

Business and Human Rights in Domestic Implementation
Technical Intern Training and
Specified Skilled Worker Programmes in Japan as Case Studies

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Summary

This paper evaluates the effectiveness of the Business and Human Rights concept using two case studies from Japan: the Technical Intern Training Programme (TITP) and the Specified Skilled Worker Programme (SSWP), both of which invite foreigners to provide their labour power in the domestic market.

Business and Human Rights focuses more on transnational activities of business enterprises in low-governance areas, while transnational activities of individual workers require more attention to. However, situations of transnational workers are often claimed to be severely inadequate, even in most developed countries. With such issues, this paper mainly analyses the TITP as a case study for the domestic implementation of Business and Human Rights in one of the most developed countries. It helps evaluate the effectiveness of the current Business and Human Rights concept in domestic implementation, specifically in solving the vulnerability of transnational workers. In short, this paper argues that the current concept of Business and Human Rights lacks the vision for solving information asymmetry between stakeholders, which could be a root cause of human rights abuse in business.

To argue this point, this paper first provides an overview of Business and Human Rights by focusing on the United Nations (UN) Framework for Business and Human Rights of 2008 and the Guiding Principles on Business and Human Rights of 2011. These are considered authoritative focal points for every stakeholder to refer to and provide three pillars for promoting human rights: “the state duty to protect” human rights, “the cooperate responsibility to respect” human rights, and securing “access to remedies” for individuals.

Second, this paper observes the policy framework of TITP as a case study for the domestic implementation of Business and Human Rights, focusing on the programme’s policy structure and transition and how some stakeholders perceive the programme. This paper discovers that with increasing media, international community, and business sector concern regarding the programme’s exploitative structure, the Japanese government has admitted the human rights violations in TITP. Despite the government’s effort to fulfil “the state duty to protect” human rights by aligning its policies

with the Framework and Guiding Principles, the situation for foreign trainees remains fragile. This paper claims that given the lack of perspective on information asymmetry between stakeholders, the current concept of Business and Human Rights is failing to address the issue of the imbalanced relationship between employees and employers. It was discovered that some trainees are unaware of the rights and conditions they are entitled to in Japan, and some stakeholders on the employer side have been taking advantage of the trainees' ignorance. Therefore, this paper suggests that these individuals must be made aware of the rights they are entitled to rather than remedial mechanisms available when their rights are violated. In this sense, solving information asymmetry between stakeholders is a crucial issue in TITP for better human rights promotion.

Third, this paper analyses the SSWP, considered an alternative to TITP for another case study. While some improvements in SSWP have been made to reflect the challenges admitted in TITP, foreign workers' vulnerability still needs to be adequately addressed. This insight reinforces the argument that information asymmetry is a vital issue to be solved to ease the imbalanced relationship between stakeholders.

Finally, this paper examines an implication for future policy making. It suggests that in addition to the "access to remedies", "access to information" shall be added to the concept of Business and Human Rights as the fourth pillar to enable a state to enhance human rights protection in business activities.

The arguments in this paper intend to assist individual workers in making better-informed choices without risking their human rights. Additionally, this paper suggests that overall human rights standards may be improved by enabling workers to make informed choices. It pressures companies, industries, and even states to increase the quality of the labour environment for human resource acquisition. Hence, this paper concludes that "access to information" should be added to the concept of Business and Human Rights as another pillar for addressing information asymmetry between stakeholders. In this way, individuals may know the best way to pursue their life goals via their job choices without risking their human rights.

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I take sole responsibility for any analysis, fact, or translation errors and the views expressed in this research paper.

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Introduction

The concept of Business and Human Rights has been recognised for its importance worldwide. After the unanimous endorsement of the Guiding Principles on Business and Human Rights at the Human Rights Council in 2011, the Guiding Principles have played an essential role as an official reference for promoting human rights in business activities.

The development of Business and Human Rights reflects the transnational activities of business enterprises and their impact on human rights, particularly adverse effects. The Guiding Principles focus on business operations in areas with relatively low governance levels, such as conflict-affected areas. Following such a trend, a few companies in Japan have been accused of their lack of supervision over their subcontracting companies abroad, such as Miki House in Myanmar in 2016 (MIKIHOUSE TRADE, 2017) and Uniqlo's parent company, Fast Retailing, in China in 2020 (FAST RETAILING, 2020).

However, business enterprises are not the only stakeholders acting transnationally; individual workers are also key stakeholders in Business and Human Rights as they cross borders to provide labour outside their home countries. These transnational workers' environments are often severely inadequate even in the most developed countries. A recent study indicates that more than half of all forced labour occurs in upper-middle-income and high-income countries, further indicating that migrant workers are at higher risk of human rights violations (ILO, IOM, & Walk Free, 2022). In this respect, Japan's Technical Intern Training Programme (TITP) illustrates some unnoticed issues in the domestic implementation of Business and Human Rights. The scheme invites foreign *de facto* workers as "trainees" to Japan and places them in different industries nationwide. It has been debated for decades that human rights abuse and exploitation are widespread throughout the scheme. As a result, the Japanese government has recognised it as a domestic challenge for Business and Human Rights, as mentioned in the National Action Plan (NAP) on Business and Human Rights published in 2020.

