

HIDDEN IN PLAIN SIGHT: JAPAN'S DYING LABOR FORCE AND THE HUMAN TRAFFICKING ISSUES THAT COME WITH IT

Cristina Marila*

Japan's stringent immigration policies paired with an aging population have left the country with a high demand for laborers. The labor scarcity promotes serious human trafficking issues that will become increasingly detrimental and prevalent as Japan's population continues to fall, and the country's strict immigration restrictions exacerbate the problem. Building on Japan's recent abolishment of the troublesome Technical Intern Training Program (TITP), this Note proposes that Japan amend its new foreign workers program—the Work Training System—to secure foreign workers more rights, accept more refugees, and enforce laws aimed at preventing human trafficking. These changes will address Japan's labor shortage while protecting the labor rights of people who immigrate to Japan under its new program.

I. INTRODUCTION

The scope of human trafficking for many people is limited to movies like “Taken,” stories of creepy interactions with random strangers summed up as potential sex trafficking recruitment,¹ or conspiracies that Wayfair is running a child trafficking ring.² While human trafficking is frequently viewed through the lens of sex and child trafficking, these perceptions of human trafficking differ from the growing reality—undocumented migrants trafficked into foreign countries for labor purposes.³ Labor trafficking tends to be ignored, but it is a serious issue that continues to grow, with

* J.D. 2024, The George Washington University Law School; B.S. 2021, University of Illinois Urbana-Champaign. The author would like to thank all her friends, mentors, and fellow GWILR members who contributed to this Note whether with their feedback or a listening ear. Cristina would especially like to thank her own immigrant parents, who inspired her with their own strength in the face of adversity, two younger brothers, dog (hi Isabella, if you're reading this, how?), and partner for their forever support.

1. Sarah Marshall & Michael Hobbes, *Halloween Special: Creepy Encounters*, YOU'RE WRONG ABOUT at 6:04 (Oct. 19, 2020), <https://www.buzzsprout.com/1112270/episodes/5948920-halloween-special-creepy-encounters> [perma.cc/6X72-W98F].

2. Marianna Spring, *Wayfair: The False Conspiracy about a Furniture Firm and Child Trafficking*, BRIT. BROAD. CORP. (July 15, 2020), <https://www.bbc.com/news/world-53416247> [perma.cc/H58R-FU7S].

3. See U.N. OFF. ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS, at 16, U.N. Sales No. E.20.IV.3 (2020).

trafficking for labor purposes surging from eighteen percent of human trafficking in 2006 to thirty-eight percent of all human trafficking cases in 2018.⁴ But this statistic only counts reported cases of trafficking; many more unreported cases are happening right under our noses.

Trafficking for labor purposes occurs when migrants are recruited or transported for forced labor by means of coercion, fraud, or an abuse of power.⁵ The International Labour Organization defines forced labor as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁶ According to the U.N. Office on Drugs and Crime’s Global Report on Trafficking in Persons 2020, there are a variety of risk factors that are used to detect labor trafficking.⁷ The most common component of labor trafficking is an imbalanced relationship between foreign workers and their employer that leads to exploitative wages and excessive work hours imposed on the foreign workers who are stranded in unfamiliar countries without any resources to change their circumstances.⁸ Other noted patterns in labor trafficking situations include: migrants being confined in remote areas to avoid outsiders learning about the exploitative conditions imposed on the workers; a migrant’s status being used against them by an employer; and the presence of intermediaries such as recruitment agencies that charge high fees and are complicit in the trafficking scheme.⁹ The Global Report also noted that “trafficking for the purpose of forced labour is closely connected with labour migration, particularly in high income countries,” such as Japan.¹⁰

Japan is one of the most successful countries in the world today.¹¹ The country has a gross domestic product of 4.21 trillion U.S. dollars,¹² making its economy the fourth largest in the world¹³

4. *Id.*

5. See *What is Forced Labour?*, INT’L LABOUR ORG., <https://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm>.

6. International Labour Organization, Convention Concerning Forced or Compulsory Labour art. 1, June 28, 1930, 30 U.N.T.S. 55 [hereinafter Forced Labour Convention].

7. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 108–14.

8. See *id.* at 108–10.

9. *Id.* at 110–14.

10. *Id.* at 55 n.85, 97.

11. See *Japan, Overview*, WORLD BANK GRP., <https://data.worldbank.org/country/JP> (reported in U.S. dollars).

12. *Id.*

13. *GDP (Current US\$)*, WORLD BANK GRP., https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true.

and easily qualifying Japan as a high-income country.¹⁴ Its citizens have one of the highest life expectancies amongst nations,¹⁵ and it is considered to be “one of the world’s most literate and technically advanced nations.”¹⁶ Nevertheless, Japan currently lacks one essential aspect of a functioning economy—a consistent workforce.¹⁷ With a dying population that is not expected to grow anytime soon, Japan lacks workers to uphold essential agricultural and construction industries.¹⁸ However, because of its historically restrictive immigration laws against blue-collar workers and hostility towards refugees,¹⁹ Japan finds itself ill-equipped to attract this necessary labor force from foreign countries. This Note will focus on the troubling combination of strict immigration laws and an urgent need for a working population that has led to Japan’s increased reliance on human trafficking. Japan’s stringent immigration policies contribute to a severe labor shortage and leave the door open for human trafficking, resulting in a desperate need for major reform of the country’s labor and immigration laws.

Japan’s immigration policies are not foreigner-friendly.²⁰ Its immigration laws make entry for migrants difficult and tend to encourage only temporary stays in the country.²¹ The refugee population is essentially nonexistent.²² Japan attempted to open its borders through the Technical Intern Training Program (TITP), a five-year program for foreign workers to learn important work skills in Japan.²³ However, TITP was criticized relentlessly by the international community for years, with the U.S. Department of State mentioning TITP in its annual Trafficking in Persons Report every year since 2007.²⁴ In the 2022 Trafficking in Persons Report, the department

14. *World Bank Country and Lending Groups*, WORLD BANK GRP., https://datahelpdesk.worldbank.org/knowledgebase/articles/906519#High_income [perma.cc/7489-GHQ3].

15. *Life Expectancy at Birth, Total (Years)*, WORLD BANK GRP., https://data.worldbank.org/indicator/SP.DYN.LE00.IN?most_recent_value_desc=true.

16. *Japan*, U.S. NEWS, <https://www.usnews.com/news/best-countries/japan>.

17. *Japan Faces Shortage of Almost a Million Foreign Workers in 2040, Think Tank Says*, REUTERS (July 2, 2024), <https://www.reuters.com/markets/asia/japan-faces-shortage-almost-million-foreign-workers-2040-think-tank-says-2024-07-04/>.

18. See Markus Bell, *Japan’s Self-Destructive Immigration Policy*, DIPLOMAT (Jan. 4, 2022), <https://thediplomat.com/2022/01/japans-self-destructive-immigration-policy/>.

19. See *id.*; see also Jun Saito, *Historical Background of the Japanese Restrictive Immigration Policy*, JAPAN CTR. FOR ECON. RSCH. (2022).

20. See Bell, *supra* note 18.

21. See Saito, *supra* note 19; see also Piyada Chonlaworn, *Cheap and Dispensable: Foreign Labor in Japan via the Technical Intern Training Program*, 11 JSN J. 33, 34 (2021).

22. See JAPAN ASS’N FOR REFUGEES, 2021 JAR ANNUAL REPORT: ENGLISH VERSION 6 (2021).

23. Chonlaworn, *supra* note 21, at 34.

24. VERITÉ, FORCED LABOR RISK IN JAPAN’S TECHNICAL INTERN TRAINING PROGRAM 7 (2018); see U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 262–66 (2019); U.S.

showed concern about TITP workers' reported recent experiences, including "restricted freedom of movement and communication, confiscation of passports and other personal and legal documentation, threats of deportation or harm to their families, physical violence, poor living conditions, wage garnishing, *and other conditions indicative of labor trafficking*."²⁵ The growing number of reports of abuse of TITP workers coming to public light and mounting criticism of the program eventually culminated in TITP's abolishment in early 2024.²⁶ The Japanese government has promised to create a new system for foreign workers to work in Japan safely.²⁷ However, the plans for this new program fail to overcome many of TITP's shortcomings and thus, remain insufficient to provide Japan with the high number of laborers the country needs while also protecting the foreign workers from future abuses.

