



Learning Experience?

Japan's Technical Intern
Training Programme and the
Challenge of Protecting the
Rights of Migrant Workers



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Image: [Flickr/Samantha Marx](#)

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About this Report

Migrant workers are an ever-present feature of global supply chains. They work in all sectors and all geographies.

Low-skilled migrant workers are however amongst the most vulnerable to exploitation and abuse. Compounding this, they are also often among the least able to assert their rights. For many, a lack of viable options to sustain a livelihood at home increases their willingness to accept risks inherent to migrating for work abroad. Much of IHRB's work in this area is focussed on how workers are recruited and in particular the payment of recruitment fees to secure employment.

IHRB serves as the secretariat for the Mega-Sporting Events Platform for Human Rights (MSE Platform – www.megasportingevents.org), a coalition of international and intergovernmental organisations, governments, sports governing bodies, athletes, unions, sponsors, broadcasters, and civil society groups.

Mega-sporting events have great potential to advance human rights, through job creation, employability, new social housing, and urban regeneration. Yet, with very few exceptions, these events have also been associated with serious violations of human rights. Despite two decades of growing international attention to the sector, recurring areas of concern include forced evictions, construction deaths, migrant worker exploitation, sweatshop labour, restrictions on protesters and street-vendors, and discrimination on and off the sport field.

Exploitative employment conditions for migrant workers have unfortunately been frequently exacerbated by the construction demands of mega-sporting events. In the context of Japan, the upcoming Tokyo 2020 Olympic and Paralympic Games shine a light on the employment conditions of migrant workers there, and in particular Japan's Technical Intern Training Programme (TITP).

This Report provides an overview of the development TITP and how it operates in principle and practice. The main aim of this Report is to promote international awareness of TITP and its problematic impacts, much of which has not been accessible to date in English. Further research covering violations on the ground would be welcome.

Executive Summary

1

This Report shines a light on the human rights challenges of Japan's Technical Intern Training Programme (TITP), a state-supported scheme in principle providing beneficial training opportunities in Japanese companies for foreign workers. The official overall purpose of TITP is to support the industrial development of developing countries through the transfer of Japanese technology and technical expertise, with trainees applying the skills acquired during internships in local businesses in their own countries or in Japanese companies, subsidiaries and business partnerships operating abroad.

However, TITP has faced growing criticism within Japan and internationally. Diverse observers allege that it operates largely as a guest-worker programme providing cheap labour to tackle substantial labour shortages in low-skill sectors of Japan's economy rather than the professional development of 'interns', and that it involves widespread exploitation and human rights abuses, including human trafficking and forced labour. TITP is overwhelmingly used by medium and small-sized companies and micro-enterprises to recruit migrant workers, almost all of whom come from countries in South-East and East Asia, in particular China and, increasingly, Vietnam.

There is an urgent need for TITP's problematic nature and operation to be more widely understood so that its human rights impacts can be properly addressed, including in the run-up to the Tokyo 2020 Olympic and Paralympic Games.

As Japan steps up the building and renovation of sporting facilities and other infrastructure for Tokyo 2020, it is moving to plug labour shortfalls and meet additional labour demand in the construction sector through the intensified recruitment of foreign workers. With TITP increasingly used for this purpose, Japan's government, state institutions, and business bodies face rising pressure to tackle the scheme's unscrupulous recruitment and employment practices and labour and human rights abuses. Such action is crucial to protect migrant workers, but also for Japan's international image if it is to avoid controversies of the kind surrounding Qatar's preparations for the 2022 FIFA World Cup.

The problems of TITP, however, transcend the greater attention they may attract because of Tokyo 2020 and its potential impacts on construction workers. They also raise questions about how effectively Japan is considering the rights of migrant workers in dealing with the structural labour supply problems it faces as a result of societal changes and demographic pressures. Despite official policy favouring a domestic workforce, Japan is more and more resorting to foreign labour to meet the needs of its economy in lower-skill areas. The role of TITP, now accounting for a fifth of all foreign workers in the country and involving around 30,000 enterprises, is significant.

It is beyond the scope of this Report to provide detailed rights-based recommendations for how policy-makers and stakeholders might tackle TITP problems in relation to Tokyo 2020 and Japan's overall labour market challenges in the longer-term. Rather, its primary aim is to boost international awareness of TITP's problematic nature and operation as a starting point for future debate and action, and to address the relative lack of English-language information on the programme.

The following sections examine the roles and effectiveness of Japanese state and business institutions in TITP's oversight, management and implementation, and reviews criticisms of the programme. It briefly sets out the main features of, and reactions to, 2016 legislation on TITP which the Japanese government has introduced in response to growing national and international concern, including by the US State Department and the United Nations. The law is due to enter into force by November 2017 but is still the focus of criticism.

The Report concludes by noting international developments, tools and frameworks that could help policy-makers and stakeholders to promote effective action on human rights concerns related to TITP. These include implementation of relevant ILO Conventions and the UN Guiding Principles on Business and Human Rights, which are identified as official means of achieving the UN Sustainable Development Goals (SDGs). Under SDG 8.7, governments have pledged to eradicate human trafficking, forced labour and all forms of modern slavery.

Setting the TITP Scene

2

Mega-sporting events (MSEs) have increasingly attracted the attention of those concerned with human rights. Such events involve a diverse range of human rights risks and impacts in their planning, preparation, delivery and legacy. In turn, they raise questions about wider challenges affecting human rights in MSE host countries and the extent to which governments are committed to addressing the crucial issues at stake.²

As Japan gears up for the Tokyo 2020 Olympic and Paralympic Games,³ one significant national issue likely to come increasingly under the human rights spotlight, both directly in relation to the games and in broader terms, is the country's state-supported Technical Intern Training Programme (TITP).

TITP has already faced substantial criticism within Japan and internationally. The charge is that it operates as a guest-worker programme open to human rights infringements, including human trafficking and forced labour, as noted by the US State Department.⁴ Observers point out that instead of developing the technical skills of foreign 'interns', in line with TITP's supposed official aim of aiding the industrial development of other countries (see box below), the scheme is used as a source of cheap labour, mainly from China and increasingly Vietnam (see box below), to deal with Japan's increasing shortages of workers in low-skill economic sectors.⁵

2 For an overview of issues in the MSE lifecycle, see the Institute for Human Rights and Business, "Striving for Excellence: Mega-Sporting Events and Human Rights" (2013), at: http://www.ihrb.org/pdf/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf. For the latest thinking on improving business and human rights policy and practice on MSEs, see the white papers produced by the Mega-Sporting Events Platform for Human Rights, an emerging multi-stakeholder coalition facilitated by IHRB: <https://www.ihrb.org/megasportingevents/mse-news/sporting-chance-white-papers>. This paper covers in greater depth issues raised in Section 1.2 of White Paper 2.3: https://www.ihrb.org/uploads/reports/MSE_Platform_Human_Rights_Risk_Mitigation_in_the_Sports_Context_Jan_2017.pdf

