage face up to ten years prison. Criminal Act (as revised in 2013), *supra* note 63, art. 292.

90. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶1.

91. Trafficking Punishment Act, *supra* note 61, art. 2(1) ¶1.

ing to annul their marriage or obtain a divorce.⁹² While the 2013 changes in criminal law now cover a broader range of human trafficking activity, victim protections, which are located in the “sexual traffic” law,⁹³ have not been updated to include victims of these new criminal provisions. Furthermore, different agencies investigate sex trafficking and unscrupulous marriage brokers,⁹⁴ meaning that while potential sex trafficking victims may be identified before or after entering the country, victims bound for forced marriages may go unnoticed.

Additionally, the law on punishing sexual traffic has not been stringently enforced, nor have up-to-date statistics been published.⁹⁵ However, the initial years of the law’s operation saw less than 2% of prosecutions for the most serious charge of coercing an individual into prostitution. Instead, over 90% of criminal charges brought were for the lighter penalty of facilitating prostitution.⁹⁶ How many victims were rescued, and indeed how many had arrived in the country through international marriage migration, is not discussed in any of the existing research surveyed.

In terms of victim protections, those who fall within the law’s narrow scope are neither assured continued residency nor a right to work.⁹⁷ While legal residency is available for those victims whose “condition” merits it, it is unclear whether the status of sex trafficking victim itself is a qualifying condition. Furthermore, no provisions on the right to employment exist within current law. This creates a particular hardship for victims who are expected to cooperate in prosecutions. Unless the victim can show that she has a valid work permit, which will be impossible if she arrived illegally or her personal documents were confiscated by a trafficker, she may have to rely on the gen-

92. See succeeding sections on marriage and divorce law.

93. Trafficking Punishment Act, *supra* note 61.

94. The Ministry of Gender Equality and Family investigates complaints against marriage brokers, while sex trafficking cases fall under the purview of law enforcement officials. Interview with Ministry of Gender Equality and Family (Seoul, Korea) (July 11, 2013). Notes on file with author.

95. *Id.*

96. Cheng, *supra* note 20, at 10.

97. This is admittedly not a requirement under international law. However, some face real dangers of re-trafficking or even retribution upon repatriation, and without adequate standards in place to ensure their safety, victims can be repatriated into an even more dangerous situation.

erosity of victims shelters to survive until the case concludes. This provides a powerful disincentive for victims to claim compensation, or to even cooperate in a criminal investigation. Many instead are likely to choose returning home so that they may attempt to find work elsewhere.

2. Recommendations

Ultimately, Korea's anti-trafficking regime should be expanded to encompass all forms of exploitation detailed under the Palermo Protocol.⁹⁸ Defending the marriage migration route from trafficking will require a particular focus on the elements of commercial marriage trafficking introduced in Part I. Ratifying the Palermo Protocol and the underlying organized crime convention should be the first step in reforming the domestic legal framework. If necessary, the criminal code provisions on forced marriage should be interpreted to specifically address coercion in brokered marriages.

Victim protections available under the "sexual traffic" law should be extended to victims of the crimes now included in the 2013 criminal code provisions. Going further, the opportunity for continued legal residency in the country, ideally at the victim's choosing, but at the least where repatriation would risk the victim's safety, should be added. Those who remain should be afforded a right to employment, as this will enable them to generate income and will remove a powerful disincentive to cooperating in investigations.⁹⁹

Finally, additional data is needed to understand enforcement patterns of current law, as well as the proportion of foreign nationals who are coerced either into a marriage or into other forms of human trafficking. A key goal of such research would be to identify the prevalence of various patterns of human trafficking via marriage migration, and to ensure that current and revised laws are used to address what is found.

98. A full analysis of the criminal provisions enacted in 2013 is required to determine if, along with other existing law, Korea has fully met its obligations to criminalize the acts defined in the Palermo Protocol.

99. While some may question why law enforcement might not simply compel a victim to cooperate, in reality a victim can withhold cooperation by claiming ignorance or offering conflicting statements. Additionally, any attempts to pressure a victim are likely to exacerbate the severe psychological trauma they have already experienced. Such tactics violate the "do no harm" principle that is paramount to victim services, and render any information they provide extremely unreliable.

B. Marriage Brokers

While commercial marriage brokers have always been legal in Korea, the government began regulating the industry only recently. Reports of fraud, domestic violence, and sexual abuse, and even the tragic deaths of multiple foreign wives at the hands of their husbands, have appeared in the press over the last several years.¹⁰⁰ These stories prompted a new law and a pair of enforcing acts and regulations in 2008, with various amendments promulgated in 2010 and 2012.¹⁰¹ The discussion of this legal regime is divided into four parts: 1) brokerage registration, 2) duties of brokerages operating overseas, 3) client protections, and 4) administrative and criminal penalties.

1. Brokerage Registration

Individuals or businesses who wish to engage in international marriage brokering face requirements that domestic marriage brokers do not.¹⁰² These include mandatory registration, professional and ethical training¹⁰³ and any additional requirements that the government may set. Like domestic-focused marriage brokers, they must also obtain liability insurance.¹⁰⁴

The law bars several categories of people and businesses from international marriage brokering, although not always permanently. For instance, those who have been convicted of crimes that carried prison time are barred from

100. Cheng, *supra* note 20, at 13.

101. See *infra* note 102 (Marriage Broker Management Act); *infra* note 114 (Enforcement Decree on the Marriage Broker Management Act); Enforcement Regulations on the Marriage Broker Management Act (amended Nov. 11, 2010) (S. Kor.). (Korean language only; translation and interpretation verified in consultation with Professor Joongi Kim of Yonsei University, a native Korean speaker and law professor.)

102. See Marriage Broker Management Act, Act. No. 10301, May 17, 2010, *as amended* Mar. 22, 2013, arts. 3-4 (S. Kor.). (Korean language only; translation and interpretation verified in consultation with Professor Joongi Kim; English versions of the original 2010 law now available in English.)

103. Training includes increasing professional expertise and improving ethics within the industry as well as information generally in line with the purpose of the law, namely supporting constructive marriages and business practices that protect the users. See *id.* art. 24 (education contents); *id.* art. 1 (purpose of the law). Surprisingly, employers can send employees but do not necessarily have to attend. See *id.* art. 24(3).

