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**LEGAL PROTECTION FOR MIGRANT TRAINEES IN JAPAN:
USING INTERNATIONAL STANDARDS TO EVALUATE
SHIFTS IN JAPANESE IMMIGRATION POLICY**

SHIKHA SILLIMAN BHATTACHARJEE*

Japan's steady decline in population since 2005, combined with the low national birth rate, has led to industrial labor shortages, particularly in farming, fishing, and small manufacturing industries.¹ Japan's dual labor market structure leaves smaller firms and subcontractors with labor shortages in times of both economic growth and recession.² As a result, small-scale manufacturers and employers in these industries are increasingly reliant upon foreign workers, particularly from China, Vietnam, Indonesia, and the Philippines.³

Temporary migration programs, designed to allow migrant workers to reside and work in a host country without creating a permanent entitlement to residence, have the potential to address the economic needs of both sending and receiving countries.⁴ In fact, the United Nations Global Commission on International Migration recommends: "states and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination."⁵ "Most high-

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¹ Apichai Shipper, *Contesting Foreigner's Rights in Contemporary Japan*, N.C. J. INT'L L. & COM. REG., 505-06 (2011).

² Ritu Vij, Review, 64 J. ASIAN STUD. 469-71 (May 2005) (reviewing HIROSHI KOMAI, *FOREIGN MIGRANTS IN CONTEMPORARY JAPAN* (2001)).

³ Shipper, *supra* note 1, at 506.

⁴ This definition does not exclude the possibility that migrants admitted to host countries may be granted permanent residence. See Martin Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy*, 145 INT'L LAB. REV. 7, 8-13 (2006) (providing a nuanced definition of temporary migration programs as well as delineating discrete typologies of such programs).

⁵ Summary of the Report of the Global Commission on International Migration, U.N. Doc. UN/POP/MIG-FCM/2005/09 (Oct. 13, 2005).

income industrialized countries recognize a need for both high and low skill migrant labor.”⁶ Currently, temporary migration programs exist in varied forms, differing with regard to the mechanisms for admitting migrant workers, policies for selecting migrants, rights granted to workers after admission and primary policy objectives.⁷

Any temporary migration program, however, “involves at least some trade-off between the economic gains typically associated with access to labour markets in high-income countries” and “restrictions of some of the individual rights of migrants.”⁸ For instance, in order to align migration with sector-specific need, temporary migration programs usually restrict migrant workers’ right to freedom of movement within the labor market of the host country.⁹

Migrant workers filling vacancies in low-skill sectors are particularly vulnerable to human rights abuses. “[G]iven the wide income inequalities between high and low-income countries, migrant workers are sometimes willing to trade economic gains for restrictions in personal rights to an extent that may well be considered unacceptable in most liberal democracies.”¹⁰ Examples of low-skill occupations include jobs in the hospitality sector, construction, cleaning, agriculture, food processing, and small-scale manufacturing. This paper considers whether recent policy shifts in Japan’s trainee program are sufficient to safeguard the rights of these temporary migrant workers.

Temporary migrants who have entered Japan legally under the residence status “trainee” and “technical intern” form a subset of the migrant labor force in Japan. In 2009, there were 80,480 trainees in Japan, a decline of 21% compared to the previous year, likely due to the global recession.¹¹ Most trainees were in their twenties and came from China (78.8%), Vietnam (10%), Indonesia

⁶ Ruhs, *supra* note 4, at 14.

⁷ See *id.* at 10 (discussing various forms of temporary worker programs).

⁸ *Id.* at 23.

⁹ *Id.*

¹⁰ *Id.*

¹¹ This decline in 2009 reflects both a decrease in the number of foreign workers newly entering as trainees, and an increase in the number of trainees who transferred to the status of technical intern. MINISTRY OF JUSTICE, JAPAN, *Basic Plan for Immigration Control (4th edition): Provisional Translation*, at 8-10 (Mar. 2010), available at http://www.immi-moj.go.jp/seisaku/keikaku_101006_english.pdf.

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(7.15%), the Philippines, and Thailand (4%).¹² The “trainee” designation is part of a broader system of differentiation used by the Japanese Ministry of Justice to categorize foreign workers based upon their national origin and purpose for entering Japan.¹³ In an interview with *The Asahi*, the director of a sewing industry association in Hiroshima insisted that the foreign trainee system is indispensable to small Japanese companies, who, without it, would be forced to move overseas.¹⁴

The original trainee program, initiated in 1981, authorized young workers to enter Japan, ostensibly to receive technical training in industrial fields, but in reality created “another potential channel for the legal introduction of unskilled foreign labour in an explicit manner.”¹⁵ Not considered workers under the Immigration Control Act, trainees were not entitled to minimum wages, not protected by labor laws, and routinely subjected to exploitation and abuse. In 2009, however, amendments to Japan’s Immigration Control Act extended legal protection under the Labor Standards Act, the Minimum Wage Act, and other labor-related laws and regulations to migrant workers who enter Japan with the immigration status “trainee.”¹⁶

This paper uses international human rights instruments as a benchmark to evaluate the July 2009 protections extended to migrant trainees under Japanese law. The first section traces the evolution of the trainee program from 1971 to the present, details the features of the program that facilitate exploitation of trainees and concludes with an analysis of the recent attempt by the Japanese government to remedy the exploitative features of the program. The second section reviews relevant human rights instruments, including the International Labour Organization and United Nations Conventions. The third section applies these international standards to evaluate the recent protections extended by the Japanese government to migrant trainees. Finally, the fourth section concludes with recommendations for advancing the rights of migrant trainees in Japan.

¹² Shipper, *supra* note 1, at 515; MINISTRY OF JUSTICE, *supra* note 11, at 8.

¹³ Shipper, *supra* note 1, at 506-07.

¹⁴ Philip Brasor, *Immigrant Workers in Japan Caught in a Racket*, JAPAN FOCUS, (July 8, 2007), <http://www.japanfocus.org/-Philip-Brasor/2464>.

¹⁵ HIROMI MORI, IMMIGRATION POLICY AND FOREIGN WORKERS IN JAPAN 114 (1997).

¹⁶ MINISTRY OF JUSTICE, *supra* note 11, at 26-27.

