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Contesting Foreigners' Rights in Contemporary Japan

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Contesting Foreigners' Rights in Contemporary Japan

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Contesting Foreigners' Rights in Contemporary Japan

Apichai W. Shipper†

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Japan's population has declined steadily since 2005.¹ A low birthrate means that Japanese society is aging at an unprecedented rate.² As a consequence, many industries are bracing for labor shortages.³ These shortages are already having a large impact on

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¹ Statistical Research and Training Institute, *Statistical Handbook of Japan 2010*, JAPANESE MINISTRY OF INTERNAL AFFAIRS AND COMMC'NS. § 2, § 2 at 2.2 (2010).

² *Id.*

³ Statistical Research and Training Institute, *Employment Status Survey*, JAPANESE MINISTRY OF INTERNAL AFFAIRS AND COMMC'NS. § 3, § 3(a)-(b) (2007).

the farming and fishing industries as well as small manufacturers.⁴ Small manufacturers or subcontractors of major corporations initially turned to Japanese-descended (nikkei) Brazilians and later to their spouses to fill employment gaps.⁵ Small, family-run manufacturers and employers in farming and fishing industries have increasingly relied on Asian trainees and interns, particularly from China, Vietnam, Indonesia, and the Philippines.⁶ The demand for foreign workers has resulted in a large influx of foreigners.⁷ In 2008, more than 2.2 million foreigners in Japan registered with their local wards.⁸ They included zainichi foreigners (Japan-born Koreans and Chinese), nikkeijin (foreign-born Japanese), foreign wives married to Japanese men, trainees, foreign students, entertainers, and English-speaking language instructors.⁹ Foreigners from Korea, China, Brazil, the Philippines, Peru, Thailand, Vietnam, and Indonesia constituted 85 percent of these registered foreigners.¹⁰ In addition, the Immigration Bureau estimated that 100,000 foreigners who had overstayed their visas or illegally entered the country were still living in Japan.¹¹ Illegal foreign workers typically include East Asian men and women, and men from South Asia.¹²

In response to this recent influx, the Japanese government struggles to reinterpret or reform existing immigration laws and entitlement schemes in light of changing economic, demographic and public sentiment realities.¹³ Bureaucrats from the Ministry of Justice categorize foreigners into a racial hierarchy that produces

⁴ *Id.* § 1.5.

⁵ Chikako Kashiwazaki, *Japan's Resilient Demand for Foreign Workers*, MIGRATION INFORMATION SOURCE (May 2002), <http://www.migrationinformation.org/feature/display.cfm?ID=8>.

⁶ *Id.*

⁷ Masahiko Yamada, *The Current Issues on Foreign Workers in Japan*, 7 JAPAN LAB. REV. 3, T2 (Summer 2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.* § 7. In January 2010, there were 91,778 foreigners with overstayed visas. *Id.*

¹² *Id.* South Korea had the most overstayers, but overall, the majority of illegal immigrants were from other Asian countries. *Id.*

¹³ Yamada, *supra* note 7, § 5, ¶ 1.

differentiated labor entitlements and legal rights based on an immigrant's country of origin and purpose for entering Japan.¹⁴ Zainichi foreigners and nikkeijin, or those people who are closest to being "Japanese," are at the high end of the racial hierarchy.¹⁵ At the bottom end of the racial hierarchy of foreigners in Japan are the "darker-skin" South Asians. This hierarchy produces differentiated wages, rights, and privileges across different groups of foreigners.¹⁶ The demarcation of immigrants into categories of legal and illegal foreigners is a distinction that significantly impacts their living and working conditions.¹⁷

A fundamental belief of social justice is that inequality is allowed to exist only if it benefits the least advantaged people in society.¹⁸ This often entails the protection of disadvantaged populations in a society with protective policies and welfare provisions.¹⁹ It also includes regulation of the advantaged segments of society (i.e. by imposing higher taxes and regulations on businesses to the extent that they do not impede the group's potential for innovation and acceptable level of growth).²⁰ In most industrialized societies, foreign workers are arguably among the worst-off populations—often more disadvantaged than their local counterparts—spurring governments to devise some forms of protective policies and welfare provisions for them.²¹ Although some governments show greater generosity with their provisions for protection of foreign workers than others, most have tried to do so in such a way that would be consistent with their own cultural norms and beliefs.²²

¹⁴ Immigration Bureau, *Basic Plan for Immigration Control*, JAPANESE MINISTRY OF JUST. § 1, 10 (4th ed. 2010).

¹⁵ *Id.* at 24.

¹⁶ Yamada, *supra* note 7, at 10-11.

¹⁷ *Id.*

¹⁸ JOHN RAWLS, *A THEORY OF JUSTICE* 100-101 (1971).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Rich Exner, *Sunday's Numbers: Foreign-born Residents Hold 15.5 Percent of the Jobs in the U.S.*, *THE PLAIN DEALER* (April 11, 2010), http://www.cleveland.com/datacentral/index.ssf/2010/04/sundays_numbers_foreign-born_r.html.

²² Chizuko Hayakawa, *Labor Law and Policy Issues Relating to Foreign Workers in Japan*, *JAPAN LAB. RES. CENTER* 19, 21 (2008).

In Japan, local government officials are providing foreign residents with social, civil, and political rights that are conflicting with national norms and beliefs, such as refusing to take legal action against *zainichi* Koreans who objected to being fingerprinted for their alien registration cards, pushing to obtain voting rights for foreigners in local elections, and even extending medical services to illegal foreigners.²³ In the absence of local suffrage for foreigners, some local authorities have created foreigner advisory councils as a means to elicit foreign residents' opinions on public services and welfare needs.²⁴ In recent years, support groups for illegal foreigners have been increasingly involved in redefining membership rules and expanding foreigners' rights.²⁵ One group has successfully pressured the national government to grant certain overstayed foreigners "special residence permission" to remain in the country, while another has achieved success in expanding Japan's nationality law, allowing children born out of wedlock to a Japanese man and a foreign woman to obtain Japanese nationality if the father acknowledges paternity either before or after birth.²⁶ Others have challenged the government to extend National Health Insurance to certain unqualified foreigners such as victims of human trafficking, and have raised public and government awareness of the flawed and abusive trainee and technical intern system.²⁷

This article discusses the contest over foreigners' rights between central government actors, local government actors, and societal actors. It is divided into five sections. The first section provides an overview of the central government's policy of categorizing foreigners into a differentiated racial hierarchy with varying rights. The second section examines local governments'

²³ Immigration Bureau, *supra* note 14, § 3, 36.

²⁴ Kumiko Ishikawa, *Multicultural Social Work in Japan: The Need for Development*, *WORLD CULTURAL PSYCHIATRY RES. REV.* 47, 47-52 (Jan. 2009).

²⁵ The Asahi Shimbun, *Japan's Entrenched Discrimination Toward Foreigners*, *THE ASIA-PACIFIC J.: JAPAN FOCUS* (Oct. 8, 2010), http://www.japanfocus.org/-The_Asahi-Shimbun/2932.

²⁶ Immigration Bureau, *supra* note 14, § 1, 12 to § 3, 33.

²⁷ Kyodo News, *Decision Not to Examine Foreigner's Request on Welfare Benefits Repealed in Oita*, *JAPAN TODAY* (Oct. 1, 2010), <http://www.japantoday.com/category/national/view/decision-not-to-examine-foreigners-request-on-welfare-benefits-repealed-in-oita>.

efforts to accommodate foreigners and to extend additional social, civil, and political rights to them. The third section explores the role of civil society organizations in demanding for more protection and greater benefits to foreigners, particularly illegal ones. The fourth section focuses on the institutionalization of cooperation between local governments and immigrant rights Non-Governmental Organizations (NGOs), which has led to an improvement in democratic representation in Japan. The fifth and final section briefly summarizes the findings of the paper.

I. Foreigner Categorization and Their Rights

A. Legal Foreigners

1. *Zainichi*

The group of foreigners known as *zainichi* includes approximately 460,000 Koreans and 4,000 Chinese who have lived in Japan for several generations and have chosen not to become naturalized.²⁸ After Japan's defeat in World War II, many Koreans and Chinese returned to their homelands.²⁹ In 1950, approximately 620,000 Koreans and 40,000 Chinese (mostly from Taiwan) remained in Japan.³⁰ Those Koreans and Chinese who decided to stay in Japan lost the right to vote along with any legal protection from discrimination.³¹ Before the war, people in Japan from the former colonies, also known as "imperial subjects," were entitled to vote, to be elected, and to assume public office.³² In fact, several Koreans were actively involved in politics as candidates for public office during the early 1930s. On December 17, 1945, however, the House of Representatives amended the election law, which suspended suffrage in all phases of the

²⁸ Rennie Moon, *Koreans in Japan*, STANFORD PROGRAM ON INT'L AND CROSS-CULTURAL EDUC. 1, 3 (Fall 2010), http://spice.stanford.edu/docs/koreans_in_japan/.

²⁹ Adam Wozniak, *Japanese Government's Response to Migrant Workers in the Post-war Period*, CENTRUM STUDIOW: POLSKA-AZJA (2009), <http://www.polska-azja.pl/2009/10/12/analiza-in-what-ways-has-the-japanese-government%E2%80%99s-response-to-migrant-workers-changed-in-the-post-war-period/>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

electoral process for the nationals of Japan's former colonies.³³ Thereafter, Koreans and Chinese in Japan were not entitled to vote or to be elected.³⁴

After the war, Koreans and Chinese in Japan also lost protection against discrimination.³⁵ Initially, American occupation forces had planned to guarantee equal rights to foreign residents in Japan and to prohibit discrimination on the basis of race and national origin.³⁶ General MacArthur and his staff included an article (Article 16) in the draft constitution of Japan that explicitly stated: "All foreigners are to receive equal protection by law."³⁷ However, a translator of the draft constitution, Satō Tatsuo, argued that Article 13 already guaranteed protections for resident aliens because the Japanese word "kokumin" implied all people, including foreigners.³⁸ While the Americans accepted Satō's argument, Japanese conservatives interpreted the word "kokumin" in the 1945 Constitution to mean Japanese nationals alone.³⁹ Thus, foreigners residing in Japan were not covered under the basic human rights provisions in the new Constitution.⁴⁰

An additional blow to foreigners' rights came in May 1947 when the government enacted the Alien Registration Law, which reclassified Koreans and Chinese from "imperial subjects" to "foreigners."⁴¹ This law effectively established a system of control over Korean and Chinese residents, imposing strict surveillance and coercive assimilation policies.⁴² On April 28,

³³ See David White, *Koreans in Japan: An Invisible Community*, JAPAN VISITOR (Jan. 2011), <http://www.japanvisitor.com/index.php?cID=359&pID=1305>.

³⁴ Kyodo News, *Haraguchi Positive on Foreigner Voting Rights*, THE JAPAN TIMES ONLINE (Oct. 2009), <http://search.japantimes.co.jp/cgi-bin/nb20091009a1.html>.

³⁵ Tessa Morris-Suzuki, *Japan's Hidden Role in the 'Return' of Zainichi Koreans to North Korea*, HISTORY NEWS NETWORK (Mar. 14, 2005), <http://hnn.us/articles/10199.html>.

³⁶ Satoko Kogure, *Bill of Rights: Military Law Ignores Gaijin Rights Violation Danger*, THE ZEIT GIST (Jul. 20, 2004), <http://search.japantimes.co.jp/cgi-bin/f120040720zg.html>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Moon, *supra* note 28, at 1-3.

⁴² *Id.*

1952, Koreans and Chinese officially became “foreigners” in Japan and were obliged to register as resident aliens.⁴³ The Alien Registration Law required fingerprinting and possession, at all times, of an alien registration card.⁴⁴ Alternatively, they could naturalize and become Japanese citizens.⁴⁵ However, naturalization meant that they must give up their original names and take new Japanese ones.⁴⁶

The situation for *zainichi* Koreans improved in 1965 after Japan and South Korea signed a treaty that gave Koreans in Japan with South Korean citizenship a “special permanent resident” status.⁴⁷ As a result, South Koreans gained valid documents for travel abroad and a secure residential status inside Japan for re-entering the country.⁴⁸ Koreans in Japan with North Korean citizenship received similar treatment in 1981.⁴⁹ This status was later extended to *zainichi* Chinese. With this special permanent resident status, the Japanese government permits *zainichi* Koreans and Chinese to reside indefinitely in Japan. They are free to live and work in Japan and receive comprehensive social and welfare benefits from the government. However, they cannot vote in the local and national elections or work in most national civil service jobs, nor do they have the right to membership in district welfare commissions, boards of education, or human rights commissions. Although *zainichi* Koreans sometimes experience housing discrimination from Japanese landlords, they encounter little discrimination when applying for public-subsidized apartments.

Zainichi are typically self-employed in the service sector. In recent decades, some *zainichi* have also joined Japanese corporations, where they are usually offered lifetime employment and bonuses similar to those given to other Japanese employees. In Japanese corporations, discrimination against *zainichi* occurs, if at all, during the hiring and promotion process—similar to that faced by many Japanese women, *Burakumin*, and ethnic

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Moon, *supra* note 28, at 1-3.

⁴⁷ *Id.*

⁴⁸ *Id.* at 2.

⁴⁹ *Id.*

minorities.