104. *Id.* art. 4(1).

registering until two years after the sentence is completed.¹⁰⁵ Meanwhile, those convicted of designated crimes, including arranging human trafficking or arranging for fraudulent visa applications for foreign nationals, may not register until three years after the sentence is completed.¹⁰⁶ Further, those who have lost their registration due to infractions of the marriage brokering law are also barred from brokering for three years.¹⁰⁷ Businesses are also barred from the industry as long as they employ people blacklisted from marriage brokering for any of the above reasons.¹⁰⁸ Finally, certain categories of businesses may not engage in marriage brokering, including labor brokers, temporary employment agencies, and agencies offering immigration services to Koreans moving abroad.¹⁰⁹

2. Duties of Brokerages Operating Overseas

In addition to the above provisions, those conducting business in source countries are further required to respect the local laws of that country.¹¹⁰ Contracts with local partners to recruit spouses (almost always women) must be in writing, and must include the same information as given to clients in Korea.¹¹¹ Additional provisions on respecting the local laws, protecting clients' and potential brides' personal information, and prohibitions on false or discriminatory advertising must also be included.¹¹² Korean brokerages are prohibited from working with local business partners who would be barred from marriage brokering under Korean law.¹¹³

105. *Id.* art. 6(2). This includes those who had a suspended sentence. *Id.* art. 6(3). In these and other cases where the sentence was commuted, the two-year time period begins upon the decision to suspend or commute the sentence. *Id.* art. 6(1).

106. *Id.* art. 6(4). As above, the three-year prohibition also applies to those with suspended or commuted sentences. *Id.*

107. *Id.* art. 6(6).

108. *Id.* art. 6(7).

109. *Id.* art. 7.

110. *Id.* art. 11.

111. *Id.* art. 14-2(2)(1).

112. *Id.* arts. 14-2(2)(2),(4),(18).

113. *Id.* art. 14-2(3).

3. Client Protections

On the client protection side, provisions directly protecting brokers' clients include requirements that contracts be in a language that the customer can understand.¹¹⁴ The contract must be sufficiently explained so that the customer can understand its provisions.¹¹⁵ It must also describe all charges,¹¹⁶ the services provided,¹¹⁷ when and if refunds are available after the contract has been completed,¹¹⁸ the broker's responsibility for liability,¹¹⁹ and any other provisions set by the government.¹²⁰ Brokers are prohibited from conducting advertising that advances prejudicial images, and may not provide false information to their clients.¹²¹

Brokers are also required to collect personal information from both customers and the "other party," including their marriage history; health status, including AIDS, other STDs, and other communicable diseases; their current employment; any criminal history related to domestic violence, sexual violence, or child abuse; and any other information required by the laws of the sending country.¹²² This information is then provided to the prospective partner in a language that they can understand.¹²³ In all cases, personal information must be protected, and is not to be given to third parties or used outside of the transaction.¹²⁴ The language requirement runs throughout the contract, and brokers must either directly provide or contract for interpreting and

114. Enforcement Decree on the Marriage Broker Management Act, Presidential Decree No. 23488, Jan. 6, 2012, art. 3 (S. Kor.). (Korean language only; translation and interpretation verified in consultation with Professor Joongi Kim.)

115. *Id.* art. 10(1).

116. Marriage Broker Management Act, *supra* note 102, art. 10(2)(1).

117. *Id.* art. 10(2)(4).

118. *Id.* art. 10(2)(2).

119. *Id.* art. 10(2)(3).

120. *Id.* art. 10(2)(5).

121. *Id.* art. 12(1)-(2). Brokers are prohibited from using advertisements that discriminate or support prejudices based on race, gender, age type of employment, among others. *Id.* art. 12(1).

122. *Id.* arts. 10-2(1)(1)-(5). Necessary proof of this information is contained in the Enforcement Decree on the Marriage Broker Management Act, *supra* note 114, art. 3-2(1).

123. Marriage Broker Management Act, *supra* note 102, art. 10-2(2).

124. *Id.* art. 13.

translation service to ensure effective communication between the parties.¹²⁵

4. Administrative and Criminal Penalties

Penalties for breaking the law range from administrative slaps on the wrist to prison sentences. Minor administrative irregularities, mostly dealing with reporting requirements, can simply lead to an administrative order to address the problem.¹²⁶ Administrative fines of up to 3 million Won (US\$ 2828) apply for those who fail to submit corrected information as required, who operate marriage brokerages while operating other brokering activities as prohibited, or who either refuse to provide or else offer false information during an inspection.¹²⁷ For most infractions, local authorities may either order the business to halt activity for up to one year, or void its marriage broker registration.¹²⁸ However, voiding is required when the broker registered or operated the businesses fraudulently or illegally, the operator falls under one of the categories of people barred from marriage brokering, or does not carry insurance as mandated.¹²⁹ Business entities that employ a barred person must terminate the individual within one month in order to avoid losing their registration.¹³⁰ All of the penalties described also “travel” with those penalized; i.e. an individual will not be able to continue work as another marriage broker, and businesses that merge with entities that have been barred are themselves barred.¹³¹ Those businesses operating contrary to the law’s registration requirements, who continue operating in violation of an administrative order to halt operations, or who have had their registration revoked, can be physically shut down.¹³²

125. *Id.* art. 10-3.

126. *Id.* art. 17.

127. *Id.* art. 28(1). Smaller administrative fines of up to 1 million won (942 U.S. dollars) exist for more minor infractions, including failure to display broker registration in a prominent place in the business. *Id.* art. 28(2).

128. *See* Marriage Broker Management Act, *supra* note 102, art. 18(1).

129. *Id.* arts. 18(1)(1)-(2).

130. *Id.* art. 18(1)(2).

131. *Id.* art. 21.

132. *Id.* art. 19. However, the law suggests that businesses closed down can be reopened upon appeal or if closure is no longer merited. Neither the law nor its associated enforcing regulations make clear what criteria merit rescinding the order.