3 See <https://tokyo2020.jp/en/>

4 See its 2016 "Trafficking In Persons Report" at <https://www.state.gov/documents/organization/258880.pdf> (pp217-220).

5 For instance, see the views of the Japan Federation of Bar Associations of (<http://www.nichibenren.or.jp/li->

Countries of origin of TITP 'trainee' workers⁶

Japan has around 211,000 'trainees' and they come mainly from the following countries in South-East and East Asia:

- China (40.4%),
- Viet Nam (34.1%)
- Philippines (9.8%)
- Indonesia (8.2%)
- Thailand (3.2%)
- Others (4.3%)

Today's TITP: A Historical Snapshot

TITP was officially introduced in 1993 but its origins date to 1965 when Japanese corporations, as they expanded their businesses overseas,⁷ started to accept foreign trainees. At the time, the typical trainee was an employee of an overseas affiliate, joint-venture or partner company. Trainees were expected to learn technologies, skills and knowledge in Japan and, after the training, apply such expertise in their home country.

Even today, the stated official purpose of TITP, despite changes in the programme over the years, is still "to develop human resources who can contribute to the industrial development of foreign countries through the transfer of Japanese technology".⁸

TITP's original emergence in 1993 was a response to the rising numbers of foreign trainees as large corporations with operations abroad continued to recruit. The real source of demand, however, had increasingly been associations of small and medium-sized enterprises such as the Cooperative Business Association (Jigyo-Kyodo Kumiai) and the Chamber of Commerce and Industry (Shoko-Kaigisyo). Most 'interns' under the current TITP are placed with SMEs and micro-enterprises.

The duration of a TITP employment contract, originally restricted to a one-year maximum and increased to two in 1997, is now three years, following 2010 amendment of Japan's Immigration Control and Refugee Recognition Act, which forms the basis of the current programme. At the time of writing, TITP, notwithstanding the impact of new legislation (see Sections 3 and 6), still involved two types of 'Technical Intern Training' (Gino-Jissyu):

brary/ja/opinion/report/data/2015/opinion_150227.pdf, 27 February 2015, and the following media article by Yukifumi Takeuchi: <http://www.asahi.com/strategy/O829a.html>

6 Source: Ministry of Justice, June 2016 <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001161643>

7 This overview of TITP approaches is based on Masayuki Ito, "Issues of Foreign Trainees and Foreign Students" (<http://www.ndl.go.jp/jp/diet/publication/document/2008/20080109.pdf>); the Japan Federation of National Service Employees (<http://kokkororen.com/news/view.php?id=590>), 16 April 2015; and the Japan Federation of Bar Associations (http://www.nichibenren.or.jp/activity/document/opinion/year/2013/130620_4.html), 20 June 2013.

8 https://www.jitco.or.jp/download/data/guidebook_english.pdf

- Technical Intern Training Type (i) relating to trainees' first year in Japan. Following a two-month lecture period, trainees in theory spend the rest of the year devoted exclusively to acquiring skills with a single employer 'implementing' organisation.⁹
- Technical Intern Training Type (ii) relating to the remainder of the three-year period. On completing the first year, trainees must change their status of residence to stay in Japan for the next two years. Having passed a basic skills test as a requirement, they continue their training as part of the workforce. This must be with the same organisation as the first year.

A cause of rising concern is use of TITP in the construction sector, particularly in view of the additional infrastructure development needed to host the Tokyo 2020 games. While many migrant workers already work in construction, Japan is unable to meet the further increase in labour demand domestically, and is therefore intensifying its recruitment of foreign labour. A significant proportion of these workers will be employed through TITP.

There is a clear danger that if the country fails to address the existing problems of TITP, it will expose migrant construction workers to serious human rights risks and also face widespread criticism of the kind afflicting Qatar's preparations for the 2022 FIFA World Cup. As well as work conditions causing injury and death, criticism of Qatar has centred on exploitative recruitment and employment practices such as the charging of recruitment fees and restrictive visa and residency conditions.

Alternatively, Tokyo 2020 could serve as an opportunity for Japan to ensure fair treatment of migrant workers not just in construction but also the other economic sectors in which TITP is increasingly being used.

2.1 TITP and Construction: Rising Demand for Foreign Workers

According to estimates, the major infrastructure development needed to host the Tokyo 2020 Games will require investment in construction totalling approximately JPY10 trillion (US\$9 billion).¹⁰ As well as construction of Olympic site facilities, this relates to indirect needs such as urban redevelopment and the building or renovation of hotels and transport infrastructure.

Together with reconstruction arising from the March 2011 earthquake, the games are a major cause of the current increase in labour demand in the construction industry. In 2014, Japan's government reportedly estimated it would require an additional 150,000 workers in the financial years between 2015 and 2020¹¹ to meet the sector's overall needs.

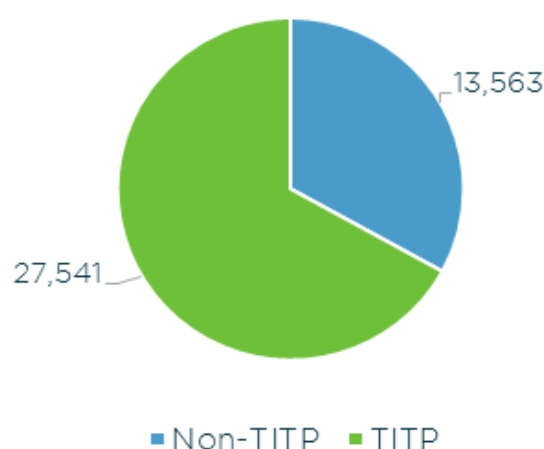
9 As a result of the 2010 change, the current TITP restricts use of the 'trainee' to training that does not involve practical business operations or that is of a public nature (such as that provided by national and local government). See http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00011.html#1-4

10 See December 2015 Bank of Japan report, p10: https://www.boj.or.jp/research/brp/ron_2015/data/ron151228a.pdf

11 Nihon-Keizai-Shinbun, 4 April 2014: http://www.nikkei.com/article/DGXNASGC04003_U4A400C1EAF000/

Government policy in Japan over the last twenty years has steered away from accepting low-skilled foreign labour. However, like many other industries in Japan with a large number of low-skilled jobs, the construction industry is facing considerable human resources challenges. Retiring older workers are not being replaced by young Japanese due to perceptions of poor work conditions.¹² As a result, the government has begun to look overseas to tackle these increasing labour demand pressures.¹³ By October 2016, there were 41,104 foreign workers in the construction industry, including 27,541 TITP 'interns' or 67 per cent of the total (see pie chart below).¹⁴

Proportion of foreign workers in construction industry on TITP (October 2016)



Source: Ministry of Health, Welfare and Labour¹⁵

The number of foreign workers in the construction industry kept on under TITP has also been steadily rising. The graph below, showing the number of those becoming 'second year' interns under Technical Intern Training Type (ii), suggests a recent sharp increase in retained workers linked to Tokyo 2020.