Japan can best resolve a number of these issues by mirroring Germany. Germany's blue-collar workforce dwindled severely after World War II.²⁸ Once a strongly anti-immigration country, Germany grew its labor force by opening up its borders to foreign workers and refugees who, in exchange for providing labor services, were offered an opportunity to reside permanently in Germany.²⁹ Similarly, Japan can repair its labor shortage by creating a visa program that better supports foreign workers and by incentivizing refugees to join its workforce through integration measures and guarantees of stable immigration status. Japan should grant working foreigners rights that shield them from

DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* 282–86 (2020); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* 317–321 (2021); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* 313–17 (2022) [hereinafter 2022 *TRAFFICKING IN PERSONS REPORT*], 2023 *Trafficking in Persons Report: Japan*, U.S. DEP'T OF STATE, [HTTPS://WWW.STATE.GOV/REPORTS/2023-TRAFFICKING-IN-PERSONS-REPORT/JAPAN](https://www.state.gov/reports/2023-trafficking-in-persons-report/japan) [perma.cc/H5MT-HUGA]; 2024 *Trafficking in Persons Report: Japan*, U.S. DEP'T OF STATE, <https://www.state.gov/reports/2024-trafficking-in-persons-report/japan/#:~:text=TITP%20participants%20from%20Bangladesh%2C%20Bhutan%2C%20Burma%2C%20Cambodia%2C,excessive%20worker%2Dpaid%20fees%2C%20deposits%2C%20or%20vague%20%22commissions%22> [perma.cc/GST8-E29P].

25. 2022 *TRAFFICKING IN PERSONS REPORT*, *supra* note 24, at 317 (emphasis added).

26. See Kathleen Benoza, *Japan to End Technical Intern Program and Allow Transfers to New Jobs*, JAPAN TIMES (Feb. 9, 2024), <https://www.japantimes.co.jp/news/2024/02/09/japan/society/technical-intern-program-scrapped/> [perma.cc/JN2H-Y2WH].

27. See *id.*

28. Sal Ahmed, *At 60, Is the Turkish 'Guest Worker' in Germany Still a Guest?*, TRTWORLD, <https://www.trtworld.com/magazine/at-60-is-the-turkish-guest-worker-in-germany-still-a-guest-50661>.

29. See Barbara Laubenthal, *Refugees Welcome? Reforms of German Asylum Policies Between 2013 and 2017 and Germany's Transformation into an Immigration Country*, 28 GER. POL. 412, 418–21 (2019).

labor exploitation and should strengthen its legislation against human trafficking with more effective penalties for employers who condone and contribute to labor trafficking.

This Note proposes that Japan take further action to counteract the legalized human trafficking enabled under TITP and repair the country's labor force in an ethical manner. Part II begins by exploring contributing factors to Japan's devastating population decline and labor shortage. Next, Part II analyzes Japan's immigration laws, their restrictive nature that has contributed to the growth of human trafficking in the country, and Japan's attempts to reform them through new legislation. Finally, Part II discusses how Germany addressed similar labor issues while maintaining strict immigration laws. Part III suggests that Japan's proposal for a new foreign worker program does not accomplish nearly enough, and the solution requires addressing labor, refugee, and human trafficking concerns. This Note recommends Japan make additional reforms to its laws to protect foreign workers, noting the harms of the TITP program and the shortcomings of the current proposals for its replacements. In addition, Japan must empower refugees to help ameliorate the country's labor deficiency and restructure human trafficking enforcement mechanisms.

II. BACKGROUND

To fully comprehend the labor shortage Japan currently faces, this section discusses why Japan's population has decreased significantly and how Japan's strict immigration policies have contributed to the country's lack of a labor force. This Section provides an overview of Japan's former recruitment system for blue-collar work, TITP, the problems it created during its implementation, and the attempts made by the Japanese government to ameliorate them. Finally, this Section looks at pathways to a solution highlighted by the international community.

A. *The Current State of Japan*

Despite its high rankings and numerous advancements, Japan faces a serious population shortage.³⁰ According to the Migration Policy Institute, Japan's birth rate in 2024 was around seven births per 1,000 people, while the death rate in 2024 superseded that number

30. Claire Parker, *Japan Records its Largest Natural Population Decline as Births Fall*, WASH. POST (June 3, 2022), <https://www.washingtonpost.com/world/2022/06/03/japan-low-births-population-decline-2021/>.

with around 11.9 deaths per 1,000 people, making the population growth rate 0.43%.³¹ Japan's population dropped by 628,205 between 2021 and 2022, the biggest natural population decline ever recorded in the country.³² There are multiple reasons why the population decline is so severe, most of which are rooted in Japan's strong traditionalist culture. In 2022, the fertility rate decreased for the sixth year in a row and sat at an average of 1.3 children in a women's lifetime, compared to a worldwide rate of 2.3 children that same year.³³ Additionally, due to the strong sense of custom and traditional notions in the country, most people do not have children outside of marriage,³⁴ and people are not getting married as often.³⁵ The number of marriages declined by 24,391 in 2021, with only 501,116 marriages recorded—the lowest number since World War II.³⁶ The traditionalist culture still typically expects married women to maintain domestic duties; studies from 2020 show that mothers still do 3.6 times more housework than fathers in Japan.³⁷ Even if they are college-educated and thriving in their careers, women are expected to fulfill domestic duties once they are married. Thus, many women choose not to marry and, instead, focus on their long-term careers.³⁸ As a result, the proportion of women receiving higher education has grown in Japan, while the birth rate continues to decline.³⁹ Japanese culture is also heavily pro-heteronormative relationships; same-sex marriage is not legal in Japan, nor is adoption by same-sex couples.⁴⁰ Hence, neither

31. *Japan*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/country-resource/japan> [hereinafter MIGRATION POL'Y INST.].

32. Parker, *supra* note 30.

33. *Id.*; see *Fertility Rate, Total (Births per Woman)*, WORLD BANK GRP., <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN> [perma.cc/KR8E-CVSA].

34. Parker, *supra* note 30.

35. *Id.*

36. Justin McCurry, *Record Number of Young People in Japan Rejecting Marriage, Survey Shows*, GUARDIAN (Sept. 13, 2022), <https://www.theguardian.com/world/2022/sep/14/record-number-of-young-people-in-japan-rejecting-marriage-survey-shows> [perma.cc/V364-F2CA].

37. Mariko Oi, *Why Japan Can't Shake Sexism*, BRIT. BROAD. CORP. (Apr. 8, 2021), <https://www.bbc.com/worklife/article/20210405-why-japan-cant-shake-sexism> [perma.cc/KWN3-LE4H].

38. Parker, *supra* note 30.

39. *Id.*

40. See Julian Ryall, *Japan: Same-sex Couples Face Resistance to Adoption*, DW (June 6, 2022), <https://www.dw.com/en/japan-same-sex-couples-face-resistance-to-adoption/a-62043706> [perma.cc/7LBL-DMBM].

marriages nor families are growing from LGBTQ communities within Japan.⁴¹

Along with the decreasing marital rate, the average age of Japan's population is increasingly older. While Japan's high life expectancy is impressive, it is also the country's Achilles' heel. In 2023, about thirty percent of the population in Japan was over the age of sixty-five, while only ten percent of the population globally was sixty-five years or older.⁴² Adult diapers sell out over twice as often as baby diapers.⁴³ This decrease in the population has led to fewer young and able-bodied people in Japan's workforce.⁴⁴ Older members of society are less productive in the workforce, and yet they remain in the jobs they originally had long-term, taking away potential work for a younger labor force.⁴⁵ This decrease in the population shows no signs of stopping anytime soon, with the population expected to decline by twenty million by 2045,⁴⁶ which is about sixteen percent of the current population.⁴⁷ A drastic population decrease typically would be a call to bring more people into the country, but this is not a measure to which Japan has defaulted. Japan's current immigration policies have maintained rigidity despite the crisis.

B. Current Immigration Policies

The current immigration regime in Japan is the Immigration Control and Refugee Recognition Act (ICRRA) which was enacted in 1951. "The purpose of the [ICRRA] is to provide equitable control over the entry into or departure from Japan of all persons and to consolidate the procedures for recognition of refugee status."⁴⁸ The ICRRA has extensive provisions used to regulate the flow of migrants into the country and maintains a long checklist of

41. See *id.*

42. *Populations Ages 65 and Above (% of Total Population)*, WORLD BANK GRP., <https://data.worldbank.org/indicator/SP.POP.65UP.TO.ZS> [perma.cc/8TSH-JH4G].

43. See Bell, *supra* note 18.

44. See *id.*

45. See *id.*

46. Jeremy Davison & Ito Peng, *Views on Immigration in Japan: Identities, Interests, and Pragmatic Divergence*, 47 J. ETHNIC & MIGRATION STUD. 2578, 2578 (2021).

47. See MIGRATION POL'Y INST., *supra* note 31.

48. Shutsunyūkoku kanri oyobinanmin'nintei hō [Immigration Control and Refugee Recognition Act], Cabinet Ord. No. 319 of 1951, ch. I, art. 1, *translated in* (Japanese Law Translation [JLT DS]), <https://www.japaneselawtranslation.go.jp/en/laws/view/1934/en> [perma.cc/J5EQ-4QZN] (Japan).

requirements migrants must fulfill simply to gain initial entry into the country.⁴⁹

The hoops migrants have to jump through are illustrated by the process of admitting “highly-skilled foreign professionals” into Japan. Although highly-skilled workers are given “preferential immigration treatment,” the application process does not suggest that intention.⁵⁰ Highly-skilled workers are evaluated through a point system where the applicant receives a number of points based on their skill set and must receive a minimum of seventy points to be admitted into Japan.⁵¹ Factors that give applicants the highest number of points include whether the applicant will receive a high annual salary—which can grant the applicant up to forty points—and holding a “doctor’s degree,” which grants an applicant thirty points.⁵² All other potential points are of lower value, noting things such as age—the younger one is, the more points one receives—and years of experience.⁵³ The benefits that come with being let into Japan as a highly-skilled worker are that one will receive a five-year residence permit with a potential path to permanent residency and the ability to bring their spouse or parents to live with them.⁵⁴ This is the entry process required for people Japan considers to be top-tier international candidates: a process with a high bar and many requirements to fulfill.⁵⁵ Japan’s selectivity with the migrants it allows to enter the country becomes even more burdensome when it comes to growing its blue-collar labor force through refugees or foreign worker programs.

