

Human Trafficking, Modern Slavery and Discursive Institutionalism: Entertainers, Foreign Trainees and Interns in Contemporary Japan, 1990-2017



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Abstract

This thesis offers insights into the institutional and policy changes associated with anti-trafficking and anti-slavery paradigms by drawing attention to discursive institutionalism. These insights derive from the constructed dominant discourses on human trafficking and modern slavery in Japan from 1990 to 2017. Two strands of discourse have become dominant there as a consequence of political activism since the early 1990s: Filipina entertainers as ‘sex trafficked victims’ and interns and trainees in the Technical Intern Training Programme (TITP) as ‘modern slaves’. Taking a critical view of these discourses, this thesis answers the questions of how and why institutional arrangements associated with trafficking and modern slavery have changed in Japan. It argues that, in the context of a discursive shift regarding how to treat these workers, institutions and policies gradually changed to provide remedies to foreign interns and trainees under the purview of TITP by 2017, whilst entertainers largely remained subjects of criminalisation and deportation. By looking at the empirical transformation by 2017, this thesis argues that the discourse about trafficking and modern slavery was significant in making known the needs to protect unskilled migrants. While not officially admitting that labour trafficking and modern slavery exist in Japan (due to its zero-immigration principle), the government in 2017 revealed its intention to establish an action plan to fight trafficking and modern slavery, following the initiatives of United Nations’ Sustainable Development Goal (SDG) 8.7. Through the lens of human trafficking and modern slavery and the related changes in policies and institutional arrangements since the early 1990s, this thesis examines the role of the state in solving problems related to unskilled migrants. In this sense, the study empirically illuminates the trajectory of the government’s current shift towards officially accepting unskilled labourers in response to Japan’s dwindling workforce.

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List of Abbreviations and Terms Used

AWC- the Asian Women and Children's Network

CATW- the Coalition Against Trafficking in Women

CEDAW- the Convention on the Elimination of All Forms of Discrimination Against Women

CEFP- the Council on Economic and Fiscal Policy

Chukun aikoku- emperor worship and love of country

CPRR- the Council of Promotion and Regulatory Reform

CSR- corporate social responsibility

Daisankokujin- people from the third countries

Danjo Kyodo Sankaku- the Promotion of Gender Equality

Dantaikanrigata- acceptance supervised by organisations

DV-domestic violence

EC- the European Commission

ECPAT- End Child Prostitution in Asian Tourism

Enjo kosai- compensated dating with school girls

EPA- the Economic Partnership Agreement

FTA- the Free Trade Agreement

FWAD- the Foreign Workers Affairs Division

Gaijinzuma- foreign wives

GPNs- global production networks

GVCs- global value chains

HELP- the House in Emergency of Love and Peace

ICRRA- the Immigration Control and Refugee Recognition Act

ILO- the International Labour Organization

IMADR- International Movement Against All Forms of Discrimination and Racism

IOM- The International Organisation for Migration

ISHC- Industrial Safety and Health Centre

IT-TIP- the Industrial Training and Technical Internship Programme

Japayuki- people who are going to Japan to work

JFBA- The Japan Federation of the Bar Association

JFC Network- Japanese Filipino Children's Network

Jidokaishunho- the Act on the Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children

Jinshinbaibai- selling and buying human beings

JITCO- the public interest foundation Japan International Training Cooperation Organisation

JLPT- the Japanese Language Proficiency Test

JNATIP- the Japan Network Against Trafficking in Persons

Joko-Aishi- the tragic history of female factory workers

Karayuki- Japanese emigrants going abroad

Kigyotandokugata- acceptance managed by individual enterprises

Kyofukai- the Japan Christian Women's Organisation

MHLW- the Ministry of Education, and the Ministry of Health, Labour and Welfare

MITI- the Ministry of International Trade Industry

MOFA- the Ministry of Foreign Affairs

MOL-Ministry of Labour

MOJ- Ministry of Justice

MPs - members of parliament

ODA- Official Development Aid

OTTI- Organisation for Technical Intern Training

Roshigun- female warriors

SDP - the Social Democratic Party

Shugyofu- ugly workers

SMJ- the Solidarity Network with Migrants in Japan

SMOs- social movement organisations

SPA- Special Retailer of Private Label Apparel

SWASH- Sex Work and Sexual Health

TIP report - US Trafficking in Persons report

TITP- the Technical Intern Training Programme

TPP- the Trans-Pacific Partnership

TVPA- the Trafficking Victims Protection Act

UNICEF- The UN Children's Emergency Fund

UNGPs- the UN Guiding Principles

UNCSW- the UN Commission on the Status of Women

UN Palermo Protocol- the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime

UNPD- the UN Population Division

UN SDG – the UN Sustainable Development Goals

Yujo- prostitutes

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Chapter 1

Introduction

Overview

Every day, we use and consume globalised products and services. The cloth you wear might be made in your own country but might be sewn by migrant labourers; dancers you met in a bar last night might be of different nationalities to you. This everyday globalisation contains endless possibilities of exploitation of those labourers embedded within the asymmetry between Global South and Global North. Human trafficking and modern slavery have come to typify the harsh labour conditions of those labourers in this asymmetrical structure since the early 1990s.

The concepts of human trafficking and modern slavery have been developed by North American and European academic circles and policy-makers. Although it was not yet part of their mainstream conversation in the 1980s, the term *human trafficking* has come to be at the centre of international agendas since the fall of the Berlin Wall, which has led to a growing concern over human trafficking in the European continent (Anderson 2013). During the early 20th century, international laws were also intended to deal with prostitution,¹ but human trafficking discourse was again highly sexualised and gendered. The assumption at the beginning of the 1990s was that passive female migrants were threatened by traffickers

¹ For instance, see the International Convention for the Suppression of the Traffic in Women and Children concluded at Geneva on 30 September 1921, amended by the Protocol signed at New York on 12 November 1947 (The United Nation 1947).

and forced to work in the commercial sex industry (Kempadoo 2005). As Ann Gallagher clarifies (2001), international and regional organisations in Europe and North America began to establish measures against human trafficking in the late 1990s. This was the root of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (the UN Palermo Protocol) adopted in 2000.

Since then, international agendas associated with human trafficking have, however, expanded to encompass issues like forced labour, and often discuss trafficking as a specific issue related to migrant labourers. Extreme abuse of this labour mobility is often presented in terms of the relationship between vulnerable migrant workers and their abusive employers or those who facilitate exploitative working environments such as traffickers. In this context, discourses on trafficking have extended towards modern slavery. Emerging discourses now discuss not only the relationship between state sovereignty and migrants but also migrants at work in the business context. As part of this shift, the focus of discussion has also changed from brothels to industries.

To mitigate the problems associated with industrial work contracts, Professor John Ruggie, a UN Secretary-General's Special Representative on Business and Human Rights, has headed UN initiatives to create global rules in the business sector since 2005 (Bernard 2012). In this context, in 2011 the UN Human Rights Council established the UN Guiding Principles (UNGPs) on Business and Human Rights to develop the responsibility of businesses to ensure basic human rights. In 2014, the International Labour Organization (ILO) also adopted the Protocol of the Forced Labour Convention, which supplements the earlier 1930 Convention, to fight against forced labour, 'including trafficking in persons and

slavery-like practices' (ILO Homepage 2017a; ILO Homepage 2017b). In short, the discourses on anti-trafficking and anti-slavery have brought about a unified effort to improve working conditions in member states. However, on a state level, adopting these international protocols and discourses becomes a useful way of managing tensions between border controls and human rights.