1. MIGRANT TRAINEES IN JAPAN

1.1. Evolution of the Trainee Program

The “trainee” category was first created in 1971 in response to demands from Japanese business associations to import unskilled foreign labor.¹⁷ The initial plan was modest, importing only 5,000 unskilled foreign workers.¹⁸ The current iteration of the “trainee” category finds its roots in the 1981 revision of Japan’s Immigration Control Act.¹⁹ The 1981 revision allows low-wage workers to enter Japan under the stipulation that they “are not permitted to deviate from technical intern training activities.”²⁰ Under this scheme, trainees are not legally entitled to work. Their compensation is limited to commuting and living expense, and they are not protected by Japanese labor laws.

In 1990, the Immigration Control Act was reformed drastically, triggered by the accelerated presence of clandestine foreign workers.²¹ In 1992, the government instituted the Technical Internship Program, allowing trainees who pass evaluations from the Japan International Training Cooperation Organization (JITCO) to work legally in Japan for two years.²² JITCO simultaneously

¹⁷ David Bartram, *Japan and Labor Migration: Theoretical and Methodological Implications of Negative Cases*, 34 INT’L MIGRATION REV. 5, 17-18 (2000) (citing the 1970 resolution by the Japanese Chamber of Commerce and Industry urging the government to explore the option of importing labor and the 1970 “Demand on Next Year’s Labor Policy” issued by The Tokyo Chamber of Commerce and Industry).

¹⁸ See *id.* (discussing the limited nature of the plan, while making reference to a Labor Ministry announcement that the intent was to import only 5,000 workers).

¹⁹ The Immigration Control Act was enacted in 1951, initially in the form of a Cabinet Order. It became effective in 1952 with the issuance of the Law on the Effect of Directives Concerning the Ministry of Foreign Affairs. The existing law has been revised 19 times since its inception. Despite revisions, the principal legislative framework has been maintained without substantial modification. The 1981 revision of the Immigration Control Act corresponds with Japan’s increased dependence upon foreign workers in the 1980’s. See MORI, *supra* note 15, at 2, 32. See also Keiko Yamanaka, *New Immigration Policy and Unskilled Foreign Workers in Japan*, 66 PAC. AFF. 79-80 (1993) (detailing demographic trends during the first decade of the trainee program).

²⁰ JAPAN INT’L TRAINING COOPERATION ORG., INDUSTRIAL TRAINING AND TECHNICAL INTERNSHIP PROGRAMS: OPERATIVE MANUAL FOR SENDING ORGANIZATIONS 62 (2009), available at http://www.jitco.or.jp/download/data/okuridashi_English.pdf.

²¹ Yamanaka, *supra* note 19, at 75-76 (attributing the growing awareness of the mistreatment of illegal workers to mass media).

²² JITCO, a semi-governmental organization founded in 1991, is a

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provided incremental increases in legal protections for trainees who completed their first year in the program,²³ and allowed smaller companies to band together and form associations to collectively receive groups of trainees. Associations are usually created by industry groups that recruit trainees in order to alleviate labor shortages.²⁴ The practice of allowing aggregation by smaller companies decreased direct oversight over trainee placements—increasing the potential for abuse. Viewed as a whole, the immigration policy reforms of the early 1990's ostensibly kept the 'front door' closed, while simultaneously meeting the growing demand for unskilled labor by allowing de facto foreign workers to enter Japan through intentionally provided 'side-doors.'²⁵

1.2. Exploitation of Trainees

The flaws in Japan's trainee program have been widely acknowledged since the first decade of its operation.²⁶ The underlying concept of the system, to transmit industrial skills to foreign workers, implicitly places trainees in situations where they are subject to exploitation.²⁷ There are few industrial skills that can

partnership between five Japanese Ministries: Justice; Foreign Affairs; Health, Labour and Welfare; Economy, Trade and Industry; and Land, Infrastructure and Transport. *Overview of the System*, JAPAN INT'L TRAINING COOPERATION ORG. (2011), available at <http://www.jitco.or.jp/english/overview/index.html>; Shipper, *supra* note 1 (manuscript at 111). It is suggested, though not formally documented, that many of those running JITCO derived their position through *amakudari* from the various ministries mentioned above. See Brasor, *supra* note 14.

²³ The Technical Internship Program (TIP), operated by JITCO, permits trainees designated by JITCO to work legally for two years. As legal foreign workers, they are entitled to receive Japan's National Health Insurance and Worker's Compensation Insurance. See Shipper, *supra* note 1, at 515.

²⁴ Hiroshi Matsubara, *Training Scheme Exploits Foreigners*, JAPAN TIMES (Apr. 7, 2000), <http://www.japantimes.co.jp/2000/04/07/announcements/training-scheme-exploits-foreigners/#.VBVDc0vMZFY>.

²⁵ MORI, *supra* note 15. See also Yamanaka, *supra* note 19, at 76-78 (comparing Japan's trainee program to U.S. government policy toward migrant workers from Asia and Latin America).

²⁶ See HIROSHI KOMAI, *MIGRANT WORKERS IN JAPAN* 37-54 (1993) (detailing, *inter alia*, the poverty of working conditions and low compensation); HARUO SHIMADA, *JAPAN'S "GUEST WORKERS"* 39 (1994) ("The problem . . . is the tremendous gap between Japan's official legal position on the acceptance of foreign workers and the real state of affairs, and the absence, or ambiguity, or regulations that might bridge this gap.")

²⁷ See Haruo Shimada, *The Employment of Foreign Labor in Japan*, in 513 ANNALS AM. ACAD. POL. & SOC. SCI., JAPAN'S EXTERNAL ECONOMIC RELATIONS: JAPANESE PERSPECTIVES 117, 126 (1991) (discussing how the trainee system can be

be learned without actually performing industrial activities.²⁸ As a result, by program design, trainees are made to work in industrial sectors and compensated with a training allowance that is only a small fraction of the normal market wage.²⁹ In 2010, the Japanese Ministry of Justice reported that “the number . . . [of] trainees and technical interns being treated like low-wage workers . . . has been on the increase”³⁰

Misconduct by organizations receiving trainees is rampant and well documented. According to Ministry of Justice statistics, the number of organizations deemed to have committed misconduct reached a record high of 452 organizations in 2008, and declined to 360 organizations in 2009—in part due to the significant decline in the number of trainees entering Japan that year.³¹ Nearly all recorded abuses—358 out of 360 officially acknowledged abuses in 2009—took place in association-supervised systems of placement.³² According to the Ministry of Justice, “some accepting organizations do not provide adequate guidance and supervision for their umbrella organizations, and there are brokers who obtain unfair profits from intermediary services.”³³

The Ministry of Justice divides misconduct into three major categories that account for the majority of recorded violations: violations against labor-related regulations, including unpaid wages; ‘work in excess of statutory working hours;’ and ‘name lending’—the practice of allowing other organizations that have not completed formal application procedures to accept trainees and technical interns.³⁴ These three categories account for 76.6% of all misconduct.³⁵

used to exploit foreign workers because trainees cannot be paid during the training period for actual work performed, but instead are paid a lower rate through payment of a training allowance).