1. The Makeup and Effects of the Recently Abolished Technical Intern Training Program

Key immigration channels used by Japan are visa programs dedicated to foreign laborers. The most prevalent and problematic of the bunch was the TITP. TITP was the primary program utilized to bring blue-collar migrant workers into the country from 1993 to early 2024.⁵⁶ The mission of TITP was to “transfer skills,

49. *See id.* at ch. II.

50. *Points-Based Preferential Immigration Treatment for Highly-Skilled Foreign Professionals, Points-Based Immigration System for Highly-Skilled Foreign Professionals*, IMMIGR. SERVS. AGENCY (April 2023), <https://www.moj.go.jp/isa/content/001398892.pdf> [perma.cc/9NJ3-2QTU].

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *See generally id.*

56. Chonlaworn, *supra* note 21, at 35, 37; Benoza, *supra* note 26.

technologies, or knowledge . . . accumulated in Japan to developing and other regions and to promote international cooperation by contributing to the development of human resources who can play roles in the economic development of those developing regions.”⁵⁷ TITP hired trainees specifically for low-paid work and had them work in blue-collar industries such as construction and food processing.⁵⁸ In 2020, these interns were the second largest foreign workforce in Japan, behind permanent residents.⁵⁹ Participating countries in the program included Indonesia, Vietnam, Sri Lanka, Thailand, and Bangladesh.⁶⁰ Interns worked in their roles for five years and promptly would go back to their home countries, where they were expected to use the skills they learned from TITP and improve their developing countries with their new skillset.⁶¹ While the primary purpose of TITP allegedly was to teach foreign workers skills that could be used to benefit their home countries,⁶² many foreign workers left Japan without learning anything that feasibly could be used to benefit them.⁶³ One Vietnamese worker, who spent his TITP residency working on the National Stadium for the Tokyo 2020 Olympics, said he learned nothing he could take back to Vietnam because Vietnam primarily uses bricks instead of concrete for its infrastructure.⁶⁴

The TITP program had a burdensome administrative process. During the initial application process for TITP, interns were required to pay a service fee to cover expenses such as visa processing, airfare to and from Japan, mandatory Japanese language training, and more.⁶⁵ Some of these fees reached up to one million yen—a little more than 9,000 U.S. dollars—with the average worker paying 570 thousand yen, which is about 5,300 U.S.

57. *What is the Technical Intern Training Program?*, JAPAN INT’L TRAINEE & SKILLED WORKER COOP. ORG., <https://www.jitco.or.jp/en/regulation/> [perma.cc/7CS7-MSY6].

58. *Technical Intern Training Program (TITP)*, CTR. FOR GLOB. DEV., <https://gsp.cgdev.org/legalpathway/technical-intern-training-program-titp/>.

59. Chonlaworn, *supra* note 21, at 36.

60. *Agreements with Governments of Sending Countries*, IM JAPAN, <https://imm.or.jp/en/program/gov.html> [perma.cc/2DZA-RBXD].

61. *Quick Understanding of Technical Intern Training Program*, IM JAPAN, <https://imm.or.jp/en/about.html> [perma.cc/2EGF-MWSD].

62. *Id.*

63. 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 317 (“TITP employers place many participants in jobs that do not teach or develop technical skills, contrary to the program’s stated intent; others place participants in jobs that do not match the duties they agreed upon beforehand.”).

64. Yusuke Yasuda, *Can They Call Japan Home? Japanese Nationalism and Unskilled Labor Migrants*, 12 EXCURSIONS 23, 33 (2022).

65. Chonlaworn, *supra* note 21, at 37–38.

dollars.⁶⁶ While the interns were in Japan, they were overseen by supervising organizations that offered them technical intern training, Japanese language training, and “mental care.”⁶⁷ The requirements for participants to intern through TITP varied by country, but all required some sort of academic test, a physical fitness test, a medical examination, and an interview.⁶⁸ Once these were completed, the interns underwent four months of training in their home country.⁶⁹

First, the interns participated in a pre-entry training program in their home country that acted as a vocational school and taught the interns essential skills for living in Japan, such as the Japanese language and social expectations.⁷⁰ Next, the interns received a one-year residence card and entered their first round of formal TITP training in Japan, in which the interns were assigned to an employer from whom they began to learn a new skill set.⁷¹ The interns also were required to take the Skills Proficiency Test Basic Level, a “skills test and knowledge [academic] test”; if the interns failed these tests, they lost their residence status and their training period terminated.⁷² Once the interns completed the first round of TITP training and passed the Skills Proficiency Test Basic Level, Japan guaranteed the interns two years of training.⁷³ Following their two years of training, interns had to renew their stay and complete a third round of training where they were required to take another exam testing their trade skills.⁷⁴ If the intern passed the exam, they were permitted to return to their home country for at least one month and were expected to return back to Japan to finish their training.⁷⁵ At the end of this extensive process, the intern completed their five-year TITP program.⁷⁶

During their time in the program, TITP interns were expected to meet certain qualifications and follow certain rules. Alongside the excessive exam-taking and work hours, the interns were expected

66. *Id.*

67. *Quick Understanding of Technical Intern Training Program*, *supra* note 61.

68. *Screening and Training*, IM JAPAN, <https://imm.or.jp/en/program/selection.html> [perma.cc/A449-PFSR].

69. *Id.*

70. *Id.*

71. *Quick Understanding of Technical Intern Training Program*, *supra* note 61.

72. *Id.*

73. *Id.*

74. *Technical Intern Training Program*, MINISTRY OF JUST. 5, <https://www.otit.go.jp/files/user/210316-5.pdf> [perma.cc/N5KS-TUEC].

75. *Id.*

76. *Id.*

to learn Japanese.⁷⁷ Furthermore, except for the one-month period right before the intern's fourth round of training, the intern was not permitted to return home.⁷⁸ Likewise, they could not bring family members to live with them during this five-year period.⁷⁹ If the intern wanted to stay in Japan past their permitted five years, they were out of luck; TITP did not grant foreign workers a pathway to permanent residency and expected foreign workers to go home once their work permit ran out.⁸⁰ TITP interns were not allowed to switch jobs after initial placement; if the intern switched jobs or was fired, they were immediately stripped of their TITP status and forced home.⁸¹

After the strenuous application process, TITP members faced many issues once they were in the actual workplace.⁸² Japanese employers forced TITP interns to work long hours and overtime with no extra pay.⁸³ Complaints filed under Japan's Labor Standards Act (LSA) showed evidence of employers regularly and severely underpaying their trainees.⁸⁴ This is something that deeply affected all the interns, most of whom had given up their savings to pay to participate in TITP to make money to send back to their families waiting for them in impoverished countries.⁸⁵ TITP continued to weaponize debt-based coercion against interns by charging excessive fees for participation in the program.⁸⁶ For example, a twenty-three-year-old Vietnamese worker named Vinh paid one million yen to a recruiting agency to become a TITP intern but only made about 110,000 yen a month, which is about one thousand U.S. dollars.⁸⁷ In comparison, his Japanese national peers received a 348,000 yen monthly salary, which is 3,150 U.S. dollars in monthly earnings.⁸⁸ The conditions of the program forced interns either to stay in their abusive employment conditions for the extent of their

77. *Screening and Training*, *supra* note 68.

78. *Technical Intern Training Program*, *supra* note 74, at 5.

79. Chonlaworn, *supra* note 21, at 35.

80. *See Screening and Training*, *supra* note 68; *see also* Yasuda, *supra* note 64, at 36.

81. Yasuda, *supra* note 64, at 33.

82. Chonlaworn, *supra* note 21, at 41.

83. *Id.*

84. *See id.* ("Of the complaints filed by trainees, 80% concerned not being paid hourly or overtime wages; 10% concerned being underpaid; and another 10% concerned flaws in company dismissal procedures.").

85. *Id.*

86. *See* 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 313.

87. Chonlaworn, *supra* note 21, at 34.

88. Hei Kin Wong, *Ultimate Guide to Average Salary in Japan*, BFF TOKYO (July 13, 2021), <https://jobs.bfftokyo.com/ultimate-guide-to-average-salary-in-japan/> [perma.cc/EMS2-QQLX] (The average salary noted is that of Japanese national construction workers).