The government has also taken additional emergency measures in relation to TITP to deal with the labour shortages facing the construction industry. In April 2015 it introduced the Foreign Construction Worker Acceptance Programme, which will run to the end of 2020. This allows the continued employment of foreign workers who have already spent three years under TITP specifically in the construction industry. The government expects that around 3,000 foreign workers in total will be accepted under the emergency measure by the end of March 2017.¹⁶

¹² See <http://www.mlit.go.jp/common/001064740.pdf>

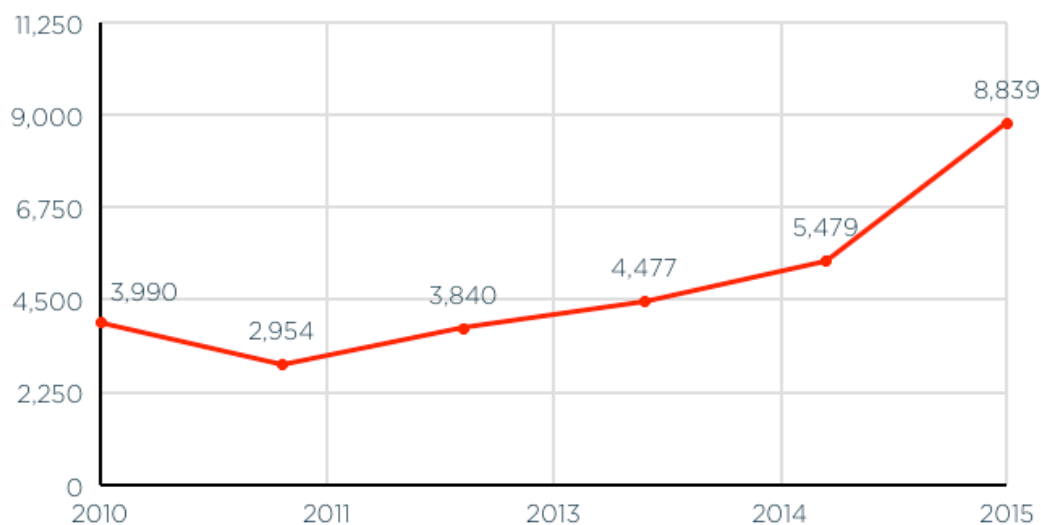
¹³ See the material issued by Ministry of Land, Infrastructure, Transport and Tourism from April 2016: <http://www.mlit.go.jp/common/001132943.pdf>

¹⁴ Source: Ministry of Health, Welfare and Labour: <http://www.mhlw.go.jp/file/04-Houdouhappyou-11655000-Shokugyouanteikyokuhakenyukiroudoutaisakubu-Gaikokujinkoyoutaisakuka/674674.pdf> (Appendix 6)

¹⁵ <http://www.mhlw.go.jp/file/04-Houdouhappyou-11655000-Shokugyouanteikyokuhakenyukiroudoutaisakubu-Gaikokujinkoyoutaisakuka/674674.pdf> (Appendix 6)

¹⁶ http://www5.cao.go.jp/keizai-shimon/kaigi/minutes/2017/0523/shiryu_05.pdf (page 3)

Number of foreign workers who transition to a second year under TITP: construction-related work



Sources: Ministry of Health, Welfare and Labour, Ministry of Justice

2.2 TITP and Labour Trends in Japan's Wider Economy

Japan's low birth rate and aging population are also major factors driving demand for foreign workers and use of TITP. In 2016, almost 27 per cent of the country was aged 65 and over¹⁷ and its population is expected to fall by roughly 12 per cent over coming decades,¹⁸ leading the Bank of Japan to anticipate almost all industries facing looming labour shortages.¹⁹ In response, the total number of foreign workers employed by businesses across the economy rose sharply from 717,504 in 2013 to almost 1.1 million in October 2016, with those in TITP numbering 211,108 and a significant 19.5 per cent of the total.²⁰

Tokyo 2020 has understandably drawn attention to construction as a leading sector involved in TITP. However, 2015 Ministry of Health, Labour and Welfare statistics²¹ reveal that the machinery and metals and also textile industries are even greater users of TITP, and that other sectors such as agriculture, food manufacturing and fisheries figure among the scheme's main participants.

17 <http://www.stat.go.jp/data/jinsui/pdf/201607.pdf>

18 See the 2012 data published by the National Institute of Population and Social Security Research at http://www.ipss.go.jp/syoushika/tohkei/newest04/h1_1.html

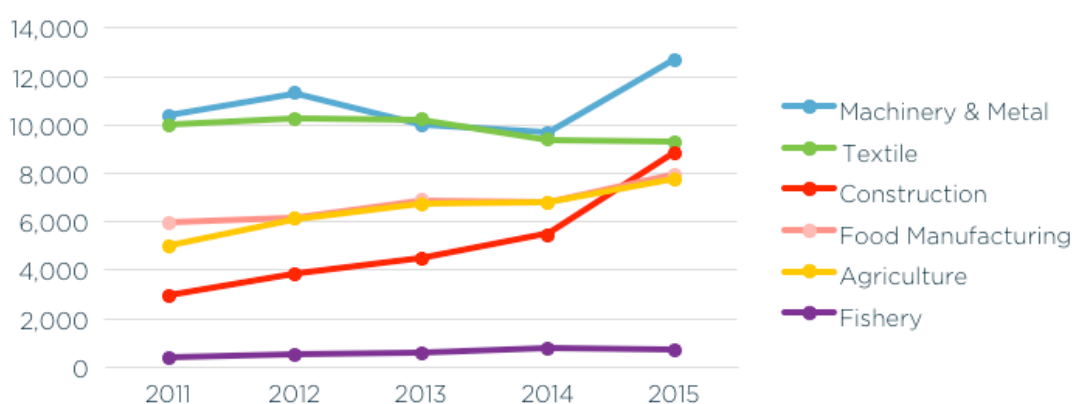
19 See <https://www.boj.or.jp/statistics/tk/gyosyu/2016/tkb1606.pdf>. As well as construction, the accommodation, food and beverage sectors showed particularly high labour shortages.