Therefore, this paper analyses the TITP as a case study for domestic implementation of Business and Human Rights by evaluating the current Business and Human Rights concept's effectiveness in

decreasing transnational workers' vulnerability. In short, this paper argues that the current Business and Human Rights scheme lacks the vision for resolving information asymmetry between stakeholders, which could be a root cause of human rights abuse in business. To argue this point, Chapter 1 of this paper provides an overview of Business and Human Rights by focusing on the United Nations (UN) Framework for Business and Human Rights of 2008 and the Guiding Principles for Business and Human Rights of 2011. Chapter 2 observes the TITP's policy framework as a case study for domestic implementation of Business and Human Rights, focusing on the programme's policy transition and how some stakeholders perceive the programme environment. The chapter also analyses how applying the Framework and Guiding Principles has enhanced the TITP but still needs to be improved to solve the programme's human rights challenges. Chapter 3 presents a case study of the Specified Skilled Worker Programme (SSWP), an alternative to TITP. This chapter's insights reinforce the information asymmetry argument by evaluating how much the SSWP reflects the admitted TITP issues and how Business and Human Rights is limited in assisting policy development. Chapter 4 provides implications for future policy making by discussing how information asymmetry could be eased for stakeholders and analyses anticipated challenges and limitations.

1. Business and Human Rights

1.1. History of Business and Human Rights

The concept of Business and Human Rights has become prominent since the 1970s. The increasing recognition of the importance of international businesses in economic development, as well as the impact of their activities on society, led to a demand for enterprises to engage in responsible conduct (Inter-Ministerial Committee on Japan's National Action, 2020). In 1976, the first Guidelines for Multinational Enterprises by the Organisation for Economic Co-operation and Development (OECD) were adopted by its member states. This was followed by the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, issued by the International Labour

Organization (ILO) in 1977. Both documents provide direct guidance to business enterprises on the required social policies and responsible workplace practices.

In the 1990s, to reflect the dramatic worldwide expansion of business enterprise activities, the issue of Business and Human Rights became permanently implanted on the global policy agenda (Ruggie, 2011). The establishment of the UN Global Compact (UNGC) was proposed in 1999, and it has been working since to support private business enterprises in doing business responsibly by aligning their strategies and operations with the ten principles in four sections: human rights, labour, environment, and anti-corruption. Additionally, it assists in taking strategic actions to advance broader societal goals, such as the UN Sustainable Development Goals, emphasising collaboration and innovation (UNGC, n.d.).

1.2. Authoritative Focal Points in Business and Human Rights

Ruggie, the author of the Framework and Guiding Principles on Business and Human Rights, states that despite these endeavours by international society, none had reached sufficient scale to truly move business markets. Hence, they existed as separate fragments that did not add up to a coherent or complementary system, resulting in the absence of an authoritative focal point around which the expectations and actions of relevant stakeholders could converge (Ruggie, 2011). Firstly, to overcome this situation, the Framework for Business and Human Rights was submitted to the Human Rights Council in 2008, followed by the Guiding Principles on Business and Human Rights in 2011, as a practical guidance on how to make use of the Framework, which in the end received unanimous endorsements at the Human Rights Council. Since then, the Framework and the Guiding Principles have acted as authoritative focal points for every stakeholder involved in Business and Human Rights, guiding how each should treat human rights in its activities.

In the following subsections, this paper provides a brief overview of the Framework and Guiding Principles to show the current international standards for promoting human rights in business. Also, it introduces the UN Guidance for National Action Plan formulation to clarify what is required for the

domestic implementation of Business and Human Rights.

1.2.1. The Framework: Protect, Respect, and Remedy

The Framework suggests that the root cause of the Business and Human rights predicament lies in the governance gaps created by globalisation, the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences (para. 3). Therefore, narrowing and ultimately bridging the gaps concerning human rights is the fundamental challenge for the Framework (para. 3). To fill such gaps, it provides three pillars to assist all social actors in reducing the adverse human rights consequences of the misalignments (para. 17). These three pillars are “the state duty to protect”, “the corporate responsibility to respect”, and “access to remedies”. The specific guidance on implementation for each pillar is provided in the Guiding Principles.

1.2.2. The Guiding Principles

The Guiding Principles are designed for practical guidance on implementing the Framework (introduction para. 11); as such, they include the three pillars of the Framework.

Firstly, for “the state duty to protect”, the states are responsible for protecting human rights by fostering corporate cultures and ensuring policy alignment in addition to the existing obligations for complying with international human rights laws. Also, states must prevent business enterprises from being involved in human rights violations, especially in conflict zones where the rule of law is absent. In addition, they may seek support from international organisations for better policy implementation.

Secondly, for “the corporate responsibility to respect”, business enterprises should respect human rights and comply with each national law to which they are subjected. Due diligence is a crucial concept for a company to fulfil its responsibility, requiring it to identify human rights risks in its business activities, take preventative measures, and mitigate adverse human rights impacts. This responsibility shall be applied not only to the activities of a company’s directly owned business but also to the whole supply chain in which the company is engaged. It involves examining a company’s sphere of influence

and assists the company in avoiding complicity in human rights violations, notably in conflict zones, where governance is fragile.

Lastly, for “access to remedies”, remedies for human rights violations must be provided as part of “the state duty to protect”, but business enterprises may also contribute to the access provision. It can be implemented by providing judicial and non-judicial grievances, including company-level and multi-stakeholder industrial initiatives where business enterprises are expected to take active roles in filling access gaps in remedy.

1.2.3. National Action Plan

In fulfilling “the state duty to protect” human rights in business, states are recommended to develop, implement, and update a National Action Plan (NAP) on Business and Human Rights. The UN Working Group on Business and Human Rights (UNWG) has a guide for formulating an NAP for each state. In its guidance, NAP is defined as an evolving policy strategy developed by a state to protect against adverse human rights impacts by business enterprises in conformity with the Guiding Principles (UNWG, 2016). It also provides four essential criteria that are considered indispensable for an effective NAP: it needs to be (1) founded on the Guiding Principle, (2) context-specific and address the country’s actual and potential business-related human rights abuse, (3) developed in inclusive and transparent processes, and (4) regularly be reviewed and updated.