2. *Nikkeijin*

The second group of legal foreign workers includes approximately 300,000 nikkei Brazilians and 55,000 nikkei Peruvians, typically second- and third-generation “Japanese” who were born and raised abroad. In response to an influx of “illegal” foreign workers and a need to clarify the residency status of foreigners, the Ministry of Justice (MOJ) revised the Immigration Control and Refugee Recognition Act in 1990 (hereinafter, 1990 Revised Immigration Law) and eased working visa requirements for nikkeijin.⁵⁰ Nikkeijin were given the legal status of “spouses or children of Japanese” or “long-term residents” in order to counterbalance the “special permanent resident” status that had already been granted to resident Koreans.⁵¹ While government officials determined zainichi to be “special” foreigners, they designated nikkeijin as “almost Japanese”—a reflection of the government’s concern with an individual’s bloodline in determining “Japaneseness.”⁵² Nikkeijin were now on par with zainichi foreigners but above other foreigners.⁵³ After the MOJ officials established this racial view of nikkeijin, the Ministry of Labor (MOL) then established the Nikkeis Employment Service Center in 1991, with offices in Tokyo, Nagoya, and São Paulo, to create job opportunities and to provide labor counseling services for nikkeijin.⁵⁴ In addition, the MOL implemented an employment management and improvement program that provides counseling, seminars, and assistance on employment management and working lifestyles to nikkeijin through its Employment and Livelihood Counseling Centers for Nikkeijin.⁵⁵

Nikkeijin are “ethnic Japanese” by blood, but their foreign

⁵⁰ Interview with an official of the Ministry of Justice Immigration Bureau (Jan. 8, 1999).

⁵¹ Immigration Bureau, *supra* note 14, § 2(4).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Japan’s All Too Tentative Opening to Immigration*, JAPAN WATCHING (Dec. 19, 2009), http://www.japanwatching.com/index.php?option=com_content&view=article&id=98:japans-all-too-tentative-opening-to-immigration&catid=36:society&Itemid=2.

⁵⁵ *Id.*

birth and upbringing make them “foreigners.”⁵⁶ Their cultural activities are Brazilian or Peruvian, and few speak Japanese fluently.⁵⁷ They are not considered ethnic immigrants returning to their home country, but migrants coming to work in Japan.⁵⁸ They can work legally, but cannot vote or work in the civil service.⁵⁹ Most nikkeijin work for secondary or tertiary subcontractors in production sites with more than twenty employees in manufacturing (particularly automobile and electronic) or transport-related services sector jobs in Aichi, Shizuoka, Gunma, and Kanagawa.⁶⁰ They receive good salaries, but the salaries are slightly lower than those of Japanese workers. In 2003, nikkei men and women earned an average of \$2,825 USD and \$1,870 USD per month, respectively.⁶¹ However, nikkeijin rarely receive bonuses or welfare benefits and are not guaranteed lifetime employment like their Japanese and zainichi counterparts, nor can they rely on regular pay increases or promotion in accordance with the length of their employment, given their short-term employment contracts. Nikkeijin enjoy full access to medical care and public health services, although few subscribe to them, as most refuse to allow their employers to deduct social insurance premiums from their wages.

Most nikkeijin work for contract companies and are thus indirectly employed.⁶² While most contract companies prefer to directly recruit nikkeijin already residing in Japan, they also hire nikkeijin from travel and local recruitment agencies in Brazil. Labor contractors have actually created a mobile labor pool both in Japan and Brazil that can provide a “just-in-time” delivery of Brazilian workers to client-companies.⁶³ Typically, a contract

⁵⁶ Immigration Bureau, *supra* note 14, § 1, 24.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Japan's All Too Tentative Opening to Immigration*, *supra* note 54.

⁶⁰ Florence Rau & Gabriele Vogt, *The Labor Market: Below the Surface*, JAPAN INC. MAG. (Mar. 6, 2009), <http://www.japaninc.com/mgz85/nikkeijin-Japan-s-foreign-workforce>.

⁶¹ Hiroaki Watanabe, *Human Resource Management for Nikkei Workers and the Increase of Indirect Employment*, 2 JAPAN LAB. REV. 4, 72-106 (2005).

⁶² Junichi Goto, *Latin Americans of the Japanese Origin (Nikkeijin) Working in Japan: A Survey*, RES. INST. FOR ECON. & BUS. ADMIN. 22-23 (Apr. 2006).

⁶³ *Id.*

company makes an initial two to three-month contract with a client company. If the client company is satisfied with the nikkei worker, then the contract company will initiate a six-month or one-year contract with the client company.⁶⁴ However, local intermediaries in Brazil sometimes mislead nikkei Brazilian workers into believing that they would be working at internationally recognized and competitive companies. In reality, they work at secondary or tertiary subcontracting companies, and have far fewer opportunities and benefits.⁶⁵

Another major problem with the brokerage system for nikkei Brazilian workers involves labor accidents.⁶⁶ When a dispatched nikkeijin suffers a job-related accident, for example, the labor contract company, as the direct employer, is responsible for reporting the accident to Labor Standards Inspection Office (LSIO) officials and paying a minimum compensation.⁶⁷ However, contract companies prefer not to make such reports out of fear that their client companies will be unhappy with LSIO's investigations.⁶⁸ Client companies, in turn, tend to hide their involvement in accidents and leave the labor contract company to deal with these cases.⁶⁹ Consequently, injured nikkeijin often end up receiving no accident compensation.⁷⁰ Despite these problems, in 2004, the government deregulated the Workers Dispatching Law, allowing the dispatching of nikkei workers to be expanded in manufacturing, services, and other industries.⁷¹ Such deregulation has resulted in more corporate abuses against nikkei workers.⁷²

3. *Legal Asian Workers*

Legal workers from Asia include approximately 80,000

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Uchihashi Katsuto, *Japanese Deregulation: Big Corporations Are Destroying People's Lives*, THE ASIA-PACIFIC J.: JAPAN FOCUS (Aaron Sakebelund trans.) (Sept. 2007), <http://japanfocus.org/~Uchihashi-Katsuto/2518>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Goto, *supra* note 62, at 23.

⁷¹ Katsuto, *supra* note 66.

⁷² *Id.*

trainees, 37,870 foreign students, and 31,170 entertainers.⁷³ In addition to opening its doors to the *nikkeijin*, the Japanese government also decided to accept a larger number of Asian trainees in 1990.⁷⁴ Most trainees are in their twenties and come from China,⁷⁵ Indonesia, Vietnam, the Philippines, and Thailand—countries where Japanese multinational corporations have established a strong presence.⁷⁶ The Japanese government stipulates that these workers are only allowed to engage in “activities to learn and acquire the technology, skills or knowledge at public or private organizations in Japan.”⁷⁷ In reality, trainees rarely receive any “training.” Rather, they work in inferior and temporary positions in industrial niches unoccupied by Japanese or other foreigners.⁷⁸ Trainees’ compensation is limited to commuting and living expenses.⁷⁹ Moreover, since foreign “trainees” are not considered “workers,” they are not protected under Japanese labor laws.⁸⁰ In April 1993, the government instituted a Technical Internship Program (TIP) to transform “trainees” into “interns.”⁸¹ Trainees who pass evaluations from the Japan International Training Cooperation Organization (JITCO) are given “designated activities” visa status and are permitted to work legally for two years.⁸² This transformation from trainees to legal foreign workers means that they will be covered under Japan’s Labor Laws, and they are entitled to receive the National Health Insurance and the Workers Compensation

⁷³ Immigration Bureau, *supra* note 14, § 1, 6-9.

⁷⁴ Masahiko Yamada, *The Current Issues on Foreign Workers in Japan*, 7 JAPAN LAB. REV. 3, § 4 (2010).

⁷⁵ Seventy percent of trainees come from China. Immigration Bureau, *supra* note 14, § 1, 10.

⁷⁶ *Id.*

⁷⁷ JAPAN INT’L TRAINING COOPERATION ORG., *Industrial Training and Technical Internship Programs: Operative Manual for Sending Organizations* 1 (2009) [hereinafter JITCO].

⁷⁸ Immigration Bureau, *supra* note 14, § 1, 26.

⁷⁹ JITCO, *supra* note 77, at 7.

⁸⁰ *Id.*

⁸¹ Yamada, *supra* note 74, § 4.

⁸² Arudou Debito, *Japan’s Future as an International, Multicultural Society: From Migrants to Immigrants*, THE ASIA-PACIFIC J.: JAPAN FOCUS (Oct. 2007), <http://www.japanfocus.org/-Arudou-Debito/2559>.

Insurance.⁸³ As a result, the number of trainees has increased almost three-fold from 17,000 in 1987 to 190,000 in 2009.⁸⁴

Most trainees receive lower pay when compared to other resident foreigners. In 2008, trainees received a monthly compensation of about \$700 USD.⁸⁵ During their first year, trainees receive subsistence pay below the minimum wage while they receive training.⁸⁶ During the second and third year, trainees become technical experts and are supposed to get paid at legal wage levels.⁸⁷ In reality, they seldom receive these pay rates. For example, a twenty-three year old Chinese trainee was assigned to a workshop in Hiroshima.⁸⁸ She operated a machine that printed cell phone keypads.⁸⁹ In her first year, she worked 8-hour days and received \$660 USD per month after various deductions.⁹⁰ This turned out to be about \$3.77 USD, per hour, or less than half the minimum wage.⁹¹ Moreover, the company initially withheld \$490 USD per month as savings.⁹² In her second year, her monthly wage rose to about \$1,510 USD.⁹³ But this rate was still only \$7.91 USD per hour, which was still lower than the \$8.56 USD minimum wage.⁹⁴ Furthermore, her employer took out \$674 USD each month for her accommodations and other expenses.⁹⁵ Meanwhile, her work hours also increased dramatically to as much as sixteen hours per day, five to six days per week.⁹⁶ A Mazda

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Training Compensation, Class Compensation and Wage Information of Trainees and Technical Interns*, JITCO (July 2010), <http://www.jitco.or.jp/stop/teachingin.html>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Hiroko Tabuchi, *Japan Training Program Is Said to Exploit Workers*, N.Y. TIMES (July 20, 2010), http://www.nytimes.com/2010/07/21/business/global/21apprentice.html?_r=1.

⁸⁹ *Id.*

⁹⁰ Tabuchi, *supra* note 88.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Tabuchi, *supra* note 88.

⁹⁶ *Id.*

trainee from the Philippines reported similar working conditions, receiving almost one US dollar less than the minimum wage and working up to fourteen hours per day, sometimes six days per week.⁹⁷

Since the inception of the trainee and internship programs, there have been several reports of cases where the worker has been violated and the human rights of trainees and technical interns have been violated as well.⁹⁸ Between 2005 and 2010, at least 127 trainees (or one in 2,600 trainees) have died, mostly due to strain from excessive labor.⁹⁹ This ratio is high considering that trainees are young people who must pass stringent physicals to enter the program.¹⁰⁰ In 2009, the MOJ identified at least 400 cases of mistreatment of trainees (i.e. failing to pay legal wages, exposing trainees to dangerous work conditions, and the like).¹⁰¹ Trainees and technical interns have been forced to perform grueling work at low wages.¹⁰² Many fail to receive overtime pay or have money skimmed from their promised earnings.¹⁰³ Moreover, Japanese employers sometimes confiscate the passports of trainees and house them in crowded apartments without heating.¹⁰⁴ Some employers ban their foreign trainees from communicating with outsiders and threaten them with deportation if they do not “toe the line.”¹⁰⁵ A Chinese trainee reported that she had to fight noxious vapors in her workplace, and “managers would tell Japanese employees to avoid her work area.”¹⁰⁶ According to Ippei Torii of the Zentōitsu Workers Union, “there are even cases in which primary accepting organizations advise on how to conceal wrongdoing.”¹⁰⁷ Trainees have also accused certain

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Tabuchi, *supra* note 88.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Interview with a staff member of the Solidarity Network with Migrants Japan (July 18, 2010).

¹⁰⁶ Tabuchi, *supra* note 88.

¹⁰⁷ Daisuke Furuta, Op-Ed., *Japan Must Stop Exploitation of Foreign Trainees*, ASAHI SHIMBUN (Apr. 8, 2010),

JITCO staff of sexual harassment.¹⁰⁸

Legal Asians also include foreign students, almost 80 percent of whom come from China and South Korea.¹⁰⁹ In 1983, the Nakasone government reformed the education system and launched an “internationalization” campaign hoping to attract about 100,000 foreign students as “ambassadors from the future” by the early twenty-first century in order to improve international understanding and to deepen friendships with other countries.¹¹⁰ In 1984, the government simplified visa procedures for foreign students, by only requiring registration in any school, including “bogus” language schools.¹¹¹ To help pay for their tuition and living expenses, at least two-thirds of foreign students engage in part-time work, usually in food shops and restaurants.¹¹² As part-time workers, these foreigners typically receive an hourly wage of \$9.77 USD. With a permit to engage in activity other than that permitted by the status of residence previously granted, foreign students can work up to 28 hours per week. However, many work longer and without a permit. In fact, the number of “bogus” foreign students, who are registered in language schools or remote private colleges but rarely attend classes, is steadily rising. Although local governmental organizations have begun to supply information and consulting services to foreign students, many privately funded students face difficulties finding housing.

Another major group of legal Asian workers includes female entertainers, mostly singers and dancers from the Philippines. They typically enter Japan on a six-month entertainer visa and earn about \$2,500 USD per month. The “foreign entertainers” visa and residence category originated in the 1950s when the U.S.

<http://www.asahi.com/english/TKY201004070369.html>.

¹⁰⁸ *Foreign Trainees in Japan Defend their Rights*, ASIA MONITOR RES. CTR (Oct. 14, 2008),

http://www.amrc.org.hk/alu_article/informalization_of_labour_in_asia/foreign_trainees_in_japan_defend_their_rights.

¹⁰⁹ *Id.*

¹¹⁰ Claudia Ishikawa, *Education-Oriented Immigration in Japan and the Legacy of the ‘Plan to Accept 100,000 Foreign Students’*, EDUC. CENTER FOR INT’L STUD. 18, http://www.ecis.nagoya-u.ac.jp/about/pub-pdf/J_of_ECIS/Vol4/Ishikawa%20Paper.pdf (last visited Mar. 29, 2011).

¹¹¹ *Id.* at 10.