20 <http://www.mhlw.go.jp/file/04-Houdouhappyou-11655000-Shokugyouanteikyokuhakenyukiroudoutaisakubu-Gaikokujinkoyoutaisakuka/546174.pdf>

21 <http://www.mhlw.go.jp/file/06-Seisakujouhou-11800000-Shokugyounouryokukaihatsukyoku/0000143745.pdf>

This wide scope highlights how important TITP is becoming for many lower-skill sectors of Japan's economy, with the sectors outlined above seen as a priority for sourcing foreign labour through TITP. These are the sectors that are allowed to retain trainees for a second and third year under TITP (ii)²² (see graph below) along with a diverse range of additional trades and services.²³ Meanwhile, it should be noted that there are no restrictions on which business sectors can take on interns through the TITP programme in the first year (TITP(i)). This suggests that an even more extensive, flexible pool of 'trainee' labour is being used in the economy under TITP. The vast majority of TITP users are SMEs and especially micro-enterprises. In 2014, 65 per cent of trainees were with a company with 19 employees or fewer.²⁴

Number of foreign workers who transition to a second year under TITP: key sectors and industries



Sources: Ministry of Health, Welfare and Labour, Ministry of Justice²⁵

22 https://www.jitco.or.jp/english/overview/pdf/shokushu_en.pdf

23 Furniture-making, printing, book-binding, plastic-moulding, reinforced plastic-moulding, painting, welding, industrial packaging, carton box and corrugated cardboard box-making, industrial manufacturing, pottery, car repair and maintenance, and building cleaning management.

24 See http://www.mhlw.go.jp/bunya/nouryoku/gaikoku/dl/ginou_data.pdf

25 <http://www.mhlw.go.jp/file/06-Seisakujouhou-11800000-Shokugyounouryokukaihatsukyoku/0000143745.pdf>

How the Existing TITP Works

3

3.1 TITP Recruitment and Placement Arrangements

Just as the TITP in place since 2010 has two categories – Technical intern Training Type (i) for trainees in their first year and Technical intern Training Type (ii) for their continued ‘internship’ during the rest of the existing three-year maximum – the scheme involves two types of organisational arrangements for receiving or placing ‘interns’: type (a) and type (b).

- **Type (i)(a)** refers to the residential status and activities of ‘interns’ received by individual enterprises (becoming (ii)(a) for years two and three). This arrangement is for foreign employees of overseas affiliates of public or private organisations in Japan or for foreign workers from overseas organisations having a business relationship with a Japanese counterpart. Generally used by multinationals, it accounts for a minority of TITP interns.
- **Type (i)(b)** refers to the residential status and activities of first year ‘interns’ (becoming (ii)(b) for years two and three) that ‘non-profit’ business-related bodies (so-called ‘Supervising Organisations’) place with individual employers (‘Implementing Organisations’). These can be companies or even single entrepreneurs. The supervising bodies put in place an employment agreement with the enterprises based on a plan for the trainee’s activities.

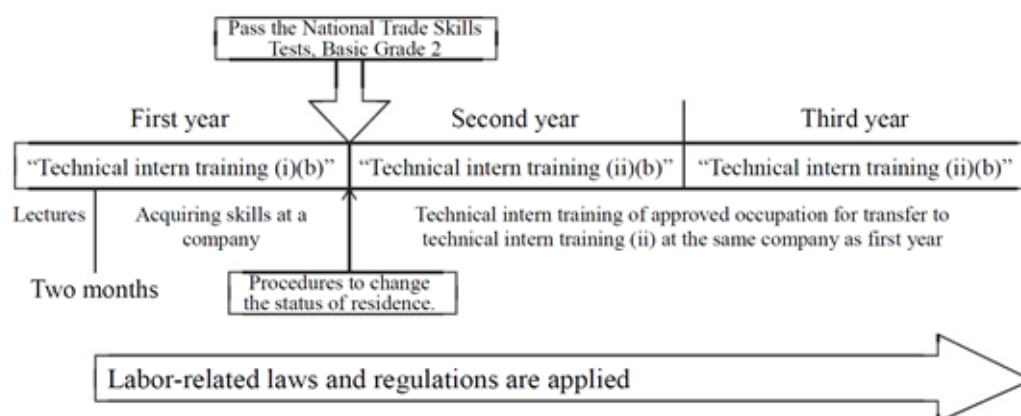
The vast majority of TITP interns enter Japan via the Type (i)(b) route involving Supervising Organisations, which are typically chambers of commerce and business associations representing SMEs in given industries. These bodies broker intern placements with employers in collaboration with ‘Sending Organisations’, mostly recruitment agencies, based in the trainees’ countries of origin. The senders are often certified as appropriate bodies by the national government concerned, but this is not always the case.

Following the 2010 amendment of TITP, labour laws and regulations in theory apply to trainees from when they start to acquire skills at a workplace. This follows the two months of lectures that Supervising Organisations should provide to prepare interns for their stay in Japan. The lectures are supposed to provide information on, among other issues,²⁶ the requirements of the Immigration Control Act and Labour Standards Law and use of legal protections available to trainees. Japanese law allows migrant workers to join a trade union.²⁷

²⁶ Others include Japanese language skills; living in Japan; and how to acquire skills effectively in Japan. See https://www.jitco.or.jp/download/data/okuridashi_English.pdf, p17.

²⁷ Article 3 of the Labour Union Act and Article 28 of the Constitution of Japan. See the annotations of the La-

A controversial feature of TITP (see Sections 4 and 6), when trainees transition to Technical intern Training Type (ii) and change their status of residence on passing basic National Trade Skills Tests, is the requirement that interns should remain with the same Implementing Organisation they had in the first year. The only exceptions are cases where trainees cannot continue the internship through no fault of their own.²⁸ These include bankruptcy of the enterprise and, in theory, its commission of “wrongful acts”.²⁹ The chart below illustrates the main steps involved in the current TITP process once interns enter Japan.³⁰



With Japan keen to recruit and retain workers to tackle its labour pressures reviewed earlier, new legislation due to enter into force in late 2017 (see Section 6) envisages extending the maximum time interns can spend in Japan to five years through the addition of a new TITP category – Technical Intern Training Type (iii)(a) or (iii)(b), depending on which recruitment and placement arrangement is adopted. TITP’s trajectory to date suggests most will remain via Technical Intern Training Type (iii)(b).

3.2 Official Coordination and Oversight of TITP

The body in charge of coordinating TITP’s operation is the Japan International Training Cooperation Organisation (JITCO),³¹ set up in 1991 under the joint jurisdiction of the Ministry of Justice, the Ministry of Health, Labour and Welfare, the Ministry of Economy, Trade and Industry, and the Ministry of Land, Infrastructure, Transportation and Tourism, and the Ministry of Foreign Affairs.

bour Union Act and Labour Relations Adjustment Act (6th edition), edited by the Director’s Office for Labour Relations at the Health, Labour and Welfare Ministry, 2015 (p331).