Like other members of Global North, Japan has been regarded as a major destination country for trafficking, in terms of financially attracting labourers from its neighbour countries (Mensendiek 2014; the United States Department of State 2009). Although Japan did not ratify the 2000 UN Palermo Protocol until July 2017 and still has not ratified the 2014 ILO Protocol of the Forced Labour Convention, its domestic institutions to deal with trafficking and modern slavery have gradually changed over the last couple of decades. More precisely, I am going to use institutions to indicate immigration and labour legislation and rules but also include informal rules and ethical norms at workplaces.² This change in Japan is not obvious in the literature since most of it has focussed on North American and European countries. In practice, the Japanese government revised the Immigration Control and Refugee Recognition Act (ICRRA) and the Penal Code in 2005 as a response to the problems of entertainers in the commercial sex industry as sex trafficking. There has also been a rise

² Definitions of institutions vary depending on a version of institutionalism. For instance, rational choice institutionalists view institutions as a system of incentives which make actors maximise their utility (Shepsle 2008); historical institutionalists tend to see institutions as patterns of conduct from which people are reluctant to deviate (Greif 2006); sociological institutionalists regard institutions as an enduring collection of rules and organised practices embedded in structures (March and Olsen 2008). In sociological institutionalism, the logic of appropriateness explains the reason why actors seek to fulfill the obligations and duties encapsulated in rules. Discursive institutionalism which this thesis relies on regards institutions as internal ideational constructs which constrain actors by supplying shared ideas but also let these actors communicate critically about the shared ideas (Schmidt 2010). Based on these different definitions of institutions, this thesis is going to use institutions as both formal and informal rules and regulations but distinguish them from organisations. Further discussion will be in Chapter 2, p.42.

in political activism³ arguing that the Technical Intern Training Programme (TITP) involves trafficking for the purpose of labour exploitation. The TITP is officially a short-term vocational training/internship programme for migrants, but is in practice a guest worker scheme, involving labour trafficking. These migrants are working in 77 different economic sectors, such as the construction and the clothing/textile industries.⁴ Although the government did not admit that labour trafficking existed in Japan in its 2004 and 2009 Action Plans on Combatting Trafficking in Persons, TITP was described in the 2014 Action Plan (Ministerial Meeting Concerning Measures Against Crimes 2014; 2009; 2004).⁵ To respond to both exogenous and endogenous criticisms of TITP as a case of modern slavery, the government facilitated the protection of TITP labourers in November 2016.⁶ At the same time, the government also announced that it is planning to develop Japan's Action Plan to implement the UNGPs to combat trafficking and modern slavery (Hayakawa and Barnes 2017).

A Key Question

This thesis therefore questions how and why institutional arrangements associated with human trafficking and modern slavery in Japan have changed from 1990 to 2017. Based on this principal question, this thesis analyses the changes in domestic institutions related to women's and migrants' rights. More precisely, this thesis is mainly looking at discourses on

³ The definitions of political activism vary depending on the scope of research. My understanding of political activism is closer to that of Simon Goeke, who describes it as a mobilisation of a large number of migrants to claim their rights (2014).

⁴ See Chart 7 in Chapter 5.

⁵ These Action Plans have been developed in the current annual reports published by the Ministerial Meeting Concerning Measures Against Crimes (2018; 2017).

⁶ The legislation of protection for TITP labourers was promulgated in November 2016, came to force in November 2017.

two groups of female migrant labourers: Filipina entertainers in the commercial sex industry, and TITP labourers who mostly come from rural China, working at the clothing/textile industry in Japan. This is because these subjects are represented in discourses on ‘human trafficking’ and ‘modern slavery’ by political actors, that is, Japanese domestic activists such as the Solidarity Network with Migrants in Japan (SMJ) and politicians especially from Social Democratic Party (SDP), as well as international organisations.⁷ I am using ‘political actors’ when I refer to both activists and authorities, while I regard ‘political activists’ as those who engage in raising awareness of migrant labourers’ rights but they do not include authorities. I pay attention to the period between 1990 and 2017, because this timespan allows us to understand the process by which, adding to entertainers’ issues, the government has begun to recognise TITP issues as ‘labour trafficking’ or ‘modern slavery’, and to provide remedies to these TITP labourers by late 2017. My analysis starts from 1990 because deregulations of labour market such as a series of revisions of labour dispatching laws have begun since then.⁸

There is no consensus among political actors at either an international or a domestic level on definitions of trafficking and modern slavery, although we have observed their efforts to establish common definitions (UN 2000; ILO Homepage 2017a; 2017b). In this thesis, however, I used the term *human trafficking* to mean a process with illegal aspects that facilitates people’s movement to different locations. In this process, some people are moved against their will; other people are willing to move. Either way, however, they suffer from exploitation, coercion, and deception in their process of migration to work. On the other

⁷ See Chart 1 in Chapter 2.

⁸ Before the government revised ICRRA, there were some schemes such as intra-company transfer system of trainees. Entertainment visas had also already existed before 1990. However, this thesis does not include these pre-1990 schemes in order to discuss the situations of entertainers, trainees and interns in the context of labour deregulation happened since 1990.

hand, the term *modern slavery* here is to describe exploitative working conditions at the workplaces of migrant labourers in destination countries. These two terms are different but overlap each other in terms of how labourers are treated at workplaces in their destination countries. This will be discussed further in Chapter 2.

Based on this key question and my understanding of trafficking and modern slavery, this thesis traces the process of constructing the discourses on these two issues and clarifies how such discourses affect the changes of policies and institutional arrangements. By doing so, I argue that the understanding of human trafficking in Japan has been extended from the case of Filipina entertainers since the mid 2000s to include the IT-TIP/TITP scheme as ‘modern slavery’. Under the changes in the understanding of human trafficking and the expansion to include the discussion of modern slavery, institutions and policies had gradually changed to provide remedies for TITP labourers by late 2017, while keeping this scheme in order to invite unskilled labourers within its ‘zero-immigration principle’. In this sense, the role of discourses on trafficking and modern slavery is significant to raise the need of the protection for these unskilled labourers. In particular, this thesis suggests informal rules and ethical norms circulated through communicative discourses can be influential in policy reforms. By clarifying the interaction between coordinative and communicative discourses constructed over the last three decades, this thesis offers a broad picture of a policy background which led to changes in immigration and labour legislation for the acceptance of unskilled labourers.

Why Japan?

Cases of human trafficking and modern slavery in Japan offer three insights to this North American and European oriented ‘global’ field. First, Japan’s cases of human trafficking and modern slavery represent multidimensional concepts of forced labour (McGrath 2013). These include, for instance, bonded labour in India. Like some other Asian countries (Mezzadri 2017; McGrath 2013; Lerche 2007), Japan has a different concept of forced labour. As Chapter 3 will discuss further, the concept of forced labour is mostly associated with the situation in which labourers never agreed to work. In Japan indentured servitude was historically related to the concept of human trafficking, but this historical lesson has been ignored in the literature. Although a leading NGO occasionally used this historical discourse to describe IT-TIP/TITP issues since 2006, previous studies have not discussed this point. This could offer one of the answers to the question of why it had taken so long to raise a discussion of labour exploitation under working contracts as an issue of labour trafficking.

Second, Japan’s case on trafficking and modern slavery can build on the discussions about the relationship between internal and external pressure in changing domestic institutional arrangements. In other words, this study contributes to the scholarship which emphasise more on the complicated interaction between these two pressures, rather than judging which can be more influential (Robson 2012; Strausz 2012; Schoppa 1993). In this respect, this thesis clarifies the way in which the Advocacy Network for IT-TIP/TITP Workers’ Rights

in civil society⁹ use the resources from local community unions¹⁰ and international norms, to change the existing domestic legislation and informal rules to solve domestic problems. For instance, regarding trainees and interns, these domestic activists use discourses on labour trafficking and modern slavery which came from international criticisms to legalise unskilled labour as a replacement for IT-TIP/TITP. In this way, they suggest that access of those labourers to fair working conditions will become more secure at their workplaces. While these activists have ultimately failed to convince the government to get rid of the TITP scheme, they have successfully raised the problems experienced by those foreign labourers by using anti-trafficking and anti-slavery rhetoric.

In this sense, this thesis is also inspired by some of the international relations' scholars who discussed the varying degree of coercion or cultural patterns of the acceptance of international norms as resources to solve domestic problems (Krücken and Drori 2009).¹¹ By paying more attention to individual actors and their agencies, these scholars clarify some patterns of agency (Ibid.). These actors are operating under rules and can serve as an agent or consulting others for a wide variety of legitimated principles having recognised functions or interests. Although this thesis does not clarify such patterns of international norm

⁹ The term civil society has emerged especially in the Japanese media, particularly after the Great Hanshin-Awaji Earthquake in 1995. However, the substance of civil society existed since Meiji era (Tsujinaka 2010; Haddad 2010; Pekkanen 2006), which provides different concepts and patterns from North American and European countries. The concept of civil society has been defined in many different ways. For instance, Wilhelm Vosse (2000) points out that, in Japan, it is hard to see the notion of civil society that stresses its independence from state power which is often discussed in West European contexts. For Vosse's analysis as of 2000, Japanese civil society was closer to volunteer, less independent from the state authority.

¹⁰ Unlike trade unions developed with respect to apprenticeship and training in the UK, in Japan such apprenticeship training has not historically been regulated. Whereas, enterprise unions belonging to enterprises have still played a significant role in controlling the labour market as well as in claiming workers' rights (See Thelen 2004; Woodiwiss 2005). As an alternative to claiming the rights of those labourers excluded by enterprise unions, I use the term 'community unions' here.