More serious penalties apply for those who fail to register with the local jurisdiction, publish discriminatory or prejudiced advertisements, provide false information to clients or divulge personal information to third parties. All violations carry a prison term of up to two years or a fine of up to 10 million Won (US\$9,426).¹³³ The largest penalties target those who have fraudulently registered, operated without registration, or continued operating even after their businesses were ordered closed. Penalties for these infractions include up to a three year prison sentence or a fine of up to 20 million Won (US\$18,853).¹³⁴ These penalties are applicable either to the individual who committed them, or to their employer or business entity, or both.¹³⁵ Finally, the law mandates that businesses expressly stipulate in their contracts that clients may sue for intentional or unintentional tort liability as appropriate.¹³⁶

5. Analysis

As human trafficking is an underground activity, regulating brokers through registration requirements enables the government to monitor the industry. Specific regulations regarding who can conduct international marriage brokering, contract disclosure, prohibitions on deceptive practices, and regulation of overseas operations create constraints that in theory should diminish bad practices that lead to exploitation. Government inspections, which are mandated under the law, could also provide at least the potential for proactive identification of trafficking within the industry.¹³⁷

However, it is not clear how the government polices brokers' activities abroad, or even whether it could, given national sovereignty issues between countries. One government official interviewed claimed that foreign laws

133. *Id.* art. 26(2).

134. *Id.* art. 26(1).

135. *Id.* art. 27. Employers and/or business entities can avoid these penalties if they can show that they have fully informed employees about the law and were not lax in monitoring employees.

136. *Id.* art. 25.

137. *Id.* art. 15. Note that at least one NGO has charged that the inspections are sporadic at best. Although the Ministry of Gender Equality and Family are ultimately responsible for the law, local governments are tasked with processing and reviewing marriage broker registrations. Faced with numerous other demands from the central government, many local governments do not place a high priority on matters related to marriage brokers. Interview with Gong-Gam Human Rights Center (Seoul, Korea) (July 12, 2013).

banning marriage brokering in other countries are not implicated where Korean marriage brokers are involved, as the entire transaction occurs in Korea, via payment by the prospective husband.¹³⁸ However, Korean brokers must recruit potential brides, and that requires them either to find the women directly or to employ local partners in source countries to conduct recruitment. In both cases, the recruiters are paid to find women for brokered marriages. This would run afoul of anti-brokering laws in at least Vietnam and Mainland China, two of Korea's biggest sources of marriage migrants.¹³⁹ At the least, prohibitions against breaking foreign laws appear to be difficult, if not impossible, to enforce.¹⁴⁰

Second, client protections tailored to fully understanding the contract and to breaking down the language barrier are laudable in that they take a measure of power out of the hands of brokers and put it into those of customers. Without these provisions, both clients and potential foreign spouses would be far more reliant upon the broker for information about the other party in making a decision. Sadly, both the government and human rights groups report that the husbands are the most common user of these client protections, and mostly file complaints against brokers for various contract-related

138. Interview with Ministry of Gender Equality and Family official (Seoul, Korea) (July 11, 2013).

139. For Vietnam, *see* Decree Detailing the Implementation of a Number of Articles of the Marriage and Family Law on the Marriage and Family Relations Involving Foreign Elements, Government Decree No. 68/2002/ND-CP, July 10, 2002, art. 2(2), *available at* http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10076; for China, *see* Zhonghua Renmin Gongheguo Hunyinfu (中华人民共和国婚姻法) [Marriage Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Apr. 28, 2001, effective Jan. 1, 1981), art. 3, *available at* <http://www.lawinfochina.com/display.aspx?id=1793&lib=law&SearchKeyword=marriage%20law&SearchCKeyword=> (Chinese and English versions; obtaining payment in relation to marriage prohibited).

140. Issues of liability will differ depending on whether the Korean marriage broker or their foreign partner violated local law. Korean law places a duty upon international marriage brokers to respect foreign law in their operations abroad, *see* Marriage Broker Management Act, *supra* note 102, art. 11, and to include contract terms requiring any foreign partners they work with to comply with local law. Marriage Broker Management Act, *supra* note 102, art.14-2(2). The former means that Korean marriage brokers would likely face liability if they directly break applicable foreign laws. However, anecdotally, most marriage brokers work with local partners abroad. While local partners who operate in violation of local law would thus be in breach of their partnership agreement, it is unclear what, if any, liability the Korean marriage broker would face under Korean law for continuing a partnership with a foreign counterpart whom they knew was operating in violation of local law.

claims.¹⁴¹ Foreign brides are far less likely to use the law, often because they are unaware of their rights or even of the law's existence.

Third, in terms of deterring bad behavior, training for marriage brokers provides an opportunity to make the law clear to businesses, and what penalties await violators. However, the law only requires a business to send a single employee from the operation, leaving both the owner(s) and any other employees untrained.

Fourth, while administrative and criminal penalties add much needed teeth to the law, particularly in provisions enabling local governments to shut down businesses or put bad actors in prison, most of the provisions have neither minimum prison terms nor set fines. For instances, courts can simply elect to shut down the business or impose a token sentence. Perhaps the biggest shortcoming is the lack of a lifetime ban for even egregious acts of exploitation, as no broker, even those convicted of *human trafficking*, is permanently barred from the industry. Such a gap hinders law enforcement efforts to put bad actors permanently out of practice.

Finally, reports exist that under-enforcement at the local level is a problem. While the Ministry of Family and Gender Equality is responsible for the law's operation,¹⁴² local governments have primary authority for making sure that businesses are registered. One human rights organization that has represented marriage migrants stated that given the many responsibilities placed on municipalities by the central government, this particular responsibility often falls by the wayside.¹⁴³

6. Recommendations

If Korea continues its experiment with regulated commercial marriage brokers,¹⁴⁴ the law should clearly mandate contracts between both parties.¹⁴⁵

141. Interview with Ministry of Gender Equality and Family official (Seoul, Korea) (July 11, 2013); and interview with Gong-Gam Human Rights Center (Seoul, Korea) (July 12, 2013).

142. Interview with Ministry of Gender Equality and Family official (Seoul, Korea) (July 11, 2013).

143. Interview with Gong-Gam Human Rights Center (Seoul, Korea) (July 12, 2013).

144. There are voices within the country arguing for the practice to end and be replaced by NGO matchmakers instead. See *International Matchmaking* (Editorial), THE KOREA HERALD, Jan. 3, 2012, available at <http://www.koreaherald.com/view.php?ud=20120103000410>.