As mentioned in the introduction section of this paper, TITP is one of the specific issues stressed in Japan’s NAP. In the next chapter, this paper will observe human rights issues in TITP. It will explore how recognised stakeholders in Business and Human Rights — media, civil and international society, business enterprises, and the government — are respectively perceiving the programme environment, and finally discuss how the application of the Framework and Guiding Principles has facilitated the promotion of human rights in TITP, as well as any needs for revision.

2. Technical Intern Training Programme as a Challenge for Business and Human Rights in Japan

2.1. Brief Overview of the Technical Intern Training Programme and Its Issues

2.1.1. Basic Structure of the TITP

The TITP was established in 1993 within the Immigration Control and Refugee Recognition Act (the Immigration Control Act), and it has since upheld its fundamental philosophy of international cooperation. It aims to contribute to developing regions by transferring skills, technologies, and knowledge accumulated in Japan (JITCO, n.d., a). It is now a maximum five-year programme consisting of three different levels: (i), (ii), and (iii). The programme allows trainees from less developed countries, mainly from Asia, to engage in specific industries. The two tables below show the top sending countries and accepting domestic industries of TITP in FY2021.

Tables 1 and 2 Number of Accredited TITP Plans by Nationality and Industry

Source: OTIT (2022), edited and translated by the author

Nationality	No.	Accredited	Industry	No. Accredited	
		(%)			(%)
Vietnam	90,753	53.0%	Construction	35,606	20.8%
China	22,879	13.3%	Food Manufacturing	33,346	19.5%
Indonesia	21,651	12.6%	Machinery	25,520	14.9%
Philippines	12,785	7.5%	Agriculture	16,467	9.6%
Myanmar	7,979	4.7%	Textile	9,704	5.7%
Thailand	5,254	3.1%	Fishery	1,847	1.1%
Cambodia	6,505	3.8%	Airport Ground Handling	0	0.0%
Mongolia	1,330	0.8%	Other (Eligible for Shifting to TITP ii)	45,746	26.7%
Other	2,251	1.3%	Welding	8,621	5.0%
Total	171,387	100.0%	Care Work	8,384	4.9%
			Plastic Molding	8,320	4.9%
			Industrial Packaging	5,506	3.2%
			Painting	5,430	3.2%
			Other	9,485	5.5%
			Other (Non-Eligible for Shifting)	3,151	1.8%
			Total	171,387	100.0%

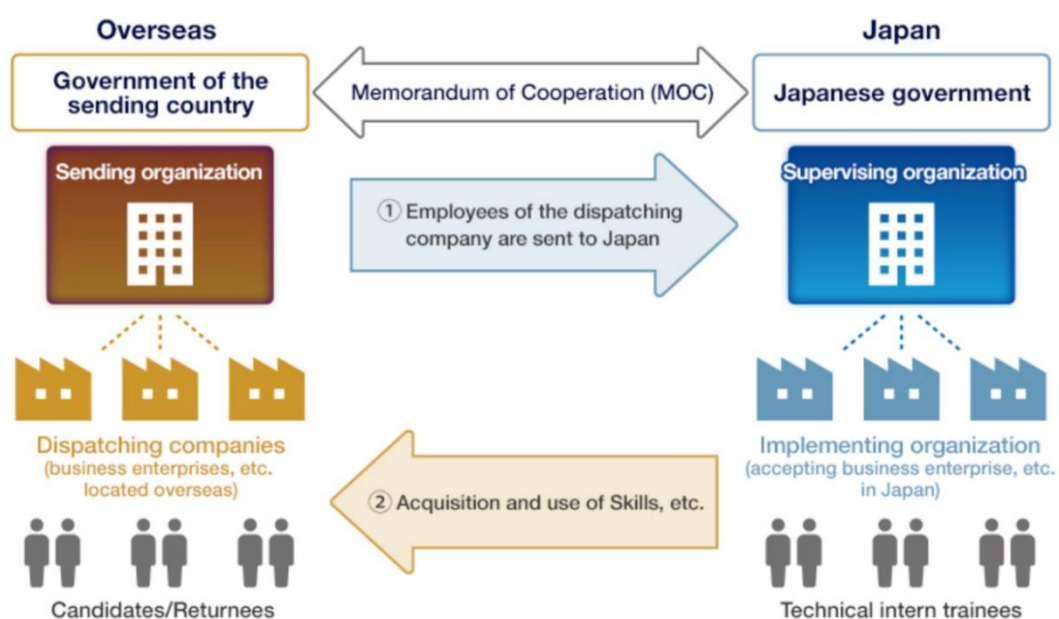
The industries shown in Table 2 are classified by “Job Categories” in TITP and further classified by “Operations”. For example, the agriculture industry is divided into two job categories: cultivation agriculture and livestock agriculture. Three operations further classify cultivation agriculture: facility horticulture, upland field cropping/vegetable growing, and fruit growing. As of November 2022, 86 job categories with 158 operations are listed as eligible for shifting from TITP (i) to (ii) (OTIT, n.d.). The job category and operation that a trainee is to be engaged in are pre-fixed by a training plan submitted

and accredited by the designated governmental body before the trainee comes to Japan, and the fixed plan must be followed throughout the programme. Only in some limited cases, such as the bankruptcy of a training-implementing organisation, may one switch a place for training within the same job category. As the programme is expected to contribute to the trainee's country via skills, technologies, and knowledge transfer, trainees are expected to return to their home countries after the training. By this basic premise, trainees can stay in Japan only for a designated period, and their families are not allowed to accompany them during the programme.