TITP internship or to quit their jobs and immediately be deported back to their home country.⁸⁹ The interns were faced with the pressure of choosing between two evils, leaving some with nothing other than the option of departing Japan without notifying their employer or their supervising organization.⁹⁰ In 2021, 7,167 TITP interns disappeared from their jobs, likely due to the abusive conditions they were facing as interns.⁹¹

Migrant workers faced abuse not only by their employers but also by their peers in the workplace.⁹² In 2019, a forty-one-year-old Vietnamese construction worker was reminded that he would forever be considered an outsider after he was beaten by his colleagues and mocked for his “sub-par Japanese.”⁹³ The man, who required serious medical attention after the beating, from stitches to having broken bones set, was told by his Japanese employer to lie about the beating and say he fell off his bike instead.⁹⁴ The man was fearful that reporting the incident to an outside party would lead to him becoming unemployed and being sent out of Japan with no money and no justice for his abuse.⁹⁵ Luckily, a local labor union helped him file a suit requesting an apology and compensation.⁹⁶ This beating occurred just one month after the migrant worker began as a TITP intern.⁹⁷ In the aftermath, the Japanese government did not revoke the TITP permit of the man’s employer until 2022, three years after the incident occurred.⁹⁸ This was the thirty-third company in over six years to have its permit allowing it to employ foreign workers revoked,⁹⁹

89. Yasuda, *supra* note 64, at 33.

90. See 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 315.

91. *Id.*

92. Walter Sim, *Vietnamese Man Punched, Beaten, Kicked and Insulted as an Intern in Japan*, STRAITS TIMES (Jan. 29, 2022), <https://www.straitstimes.com/asia/east-asia/vietnamese-man-punched-beaten-kicked-and-insulted-while-an-intern-in-japan> [perma.cc/ER58-NXTT].

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Japan Gov’t Bans Intermediary Body from Introducing Foreign Trainees*, KYODO NEWS (May 31, 2022), <https://english.kyodonews.net/news/2022/05/1de5d5d35b57-japan-govt-bans-intermediary-body-from-introducing-foreign-trainees.html> [perma.cc/T7MH-3W9C].

99. *Id.*

showing the Japanese government's slowly emerging awareness of these issues.

2. Past and Current Efforts to Amend the TITP

Japan previously attempted some reforms of TITP. In 2016, Japan implemented the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees, otherwise regarded as the TITP Reform Law.¹⁰⁰ The TITP Reform Law required the Ministry of Health, Labour and Welfare to approve details involving living conditions, work hours, and other important factors between interns and their supervising organizations.¹⁰¹ Unfortunately, this reform law was not effective because the agency did not implement any uniform measures for what adequate living and work conditions should look like for TITP interns.¹⁰² Outside of TITP, Japan instituted various new immigration reforms, such as the Specified Skilled Worker Visa, a 2019 amendment to the Immigration Control Act.¹⁰³ Unlike TITP, the Specified Skilled Worker Visa allows foreign workers to transition to residency after five years in Japan and bring their families with them while they work abroad.¹⁰⁴

In December 2023, Japan finally took the complaints made against TITP seriously and created a government panel to review the numerous issues surrounding the program.¹⁰⁵ The panelists—including academics and various local government leaders—discussed the lack of communication between employers and incoming foreign workers that led to misunderstandings about the foreign worker's role and salary, as well as the lack of resources available to foreign workers if they did face abuse from their employer.¹⁰⁶ The panel also debated whether the over thirty-year-old program should be reformed or thrown out completely.¹⁰⁷ Akihiko Tanaka, president of the Japan International Cooperation Agency, hoped that this panel

100. 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 316.

101. *Id.*

102. *Id.*

103. *Technical Intern Training Program (TITP)*, *supra* note 74.

104. Nana Oishi, *Skilled or Unskilled?: The Reconfiguration of Migration Policies in Japan*, 47 J. ETHNIC & MIGRATION STUDS., 2252, 2253 (2020).

105. *Gov't Panel Reviewing Japan Foreign Trainee Program Holds 1st Meeting*, KYODO NEWS (Dec. 14, 2022), <https://english.kyodonews.net/news/2022/12/c0a08fc1807e-govt-panel-reviewing-japan-foreign-trainee-program-holds-1st-meeting.html> [perma.cc/M3MU-9XJX].

106. *Id.*

107. *Id.*

would create “a system that will realize our three visions of safety, diversity and the respect of individuals and their rights.”¹⁰⁸

In February 2024, the panel came to the surprising decision to abolish TITP.¹⁰⁹ After a myriad of reports detailing abuses and labor rights violations that TITP workers regularly faced, the Japanese government found TITP to be a detriment to its country and it was no longer an effective incentive for foreign workers to come into the country.¹¹⁰ The panel now has approved bills to create a new program, the Work Training System (WTS).¹¹¹ Set to begin in 2027,¹¹² WTS would bring in blue-collar foreign workers, using the Specified Skilled Workers Visa program as a template for providing foreign workers with permanent residency opportunities after five years in WTS.¹¹³ The panel has been clear about WTS’s intentions; rather than TITP’s guise of recruiting foreign workers to teach them skills that would benefit their country of national origin, WTS’s transparent motive is to recruit foreign workers solely to confront Japan’s current labor shortage.¹¹⁴ Because of this, WTS will allow workers a “conditional transfer” between workplaces in the same field depending on where the demand for work is.¹¹⁵ Similarly, the panel has suggested permitting workers to transfer to a new job after either one or two years if they have achieved certain work skills and a particular level of Japanese proficiency, and depending on the industry in which they work in.¹¹⁶

The panel hopes that WTS will “take into account the protection of the human rights of foreign nationals, enhance their rights as workers and create an easy-to-understand system within which non-Japanese can advance their careers.”¹¹⁷ However, a number of

108. *Id.*

109. Benozza, *supra* note 26.

110. *Id.*

111. *Japan Cabinet OKs New Foreign Trainee Program to Promote Longer Stays*, KYODO NEWS (Mar. 15, 2024, 13:50), <https://english.kyodonews.net/news/2024/03/08d9b48e5313-japan-cabinet-oks-new-foreign-trainee-program-to-promote-longer-stays.html?phrase=technical%20intern%20training%20program&words=technical,training,program,Technical,Intern,Training,Program,train,interns,programs> [perma.cc/9E2D-L5ZB]; see also Hilary J. Holbrow & Qiaoyan Li Rosenberg, *Japan Has to Do More for Migrant Rights Than Drop ‘Intern’ Label*, NIKKEI ASIA (Mar. 1, 2024, 5:00 JST), <https://asia.nikkei.com/Opinion/Japan-has-to-do-more-for-migrant-rights-than-drop-intern-label> [perma.cc/FX3R-EFUW].

112. *Japan Cabinet OKs New Foreign Trainee Program to Promote Longer Stays*, *supra* note 111.

113. *Id.*

114. See generally Holbrow & Rosenberg, *supra* note 111.

115. *Japan Cabinet OKs New Foreign Trainee Program to Promote Longer Stays*, *supra* note 111.

116. *Id.*

117. Benozza, *supra* note 26.

these proposed changes also have led to discussions of restrictions that could be placed on WTS participants. While WTS would provide foreign workers with an opportunity for permanent residency after five years, the government is mulling over ways to revoke permanent residency status from foreign workers who do not pay taxes or social insurance premiums.¹¹⁸

As of 2023, Japan has recorded 3.4 million foreign nationals in the country with employment visas, the highest number the country has ever seen and a 10.9% increase from the previous year's count of foreign nationals in Japan.¹¹⁹ The number of foreign nationals substantially outweigh the 891,000 current permanent residents in the country.¹²⁰ WTS will hopefully be able to provide support and protections for the growing number of foreign workers coming into Japan in the next few years.

3. Japan's Low Acceptance of Refugees

Japan does not have a high refugee acceptance rate. While there were over 89.3 million people considered to be refugees in the world in 2021, Japan received only seventy-four refugees, which was a record-high number for the country.¹²¹ A migrant in Japan with refugee status can work, can qualify for permanent residency in Japan, is issued a Refugee Travel Document, and has access to various government-recognized benefits such as welfare or the national pension.¹²² Refugees should "be treated in the same manner as Japanese citizens."¹²³ There are various support systems for refugees coming into the country, not provided by the government itself, but by independent organizations such as the Japan Association for Refugees.¹²⁴

Japan recently admitted around 2,000 Ukrainian refugees on a temporary basis and has provided each of them with a one-year-long residency and work permit, along with housing and

118. *Japan Cabinet OKs New Foreign Trainee Program to Promote Longer Stays*, *supra* note 111.

119. *Record 3.4 Million Foreign Residents in Japan As Work Visas Rise*, KYODO NEWS (Mar. 22, 2024), <https://english.kyodonews.net/news/2024/03/d72c3226dfb0-record-34-million-foreign-residents-in-japan-as-work-visas-rise.html> [perma.cc/NMZ9-JR5R].