¹¹² *Id.* at 22.

government requested that the Japanese government allow English-speaking women, particularly from the Philippines, to come and entertain the U.S. troops who were stationed in Japan. The 1990 Revised Immigration Law simply legalized the working activities of many foreign singers and dancers from the Philippines who were already working in Japan at the time. In 2005, the government finally set a standard for foreign entertainers, including minimum educational training and international work experience outside of Japan. Some of these foreign female entertainers have married Japanese men. As foreign spouses, they are not allowed to be listed in the "family registry" (*koseki tōhon*) of a Japanese national.¹¹³ This often causes problems for the couple when they want to buy a condominium, apply for public loans, or find schools for their children, because the couple must present their residency register. With the foreign spouse's name not listed in the registry, the Japanese spouse publicly remains unmarried and the couple's children are considered illegitimate, thereby jeopardizing their chances for a successful application.

4. *Caucasian English Teachers*

Another group of legal foreigners include approximately 26,000 Caucasians from English-speaking countries, particularly the United States, United Kingdom, Canada, Australia, and New Zealand. These Caucasians typically teach English in the private sector in urban metropolitan areas on a "specialist in humanities/international services" visa and in public junior and high schools in rural areas on an "instructor" visa. They typically are employed with a fixed contract and earn about \$3,663 USD per month. During the mid-1980s, the U.S. government persistently pressured Japan to internationalize and improve cultural understanding between Japanese and people from other nations.¹¹⁴ In 1987, the Japanese government launched the Japan Exchange

¹¹³ In 1967, the Ministry of Home Affairs issued a notice granting the head of a non-Japanese household the right to be listed in the remark column (*bikōran*) of her or his spouse's family registry. Despite this notice, several local governments still have not allowed foreigners to be listed in the family registry. See Lucinda Otsuka, *Foreign Residents and the Family Register*, UNITED FOR A MULTICULTURAL JAPAN (Apr. 1998), <http://www.tabunka.org/newsletter/familyreg.html>.

¹¹⁴ PURNENDRA JAIN, JAPAN'S SUBNATIONAL GOVERNMENTS IN INTERNATIONAL AFFAIRS 65 (2005).

and Teaching (JET) Program, which “aims to promote internationalization in Japan’s local communities by helping to improve foreign language education and developing international exchange at the community level.”¹¹⁵ The JET Program, which is operated by local authorities in cooperation with the Ministry of Foreign Affairs, the Ministry of Internal Affairs and Communication (MIC), the Ministry of Education, Culture, Sports, Science, and Technology (MEXT), and the Council of Local Authorities for International Relations (CLAIR), annually brings about 5,800 young graduates from English-speaking countries to Japan as assistant language teachers at about 2,000 contracting public junior and high schools.¹¹⁶ In general, Caucasians hold a relatively “privileged” position in Japanese society, as they enjoy semi-extraterritorial rights and can call upon the credible protection of their home governments in the form of *gaiatsu* (pressure from the outside) if they need it. Because they work and live in a decent environment, they rarely face the kinds of problems that other foreigners encounter.

B. Illegal Foreigners

Illegal foreign workers are born and raised abroad.¹¹⁷ They overstay their visas or enter Japan with forged passports or by other illegal methods and come mostly from East Asian countries.¹¹⁸ Three quarters of overstayed foreigners enter Japan as “temporary visitors” with 15- or 60-day visas. Others enter as “entertainers,” “pre-college students,” “college students,” and “trainees,” with visas that range from three months to one year. Given their visa status, these foreigners, who are mostly in their twenties and thirties, do not have the right to work in Japan as “unskilled workers.” The Immigration Bureau estimated that at the end of 2008 about 100,000 foreigners were overstaying their visas.

¹¹⁵ *The Japan Exchange and Teaching (JET) Programme*, JAPAN LOCAL GOV'T CTR., <http://www.jlgc.org.au/activities/jet.html> (last visited Jan. 29, 2011).

¹¹⁶ *Id.*

¹¹⁷ See Sharon Noguchi, *Hard Work, Furtive Living: Illegal Immigrants in Japan*, YALE GLOBAL ONLINE (Mar. 2, 2006), <http://yaleglobal.yale.edu/content/hard-work-furtive-living-illegal-immigrants-japan>.

¹¹⁸ See *id.*

Illegal foreigners possess non-Japanese blood and can be subdivided into two groups according to their geographic origin: East Asians and South Asians. East Asian illegal immigrants consist of both female and male workers from Korea, China, the Philippines, and Thailand. South Asian workers generally enter Japan as “temporary visitors” and overstay their visas. Because there were no visa requirements for Bangladeshis and Pakistanis before 1989, or for Iranians before 1993, most of the remaining South Asians and Iranians entered Japan before that time. By the early 2000s, most Iranians and many South Asians voluntarily returned home or were deported. Due to similarities in racial descent, culture, and appearance, Koreans, Chinese, Filipinos and Thais look and act less foreign in the eyes of Japanese than “darker-skin” Indians, Pakistanis, and Bangladeshis.

About two-thirds of illegal foreigners find employment around the Tokyo metropolitan area. They tend to occupy the low-paying, dirty, difficult, and dangerous jobs. Men work as construction workers, factory workers, cooks, and kitchen helpers. Women work mostly in bars, but some also work as waitresses and factory workers. About half of illegal foreign workers earn \$85 to \$122 USD per day while a third makes less than \$85 USD per day. Their jobs are not guaranteed and none provide bonuses, paid holidays, or company insurance.¹¹⁹ Typically, illegal Asian workers tend to work in small companies with fewer than twenty employees.¹²⁰ Japanese small businesses prefer to hire illegal foreign workers because they are then not obligated to pay health insurance premiums—a great saving for the company.¹²¹ Illegal Asian workers in Japan are obliged to rely on informal channels to find jobs, such as recruiting agents, brokers, or friends.¹²² These “middle people” often take advantage of the workers’ illegal status by taking dispatching fees from them without securing them a job.¹²³

Some female entertainers have overstayed their entertainer

¹¹⁹ See *id.* at 16.

¹²⁰ Interview with the representative of a business association whose members hire illegal foreign workers (Nov. 28, 1998).

¹²¹ *Id.*

¹²² *Id.*

¹²³ Interview with a former Thai broker, in Tsuchiura-shi, Ibaraki (Dec. 28, 1998).

visas and work in the sex industry, which often overlaps with the “entertainment” industry.¹²⁴ In other cases, Filipina and Thai women have been deceived and forced into sex slavery. As forced prostitutes, they receive between \$300 and \$430 USD per customer.¹²⁵ These women must pay rent to their brokers or to their madams, since they cannot get an apartment on their own.¹²⁶ They are also burdened by medical and other miscellaneous expenses.¹²⁷ Moreover, Japanese workers, madams, and *yakuza*—or Japanese gangsters—closely monitor these foreign women workers.¹²⁸

Japan does not welcome unskilled foreign workers despite its aging population and shrinking domestic labor supply.¹²⁹ The presence of unskilled foreign workers without work visas is largely a by-product of Japan’s failed policy to control their entries and departures.¹³⁰ The 1990 revised Immigration Control Law effectively denies these people, mainly Asians, the right to exist as “unskilled foreign workers” in Japan.¹³¹ It essentially turned Asian unskilled workers into illegal residents.¹³² The government clearly wants only “good” foreigners—those with Japanese blood or specialized skills. Therefore, the MOFA instructs its embassies abroad to conduct rigorous examinations before issuing visas in order to prevent people from entering Japan to obtain illegal employment.¹³³ At the same time, it aims to promote international exchanges with different countries by simplifying and accelerating its visa-issuing procedures.

¹²⁴ *Id.*

¹²⁵ Interviews with Thai entertainers, in Iwai-shi, Ibaraki (June 17, 1998).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Noguchi, *supra* note 117.

¹³⁰ *Id.*

¹³¹ Christiane Kuptsch & Nana Oishi, *Training Abroad: German and Japanese Schemes for Workers from Transition Economies or Developing Countries*, INT’L LAB. OFF., EMP. DEP’T 34 (Oct. 1994), <http://www.ilo.org/public/english/protection/migrant/download/imp/imp03.pdf>.

¹³² *See id.*

¹³³ *The Recent Actions Japan Has Taken to Combat TIP (Trafficking in Persons)*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Mar. 2008), http://www.mofa.go.jp/policy/i_crime/people/action0508.html.

Meanwhile, the MOJ annually conducts a one-month Campaign against the Employment of Illegal Foreigners with raids of business establishments that hire illegal foreign workers.¹³⁴ These occasional raids prevent illegal Asians from forming permanent communities, as they are constantly hiding or on the run.¹³⁵ In 1998, the Immigration Bureau Chief of Ministry, Takenaka Shigeo, called for joint action between the National Police Agency (NPA) and the Ministry of Health, Labor, and Welfare (MHLW), establishing the Liaison Council of Government Agencies on the Affairs of Illegal Foreign Workers to gather information on illegal foreign workers and to prevent illegal employment.¹³⁶ These government agencies joined forces to crack down on illegal foreign workers nationwide.¹³⁷

In 2003, the government formulated an "Action Plan for the Revitalization of a Society Resistant to Crime," with the goal of halving the number of illegal foreign residents associated with criminality by 2008.¹³⁸ As a result of the Action Plan, the Tokyo Metropolitan Police began conducting random checks on foreigners in areas where illegal foreigners were known to congregate.¹³⁹ During these checks, any Asian can be asked to show his or her immigration document and be placed in custody if he or she fails to produce proper documentation. As a result, the official number of illegal foreigners declined from about 220,000 in 2002 to 100,000 in 2008.

The Foreign Workers' Affairs Division of the MHLW has maintained that Japan's Labor Standards Law protects all workers in Japan, including overstaying foreign workers from "discriminatory treatment with respect to wages, working hours or

¹³⁴ Interview with an official of the National Police Agency, (Dec. 10, 2000).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Interview with an official of the Ministry of Justice, Immigration Policy Planner's Office (July 26, 2006).

¹³⁹ Illegal foreigners were known to congregate in the Shinjuku, Shin-Okubo, Takadanobaba, and Shibuya areas. See *Principal Policies of the Tokyo Metropolitan Government*, THE OFFICIAL TOKYO METRO WEBSITE, <http://www.chijihon.metro.tokyo.jp/english/PROFILE/POLICY/policy16.htm> (last visited Mar. 27, 2011) (announcing the new measures aimed at reducing the number of illegal foreign residents in the Greater Tokyo area).

other working conditions,” regardless of their nationalities.¹⁴⁰ Foreign workers are also entitled to fundamental labor rights such as the right to organize a trade union and hold collective bargaining negotiations.¹⁴¹ When these unskilled foreign workers encounter labor rights violations by their employers, the Foreign Workers’ Affairs Division of the MHLW steps in, making no distinction between overstayed and legal foreign workers in providing labor protection.¹⁴² MHLW officials have expressed concern that without these equally-applied protective measures, Japanese employers might develop a two-tiered labor market for Japanese and foreign workers, thereby undermining labor standards in Japan.¹⁴³

In reality, though, illegal foreign workers do not receive full legal protection.¹⁴⁴ As illegals, they sometimes encounter irregular Japanese business practices such as uncompensated accident insurance, unpaid wages, and arbitrary dismissal.¹⁴⁵ Because they fear the disclosure of illegal employment, employers sometimes insert Japanese names into employment contracts for illegal foreign workers.¹⁴⁶ This practice leads to serious problems when illegal foreign workers suffer from industrial injuries but cannot claim accident insurance because their names do not match those in the employment contracts.¹⁴⁷ In other cases, employers simply refuse to cooperate with insurance claims for illegal foreign

¹⁴⁰ *Rōdō-kijun-hō* [Labor Standards Act], Act No. 49 of 1947, art. 3 (Japan).

¹⁴¹ See [Labor Union Act], Act No. 174 of 1949, art. 1 (Japan) (The purpose of this Act is to “defend the exercise by workers of voluntary organization and association in labor unions so that they may carry out collective action . . . ; and to promote the practice of collective bargaining . . .”).

¹⁴² See *Ministry of Health, Labour and Welfare Policy Statement*, MINISTRY OF HEALTH, LAB. AND WELFARE, <http://www.mhlw.go.jp/english/policy/affairs/dl/intro.pdf> (last visited Mar. 24, 2011).

¹⁴³ Interview with an official of the Ministry of Health, Labor, and Welfare Foreign Workers’ Affairs (July 20, 2006).

¹⁴⁴ See *infra* text accompanying notes 145-149.

¹⁴⁵ HIROMI MORI, IMMIGRATION POLICY AND FOREIGN WORKERS IN JAPAN 197 (1997) (claiming that only a marginal proportion of accidents are reported, and thus insurance payments are rarely made).

¹⁴⁶ Interview with Murayama Satoshi of the Kanagawa City Union (Oct. 18, 1998).

¹⁴⁷ See MORI, *supra* note 145, at 197 (“Employers are generally uncooperative in claiming for insurance for fear of disclosures of illegal employment. Employers sometimes falsely insert a Japanese name to designate illegal victims.”).

workers.¹⁴⁸ Moreover, employers may stop paying illegal Asian workers or dismiss them for arbitrary reasons, presuming that illegal workers will be too afraid to report irregular labor practices to authorities.¹⁴⁹

The National Health Insurance Division of the MHLW has also made it difficult for illegal foreigners to maintain a safe and healthy life in Japan.¹⁵⁰ Faced with Japan's aging population and increased financial constraints, MHLW officials feel that their concern for Japanese residents is more immediate than that for foreign residents with no legal status.¹⁵¹ In 1990, the MHLW stopped offering illegal foreigners publicly-subsidized medical assistance, which has traditionally been a significant resource for those living in poverty or burdened with large unpaid medical expenses. Two years later, the ministry instructed local governments to limit application for National Health Insurance (*kokumin kenkō hoken*; hereafter NHI) to those foreigners who "had registered themselves, and who would be in the country for over one year."¹⁵² In 2004, this became an official written policy. Consequently, overstayed foreigners could no longer be insured under any public insurance scheme and would be forced to bear all medical costs themselves.¹⁵³ Since pregnant foreign women often do not receive necessary prenatal care due to high cost, problems

¹⁴⁸ JAPAN OCCUPATIONAL SAFETY AND HEALTH RESOURCE CENTER, ed., *Gaikokujin rōdōsha no rōsai hakusho* [*White papers on industrial accidents among foreign workers*] (Tokyo: Kaifū Shobō, 1992). According to a 1992 study, only 19 percent of employers directly compensate injured overstaying foreign workers. *Id.*

¹⁴⁹ See Takeyuki Tsuda, Assoc. Dir., Ctr for Comparative Immigration Studies, University of California – San Diego, Address at the UC-CIIP Seminar: Reluctant Hosts: The Future of Japan as a Country of Immigration (Feb. 23, 2001) ("Illegal aliens in Japan are sometimes forced to toil under exploitative working conditions and low wages and cannot report employer abuses because of fear of apprehension.").