The TITP could involve an individual enterprise type or a supervising organisation type. In the former, one company takes care of the whole process; in the latter, a small Japanese company without overseas knowledge can invite trainees by using support from a supervising organisation. While the individual enterprise type only comprises 1.6% of the accredited training plan in FY2021, the supervising organisation type amounts to as much as 98.4% (OTIT, 2022). Moreover, this makes TITP involve many different stakeholders, as partially shown in Figure 1:

Figure 1 Stakeholders of TITP (Supervising Organisation Type Training)

Source: JITCO (n.d., a)



After a few legal reforms, which will be discussed later, there are now three main actors on the side of overseas/sending countries: governments, sending organisations, and dispatching companies.

On the other side are the Japanese government (and legal entities), supervising organisations, and training-implementing organisations. Furthermore, individual candidates, trainees, and returnees also play transnational roles.

2.1.2. Issues in TITP: Past Policy Endeavours and Remaining Challenges

Despite the ambitious policy principle, TITP has been accused of having an exploitative structure that uses trainees as cheap labour. It is said to be caused by the country's extreme labour shortage due to its ageing societal structure. TITP has been used to find labour; in some industries, trainees have played an indispensable role in sustaining businesses while being abused of their human rights.

Japanese society being aware of the issue and the topic being debated in the House of Representatives¹, however, exploitation remains within TITP. The forms of exploitation seem to vary: unreasonably high brokerage fees, low or unpaid wages, long working hours, unsafe working conditions, limited access to the internet (means of communication), passport deprivation, and deportation of females if found pregnant (Japan Federation of Bar Associations, 2022a).

These are deemed to be deeply connected with the policy transition and structure. Some researchers argue that TITP is designed as a “side door” to accept *de facto* foreign workers (Ito & Sai, 2021; Miyajima & Suzuki, 2019). It is claimed that the government keeps acknowledging the people involved as “trainees” while denying they are low-skilled “workers” to avoid problematic debates over accepting immigrant workers (Takaya, 2019).

It is well illustrated by the fact that it was not until the 2009 revision of the Immigration Control Act that trainees were recognised as employees. It means that trainees were not protected by the domestic labour laws and regulations in Japan, causing their fragile status during their “training”. The 2009 revision clarified a need for Japanese training-implementing organisations that were *de facto* employers to make an appropriate contract with trainees so that the latter are also protected by the labour

¹ For example, see discussion by Fujino from the Japanese Communist Party (<https://kokkai.ndl.go.jp/txt/119705254X00920181127/60>) in 197th Plenary Session, 2018.

standards and regulations like the Japanese employees.

In 2016, for further improving programme implementation, the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees (the Technical Intern Training Act), separate from the original Immigration Control Act, was enacted and enforced a year later. From the standpoint of appropriate programme implementation and protection of technical intern trainees, the TITP, under the Technical Intern Training Act, introduced a new system for licensing supervising organisations. It should be noted that, even before the Technical Intern Training Act, supervising organisations existed and assisted in checking the quality of training implementation; however, they only needed to register as employment replacement service providers. To improve the quality of training, the new system required an organisation to be licenced by the authority. It also expanded the programme for excellent supervising organisations and implementing organisations as an incentive. It allows those organisations to take level (iii) trainees that increase the training period for extra two years and quotas for trainees (JITCO, n.d., a). Also, the new act requires a bilateral memorandum of cooperation (MOC) or records of discussion (R/D) with sending countries for sending organisation recognitions, which limits trainees' acceptance from the countries with the official agreement. According to JITCO, as of 2022, 16 countries have signed an MOC or R/D with the government of Japan (JITCO, n.d., b)². To avoid being exploited by malicious contractors, the applicants also must register with one of the sending organisations recognised by their home countries to be matched with a Japanese training-implementing organisation. Furthermore, under the new act, the Organisation for Technical Intern Training (OTIT) was established in 2017 under the Ministry of Justice and the Ministry of Health, Labour and Welfare to ensure proper implementation of TITP and protection for trainees. OTIT responsibility includes accreditation for technical training plans and screening for supervising organisation licenses.

Even with such policy endeavours, challenges remain within the programme. According to the annual statistics for FY 2021 conducted by OTIT, 34% of 24,105 inspected training-implementing

² As of November 19, 2022, Bangladesh, Cambodia, China, India, Indonesia, Lao PDR, Mongolia, Myanmar, Nepal, Pakistan, Peru, the Philippines, Sri Lanka, Thailand, Uzbekistan, and Vietnam are listed.

organisations were found to violate the Technical Intern Training Act. Moreover, 49% of 4,162 inspected supervising organisations whose responsibility was to support implementing organisations for proper enforcement of training were also found to violate the act (OTIT, 2022). It indicates that the lack of awareness of legal compliance on employers' side is a crucial issue and that some supervising organisations are not fulfilling their duty; instead, they are exploiting trainees through the programme.

Iwashita (2021) suggests that in some cases, there has been a contradictory relationship between a supervising organisation and a training-implementing organisation, which makes both involved in the maltreatment of trainees. In some cases, though it should be noted that these are before the enforcement of the Technical Intern Training Act, some supervising organisations were approved of Liability of Joint Tortfeasors for unpaid wages and other violations³. This shows that there could be an incentive for a supervising organisation to collude with a training-implementing organisation to take advantage of a trainee and benefit from the unequal relationship between them.