120. *Id.*

121. JAPAN ASS'N FOR REFUGEES, *supra* note 22, at 6.

122. *Refugee Recognition System*, IMMIGRATION SERVS. AGENCY OF JAPAN, <https://www.isa.go.jp/en/applications/guide/nanmin.html> [perma.cc/7LGY-UAW9].

123. *Id.*

124. *About JAR*, JAPAN ASS'N FOR REFUGEES, <https://www.refugee.or.jp/en/org/> [perma.cc/UC5D-8QH7].

financial support.¹²⁵ Yet many question Japan's newfound interest in these refugees, wondering whether the country's actions reflect an increasing openness to refugees or are grounded in racial bias.¹²⁶ Allegations of Japan's hypocrisy are based on their actions during the recent Afghan refugee crisis, where almost half of the measly 169 refugees Japan took on returned to Afghanistan because of "pressure and lack of support from the Japanese Foreign Ministry."¹²⁷ Further, many refugees from other Asian countries who have not been granted official refugee status and have lived in Japan for decades are still struggling to obtain some sort of autonomy and rights.¹²⁸ Take Mr. Safari Diman, for example, who has applied continuously to be recognized as a refugee in Japan to no avail.¹²⁹ He has lived in Japan for over thirty years and speaks Japanese fluently.¹³⁰ Yet he was detained for four years with no explanation in "hellish conditions" and is unable to support himself in Japan without some sort of recognized immigration status, which Japan has refused to grant him.¹³¹ While the country is somewhat welcoming of the Ukrainian refugees, Japan strictly refers to them only as "evacuees."¹³² Japan treats refugees much like it treats labor migrants, even calling them "foreign workers" to avoid giving them any false hope of permanence in the country.¹³³

125. Anthony Kuhn, *Japan Has Taken in Hundreds of Ukrainians. The Welcome for Others Has Been Less Warm*, NAT'L PUB. RADIO (Oct. 29, 2022), <https://www.npr.org/2022/10/29/1127430620/japan-has-taken-in-hundreds-of-ukrainians-the-welcome-for-others-has-been-less-w#:~:text=Historically%2C%20Japan%20accepts%20very%20few,not%20a%20nation%20of%20immigrants> [perma.cc/554R-QH2P].

126. Hanako Montgomery, *Insular Japan Opened Its Borders to Ukrainians. Will It Do the Same for Others?*, VICE (Aug. 11, 2022), <https://www.vice.com/en/article/k7bzbv/japan-immigration-afghan-refugees-ukraine> [perma.cc/SJK9-D36W]. Reiko Ogawa, a professor at Chiba University's Graduate School of Social Sciences, believes: "The Japanese public will feel good about helping out when they see that the refugee is a blond, blue-eyed woman in the media—they can feel superior." *Id.* Another interviewee for the article, Teppei Kasai, a program officer for Human Rights Watch's Asia division, said: "There's this uninformed assumption and bias that people from these three countries must somehow be less compatible with the customs and life in Japanese culture compared to people from Ukraine, because they're from Europe." *Id.*

127. Kuhn, *supra* note 125.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Yasuda, *supra* note 64.

C. Japan's Views on Immigration

These policies and approaches to immigration and refugees are rooted in Japan's proud monoethnic culture. In a 2015 survey of an array of Japanese citizens, many believed that accepting immigrants into Japan would lead to the "irrevocable loss of Japanese culture," which was described as "uniquely good, praiseworthy, and intrinsically valuable" by those interviewed.¹³⁴ In a 2018 Pew Research Center survey, fifty-eight percent of Japanese respondents believed that Japan should maintain its current levels of immigration, thirteen percent wanted Japan to accept fewer immigrants, and only twenty-three percent wanted Japan to accept more immigrants.¹³⁵ Many of those surveyed limited the scope of the conversation on immigration to foreign worker policies and temporary stays.¹³⁶ When the discussion of immigration centered around foreigners coming into Japan in search of permanent residency, Japanese citizens expressed more reservations.¹³⁷

Japanese citizens' fear of permanent newcomers has contributed to the restrictive nature of the immigration policies. And, circularly, the strict immigration policies upheld by the government promote xenophobia in the country by perpetuating the lack of exposure Japanese citizens have to people they consider to be "outsiders."¹³⁸ Scholars believe the Japanese government should embrace immigration and promote cultural assimilation to plant the seeds of a pro-immigration mindset for its people.¹³⁹ In the same breadth, the Japanese government is not inclined to increase rates of immigration because of the public's disfavor of it.¹⁴⁰ Breaking this cycle requires a push either by the Japanese government or the Japanese people.¹⁴¹ Whether the country is aware of it or not, immigration is one of the only options left for Japan as its labor force hangs on by a

134. Davison & Peng, *supra* 46, at 2585 ("Most commonly, participants argued that immigration is undesirable because the entry of immigrants into Japan will lead to the irrevocable loss of Japanese culture, which [the surveyed Japanese] characterized as uniquely good, praiseworthy, and intrinsically valuable.").

135. *Id.* at 2579.

136. *See id.* at 2584–85.

137. *Id.* at 2585 (Most participants expressed opposition to immigration once they understood it to entail long-term residency or naturalization.).

138. Anthony Wilder Wohns, *Calling All Gaijin! Immigration Reform for Japan*, 35 HARVARD INT'L REV., 6, 7 (2013).

139. *Id.* at 6.

140. *Id.*

141. *Id.*

thread. Thus, Japan needs a huge upheaval of not only its immigration laws but also its cultural ideologies.

D. Germany's Immigration Reforms and Prevailing Issues

High-income countries have the highest rates of trafficking.¹⁴² Like many of the high-income countries, Japan has instituted strict immigration policies.¹⁴³ Years ago, Germany found itself in the same position as Japan.¹⁴⁴ Therefore, the approach it took to resolve its labor shortage should be considered by Japan.

Germany, which is also considered a thriving country and trails right behind Japan in gross domestic product rankings,¹⁴⁵ shared many similar immigration policies with Japan. After a surge in labor immigration between 1955 and 1973, Germany enacted a "phase of deterrence" that led to the creation of restrictive immigration policies in the 1980s that lasted for two decades.¹⁴⁶ The restrictive immigration policies during this time led to a strict prohibition on any labor migration.¹⁴⁷ After discourse in 2005 on the potential of opening the borders for immigration to address the growing labor shortage and a quickly aging population, Germany implemented its first immigration reform in decades.¹⁴⁸

The Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of E.U. citizens and Foreigners (Residence Act) created a permanent opportunity in Germany for labor migration.¹⁴⁹ The Residence Act had some issues from the get-go; particularly, the law was geared only toward highly-skilled migrants, and the requirements for migrants to join the program were inflexible and limiting.¹⁵⁰ The Residence Act's high threshold requirements made the immigration initiative not as effective as the German government intended it to be, so they continued tinkering with the law, and various reforms followed.¹⁵¹ Germany shifted to allowing migrants to obtain a six-month job search visa instead of permitting them entry only after

142. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 10.

143. *World Bank Country and Lending Groups*, *supra* note 14.

144. See Laubenthal, *supra* note 29, at 417–19 (mentioning Germany's declining labor force due to a largely aged population).

145. *GDP (Current US\$)*, *supra* note 13.

146. Laubenthal, *supra* note 29, at 415.

147. *Id.*

148. *Id.* at 416.

149. *Id.*

150. *Id.*

151. *Id.* at 415.

they had secured a job in Germany and allowed blue-collar workers entry as well.¹⁵² Germany also abolished the priority check for certain groups of workers, which was a system used to investigate whether a German national was available for a job before issuing a migrant worker a work permit.¹⁵³

In addition to these particular reforms, Germany made two major changes to its labor immigration laws. First, it introduced the European Union Blue Card, a special form of residency offered to migrants who have a recognized higher education degree, have secured a job in Germany that will last for at least a six-month period, and will be making at least 45,000 euros.¹⁵⁴ This work permit is unique in that it gives migrants the opportunity to obtain a settlement permit, allowing them to live in Germany permanently, and also allows workers to bring their families to live in Germany with them.¹⁵⁵ Second, to further promote immigration, the German government created a “welcome culture” for migrant workers.¹⁵⁶ This “welcome culture” consisted of “Welcome Centres,” which were used to provide migrant workers with administrative and cultural support for their move to Germany, as well as German language learning centers.¹⁵⁷ In time, Germany increasingly emphasized the importance of integration in their immigration policies to benefit migrant workers.¹⁵⁸

Germany’s influx of refugees helped pull the country out of its labor deficiency.¹⁵⁹ Before 2013, the German population generally regarded refugees very poorly; many Germans considered them to be “social parasites,” “welfare tourists,” and “fake asylum seekers.”¹⁶⁰ The backlash against refugees was so extreme that a constitutional amendment, the third-country clause, was enacted in 1993 to restrict the right to asylum.¹⁶¹ Like its other immigration laws, Germany previously had strict refugee policies. Laws making residency and work opportunities nearly impossible for refugees

152. *Id.* at 417.

153. *Id.* at 416–17.