¹⁵⁰ See *infra* text accompanying notes 152.

¹⁵¹ Interviews with an official of the Ministry of Health, Labor, and Welfare National Health Insurance Section (Jan. 7, 1999 and May 18, 2000).

¹⁵² Sumi Shin, *Newcomer Migrants: Implications for Japan's Administration of Social Services and Nationality*, 6 UCLA J. INT'L L. & FOREIGN AFF. 313, 318 (2002) (referencing the MHLW's written notice recommending that eligibility for NHI required undergoing alien registration).

¹⁵³ See *infra* text accompanying notes 175-181 (describing the measures taken by local governments to counteract the lack of national health care available to illegal foreigners).

during delivery are not uncommon among this population.¹⁵⁴ The infant mortality rate is unusually high among foreign mothers.¹⁵⁵ According to a 1997 report, the number of stillborn babies of Thai mothers was 2.1 times higher than that of Japanese mothers.¹⁵⁶ The number of babies who died before their first birthday was 3.8 times higher for Filipina mothers, and 2.5 times higher for Thai mothers, than for Japanese mothers.¹⁵⁷

Many illegal foreigners were either unable to seek medical treatment or were forced to treat themselves because of high medical expenses, often with disastrous results.¹⁵⁸ This was the case for one Malaysian woman who died while trying to treat her acute abdominal pains with over-the-counter medicine with directions written entirely in Japanese.¹⁵⁹ Due to her tourist visa status, she did not have health insurance, and thus thought that it would be too expensive to see a doctor.¹⁶⁰ In numerous similar cases, foreigners without NHI coverage often wait until the illness worsens before going to the hospital because they cannot afford to pay the medical bills.¹⁶¹ One month after the initial diagnosis, she arrived in an ambulance with the lower half of her body covered with blood.¹⁶² The doctor asked, "Why haven't you come until now?" She replied, "I don't have money and I couldn't afford to take days off from work."¹⁶³ Without NHI, the cost would have been \$25,000 USD.¹⁶⁴ With NHI, it would have been only \$730 USD and would not have kept her from seeking treatment earlier.¹⁶⁵

¹⁵⁴ Interview with Sawada Takashi of SHARE (May 26, 1998).

¹⁵⁵ See *infra* text accompanying notes 156-157.

¹⁵⁶ *More Non-Japanese Having Babies*, ASAHI SHIMBUN, Oct. 8, 1999, at 1.

¹⁵⁷ *Id.*

¹⁵⁸ Takayama Toshio, *Gaikokujin Wo Shimedasu Iryō - fukushi* [Shutting Foreigners out of Medical Treatment and Welfare], in OKASARERU JINKEN GAIKOKUJIN RŌDŌSHA [NO RIGHTS FOR FOREIGN WORKERS] 127-45 (Dai-san Shokan ed., 1992).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Interview with Sawada Takashi, *supra* note 154 (May 26, 1998).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

II. Local Governments and Accommodation of Foreigners

Local governments managing large populations of foreigners have established special consultation centers for foreigners to answer inquiries in various foreign languages on family life, schools, housing, emergency contacts, the social welfare system, insurance procedures, traffic accident compensation, and Japanese customs.¹⁶⁶ For example, in Oizumi-machi and Ōta-shi, Gunma Prefecture where nikkei Brazilians constitute about 20 percent of the total population, government offices, including public schools and police boxes, employ regular Portuguese speakers or translators.¹⁶⁷ In areas where several subcontractors of manufacturing firms employ nikkeijin, local governments provide them with subsidized Japanese-language classes, health insurance programs, Portuguese and Spanish translators, and publicly-subsidized apartments (although most choose to live in company housing).¹⁶⁸ Nikkeijin help stabilize the local labor market in those areas where companies regularly experience labor shortages. As financial conditions of local manufacturers and their subcontracting companies improve, tax revenues for local governments also increase. Some of these revenues go back to fund more facilities and services such as translators at government offices and free Japanese language classes for nikkeijin, thereby attracting even more nikkeijin to the area.

Local governments have also set up labor consultation systems, through which they and their foreign interpreters offer free advisory services to foreign workers on working conditions

¹⁶⁶ See Kanagawa Prefecture Government, *Gaikokuseki kenmin shien jissen no tame ni* [For the Practice of Assisting Foreign Residents in the Prefecture] 53 (Yokohama: Kanagawa Prefecture Government, Foreign Affairs Division, 1994). Some city halls, town halls, and ward offices also offer their own consultation services to foreigners. Interview with an official of the Kanagawa Prefecture Government Foreign Affairs Division (Dec. 1, 1998). Foreigners in the Kanagawa prefecture can also receive advisory service on human rights issues at the Human Rights Consultation Window. *Id.*

¹⁶⁷ Interview with the mayors of Oizumi-machi and Ōta-shi (Nov. 30 2008); interview with the police chief of the Gunma Prefecture (Nov. 27, 2008).

¹⁶⁸ See generally DAVID LINGER, NO ONE HOME: BRAZILIAN SELVES REMADE IN JAPAN (2001); LOCAL CITIZENSHIP IN RECENT COUNTRIES OF IMMIGRATION: JAPAN IN COMPARATIVE PERSPECTIVE (TAKEYUKI TSUDA, ed.) (2006); TAKEYUKI TSUDA, STRANGERS IN THE ETHNIC HOMELAND: JAPANESE BRAZILIAN RETURN MIGRATION IN TRANSNATIONAL PERSPECTIVE (2003).

and other general labor problems as part of their administrative services.¹⁶⁹ Labor consultation offices give advice on Japanese labor laws and on domestic employment practices in English and sometimes in additional languages, such as Chinese, Korean, Portuguese, and Spanish. Dispatched interpreters for other languages can also be arranged.¹⁷⁰ These offices specialize in labor dispute settlement in the areas of labor contracts, work conditions, paid holidays and working hours, dismissal and nonpayment of wages, compensation for injury at the workplace and medical expenses, and labor union law.¹⁷¹ With the consent of both the foreign worker and their employer, officials at these offices also mediate labor disputes between the two parties, acting as third party conciliators and assisting them in reaching an acceptable solution to the matter in question.¹⁷² They do not represent either party, but rather they try to bring the parties to a reasonable solution by taking both parties' views into consideration.¹⁷³ As neutral mediators, government officials at

¹⁶⁹ TOKYO METROPOLITAN GOVERNMENT, *Rōdō sōdan oyobi assen no gaiyō (Heisei 9 nendo)* [1997 Outline of Labor Consultation and Mediation] 27-33 (Tokyo: Tokyo Metropolitan Government, Labor and Economic Bureau, 1998). Labor offices in Tokyo appeared to be most active, perhaps due to the high population of foreign workers in the city. *Id.* Over half of the cases involved non-payment of wages, unlawful dismissal, and labor contract infringement. *Id.* Although labor offices in Tokyo handled 2875 cases in 1997, only about 400 of them involved illegal foreign workers. Interview with an official of the Tokyo Metropolitan Government Labor Administration Division (Dec. 21, 1998). The Zentōitsu Workers' Union alone worked on approximately 1500 cases involving illegal foreign workers the same year. *Id.* And this number did not include consultations. *Id.*

¹⁷⁰ See Guidebook from the Tokyo Metropolitan Government Labor Consultation Center [hereinafter Guidebook], Bureau of Industrial & Labor Affairs 4, <http://www.hataraku.metro.tokyo.jp/soudan-c/center/all-e2008.pdf> (last visited Mar. 27, 2011) ("In cases where employees cannot understand their contracts written in Japanese, it may be possible to have them translated into their own languages.").

¹⁷¹ *Id.* at 134.

¹⁷² Interview with an official of the Tokyo Labor Administration Office (Oct. 9, 1998).

¹⁷³ Interview with an official of the Tokyo Metropolitan Government's Economic and Labor Division, (May 12, 1998). For instance, a part-time Chinese worker at a restaurant sought advice at the Tokyo Labor Administrative Office after the employer refused to pay him fifteen days worth of owed wages. *Id.* The Chinese worker explained that he had quit working because the manager complained that he took time off without giving any notice. *Id.* The advisor approached the manager and discovered that the manager tried to tell the Chinese worker that he did not want to pay the wages

these offices try to listen to both sides and do not make demands on any concerned party.¹⁷⁴

In solving problems and conflicts involving foreign residents and assuring their security and livelihood, local governments cannot always treat foreigners on strictly legal terms and must break with the central government on issues concerning foreigners' social, civil, and political rights.¹⁷⁵ Certain local governments, for instance, have split with the national government in their decision to extend medical services to all foreign residents, regardless of their visa or residential status.¹⁷⁶ Local governments in Tokyo, Osaka, Utsunomiya, Kawasaki, Yokohama, Kanagawa, and Saitama have done this by reviving the 1899 Sick or Dead Travelers Treatment Law, originally aimed at providing medical care to foreign travelers who were taken ill while traveling in Japan and had no caretaker.¹⁷⁷ Illegal foreigners have benefited from this law, as it applies to any foreigner who temporarily visits Japan and does not have to register as a foreign resident.¹⁷⁸ Many illegal foreigners who have not registered with their local authorities meet these criteria. Some prefectural governments also have set up an "Emergency Medical Fee Subsidiary System" to cover unpaid medical expenses for emergency medical care.¹⁷⁹

except in the presence of the person who had introduced the employee to him. *Id.* But in the presence of the advisor, he would pay the wages and deduct 30percent as a fine for the loss the employee incurred to the restaurant due to his unexpected absences. *Id.* The advisor then explained to the manager that Japanese Labor Laws stipulate that sanctions must be explicitly stated as a part of the rules of employment, and fines cannot exceed half the wages for one day's work or 10 percent of the total wages over one payment period. *Id.* When the Chinese worker met with the employer, he apologized for taking absence without notice and the manager paid fifteen days' wages and transportation expenses. *Id.*

¹⁷⁴ See Guidebook, *supra* note 170, at 134.

¹⁷⁵ See generally T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS AND OTHER ESSAYS* (1950) (discussing how these three dimensions of membership, as espoused by local authorities in progressive areas, are similar to T.H. Marshall's conceptualization of citizenship).

¹⁷⁶ Yasuo Takao, *Foreigners' Rights in Japan: Beneficiaries to Participants*, 43 *ASIAN SURVEY* 527, 543 (2003).

¹⁷⁷ See *id.*

¹⁷⁸ *Id.*

¹⁷⁹ See, e.g., Osaka Prefecture's Policy Regarding Foreign National Residents, *OSAKA PREFECTURAL GOV'T*, http://www.pref.osaka.jp/en/life/general/f_citizens.html (last visited Mar. 27, 2011) ("To

According to this system, the prefectural government covers 70 percent of the unpaid medical bill, while the city, town, and village cover 20 percent and the employer covers 10 percent. The Gunma Prefectural Government introduced this system in 1993 and was subsequently followed by Kanagawa, Hyogo, Chiba, Saitama, Tokyo, and Yamanashi.¹⁸⁰ In 1993, the Tsukuba government in the Ibaraki prefecture initiated a free AIDS consultation service in English and Thai at the Tsukuba Health Center. Some progressive local governments have even requested that the central government expand its medical system to financially assist foreigners who cannot pay medical bills and reinstate the Livelihood Protection Law for overstayed foreigners.¹⁸¹ In sum, despite the actions of the central government to limit NHI to certain foreigners, local governments in many areas have found alternative ways to offer direct relief to all foreign residents in immediate need.¹⁸²

In protecting the civil rights of their foreign residents, local governments, particularly in Kawasaki City where many *zainichi* Koreans live, have directly challenged conservative national policies.¹⁸³ In 1985, Kawasaki officials acted against the national government and sided with the Koreans when they decided not to take legal action against Koreans who refused to be fingerprinted for their alien registration cards.¹⁸⁴ After other local governments began to follow Kawasaki's example, the central government eventually eliminated the fingerprinting requirement for foreigners in 2000.¹⁸⁵ In 1996, Kawasaki officials also played a leading role in the movement to eliminate the requirement of Japanese

absorb outstanding medical fees from uninsured foreign nationals' treatment, and thus prevent them from being barred from treatment . . . for emergency medical institutions, a subsidization system to cover a portion of the outstanding amounts was made . . .").

¹⁸⁰ Takao, *supra* note 176, at 543.

¹⁸¹ *Id.* at 543-44.

¹⁸² See *supra* text accompanying notes 176-181.

¹⁸³ See *infra* text accompanying notes 184-191.

¹⁸⁴ Interview with an official of the Kawasaki City Government Citizens' Bureau (Dec. 25, 1998).