Other researchers indicate that there must have been a lack of information or knowledge for trainees, including candidates, regarding their rights. For incoming trainees, all the basic information regarding the working environment and related regulations is provided through the Technical Intern Trainee Handbook published by OTIT, as well as other information sources published through its website. However, many studies show that they are not working well enough to advocate effectively for trainees. Iwashita (2021) argues that these trainees are unfamiliar with labour regulations and the rights they are entitled to in Japan. Kamibayashi (2015) also suggests that even if they were aware of their situation (i.e., overtime pay premiums can be applied but unpaid), they are prohibited from appealing or knowing where to do so. Shikata (in Ito & Sai, 2021) additionally claims this could be related to the limited communication access available for trainees. He suggests that the low percentage of direct access from trainees to the legal counselling service he provides for foreigners as a lawyer shows the

³ See, the Purasu-Apareru case (プラスアパレル協同組合事件) <https://www.zenkiren.com/Portals/0/html/jinji/hannrei/shoshi/08814.html> (retrieved on November 16, 2022) and the Kita-Nihon-Denshi case (北日本電子事件) <https://www.zenkiren.com/Portals/0/html/jinji/hannrei/shoshi/09007.html> (retrieved on November 16, 2022).

situation of those trainees without communication means to consult with someone outside work. Therefore, solving the trainees' information asymmetry, including programme candidates, before joining the programme would be another vital issue in TITP to prevent human rights violations (National Institute of Population and Social Security Research, 2022).

This exploitative structure is claimed to be caused by the imbalanced relationship between *de facto* employer and employee caused by limited choices for switching training places (Japan Federation of Bar Associations, 2022a). In the first place, trainees are only accepted by companies already registered or willing to be registered as training-implementing organisations. Switching training places is not expected considering the accomplishment of a pre-fixed training programme for specific skill acquisition. Given the limited ability and knowledge of the local language or legal system, it is not feasible for a trainee to accuse a training-implementing organisation of violating the rules, claim a remedy for any damage, or seek a chance to switch training places. In addition, failing to find a new position means that a trainee has to return to their home country without earning enough money to fulfil one's dream, while a loan for brokerage or commission fee remains unpaid. According to the recent survey conducted by the Immigration Services Agency of Japan, more than 80% of over 2,000 survey participants answered that they paid some fee for either a broker and/or sending organisation for joining TITP, and more than half mentioned substituting that money by loans (Immigration Services Agency of Japan, n.d., a). Such fear of being unable to pay a loan causes trainees to remain silent and be even more disadvantaged vis-à-vis their *de facto* employers (Kamibayashi, 2015).

2.2. Perception of Stakeholders in the Scope of Business and Human Rights

2.2.1. Media, Civil, and International Society: TITP as a Human Rights Violation

In the late 2010s, TV programmes by famous broadcasting companies, such as TV Tokyo⁴, Japan

⁴ Gaia-No-Yoake (ガイアの夜明け), Now is the time to change the hopeless workplace (絶望職場を今こそ変える), December 12, 2017, https://www.tv-tokyo.co.jp/gaia/backnumber4/preview_20171212.html (retrieved on November 16, 2022).

Broadcasting Corporation (NHK)⁵, and British Broadcasting Corporation (BBC)⁶, denounced the poor environments that trainees face. With growing concerns in civil society, the UN Committee on the Elimination of Racial Discrimination (CERD) has repeatedly shown its concern towards exploitation in TITP in their 7–9th and 10–11th Concluding Observations on the periodic reports of Japan. The U.S. Department of State also, in its Trafficking in Persons Reports 2020 to 2022, also mentioned TITP as a source of human trafficking without enough supervision by the Japanese government.

2.2.2. Business Sector: TITP as a Business Risk

In response to such media reports and criticism from the international community, business risks within TITP have been recognised by some individual companies from a relatively early stage. One of the first companies was the children's clothing company Miki House. As mentioned in the introduction of this paper, the company was accused of lacking supervision towards a subcontracting company in Myanmar in 2016. As a result, the company ended up closing down one of its representative brands called PiCNiC MARKET, which was manufactured in the factory in question⁷. Such an experience made the company aware of the risks of neglecting Business and Human Rights in their supply chain. Since then, with the growing concern from media and NGOs regarding poor working conditions, the company has started to assess its human rights risks in TITP as a representing business risk in their domestic supply chain (Miki House, n.d.). A global sportswear brand, Adidas, has also raised its concern towards TITP as a reputation risk both domestically and abroad and has actively been contributing to monitoring and improving the human rights environment of the trainees in its supply chain in Japan (Adidas, 2018).

⁵ No Nare (ノーナレ), From behind the screen (画面の向こうから), June 24, 2019, <https://www.nhk-ondemand.jp/goods/G2020108181SA000/> (retrieved on November 16, 2022).

⁶ Immigrant Workers Exploited in Japan (日本で「搾取」される移民労働者たち), August 26, 2019, <https://www.bbc.com/japanese/video-49471735> (retrieved on November 16, 2022).

⁷ It was introduced by the CSR chief of the company in a seminar hosted by Tokyo Metropolitan Human Rights Promotion Centre in February 2021, <https://www.tokyo-hrp.jp/sem-coach-2020-02.html> (retrieved on November 17, 2022). For the video clip, see <https://www.youtube.com/watch?v=McLVFWPlqEM> (retrieved on November 17, 2022).

Following these actions, Keidanren (Japan Business Federation), a comprehensive economic organisation with a membership comprising representative companies in Japan, has also recently given recognition to the TITP as a matter of Business and Human Rights. In the report “Innovating Migration Policy” (2022), Keidanren claims that the violation of human rights in the TITP is one of the most pressing issues in human rights policy in Japan, and such violation shall be eliminated and prevented accordingly to the concept of Business and Human Rights. In the report, Keidanren suggests digital transformation for managing information, such as workload and payment of trainees, and OTIT to enhance its capacity to manage this information. It also claims that there must be more flexibility in switching job categories to mitigate human rights violations and allow trainees to experience a broader range of skills.

2.2.3. The Government: TITP as an Issue of Foreign Workers

As mentioned earlier, TITP is one of the issues explicitly indicated in Japan’s NAP. In Japan, NAP was formulated in the wake of the Olympic and Paralympic Games, which were initially to be held in 2020 and then postponed for a year due to the coronavirus pandemic (Japan Federation of Bar Associations, 2022b). The NAP has five priority areas considered particularly important for its implementation. Three of them are to promote understanding and awareness among public entities, business enterprises, and society. Concerning business enterprises, the importance of small and medium-sized enterprises (SMEs) is stressed in increasing the effectiveness of the NAP implementation. In addition, supporting business enterprises to realise human rights in their domestic and global supply chains and ensuring access to remedies are identified as priority issues.