²⁸ *Id.* at 126.

²⁹ *Id.*

³⁰ MINISTRY OF JUSTICE, *supra* note 11, at 10-11.

³¹ *Id.*

³² *Id.*

³³ Masahiro Tabuchi, Director-General of the Immigration Bureau, Ministry of Justice, Japan, *Measures on the Training and Technical Internship Programs*, in 2010 IMMIGRATION CONTROL 89, available at www.moj.go.jp/content/000058064.pdf.

³⁴ Masahiro Tabuchi, Director-General of the Immigration Bureau, Ministry of Justice, Japan, *Measures on the Training and Technical Internship Programs: Response to Cases of Inappropriate Acceptance*, in 2010 IMMIGRATION CONTROL 90, available at www.moj.go.jp/content/000058064.pdf.

³⁵ *Id.*

Organization misconduct, however, goes far beyond treating trainees as low-wage workers. In addition to the three major categories cited above, the government acknowledges a category of abuse entitled “malicious acts of infringement of human rights.”³⁶ For instance, in 2007, six Vietnamese women in their twenties, accepted by the Toyota Technology Exchange Association and sent to a third-tier subcontractor, where they worked in the production of vehicle seat parts, sued the subcontractor for withholding wages, subjecting them to sexual harassment, and preventing them from escaping by confiscating their passports and bank books.³⁷ Similarly, in 2008, three Chinese women filed a damages lawsuit against two farms where, rather than receive training in tomato farming as promised, their passports were confiscated and they were forced to pick strawberries, work overtime without breaks, and were even dispatched to other farms to work.³⁸

Most alarmingly, between 2005 and 2010, at least 127 trainees (or one in 2,600 trainees) died on the job, mostly due to the strain of excessive labor.³⁹ Under Japanese law, when a worker dies from brain or heart disease and either their overtime hours were in excess of 100 in the month before their death, or the average monthly overtime was more than 80 hours for a period of at least two months before their death, overwork (*karoshi*) is recognized as the cause of death.⁴⁰ According to JITCO, “the rate of death of heart disease of trainees and technical interns was almost double

³⁶ *Id.* at 91.

³⁷ *Foreign Female Interns to Sue Toyota Subcontractor*, JAPAN TIMES (Mar. 9, 2007), <http://www.japantimes.co.jp/news/2007/03/09/national/foreign-female-interns-to-sue-toyota-subcontractor/>.

³⁸ *Trainee Trio File Suit Against Kumamoto Farms, Agencies*, JAPAN TIMES (Apr. 10, 2008), <http://www.japantimes.co.jp/news/2008/04/10/national/trainee-trio-file-suit-against-kumamoto-farms-agencies/#.VBVDRkvMZFy>.

³⁹ Shipper, *supra* note 1, at 517; see also Simon Scott, *Dying to Work: Japan Inc.'s Foreign Trainees*, JAPAN TIMES (Aug. 3, 2010), <http://www.japantimes.co.jp/community/2010/08/03/issues/dying-to-work-japan-inc-s-foreign-trainees/#.VBVCqUvMZFy> (documenting the first time Japanese authorities recognized that a foreign trainee effectively worked himself to death: an official ruling from the Kashima Labor Standards Inspection Office held that 31-year-old Chinese trainee, Jiang Xiaodong, died of *karoshi* – death from overwork).

⁴⁰ Scott, *supra* note 39 (quoting Hiroshi Kawahito, a Japanese labor lawyer who explains that, while it is impossible to conclusively prove an instance of death from overwork, if one looks at the overall pattern of a person's life, it is clear in many cases that the physical and mental stress of long working hours was fatal).

the rate for Japanese of the same age.”⁴¹ The ratio of trainees who have died from *karoshi* is particularly high considering that nearly all trainees are young people who must pass rigorous physical examinations to enter the program.⁴²

Japan International Training Cooperation Organization, responsible for overseeing trainee placements, has failed to intervene on behalf of trainees, even when abuses are brought directly to their attention.⁴³ As JITCO has become increasingly autonomous, the organization has taken on the culture of a private company.⁴⁴ JITCO's total income for the 2008 financial year was ¥2.94 billion and more than half this amount, ¥1.66 billion, came from “support membership fees” paid by companies receiving trainees.⁴⁵ Industry officials told *The Mainichi* newspaper that JITCO treats them as customers and is willing to look the other way with regard to common illegal practices such as confiscating trainee passports and fourteen-hour workdays.⁴⁶ “One employer said appreciatively that JITCO calls him beforehand to tell him when they are coming for a surprise inspection.”⁴⁷ This lack of oversight from JITCO has allowed placement organizations to behave with impunity.

Under this system, foreign trainees and technical interns had little recourse. During their first year of the program, Labor Standards Offices could do nothing for them because the Labor Standards Act did not apply.⁴⁸ After their first year, trainees who achieved the legal status designation “intern” were technically entitled to legal recourse under the Labor Standards Act but typically had limited knowledge of the law and rarely brought their grievances to the offices.⁴⁹ Alternate avenues of recourse were also largely foreclosed. Although trainees could petition the Immigration Bureau of the Ministry of Justice if they did not

⁴¹ *Id.*

⁴² Shipper, *supra* note 1, at 517.

⁴³ *Foreign Female Interns to Sue Toyota Subcontractor*, *supra* note 37.

⁴⁴ Brasor, *supra* note 14.

⁴⁵ Scott, *supra* note 39 (quoting Lila Abiko of the Lawyer's Network for Trainees).

⁴⁶ Brasor, *supra* note 14.

⁴⁷ Brasor, *supra* note 14.

⁴⁸ Hiroshi Matsubara, *Training Scheme Exploits Foreigners*, JAPAN TIMES (Apr. 7, 2000), <http://www.japantimes.co.jp/2000/04/07/announcements/training-scheme-exploits-foreigners/#.VBVCVEvMZFy>.