154. *EU Blue Card*, MAKE IT IN GER., <https://www.make-it-in-germany.com/en/visa-residence/types/eu-blue-card> [perma.cc/YC5X-8ZDZ].

155. *Id.*; *Glossary*, MAKE IT IN GER., <https://www.make-it-in-germany.com/en/service/glossary/glossar/do/show/settlement-permit> [perma.cc/2CZ8-LXMR].

156. Laubenthal, *supra* note 29, at 417.

157. *Id.*

158. *Id.* at 415.

159. *Id.* at 418.

160. *Id.* at 414.

161. *Id.*

to obtain discouraged them from coming to Germany.¹⁶² These policies started changing only in 2013, when then-Chancellor Angela Merkel began her attempt to push pro-immigration views in Germany and focus immigration efforts on integration.¹⁶³ In 2015, Chancellor Merkel found her chance to put her immigration initiatives to the test when she made Germany a home for about 10,000 Syrian refugees.¹⁶⁴ Despite many complaints about the number of refugees let into the country, due to the state of the labor market, refugees became an essential component of Germany's economic success.¹⁶⁵ In recognition of the potential value refugees could bring, Germany loosened immigration restrictions.¹⁶⁶ For instance, changes permitted refugees to work after being in Germany for just three months and exempted the refugees from priority checks if they were considered "highly-skilled" or were working in a domain that was grappling with a labor shortage.¹⁶⁷ Similarly, refugees who were in vocational training were eligible to obtain a residence permit.¹⁶⁸ While Germany showed a willingness to loosen their restrictions for refugees, it was only prepared to do so within the constraints of work.¹⁶⁹ In the Law for the Redefinition of the Residence Law and a Termination of Stay, refugees who were considered "well-integrated" were permitted to apply for a residence permit, but they were also subject to six new conditions requiring detention prior to deportation.¹⁷⁰ While the refugees won some benefits, Germany made it clear that they should not expect to be living a life of luxury.

Through these immigration reforms, the integration of refugees largely succeeded. The efforts made by Germany aided in resolving the labor shortage; out of 1.8 million refugees who could not speak German and came into the country with nothing, half of them are now employed and forty-four percent of

162. *See id.*, at 420 (describing German refugee deterrence measures that included making refugees wait five years before they could work, not presenting residency opportunities, and restricting access to welfare benefits).

163. *Id.* at 415.

164. Christoph Hasselbach, *Five years on: How Germany's refugee policy has fared*, DW (Aug. 25, 2020), <https://www.dw.com/en/five-years-on-how-germanys-refugee-policy-has-fared/a-54660166> [perma.cc/UUU8-9HPN].

165. Laubenthal, *supra* note 29, at 418–19.

166. *Id.* at 420.

167. *Id.*

168. *Id.*

169. *See id.*

170. *Id.*

them can speak German proficiently.¹⁷¹ Nevertheless, some of the anti-immigrant sentiments have not dissipated completely since the immigration reform began; in 2019 alone, Germany reported over 1,600 attacks on refugees.¹⁷² In 128 of these cases, refugee shelters were specifically targeted.¹⁷³ These anti-immigrant sentiments heightened after a mass shooting in Hanau in early 2020, where a far-right-wing shooter killed nine foreigners in a racially-motivated attack.¹⁷⁴ In addition, a far-right-wing party called Alternative für Deutschland formed in response to the influx of refugees.¹⁷⁵ The party won 12.6% of the vote in Germany's last parliament elections, and its popularity continues to rise since its establishment in 2013, showing growing support for pro-German and anti-immigrant ideas.¹⁷⁶ While refugees dramatically helped improve the labor decline in Germany, xenophobic attitudes still pose a threat and need to be addressed in Germany today.

E. The International Community's and Japan's Response to Human Trafficking Concerns

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, known as the Palermo Protocol, defines human trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sex-

171. Sekou Keita & Helen Dempster, *Five Years Later, One Million Refugees Are Thriving in Germany*, CTR. FOR GLOBAL DEV. (Dec. 4, 2020), <https://www.cgdev.org/blog/five-years-later-one-million-refugees-are-thriving-germany>.

172. *1,600 Attacks on Refugees in Germany*, DW (Mar. 27, 2020), <https://www.dw.com/en/germany-more-than-1600-crimes-targeted-refugees-and-asylum-seekers/a-52935715> [perma.cc/U4KM-T7LY].

173. *Id.*

174. Jack Ewing & Melissa Eddy, *Far-Right Shooting Shatters an Already Fragile Sense of Security in Germany*, N.Y. TIMES (Feb. 20, 2020), <https://www.nytimes.com/2020/02/20/world/europe/germany-hanau-shisha-bar-shooting.html>.

175. *Refugees in Germany: The Discrepancy in Data and Opinion*, VISION OF HUM. (2021), <https://www.visionofhumanity.org/refugees-germany-discrepancy-data-opinion/> [perma.cc/VW89-NDWX].

176. *Id.*

ual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁷⁷

This is an internationally recognized definition of human trafficking, and all but a few States are party to the Palermo Protocol.¹⁷⁸ The United Nations works with states to ensure the Palermo Protocol is enforced properly by helping countries draft laws to follow its mission, create systems to better identify trafficking victims, and connect organizations to work together to stop the growth of trafficking in particular States.¹⁷⁹

Japan signed the Palermo Protocol in 2002 and formally accepted the agreement in 2017.¹⁸⁰ To address the terms of the Protocol domestically, Japan does not have a comprehensive anti-trafficking statute but instead addresses the issue in various criminal statutes. The Labor Standards Act (LSA) sets the minimum standards for working conditions in Japan and criminalizes incidents of forced labor.¹⁸¹ Offenders of forced labor crimes may be penalized with up to ten years of imprisonment or a fine of up to three million yen.¹⁸² Under the LSA, “forced labor” occurs when employers “force a worker to work against their will through the use of physical violence, intimidation, confinement, or any other means that unjustly restricts that worker’s mental or physical freedom.”¹⁸³ Although Japan must rely on its LSA protections against forced labor to combat human trafficking, the LSA’s definition of forced labor is notably far narrower than the international community’s definition of human trafficking.¹⁸⁴ Specifically, the LSA’s definition of forced labor fails to mention or cover exploitation, which the international community’s definition of labor trafficking considers “an essential element of the crime.”¹⁸⁵ This seemingly slight mismatch in statutory language leads to a huge disparity in criminal sanctions for perpetrators of labor trafficking.¹⁸⁶ There is no record of the Japanese

177. G.A. Res. 55/25, annex II, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, at 32 (Nov. 15, 2000).

178. *Id.*

179. *Our Response*, UNITED NATIONS, <https://www.unodc.org/unodc/en/human-trafficking/our-response.html> [perma.cc/WC8Q-TXQ6].

180. See G.A. Res. 55/25, *supra* note 177.

181. Roudou Kijun Hou [Labor Standards Act], Act No. 49 of 1947 (Japan).

182. 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 314.

183. Roudou Kijun Hou [Labor Standards Act], Act No. 49 of 1947, ch. I, art. 5 (Japan).

184. 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 314.

185. Compare Roudou Kijun Hou [Labor Standards Act], Act No. 49 of 1947, ch. I, art. 5 (Japan) with G.A. Res. 55/25, *supra* note 178, art. 3 (Nov. 15, 2000); see also 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 314.

186. See 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 314.

government holding any TITP traffickers accountable for their crimes with penalties that include imprisonment.¹⁸⁷ Further, in cases where employers were found guilty of forced labor, the crimes were not treated as human trafficking convictions.¹⁸⁸ The Japanese government responded to these concerns by abolishing TITP,¹⁸⁹ but with WTS still in the works, there is uncertainty as to how it will disincentivize employers from exploiting foreign workers in the future. To confront the country's labor shortage and ensure safety and human rights, Japan must coordinate efforts to address the related issues of reforming programs for foreign workers, providing aid for refugees, and protecting against human trafficking.

III. ANALYSIS

Japan needs to make an urgent effort to repair the gaping hole in its workforce. Japan's dependency on foreign labor created human trafficking issues that continued to worsen with the usage of TITP. Abolishing TITP was a critical first step to reform, but its replacement must be easier to navigate while also protecting foreign workers and ensuring they are well-integrated into society. Furthermore, to resolve its gap in laborers while also no longer making itself a hot spot for human trafficking, Japan must address its policy regarding refugees and amend its understanding of labor trafficking.

A. *Japan Must Reform Its Immigration Laws by Creating a Program that Adequately Protects Foreign Workers.*

1. Why TITP Needed to be Abolished

Japan's abolishment of TITP was a vital step taken towards bettering the country's treatment of foreign workers because TITP encouraged practices that inherently furthered labor trafficking. Labor trafficking is a mélange of excessive working hours, few or no rights for workers, exploitative wages, no oversight over foreign workers, the worker's precarious immigration status, and the involvement of manipulative recruitment agencies.¹⁹⁰ TITP checked all the boxes when it came to enabling these risk factors.¹⁹¹ The intern program

187. *Id.* ("For example, in 2021 the government reported it prosecuted and convicted one perpetrator within the TITP program for labor violations under the LSA, who received a sentence of a fine in lieu of imprisonment, which was inadequate compared to the gravity of the crime.").