145. The distinction between the client and the "other party" in the law suggests that broker

Currently, the husband's status as the paying customer is likely to encourage brokers to put the husband's interests above the potential bride's. Without a contract, the foreign spouse may not be able to access many of the protections in the law, particularly the liability provisions aimed at brokers.¹⁴⁶ In short, the current system does little to correct the imbalance of interests created by a profit-oriented enterprise that naturally caters to only one of the two parties involved.

At the same time, while the law's penalty provisions have teeth, research on enforcement is necessary to assess how effective prohibitions and punishments have actually been. How such brokers operate abroad is a key question for advocates and the government, and revisions to the law should take brokering practices in the most common source countries into account, with an eye towards curtailing activities that run afoul of Korean law.

Finally, as noted above, informal brokering via friend and kinship networks is reportedly widespread.¹⁴⁷ As a community of marriage migrants from a particular country grows, individuals may attempt to connect those in their home communities with other eligible bachelors in the area. While such arrangements may carry less risk to potential marriage migrants, as they either know the broker directly or through a friend, the informal nature of their activities allow unscrupulous actors to avoid all of the disclosure provisions that the law requires. Formulating effective responses to bad practices within this informal sector will first require an understanding of how such brokers

agencies are only required to sign contracts with the paying customer, who in many cases is the husband. The reality may be that brokers do indeed have contracts with the foreign spouse. It is also possible that they regulate their legal relationship with the foreign spouse via their contracts with partner brokers. Research into how Korean brokers structure their legal relationships with the foreign spouse is necessary.

146. A lawyer at one human rights organization stated that the foreign spouse does indeed have access to these penalties, despite the use of different terms to denote the Korean spouse and the foreign spouse in the law. However, foreign brides' lack of use of this law leaves no precedent to verify these claims, at least among the English materials present. Research into published cases, if any exist, will be necessary to confirm that the law in fact treats both spouses equally, despite the use of different terms for each. Interview with Gong-Gam Human Rights Center (Seoul, Korea) (July 12, 2013).

147. Yun-Soon Koh, Nam-Soon Huh & Il-Young Koh, *Multi-Cultural Families from International Marriages and Current Family Policies in Korea*, 33rd Global Conference of the International Council on Social Welfare (2008) (Fr.). (Powerpoint presentation. On file with author.) As before, the focus is on commercially transacted marriages rather than more traditional arranged marriages.

operate, as well as the extent and manner in which exploitation occurs.

C. Marriage Law

Marriage law can and should serve as part of the initial bulwark against commercial marriage trafficking. The applications for marriage, and especially for a spouse visa, provide a critical opportunity to detect signs of force, fraud, or coercion. This section describes the requirements for marriage, and for obtaining a spouse visa, along with an analysis of these provisions from the perspective of detecting and preventing commercial marriage trafficking.

In terms of age, those aged 18 or over may marry freely,¹⁴⁸ while those younger must obtain a parent or guardian's permission. Both parties must consent to marriage.¹⁴⁹

Applications for an international marriage can be processed without both parties present, as marriage certificates only require signatures of both parties and two witnesses.¹⁵⁰ Where the marriage took place abroad, the Korean spouse can submit proof of marriage registration obtained from the foreign spouse's government.¹⁵¹ Limited examination provisions do not seem to include in-person interviews, or any extensive checks for fraudulent marriages.¹⁵² Once registration is completed, the embassy sends the registration application back to the local jurisdiction where the applicant resides for additional inquiry, likely to ensure that they are not subject to any of the limita-

148. Civil Act, Act. No. 9650, May 8, 2009, art. 800 (S. Kor.) (adults may freely marry); *cf. id.* art. 801.

149. *See id.* art. 803 ("No person may claim to the court for compulsory performance of a matrimonial engagement").

150. *Id.* art. 812(2).

151. Act on the Registration, etc. of Family Relationship, Act. No. 10279, May 4, 2010, art. 35 (S. Kor.). A small number of international marriages may take place in a third country where both spouses reside. Note that the law does not state whether a marriage obtained in a third country is recognized.

152. *See* Civil Act, *supra* note 148, art. 813. Note that examinations may be necessary where there are violations of any other acts or statutes. Civil Act, *supra* note 148, art. 813. No references to false marriage or human trafficking were found during research, although additional research will be needed to determine whether internal regulations, if available to the public, make such references.

tions listed above.¹⁵³

Visa procedures for the foreign spouse similarly can take place without both parties present. After obtaining a copy of the marriage certificate, the foreign spouse becomes eligible for an F-2 residence visa, which is predicated on the marriage.¹⁵⁴ In most cases, the spouse simply applies to the local Korean embassy with a copy of the marriage certificate, a letter of reference from the Korean spouse, proof of “financial capability,” the visa and an application fee.¹⁵⁵ While the Korea Immigration Service describes an examination as part of its visa application review process,¹⁵⁶ regulations researched do not mention whether this is an in-person examination by default, and if so, what the specifics of the examination are.¹⁵⁷ Alternately, the Korean spouse may be able to undergo the examination process in the foreign spouses stead by “inviting” the spouse.¹⁵⁸ The Korean spouse must fall under one of four criteria in order to invite their spouse, the most relevant here being that the Korean spouse must be older or younger by ten or more years.¹⁵⁹ While the examination process for Korean nationals is again not detailed in the available research, successful applications result in the foreign spouse being issued an exchange certificate that allows the individual to immediately obtain a visa without examination.¹⁶⁰

153. Civil Act, *supra* note 148, art. 36.

154. Korea Immigration Service, Immigration Guide, *available at* http://www.hikorea.go.kr/pt/InfoDetailR_en.pt?categoryId=2&parentId=382&catSeq=385&showMenuId=374&visaId=F2 (describing F-2 visa eligibility requirements).

155. *Id.* (Note that required documents may change “depending on individual circumstances.”)

156. *See* Korea Immigration Service, Immigration Guide, “Process to Apply for Recognition of Visa Guidance,” *available at* http://www.hikorea.go.kr/pt/en/info/popup/icis/VisaFlow2_pop.htm.

157. Although again, examination procedures, at least at Korean consular offices in Vietnam, are seen as less stringent than those of Taiwan. *See* Hong Xoan Nguyen Thi, *Contemporary Cross-Border Marriage Migration in Vietnam: Pattern and Consequence* 5, *Contemporary Dynamics of International Marriage Migration in South-East Asia* (2009) (Phil.).