¹¹ Some scholars such as Thomas Risse and Kathryn Sikkink (1999) also illustrate the interaction between external and internal factors by emphasising the role of state's desire of legitimacy in international society in terms of ratification of human rights norms. By introducing Japan as a case study, Petrice Flowers (2016), for instance, shows the degree of compliance of international human rights norms. More specifically, as a case study paying attention to the interaction between internal and external pressures on the matters of IT-TIP/TITP in Japan, see Daniel Kremers (2014).

acceptance, my understanding of the reasons why the Japanese government has changed its domestic laws to follow anti-trafficking rhetoric partially builds on the perspectives provided by those scholars in international relations.

Third, through the lens of human trafficking and modern slavery, this thesis offers an intriguing insight into changes in institutional arrangements associated with unskilled migrant labourers. In Japan, the government has maintained a ‘zero-immigration principle’ for unskilled workers not to encourage their settlement, although it has actively accepted those labourers on a short-term basis. For this reason, many scholars have regarded the government’s immigration policy as Japan opening its ‘side’ door while not exactly opening its ‘front’ door (Roberts 2012; Vogt 2007). This ambiguous government standpoint makes it unclear who will take responsibility for the affairs of foreign residents. Therefore, the contentious debate on whether Japan has an immigration policy for unskilled labourers continues. The intense dispute in the late 1980s over unskilled labourers, including entertainers and undocumented migrants, resulted in a compromise that never resolved a basic tension. On the one hand, the discussion about allowing migrant labourers effectively halted; while on the other hand, there was a need to support migrant workers and their families.

In this contentious debate, Japan revised its ICRRA in 1990 with expanded labour visa categories which took into account the Industrial Training and Technical Internship Programme (IT-TIP). This ancestor of the TITP enabled small factories to hire migrant labourers while keeping trainee visas for large enterprises. The government uses IT-TIP/TITP not only to feed the demand for unskilled workers but also to support its fundamental idea that these foreign residents are temporary so that the government can avoid

talking about their settlement and integration (Milly 2014). To date, the number of TITP labourers coming to Japan has outnumbered *Nikkei* workers (Japanese descendants mostly from Brazil and Peru) who are allowed to have settlement status. The government still emphasises that ‘this is different from its immigration policy’ (*Mainichi Shimbun* 29th May 2018). However, only recently, at the end of May 2018, the government uncovered that it was planning to introduce the new guest worker visa scheme for unskilled workers, including former TITP labourers who completed their programme, to stay and work in Japan for up to five years (Ibid.). In short, within the ‘zero-immigration principle’ for unskilled labour, institutions and policies for these labourers have changed.

Purposes and Direction of This Thesis

One of the purposes of this thesis is to draw attention to the changes in policies and institutional arrangements which aimed to solve the problems of human trafficking and modern slavery in Japan. By paying attention to the period between 1990 and 2017, it examines both issues of entertainers as well as trainees and interns in Japan. Doing so revises the idea of human trafficking in Japan as being exclusively sex trafficking. Furthermore, it endeavours to reconsider the conventional idea that the external pressure from the US in 2004 was the principal explanatory factor which led to abrupt changes in policies and institutions in 2005. It also challenges the notion that this policy outcome was the conclusion of the human trafficking debate in Japan. In doing so, this thesis reviews policy and institutional changes associated with entertainers in 2005 and introduces policy processes surrounding trainees and interns whose situations have been described as ‘labour trafficking’ or ‘modern slavery’ since the mid-2000s.

Another purpose is to understand female migrant labourers not as mere workers but as sexually independent subjects who seek romantic relationships with Japanese locals. The migration of women does not derive from need alone but also from various aspirations such as enjoying new lifestyles, raising motivations for the next stage of their lives, and seeking other relationships or friendships (Cheng 2010). However, gendering migration often conjures notions of vulnerability and uncertainty, which easily singles out women as exploited and obedient subjects in discourses on trafficking and modern slavery. In Japan, whether they are entertainers or part of IT-TIP/TITP, these migrant women are often deployed as disposable labour and marginalised as migrants. Being disposable labourers, however, does not necessarily mean that these female migrants do not desire to be romantic or erotic subjects, which blurs the boundaries between labourers and women (Ibid.).

These complicated desires and this ability to make decisions require us to return to the question of the relationship between agency and structure. Structures are said to be the objective complexes of social institutions within which people live and act. Within such structures, agents are supposed to choose their life plans in an environment of constraint. However, many aspirations of female migrant labourers question such a deterministic picture of structure and agency. Their aspirations such as seeking further careers and developing romantic relationships would not fit the picture. By understanding entertainers as well as foreign trainees and interns in Japan, this thesis not only demonstrates that the structures of ‘trafficked victims’ or ‘modern slaves’ are socially and politically constructed but also considers the way in which migrant workers and employers can exercise agency within the structure. Some stories of former entertainers and TITP labourers who escaped from their workplaces also imply that these structures are in danger of excluding irregular

migrants such as overstayers or undocumented migrants, who might also be the target of trafficking and modern slavery. In other words, this structure-agency problem raises the question of anti-trafficking and anti-slavery rhetoric.

Based on these purposes, aside from Chapter 2 proposing my theoretical framework and method, my empirical section consists of four chapters. Chapter 3 is to clarify how a dominant discourse on entertainers as ‘trafficked victims’ has been constructed in Japan. To do so, this chapter traces empirical transitions of the definitions of human trafficking, and how the standpoint of feminist abolitionism has remained a dominant discourse to date. In this process, this chapter also clarifies how indentured servitude was historically related to human trafficking. This chapter is, therefore, placed as an introductory chapter feeding into the rest of the empirical chapters. Chapter 4 represents the period in which domestic female actors introduced the global ideas of violence against women which emerged in the early 1990s. This chapter explores the process through which Japanese feminist actors introduced the international concept of trafficking for the purpose of sexual exploitation, and how their discourses on Filipina entertainers as trafficked victims influenced changes in institutions and policies against sex trafficking in 2005.

Chapter 5 moves on to the aspect of labour exploitation, providing contextual information on immigration and labour regulations associated with IT-TIP/TITP. Based on this contextual information, this chapter explores the processes by which political activism has linked the problems of IT-TIP/TITP with discourses on human trafficking and modern slavery within since the mid-2000s. This also provides the reason why it took the Japanese government a long time to establish the new remedies for the TITP labourers. Following Chapter 5’s tracing of the process of changes in the regulations based on discourses on IT-

TIP/TITP labourers, Chapter 6 discusses whether those labourers in the clothing/textile industry amount to modern slaves or trafficked victims for the purpose of labour exploitation. This chapter argues that discourses on IT-TIP/TITP labourers as labour trafficking and modern slaves have been constructed since 2006, although these workers have strategies to deal with their issues. Overall, through these chapters, this thesis clarifies the process of institutional changes associated with ‘human trafficking’ and ‘modern slavery’, and the role of discourses in this process in Japan.

Research Contribution Based on a Range of Literature

The last two decades have seen the rapid emergence of literature on human trafficking and modern slavery. These themes originated in feminist literature in the mid-1990s, along with the emergence of norms associated with sex trafficking in the context of violence against women and children. Such literature representing feminist perspectives has emphasised the dichotomy between the abolition of prostitution and protection for sex workers’ rights.¹² The former argues that prostitution should be banned to prevent sex trafficking, whereas the latter suggests that protection for sex workers as labourers is more effective in solving this issue. A coalition of abolitionist feminists and groups advocating for sex workers’ rights negotiated the definition in the UN Palermo Protocol on the international level at the end of the 1990s. Ultimately, the wording of this Protocol was a product of compromise between the two sides (Doezema 2010; 2002; Bernstein 2007; Kempadoo 2005; Anderson and

¹² As in Jo Doezema (2005), the feminist lobby’s efforts were split into two camps, divided by their opinions about prostitution in the negotiation of setting up the UN Palermo Protocol. One lobby group was the Human Rights Caucus, supporting sex workers’ rights. In other words, this group saw prostitution as legitimate labour. The other group was led by the Coalition Against Trafficking in Women (CATW), regarding prostitution as a violation of women’s rights.

O'Connell Davidson 2004; Kempadoo and Doezema 1998). The feminist understanding of human trafficking allowed scholars to develop case studies of sex trafficking in different regions and states (Limoncelli 2010; Fujime 2006; Outshoorn 2004; Kantola and Squire 2004), but made it difficult to discuss the human rights of trafficked victims. The range of debates has extended, which departs from the feminist dichotomy, to discuss the maltreatment of migrant labourers in supply chains as a case of modern slavery over the last decade (Mezzadri 2017).