188. *Id.*

189. Benoza, *supra* note 26.

190. U.N. OFF. ON DRUGS & CRIME, *supra* note 3, at 108–14.

191. See discussion, *supra* Section II.B.

provided foreign workers with no tangible or stable immigration status, put them in debt with huge recruitment fees, and made it difficult for workers to climb out of debt by underpaying them.¹⁹² Additionally, the status provided to workers under TITP was flimsy and contributed to their ability to be exploited. The core of TITP was that it granted temporary status with no benefits to the recipient. Japan's preference for TITP stemmed from their negative views of permanent foreign residents;¹⁹³ the temporary stay component of TITP was key to the success and approval of the program. It is also what encouraged Japanese nationals to look down on foreign laborers. Because temporary stays are so entrenched in the definition of "immigration" in Japan, the foreigners' lack of potential permanent status justified their lack of respect in Japanese nationals' eyes.¹⁹⁴

Alongside the program's refusal to provide workers with any residency opportunities after the strenuous tests they were required to pass and the long work hours they contributed to the benefit of Japan, TITP further exacerbated its negative effects by denying foreign workers the ability to bring their family to Japan with them while they work.¹⁹⁵ TITP interns were even more isolated in Japan by the inability to bond with coworkers who would regularly harass them and the lack of resources to address the harassment they faced.¹⁹⁶ Additionally, TITP interns could not leave their jobs for better conditions or else they would lose their status, making them easily removable if they attempted to challenge an employer that was exploiting them.¹⁹⁷

The program was never intended to resolve Japan's labor shortage or act as a labor immigration policy.¹⁹⁸ Rather, TITP's alleged purpose was to "help developing countries to secure excellent human resources of their own," and the program had been strictly ruled out by the government as a means of recruiting more labor for Japan.¹⁹⁹ However, the program failed to accomplish its primary purpose, as seen through the experience of the Vietnamese worker who was an intern during the Tokyo 2022 Olympics.²⁰⁰ TITP recruited exclusively from developing countries²⁰¹ and took advantage of these foreigners to repair Japan's labor gap. Through its

192. *Id.*

193. *See* Davison & Peng, *supra* note 46.

194. *See id.*

195. *Id.*

196. *Id.*

197. Yasuda, *supra* note 64, at 33.

198. *See Quick Understanding of Technical Intern Training Program, supra* note 61.

199. *Id.*

200. *See* discussion, *supra* Section II.B.

201. *Agreements with Governments of Sending Countries, supra* note 60.

unintended metamorphosis into a labor-centered immigration program, TITP became the only means to recruit workers for blue-collar fields such as agriculture and construction,²⁰² industries that leave workers more susceptible to abuse than highly-skilled workers recruited through Japan's Specified Skilled Worker Visa program.²⁰³

Japanese lawmakers have taken correct action by abolishing TITP and developing WTS for blue-collar foreign workers. However, the current proposals for reform under WTS do not sufficiently address the failings of the TITP program.

2. What Japan's New Program for Foreign Workers Must Entail

There are many concerns that must be addressed in a new foreign worker pipeline to avoid creating another TITP-esque program. Entry into the program must be less onerous; integration efforts must be more substantial; and participating workers must be better protected.

First, the application process for the program should be less burdensome. There should be little to no recruitment fees for the foreign workers program; debt coercion was present in TITP and contributed to workers being consistently exploited because they had no choice but to try and make back the money they were forced to spend. Japan should adopt Germany's method, which lessened program requirements for foreign workers because of its high demand for laborers.²⁰⁴

Second, the program must include better mechanisms to integrate foreign workers into Japan. Under the previous structure of TITP, a worker from rural Vietnam or Thailand placed in a highly urban city such as Tokyo may be extremely overwhelmed and left alone to learn how to navigate this brand-new environment and country themselves. While WTS is determined to make promising changes to foreign workers' benefits, the panel so far has made no mention of prioritizing the actual integration of these workers, which is concerning considering that many of the attacks made on foreign workers have stemmed from Japanese nationals viewing the workers as inherently outsiders. Germany made integration of foreign workers key to growing its labor force and emphasized a welcoming culture, which made foreign workers feel more comfortable in the unfamiliar environment and, by extension, soothed the concerns of German nationals who may have worried that the workers would be difficult

202. *Technical Intern Training Program*, *supra* note 74, at 5.

203. Oishi, *supra* note 104, at 2253.

204. *See* discussion, *supra* Section II.D.1.

to work with due to dynamics such as language barriers.²⁰⁵ Foreign workers need to receive more resources to be better prepared for their roles and have an outlet to report work misconduct if they do find themselves in a labor trafficking situation.

Included in integration is a smoother path to permanent residency, such as that exhibited by Germany's E.U. Blue Card system. WTS may give foreign workers permanent residency status after five years in the program, but the Japanese government has already strategized ways to strip this status from foreign nationals, particularly for those who do not adhere to certain obligations such as paying taxes.²⁰⁶ The framing of permanent residency status through WTS makes residency conditional rather than a promise. The new program requires foreign workers to participate in the program for at least five years.²⁰⁷ This requirement seems drastic compared to the E.U. Blue Card's requirements, which only require participants to be employed for six months to receive permanent residency status.²⁰⁸ Given the well-known horror stories, foreign workers are likely dreadfully aware of abuses other workers have faced while employed in Japan.²⁰⁹ Lasting five years in a potentially exploitative work environment may not be feasible for many foreign workers yearning for permanent residency. Under TITP, many were unable to withstand these conditions for even three years, choosing to abandon any status they had rather than continue working in an abusive environment.²¹⁰

It is troubling that the Japanese government already has begun to consider ways of preventing foreign workers from achieving a more protected immigration status by devising ways to revoke it.²¹¹ The list of proposed limitations to permanent residency status will only grow longer until WTS's implementation in 2027 and may prevent foreign workers from obtaining the stability they need to thrive in Japan. Offering more permanence to foreign workers will incentivize them to better integrate in Japan, which is a key concern of many Japanese nationals who value their culture and fear it will disappear with an influx of migrants. To encourage this feeling of stability

205. *See id.*

206. *Japan Cabinet OKs New Foreign Trainee Program to Strengthen Rights Protection*, *supra* note 115.

207. *Id.*

208. *EU Blue Card*, *supra* note 154.

209. *See discussion*, *supra* Section II.B.1.

210. 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 315.

211. *See Japan Cabinet OKs New Foreign Trainee Program to Strengthen Rights Protection*, *supra* note 115.

amongst foreign workers, WTS also should allow them to bring their family members with them for the duration of their stay to provide the worker with support and help them feel more comfortable in Japan during their work period. A stronger immigration status and the ability for migrants to bring their families with them will not only help workers feel more comfortable in Japan but also lead to them being more welcomed into the community.

Third, any new program also must incorporate better protections for workers at their respective workplaces. WTS currently plans to allow foreign workers to transfer between jobs either one or two years after working in a location depending on their current field of employment, skill level, and Japanese language proficiency.²¹² While this is an improvement from TITP's previous bar against transferring between jobs, WTS imposes a false sense of flexibility for foreign workers by again imposing conditions upon this supposedly promised benefit. These conditions require foreign workers to jump through numerous hoops to simply change jobs and only allow workers to change jobs under a set of particular yet vague circumstances. The Japanese government uses these conditions to continue to keep foreign workers under its control, reminding them they are not given complete autonomy under this new law by limiting their mobility between jobs and keeping them distinct from Japanese nationals. Workers should have the same unfettered ability as Japanese nationals to move between jobs.

Additionally, a worker's newly established but limited right to transfer between jobs does not guarantee preventative measures against exploitation in these roles, even if the exploitation is temporary in the government's eyes. Hence, the new program should facilitate better relationships between workers and employers to ensure the workers are paid an adequate wage and create effective outlets for foreign workers to report any abuses they have faced. A better work relationship ultimately will lead to employers treating foreign workers and Japanese workers equally by not singling either class out, paying them the same wage, and not forcing migrants to work overtime. If work relationships do not improve over time, then the creation of supervising organizations who handle reports of abuse will at minimum ensure that employers are monitored and are disincentivized from harassing their foreign workers.

With all these reforms, Japan must be mindful that even with the overhaul of the TITP program, its stigma may attach to WTS. TITP

212. Holbrow & Rosenberg, *supra* note 111; see also *Japan Cabinet OKs New Foreign Trainee Program to Promote Longer Stays*, *supra* note 115.

continuously was brought to the international community's attention since its inception,²¹³ and it is safe to assume that the program has a stigma that has followed it globally. The problems with TITP have become more and more exposed; for instance, the incident in 2019, involving a Vietnamese worker who was told to lie about the abuse he was facing in his workplace, finally forced the Japanese government to create a reform board for the program.²¹⁴ Future foreign workers will be wary of coming to Japan under any TITP-esque program—which is some blue-collar workers' only option for entry into Japan for work—knowing the abuse that many others faced before them and the abuse they may face next. In any event, the new program that Japan attempts to construct must be done right to avoid the complete destruction of a labor force pipeline that it desperately needs. Meanwhile, as Japan creates a new foreign workers program that will lick the wounds created by TITP, it could use refugees to salvage its workforce.