158. *See* Korea Immigration Service, Immigration Guide, *supra* note 154.

159. Korea Immigration Service, Immigration Guide, *supra* note 154.

160. *See* Korea Immigration Service, Immigration Guide, “Process to Apply for Recognition of Visa Guidance,” *available at* http://www.hikorea.go.kr/pt/en/info/popup/icis/VisaFlow2_pop.htm.

1. Analysis

Korean marriage registration procedures are largely paper-based, which are not as well suited for detecting and preventing fraudulent marriages as properly calibrated in-person interviews can be. Experienced brokers and human traffickers can quickly learn what inspectors look for and then prepare applications accordingly. While applicants can always be coached for an interview, a face-to-face meeting can enable properly trained inspectors to detect indicators of force, fraud or coercion and adjust their questions accordingly. While certainly not 100% effective, in-person interviews prevent unscrupulous actors from having the level of control over the process that they enjoy in paper-based applications. While data from the field necessary to confirm the application process is truly as simple as described, Vietnam-focused researchers have found the marriage registration process for Vietnamese women at Korean embassies far more relaxed than those who intend to marry Taiwanese husbands.¹⁶¹ With no examination of the couple together being necessary, a trafficker could simply employ a single man to serve as the false husband in order to bring a victim into the country. Finally, while the Korean government is clearly committed to facilitating marriage for the demographic served by commercial marriage brokers, as seen in the special invitation provision for visa applications, the system provides no method of assessing whether a marriage might be fraudulent or coerced. This is especially true where the only official interview may be in Korea between a husband and local immigration agents, who are unlikely to have much working knowledge of commercial marriage trafficking in the source country.

2. Recommendations

For destination countries like Korea, it is imperative that international marriages be examined as early in the immigration process as possible. Couples should either have to undergo marriage registration and interviews together at the local Korean embassy or consulate, or else present a marriage registration certificate from a country with procedures that Korea has deemed reliable. Provided the questions are properly calibrated, interviews can uncover attempts at commercial marriage trafficking, while potentially furnishing the

161. See Nguyen Thi, *supra* note 157, at 5.

bride with valuable information about her prospective husband that either he or the brokers may have not divulged. While interview procedures would slow down the process to some degree, in-person interviews are the default for spouses from certain “hot spot” countries who migrate to Taiwan or the United States.¹⁶²

Successful registrations should then be transmitted to the local jurisdiction where the husband resides. Arrival of new registrations should be passed on to appropriate service providers who can then proactively contact the couple with relevant legal and basic living information that the foreign spouse may not know. This process would provide a second layer of screening against traffickers, as local government agencies can alert law enforcement when brides do not show up or when interviews with the newly arrived spouse raise concerns about a forced marriage.

D. Mandated Services for International Families

Korea has actively engaged with its rising population of international marriage migrants, placing legal duties for family support on local governments through the Support for Multicultural Families Act.¹⁶³ In brief, the Ministry of Health, Welfare and Family Affairs is required to conduct a survey every three years to determine “the current status and actual conditions of multicultural families,” i.e. those families with a foreign or naturalized spouse,¹⁶⁴

162. Taiwanese who marry Vietnamese spouses (in almost all cases women) must appear with their spouse at a Taiwanese Economic and Cultural Office in Vietnam. See 戶政事務所辦理結婚登記作業規定 [Regulations Governing Marriage Registration at Household Registration Office], Dec. 6, 2007, art. 3(3) (Taiwan), available at http://www.ris.gov.tw/ch1/eng_09712_mar1.doc (English), http://www.ris.gov.tw/version96/ris_law_007.html (Chinese Traditional). In general foreign spouses of U.S. citizens must appear with their spouse at a U.S. embassy for an interview in order to obtain a spouse visa. See U.S. Department of State, *The Immigrant Visa Process*, available at http://travel.state.gov/content/visas/english/immigrate/immigrant-process/interview/applicant_interview.html.

163. Some researchers charge that the law is an assimilationist policy that focuses less on incorporating the wife and her cultural background into her new community and more about training her to meet the social expectations of a culturally Korean wife. See Cheng, *supra* note 20, at 14. Although discussions of such criticisms are beyond the scope of this paper, further research is needed into whether marriage migrants become more vulnerable to abuse and exploitation in countries that attempt to assimilate rather than integrate new arrivals.

164. Support for Multicultural Families Act, Act. No. 8937, Mar. 21, 2008, arts. 2(1)(a)-(b) (S. Kor.).

in order to guide its policies supporting such families.¹⁶⁵ In carrying out the survey, the Ministry may request data from related legal entities or organizations outside the government, who are required to provide such data unless they can prove an exceptional reason for failing to do so.¹⁶⁶ The Ministry must also take steps to raise awareness about and reduce discrimination against multicultural families generally.¹⁶⁷

In terms of services, state and local governments are mandated to broadly establish support systems “to help multi-cultural family members enjoy stable family living.”¹⁶⁸ Specifically, localities may provide foreign and naturalized spouses with “fundamental information necessary for living” in Korea,¹⁶⁹ such as education for “social adaptation” as well as occupational training.¹⁷⁰ Under a stated policy goal of maintaining equality within the family, local governments must promote programs for family counseling, couple relationship education, parenting classes, and services that generally “help multi-cultural families maintain a democratic and gender-equal familial relationship,” with efforts to take into account cultural differences.¹⁷¹

The law also addresses the reality of domestic violence, although in somewhat hortatory rather than mandatory language. Local governments must “endeavor” to prevent it, expand domestic violence counseling centers and related shelters, and provide necessary language interpretation.¹⁷² Local governments *may* also provide support for those seeking divorce due to domestic violence, including interpretation, legal counseling, and administrative assistance.¹⁷³

Finally, the Ministry may enable any legal entity with appropriate human resources and facilities to operate a multicultural family support center.¹⁷⁴ These centers exist to provide relevant services, act as information clearing

165. *Id.* art. 4(1).

166. *Id.* art. 4(2).

167. *Id.* art. 5.

168. *Id.* art. 3(1).

169. *Id.* art. 6(1).

170. *Id.* art. 6(1).

171. *Id.* art. 7.

172. *Id.* art. 8(2).

173. *Id.* art. 8(3).