¹⁸⁵ See Catherine Lu et al., *Japan and "The Other": Reconceiving Japanese Citizenship in the Era of Globalization*, 29 *ASIAN PERSP.* 99, 115 (2005) ("[D]ue to internal and international protests, the practice of fingerprinting permanent resident aliens was discontinued in 1993; by 2000, the practice was abandoned for all aliens.").

nationality for city civil service positions (excluding firefighters), an initiative subsequently replicated by other cities and prefectures.¹⁸⁶

Local officials have also been active in the movement to obtain voting rights for foreigners in local elections.¹⁸⁷ In 1990, eleven Koreans in Osaka sued for foreigners' suffrage.¹⁸⁸ In 1995, the Supreme Court held that granting suffrage to foreign residents at local levels was "not unconstitutional" and should be left to the National Diet to legislate.¹⁸⁹ By 2001, more than 1400 local governments (representing about 73 percent of Japan's total population) had adopted resolutions urging voting rights for non-Japanese residents in local elections.¹⁹⁰ They believed that foreigners, especially permanent residents, who have close relationships with local communities in their daily lives, should be granted local suffrage.¹⁹¹ Since 1995, all political parties except the Liberal Democratic Party have begun to support local suffrage for foreign residents in an effort to enhance their support bases.¹⁹² Each year since 1998, the New Komeito Party has submitted a bill for consideration by the National Diet on local voting rights for foreign residents, but all have been shut down by conservative LDP politicians.¹⁹³ In 2010, the ruling Democratic Party of Japan

¹⁸⁶ See Takamichi Kajita, *The Challenge of Incorporating Foreigners in Japan: "Ethnic Japanese" and "Sociological Japanese,"* in *TEMPORARY WORKERS OR FUTURE CITIZENS* (Myron Weiner & Tadashi Hanami eds., 1998).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See Miles E. Hawks, *Granting Permanent Resident Aliens the Right to Vote in Local Government: The New Kōmeitō Continues to Promote Alien Suffrage in Japan*, 17 *PAC. RIM L. & POL'Y J.* 369, 369 (2008) ("[T]he Japanese Supreme Court has held that granting suffrage to [permanent resident aliens] on a subnational level is constitutional.").

¹⁹⁰ *Id.* at 375.

¹⁹¹ *See id.*

¹⁹² *Id.* at 375-76.

¹⁹³ See Takao, *supra* note 176, at 548-50 (describing the efforts of the New Kōmeitō in extending voting rights to foreign residents). The New Kōmeitō proposal would extend permanent foreign residents the rights to vote in local assembly and mayoral elections if they have lived in the same municipality for a minimum of three months. *Id.* In an effort to reach a compromise with the LDP, the New Kōmeitō proposed in 2000 that local suffrage be limited to permanent residents from countries with which Japan had diplomatic ties (i.e. not to North Korean nationals). *Id.* Conservative LDP politicians invoked Article 15 of the Constitution, which states that political suffrage is a

finally succeeded in submitting the bill for deliberation in the National Diet. However, some of its conservative members and a ruling coalition partner, the Kokumin Shinto Party, opposed the bill.¹⁹⁴ Meanwhile, some municipalities have passed ordinances to allow permanent foreign residents to vote in plebiscites that seek residents' opinions on local issues: the Kanagawa Prefectural government, in particular, has pressed for the MIC to examine ways for foreigners to be able to participate in local policy making in the regional Committee for the Protection of Human Rights.¹⁹⁵

In the absence of local suffrage for foreigners, some local authorities have created foreigner advisory councils as a means to elicit foreign residents' opinions on public services and welfare needs.¹⁹⁶ In 1994, local government officials in Kawasaki City set up Japan's first foreign resident advisory council, the Kawasaki City Representative Assembly for Foreign Residents, which brings selected foreign residents together to discuss issues concerning their livelihood.¹⁹⁷ The Citizens' Bureau of the Kawasaki City Government formed a six-person team to develop an institutional design for political participation of foreign residents. Shimohara Hajime, former professor of European politics in the University of Tokyo's prestigious Law Department, headed the research committee.¹⁹⁸ Believing that something had to be done to combat

right for citizens of the country, and giving this right to foreign residents would violate the supreme law. *Id.* Some (including Koizumi Junichiro) argued that foreigners who desire suffrage should naturalize, while others proposed that conditional local suffrage be reciprocated by home countries. *Id.* As a result, a network was formed in South Korea to mobilize the government to grant its permanent foreign residents, mostly Chinese, local suffrage for the 2006 local elections. *Id.* This new development in Korea has taken by surprise the LDP politicians who had proposed the idea. *Id.*

¹⁹⁴ Alex Martin, *Foreigner Suffrage Opponents Rally: Conservative Politicians Express Outrage at DPJ Plan*, THE JAPAN TIMES ONLINE (Apr. 18, 2010), <http://search.japantimes.co.jp/cgi-bin/nn20100418a1.html>.

¹⁹⁵ Kanagawa Prefecture Government, *Heisei 11 Nendo Kuni No Shisaku-Seido-Yosan Ni Kansuru Yōbō [Demands Concerning the Country's Measure-System-Budget for 1999]* (Yokohama: Kanagawa Prefecture Government Department of Planning, 1998).

¹⁹⁶ Hawks, *supra* note 189, at 371.

¹⁹⁷ While foreigner committees in Osaka, Kyoto, and the Hyogo prefecture appear to have been established earlier than the one in the Kawasaki City, these committees were mostly "Discussion Groups," which also included Japanese members.

¹⁹⁸ Interview with Shimohara Hajime (Jan. 20, 1999).

discrimination against foreigners and recognizing that Japan was not ready to grant foreigners voting rights, Professor Hajime concluded that the most appropriate action would be the establishment of an institution where foreign residents could express their opinions.¹⁹⁹ After another scholar-member, Nakai Takeshi, visited various European cities and studied several institutional designs for political participation of foreign residents, the team decided to borrow the German institutional design from Frankfurt's Representative Assembly for Foreign Residents.²⁰⁰

Kawasaki's Representative Assembly now meets four times a year to discuss problems of foreign residents.²⁰¹ During these meetings, "representative" members, who must be at least 18 years of age and have resided in Kawasaki for at least a year, discuss pressing matters for foreign residents, such as education, community life, and urban improvement.²⁰² Their discussion, which is conducted only in Japanese, includes debates among members on the proper course of action that they wish to recommend to their mayor.²⁰³ At the end of their term, they present their recommendations to the mayor, who then decides how to implement them.²⁰⁴

The First Representative Assembly (1997-1998) consisted of twenty-six members: Korean and Chinese immigrant ethnic associations recommended five members, while government officials selected the other twenty-one members from a pool of

¹⁹⁹ *Id.*

²⁰⁰ Investigative Research Committee of the Kawasaki City Representative Assembly for Foreign Residents, *Kashō: Kawasaki-shi Gaikokujin Shimin Daihyōsha Kaigi Chōsa Kenkyū Hōkokusho [Tentative Name: Kawasaki City Representative Assembly for Foreign Residents – Investigative Report]* (Kawasaki: Kawasaki City Government, Citizens Bureau, 1996).

²⁰¹ Interview with an official of the Kawasaki City Government Citizens' Bureau (Dec. 25, 1998); see also Yamada Takao, *Kawasaki-shi Gaikokujin Shimin Daihyōsha Kaigi No Seiritsu To Genjō [The Establishment and Conditions of the Kawasaki City Representative Assembly for Foreign Residents]*, in GAIKOKUJINSHIMIN TO SEIJSANKA [FOREIGN RESIDENTS AND POLITICAL PARTICIPATION] 39-57 (Miyajima Takashi, ed., 2000); Higuchi Naoto, *Taikō To Kyōryoku [Confrontation and Cooperation]* in GAIKOKUJINSHIMIN TO SEIJSANKA [FOREIGN RESIDENTS AND POLITICAL PARTICIPATION] 20-38 (Miyajima Takashi, ed., 2000).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

258 applications.²⁰⁵ The number of representatives from each immigrant ethnic group was determined proportionately, based on the number of its members who had registered in Kawasaki City.²⁰⁶ Each representative member could serve only two terms of office. Lee In Ha, a prominent zainichi Korean, was selected as chairperson of the First Assembly. The First Assembly proposed that the city administrators better assist international students by overhauling the scholarship system.²⁰⁷ In addition, the Committee on Community Life proposed creating a housing ordinance that included a clause prohibiting discrimination in the private rental market against foreign residents, the disabled, the elderly, single mothers, and families with children. Assembly members urged the city administrators to consider effective methods of abolishing housing discrimination, for example, by educating landowners and residential building managers or making public the names of those who discriminated. They also asked the city administrators to consider establishing a public guarantor system made up of local governments, real estate agents, universities, vocational schools, and citizens' groups.²⁰⁸ The Kawasaki City responded soon after by revising its "Fundamental Plan of Kawasaki Residences" and worked to create a fundamental ordinance on housing.²⁰⁹ Moreover, starting in 2000, the Kawasaki City Government began offering to sign as guarantor for its foreign residents in renting and buying residences.²¹⁰

²⁰⁵ The respective numbers changed to three recommended members and twenty-three selected members, during the Second Assembly (1998-1999).

²⁰⁶ Takao, *supra* note 176, at 546.

²⁰⁷ *Id.* ("Since 1995, the assembly has proposed a wide range of measures to solve community problems such as . . . foreigners' limited eligibility for university entrance examinations . . .").

²⁰⁸ Kawasaki City Representative Assembly for Foreign Residents, *Kawasaki-Shi Gaikokujin Shimin Daihyōsha Kaigi Nenji Hōkoku 1997 Nendo* [1997 Annual Report of the Kawasaki City Representative Assembly for Foreign Residents] (Kawasaki: Kawasaki City Government Citizens Affairs Bureau, 1998); see also *Kawasaki City Representative Assembly for Foreign Residents Newsletter* (Kawasaki City Government), Mar. 31, 1997, at 5-6.

²⁰⁹ Kawasaki City Representative Assembly for Foreign Residents, *FY1999 1st Assembly: Summary of Assembly Meetings*, (last visited Mar. 27, 2011) <http://www.city.kawasaki.jp/25/25zinken/home/gaikoku/assembly/meeting99-1.htm>.

²¹⁰ Eriko Arita, *Kawasaki Foreign Residents' Panel Has Significant Impact on City Policy*, THE JAPAN TIMES ONLINE (Jan. 3, 2006), <http://search.japantimes.co.jp/cgi->

Since Kawasaki's experiment, other local governments have established similar foreigner advisory councils in their cities or towns, with varying numbers of foreign members and methods of selection (through application to local officials and/or selection from ethnic groups).²¹¹ The foreigner advisory councils provide a mechanism for reflecting the voices of resident foreigners in the policy making process and presenting policy proposals to their local governments.²¹² Unfortunately, however, the city administration lacks the authority to enact many of these proposals.²¹³ An official of Kawasaki's Citizens Affairs Bureau explains, "[w]hen they [foreign representatives] talk about their problems, they eventually come up against the wall of national law and visa status. Those problems are difficult for the city alone to solve." On reform of immigration controls, for example, city officials claim that all the mayor of Kawasaki could do is to submit a proposal to the relevant ministry.²¹⁴ If the proposal is rejected, officials are "obliged to explain to the council what can and cannot be reflected in policies."²¹⁵ In some cases, these foreigner advisory councils fail to offer concrete proposals.²¹⁶ The first annual report of the Tokyo Foreigners Advisory Council, for example, discussed broad and diverse topics, including distribution information to foreigners, human rights, voting in local elections, health, welfare, education, labor, housing,

bin/nn20060103f3.html.

²¹¹ For example: the Tokyo Foreign Advisory Council (1997), the Kanagawa Foreign Residents' Council (1998), the Forum of Kyoto City Policy for Foreign Residents (1998), the Fukuoka Foreign Citizens' Board (1998), the Mino'o City Foreign Residents Policy Council (1999), and the Mitaka International Roundtable (1999). See Kashiwazaki Chikako, *Local Government and Resident Foreigners: A Changing Relationship*, in *JAPAN'S ROAD TO PLURALISM: TRANSFORMING LOCAL COMMUNITIES IN THE GLOBAL ERA* 63, 71 (Shun'ichi Furukawa & Toshihiro Menju eds., 2003).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See *The Kawasaki City Representative Assembly for Foreign Residents*, CITY OF KAWASAKI, <http://www.city.kawasaki.jp/25/25zinken/home/gaikoku/assembly/index.htm> (last visited Apr. 4, 2011).

²¹⁵ Reiji Yoshida, *Kanagawa Gives Foreign Residents Stronger Voice*, THE JAPAN TIMES ONLINE (Aug. 13, 1998), <http://search.japantimes.co.jp/cgi-bin/nn19980813a4.html>.

²¹⁶ *Tokyo Foreigners' Council Wrangles Over Voting, Job Rights*, THE JAPAN TIMES ONLINE (May 12, 1998), <http://search.japantimes.co.jp/cgi-bin/nn19980512a5.html>.

environment, and security, but offered no specific proposals in these areas.²¹⁷

The foreigner advisory councils are further limited by the fact that they are not legislated public entities.²¹⁸ As private bodies, they can be changed easily by the council members themselves, for changes require no legislative process.²¹⁹ The Tokyo Foreign Advisory Council, for example, has not met since 2001, when its members criticized the Tokyo governor, Ishihara Shintarō, for his racist remarks at a Self Defense Force gathering.²²⁰ Furthermore, private bodies are not places where members make policy, only places where members express their opinions.²²¹ For example, the Kanagawa Governor Okazaki Hiroshi can only promise to “respect as much as possible” the council’s view,²²² but like other local government heads, he is not obliged to implement the recommendations of the private panel.²²³ In cases where opinions of members are divided over certain sensitive issues, opinions of all sides are included in the councils’ recommendations. During the third session of the Tokyo Foreign Advisory Council in May 1998, an apparent majority of the council members supported a recommendation to allow foreign residents the right to vote in local elections and work in local governments,²²⁴ but “some North Korean members strongly objected to this recommendation.”²²⁵ The Tokyo Metropolitan Government officials then decided not to allow the council to take votes on such issues, fearing that majority decisions could split the council over politically sensitive issues that divide many North and South Korean residents in Japan.²²⁶

²¹⁷ Interview with an official of the Tokyo Metropolitan Government Bureau of Citizens and Cultural Affairs (May 12, 1998).

²¹⁸ Yoshida, *supra* note 215.

²¹⁹ *See id.*

²²⁰ Apichai W. Shipper, *Criminals or Victims? The Politics of Illegal Foreigners in Japan*, 31 J. JAPANESE STUD. 299, 327 (2005).