⁴⁹ *Id.*

receive any training at their firms, the Ministry could only penalize the firms by suspending their permission to accept trainees—a practice which resulted in immediate deportation for trainees working at that location.⁵⁰

1.3. 2009 Amendments to Japan's Immigration Control Act

In July 2009, the Japanese government amended the Immigration Control Act, revising the trainee and technical intern system.⁵¹ The new system, effective from July 1, 2010, replaced the trainee and technical internship categories with a new visa category entitled “on the job trainee” or “practical trainee.”⁵² Under this revised system, practical trainees complete a two-month language and training program at the beginning of their contract.⁵³ Upon completing this condensed training program, practical trainees will become eligible as “workers” under the Labor Standards Act, the Minimum Wage Act, and other labor-related laws and regulations.⁵⁴ The maximum length of stay for on the job trainees will remain three years.⁵⁵

The 2009 revision signals a basic recognition that trainees are entitled to protection under the law. As of July 1, 2010, organizations that have acted inappropriately regarding training and technical internships will be suspended from the program for three years.⁵⁶ In order to reinforce supervision of trainee placements, a new Ministry of Justice ordinance requires the staff of supervising organizations to visit the facility where programs are conducted at least once a month to confirm that the situation of trainees conforms to program guidelines.⁵⁷ In addition, board

⁵⁰ *Id.*

⁵¹ MINISTRY OF JUSTICE, *supra* note 11, at 26.

⁵² Although the “trainee” residency status still exists for foreign workers who arrived before 2010, it is currently being phased out and, from 2011, all first-year participants in the program will be classed as practical trainees. See Shipper, *supra* note 1, at 545 (describing government revisions to the trainee and technical intern system); MINISTRY OF JUSTICE, *supra* note 11, at 26 (describing Japanese efforts to ensure appropriate training and technical internship programs).

⁵³ Shipper, *supra* note 1, at 545.

⁵⁴ MINISTRY OF JUSTICE, *supra* note 11, at 26.

⁵⁵ Shipper, *supra* note 1, at 545.

⁵⁶ Masahiro Tabuchi, Director-General of the Immigration Bureau, Ministry of Justice, Japan, *Points on 2010 Immigration Control*, in 2010 IMMIGRATION CONTROL 90, available at www.moj.go.jp/content/000058064.pdf.

⁵⁷ Masahiro Tabuchi, Director-General of the Immigration Bureau, Ministry of Justice, Japan, *Measures on the Training and Technical Internship Programs: Actions*

members of supervising organizations must conduct an audit every three months, and organizations are required to provide counseling staff to advise technical interns.⁵⁸

Naomi Hayazaki, an advocate for trainees, who has been involved with the Rights of Immigrants Network in Kansai (RINK) since 2000, links the July 2009 revision of the Immigration Control Act to an increasing awareness by the government that the trainee program was deeply flawed: “[W]hen we first started, the government dismissed the problem as something only relevant to a few bad companies [B]ut in these ten years, they have realized that it is not merely one part, that it is a big problem. The change in July was also a result of that recognition.”⁵⁹

The remainder of this paper considers these changes in context of international human rights instruments aimed at protecting migrant workers. Section 2 provides an overview of relevant human rights conventions. Section 3 delineates Japan’s commitment to international human rights instruments protecting migrant workers and evaluates the practical impact of the 2009 revisions to the Immigration Control Act. Finally, Section 4 concludes with recommendations for safeguarding the rights of migrant trainees in Japan.

2. INTERNATIONAL BENCHMARKS: HUMAN RIGHTS STANDARDS PROTECTING MIGRANT WORKERS

Both the International Labour Organization (ILO) and United Nations (UN) Conventions protect migrant workers. This section begins by providing an overview of relevant human rights instruments: ILO Convention 97, Migration for Employment (1949); ILO Convention 143, Migrant Workers Convention (Supplementary Provisions) (1975); and the United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families (1990) (ICMR). Although most of the rights contained in the United Nations human rights treaty system also apply to non-citizens and thus provide basic protection for migrant workers and their families, this paper focuses on

for Improvement of the System, in 2010 IMMIGRATION CONTROL 89, available at www.moj.go.jp/content/000058062.pdf.

⁵⁸ *Id.*

⁵⁹ Jody Godoy, *Abuse Rife Within Trainee System, Say NGOs*, JAPAN TIMES, Dec. 7, 2010, <http://www.japantimes.co.jp/community/2010/12/07/issues/abuse-rife-within-trainee-system-say-ngos/#.VBVBtUvMZFY>.

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international instruments focused primarily on advancing the human rights of migrant workers.

2.1. ILO Conventions Protecting Migrant Workers Rights

The Constitution of the International Labour Organization clearly assigns the ILO the task of protecting “the interests of workers when employed in countries other than their own.”⁶⁰ Accordingly, within the UN system, setting standards for protecting migrant workers officially falls within the domain of the ILO.⁶¹ There are two ILO conventions expressly dedicated to safeguarding the rights of migrant workers.

The first, ILO Convention 97, Migration for Employment was adopted in 1949 and came into force in 1952.⁶² Convention 97 consists of general provisions safeguarding the rights of migrant workers and three optional annexes. Among other stipulations, under the general provisions ratifying states are required to provide migrant workers with accurate information on national policies, laws, and regulations relating to migration; facilitate migration for employment; maintain appropriate medical services; prevent discrimination; and provide equal treatment under the law, on par with the treatment afforded nationals, with respect to remuneration, collective bargaining, social security, taxation, and legal recourse.⁶³ The three annexes to Convention 97 cover (1) recruitment and conditions of labor for migrant workers, (2) government sponsored group transfer, and (3) exemption from customs duties. Governments are given the option of excluding any of the annexes from ratification. Forty-nine countries have ratified ILO Convention 97 to date.

The second, ILO Convention 143, Migrant Workers Convention (Supplementary Provisions), was adopted in 1975 and came into force in 1978. Convention 143 has two substantive parts: (1) Migrations in Abusive Conditions and (2) Equality of Opportunity

⁶⁰ Convention (No. 143) Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, pmbL., June 24, 1975, 1120 U.N.T.S. 323 [hereinafter ILO Convention 143].