28 See the public notice of the Minister of Health, Labour and Welfare, originally issued on 5 April 1993 and amended on 1 April 2016, “Basic Plan to manage TITP promoting work” (Ginoujissyuseido Suishinjigyoutou Uneikihon-houshin): http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/shokugyounouryoku/global_cooperation/gaikoku/

29 Ibid.

30 Source: JITCO “Technical Intern Training Guidebook for Technical Intern Trainees”: https://www.jitco.or.jp/download/data/guidebook_english.pdf

31 https://www.jitco.or.jp/download/data/guidebook_english.pdf

Each of the five ministries plays a role in TITP according to its specific brief. The Ministry of Justice's immigration bureau, for instance, oversees intern residency arrangements and the compliance of Supervising and Implementing Organisations with the conditions involved, while the Ministry of Health, Labour and Welfare, through its labour standards inspection office, deals with national labour law compliance. Meanwhile, the Ministry of Land, Infrastructure, Transportation and Tourism, is the supervisory authority for the construction industry.

In the absence of specific legislation on TITP until recently, the only stipulations regarding the recruitment, placement and use of foreign trainee interns have been those set out in the Ministry of Justice's Ordinance No. 16 of 1990³² (see box below, showing requirements relevant to Type (i)(b) trainees).

Existing Ministry of Justice 1990 Requirements on Foreign Trainee Interns

- The skills undertaken must not be simple skills or skills impossible or difficult to learn in the intern's home country;
- The intern must be recommended by a government or similar organisation of their home country and engage in work using those skills on return;
- Sending Organisations, Supervising Organisations and Implementing Organisations must not collect deposits or any other such payments from technical intern trainees, their family members, or others the intern has close relationships with socially. The same applies to any organisation acting as a go-between.
- The employment agreement cannot involve monetary penalties or other unjust confiscation of money or property as punishment for non-performance under the employment agreement. The same applies to any agreement between the Implementing Organisation and the Sending Organisation.
- The intern's remuneration must be the same as that for Japanese workers.
- The Implementing Organisation must keep a technical intern training journal.³³

32 <http://law.e-gov.go.jp/htmldata/H02/H02F03201000016.html>

33 Under the Construction Business Act, for example, "specified construction business operators" must keep on each construction site a journal that sets out, among other things, the state of the tasks engaged in by TITP trainees.

TITP's Human Rights Impacts

4

4.1 The TITP 'Reality Gap' and Calls for Change

The gap between official discourse on TITP as an international technical cooperation programme for labour skills development and the reality of exploitation and human rights abuses affecting migrant workers has become increasingly stark. It has widened to such an extent that some national and international observers have suggested the scheme should be scrapped. They include the Japan Federation of Bar Associations (JFBA)³⁴ and the UN's Human Rights Committee.

In 2014, the UN committee voiced concern that, despite the TITP-related 2010 amendment extending labour law protection to foreign trainees, "there are still a large number of reports of sexual abuse, labour-related deaths and conditions that could amount to forced labour".³⁵ It urged Japan to consider replacing TITP with a scheme genuinely promoting capacity-building rather than hiring low-paid labour and, in the interim, "to increase the number of on-site inspections, establish an independent complaint mechanism and effectively investigate, prosecute and sanction labour trafficking cases and other labour violations".

The committee's recommendations followed a series of reports from this³⁶ and other UN bodies since 2008 raising concerns over alleged labour exploitation and human rights violations, including human trafficking,³⁷ forced labour³⁸ and sexual harassment and sexual violence.³⁹

34 For example, see <http://www.nichibenren.or.jp/activity/document/statement/year/2014/140403.html>; http://www.nichibenren.or.jp/library/ja/opinion/report/data/2015/opinion_150227.pdf; and http://www.nichibenren.or.jp/activity/document/statement/year/2015/150424_2.html

35 See Paragraph 16 of the report available at <http://www.mofa.go.jp/mofaj/files/000054775.pdf>.

36 See Paragraph 24 of the committee's 2008 report at http://www.mofa.go.jp/policy/human/civil_ccpr2.pdf.

37 See the 2010 report of the UN special rapporteur on human trafficking at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/132/88/PDF/G1013288.pdf?OpenElement>

38 See the 2011 report of the UN's special rapporteur on the rights of migrants on his 2010 mission to Japan at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/121/27/PDF/G1112127.pdf?OpenElement>

39 See Paragraph 40 of the 2009 report of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.JPN.CO.6.pdf>

4.2 US and Japanese Civil Society Concerns over Forced Labour

The JFBA and civil society groups such as the Solidarity Network with Migrants Japan (SMJ) have long alleged that TITP's stated aim and its operation in practice as a source of cheap migrant labour are at odds.⁴⁰ Significantly, their views have been indirectly lent weight as a result of concerns among Japan's foreign government partners, notably the United States, particularly over forced labour. The US State Department, in its 2016 "Human Trafficking in Persons Report", observed:

"During the 'internship', many migrant workers are placed in jobs that do not teach or develop technical skills—the original intention of TITP; some of these workers continued to experience conditions of forced labor.... Some of [the technical intern trainees] pay up to \$10,000 for jobs and are employed under contracts that mandate forfeiture of the equivalent of thousands of dollars if they leave. Reports continue of excessive fees, deposits, and 'punishment' contracts by sending organizations under this program. Some employers confiscate trainees' passports and other personal identity documents and control the movements of technical intern trainees to prevent their escape or communication with persons outside the program."⁴¹

Such observations resonate with those made by the SMJ and JFBA, which have pinpointed a range of other forced labour practices.⁴² These include wage deductions for rent, accommodation and living costs, forced saving schemes, performance penalty charges, overwork, unpaid overtime, threats of deportation and involvement in forced expulsions if workers make complaints.

Crucially, the SMJ and JFBA argue that a core factor underpinning potential exploitation and fuelling the risk and occurrence of abuses is TITP's stipulation that interns can only be placed and receive work training with a single 'Implementing Organisation' and cannot change employer. This, critics say, puts a trainee in a vulnerable position, particularly when his or her residential status is tied to such an arrangement. The result is a power imbalance involving a subordinate relationship between migrant workers and employers.

Discussions in Japan's parliament suggest some degree of official acknowledgement of TITP's inconsistencies and problems,⁴³ but whether the government is prepared to deal with their structural causes in order to close the 'reality gap' has remained unclear. In 2016, a Ministry of Justice official told the country's Lower House judicial affairs committee that prohibition of intern trainees' ability to change organisation was needed for continuity to boost the

40 See the Federation's statements of 27 February 2015 (http://www.nichibenren.or.jp/library/ja/opinion/report/data/2015/opinion_150227.pdf) and 20 June 2013 (http://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130620_4.pdf) and p19 of the SMJ's 2014 submission to the UN Human Rights Committee, "The Rights of Non-Japanese Nationals, Minorities of Foreign Origins, Migrants, and Refugees in Japan". <http://rink.webcrow.jp/SN-J2014NGOReporttoCCPR.pdf>

41 Op.cit., p218.

42 SMJ, Japan Federation of Bar Association, op. cit.

43 For example, see the statement made by a member of Japan's diet on 10 May 2013: http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000418320130510012.htm

effectiveness of skills development.⁴⁴ For critics, such views raise questions the extent to which policy-makers are committed to protecting the rights of workers in the context of TITP's operation – and perception by business bodies – as a labour supply scheme.