174. *Id.* art. 12(1).

houses, and to connect wrap-around services offered by other parts of the government.¹⁷⁵ National and local governments are also empowered to fund NGOs that provide relevant services to families.¹⁷⁶

1. Analysis

Although the law does not specifically address forced marriages, the data collection and services it establishes could be used to attack the hidden nature of commercial marriage trafficking. The triennial survey of families should be calibrated to note potential indicators of human trafficking generally and forced marriages in particular. Data gathered could then be used not only to improve services but also to inform anti-trafficking efforts.

Services aimed specifically at marriage migrants can also be a powerful preventative to trafficking into forced marriages. Korea's dual-pronged approach of services for immigrant spouses and combating stereotypes provides a theoretically effective framework for addressing social and cultural factors that can alienate and isolate vulnerable marriage migrants.¹⁷⁷

The inclusion of targeted domestic violence services reflects recognition of the problem within the international marriage community. Centers that provide such services will be a natural place for trafficked women to go. Furthermore, the government launched a DV hotline in 2005 that includes interpretation in multiple languages, potentially providing a lifeline to those who are prevented from leaving the home.¹⁷⁸

That said, many of these services are not mandated, meaning that a marriage migrant's access to services may depend entirely on where in the country she ends up. These services appear to lack an outreach component, and thus do little good for those who do not know about or cannot access them. More troubling, local governments have reportedly often contracted out service provision to the international marriage broker industry.¹⁷⁹ As described

175. *Id.* art. 12(2).

176. *Id.* art. 16.

177. Although again with the caveats that some see Korea's assimilationist policies may conflict with efforts to dismantle stereotypes about the women and their cultures of origin. See Cheng, *supra* note 20, at 15 (citing anthropologist Kim Hyun Mee).

178. Hyun-Sil Kim, *supra* note 12, at 565.

179. Cheng, *supra* note 20, at 10.

earlier, the industry is far more sensitive to the husband's needs than to the wife's. At best, such services can be tinged with pressure to conform to the husband's wishes. At worst, unscrupulous brokers can enforce a husband's control over an unwilling wife, perpetuating a culture of silence about forced marriages and leaving victims feeling powerless to escape their situation. Critically, the law provides no explicit oversight mechanisms to ensure that contracting organizations are in fact providing appropriate services.

2. Recommendations

Support centers should be run by government agencies specifically tasked with advocating for the needs of foreign brides, or at least by properly vetted NGO with a similar mission. These centers should also provide active outreach when local governments are notified of newly registered marriages. A public servant or NGO staffer trained to identify signs of trafficking or DV should meet with the spouse at least once, if not multiple times, after her arrival. Indeed, spouses who have not arrived or have disappeared may well have been trafficked, and discovering this early increases the chances of rescuing the victim. Meeting with an outreach worker can also help dispel feelings of isolation, as well as any misinformation the victim may have received from traffickers or their husbands, while providing a lifeline to help in case of future problems.

Additionally, the lack of services for Korean husbands, whether mandated or even suggested, is problematic. From a commercial marriage trafficking perspective, prevention requires educating potential husbands about the penalties for forced marriage, their responsibility to respect their spouse's human rights, and to understand that their spouse is a free individual and not a "purchase" that they have made.¹⁸⁰ Such education should be mandatory prior to engaging a marriage broker's services, and it should be provided either directly by the government or by an organization independent of marriage brokers. After marriage, direct outreach to the husband should take place in order to potentially identify coercive marriage situations and to reinforce the education he received earlier. Although some might balk at mandatory educa-

180. The exact details of such trainings is beyond the scope of this article, but in general should be designed to address specific legal and cultural issues that make foreign spouses vulnerable to commercial marriage trafficking, as well as domestic violence generally.

tion requirements, the prevalence of DV and human rights advocates' contentions that marriage migrants are predisposed to human trafficking¹⁸¹ shows a pressing need for aggressive outreach aimed at those who use marriage brokers.

Finally, while the above analysis identifies shortcomings in the provisions of the law, in-depth research into the kind and quality of the services currently provided is necessary to determine the extent to which they actually help marriage migrants, particularly in counteracting vulnerabilities to commercial marriage trafficking.

E. Immigration Law

This section examines a foreign spouse's residency options after marriage, and the role her residency status plays in aggravating or diminishing vulnerabilities to exploitation and abuse. Note that the following section on divorce will focus on a marriage migrant's residency status if a marriage ends.

While a spouse visa is predicated on the marriage, foreign spouses may eventually change to either permanent residency (PR) or apply for citizenship. PR generally requires two years' residence in Korea, as well as proof of assets of 30 million won (\$28,280),¹⁸² which may include the husband's assets.¹⁸³ Those seeking citizenship must have either maintained a domicile in Korea for two consecutive years during the marriage, while those present for only one year are eligible after three years of marriage.¹⁸⁴ Additionally, spouses must prove "conduct," sufficient assets on her own or including her husband's, totaling 30 million won (\$28,280) or more, and have "basic knowledge befitting a Korean national; such as understanding of the

181. Interview with Gong-Gam Human Rights Center (Seoul, Korea) (July 12, 2013).

182. See Korea Immigration Service, Immigration Guide, "Criteria and Required Documents by the Subject for Permission for Change of Visa Status," available at http://www.hikorea.go.kr/pt/en/info/popup/icis/3-4-2_pop.htm (click on the link labeled "Spouse of Korean national, Spouse and children under age of Permanent Residency (F-5) status holder") (describing criteria for spouses of Korean nationals).

183. *Id.*

184. Nationality Act, Act. No. 5431, Dec. 13, 1997, arts. 6(2)-(3) (S. Kor.) (continuous and intermittent domicile requirements, respectively).

Korean language, customs and culture.”¹⁸⁵ Candidates must participate in the process with their spouse and prove that the “normal marriage status is maintained.”¹⁸⁶ Such proof may include photographs, statements by those in her community, or letters exchanged between the spouses before marriage.¹⁸⁷

1. Analysis

Once in the country, Korean law gives the Korean spouse control over if and when the foreign spouse obtains residency status independent of marriage. Even for PR, foreign spouses’ relatively impoverished backgrounds and any prohibition by their husbands from working will ordinarily require them to list the husband’s assets, not to mention obtaining his help in overcoming the significant language barrier inherent in the application process. Without his or his family’s cooperation, stable residency may be nearly impossible to obtain. Husbands’ control over their wives’ residency status can thus potentially extend indefinitely.