The analytical framework for my empirical analysis determines how to classify the existing literature. There are two analytical tools which have inspired my analysis on policies and institutions associated with trafficking and modern slavery in Japan. Regarding policy analysis, quite a few scholars have paid attention to the constructing process of discourses on human trafficking and modern slavery (O'Connell Davidson 2017; 2006; Anderson 2012; Quirk 2009). By drawing attention to critical discourse analysis, these scholars analyse how the measures taken against trafficking and modern slavery have supported the state paradigms of criminalisation of traffickers and deportation of trafficked victims. These scholars also question the estimated number of victims that is well into the millions (O'Connell Davidson 2017). Joel Quirk (Ibid.), for instance, argues that the scope of trafficking and modern slavery presented by Kevin Bales (2007) has often been greatly exaggerated and that his approach to modern slavery is based on a distinctively American experience which limits the understanding of modern slavery in a broader context. In a similar vein, by paying attention to discourses on human trafficking used in the ILO, Antoine Pécoud (2015) demonstrates how these are isolated as 'an unnatural element of capitalism' without offering a sufficient discussion of the socioeconomic and political contexts within states that make abusive working conditions possible.

Another analytical sight is also related to narrative and social network analysis but focusses more on the issues of the degree of agency.¹³ A degree of agency has been discussed in some previous studies paying attention to migrant sex workers working in the Japanese sex industry (Campana 2016; Pinxteren 2015; Aoyama 2014; Parreñas 2011; Samad 2010). Although ‘agents’ can vary in the literature paying attention to the degree of agency (Dottridge 2016), this analytical insight raises a question of a dichotomy between ‘traffickers’ versus ‘trafficked victims’ (Anderson 2013).¹⁴ As Yunas Samad observes (2010), women who are called ‘victims’ of forced marriage as a consequence of trafficking can be both victims and perpetrators.

These two analytical perspectives imply that the way in which political actors represent trafficking and modern slavery create the gaps in discourses on these issues. As a consequence of construction and representation of what is meant by trafficking and modern slavery, institutions and policies have changed to solve these issues. Dominated by discourses on the importance of security and immigration controls, anti-trafficking and anti-slavery paradigms are favoured by states and their sovereignty because they give states legitimacy in controlling borders and deporting unwanted migrants (including trafficked victims). In such a context, dealing with trafficking means that border enforcement becomes a ‘human rights’ measure. However, these two analytical perspectives do not clarify how

¹³ Agency refers to the ability and capacity to make decisions and express them in behaviour. As I shall discuss further later, the definition of agency in a political context is narrower than a sociological one, in the sense that the ability and capacity is limited to accessing political decisions. However, here I use an extended understanding of agency from a sociological perspective: individuals (actors) have the ability – *agency* – to make their own decisions while they are, to some extent, shaped by the existing social structure (Hay 2002).

¹⁴ Paolo Campana (2016), for instance, focuses more on structure, discussing how trafficking organisational costs and constraints play a crucial role in shaping traffickers’ individual decisions.

dominant discourses created by political actors lead to changes in policies and institutions which might allow migrant labourers and employers to exercise agency.

To fill this omission, this thesis offers an intriguing case study in trafficking and modern slavery literature. It does this by drawing attention to two aspects. One is to focus on discourses on trafficking and modern slavery, and their impact on institutional and policy changes in Japan. Through the lens of trafficking and modern slavery, it traces the changes in immigration and labour regulations associated with unskilled labourers which have occurred since the early 1990s. The other is to draw attention to various aspects of illegality associated with migrant labourers which have been focused over the past 10 years (Nelson et al. 2015; Anderson and Ruhs 2010; DeGenova 2005; Ruhs and Anderson 2004). Nicholas DeGenova (2005) discuss the social and political construction of ‘illegality’ which entails the dimension of deportability of Latino legal residents in the United States. On the other hand, Anderson and Ruhs (2010) explore more about negotiation spaces (which they call ‘semi-compliance’) between employers and migrant labourers to cheat immigration and labour regulations. These studies clarified various aspects of illegality, but more detail into how the government policy reforms may have (or have not) altered the abilities and strategies between employers and migrant labourers is needed. Or, it might be the case in which informal rules or norms at workplaces affect changes in the existing regulations.

Given this, this thesis offers three contributions. First, this thesis is to discuss discourses both on human trafficking and modern slavery in order to highlight the labour rights of unskilled workers at the low end of the labour market in Japan. Doing so brings a new perspective on their labour rights into the literature paying attention to Japan. Second, by drawing attention to discursive institutionalism, this thesis demonstrates the process by

which political activism against trafficking and modern slavery has been gradually welcomed amid the chronic labour shortage and aging society in Japan. By doing so, this thesis offers a deep insight into the interaction between endogenous and exogenous factors - another reason for focussing on Japan. This includes the role of the discourses of political actors in raising migrants' issues, as well as the discursive shift towards accepting immigration in society. Third, this thesis contributes to the above discussion of the relationship between illegality and human trafficking, by raising the issue of a degree of agency among labourers, involving some negotiation space between these labourers and their employers. In doing so, this thesis questions the rhetoric of anti-trafficking and anti-slavery.

Two Issues: Commercial Sexual Exploitation, IT-TIP/TITP, and Their Political Implications

My goal in exploring changes in policies and institutional arrangements associated with trafficking and modern slavery is not to judge which exogenous and endogenous factors are more influential in their evolution. Rather, I shed light on the complicated interaction between internal and external factors in changing institutional arrangements. The dynamics between internal and external factors also make it clear about the interaction between coordinative and communicative discourses. Coordinative discourses are the ones constructed by policy circles working closely to change existing laws and policies, while communicative discourses are the ones created in the interaction with public and international society. Even though international society has created norms associated with human trafficking and modern slavery, and puts pressure on states by criticizing their wrongdoing, domestic actors are selective filters in terms of which international norms

should be influential in the domestic context. This perspective of domestic actors in promoting exogenous ideas is still underdeveloped in the literature on trafficking and slavery. Hence, this thesis highlights the role of Japanese domestic actors, including their capacity for introducing international norms and constructing domestic discourses on trafficking and slavery (Alasuutari 2015; Telò 2014; Flowers 2009).

The international concern in the 1990s over sex trafficking as an example of violence against women has conflicted with domestic norms in Japan. This period of emerging discourses on sex trafficking represents the conjunction between international and domestic norms on matters of violence against women. For instance, as one Japanese ambassador to the UN in the early 1990s argued, there was no issue of domestic violence in Japan, which was voicing a common perception (Chan-Timberghien 2004). This comment reflects the Japanese social norm that women should be obedient to male breadwinners, who earn money to support other family members. This also implies the prevalent view among Japanese society that domestic violence is a personal matter which occurs infrequently (Yoshihama 2002). This understanding of domestic violence, and the institutions and policies dealing with it, evolved through discourses on former entertainers trafficked into Japan becoming the abused wives of Japanese locals. Based on such conflated discourses between domestic violence victims and sex trafficking, changes associated with trafficking occurred around 2005. This policy reform happened just after the US State Department had criticised Japan for its reluctance to deal with trafficking in 2004.

To be clear, in terms of issues of entertainers, this thesis represents only a small part of ‘entertainers’ who are the icon of ‘sex trafficked victims’ in Japan. Entertainers are officially defined as people who are working in the entertainment industries such as singers, dancers,

actors, actresses, and sports players. Although entertainers working in the commercial sex industry are mostly imagined as females, the definition of entertainers does not exclude males. Even so, the idea of ‘entertainers’ implies mostly Filipina entertainers working as hostesses in the commercial sex industry. Although there are males working in such industry, they are not included within the scope of political activism against sex trafficking. The Japanese commercial sex industry is also a tricky phrase. It is not synonymous with prostitution because the 1956 Prevention of Prostitution Act (enacted in 1958) banned prostitution by referring to sexual intercourse with an unspecified person for money. This narrow legal definition of prostitution has allowed for the proliferation of an industry which can legally offer any sexual services short of this act, such as hostessing, bathing and massaging (Koch 2014). Working as a hostess is popular especially for Filipina entertainers, who believe before coming to Japan that this job only entails serving drinks and having conversations with men in the evening, but not sexual labour. However, in most cases the working conditions are very different from those that have been described (Cojocaru 2016).

On the issue of IT-TIP/TITP, the conflict between international and domestic norms in protecting migrant rights has its roots in Japan’s domestic discourse on homogeneity. This idea of homogeneity can be observed in the comment of a bureaucrat from the Ministry of Foreign Affairs (MOFA), emphasising that ‘Japan has no immigrants, only entrants’ (Roberts 2012: 48), which rests on the concept of ‘Japaneseness’ [*Nihonjinron*] (Arudou 2013). According to Jane Yamashiro (2011: 1515), the concepts of ‘Japaneseness’ and ‘foreignness’ in Japanese society conflate ‘ancestry, citizenship, language and culture’. This leads not only to racial incorporations but also to the cultural rejection of foreignness. Discourses on the criminality of, and discrimination against, foreigners still remain, which conflicts with international norms for protecting migrants’ (labour) rights. In short, those

discourses against migrant labourers have encouraged not only discrimination against these labourers, but also the creation of ‘others’ in society. This concept of ‘Japaneseness’ is, to some extent, still reflected in immigration and labour market regulations within the ‘zero-immigration principle’, given that most foreign nationals cannot be granted Japanese citizenship.