4.3 Official Evidence of TITP's Labour and Human Rights Problems

Whatever the policy challenges, official statistics give a factual indication of TITP's problems in practice. For example, TITP stipulates that the wages of trainees should not be lower than minimum wages and that they should be on "an equal level to Japanese employees". However, according to Ministry of Justice 2011 figures, TITP wages were below average minimum wages and 37-48% less than the average of workers in manufacturing industry.⁴⁵

Official reports similarly yield insights on the scale and specific types of issues involved. For instance, the Ministry of Health, Welfare and Labour's labour standards inspection office, in its annual report for 2015 (assessing how Supervising and Implementing Organisations treated both Japanese and foreign workers) stated that labour standards violations were found in 71.4 per cent of the 5,173 cases investigated. The problems related to:

- Illicit overtime work (22.6 per cent)
- Safety standards such as use of machines without proper equipment (20.8 per cent)
- Unpaid overtime (15 per cent)
- Conditions of employment (11.4 per cent)
- Payment of wages (10.5 per cent)
- Sanitary standards (10.2 per cent)
- Minimum wage issues (2.2 per cent)

For its part, the Ministry of Justice's immigration bureau, in its annual report for 2016, recorded 239 cases of "wrongful acts"⁴⁶ resulting in penalties.⁴⁷ They included:

- Unpaid wages (121 cases)
- Use of improper documents (62 cases)
- Discrepancy between the technical training plan and actual work (39 cases)
- Violation of labour-related laws and regulations (35 cases)
- Name-lending (33 cases)
- Employment of an undocumented worker (24 cases)
- Confiscation of passport or residence card (9 cases)
- Gross violation of human rights (9 cases)
- Collection of guarantee deposit (4 cases).⁴⁸

44 http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000419020160406009.htm

45 <http://www.moj.go.jp/content/000116717.pdf>

46 <http://www.moj.go.jp/content/001219277.pdf>

47 http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00011.html#5-3 and <http://law.e-gov.go.jp/htmlldata/H02/H02F03201000016.html>

48 <http://www.moj.go.jp/content/001219277.pdf>

The figures may at first sight seem quite small. Yet they should not detract from the serious implications of the problems, both for the individuals harmed and against official discourse claiming TITP transfers skills. It is also likely that the number of cases identified, reported and recorded by official bodies and business groups is only a surface reflection of their underlying fuller extent.

Another official indication of TITP problems is the rising number of cases recorded of intern trainees 'absconding' from placements at Implementing Organisations. The Ministry of Justice has reported at least 5,800 instances for 2015, the majority occurring as a result of interns seeking higher wages elsewhere and others due to human rights violations.⁴⁹

Interns who leave their employment and 'disappear' do so in breach of their immigration conditions and lose valid residential status, preventing them from working in the country legally.⁵⁰ Their uncertain position further exacerbates migrant workers' vulnerability to exploitation and abuse and creates yet another barrier to their ability to defend and claim their rights.

Regulation to Tackle TITP's Human Rights Challenges 5

5.1 Key TITP Ministries: Making the Most of Their Powers to Act?

As indicated by the ministerial annual reports mentioned above, institutional structures and mechanisms do exist for oversight and regulation of TITP. Indeed, the annual report of the Labour Standards Inspection Office is based on its formal authority to conduct investigations into Implementing Organisations. The body has the power to instruct enterprises to take corrective action and, in particularly serious instances of violations, to send cases for prosecution.

Similarly, the immigration bureau of the Ministry of Justice, which oversees Supervising Organisations and Implementing Organisations over residency status issues, can forbid business associations and individual enterprises accepting further technical intern trainees for specific periods if they have committed "wrongful acts", depending on their severity. Yet doubts linger as to whether there is currently sufficient will and capacity to address the human rights challenges persistently associated with TITP. For example, of the 3,695 cases

49 Ministry official quoted in the minutes of the Lower House's judicial affairs committee on 19 April 2016. http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000419020160419012.htm

50 See the TITP regulations set out by JITCO at <http://www.jitco.or.jp/download/data/1409010.pdf>

the Labour Inspection Office found to involve labour standards violations in 2015, it only sent 46 cases to prosecutors.⁵¹

Meanwhile, in the case of the Ministry of Justice, civil society observers have alleged that regional immigration bureaus dealing with TITP applications have limited human resource capacity and that their language support systems for foreign trainees are poor. Such critics lament public institutions' alleged lack of stakeholder consultation on TITP's problems and possible solutions.

As highlighted in Section 4, however, pressure is building for stronger official action to address the scheme's problems, and signs of a more assertive approach appear to be emerging. For example, it seems that one reason for weak business uptake of the TITP-related emergency programme to recruit foreign construction workers mentioned in Section 2 is increased scrutiny of the TITP system. The Ministry of Land, Infrastructure, Transport and Tourism has reportedly been urging companies to exercise due care over working conditions and human rights, and to ensure that the wages of foreign workers employed under the measure and those of Japanese employees in their third year at the companies are the same.⁵²

5.2 JITCO Weaknesses and Reliance on Businesses' Voluntary Cooperation

A major cause of problems in public oversight of TITP, the SMJ argues, is the deficient operation of the Japan International Training Cooperation Organisation. The network contends that JITCO is ineffective in managing the programme to prevent infringements of laws and regulations by individual companies linked to 'supervising' business associations.

In support of its claims, the SMJ⁵³ cites a 2013 Ministry of Internal Affairs and Communications public sector evaluation. This found that JITCO had failed to identify all but one of 60 cases of "wrongful acts" in 2011 and that it had acted on only eight of 23 major cases between 2009 and 2011. Moreover, the SMJ observes, JITCO's audits cover only 9,000 of the approximately 30,000 businesses involved in TITP, and only one audit is held with each Implementing Organisation every three years. This does involve a JITCO on-site check for discrepancies between intern training plans and actual work, or improper employment practices,⁵⁴ but the agency must announce its audit visit in advance to the relevant business association 'supervising' the enterprise. This notification system allows the company to prepare and avoid discovery of infringements, with frequent reports of payroll records being doctored and technical interns ordered to answer questions in favour of the enterprise and the supervising business body.