2. Recommendations

Residency independent of the marriage is essential to address the power imbalance between marriage migrants and their spouses, and to ensure that the former are not vulnerable to exploitation from their husbands. While immediate eligibility for PR would be the strongest solution, allowing the wife to obtain residency without depending on the husband either for his assent, for his assets, or for help in filling out paper work would be significant steps.¹⁸⁸ In addition to these changes in the law, the government should also ensure caseworkers are available at the local level to help women navigate the bureaucratic process of changing residency status.

185. Korea Immigration Service, Immigration Guide, *Simplified Naturalization (Marriage)*, available at http://www.hikorea.go.kr/pt/InfoDetailR_en.pt?catSeq=457&categoryId=2&parentId=399&showMenuId=377.

186. *Id.* (describing exceptions provided for those spouses who are unable to attend for approved reasons, with the example of regular hospitalization for an illness provided).

187. *Id.*

188. Note that such steps would come at some cost to the government’s control of national borders, and would likely exacerbate fears that those migrating for marriage are doing so simply to obtain PR rather than to build a family with the Korean spouse.

Finally, while a discussion of the policy surrounding this law is beyond the scope of this paper, a few points on residency status are in order. From the country's perspective, immigration through marriage should not easily lead to other forms of residency, as the primary goal is ostensibly to allow a national to reside in the country with his foreign spouse. The easier the requirements for a spouse visa, and the easier it is to either change to permanent residency or to legally remain following divorce, the more vulnerable the spouse visa itself will be to misuse by those who marry simply to obtain legal residence and who then divorce once they are in the country and have secured residency. The argument thus generally goes that if the marriage ends, there should be only limited circumstances where the now former wife could remain.

Unfortunately, the interests of the state and of the foreign spouse are at odds. In contrast to purely domestic marriages, those in international marriages essentially place the stability of their current way of life in the hands of another. In short, as long as a foreign spouse remains dependent upon the marriage for her residency, the husband can use the threat of divorce to control her.¹⁸⁹ While countries will obviously have concerns about marriages of convenience that exist purely for labor migration purposes, those who legitimately come for marriage should be allowed to attain residency and/or citizenship on their own after some period of time, and should also enjoy sufficient protections in the meantime to mitigate the danger of the local spouse using the threat of revoking their partner's legal status via divorce as a tool to control or exploit them.

F. Divorce

Divorce laws often determine both continued residency in a destination country after marriage, as well as who obtains custody of any children. For many marriage migrants, remaining in the destination country is a high priority, either for children, to pay off debts incurred in migrating and/or to continue supporting family in the home country via remittances. In particular, those with children will fear that they may be separated from their offspring if divorce would lead to deportation. Divorce laws that jeopardize residency

189. One solution to this issue would be to determine that such threats constitute a form of domestic violence. Proving that such threats have occurred, however, seems incredibly difficult in practice.

or custody may effectively dissuade spouses from attempting to leave a forced marriage, as they must choose between continued exploitation and the dangers of escape, irregular status, and potential deportation. Laws that provide avenues out of the marriage while preserving residency and custody rights protect the foreign spouse's autonomy while decreasing her vulnerability to exploitation.

In Korea, options for both divorce and annulment exist. Spouses may unilaterally divorce for reasons that include: the other spouse's medical condition in certain cases, including having a venereal disease, incurable psychosis or "any other incurable malignant disease;"¹⁹⁰ when the spouse is already engaged to marry or is already married to another;¹⁹¹ if the spouse has committed adultery;¹⁹² or "if there exists any other serious reason."¹⁹³ Critically for marriage migrants, marriages may be annulled where the intent to marry had been made under fraud or duress,¹⁹⁴ or where "any other serious reason which would make marital life unable to continue" exists.¹⁹⁵ However, annulment has a three-month statute of limitations, starting from discovery of the fraud or upon gaining freedom from duress.¹⁹⁶

Continued residency after divorce or nullification is possible, but requires a change to either PR or citizenship, both of which require that the foreign spouse has resided in Korea for at least two years in most cases.¹⁹⁷ Additionally, those seeking divorce are eligible for change of residency status only if they have resided in Korea for the necessary period of time *and* their Korean spouse was deemed at fault for the divorce, or else if the wife is granted custody of any minor children.¹⁹⁸ Spouses who annul their marriages are eligible

190. Civil Act, *supra* note 148, art. 804.3.

191. Civil Act, *supra* note 148, art. 804.4.

192. Civil Act, *supra* note 148, art. 804.5.

193. Civil Act, *supra* note 148, art. 804.8.

194. Civil Act, *supra* note 148, art. 816.3.

195. Civil Act, *supra* note 148, art. 816.2.

196. Civil Act, *supra* note 148.

197. *See* Civil Act, *supra* note 148.

198. Nationality Act, *supra* note 184, art. 6(2) ¶3 (spouse need not have been married for the required time, but must have resided in Korea for that time period); Korea Immigration Service, Immigration Guide, "Criteria and Required Documents by the Subject for Permission for Change of Visa Status," available at http://www.hikorea.go.kr/pt/en/info/popup/icis/3-4-2_pop.htm (click on the link labeled "Spouse of Korean national, Spouse and children under age of Permanent Residency (F-5) status holder") (describing criteria for spouses of Korean nationals).

for legal residency only if they have minor children and only then if they have been granted custody.¹⁹⁹

Finally, an additional path to continued legal residency for such victims may exist under long-term visas provided to those involved in ongoing legal disputes.²⁰⁰ Wives who launch civil suits to end the marriage and to subsequently recover damages from the husband and/or the broker could theoretically “run out the clock” on the residency requirement. It is not clear, however, whether residency accumulated on such visas counts towards the two-year requirement.

1. Analysis

The two-year residency requirement presents difficult choices for those trapped in forced or abusive marriages. Victims can attempt to endure for two years before suing for a divorce that hopefully ends with the husband at fault, or they can end the marriage and return home, facing potential stigma from her community for a failed marriage. The choice is even more dire if she already has any children; she may take her chances with the Korean courts over custody, attempt to flee with the child, or else leave the child behind. None of these options encourage victims to seek help or to attempt to end the marriage.