To address the chronic labour shortage in rural Japan, however, Japanese homogeneity has been eroded. The government has established a number of side-door policies since the early 1990s (Vogt 2007), and a new training system introduced in 1991 is one of them. This training system was to provide migrant labourers, especially to small and medium-sized companies.¹⁵ As part of its labour and trade policies, the government has expanded IT-TIP/TITP and the Economic Partnership Agreement (EPA) since the 2000s, to provide migrant workers to address labour shortages in certain industries. At the same time, the labour activists (including community unions) originated in the spring offensive¹⁶ for unskilled migrant labourers in 1993, and have gradually added to the human trafficking and modern slavery discourse since 2006. This timing coincides with the moment when feminist activists won their fight to criminalise sex trafficking, which had been their aim since the mid-1990s. Since the mid-2000s, these feminist activists started working with the above-mentioned labour activist groups. The monthly leaflet¹⁷ published by these labour activist groups and materials from economic pressure groups suggest that there was a shift in the discourse through the early 2000s from *whether* Japan needs migrant workers to *how* Japan should treat these workers (SMJ 2007; Keidanren 2004). This arose from domestic pressures to source more workers, and from the state’s responsibility to protect their human rights in

¹⁵ See the definition of small and minimum-sized companies. See Table 1 in Chapter 5.

¹⁶ The term refers to annual wage negotiations between the unions and employers.

¹⁷ For instance, the SMJ, the leading NGO, has published monthly leaflets to raise the issue of migrants in Japan since 1997.

line with international norms. Ten years after the first government Action Plan for Trafficking in Persons was published in 2004 (Ministerial Meeting Concerning Measures Against Crimes 2004), TITP was considered in the latest version of the Action Plan published in 2014 (Ibid. 2014). The government also decided to introduce legislation protecting TITP labourers, and announced in November 2016 that it was going to establish its Action Plan to tackle TITP issues in the context of fighting against human trafficking and modern slavery.

These two cases represent contested debates over the treatment of women and foreigners, who are placed at the margins of Japanese society. Also, they are both embedded within liberal political tensions that underpin the question of who counts as a victim of trafficking. The victims of trafficking in Japan are largely regarded as migrant women who are tricked and forced into prostitution. As mentioned above, two feminist coalitions with very different ideas of prostitution have been fighting over whether prostitutes should be recognised as victims of trafficking in international norms. However, this political tension, which derives from feminist parties consisting of mostly American and European academic scholars and feminist groups, does not exist in Japan. Aside from one feminist group called Sex Work and Sexual Health (SWASH) which supports sex workers' rights, other feminist advocacy groups share the ideas of feminist abolitionists: prostitution is not and can never be recognised as work, and thus there is no debate over what constitutes exploitative working conditions in the sex industry. Here, the questions can never be about exploitation, but rather the domination of women's bodies. In other words, the view that prostitution should not be recognised as work is widely shared among feminist activists in Japan, so they have never raised this point as a policy agenda. In this context, whether voluntary or not, migrant women in the sex industry, mostly framed as entertainers, can be victims of trafficking, but

they can never be treated as labourers. The problem is, as in other countries, this kind of feminist abolitionist discourse has been used by the government to justify its criminal and migration controls, which are embedded within an anti-trafficking paradigm. The category of who could be a victim is, therefore, socially and politically constructed.

The TITP case, conversely, highlights a classic liberal tension between free and unfree labour. As Laura Brace notes (2004), liberalism has discussed how to draw a clear line between free and unfree labour. Numerous historical studies have investigated the question of what constitutes free labour and have pointed out the striking proliferation of free labour systems in the midst of the globalising capitalist system of manufacturing in the late 19th and the early 20th centuries (Brown and Van Der Liden 2010). In the 21st century, as Bridget Anderson suggests (2013), ‘slavery’ and ‘slave masters’ are used as metaphors. These describe distortions of labour contracts so that employers can use their workers in exploitative ways, such as by asking their labourers to work for fifteen hours per day without salary but only providing food to these labourers. The political implication here is that the idea of free labour is socially embedded. In my investigation of TITP, I found that Japanese employers, especially in small-sized manufacturing firms in rural Japan, often offer a similar type of explanation. For example, one said that their labourers had betrayed them by making a complaint to the Labour Standards Inspection Office, even though they sometimes invite their workers for dinner instead of paying a certain amount of overtime salary (Interview with an Employer 1, Fukui, 4th October 2016). Such employers may believe that employees who accuse employers of malpractice relating to wages are morally wrong because, even though they may not pay the full salary, they provide their employees with some food instead. This reveals a similar kind of moral judgment which Anderson (Ibid.) notes: some abusive treatments of labourers at workplaces are not even recognised as human rights abuse in

certain societies. In other words, no one knows whether a person has freely consented to the working conditions in which they find themselves.

In addition to these two political implications, discussing issues of entertainers and TITP labourers within the umbrella term *human trafficking* and *modern slavery* brings an additional political implication, namely the relations with the state's immigration policy. As in the UN Palermo Protocol (2000), crossing a border is not a requirement for trafficking to take place. However, because crossing borders to work requires a working visa which heavily relies on the sponsorship of their employers, this can be an extra factor putting migrant workers in vulnerable situations. Once migrant workers decide to come and work in Japan, they are embedded within Japan's institutions of immigration and labour. In the process of migration, they might have to borrow a certain amount of money to receive passports and to apply for visas from someone if they do not have enough resources. If they are in extreme poverty, they might use brokers to receive such documents and to agree with the working conditions and the length of stay and work prescribed in their visa status.

The introduction of temporary foreign labourers took place within the development of interregional migration in Asia, starting in the 1980s. A shrinking labour force and robust economic growth in industrial economies, such as Japan and South Korea, increased the need to attract migrant labourers from Global South, such as Southeast Asian countries. The introduction of temporary labourers has resulted in securing an exploitable labour force, while minimising social costs (Surak 2015). In this context, the phenomenon of and the abusive stories related to *Japayuki*, who are mostly entertainers from Southeast Asian countries working as hostesses or sex workers, have been highlighted since the late 1980s. When it comes to entertainers, as mentioned above, their case does not raise any tension

between free and unfree labour in Japan. Instead, another tension arises: whether they deserve the status of a settlement if they are in a *de facto* marriage with Japanese men or are mothers of Japanese citizens. For instance, if entertainers escape from their employers and become undocumented or overstayers without being married to Japanese men or being mothers of Japanese citizens, then they do not have any legitimacy to stay in Japan.¹⁸ However, within the TITP institution, political tension between the state and labour activism is rather pronounced in terms of those workers' lack of freedom. For example, in principle, there is a prohibition against changing employers, which is contained within their labour contracts and embedded in labour and immigration regulations. This implies that the employment contract within the regulations dramatically affects the legal status of migrant workers, which indirectly justifies inequality between Japanese employers and their migrant workers. In this way, immigration regulations established on the state's idea of supplying workers place non-citizen migrants as subordinates to Japanese employers.

Theoretical Framework and Methodology

This thesis relies on a qualitative and constructivist approach. I use two issues – entertainers and IT-TIP/TITP labourers – to emphasise to view the interactions between endogenous and exogenous factors which affect changes in institutional arrangements related to human trafficking. In doing so, this thesis focusses on the way in which political activism constructs discourses on human trafficking and modern slavery, and how their discursive interactions lead to changes in immigration and labour institutions. To understand such discursive interactions, which occur not only among political actors who are constructing their policy

¹⁸ See p.128., Chapter 4.

ideas (coordinative discourses) but also their interaction with the public (communicative discourses), this thesis casts discursive institutionalism as a major theoretical concept. Actors creating coordinative discourses are policy-makers, civil servants and leading NGOs who are closely working with policy reforms. On the other hand, actors creating communicative discourses are local community unions, the media and international organisations whose activities do not directly impact on those reforms. As supplementary theoretical perspectives, this thesis is also inspired by the concepts of the forced labour chain and semi-compliance to understand the situation which migrant labourers face at their workplaces. These concepts help us understand both institutional changes in the development of value chains which spread across borders (i.e., global value chains: GVCs), and also changes in employment relations (Barrientos 2013). In short, this thesis has two levels of analysis: analysing the process of constructing discourses on human trafficking and modern slavery among political actors, on the one hand; and on the other, assessing the situations which labourers face at their workplaces.