In the NAP, the TITP is mentioned in the section “Labour and Promotion of Decent Work” and is treated explicitly as an issue of foreign workers in Japan. Though the specific issues in TITP are not mentioned in the NAP, a few points are raised as “Planned Future Measures”. According to these, the government will (1) disseminate information and raise awareness on compliance with related national labour laws among employers through seminars, (2) continue to implement multi-lingual services at

Prefectural Labour Bureaus, Public Employment Security Offices and Labour Standards Inspection Offices, and (3) incorporate gender perspectives in the Technical Intern Training Act, together with introducing new measures for preventing the disappearance of trainees. The above points imply that the government perceives the current situation as follows: (1) The related laws are not well complied with by stakeholders, while (2) access to support or remedy is limited for those trainees without Japanese language ability. The suggestion is also that (3) the situation has been even worse for females than for males.

2.3. Business and Human Rights as a Solution?

From the discussions above, Section 2.1. has shown three main issues with TITP: a lack of awareness for legal compliance on the training-implementing organisations' and supervising organisations' side, a lack of information on the trainees' side, and a limitation that prohibits a trainee from raising their voice in the workplace, causing the overall unethical structure to be enhanced.

Section 2.2. observed how the issues are perceived by each stakeholder: the media, civil and international societies, business enterprises, and the Japanese government. It showed that introducing the concept of Business and Human Rights in Japan has indeed improved some issues. First of all, the formulation of the NAP assisted the government in recognising the need to raise awareness for legal compliance among implementing organisations and supervising organisations, which are *de facto* employers of trainees. This should be considered aligned with “the state duty to protect” human rights in the Framework and the Guiding Principles. Also, it could be observed that the Japanese business sector recognises the importance of “the corporate responsibility to respect” human rights, and some companies are striving to fulfil their roles, but the number is still limited. Last but not least, the importance of “access to remedies” is also recognised by the government in the NAP, so those concerns from a trainee can be addressed directly by some legal entities.

This paper claims, however, that the lack of information for trainees, in other words, information asymmetry in TITP, still needs to be fully recognised as an issue in the NAP and appropriately addressed

by the stakeholders. The Guiding Principles partially mention that many barriers exist for individuals in vulnerable positions, such as migrants, to be able to access the remedial mechanism (para. 26 and 27 commentaries), and a lack of awareness of the mechanism can be a barrier for individuals to acquire a remedy (para. 31 commentary). Nevertheless, as observed in Section 2.1., the problem is that in some cases, these individuals must be made aware of their rights they are entitled to, rather than the mechanisms available when those rights are violated.

This paper adds that raising awareness among business enterprises in respecting human rights has a structural limitation. It is easier to imagine the impact of your social reputation or brand image on consumer behaviour, which would be significant if the brand is globally known and consumed, giving companies like Miki House and Adidas an incentive to act upon the issue recognised by the international community. On the other hand, this paper suspects that the smaller the business, the more complex the issues to be recognised. There would be lower incentives for industries and companies that completed their business and consumed domestically and/or without relying on their established brand, thus less motivating for SMEs to take human rights issues into serious consideration. It could also be suggested that it is difficult to determine a common incentive for SMEs in various industries and structures. Addo (2017) points out that given the unique nature of SMEs, there have been missing pressure points in pursuing human rights within the environments of each SME. As a result, there is yet to be a suitable mechanism for properly addressing SMEs' desire to comply with the Guiding Principles other than being pressured by a larger company within their supply chain. It also heavily depends on each industrial structure and how much the industry cares about social pressure. If there were to be any common factor for such SMEs with different backgrounds to comply with human rights standards, this paper claims it would be a demand for the labour force. Not only the wish to attract human resources but also the fear of losing it may affect the employers to seek better legal compliance. A study of the agricultural industry in Hokkaido, a rural island of Japan with a sharp decrease in the population, observed that the fear of losing incoming trainees prompted the industry to pursue better training conditions to ensure sustainable TITP participation and business continuity (Miyairi, 2020). The study suggests that raising the standard

of human rights conditions for the trainees may increase their bargaining power against the other side by enabling these trainees to make an informed choice. Therefore, increasing awareness, not only from the side of business enterprises but also from the side of individual workers, could be crucial in promoting human rights in business so that those individuals can be aware of what they should expect and should not accept.

Hence, this paper suggests in addition to raising awareness among business enterprises for respecting human rights, raising awareness among individual workers for the rights they are entitled to should be further emphasised in the Framework of Business and Human Rights and followed by the Guiding Principles. It would be vital for trainees in TITP, as they are from relatively underdeveloped areas with little knowledge of the host country's legal system or international standard of human rights. For instance, this paper suggests official guidance from the Japanese government would ease the information asymmetry between the stakeholders. For example, the Japan International Cooperation Agency (JICA), one of Japan's public entities, has decided to conduct a pilot project in FY 2023 in Vietnam to directly reach and provide information on job openings to individuals considering applying for TITP. The project intends to inform candidates what they should expect in TITP before joining the programme. It is also expected to reduce unreasonably high brokerage costs that many Vietnamese candidates are said to be paying to some malicious dispatching companies (Lang, 2022). In addition, this paper argues a structure similar to the current TITP could be applied to other transnational workers hosted in different countries. Therefore, raising awareness for those workers can also improve the human rights standards in their host countries. Furthermore, it may benefit individuals in making an informed choice regarding which country to work in, which could drive companies, industries, and even governments to compete for better human rights provisions to attract more foreigners. Thus, the Framework and the Guiding Principles are worth considering for solving information asymmetry between stakeholders and promoting human rights in business.