⁶¹ Roger Bohning, *The ILO and the New UN Convention on Migrant Workers: The Past and Future*, 25 INT’L MIGRATION REV. 698, 700 (1991) (assessing the ILO’s role in developing international measures to aid migrant workers).

⁶² Convention (No. 97) Concerning Migration for Employment (Revised 1949), Jan. 7, 1949, 120 U.N.T.S. 71 [hereinafter ILO Convention 97].

⁶³ *Id.*

and Treatment. The first substantive component of Convention No. 143 is primarily concerned with irregular migrant workers – migrant workers who have entered a host country illegally whether voluntarily or due to forced trafficking. Ratifying countries are called upon to detect and suppress illegal employment by prosecuting employers and agents who engage in trafficking.⁶⁴ The second substantive component concerns equality of opportunity and treatment for migrant workers who lawfully enter a host country.⁶⁵ Ratifying states have the option of excluding either part of the convention.

Despite the option to selectively ratify each component, Convention No. 143 faced significant resistance when it came up for adoption by the International Labour Conference.⁶⁶ States, employers, and workers' organizations from developing countries objected to the Convention because it threatened to cut off employment opportunities and foreign exchange remittances from illegally employed migrants from developing countries.⁶⁷ Only 23 countries have ratified ILO Convention 143 to date.⁶⁸

2.2. UN International Convention on the Protection of All Migrants Workers and Members of Their Families

The 1990 United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMR) officially entered into force on July 1, 2003.⁶⁹ Intervening in the conflict between state sovereignty and human rights, the ICMR defines the category migrant worker, clarifies the full application of human rights law to migrant workers, and traces the rights of workers through the entire migration process. The types of migrants covered range from skilled to unskilled and include itinerant, project tied, those in specified employment, self-employed migrant workers, and seasonal workers. Thirty-three

⁶⁴ ILO Convention 143, at art. 3.

⁶⁵ ILO Convention 143, at Part II.

⁶⁶ Bohning, *supra* note 61, at 699.

⁶⁷ *Id.* at 700.

⁶⁸ *Ratifications of C143-Migrant Workers (Supplemental Provisions) Convention*, 1975 No. 143, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO.

⁶⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter ICMR].

states are currently signatories of the ICMR.

Comprised of nine sections, the ICMR is considered the first comprehensive codification of the rights of migrant workers and their families in a single human rights instrument. Article 1 provides a broad definition of migrant workers, including a distinction between regular (documented) workers and irregular (undocumented) workers.⁷⁰ Article 7 sets forth a principle of non-discrimination—providing that States should enforce the rights contained in the Convention without distinction.⁷¹ Part III of the ICMR (Articles 8–35) grants broad human rights to all migrant workers and members of their families, irrespective of their migratory status.⁷² Article 37 confers additional rights for migrant workers who are documented or regular.⁷³ Part VI provides a framework for international migration particularly oriented toward eliminating trafficking and smuggling of migrants. Finally, Article 72 requires that implementation of the ICMR be monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁷⁴

The last of the seven core UN international human rights treaties that together form the United Nations human rights treaty system, the ICMR is smaller than the other conventions and was not initially given immediate priority or widely promoted.⁷⁵ Beginning in the late 1990's, however, the ICMR gained authority due to a confluence of factors. These factors include establishment of the Steering Committee of the Global Campaign for Ratification of the ICMR, an alliance involving the UN Secretariat, intergovernmental agencies and international human rights, church, labor, migrant, and women's organizations. First convened in 1998, the work of the Steering Committee has led to a sharp increase in the number of ratifications and signatures to the

⁷⁰ See ICMR, *supra* note 69, at art. 1.

⁷¹ ICMR, *supra* note 69, at art. 7.

⁷² ICMR, *supra* note 69, at arts. 8-35.

⁷³ ICMR, *supra* note 69, at art. 37.

⁷⁴ See ICMR, *supra* note 69, at art. 72 (discussing implementation measures for the convention, including discussion of a committee for monitoring purposes).

⁷⁵ Robyn Iredale & Nicola Piper, UNESCO Int'l Migration & Multicultural Policies Sec., *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers: The Asia-Pacific Perspective 13*, in UNESCO SERIES OF COUNTRY REPORTS ON THE RATIFICATION OF THE UN CONVENTION ON MIGRANTS (Oct. 2003), available at <http://unesdoc.unesco.org/images/0013/001395/139528e.pdf>.

ICMR—prior to 1998 only nine states had ratified the Convention.⁷⁶

Additionally, the first UN Special Rapporteur on Human Rights of Migrants was appointed in 1999.⁷⁷ The Special Rapporteur is charged with receiving information from migrants concerning violations of their rights, issuing recommendation to correct such violations, promoting the application of international legal instruments and recommending policies to advance migrants rights at the national, regional and international levels.⁷⁸

Finally, increased support for the ICMR can be attributed to “intensified civil society activism, notably in Asia which has the most advanced migrant worker NGOs and regional networks.”⁷⁹ The Migrant Forum in Asia (MFA) was established in 1994, following the First Regional Conference organized by the Asian Migrant Centre in Hsinchu, Taiwan.⁸⁰ Initially meant to serve as a mechanism to monitor the implementation of conference recommendations, it has since evolved into a regional network that provides advocacy and direct services to migrant workers in all phases of the migration cycle.⁸¹ The broadest regional network dedicated to advancing migrants rights, the MFA is comprised of 23 member organizations, including migrant workers associations and unions, NGOs, religious organizations, national networks, and women’s NGOs. Member organizations represent 5 labor-sending countries—Bangladesh, Indonesia, Nepal, the Philippines and Sri Lanka; and 5 labor-receiving countries—Hong Kong, Japan, Malaysia, South Korea and Taiwan.⁸²

2.3. *Relationship Between ILO Conventions and the UN International Convention on Protection of All Migrants Workers and Members of Their Families*

Due in part to ILO participation in the drafting of the ICMR,

⁷⁶ OFF. OF U.N. HIGH COMM’R FOR HUM. RTS., THE INTERNATIONAL CONVENTION ON MIGRANT WORKERS AND ITS COMMITTEE: FACT SHEET NO. 24 (REV. 1), at 3 (2005) [hereinafter ICMR Fact Sheet].

⁷⁷ *Id.* at 14.

⁷⁸ *Id.*

⁷⁹ Iredale & Piper, *supra* note 75, at 13.