Discursive institutionalism is applied to this thesis for the following three reasons. First, this theoretical perspective fits nicely with a constructivist perspective to analyse the process by which political actors construct their discourses. Discursive institutionalism, as prompted by Vivian Schmidt (2008a), shares with an idea of constructivism that institutions and their changes are socially and politically constructed based on the ideas of political actors. Second, this encourages us to look at ideas which constitute discourses on human trafficking and modern slavery, and how they affect changes in an institutional setting. In this sense, some poststructuralist scholars oppose the ideas that discourse itself is an explanatory variable that leads to changes in institutions and policies (Bacchi 2009; 2008; 2000). However, this thesis considers the relationship between discourses and institutional changes more positively by

drawing attention to discursive institutionalism. Third, discursive institutionalism explains more about the ideational process by which ‘the old ideas fade, and new ones come to the fore’ (Schmidt 2008b:9). This insight helps us understand why certain ideas are highlighted rather than others, and how the current political actors use old ideas to represent issues they face now. In this way, it enables us to unpack the policy ideas supporting the particular discourses and their impact on policy changes.

By drawing attention to discursive institutionalism as a major theoretical framework, I try to place this thesis in the context of the ongoing theoretical development of analysing gradual changes in policies and institutions. Institutional scholars once assumed that social and political institutions were stable, changing in response to external shocks (Robson 2012; Strausz 2012). To respond to this argument, other scholars have suggested that shifts in institutions and policies might happen gradually without distinctive external shocks (Hay 2016; Thelen and Mahoney 2010; Schmidt 2008a; Streek and Thelen 2005).¹⁹ Although these theorists have developed labels to identify gradual changes, they remain unclear because they are difficult to detect (Rocco and Thurston 2014). My position in this thesis also does not entirely exclude either internal or external pressures. As mentioned above, this focusses more on the interaction between internal and external factors. In this sense, introducing discursive institutionalism which focusses explicitly on the role of ideas and discourses in institutional and policy changes is helpful (Weitzer 2012; Anderson and O’Connell Davidson 2004). This is because political actors in this theoretical framework are

¹⁹ Schmidt (2008a), a leading scholar of discursive institutionalism, has developed the concept of discursive interaction as the newest of new institutionalism, arguing that the state changes institutions resulting not from the strategic interactions among rationalist institutionalism actors, but also from discursive interactions which are analysed by the interactive process of discourses and the content of ideas (Telò 2014). While Streek and Thelen who are the leading scholars of sociological institutionalism (2005), pay attention to institutional changes in political economy, Schmidt suggests discursive institutionalism as to offer a way into the explanation of dynamics of institutional change in more wide range of policy areas.

not limited to domestic actors, but also include discursive practice through which global ideas and norms are incorporated in the domestic context (Alasuutari 2015).

As an alternative perspective, diffusion theory might be able to provide a theoretical lens through which to view my research question of how and why domestic institutions and policies associated with trafficking and modern slavery have changed over the last three decades. The concept of norm diffusion is not only used to explain norm transfers across countries specifically related to the spread of democracy and human rights but is also used to illustrate why and how states adopt new policies. Diffusion effects are the ways in which domestic policy-makers are influenced by other countries, sometimes in the context of competition with other states (Berry and Berry 2007). Indeed, some human trafficking scholars also draw attention to this theoretical framework (Dean 2017; Shelly 2005). Thus, this perspective might help us understand the horizontal diffusion of ideas among states, and how domestic policy-makers compare their situation to that of other countries which have already accepted international norms. However, whether the case of Japan can be seen as a compelling case of norm diffusion is still questionable, given that, unlike South Korea, Japan has not yet established legislation for protecting trafficked victims.

In a similar vein, civil society, social movement theory and network analysis can be seen as other theoretical option. Social movement theory provides theoretical insight into the structure of social movements and social movement organisations (SMOs) in advocating social issues.²⁰ For instance, Beth Simons (2014) uncovers that when issues of human trafficking are framed as human rights issues, it turns out to be difficult to receive support

²⁰ To look at more discussions of human trafficking from the perspectives of SMOs, see Edith Kinney (2011) and Rachel Gong (2015).

from UN member states. Those scholars relying on this theoretical perspective argue that a consensus on how to confront trafficking depends on how the issue is framed (Charnysh et al., 2015). To understand such framing strategies and agenda setting, this theoretical insight is helpful. The insight into framing by civil society groups can also be compatible with institutionalism, and the forced labour chain which I use as a supplementary perspective (Stringer et al. 2016). In fact, some studies draw attention to the formulation and diffusion of policies with a particular emphasis on framing in institutional changes (Rasmussen et al. 2017; Birkland and Lawrence 2009). However, concerning various understandings of trafficking and modern slavery, it is difficult to assess ‘collective action’ which provides the foundation of framing.

For this reason, rather than paying attention to framing, this thesis uses discursive institutionalism in combination with forced labour chain and semi-compliance. This is because, although forced labour chain and semi-compliance do not emphasise the role of discourses, these concepts highlight political activism which raises the issues of labour standard of unskilled workers at the low end of the labour market, and how employers and these labourers play with the structure. As Stephanie Barrientos clarifies (2014), the role of civil society is significant in examining the implications of economic and social upgrading and downgrading for labourers in global value chains (GVCs) where the different stages of the production process are located across different countries. As a more specific focus on the situations of labourers, Barrientos et al. introduce the concept of forced labour chain (2013). To pay more attention to the motivations and strategies of those labourers, this thesis also introduces the concept of semi-compliance developed by Bridget Anderson and Martin Ruhs (2010). Since this provides a perspective on labourers’ abilities to negotiate their labour conditions with their employers, this helps us develop an insight into the structure-

agency relationship. The combination of discursive institutionalism and the concepts of the forced labour chain and semi-compliance, therefore, gives us the theoretical framework we need. It enables us to analyse the construction of discourses and their influence over institutional changes, as well as to assess how effective these changes are, in order to solve the problems of ‘human trafficking’ and ‘modern slavery’.

As for methods, I conducted participant observation, semi-structured interviews, and archival research to collect data, and draw attention to explanatory process-tracing and critical discourse analysis for my data analysis. As briefly mentioned, vague definitions of human trafficking and modern slavery cause methodological challenges. Therefore, this thesis needs to analyse complex descriptions of how people experience the issues of ‘human trafficking’ and ‘modern slavery’. Such rich descriptions of people’s experiences and ideas have also changed over time, depending on a domestic context. Looking at the constructing process of discourses on these issues, and its influence over institutions and policies, therefore, has required me to conduct two periods of fieldwork in Tokyo, Hokuriku and Shikoku. The first period of fieldwork paid attention to politicians, activist groups such as NGOs, unions and lawyers who are mostly working in Tokyo, and have more access to the policy process. Conversely, in the second period of fieldwork, I decided to conduct an in-depth investigation in the clothing/textile industry located in Hokuriku and Shikoku as these areas are the distinctive regions for the clothing manufacturers. Prior to fieldwork, I identified key political actors.

During these two periods of fieldwork, I collected materials in the National Diet Library, local libraries in Hokuriku and Shikoku, and empirical sources from the activist groups. These materials enabled me to understand empirical events and discussions in dealing with

human trafficking and modern slavery since the early 1990s in Japan. I also conducted semi-structured interviews with the following groups: politicians, feminist and labour activists, lawyers, employers, migrant labourers as well as industrial organisations in the clothing/textile industry.²¹ Semi-structured interviews through these two periods of fieldwork helped me understand not only discourses around future policy but also motivations and strategies of employers as well as migrant labourers at their workplaces. In short, the major original data I use in this thesis are as follows: materials from the Japanese government, international organisations such as the UN and the ILO, the government's materials including Diet records; sources from the activist groups; the newspaper archives; interview materials.

For the data analysis, I use explanatory process-tracing and critical discourse analysis. The explanatory process-tracing enables me to highlight the particular events and actions which political actors take as a response to the events. Critical discourse analysis draws attention to the relationship between political actors' practice and their discourses. Doing so helps us understand the ideas behind discourses of these actors and makes it possible to observe changes in policies and institutions in a critical manner (Visoka 2016). I use critical discourse analysis in interpreting data from government materials as well as from fieldwork, while I rely on the views of organisations in describing their statements in terms of the particular sources of international organisations and legal texts. I also use the operational indicators provided by the ILO and the European Commission (EC) to map my interview data from the second period of fieldwork. Further discussion on the data and its analysis will be offered in Chapter 2.