51 <http://www.mhlw.go.jp/stf/houdou/0000133506.html>

52 See: Takashi Hachiya, "The Foreign Construction Worker Acceptance Program", Mnet, August 2016 (No.187), p22.

53 <http://rink.webcrow.jp/SNJ2014NGORreporttoCCPR.pdf>

54 See <http://www.moj.go.jp/content/001128653.pdf>, p20.

A key weakness in JITCO oversight would therefore appear to be its reliance on the voluntary cooperation of 'Supervising Organisations', as acknowledged by a Ministry of Health, Labour and Welfare official in April 2016, who remarked that the agency's audit visits lack legal authority.⁵⁵ JITCO's status contrasts with the formal powers of TITP-related ministries described briefly above, which in turn raises questions about how effectively the roles and functions of the diverse official bodies involved in TITP oversight are coordinated overall.

JITCO's mandate also involves providing support services for TITP business participants.⁵⁶ Its collection of service fees from 'Supervising Organisations' and implementing companies thus raises conflict-of-interest questions about the agency's independence. JITCO also conducts audits of supervising bodies but these consist of oral interviews rather than wider on-site visits.

5.3 Compounding the Failings of Supervising Organisations

According to relevant legislation,⁵⁷ Supervising Organisations are themselves also expected to oversee Implementing Organisations. The SMJ, however, alleges that business bodies fail to ensure effective guidance or control of the enterprises taking on TITP interns, and that their leading role in the scheme itself involves complicity with exploitation and abuses.

The SMJ notes⁵⁸ that the official public sector evaluation referred to above found that audits conducted by the Supervising Organisations had failed to identify 81 of the 83 instances of wrongful acts discovered during investigations of the cases also carried out by the Ministry of Justice's immigration bureau. The SMJ argues that – in the absence of the effective JITCO oversight and appropriate support – supervising business bodies, as well as having a vested interest in not unearthing problems, lack a proper framework for conducting their own audits effectively and fairly.

TITP reforms have established consultation mechanisms in Supervising Organisations and made them available to interns, but their impact in discovering and addressing the problems faced by trainee workers is limited by the lack of effective regulation to promote better practice by business bodies and ensure enforcement of protection measures. Meanwhile, some business bodies, such as within the construction sector,⁵⁹ run their own private initiatives to promote TITP according to its original aims. Likewise, however, the possible value of such efforts is unlikely to change business practice overall without a concerted strategy of public and private action to address TITP's problematic operation.

55 http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000419020160419012.html in fact, JITCO. See, http://www.soumu.go.jp/main_content/000219637.pdf (page 32)

56 See http://www.sangiin.go.jp/japanese/annai/chousa/rippou_chousa/backnumber/2015pdf/20150601003.pdf

57 See appendices 1 and 2 of the Immigration Control and Refugee Recognition Act at <http://law.e-gov.go.jp/htmldata/S26/S26SE319.html>

58 <http://rink.webcrow.jp/SNJ2014NGORreporttoCCPR.pdf>

59 The Japan Federation of Construction Contractors has an annual award for organisations deemed to demonstrate best practice under TITP. See http://www.zentekkin.or.jp/images/160215/150215_jushou.pdf

The TITP Legislation of 2016 in Brief

6

In response to criticisms – specifically US and UN concerns, according to official explanations⁶⁰ – Japan enacted new TITP-specific legislation in November 2016, following its March 2015 Cabinet approval,⁶¹ and the government is due to make it effective by November 2017.⁶² Noteworthy points on TITP oversight and management include:

- Creating a new TITP oversight body with the legal authority to conduct investigations and work with the Labour Standards Inspection Office and the Immigration Bureau over violations of labour and immigration laws;
- In cases of an enterprise proving unable to provide training or becoming involved in wrongful acts negating training plans, properly ensure that the Supervising Organisation and Implementing Organisation arrange the transfer of technical intern trainees to another organisation;
- Strengthening official oversight of TITP business associations and enterprises through the introduction of (i) a permit system for Supervising Organisations and (ii) a notification system for Implementing Organisations; and
- Introducing a system whereby plans for technical intern training require recognition by an official state authority.⁶³

One major change is that the legislation plans to extend interns' maximum term from three to five years by creating a new residential status category (Technical Intern Type (iii)), with nursing care also added to the occupations where foreign interns can be placed.⁶⁴ Consequently, officials envisage that the number of foreign trainees attached to enterprises will double.⁶⁵ The developments, if civil society scepticism over the reforms is correct, are likely to remain a source of concern. Indeed, in possible recognition that problems exist, the envisaged residential term extension to five years will be restricted to Supervising and Implementing Organisations officially judged to be "good", but no criteria yet exist to clarify such a definition.

With the legislation due to enter into force, Japan's upper House of Councillors⁶⁶ has drafted/passed supplementary resolutions. Currently lacking legal effect, they state that

60 http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000419020160406009.htm

61 <http://www.jitco.or.jp/press/detail/544.html>

62 <http://www.moj.go.jp/content/001209383.pdf>

63 <http://www.moj.go.jp/content/001209383.pdf>

64 See <http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000147660.html>

65 See <http://www.moj.go.jp/content/001209495.pdf>

66 See <http://www.sangiin.go.jp/japanese/aramashi/keyword/katudo01.html>

the government should:

- Allow technical intern trainees who make the transition from Technical Intern Type (ii) to Technical Intern Type (iii) to choose an Implementing Organisation (employer);
- Require relevant organisations to provide notification if a technical intern trainee returns to his or her home country during their TITP term; and
- Strive to forge a bilateral agreement with every sending country whereby its government ensures appropriate regulation of Sending Organisations and prohibits their imposition of "penalty charges".⁶⁷

6.1 Civil Society Reactions

In immediate response to the legislation, the Japan Federation of Bar Associations reiterated its opposition to TITP's continuation,⁶⁸ while partially welcoming the supplementary resolutions signalling flexibility on trainees changing employer in the last two years of the new five-year maximum.

The JFBA argued, as did the SMJ, that worker freedom of choice remained heavily restricted overall and that the government was still largely in denial over the gap between TITP theory and practice. Indeed, a legal group supporting TITP trainees⁶⁹ declared that the new legislation would not stop future abuses. Anticipating persistence of the problems, the JFBA called for effective legal aid and stronger backing of support groups providing protection and relief for technical intern trainees.

In addition, the SMJ criticised⁷⁰ the legislation's lack of clarity on ensuring minimum wage parity for TITP interns, the absence of measures to punish forced returns and that provisions specifically prohibiting human rights abuses and scheme infringements would not apply to overseas Sending Organisations.