3. Specified Skilled Worker Programme as an Alternative?

3.1. Brief Overview of the Specified Skilled Worker Programme

Before concluding the discussions, this paper would like to compare the Specified Skilled Worker Programme (SSWP) to TITP to observe the policy development for Business and Human Rights in Japan. As mentioned in the introduction section, SSWP is considered a successor of TITP: after completing three years of TITP (i) and (ii), one can transfer to SSWP to extend their stay in Japan. The two programmes, however, have a small but significant difference. While TITP tries to stick with its original principle of international cooperation and acts as a “side door” for inviting foreign *de facto* labour to work in Japan, SSWP is said to open a “front door” for foreign labour to work in the country: it officially admits the programme aims to fulfil Japan’s labour shortage by inviting foreign labourers to work in Japan (Ito & Sai, 2021, and Miyajima & Suzuki, 2019). It allows businesses, including SMEs, in industries that are having difficulty recruiting human resources, despite the efforts made to raise productivity and recruit domestic human resources, to hire foreign nationals with specific specialised skills (JITCO, n.d., c).

It is also a maximum of five years for the programme though it allows for the extension and renewal of the residency status after the initial five-year programme. Many workers are from the countries which are sources of technical intern trainees, and they are to be engaged in 14 designated industries⁸: nursing care, building cleaning, material processing, industrial machinery manufacturing, electric and electronic information, construction, shipbuilding, automobile maintenance, aviation, lodging, agriculture, fisheries, food manufacturing, and food service. There are similarities to the job categories in TITP: SSWP classifies industries under a few different categories and requires workers to have a certain level of skills, which is examined together with Japanese language proficiency for visa acquisition. As mentioned earlier, transferring from TITP to SSWP after completing level (ii) of TITP training is allowed, and the trainees are exempted from taking a skill exam or Japanese language proficiency test

⁸ Since April 2022, with approval from the cabinet, three industries: material processing, industrial machinery manufacturing, and electric and electronic information, are combined and treated as one industrial field, which technically changed the number of industries from 14 to 12.

for such a transfer. Once they complete an initial five-year programme for SSWP, they will be allowed to apply to upgrade their SSWP status from level (i) to (ii). Level (ii) status allows a worker to apply for visa renewal every three years, one year, or six months on an unlimited basis as long as there is a demand for human resources in the worker's engaged industry. In addition, those people with level (ii) status are expected to be able to invite their families to live with them in Japan. Unlike TITP, SSWP allows a worker to switch working places under some conditions: when one shows a skill certificate to fill a position in a designated category of job classification in an industry field and when one has an accepting organisation to support the visa application for the transfer.

Figure 2 Stakeholders in SSWP, source: JITCO (n.d., c)

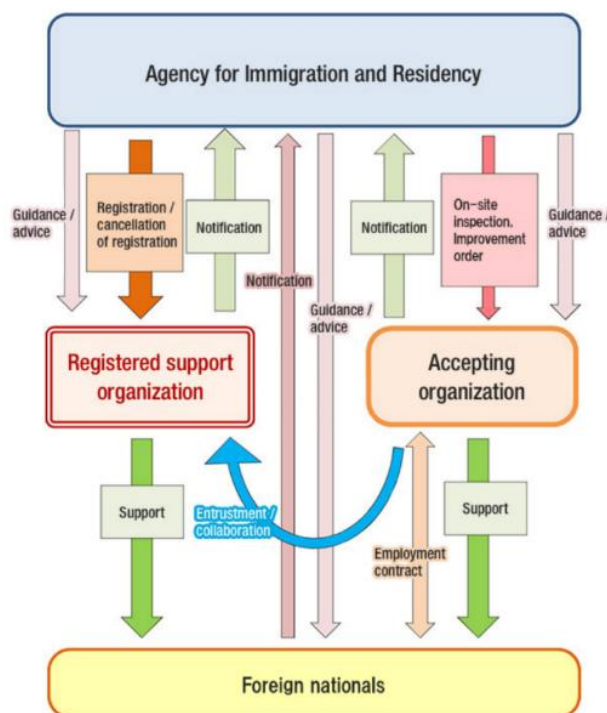


Figure 2 shows the stakeholders in SSWP. Accepting organisations can recruit potential workers directly from their home countries; however, they must register with the Immigration Services Agency of Japan and its industry's sectoral council. Accepting organisations may outsource supporting activities for workers, for instance, preparing houses and other necessary assistance to live in Japan, to support organisations that are also required

to register with the Immigration Services Agency of Japan.

When the Immigration Control Act was amended in 2018, the Specified Skilled Worker was recognised as a new category of residency status, and the programme has been active since the following year. A specific MOC is not required to be signed between the governments of Japan and workers' home countries. However, as of November 2022, 15 countries have signed an MOC to set specific procedures

for SSWP implementation in each country (Immigration Services Agency of Japan, n.d., b)⁹.

3.2. Specified Skilled Worker Programme as a Policy Improvement?

It appears that SSWP might have learnt some lessons from TITP. It is trying to improve its system by allowing more freedom for workers to switch jobs to ease the unequal relationship between employees and employers. It is also eliminating many stakeholders in the programme to mitigate unnecessary brokerage costs. The problem is, however, whether the policy structure of SSWP can genuinely overcome these challenges admitted in TITP.