²¹ See Appendix 2.

Chapter 2

Discursive Institutionalism and Forced Labour Chain: A Theoretical Framework and Methodology

Introduction

As highlighted in the introductory chapter, my thesis seeks to answer the following question: How have the discourses on human trafficking and modern slavery been constructed in Japan, and how has this affected changes in policies and institutions associated with immigration and the labour market since 1990? To answer this question, this thesis will address the following sub-questions: 1)What counts as human trafficking and modern slavery in Japan, and how does Japan's definition of human trafficking differ from international norms?; 2)How has political activism represented discourses on human trafficking?; 3)How has such activism shifted the discourse on labour trafficking and modern slavery, and how have these discourses been recognised by the government?; 4)Where have these discourses come from, and how has the nature of illegality in workplaces actually been constructed? I argue that, since 2005, the definitions of human trafficking and modern slavery have been expanded by the interaction between the state and political activism. Along with the expansion of the definition of human trafficking, institutions and policies associated with migrant labour have changed to protect migrant labourers.

The purpose of this thesis is to explain the process of constructing discourses on human trafficking and modern slavery as well as to examine the way in which such discursive

changes have influenced institutional and policy changes. To explain these processes, this chapter is divided into two sections. In the first half of this chapter, I present discursive institutionalism as a type of constructivist approach, which represents how the problems of human trafficking and modern slavery have been constructed both by the state and by political activism. I also introduce the concepts of the forced labour chain and semi-compliance as supplementary theoretical perspectives. These concepts help to crystallise the continuum of exploitation of migrant labourers at work from entry to exit as well as the negotiation space between employers and migrant workers. In other words, this thesis has two levels of analysis of constructed discourses on migrant workers and the situations which they face at their workplaces. I then illustrate the method I will use to answer the above questions. In this second half of this chapter, I illustrate the fieldwork process, including the interview strategies and my position as a researcher at the field sites. In addition, I introduce process-tracing and critical discourse analysis as analytical tools. I also explain the methodological challenges associated with studies of human trafficking and modern slavery, which mostly derive from the ambiguous terms ‘exploitation’, ‘deception’ and ‘coercion’. To overcome the problems identified in the approach, I try to clarify the terms, by introducing and editing the ILO/EC operational indicators of human trafficking (2009).

In the following section, before starting to illustrate my theoretical framework and its supplementary materials, I provide my understanding of human trafficking and modern slavery based on the existing literature, and justify the use of discursive institutionalism as a major theoretical frame.

1. Discursive Institutionalism as a major theoretical framework

1-1. Term Use: human trafficking, forced labour and modern slavery

This section presents the context in which a wide variety of actors represent different discourses on human trafficking, forced labour and modern slavery. Definitions of these terms vary widely across states and regions, and based on these multiple definitions, international protocols and legislation that are associated with trafficking and modern slavery are constructed at the national and international levels.

The legal definitions of human trafficking and modern slavery are specified at the international level in the United Nations Palermo Protocol:

Trafficking in human beings shall mean the recruitment, transportation, transfer, harbouring or receipt of persons...by means of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (United Nations 2000).

While there are elements of human rights abuse within this definition of human trafficking, the UN Protocol provides the ‘common’ definition rather for illegal immigration than for human rights issues. Clearly, the emphasis on ‘exploitation’, ‘coercion’, and ‘deception’

attempts to distinguish trafficking from the legal immigration embedded in the labour structure. In other words, this definition does not offer a clear basis for resolving the precise relationship between forced labour and trafficking. In contrast, the understanding of human trafficking that is provided by the ILO is different from that in the Palermo Protocol, because trafficking is one of the categories of forced labour:

Traditional practices of forced labour, such as vestiges of slavery or slavery-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking also called modern slavery to shed light on working and living conditions contrary to human dignity (ILO Homepage 2017b).

As some studies have highlighted (Pécoud 2015; Lerche 2011), this official ILO definition from 2005 requires a lack of freedom in both the entry into and exit from the labour relation for it to be defined as human trafficking (2005a). However, this has since been modified so that only one of the following criteria needs to be fulfilled: ‘forced entry; retaining labour in an employment relation against his or her will; and the employment can be left only at great risk’ (Lerche 2011:10; ILO 2005b). This modification has raised the question of whether contract workers (possibly in the low end in the labour market) could be defined as forced labourers. Based on its definition, the ILO estimated that 18.7 million people are exploited in the private economy (2014).

While it is important to understand these legal definitions as they are used in the national and international context, it is also crucial to explore how these international laws have been used (or not used). As a researcher observing these issues, considering the various

definitions and their numerous uses, it is essential to clarify exactly what is meant in the following thesis by human trafficking, forced labour and modern slavery. In this thesis, I use the terms 'human trafficking' and 'modern slavery' to represent the problems of temporary migrant labourers who are placed into poor working conditions. Given that the UN definition puts human trafficking in the context of illegal immigration, and the ILO definition puts it in the context of forced labour, it appears that there is a gap in understanding. Human trafficking, forced labour and modern slavery appear to be defined differently by different international organisations and states. Needless to say, this causes problems to the researchers as well as practitioners.

The first problem stems from the innumerable interpretations of human trafficking by a variety of political actors. Because various advocacy organisations, lobby groups and shelters seek to further very different agendas through a focus on 'trafficking', it has proved remarkably difficult to agree on a precise and workable legal definition of the term. Additionally, the trafficking process itself may be organised by various groups or individuals at different stages, and their recruitment and transportation are controlled in numerous ways.

The language use also varies depending on the international organisations. For instance, the ILO highlights the vulnerability of labour migrants by deliberately using the term *forced labour*. Although the international organisations use this to encompass the experiences of some particular groups of migrants who suffered from the economic exploitation derived from global political and economic inequalities between the Global North and the Global South, they regard human trafficking and modern slavery as extreme cases of those economic migrants (Pécoud 2015). In short, these actors have never proposed clear measures to fix the problems which arise from prioritising state sovereignty over economic migration.

Because of this, the phenomena described as ‘human trafficking’, ‘modern slavery’ and ‘forced labour’ are depoliticised by leaving global inequality between the North and South unchallenged (O’Connell Davidson 2015; Pécoud 2015; Lerche 2007).

Another problem centres on the idea that, whilst trafficking and some of its constituent elements may universally be considered to constitute human rights violations and/or crimes, other actions and consequences related to trafficking may be unproblematic to some parties. In certain contexts and in certain countries, human rights abuse itself may be unproblematic (Lerche 2011). For example, exploitation within the realm of prostitution is one possible outcome of trafficking; however, many countries regulate certain forms of prostitution in the legitimate economic sector, rather than universally criminalising the practice or viewing it as a human rights abuse.¹ Moreover, some trafficking cases do not neatly fit in the categories of forced or voluntarily migration, or of legal or illegal migration for work.

It is also difficult to distinguish between human trafficking and exploitative situations within contracted employment. In particular, the question of what constitutes an exploitative employment practice is still highly contested. There is considerable variation between countries and economic sectors in terms of what socially and legally constitutes an acceptable employment practice (Anderson 2013; Lerche 2011). For instance, in Japan, some unreasonable restrictions of employees’ freedom still exist under the name of apprenticeship,² even though labourers’ rights in apprenticeships are legally protected in the

¹ Even within European countries, prostitution policies vary. The Netherlands and Germany legalise prostitution, although they criminalise the purchase of sex from a victim of trafficking. On the other hand, Finland has banned the purchase of sex since 1999. It has also banned prostitution in public spaces and criminalised the purchase of sex from trafficked victims in the 2006 revision.

² For instance, some craft companies in Japan require female apprentices, regardless of their nationalities, to trim their hair and not to have relationships. This custom persists despite the fact that Article 69 (1) in the Labour Standards Act protects labourers’ rights under apprenticeship in Japan.

Labour Standards Act. Labour conditions which depend on immigration status make things even more complicated, as each state has different permissible working categories depending on visa status. This variation in working conditions and immigration status means that there is no global political consensus in terms of minimum employment rights, which makes the adoption of a yardstick to measure ‘exploitation,’ ‘coercion’ and ‘deception’ difficult. These problems of definition, especially those associated with the key terms in the UN Palermo Protocol (2000), cause methodological problems, which I will discuss further in the method section.