Residency requirements notwithstanding, the ability to annul a marriage entered through fraud or duress is an important protection for victims of commercial marriage trafficking. Unlike divorce, annulment is unilateral, and in theory should thus be a more expedited process. The statute of limitations, however, may be a serious hurdle for those attempting to leave marriages involving fraud or deception; a three-month time limit is short, and factors ranging from the stigma of returning home in failure to basic ignorance of the law and where to go for aid may put this avenue out of reach for many. On the other hand, those coerced into a marriage face less time pressure. Those lucky enough to escape and find help are able to apply for annulment within six months. That said, annulment is a less attractive option than di-

199. Nationality Act, *supra* note 184, art. 6(2) ¶3.

200. See Korea Immigration Service, Immigration Guide, *Miscellaneous (G-1)* (available to “those in legal proceedings”), available at http://www.hikorea.go.kr/pt/InfoDetailR_en.pt?categoryId=2&parentId=382&catSeq=385&showMenuId=374&visaId=g1 (click on the link labeled “Miscellaneous (under long-term stay visa)”).

orce for those seeking to remain in the country, as the former path is open only to those who have children *and* can secure custody of them.

Meanwhile, divorce law suffers from a lack of explicit provisions for terminating a union due to domestic violence. Although other laws mention that terminating marriage due to DV is possible,²⁰¹ it is unclear whether this refers to divorce or annulment.

2. Recommendations

The law should clearly mandate that DV be a recognized reason for at-fault divorce, both in order to open the possibility of continued residence for foreign victims, and also to act as support for tort claims against the husband and/or the broker. While not all such victims are trafficked, nearly all commercial marriage trafficking victims in forced marriages are also victims of DV, whether it is physical, mental, or sexual abuse.

More generally, victims of commercial marriage trafficking should be allowed to divorce their spouses for cause, enabling them to secure residency, even when they do not have children. Given that divorce for cause contains an open-ended element,²⁰² such victims may in fact be able to do so. Whether any have tried and been successful is a question requiring additional research.

Finally, a key question remaining to be answered is how courts actually decide cases. The law, and current research in English, provides no insight into the circumstances that Korean husbands are generally found at fault in divorce, nor how often custody is granted to their wives. Case research is needed to assess the extent to which victims of commercial marriage trafficking can obtain divorces, retain custody of their children, and remain in the country.

V. Conclusion

Korea's rapidly declining birth rate and the long-running increase in inter-

201. See Support for Multicultural Families Act, *supra* note 164, art. 8(3). ("State and local governments may provide married immigrants and naturalized citizens, etc. with necessary services... in making statements and finding facts when they terminate a marital relationship due to *domestic violence*." (emphasis added))

202. Support for Multicultural Families Act, *supra* note 164, art. 804.

national marriages suggest that demand for foreign brides will continue to be strong. The government has been quite active in promoting this trend, as it sees foreign brides as part of the solution to its population problems, and has committed legislative and administrative resources to providing support to so-called multicultural families.²⁰³ However, while Korea's legal system provides some protections, there are large gaps throughout the legal system that provide multiple vulnerabilities to commercial marriage trafficking, either by traffickers or their husbands.

Marriage broker regulations provide some important protections for both the husband and the foreign spouse, but much of the regulatory regime is aimed at protecting the potential husband as a consumer. Unless the foreign spouse is herself a paying customer (and the economic situation in the home countries of most marriage migrants makes it unlikely most would be paying the same amount as a potential husband), the broker is likely to place the husband's interests above the foreign spouse's, thus doing little to address any potentially exploitive situations. The industry's focus on the husband could easily bleed into the services for foreign spouses that many local governments have contracted out to marriage brokers. Rather than serving as an advocate for spouses who may face exploitive situations in their new homes, broker-offered services could simply pressure brides to comply with the desires of their new families. These concerns require further research into both brokers' marriage operations and any services they provide. Should the narrative of brokers operating to the detriment of the foreign spouse hold true, it would strengthen the voice of those who believe commercial brokers should be made illegal and replaced with non-profit agencies, as Taiwan has done.

In any case, the high rate of domestic violence, and the reports of tight control over the movements of foreign brides by their husbands and their families strongly suggest that the government has not done enough to address the inherent power imbalance that husbands enjoy over their wives. Human trafficking thrives in such an environment of control and abuse; confiscation of wives' passports by their new families, and control over their movements are in fact red flags of commercial marriage trafficking. Furthermore, the criteria for changing visa status keep stable residency out of reach for marriage

203. Although the regulations placed upon marriage brokers may imply that it is more difficult for single men to find spouses through these channels, no research available in English has raised this assertion. Furthermore, as mentioned previously, husbands are the primary "users" of the broker regulations. See Part III.b Marriage Brokers, Analysis (pp. 18-19).

migrants. With husbands playing a key role in changing their legal status, foreign brides can be kept in a state of vulnerability and control until their husbands decide otherwise.

Addressing these legal shortcomings will be vital to mitigating vulnerabilities to commercial marriage trafficking. However, that alone will not be sufficient. Korean anti-trafficking law must be expanded to address all forms of exploitation, including those defined under the Palermo Protocol, as well as those covered in the definition of commercial marriage trafficking in Part I. These two frameworks together should not only guide the development of domestic law, but should also be used to inform a top-to-bottom examination of legal and administrative systems that deal with marriage migrants and marriage brokers. As this article's analysis of marriage registration procedures shows, lax oversight of those applying for international marriages can enable traffickers to move women not only into forced marriages, but also into forced prostitution as well. As long as the law is blind to such activities, even well-formed anti-sex trafficking frameworks are likely to miss the connection between human traffickers and commercial marriage brokering.

That said, additional research to understand the law in operation is needed. Additional empirical research concerning marriage migrants who arrived through commercial brokers will also be required to understand the full range of experiences such migrants face, and to fully assess the effectiveness of the legal system, both structurally and in practice. This article provides initial direction to begin this admittedly large volume of needed research. Ultimately, advocates will need to continue arguing that marriage migrants are vulnerable to human trafficking, and to push for legislative and administrative solutions that truly address the needs of migrants so that both the nation and those looking to make a life in the Republic of Korea can mutually benefit from this growing migration route.

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