As mentioned, SSWP allows switching between jobs for a worker with appropriate certification and an offer from an accepting organisation; however, this may be more complex than it seems. My Navi, one of Japan's biggest web portals for job hunting, indicates that, firstly, it would be quite difficult for a foreign worker to find a new workplace willing to support complicated visa administration for the worker. Secondly, the worker also needs support from a current working place for some visa administration, which could be another obstacle. Lastly, one cannot work during the visa application process, which means the worker would be without income for a few months (Kondo, 2022). Recalling that in TITP fear of losing a job and being sent back home and unable to pay a loan hindered a trainee from switching a training place, there could also be a similar effect on SSWP if an opportunity to switch a working place was still limited.

In addition, eliminating formal stakeholders may cause more informal ones to engage in SSWP. However, per Korekawa (in National Institute of Population and Social Security Research, 2022), the cost to directly hunt in foreign sending countries would be too expensive for most of the accepting Japanese organisations – mainly SMEs with inadequate budget – so they would have to rely on brokers. Most MOC-signatory countries allow domestic job seekers and accepting organisations in Japan to use any sending organisation, while a few countries (Cambodia, Myanmar, the Philippines, and Vietnam)

⁹ As of November 19, 2022, Bangladesh, Cambodia, India, Indonesia, Lao PDR, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, Uzbekistan, and Vietnam are listed (JITCO, n.d., d). These are equal to TITP MOC countries minus China and Peru, plus Malaysia.

require registered sending organisations (JITCO, n.d., d). Thus, since every TITP sending organisation must at least be registered with all sending countries' governments, though brokerage exploitation is prevailing, allowing informal-sending organisations in SSWP to intermediate the job market does not seem to effect better change.

Therefore, the ability to use SSWP or determine an ideal environment for one's human rights depends on the path a worker chooses: the broker, accepting organisation, and industry field. However, not knowing the ideal environment would make it difficult for a foreigner to find the best opportunity in Japan. Hence, this paper again argues that solving information asymmetry would be the key to helping foreign workers find their best choice. A better measure should be taken to inform these SSWP applicants or prospective users about what SSWP should be and what is not allowed so individuals may make wise decisions to protect their rights.

4. Implications for Future Policy Making and Anticipated Challenges

The discussions above have explained why solving information asymmetry is essential for better human rights promotion in business activities. However, the top point is easing the information asymmetry between employer and employee. In section 2.3., this paper indicated official Japanese government guidance would ease information asymmetry between the stakeholders in TITP. In this chapter, the paper analyses possible implementation paths and expected challenges.

4.1. Implementation at the International Level

This paper has examined that the limited information provided for and acquired by (prospective) trainees/workers is causing the exploitative structures of TITP and SSWP to remain. However, the importance of information asymmetry is not properly viewed as a vital issue in the concept of Business and Human Rights.

Therefore, this paper suggests it be added as the fourth pillar of Business and Human Rights as

“access to information”. The policy structure for securing “access to information” could be similar to that of “access to remedies”. Primarily, it should be another component of “the state duty to protect” human rights, but business enterprises can also be responsible for providing information.

In this way, the Framework and Guiding Principles may provide awareness for not only mitigating but also preventing human rights violations towards international society.

4.2. Implementation at the Domestic Level

As mentioned above, “access to information” should become another pillar for the concept of Business and Human Rights, and the state should take primary responsibility for implementation.

In TITP, simply publishing and distributing an official piece of information or notice is insufficient to make trainees aware of the human rights risks. Hence, this paper claims the state should take a more proactive approach to advocate information, especially information on workers’ rights and related legal guidance. Workers should acquire such knowledge before starting their labour provisions to avoid the irreversible situation that was often seen in TITP trainees who acquired debt due to extraordinarily high brokerage fees.

For example, in SSWP, the government can intervene during the visa application process. Currently, to apply for the programme visa from abroad, an applicant must pass exams for language proficiency and a designated skill. The must-know information on the labour environment and workers’ rights could be added to these exams as another mandatory skill set. In this way, not only would individual applicants study and become knowledgeable on such information, but other intermediary stakeholders, such as sending organisations, would have to provide the information necessary to pass the exams. This would also make it difficult for these brokers to fraud applicants while enhancing fair stakeholder relationships.

4.3. Challenges and Limitations

Nevertheless, it could be challenging for a state to intervene and check the knowledge levels of all incoming foreign labourers. For example, in the case of Japan, it would be relatively easy for SSWP to

include intervention in its policy structure. However, a whole new process would have to be added for TITP, as there are no official requirements for language or skill ability for visa applicants. Thus, this paper admits it might be difficult to find a universal solution; each solution needs to be case-specific. This includes mandating a visa applicant to acquire the necessary knowledge for protecting their human rights in SSWP. However, as indicated in the example of SSWP, this paper suggests a state can reach out to individual workers, taking a more proactive role in human rights advocacy and easing information asymmetry by leveraging its exclusive authority in the visa application process.

Conclusion

The issues in the Technical Intern Training Programme are challenges for Business and Human Rights. While the related UN Framework and Guiding Principles focus more on areas with poor governance, this paper showed even developed countries like Japan could struggle to fully realise human rights protection in their business environment. However, it seems the Framework and Guiding Principles assist the Japanese government with determining some policy challenges. The two notably assisted with raising awareness among business enterprises of legal compliance and providing remedies being core for fulfilling “the state duty to protect” human rights. Both also guided business enterprises in being aware of “the cooperate responsibility to respect” human rights in their business activities. However, per this paper, there is a missing component in the concept of Business and Human Rights for enhancing human rights protection: solving information asymmetry to support individual workers in making better decisions when entering a labour market.

In conclusion, this paper suggests the resolution of information asymmetry should be explicitly added to the concept of Business and Human Rights as “access to information”. This would act as the fourth pillar, besides the current three, in the Framework and Guiding Principles, clarifying that states and other stakeholders should inform individuals of their rights. In this way, each individual may know the best way to pursue their life goals via choosing a job without risking their human rights.

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