²²¹ Yoshida, *supra* note 215.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Tokyo Ready to Set Up Non-Japanese Advisory Council*, THE JAPAN TIMES ONLINE (May 7, 1997), <http://search.japantimes.co.jp/cgi-bin/nn19970507a3.html>.

Although the membership of foreign advisory councils reflects the proportion of each immigrant ethnic group in the area, members cannot be viewed as “representatives” of their own ethnic groups, and none claim to be so.²²⁷ With the exceptions of the Forum in Saku, whose meetings are open to all, and the Council in Hyogo, whose members are *elected* by their own immigrant ethnic groups, local officials *select* most of these “representatives.”²²⁸ Because immigrant ethnic communities and networks among newcomers are not yet sufficiently well-organized to articulate and aggregate their interests at the foreigners’ councils, council members represent only their own opinions and not necessarily those of their ethnic communities, perhaps with the exception of the *zainichi* Koreans and Chinese.²²⁹ Since discussion is held only in Japanese, representation in the Councils is also biased by the competency of the Japanese language members. Understandably, *zainichi* Koreans (and Chinese) dominate most discussion at these Councils because they are native speakers of Japanese.²³⁰ Moreover, the issues raised at these Councils, which are usually influenced or controlled by city government officials, are broad and aim to benefit only legal foreign residents in general.²³¹ Thus, they seldom cover issues of immediate concern for illegal foreigners unless there is an intervention by a Japanese NGO.²³²

²²⁷ *Tokyo to Launch Foreigners’ Council*, THE JAPAN TIMES ONLINE (May 16, 1997), <http://search.japantimes.co.jp/cgi-bin/nn19970516b1.html>.

²²⁸ *See id.*

²²⁹ Interview with Somsee Mochida of the Kawasaki City Representative Assembly for Foreign Residents (Oct. 24, 1998). A Thai representative at the Kawasaki City Representative Assembly for Foreign Residents had tried to encourage other Thais to attend the meeting, but no one showed any interest in participating. *Id.* Besides, many overstayed foreigners do not have the time to attend, for they must work six days a week and prefer to use their only day off for rest. *Id.*

²³⁰ *See Tokyo to Launch Foreigners’ Council*, *supra* note 227.

²³¹ *Id.*

²³² *See NGO Pushes for Foreigners’ Rights*, THE JAPAN TIMES ONLINE (Nov. 1, 2002), <http://search.japantimes.co.jp/cgi-bin/nn20021101b2.html>.

III. Civil Society Organizations: Protecting Foreigners and Demand for More Rights

A. Immigrant Ethnic Associations

Living in a country with few national policies encouraging assimilation of foreigners into its society, legal foreigners have created numerous immigrant ethnic associations that provide ethnic identification and various support systems for themselves.²³³ Historically, large and centralized Korean ethnic associations, Mindan (Korean Residents Union in Japan) and Chōsen Sōren (General Association of Korean Residents in Japan), played an important role in the opposition to the closure of Korean schools (1948), the opposition to the Japan-South Korea agreement on the legal status of resident Koreans (1965), the opposition to the Alien School Act (1968), and the opposition to the revision of the Immigration Control Law between 1968 and 1975.²³⁴ However, major gains in civil rights and social rights for resident Koreans resulted from the efforts of smaller, independent civic groups, who organized not only the protest against employment discrimination by the Hitachi Corporation (1970-1974), but also organized the campaign for the elimination of nationality requirements for professors of national and municipal universities (1975-1979), the campaign for the elimination of fingerprinting imposed on foreign residents (1980s), the campaign for the elimination of nationality requirements for public housing and child allowance (1970s), the campaign to revamp Japan's education policy for foreigners, and the campaign to provide financial aid for the aged excluded from

²³³ APICHAJ W. SHIPPER, FIGHTING FOR FOREIGNERS: IMMIGRATION AND ITS IMPACT ON JAPANESE DEMOCRACY 71 (2008).

²³⁴ Korean in Japan Human Rights Protection Committee, ed., *Zainichi chōsenjin jinken hakusho [White papers on human rights of Zainichi Koreans]* 97-99 (Tokyo: Chōsen Seinensha, 1996). The movement to revamp Japan's educational policy for foreigners is an exception, because Chōsen Sōren (then known as Chōren) launched this political campaign for the Freedom of Ethnic Education (*minzoku kyōiku no jiyūsei*) since 1948 when the Japanese government began to regulate Korean schools. *Id.* The movement gained momentum in 1968, three years after the establishment of the Korea University. *Id.* By 1994, the organization had successfully fought for the school children at Chōsen Sōren-sponsored high schools to be able to take the entrance examination in about 40 percent of Japan's private universities. *Id.* During the same year, the Japan Railway (JR) began granting the same train discount for Korean schools' students as it does for Japanese schools' students. *Id.*

the national pension system (1990s).²³⁵ Although Mindan and Chōsen Sōren participated in these movements, independent, smaller civic groups led the effort.²³⁶

For example, a group of resident Koreans organized the Council for Combating Discrimination against Ethnic People in Japan (*minzoku sabetsu to tatakau renraku kyōgikai*, or Mintōren) in order to protest against employment discrimination in the Hitachi Corporation. In 1970, Hitachi offered a position to a zainichi Korean, Park Chong Seok, but later withdrew the offer after Park could not produce a copy of his family register.²³⁷ Because only Japanese are allowed to possess family registries in Japan, Park took Hitachi to court, accusing the corporation of racial discrimination in its employment practices.²³⁸ In 1974, the court ruled in his favor.²³⁹ Since then, the situation for zainichi Koreans has improved considerably as they have found work in both the private office and site-based (non-office type) settings.²⁴⁰

In addition, independent civic groups also led the 1970s and 1980s effort to abolish nationality requirements for public service employees, such as municipal administrative personnel, teachers, and professors. The “movement to abolish governmental discrimination” (*gyōsei sabetsu teppai undō*) began when zainichi Koreans in the Kawasaki City pressed the city officials to abolish discrimination on public housing.²⁴¹ The movement spread to Osaka, where zainichi Koreans demanded non-discriminatory treatment towards their children at schools and inclusion in the national pension plan.²⁴² By 1978, the movement had expanded

²³⁵ See DAVID CHAPMAN, *ZAINICHI KOREAN IDENTITY AND ETHNICITY* 35 (2008).

²³⁶ Higuchi Naoto, *Taikō to Kyōryoku* [*Confrontation and Cooperation*], in *GAIKOKUJINSHIMIN TO SEIJISANKA* [FOREIGN RESIDENTS AND POLITICAL PARTICIPATION] 20-38 (Miyajima Takashi ed., 2000).

²³⁷ ‘*Hitachi Struggle*’ *Still Exists Until Now* [*sic*], MINDAN (Apr. 23, 2008), http://www.mindan.org/eng/newspaper/read_artcl.php?newsid=1225.

²³⁸ See *id.*

²³⁹ See *id.*

²⁴⁰ MINTÖREN, *ZAINICHI KANKOKUJIN/CHŌSENJIN NO HOSHO JINKENHŌ* [A LAW FOR COMPENSATING AND RESPECTING THE RIGHTS OF ZAINICHI KOREANS] 136-38 (1989).

²⁴¹ Interview with an official of the Kawasaki City Government’s Citizens Bureau (Dec. 25, 1998).

²⁴² See John Lie, *Zainichi Recognitions: Japan’s Korean Residents’ Ideology and Its Discontents*, JAPAN FOCUS (Nov. 3, 2008), <http://www.japanfocus.org/-John-Lie/2939>.

nationwide. Although the anti-discrimination campaigns gained support throughout Japan, “many of the changes toward Koreans made in the early 1980s are attributable to newly ratified international covenants.”²⁴³ Japan abolished state discrimination on public housing and extended its home loans to foreigners in 1980 after it signed the United Nations Treaty on Human Rights.²⁴⁴ After Japan ratified the United Nations Refugee Treaty in 1982, it improved treatment of foreign children and extended the national pension to permanent foreign residents.²⁴⁵

B. *Immigrant Rights NGOs*

Most interestingly, it is small, issue-oriented support groups for illegal foreigners, rather than large, identity-producing ethnic associations for legal foreigners that are increasingly having a greater policy impact on foreigners' rights.²⁴⁶ For example, the Asian Peoples' Friendship Society (APFS) successfully convinced the MOJ to grant “special residence permission” to twenty-one illegal foreigners who had stayed in Japan longer than ten years.²⁴⁷ The Ministry's decision was also reflected in the 2000 Basic Plan for Immigration Control, which requires authorities dealing with overstayed foreigners to give consideration to their ties with Japanese society.²⁴⁸ Since 2000, the Ministry of Justice has taken various factors, such as the rights of children, into account when reviewing “special permission” applicants that have “ties with Japan.” Between 2000 and 2004, the Ministry of Justice granted special permission to over 40,000 overstayed foreigners.²⁴⁹

²⁴³ Amy Gurowitz, *Mobilizing International Norms: Domestic Actors, Immigrants, and the Japanese State*, 51 *WORLD POLITICS* 413, 417 (1999).

²⁴⁴ *Id.* at 440.

²⁴⁵ *See id.* at 429.

²⁴⁶ Apichai W. Shipper, *Foreigners and Civil Society in Japan*, 79 *PAC. AFFAIRS* 269, 289 (2006).

²⁴⁷ *Present Situations of the Undocumented Foreigners in Japan & Meaning of the General Movement for Obtaining Special Permission for Residence*, PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY (Jan. 31, 2001), <http://blog.peoplepower21.org/English/4475>.

²⁴⁸ *See* Basic Plan for Immigration Control, MINISTRY OF JUSTICE OF JAPAN (2d ed.), <http://www.moj.go.jp/ENGLISH/information/bpic2nd-01.html> (last visited Mar. 27, 2011).

²⁴⁹ Shutsu Nyukoku Kanri [Annual Statistics on Immigration Control], MINISTRY OF

Another major policy victory for immigrant rights NGOs involves the criminalization of transnational human traffickers and protection for victims of trafficking. A political opportunity opened up for immigrant rights activists during the early 2000s after the U.S. government enacted the Victims of Trafficking and Violence Protection Act of 2000.²⁵⁰ Since then, the U.S. State Department has begun to monitor the effects of countries around the world to stop trafficking in persons.²⁵¹ Its annual *Trafficking in Persons Report* places each country into one of three tiers (with the highest, Tier 1, considered acceptable) based on sources from foreign governments, NGOs, news media account, U.S. embassies, and official visits.²⁵² Since 2001, the State Department has consistently weighed its opinions on the NGOs' side and placed Japan in Tier 2—the only developed country in this category.²⁵³ In 2004, it downgraded Japan to a new category within Tier 2, Watch List, which consisted of countries that were in danger of falling to Tier 3. Japan received this embarrassing evaluation despite having signed the Protocol to Prevent, Suppress and Punish Trafficking (also known as the Palermo Protocol), which supplemented the UN Convention against Transnational Organized Crime in 2002. The 2004 Report stated that the Japanese government “needs to increase its efforts to combat severe forms of trafficking in persons, including increased investigations, prosecutions and convictions of trafficking crimes and better assistance to victims.”²⁵⁴ The Director of the Office to Monitor and Combat Trafficking in Persons, John Miller, explained that there is a

JUSTICE OF JAPAN (2005).

²⁵⁰ See Victims of Trafficking and Violence Protection Act, Pub. L. No. 106–386, 114 Stat. 1464 (2000).

²⁵¹ See *Office to Monitor and Combat Trafficking in Persons*, U.S. DEP'T OF STATE, <http://www.state.gov/g/tip/index.htm> (last visited Mar. 27, 2011).

²⁵² Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report: Tier Placements*, U.S. DEP'T OF STATE (2010), <http://www.state.gov/g/tip/rls/tiprpt/2010/142755.htm>.

²⁵³ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report: Japan*, U.S. DEP'T OF STATE (2010), <http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm>.

²⁵⁴ See Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, U.S. DEP'T OF STATE (2004), <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm>.

tremendous gap in Japan “between the size of the problem and the resources and efforts devoted to addressing the problem.” There are victims numbering in the thousands, but he “found only two small shelters” willing to take trafficking victims.²⁵⁵ Additionally, the arrests, prosecutions, convictions and sentences for human traffickers are almost nonexistent. In fact, prior to 2005, there were no cases in which human traffickers were punished under the Criminal Code. All human trafficking crimes were prosecuted and punished as violations of the Immigration Law or Employment Security Law, which carried lighter punishments and fines. In 2003, for example, the leader of one of Japan’s largest human trafficking rings, Koichi “Sony” Hagiwara, was found guilty of brokering several dozen Colombian strip dancers and was sentenced to twenty-two months in prison along with a \$3,600 USD fine.²⁵⁶ In other countries with anti-trafficking legislation, a crime of this nature would typically result in a prison sentence of ten years or more.

In 2004, the Japan Network Against Trafficking in Persons (JNATIP) appealed to Diet members with the need for efforts to address the human trafficking problem and aggressively lobbied Diet members for an action plan on counter-trafficking measures.²⁵⁷ During that time, Japan was aggressively seeking a permanent seat in the Security Council of the UN, and the perception of the U.S. State Department that Japan was soft on addressing serious human rights crime within its borders represented an obstacle to that effort. Therefore, Japanese officials quickly responded by creating special committees on human trafficking within the Liberal Democratic Party (LDP), the Democratic Party (DPJ), the Kōmeitō, the Japan Communist Party (JCP), and the Social Democratic Party (SDP).²⁵⁸ JNATIP members were invited to study groups of these parties, where they provided data on victims of trafficking in persons particularly

²⁵⁵ See Paul Courson, *Japan Put on Sex-Trade Watch List*, CNN.COM (June 14, 2004), <http://www.cnn.com/2004/US/06/14/trafficking.report/>.

²⁵⁶ David McNeill, *Japan: Pink Heaven for Traffickers*, THE JAPAN TIMES ONLINE (Feb. 1, 2004), <http://search.japantimes.co.jp/cgi-bin/fl20040201a2.html>.