67 <http://www.mhlw.go.jp/file/06-Seisakujouhou-11800000-Shokugyounouryokukaihatsukyoku/0000144039.pdf>

68 http://www.nichibenren.or.jp/activity/document/statement/year/2016/161124_2.html

69 The Lawyers Association for Foreign Technical Intern Trainees Issues (Gaikokujin Ginoujissyuusei Mondai Bengoshi Rengokai)

70 <http://migrants.jp/archives/news/%E3%80%8C%E6%8A%80%E8%83%BD%E5%AE%9F%E7%BF%92%E6%B3%95%E3%81%AE%E6%88%90%E7%AB%8B%E3%81%AB%E5%AF%BE%E3%81%99%E3%82%8B%E5%A3%B0%E6%98%8E%E3%80%8D%E3%82%92%E7%99%BA%E8%A1%A8%E3%81%97%E3%81%BE%E3%81%97>

Possible Ways to Address TITP Problems

7

The main aim of this Report has been to promote international awareness of TITP and its problematic impacts. It concludes with brief remarks on future trends and possible ways forward aimed at better protecting the rights of migrant workers both in the context of Tokyo 2020 Olympic and Paralympic Games and Japan's wider labour market challenges.⁷¹

Indeed, whatever the debates over whether TITP itself should be reformed, scrapped or replaced, Japan, like many other countries, needs a strategy to ensure that migrant workers are fairly treated and protected and not the victims of exploitation and human rights abuses.

The government of Japan, as well as moving to enforce existing domestic labour law protections, and to prevent immigration policies acting as a source of discrimination and vulnerability, should adopt relevant international standards and tools. For example, in terms of migrant worker protection, Japan has not ratified the International Labour Organization's Migration for Employment Convention (Revised), 1949 (No. 97)⁷² and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).⁷³

With evidence of human trafficking and forced labour under TITP, Japan is likely to face growing international expectations to take assertive action to tackle abuses associated with the rights of migrant workers. Japan's membership in the G8 and G20 groups of leading industrial nations is relevant in this context as well. Following the 2015 G8 meeting pledge to address global supply chain abuses, including by helping SMEs to exercise human rights due diligence,⁷⁴ the G20 July 2017 Hamburg summit committed to immediate and effective measures to eliminate forced labour, human trafficking and all forms of modern slavery.⁷⁵ This echoes the promise made by UN member states under Sustainable Development Goal 8.7 of the UN's Agenda 2030 for Sustainable Development launched in 2016.⁷⁶

In invoking international commitments as a spur for national action to tackle TITP problems, Japan's government could in turn emulate legislative moves made elsewhere to promote business practice avoiding forced labour in supply chains. These include, for example, the California Transparency in Supply Chains Act and the UK's 2015 Modern Slavery Act.⁷⁷ Moreover, governments are starting to ratify the 2014 Protocol to the ILO's Forced Labour Convention, 1930 (No. 29), which involves legally binding action to prevent and provide redress for forced

71 Further research covering violations on the ground and potential solutions to TITP issues would be welcomed.

72 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312242:NO

73 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312288:NO

74 See <https://obamawhitehouse.archives.gov/the-press-office/2015/06/08/g-7-leaders-declaration>

75 See <https://www.g20.org/gipfeldokumente/G20-leaders-declaration.pdf>

76 <http://www.un.org/sustainabledevelopment/development-agenda/>

77 <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

labour. Japan among other nations should be encouraged to do likewise.⁷⁸

Meanwhile, tools developed and promoted through multi-stakeholder dialogue to promote respect for migrant worker rights, such as the Dhaka Principles for Migration with Dignity⁷⁹ (see box below), are useful for companies in Japan seeking to overcome the problems raised by TITP.

The Dhaka Principles for Migration with Dignity

Core Principle A: All workers are treated equally and without discrimination.

Core Principle B: All workers enjoy the protection of employment law.

- Principle 1: No fees are charged to migrant workers.
- Principle 2: All migrant worker contracts are clear and transparent.
- Principle 3: Policies and procedures are inclusive.
- Principle 4: No migrant workers' passports or identity documents are retained.
- Principle 5: Wages are paid regularly, directly and on time.
- Principle 6: The right to worker representation is respected.
- Principle 7: Working conditions are safe and decent.
- Principle 8: Living conditions are safe and decent.
- Principle 9: Access to remedy is provided.
- Principle 10: Freedom to change employment is respected, and safe, timely return is guaranteed.

The Dhaka Principles, originally agreed in 2012, are part of a rapidly growing movement⁸⁰ to end the practice of migrant workers having to pay recruitment fees to secure employment abroad. Imposition of fees, exploitative in itself, often leads to unsustainable debt and exposes workers to risks of forced labour and human trafficking, and contravenes ILO Convention 181 (Private Employment Agencies Convention, 1997).

In a positive move, the Japanese government stated in late 2016 that it will develop a national action plan (NAP) to implement the UN Guiding Principles on Business and Human Rights (UNGPs) which, since their 2011 endorsement, have come to be recognised globally by governments, business and civil society as an authoritative global standard for business conduct on human rights.⁸¹ This is significant as key features of the UNGPs,⁸² and the Protect, Respect and Remedy framework they rest on, are crucial to tackling the challenges of TITP. For example, state duties under the UNGPs affirm obligations with respect to policy, legislation and regulation to prevent, investigate, punish and redress human rights abuses involving non-state actors and stress the need for institutional coordination in

78 http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672

79 See <https://www.ihrb.org/focus-areas/migrant-workers/dhaka-principles-migration-with-dignity>

80 An increasing number of multinational businesses are now prohibiting recruitment fees in their supply chains. They include companies belonging to the Leadership Group for Responsible Recruitment, which is committed to the Employer Pays Principle stating: "No worker should pay for a job. The costs of recruitment should be borne not by the worker but by the employer." See <https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment>

81 See http://www.geneve-mission.emb-japan.go.jp/itpr_ja/statements_rights_20161116.html

82 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

order to do so. Business responsibilities set out in the UNGPs require effective company policies and due diligence processes to avoid human rights risks and harms. The JFBA has been promoting guidance on the UNGPs and making the text available in Japanese.⁸³

The Japanese government announced its plans for a NAP specifically in the context of Tokyo 2020, aware that the games will attract human rights scrutiny. In doing so, it made reference to the draft Sustainable Sourcing Code on supply chain management linked to the events. This specifically mentions foreign workers and technical interns and stresses the need to avoid damaging practices of the kind described in this Report.⁸⁴ Indeed, Tokyo 2020 preparations are a litmus test of how committed the government and business representatives are to the strategic action needed to address adverse impacts associated with TITP affecting migrant worker rights, not just in relation to the games but in Japan's economy as a whole.

83 See <http://www.nichibenren.or.jp/en/document/opinionpapers/20150107.html> and http://www.nichibenren.or.jp/library/ja/opinion/report/data/2015/opinion_150107_2.pdf

84 See <https://tokyo2020.jp/en/games/sustainability/opinion-sourcing-code/data/sourcing-code-EN.pdf>