⁸⁰ Mary Lou L. Alcid, *The Multilevel Approach to Promoting Asian Migrant Workers’ Rights: The MFA Experience*, 42 INT’L MIGRATION 169, 171-72 (2004).

⁸¹ *Id.*

⁸² *Id.* at 172.

there is significant overlap between the ICMR and ILO instruments safeguarding migrant's rights. Of the 27 substantive Articles in Part III of the ICMR, 15 are covered by ILO Conventions or Recommendations; of the twenty substantive Articles in Part IV, 17 are covered by ILO Conventions and Recommendations; and, finally, of the 8 substantive Articles in Part VII, 6 are covered by existing ILO standards.⁸³

With regard to conflict between ILO instruments and the ICMR, the progressive development of human right standards requires that later instruments more favorable to individuals be adopted over earlier ones.⁸⁴ Accordingly, when in conflict, the ICMR supersedes preexisting ILO standards. Conflict between ILO instruments and the ICMR are most pronounced with respect to social security and free choice of employment.⁸⁵

2.4. Status of Trainees Under International Human Rights Law

Trainees fall within the definition of "migrant for employment" under the ILO Migrant Workers Convention, No. 97.⁸⁶ The ICMR broadens this definition, defining a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."⁸⁷ While these definitions imply inclusion of trainees who engage in labor for remuneration, both the ILO Migrant Workers Convention (Supplementary Provisions), No. 143 and the ICMR contain explicit provisions that exclude "trainees" from protection.⁸⁸

This explicit contradiction does not, however, necessarily foreclose protection under international law for trainees who both receive training and engage in remunerated employment. "The complexity of the present day migration stream has intensified with distinctions between migrant workers, trainees, tourists, refugees and displaced persons becoming increasingly blurred."⁸⁹

⁸³ Bohning, *supra* note 61, at 705.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ ILO Convention 97, *supra* note 62, at art. 11.

⁸⁷ ICMR, *supra* note 69, at art. 2(1).

⁸⁸ ILO Convention 143, *supra* note 60, at art. 11(d); ICMR, *supra* note 69, at art. 3(e).

⁸⁹ Piyasiri Wickramasekera, *Asian Labour Migration: Issues and Challenges in an Era of Globalization*, Int'l Labour Org. International Migration Papers No. 57, 2

With regard to trainees, this distinction is particularly tenuous because “on the job training” is difficult to distinguish from actual labor.

Challenges associated with distinguishing trainees from migrant workers were raised during the United Nations Working Group discussion of Article 3 of the ICMR. The Swedish representative, during the discussion, proposed that students and trainees engaged in remunerated work must be protected under the ICMR.⁹⁰ Despite significant endorsement of this perspective, the Working Group retained the wording “students and trainees.”⁹¹ Upon closing the session, however, a Finnish representative provided the following definition of student:

The term ‘student’ refers to a person who has been admitted to a state of which he is a national to pursue a full-time course of studies; a student is a migrant worker when he engages in remunerated activity that is not considered to be part of his course of study in that state.⁹²

Based upon these discussions, protection for migrant trainees within Japan is consistent with the scope of the ICMR.

3. JAPAN’S NATIONAL COMMITMENT TO RIGHTS AT WORK FOR MIGRANT WORKERS

3.1. *Commitment to International Human Rights Instruments Protecting Migrant Workers*

Historically, Japan has maintained an ambivalent relationship to international norms. Japan’s approach to international norms “is not necessarily resistant to their content” but also “does not see them as integral to state identity.”⁹³ Prior to 1979, Japan had

(Aug. 2002).

⁹⁰ Yazuo Kitamura, *Recent Developments in Japanese Immigration Policy and the United Nations Convention of Migrant Workers*, 27 U. BRIT. COLUM. L. REV. 113, 127 (1993).

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Amy Gurowitz, *Mobilizing International Norms: Domestic Actors, Immigrants, and the Japanese State*, 51 WORLD POLITICS 415, 424 (1999) (reaching this conclusion based upon a historical analysis of Japan’s entry into international society and themes in Japanese state identity dating back to the Meiji period).

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ratified only two international human rights agreements.⁹⁴ Following six years of intense, sustained pressure from Japanese and international NGOs, in 1979, the Japanese government ratified the International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁹⁵

Since 1979, Japan has ratified a number of additional treaties. In addition to ICCPR and ICESCR, Japan has signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁹⁶ Although there is no National Commission for Human Rights in Japan, in the last fifteen years, a number of agencies have been established to promote human rights—the Promotion Council for Human Rights Education (1995), the Council for Human Rights Protection (1997), and the Human Rights Forum 21 (1997).

Despite this increased commitment to international human rights, Japan has not ratified ILO Convention 97, Migration for Employment; ILO Convention 143, Migrant Workers Convention (Supplementary Provisions); and has taken a firm stance in opposition to the ICMR.⁹⁷ In a statement issued in 1990, following the adoption of the ICMR by the General Assembly, the Japanese government expressed several reservations. These include concern that the Conventions advocate more favorable treatment for migrant workers than is currently legislated for nationals and other foreigners; potential clashes with Japan's Constitution; and implications for Japan's basic immigration policies.⁹⁸ In addition, Japan usually follows international trends when ratifying UN documents. Absent ratification from the G7 countries and other

⁹⁴ *Id.* at 426.

⁹⁵ *Id.* at 426-29 (tracing the political context and mobilization efforts in the lead up to the ratification of these treaties).

⁹⁶ Masahiro Tabuchi, Director-General of the Immigration Bureau, Ministry of Justice, Japan, *Addressing the Global Community: Section 1, Treaties and International Conventions*, in 2010 IMMIGRATION CONTROL 89, 102-03, available at www.moj.go.jp/content/000058062.pdf.

⁹⁷ See Iredale & Piper, *supra* note 75, at 26 (noting the agreements Japan has signed, which do not list the named documents).

⁹⁸ *Id.* at 29.

high-income migrant-receiving countries, Japan has not felt compelled to ratify the ICMR.⁹⁹ Finally, the Japanese Ministry of Labor typically discusses ratification of ILO instruments with trade unions prior to recommending ratification and Japanese trade unions have not made conventions safeguarding migrant workers a priority in their advocacy.¹⁰⁰

3.2. *Challenges to Accessing Legal Protection Under Japanese Labor Law*

The capacity for a temporary migration program to balance the economic needs of the host country with the human rights of migrant workers depends upon the fulfillment of three basic prerequisites: first, a strong policy commitment to enforcing immigration and employment laws, especially against employers; second, active regulation of the cost at which migrant workers are made available to employers; and third, effective mechanisms for encouraging employers to search for local workers before demanding migrant labor.¹⁰¹ The first prerequisite relates most directly to protecting rights at work for migrant workers while the second and third variables are required to balance competing claims to employment by nationals within the host country.