²⁵⁷ *About the JNATIP*, JAPAN NETWORK AGAINST TRAFFICKING IN PERSONS (Jan. 29, 2008), <http://jnatip.blogspot.com/2008/01/about-jnatip.html>.

²⁵⁸ *Id.*

from Thailand and Colombia and exchanged ideas.²⁵⁹ In December 2004, the Inter-Ministerial Liaison Committee (Task Force), comprised of members from the Cabinet Secretariat, the MOJ, the NPA, the MOFA, and the MHLW, adopted the National Action Plan.²⁶⁰ Most interesting about this Action Plan was a noticeable change in officials' attitude towards overstayed foreign prostitutes, whom they had previously viewed as "criminals."²⁶¹ Moreover, the language in the Action Plan was remarkably similar to that of immigrant rights NGOs. For instance, the opening sentence of the Action Plan reads:

Trafficking in persons is a grave violation of human rights and requires a prompt and appropriate response from a humanitarian perspective, as trafficking in persons causes serious emotional and physical pain for the victims, especially women and children, and recovery from such damages is very difficult.²⁶²

Members of the JNATIP expressed concern that the original Action Plan focused mainly on the punishment of perpetrators. Like the APFS Campaign to grant "special residence permission" to certain illegal foreigners, the JNATIP collaborated with academics and lobbied the government to also consider the protection of victims and assistance in their rehabilitation. Before the Diet approved the conclusions of the Palermo Protocol in June 2005, the government revised its Penal Code to criminalize the buying and selling of persons.²⁶³ The revision also granted victims special residency status in order to protect them even if they had overstayed their visas so that they could receive treatment before returning to their countries. As a result, the number of victims protected at the government-run Women's Consulting Offices has increased, and the Immigration Bureau granted fifteen special residence permissions to victims between January and May of

²⁵⁹ Interview with Otsu Keiko of the JNATIP (June 29, 2006).

²⁶⁰ Japan's Actions to Combat Trafficking in Persons. MINISTRY OF FOREIGN AFFAIRS OF JAPAN 1 (Dec. 7, 2004).

²⁶¹ See Shipper, *supra* note 220, at 310-11 (describing officials' attitudes towards overstayed foreign prostitutes).

²⁶² *Japan's Action Plan of Measures to Combat Trafficking in Persons*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN, http://www.mofa.go.jp/policy/i_crime/people/action.pdf (last visited Mar. 27, 2011).

²⁶³ Japan's Actions, *supra* note 260.

2005. Starting from April 1, 2005, the government budgeted around \$100,000 USD per year to private shelters, and the MOFA has funded approximately \$160,000 USD for repatriation assistance to victims through the International Organization for Migration (IOM).²⁶⁴ The MHLW has also left an opening for progressive local governments to establish a “free medical plan” to assist trafficking victims who cannot pay their medical fees.²⁶⁵ Meanwhile, the Task Force has sent directives on how to protect victims to relevant offices throughout Japan.²⁶⁶ As a result of these directives, police at the Kōban, a Japanese neighborhood police substation, no longer treat trafficking victims - mostly overstayed foreign prostitutes - as criminals, and immigration officials do not automatically deport them. More interestingly, the government has launched an aggressive public relations campaign through TV and radio broadcasts, newspapers, and magazines as well as the distribution of multilingual leaflets and posters. This public awareness campaign now depicts those illegal foreign women, previously associated by the authorities with criminals, as “victims.”

NGO also made a significant impact on amending Japan’s Nationality Law. Through judicial activism, the Citizens’ Network for Japanese-Filipino Children (CNJFC) has achieved success in expanding Japan’s nationality law.²⁶⁷ In 2008, the CNJFN led a mass suit on behalf of ten children born out of wedlock to Filipino mothers and Japanese fathers.²⁶⁸ In June 2008, the Supreme Court’s ruling recognized Japanese nationality for all ten plaintiffs, claiming that the Nationality Law barring children born out of wedlock from attaining nationality was “unreasonably discriminatory and unconstitutional.”²⁶⁹ Following this landmark

²⁶⁴ See *The Recent Actions Japan has taken to combat TIP (Trafficking in Persons)*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Mar. 2008),

http://www.mofa.go.jp/policy/i_crime/people/action0508.html.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ Mariko Yasumoto, *Japanese-Filipino Kids Await Fate*, THE JAPAN TIMES ONLINE (June 4, 2008), <http://search.japantimes.co.jp/cgi-bin/nn20080604f1.html>.

²⁶⁸ *Id.*

²⁶⁹ For court proceedings, see “court precedent” (June 4, 2008), <http://www.courts.go.jp/hanrei/pdf/20080604174246.pdf>.

ruling, the Justice Ministry began its work to lift the marriage requirement in the Nationality Law. In November 2008, the government submitted the bill to the Lower House of the National Diet. Eager to have the bill passed swiftly, the Liberal Democratic Party (LDP) warned members of the Lower House judicial affairs committee that they would be replaced if they voted against the bill. As a result, deliberations were completed in one day and the Lower House passed the bill on November 18, 2008. In December 2008, the Upper House passed the Revised Nationality Law with support from the LDP, the Kōmeitō, the Democratic Party of Japan (DPJ), the Japan's Communist Party (JCP), and the Social Democratic Party (SDP). In effect, the 2008 Revised Nationality Law allows children born out of wedlock to a Japanese man and a foreign woman to obtain Japanese nationality if the father acknowledges paternity before or after birth.²⁷⁰

Civil society organizations, labor unions, and the media have built a nascent but growing awareness among both the public and government officials of the contradictions and structural deficiencies inherent in the training and technical internship programs.²⁷¹ In particular, the Advocacy Network for Foreign Trainees and the Zentōitsu Workers Union are active and influential actors in raising public and government awareness of the flawed and abusive system.²⁷² For example, on March 8, 2008, the Advocacy Network for Foreign Trainees hosted the first National Forum of Foreign Trainees in Tokyo, where over 200 activists, foreign trainees, researchers, students, and journalists attended.²⁷³ Meanwhile, the government had invited the Zentōitsu Workers Union to present data to its task force concerning revisions in the foreign trainee and technical intern system.²⁷⁴

²⁷⁰ See Kazuaki Nagata, *DNA Center of Nationality Debate*, THE JAPAN TIMES ONLINE (Dec. 2, 2008), <http://search.japantimes.co.jp/cgi-bin/nn20081202a2.html>.

²⁷¹ Ralph Hosoki, *Violation of Foreign Workers' Rights – in Singapore and Japan*, THE ONLINE CITIZEN (Jan. 15, 2010), <http://theonlinecitizen.com/2010/01/violation-of-foreign-workers-rights-%E2%80%93-in-singapore-and-japan/>.

²⁷² See Michiko Hiroki, *Foreign Trainees in Japan Defend Their Rights*, INFORMALIZATION OF LABOUR IN ASIA (Oct. 14, 2008), http://www.amrc.org.hk/alu_article/informalization_of_labour_in_asia/foreign_trainees_in_japan_defend_their_rights.

²⁷³ *Id.*

²⁷⁴ Interview with an official revision participant of Japan's Foreign Trainee

In July 2009, the government approved the revisions of the trainee and technical intern system. The new system (effective July 1, 2010) entails the separation of training and technical internship programs and the establishment of a new visa category entitled the “on-the-job trainee” (*ginō-jisshū*) residence status.²⁷⁵ Under the revised system, labor laws will be applicable to individuals after they complete a two month language and off-the-job training program at the beginning of their contract. The maximum length of stay is still three years, but efforts to monitor receiving companies will be strengthened, stricter punishments will be imposed on employers who engage in illegal activities, and more efforts will be made to ensure the authenticity of contracts made between sending companies and the technical interns themselves.²⁷⁶ The new visa category allows trainees to enter Japan and engage in on-the-job training activities under an employment contract.²⁷⁷ Individuals under this visa category will be fully protected upon entry by Japan’s employment laws, including the Labor Standards Act and the Minimum Wage Act.²⁷⁸

In essence, beginning July 1, 2010, minimum wage and other labor protections are applied to first-year trainees.²⁷⁹ The government also banned the confiscation of trainees’ passports. Under the revised system, dispatching organizations in home countries are prohibited from requiring deposits.²⁸⁰ The Japanese “primary accepting organizations”—the go-between bodies that help run the system, such as business associations and local chambers of commerce and industry—will be required to take greater responsibility for supervising individual companies accepting trainees and interns.²⁸¹ The amended laws prohibit

Program, (July 5, 2009).

²⁷⁵ *Agreement Concerning Technical Intern Training Program*, JAPAN INT’L TRAINING COOPERATION ORG. 1 (2010),

http://www.jitco.or.jp/new_system/100112_02/pdf/100112_02_02.pdf.

²⁷⁶ *See id.*

²⁷⁷ *Id.*

²⁷⁸ *Smoothing Integration of Resident Foreigners*, HIGHLIGHTING JAPAN (July 2010), <http://www.gov-online.go.jp/pdf/hlj/20100701/12-13.pdf>.

²⁷⁹ *See id.*

²⁸⁰ JAPAN INT’L TRAINING COOPERATION ORG., *supra* note 275, at 6.

²⁸¹ Hiroaki Watanabe, *Concerning Revisions in the Foreign Trainee and Technical Intern System*, 7 JAPAN LABOR REV. 43, 51 (2010).

foreign employment agencies from taking any money as a guarantee and Japanese businesses from fining foreign trainees.²⁸² Despite these changes, Zentōitsu Workers Union's Hiroshi Nakajima believes that a trainee's right to change companies or negotiate for different training programs remains unavailable. He concludes that "the basic attitude that treats the foreign trainee as a person who can be exploited has not changed, unless we see the government willing to treat him or her as a person who has rights."²⁸³

IV. Institutionalizing Cooperation Between Local Governments and Immigrant Rights NGOs

As Japan faces a welfare crisis and international criticism for its lack of legal protections for overstayed foreigners, local government officials have felt the need to promote secondary associations in medical and immigrant's issues.²⁸⁴ Since local governments are legally constrained, however, they cannot assist overstayed foreigners at the same level as NGOs, even if they are willing to challenge policies of the central government.²⁸⁵ As a result, they outsource many life-saving services for overstayed foreigners, such as medical assistance and women's emergency shelters, to immigrant rights NGOs.²⁸⁶ For example in Tokyo, the Tokyo Metropolitan Government contracted with AMDA to provide medical consultation to foreigners in five languages: English, Chinese, Korean, Thai, and Spanish.²⁸⁷ In 1994, after a national government study found that foreigners accounted for 80 percent of AIDS patients in Japan, the Tokyo government provided money for AMDA to bring an AIDS specialist from

²⁸² *Id.* at 60.

²⁸³ Suvendrini Kakuchi, *Critics Want Law on Foreign Trainees Scrapped, Not Revised*, INTER PRESS SERVICES (July 23, 2010), <http://ipsnews.net/news.asp?idnews=52254>.

²⁸⁴ Katherine Tegtmeier Pak, *Living in Harmony: Prospects for Cooperative Local Responses to Foreign Migrants*, in LOCAL VOICES, NATIONAL ISSUES 51 (Sheila Smith ed., 2000).

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 56.

²⁸⁷ Interview with an official of the Government Policy News Section of the Tokyo Metropolitan (May 12, 1998).

Thailand.²⁸⁸ In 1996, it funded AMDA to start an AIDS Information Helpline in English and Thai.²⁸⁹ The women's shelter HELP has also received considerable financial support from the Tokyo Metropolitan Government for its activities in helping foreign women.²⁹⁰ In 1998, the Tokyo Metropolitan Government also contracted with HELP to publish handbooks specifically for overstayed Thai immigrants on family life and labor laws in Japan.²⁹¹ Local officials have discovered that partnerships with Japanese NGOs enable the city to offer assistance to foreigners more inexpensively and with greater success.²⁹² Moreover, this coordination allows local governments to collect far better information on the condition of foreigners in the area.²⁹³ They then use the information to decide what additional public services for foreigners should be developed.²⁹⁴

Local governments have also found that outsourcing services and activities to NGOs allows them to expand services and serve broader jurisdictions without increasing the number of their state employees.²⁹⁵ In exchange for financial support, local governments can list these groups in Japanese, English, and other foreign language brochures, pamphlets, and websites as places that provide services to foreigners who live in their areas. For example, in its English guidebook, *Living in Tokyo*, the Tokyo Metropolitan Government recommends the women's shelter HELP to foreign women and their children for emergency shelter ahead of its own Tokyo Metropolitan Women's Counseling Center. In fact, some pamphlets appear to look as if local governments are providing the NGO services themselves. For

²⁸⁸ In the Nagano prefecture alone, 617 out of 679 AIDS patients were foreigners – 613 of them were from Thailand. *Yomiuri Shimbun*, Sept. 29, 1996.

²⁸⁹ Interview with Kobayashi Yoneyuki of AMDA International Medical Information Center (May 15, 1998).

²⁹⁰ In 1996, for example, about 20 percent of HELP's total budget came from the Tokyo Metropolitan Government.

²⁹¹ The Tokyo Metropolitan Government funded these publications through the Tokyo International Foundation.

²⁹² See Pak, *supra* note 284, at 57.

²⁹³ See *id.*

²⁹⁴ Interview with an official of YOKE (Sept. 24, 1998).

²⁹⁵ In fact, the number of Japanese bureaucrats remains relatively low in comparison to those in other advanced industrial countries.

example, at its offices throughout Tokyo, the Tokyo Metropolitan Government distributes a 3 by 4 inch pamphlet that offers medical services. The pamphlet is titled "Tokyo Medical Information Service 'Himawari,'" and all calls go to AMDA.²⁹⁶

Although NGOs for immigrant rights have forged strong partnerships with local officials in many areas, their impact on local governments is not uniform across geographical regions. Among progressive areas or areas with long histories of dealing with foreigners, such as the Kanagawa prefecture and the Hanshin region, local governments are more innovative in improving the lives of their foreign residents and in cooperating with NGOs.²⁹⁷ In contrast, local governments in conservative areas and areas with little contact with foreigners, such as the Ibaraki prefecture, directly provide most services for their foreign residents and typically cooperate with voluntary associations only around the issue of cultural exchange.