B. Japan Must Integrate Refugees Into its Labor Force

Japan should follow in Germany's footsteps by welcoming more refugees to bolster its labor force. Germany, like Japan now, faced a dire need for laborers.²¹⁵ While it took some years and many reforms to its laws—through emphasis on integration measures such as the addition of “Welcome Centres” and granting refugees more rights—Germany was able to utilize refugees in its labor force.²¹⁶ Germany concocted a win-win situation; it gave refugees work and an opportunity to stabilize themselves in a new country, while also concretely resolving its labor shortage.²¹⁷

For Japan to grow its labor force through refugees, it must make itself amenable to accepting refugees in the first place. There are many refugees already in Japan—but many of them are held in detention centers.²¹⁸ Giving migrants rights, the possibility of residency, and a work permit can help make major repairs to the labor force. This was key for Germany, which offered refugees a pathway to permanent residency that made them feel more secure in the country and helped them integrate through welcome centers.²¹⁹ Many

213. See 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 313.

214. See discussion, *supra* Section II.B.

215. See Laubenthal, *supra* note 29, at 417.

216. See *id.*

217. See discussion, *supra* Section II.D.1.

218. Kuhn, *supra* note 125.

219. See *supra* discussion Section II.D.1.

of the migrants in Japan have been in the country for a long time, are familiar with the social customs of the country, and speak the language. Integration efforts for many of these migrants are not even necessary, making it easier on the Japanese government; these migrants might only need actual status as refugees, which would allow them to obtain a work permit and live in Japan. Mr. Safari Diman, a migrant who has lived in Japan for many years without being granted any immigration status, expressed it clearly and simply: "I'm not asking for Japanese taxpayers to support me. If authorities recognize me as a refugee, I will work and pay taxes."²²⁰ Programs like the Japan Association for Refugees are working hard to facilitate integration efforts for refugees entering Japan now;²²¹ this is an effort that needs to be undertaken by the Japanese government as well. By opening its borders to refugees, creating a welcoming environment for them, and allowing them to obtain work permits, Japan can encourage more refugees to come to the country. This can lower the potential for exploitation and human trafficking, but admittedly there may be other issues that come along with welcoming refugees.

A major concern surrounding any shift in immigration policy like this is the dominant nationalistic culture in Japan. It is clear that Japan is an extremely homogenous country and has little desire to change that.²²² Germany did have some issues with its refugee program, particularly regarding how German nationals adjusted to the program.²²³ While Germany experienced positives, such as spikes in economic productivity, it also experienced negatives, such as instances of extreme xenophobia like the Hanau shooting that left both refugees and German nationals feeling unsafe.²²⁴ However, Germany accepted a huge surge of refugees all at once²²⁵ which may have made residents of this typically homogenous country feel overwhelmed and defensive of their country.²²⁶ To avoid the surge of xenophobia Germany experienced, Japan should not make the same sudden reform. A smaller stream of migrants can be more beneficial: slowly warming people up to the concept of immigration

220. Kuhn, *supra* note 125.

221. See JAPAN ASS'N FOR REFUGEES, *supra* note 22, at 3, 7 (describing the Japan Association for Refugees' services, including, inter alia, language training, job placement assistance, and legal assistance).

222. See discussion, *supra* Part II.

223. See discussion, *supra* Section II.D.1.

224. Ewing & Eddy, *supra* note 174.

225. *Id.*

226. See Hasselbach, *supra* note 164.

while still aiding Japan's ailing labor system. Additionally, Germany ensured that while it did give refugees opportunities to become permanent residents, it was stricter with its other immigration laws to make up for this leniency.²²⁷ As a homogenous country that is not particularly open to immigration, Japan can follow in these footsteps to make its current residents more comfortable with an influx of immigration. While initially it may be difficult for Japanese nationals to adjust to foreigners permanently in their country, as the Japanese continue to familiarize themselves with foreigners through an increasing flow of migrants, Japanese nationals will become more comfortable with becoming a multiculturalist society. The most effective way for Japan to become more pro-immigration is by increasing its interactions with immigrants, which can only be done by letting more immigrants into the country in the first place.²²⁸

The negative view of immigrants in Japan heightens their poor treatment. The changes in Japan's immigration laws are dependent on changes being made to Japan's isolationist attitude and superiority complex. However, even if Japan is unwilling to make this change, it is necessary due to the circumstances. Japan's economic status will decline as Germany's did. Germany was able to put its originally unwavering traditionalism to the side, and that is what ultimately helped it maintain its status as one of the leading countries in the world. Japan's stubbornness and fear of change will cost the country its economy if it continues to let its traditionalist culture rule its borders.

C. Japan Must Amend Its Understanding of Human Trafficking and Create New Enforcement Mechanisms for Violations.

For human trafficking regulations to be better enforced, Japan must reform the LSA's definition of forced labor to match the international community's definition. Currently, the law purportedly designed to protect foreign workers from labor trafficking is woefully ineffective. The LSA's definition is too narrow and is missing the coverage of exploitation that is present in the international community's definition of human trafficking.²²⁹ Without

227. See discussion, *supra* Section II.D.1.

228. Wohns, *supra* note 138, at 6.

229. See discussion, *supra* Section II.E.

exploitation as a factor in the definition, many employers escape conviction under the LSA.²³⁰

The international community states that trafficking consists of using threats of force, abuse of power, or other forms of coercion to exploit people for forced labor.²³¹ Enabling such behavior, TITP encouraged human labor trafficking. However, in 2021, only one person in all of Japan was convicted for labor violations.²³² The current language in the LSA is not enough to hold labor traffickers accountable.

Changing the definition to include exploitation would help cover many of the risk factors of labor trafficking and thus, would address incidents of exploitation under programs like TITP. The new statutory language would ensure change in current instances of human trafficking and act as a strong preventative measure for the future. Under the LSA, labor traffickers face either ten years in prison or a three million yen fine, which is 220,050 U.S. dollars.²³³ Exploitation is a key element of labor trafficking, and the addition of an exploitation element would enable the LSA definition to cover various forms of employer abuse. Thus, the reformed statute will broaden the scope of who can be prosecuted under it, leading to regular and substantial punishments for human trafficking offenders that will deter employers from exploiting foreign workers in the future. While uniform implementation of a new statute is difficult, by training judges, attorneys, and former TITP supervising organizations, which may be responsible for monitoring new programs, on this new law, Japan can familiarize the necessary officials of the law and the new guidelines that better address trafficking concerns. Realistic implementation of a new law always takes time, but regular enforcement will come with it. By changing Japan's statutory language, more of the international protocols can apply to human traffickers in Japan, enabling the country to hold the traffickers accountable when Japan creates new legislation for a foreign workers program. Enforcement measures created by the

230. See 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 314.

231. G.A. Res. 55/25, *supra* note 177.

232. 2022 TRAFFICKING IN PERSONS REPORT, *supra* note 24, at 314.

233. *Id.*

international community will apply to Japan and help limit any remnants of human trafficking.

IV. CONCLUSION

The idea that labor trafficking is hiding in plain sight no longer applies to Japan. Instead, labor trafficking has become a structural staple to the economic success of the country and is paraded as a solution to Japan's labor shortage to the detriment of foreign workers. Although the Japanese government has abolished TITP and plans to use WTS to resolve the issues of corruption and abuse brought by TITP,²³⁴ the current plans for the new program are insufficient to address the gravity of the circumstances. TITP's holes that WTS attempts to cover with a threadbare veil must be resolved soon and correctly or many more foreign workers will fall into the intricate labor trafficking scheme Japan has created through its immigration laws.

This Note proposes that Japan address its labor shortage and protect its workers by ensuring the new foreign workers program focuses on granting foreign workers more rights, accepting more refugees, and enforcing necessary human trafficking regulations. Japan believes an intake of migrants will lead to a deficiency in Japanese cultural values,²³⁵ but the alternative to the supposed sacrifice of cultural integrity through increased immigration is the loss of Japan's economic standing which will lead to the crumbling of everything else, including eventually the cultural uniformity it holds so dearly. Germany nearly found itself in this same position before accepting a flood of refugees that saved its economy.²³⁶ By reforming its labor laws and human trafficking, Japan can combat labor trafficking with the weight of criminal repercussions intended to hold traffickers accountable. While this solution may be far-reaching for a country as insular as Japan, steps towards increasing its labor force can be accomplished only through the ethical increase of migration. There is no other fast-acting and effective solution, and the Japanese government must come to terms with this to save the country.

234. *Gov't Panel Reviewing Japan Foreign Trainee Program Holds 1st Meeting*, *supra* note 105.

235. *See* Davison & Peng, *supra* note 46, at 2585.

236. *See* discussion, *supra* Section II.D.1.