Maintaining a focus on advancing human rights protection for migrant workers, this section considers the first prerequisite: whether the 2009 revisions to Japan's Immigration Control Act are sufficient to demonstrate a strong national commitment to enforcing immigration and employment laws, especially against employers. More specifically, the question is whether extending protection to trainees by considering them workers under the Labor Standards Act, the Minimum Wage Act, and other labor-related laws and regulations is likely to provide real access to protective measures. I consider two dimensions of access to real protective measures: first, access to legal services for migrant workers in Japan; and, second, the viability of amended legal sanctions against employers.

3.2.1. *Access to Legal Services*

Foreign workers in Japan typically do not receive legal

⁹⁹ *Id.* at 27-28.

¹⁰⁰ *Id.*

¹⁰¹ See Ruhs, *supra* note 4, at 16.

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counsel.¹⁰² The most basic barriers to access include a lack of financial resources and personal connections necessary to arrange for legal representation. The challenge of securing legal counsel under these conditions is heightened by a tendency by public defenders to reject cases involving foreigners because they are difficult, usually require interpretation, and offer little financial reward.¹⁰³

Against this backdrop, most low wage foreign workers access legal services through lawyers' associations and legal NGOs. Lawyers associations that provide legal counsel to foreigners, include the Lawyers' Association for Foreign Laborers Rights, (LAFLR), The Lawyers Association for Foreign Criminal Cases (LAFOCC), and the Immigration Review Task Force. These associations receive basic funding for their activities from regional lawyers' associations.¹⁰⁴ Legal NGOs, by contrast, rely almost entirely upon donations.¹⁰⁵ The authority wielded by employers over the legal status of trainees places an additional burden on lawyers associations and legal NGOs. Trainees occupy a particularly precarious immigration status. Placement with an employer is a prerequisite to remaining legally in Japan, and the only potential sanction for employers is to suspend permission to receive trainees—resulting in immediate deportation for trainees working with the offending firm.¹⁰⁶

Employers use this dependence to short-circuit legal proceedings and avoid paying damages and back pay.

When an intern or trainee goes to report unpaid wages to the local labor standards bureau, there have been many cases where they return to their domicile or workplace to find someone from their hiring company or association waiting to force them to return to their home country, sometimes making them leave that very

¹⁰² Apichai W. Shipper, *Foreigners and Civil Society in Japan*, 79 PAC. AFF. 269, 279-80 (2006).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Godoy, *supra* note 59 (“[T]he advocacy network relies entirely on grass-roots support in the form of volunteers and donations [T]he network receives no funding from the government . . .”).

¹⁰⁶ Matsubura, *supra* note 48.

day.¹⁰⁷

In order to avoid these outcomes, legal advocates advise clients to leave their place of employment early in the morning on the day they make their report and stay in a shelter for the duration of legal proceedings.¹⁰⁸ Advocacy groups who help trainees seek reparation are, therefore, also required to provide shelter and protection for their clients. In addition to trainees who must flee from their place of employment to avoid deportation, trainees whose contracts have been broken are evicted from the company dorm and usually need a place to stay.¹⁰⁹ Adding to these challenges, trainees who file claims against their current employer may face intimidation and need protection.¹¹⁰

3.2.2. Viability of Legal Sanctions Against Employers

While the 2009 revision to the Immigration Control Act included increasing punishments for employers who violate the dictates of the trainee program, Japan is notorious for weak law enforcement. In fact, it has been argued that no industrial nation has weaker law enforcement.¹¹¹ “Sanctions taken for granted in the West, in Europe as well as in the United States, either do not exist or remain unused in Japan.”¹¹²

Consistent with this reputation, employers who act inappropriately regarding trainees do not actually receive punishment. Rather, they lose the privilege of receiving trainees. The 2009 revision to the Immigration Control Act does not initiate additional sanctions. Instead, the revisions increase the period of suspension from the program from one year to three years.

Typically, in Japan, the paucity of formal legal sanctions is balanced, at least in part, by informal, extralegal mechanisms.¹¹³ The most persuasive is ‘loss of face’ or damaged reputation.¹¹⁴ Accordingly, as in most countries, adverse publicity is a powerful

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ John O. Haley, *Sheathing the Sword of Justice in Japan: An Essay on Law Without Sanctions*, 8 J. JAPANESE STUD. 265, 265 (1982).

¹¹² *Id.*

¹¹³ *Id.* at 275.

¹¹⁴ *Id.*

tool in gaining compliance with legal and social norms.¹¹⁵ In addition, ostracism, including refusal to deal with companies that violate accepted legal norms incentivizes compliance.¹¹⁶

Unfortunately, even after the 2009 revision of the Immigration Control Act, these informal, extralegal mechanisms for incentivizing compliance do not enhance protection for trainees. Justice Ministry investigations of trainee exploitation are rarely, if ever, made public, even when such investigations result in suspension from the program.¹¹⁷ Hiroshi Nakajima, an organizer for the Advocacy Network for Foreign Trainees,¹¹⁸ described the investigation process as a “black box.”¹¹⁹ According to Nakajima, questions go unanswered during investigations and the resulting suspensions are not even made public.¹²⁰ More alarmingly still, this information is not always available to the public, even upon request. “The network is sometimes able to get information on banned companies from the ministry upon request, but not in every case,” Nakajima explains.¹²¹ Often, organizations that advocate on behalf of trainees only know that a placement organization, association, or company has been suspended when they find out that the firm no longer receives trainees.¹²²

Local Labor Standards Offices, at least in Fukui Prefecture, also fail to provide relevant public information.¹²³ In 2009, 85% of the companies employing trainees that were investigated by the Fukui Labor Bureau were found to have committed labor or safety infractions.¹²⁴ By failing to make the names of offending companies public, the Labor Standard Inspection Office protects these companies from Ministry of Justice sanctions and allows them to continue employing foreign trainees. These *de facto* policies of shielding companies that violate the rights of trainees

¹¹⁵ *Id.*

¹¹⁶ *See id.* at 277 (suggesting that informal mechanisms of ostracism is one of the most effective means of maintaining social order).