The 1998 Nonprofit Organizations (NPO) Law, which grants smaller volunteer and other civic group's corporate status, allows local governments to accept more responsibilities for public welfare and to provide more services to their residents without carrying a heavier financial burden.²⁹⁸ The NPO Law has had a significant impact on certain medical NGOs and women's support groups that work closely with local governments to provide social welfare services.²⁹⁹ Four medical NGOs (AMDA, SHARE, TOSHC, and MIC Kanagawa), two women's groups (Mizula and Saalaa), and one faith-based group helping foreign women with AIDS (Ayūs) have acquired NPO status.³⁰⁰ With the exceptions of TOSHC and Ayūs, all foreigner support groups with NPO status perform some services for local governments and receive financial support from them.³⁰¹ As a result of the NPO Law, the

²⁹⁶ See *Tokyo Metropolitan Medical Institution Information*, TOKYO METRO. GOV'T, <http://www.himawari.metro.tokyo.jp/qq/qq13enmnl.asp> (last visited Mar. 27, 2011).

²⁹⁷ Apichai W. Shipper, *The Impact of the NPO Law on Foreigners Support Groups in Japan*, JAPAN INST. FOR LABOUR POLICY AND TRAINING 21 (2004), <http://www.jil.go.jp/profile/documents/Shipper.pdf>.

²⁹⁸ *Id.* at 1.

²⁹⁹ *Id.* at 11.

³⁰⁰ *Id.* at 19.

³⁰¹ *Id.* at 20. TOSHC hopes to form partnerships with its local government soon. *Id.*

organizational activities of the groups that acquire NPO status have expanded significantly.³⁰² Mizula, for example, now runs two additional women's shelters in Yokohama and Yokosuka.³⁰³ The Yokohama City Government also outsources its consulting services for women during the weekends to Mizula.³⁰⁴ Interestingly, Mizula had already received some financial support from local governments and performed many public services before it was incorporated. In fact, it was Yokohama officials that asked Mizula to incorporate—perhaps, to legitimize their decision to outsource many public services to the group.³⁰⁵

A landmark institutional experiment that recognized the importance of NGOs in local governance and gave voice to illegal foreigners through Japanese activists was the establishment in the Kanagawa prefecture of an NGO advisory council.³⁰⁶ In 1998, when it created the Kanagawa Foreign Residents' Council, the Kanagawa Prefecture Government also introduced an NGO advisory council, the NGO Kanagawa International Cooperation Council (NGO *Kanagawa kokusai kyōryoku kaigi*).³⁰⁷ The idea of creating an NGO advisory council actually came from local government officials at the Kanagawa Prefecture Government Foreign Affairs Division. A Kanagawa official reported that questions were raised as to why the Kawasaki's Representative Assembly for Foreign Residents included only foreigners, when members of immigrant rights NGOs were seen as their local partners. Hence, Kanagawa officials saw the need to create an NGO advisory council alongside the Foreign Residents' Council.³⁰⁸ The NGO advisory council consists of ten members from different NGOs, who are selected by a four-person Committee of Specialists (mostly university professors).³⁰⁹ It has

³⁰² Shipper, *supra* note 297, at 20.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ Interview with Kikutani Hideko of Mizula (July 16, 2004).

³⁰⁶ Shipper, *supra* note 297, at 23.

³⁰⁷ *Id.*

³⁰⁸ Interview with an official of the Kanagawa Prefecture Government, Foreign Affair Section (Dec. 1, 1998).

³⁰⁹ Apichai Shipper & Loren King, *Associative Activism: Foreigners and Democracy in Contemporary Japan* 18, Presented at Annual American Political Science Association Symposium (Sept. 1, 2005).

four divisions: regional internationalization, international exchange, international cooperation, and peace.³¹⁰ For the first NGO advisory council, the Committee of Specialists selected six women and four men, three each for the regional internationalization, international exchange, and international cooperation groups and one for the peace group.³¹¹ One of the ten members in the first NGO advisory council was Ariizumi Keiko of Mizula.³¹² The subsequent council included Ueda Yoshitsugu of Kalabaw-no-kai.³¹³

The Kanagawa Prefecture Government established the NGO advisory council in order to elicit opinions from NGO members to be considered when making the prefecture's international policy.³¹⁴ The stated goals of the NGO Kanagawa International Cooperation Council are: 1) to promote NGO participation in the policymaking process of the prefecture government on regional international policy; 2) to strengthen cooperation between local governments and NGOs; and 3) to strengthen cooperation among NGOs within the prefecture.³¹⁵ The link between the twenty-member Foreign Residents' Council and the ten-member NGO Kanagawa advisory council marked the beginning of institutional experimentation by the Kanagawa government, and the call for representation not only from legal residents, but also from NGO members who assist both legal and illegal foreign residents.³¹⁶ Such institutional innovation at the local level may provide a sort of democratic deliberation to both marginalized Japanese activists and Japan's foreign residents.

To be sure, the NGO advisory council generally cannot extend deliberative opportunities directly to illegal foreigners themselves (otherwise it will undermine its own membership rules),³¹⁷ but local governments can improve democratic representation by

³¹⁰ *Id.* at 19

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ Shipper & King, *supra* note 309, at 19.

³¹⁵ Discussion Group, Kanagawa International Policy Promotion, 8 FOREIGN AFFAIRS DIV., KANAGAWA PREFECTURE GOV'T (1998).

³¹⁶ Shipper & King, *supra* note 309, at 19.

³¹⁷ *Id.*

incorporating these marginalized voices into the council through the representation of immigrant rights NGOs.³¹⁸ For example, strengthening and institutionalizing networks of various types of NGOs that assist foreign residents, including those that provide women's shelters and labor consultation to illegal foreigners, would not have been an urgent topic in an advisory council dominated by legal foreigners.³¹⁹ However, the inclusion of immigrant rights NGOs in Kanagawa's NGO advisory council led to its first recommendation to the governor on this issue, which directly affects the lives of illegal foreigners.³²⁰

Illegal foreign workers in Japan reside in the country and contribute to the economy, but existing policies and prevalent attitudes ensure that their interests are not adequately represented in democratic deliberations and outcomes, or even in the broader public spheres of artistic and journalistic expression and popular sentiment.³²¹ Nor is mere ethnic representation sufficient because legal foreigners in Japan generally do not share the life experiences of their illegal co-ethnics, and the interests of the former are often inimical to the concerns of the latter.³²² When persistent exclusion and marginalization have undermined trust and rendered democratic institutions unrepresentative as in contemporary Japan, strategies of group representation in legislatures, administrative agencies, and other public bodies may be justified, although these efforts must be carefully tailored to avoid problematic assumptions of group essentialism.³²³

Certainly, the Kanagawa NGO advisory council, which invites a member of each immigrant rights NGOs to participate in the deliberation process, may not appear to be particularly democratic on the surface.³²⁴ However, given earlier reflections on the

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ NGO Kanagawa International Corporation Council, *21 Seiki Kyōsei Shakai No Aratana Pātonāshipu No Jitsugen* [The Realization of a New Partnership For a Symbiotic Society in the 21st Century] (Yokohama: Kanagawa Prefecture Government Social Welfare Conference, 2000).

³²¹ Shipper & King, *supra* note 309, at 20.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

practical importance of shared experiences to have effective representation in some cases, we can understand this council as part of a scheme of fair and effective representation that better ensures fairness for the foreign community in contrast to foreigner advisory councils, which are composed only of legal foreigners. Representatives in the foreigner advisory councils belong to legal immigrant groups, and in addition to the problem of divergent experiences and interests between legal and illegal foreigners, most of these representatives are not even elected by members of their ethnic groups, legal or illegal, but rather are selected by local government officials.³²⁵ In contrast, Japanese activists, who are experienced problem-solvers for underprivileged people in Japan, may have more in common with illegal foreigners, in terms of their experiences with prevailing public opinion and local authorities.³²⁶ Hence, an NGO advisory council that exists together with a foreigner advisory council comparable to the one in the Kanagawa prefecture can improve fairness for the community of illegal foreigners in Japan, by ensuring that the experiences of illegal foreigners do find a voice and receive consideration in a variety of public forums as contributors to the Japanese economy.³²⁷

An outcome of improved fairness for all foreign residents in Kanagawa was demonstrated in 2001 when both the Kanagawa Foreign Residents' Council and the NGO International Cooperation Council made an appeal to improve medical translation services to foreigners.³²⁸ The Kanagawa Prefecture Government responded by gathering a group of medical associations (Medical Doctor Association, Dentist Association, and Pharmaceutical Association) and medical NGOs to deliberate with local government officials about the best way to provide medical translation services to all foreigners with minimal financial burden on government.³²⁹ NGO leaders, led by Hayakawa Hiroshi of MF-MASH and Sawada Takashi of SHARE,

³²⁵ *Id.*

³²⁶ Shipper & King, *supra* note 309, at 20.

³²⁷ *Id.*

³²⁸ Interview with an official of the Kanagawa Prefecture Government, International Division (Aug. 4, 2004).

³²⁹ Shipper, *supra* note 297, at 23.

recommended the creation of a new NGO that would train volunteers for medical translation.³³⁰ These volunteers would then work with social welfare personnel from the local government and hospital social workers in providing medical translation and social welfare services to foreign patients.³³¹ Local authorities and representatives of private medical bodies listened seriously to the opinions of these highly educated NGO leaders, who not only demonstrated expert knowledge about the socioeconomic situation of foreigners in the community but also clearly understood the expectations of Japanese norms of articulation and modes of expression in the deliberation process.

As a result of this deliberation, MIC Kanagawa was established in 2002 with NPO status.³³² It has approximately eighty volunteers, who are dispatched to about thirty public hospitals.³³³ These volunteers receive routine training in medical terminology twice a year.³³⁴ They are sent only to specified hospitals that have legal contracts with the MIC Kanagawa and have social workers on site.³³⁵ Activists believe that social workers typically provide excellent follow-up services and deal not only with medical problems but also with patients' social and economic problems.³³⁶ Since many foreign patients, especially overstayed foreigners, face medical problems that require extra social and economic assistance, officials at MIC Kanagawa prefer to work with hospitals that have social workers.³³⁷

Members of MIC Kanagawa, government officials, and hospital workers understand that this is a back-up system to a professional medical translation service, but it is an extremely inexpensive and fool-proof system with NPO volunteers, hospital social workers, and government officials from the social welfare division working closely together.³³⁸ It is a system that connects a

³³⁰ *Id.*

³³¹ Interview with Sawada Takashi of SHARE and MF-MASH, (July 31, 2004).

³³² Shipper, *supra* note 297, at 23.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ Shipper, *supra* note 297, at 23.

³³⁸ *Id.*

network of resources and saves the Kanagawa government a significant amount of money, as volunteers at MIC Kanagawa receive just \$25 USD per day for their services—only their travel expenses are paid.³³⁹ In essence, such collaboration allows local governments to accept more responsibilities and provide more services without incurring heavier financial burdens.

V. Conclusion

In sum, foreigners' rights are highly contested among both state and non-state actors. The Japanese government's historical differentiation in immigration control laws among different ethnic groups demonstrates its view that certain races or nationalities are better qualified to engage in certain jobs.³⁴⁰ For instance, Ministry of Justice officials continue to rank *nikkeijin* higher than other Asians based on racial-descent criteria.³⁴¹ The Japanese government's decision to allow foreigners with Japanese blood to work legally and to forbid those with non-Japanese blood from doing the same jobs also reflects this belief.³⁴²

One of the many ways that activists are having an impact on immigration or nationality is through their support for the imposition of regulations on business practices which protect foreign workers.³⁴³ In recent years, the Japanese government has tried to reduce the number of injustices and inequality in its society by imposing regulations on the brokering businesses within Japan and regulating certain brokering activities of brokering organizations that export foreign workers to Japan.³⁴⁴ However, detecting and chasing down abuses involving third parties in foreign nations will be extremely challenging, and can potentially destabilize the country's foreign relations.

Indeed, Japan's civil society appears small in comparison to

³³⁹ Interview with Tsuruta Mitsuko of MIC Kanagawa (July 23, 2004).

³⁴⁰ See *Shutsu Nyūkoku Kanri Oyobi Nanmin Nintei Hō* [Immigration Control and Refugee Recognition Act], Law No. 319 of 1951, art. 19.

³⁴¹ GABRIELE VOGT, BERLIN-INSTITUT, *DEMOGRAPHIC DEVELOPMENT IN JAPAN* 7 (2010).

³⁴² *Id.*

³⁴³ JAPAN INT'L TRAINING COOPERATION ORG., *supra* note 275, at 3.

³⁴⁴ *Id.*

those of other developed countries and its Asian neighbors.³⁴⁵ But this should not lead us to prematurely conclude that Japan's political environment has become less pluralized and that these small organizations lack political influence.³⁴⁶ This article demonstrates that small immigrant rights NGOs can make significant policy impact in advancing foreigners' rights.³⁴⁷ Due to the activities of Japanese activists in recent years, Japan has achieved a high degree of humanitarianism in its accommodation of foreigners, including illegal ones.³⁴⁸ These activists ensure that globalization works for the most disadvantaged by fighting energetically for the protection of their rights and the provision of welfare services to all foreigners.³⁴⁹ By experimenting with innovative institutions of democratic representation, these activists are helping to further Japan's progress toward a more democratic society.³⁵⁰

³⁴⁵ Yutaka Tsujinaka, et al, Exploring the Realities of Japanese Civil Society and Politics through Comparison 22 (Mar. 26, 2008) (conference paper, on file with the Int'l Studies Ass'n).

³⁴⁶ See Pak, *supra* note 284, at 51.

³⁴⁷ See Shipper & King, *supra* note 309, at 22.

³⁴⁸ See *id.* at 23.

³⁴⁹ *Id.*

³⁵⁰ See *id.* at 24.