¹¹⁷ Godoy, *supra* note 59.

¹¹⁸ The Advocacy Network for Foreign Trainees, started in 1999, is a Tokyo-based umbrella organization for trainee advocacy groups. I discuss this organization further in Section IV of this paper.

¹¹⁹ Godoy, *supra* note 59.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

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from public humiliation undermine the potential for extralegal sanctions to bolster the legal rights extended to foreign trainees. According to Ichiro Takahara of the Fukui Advocacy Network for Foreign Trainees, these policies trivialize violations: “The sense of guilt over committing a labor violation is less than that over committing a traffic violation.”¹²⁵

3.2.3. *Evaluation by UN Special Rapporteur on the Rights of Migrants*

Invited by the Japanese Government to observe and report on the human rights situation of migrants in the country, in March 2010, UN Special Rapporteur on the human rights of migrants, Jorge Bustamante, spent nine days touring Japan.¹²⁶ Bustamante visited Tokyo, Nagoya, Toyota, and Hamamatsu to meet with Ministers, officials of central and local governments, international organizations, lawyers, schoolteachers, academics, members of civil society organizations, as well as migrant women, men, and their children.¹²⁷

Despite the 2009 revisions to the Immigration Control Act, Bustamante condemned the industrial trainee and technical interns program. In his recommendations, Bustamante described the program as “fuel[ing] demand for exploitative cheap labour under conditions that constitute violations of the right to physical and mental health, physical integrity, freedom of expression and movement of foreign trainees and interns.”¹²⁸ In some cases, he noted, these conditions “may well amount to slavery.”¹²⁹ In addition, he recommended that “urgent measures . . . be taken within the judiciary and law enforcement agencies to guarantee the effective implementation of the rights of foreigners without discrimination.”¹³⁰

¹²⁵ *Id.* (quoting Ichiro Takahara of the Fukui Advocacy Network for Foreign Trainees).

¹²⁶ *UN Migrants Rights Expert Urges Japan to Increase Protection of Migrants*, OFF. OF U.N. HIGH COMM’R FOR HUM. RTS. (Mar. 31, 2010), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9950&LangID=E>.

¹²⁷ *Id.*

¹²⁸ *Id.* at 2.

¹²⁹ *Id.*

¹³⁰ *Id.*

4. RECOMMENDATIONS AND CONCLUSION

4.1. Incentivizing Compliance with Legal Standards that Protect Migrant Workers' Human Rights at Work

Under the 2009 revision to the Immigration Control Act, Japanese employers who violate the human rights of migrant workers do not actually receive punishment but only temporarily lose the privilege of employing trainees for three years. This sanction is further diluted by the association-supervised system of placement which allows employers who have violated migrants rights to apply to receive trainees by joining or forming a new association that is not linked to previous abuses.

To facilitate effective enforcement of employer sanctions, two conditions need to be met: first, implementation of employer sanctions must be feasible; and second, there must be a strong commitment to enforce the law against employers.¹³¹ Intermediaries who help evade enforcement and insufficient cooperation between agencies jeopardize the feasibility of sanctions.¹³² In addition, Japan's notoriously weak culture of law enforcement significantly decreases the likelihood of a strong commitment to enforcing penalties against employers who engage in misconduct.

To enhance the ability of sanctions to feasibly deter and punish abuse of migrant trainees, small employers that band together to form associations must be held individually accountable for abuses against migrant workers. This requires the Ministry of Justice to record sufficient identifying information about all individual employers that comprise larger associations; the Labor Standards Offices to report labor and safety infractions by employers hiring trainees to the Ministry of Justice; and a joint commitment between these agencies to insure that employers that engage in abusive conduct are prohibited from joining associations in the future.

In addition, to compensate for Japan's weak culture of law enforcement, the Ministry of Justice must facilitate extralegal sanction of employers who violate migrant's rights. As previously discussed, the paucity of formal legal sanctions in Japan is typically

¹³¹ Ruhs, *supra* note 4, at 17 (defining and applying these criteria to enforcing government sanctions against employers who illegally hire irregular migrant workers).

¹³² *Id.*

balanced, at least in part, by informal, extralegal mechanisms.¹³³ The most persuasive is damage to reputation. Currently, however, concerning abuses of migrant workers, adverse publicity and refusal to deal with companies that violate the law are not effective mechanisms for sanction because Ministry of Justice and Labor Standards Office investigations of trainee exploitation are rarely made public. Accordingly, to enhance the efficacy of informal sanction, the Ministry of Justice must both make information about violations available to the public upon request and commit to publicizing investigations of employers that result in suspension from the program. Access to this information will empower migrant workers and their advocates to independently monitor abusive employers and deploy public opinion to demand legal compliance.

4.2. Recourse for Trainees: Portable Placements Within Sectors and Approved Associations

One of the primary sources of migrants' vulnerability within temporary migration programs is the requirement that they work only for the employer specified on their work permit.¹³⁴ As previously discussed, under the 2009 revisions to the Immigration Control Act, trainees continue to occupy a particularly precarious immigration status because placement with a particular employer is a prerequisite to remaining legally in Japan. Trainees who seek recourse from Local Labor Standards Bureaus are frequently forced to leave the country immediately. Employer accountability is further undermined by the illegal practice of retaining migrant workers' passports and making accommodation contingent upon submission to employer's terms.¹³⁵

Access to legal recourse from abuse, therefore, "requires at least some portability of temporary work permits" ¹³⁶ While unlimited portability of permits across occupations and sectors might undermine alignment of temporary workers with industry needs, allowing trainees to be mobile *among* smaller employers *within* industry-specific associations maintains an appropriate balance between the economic demands of the host country and

¹³³ See *supra* Section 3.2.2.

¹³⁴ *Id.* at 23.

¹³⁵ *Id.* at 24.

¹³⁶ *Id.*

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the rights of trainees.

In addition to providing trainees access to legal recourse, such an arrangement would incentivize adherence to labor standards by both employers and associations. If trainees are mobile between employers in instances where their rights have been violated, employers will have an added incentive to adhere to labor standards in order to keep workers for a sufficient duration to recoup recruitment and training costs. Moreover, requiring associations to find new placements for trainees who have been mistreated would require increased interaction between associations and their members, increasing opportunities for associations to monitor working conditions.