The most dangerous thing caused by what these discussions call ‘trafficking,’ ‘forced labour’ and ‘modern slavery’ is that anti-trafficking and anti-slavery activists are far less certain about the consequence of mixing up these confusing terms. The consequence is that, like ‘human trafficking’ for the purpose of sexual exploitation, ‘modern slavery’ is policed more at national borders (Freedland and Costello 2014). That is to say, the anti-slavery rhetoric, like the anti-trafficking rhetoric, has come to be frequently used by migration control. Conversely, some activists and scholars pay more attention to the morality of individual employers, creditors or intermediaries who violently abuse migrant labourers (O’Connell Davidson 2015). Hence, anti-slavery rhetoric is vulnerable to being used as a mask to hide the states’ real motivation of economic immigration control (Pécoud 2015; Anderson and Andrijasevic 2008).

In the Japanese context discussed here, I will interpret human trafficking and modern slavery as the problems of two main groups of people. First, the problem of human trafficking refers to violence against Filipina women, including sexual exploitation. The targeted victims of such issues are mostly female entertainers who have come from Southeast Asian countries

to work in Japan since the 1980s. As shown in the Introductory chapter, the definition of entertainers in Japan's visa category states that they are persons who have an entertainment visa, including singers, dancers, actors/actresses and sports players, regardless of gender (MOJ Homepage 2017). In human trafficking literature focussed on Japan, however, the definition refers only to females who work as hostesses or prostitutes in the sex industry (Parreñas 2011; Saito 2011a). In Japan, the term *Jinshinbaibai* [selling and buying human beings] is the translation of human trafficking, but it focusses more on patriarchal domination over female sexuality through prostitution (Anderson and Andrijasevic 2008).³

Second, the terms 'labour trafficking' [*Rodosakushugata no Jinshintorihiki*] and 'modern slavery' [*Gendai no Dorei*] have been introduced following the revisions of policies and institutions in Japan in 2005. The concept of 'modern slavery' has been developed through anti-slavery campaigns by academic scholars such as Bales (2007) since the 1990s. Since the concept is largely based on the historical experience of the transatlantic slave trade from the mid 17th to 19th centuries (Bales 2007; 1999), its application to other countries is questionable (O'Connell Davidson 2017a; Quirk 2009). However, Japanese leading NGOs and lawyers have used these terms in describing the problems of migrant labourers under the IT-TIP/TITP, since 2006. Although 'labour trafficking' and 'modern slavery' are slightly different, in this thesis I sometimes use these terms interchangeably to describe the activists' way of representing these labourers. Because these migrant labourers are supposed to consent to work under this state-sponsored scheme, the term 'forced labour' [*Kyosei Roudou*], which exclusively refers to non-consensual work in Japan, is not frequently used.⁴

³ Anderson and Andrijasevic illustrate that domination over female sexuality is consolidated by men's rights of access to women's bodies (2008).

⁴ Jens Lerche (2011) also clarified that forced labour is not a concept much used in China. This implies that the concept of forced labour, which has been developed by American and European scholars, is not always applicable to other countries in different regions.

Rather than forced labour, ‘forced deportation’ [*Kyosei Kikoku*] has been one of the core problems in IT-TIP/TITP.

Based on my understanding of the problems of these two groups, I use the term ‘human trafficking’ to describe the process with illegal aspects that facilitates the mobility of people in different locations for the purpose of both sexual and labour exploitation. Due to the illegality associated with human trafficking, discourses on anti-trafficking are often used by states to legitimatise their immigration and criminal control. Conversely, the term ‘modern slavery’ emphasises the situations of labour migrants in the low end of the labour market at their destinations. In this respect, ‘modern slavery’ sheds light on the economic exploitation experienced by some groups of migrants on the basis of the global political and economic asymmetries between Global North and Global South (cf. Crane 2013).⁵ More clearly, these two terms are used to describe different types of unfreedom or illegality within the same field of employment and/or across their lifetimes (Bastia and McGrath 2011). In addition to these, I also introduce the term ‘forced labour’ or ‘unfree labour’ to refer to two main concepts. One is the notion of direct force at the point of entry, where a person is obliged against his or her will to enter a labour relationship. The other is that of migrants with regular contracts, who are subjected to various forms of exploitation, coercion, and deception at their workplaces and on leaving their contract (Barrientos et al., 2013). As most of the cases of entertainers and TITP/IT-TIP labourers show, the employment contract is entered into voluntarily. Therefore, only paying attention to the point of entry overlooks a wide variety of exploitation, coercion, and deception at the exit point.

⁵ Andrew Crane distinguishes these terms to describe modern slavery as exploitative treatment of workers in management activities, whereas trafficking emphasises transportation rather than those economic activities (2013).

To understand the current problem of human trafficking and modern slavery in Japan, I begin by criticising the assumption that human trafficking [*Jinshinbaibai*] should be exclusively understood as the problem of entertainers. Instead, as I have argued in the introductory chapter, human trafficking and modern slavery in Japan can be recognised more broadly on the continuum of labour migration. The majority of empirical analyses of human trafficking in Japan have focussed exclusively on entertainers' issues, but they tend to overlook that they are not victims, but labourers who have agreed to work in Japan (Saito 2011b; Fujimoto 2008). There are two notable dangers of this tendency. First, because the institutional changes to dealing with sex trafficking occurred around 2005, academic scholars are apt to miss the broader range of cases of trafficking including labour exploitation. In addition, due to the changes in institutional arrangements in 2005, policy-makers tend to think that the problems related to human trafficking have already been solved. Due to the mislabelling of human trafficking as *Jinshinbaibai*, the government has, until recently,⁶ suggested that there are 'no problems' with labour trafficking or modern slavery in Japan (US Department of State 2012). This narrow definition of human trafficking highlights the second danger of omitting to account for migrant labour in the literature. In other words, dominant discourses on entertainers have drawn attention away from migrant labourers, which in turn has eliminated the agency of these labourers.

Any attempt to distinguish these two terms might remove the focus from unfreedom⁷ in labour among non-trafficked migrants. It is also true that not all trafficked migrants

⁶ The government published its Action Plan on combatting human trafficking in 2004, 2009 and 2014. Although labour trafficking issues including TITP/IT-TIP have been ignored in 2004 and 2009, TITP issues were included as potential problems of human trafficking for the purpose of labour exploitation. See action plans (Ministerial Meeting Concerning Measures Against Crimes 2014;2009;2004).

⁷ As many scholars suggest, multiple meanings of unfreedom exist, depending on how the characteristics of working relations which make a labour free or unfree are conceived (Kothari 2013; Breman 2007). The meaning of unfreedom here includes not only economic coercion such as debt-bondage and system of recruitment, but also physical and physiological unfreedom such as forced deportation.

necessarily end up as forced labourers. From the above discussions, we can see that a lack of conceptual clarity regarding forced labour, trafficking and modern slavery remains (Strauss 2012). Rather than emphasising the meaning of labour trafficking and modern slavery, this thesis underlines the discursive and institutional shifts that are associated with these concepts. They have been constructed through discursive interaction between political activists, state authorities and international organisations. To shed light on this point, the following section will introduce discursive institutionalism.

1-2. Discursive institutionalism

As mentioned above, the purpose of this thesis is to explain the processes of institutional and policy changes associated with human trafficking and modern slavery since the early 1990s. To do so, discursive institutionalism is applied. Discursive institutionalism explains how ideas and discourses of political actors change in an institutional setting. It also illuminates the process through which policy ideas and discourses have been constructed and become institutionalised (Schmidt 2008). There are two reasons why discursive institutionalism is the best way to answer the research questions.

First, discursive institutionalism utilises a constructivist approach, which examines the reality of problems by looking at how political actors construct their discourses (Schmidt 2012a). This approach focusses on how we (inter-)subjectively interpret problems, rather than focussing on the problems' real existence. The above discussion of various interpretations (and my understanding) of the terms 'human trafficking' and 'modern slavery' is crucial. It is because the use of discourses is what creates reciprocal understanding among their actors. Discursive institutionalism therefore has sociological and historical components

in the sense that political actors use discourses in their own particular way in their speech and practices, and these discourses are sometimes embedded within historical backgrounds. In this respect, introducing discursive institutionalism as a major theoretical framework makes it possible to observe incidents that could ‘mean different things to different people – and, to compound the problem, the content of such meanings has itself changed over time’ (Hay 2016).⁸

Second, discursive institutionalism also reveals ideation in political analysis (Campbell 2004; Blyth 2002; Hall 1993). It explains specific phenomena, such as how the ideas and discourses of political actors influence shifts in policies and institutions, which other new institutionalisms are not able to explain alone. The particular insight of discursive institutionalism is its identification of less hierarchical relationships among actors (Schmidt 2011). Of course, it does not mean that there is no hierarchy among political actors. According to Schmidt (Ibid.), there are two different types of agency which are understood as discursive abilities of actors: ‘coordinative’ and ‘communicative’. While coordinative discourses are confined to political actors who directly influence policy reforms, communicative discourses happen between political actors and the public, exchanging critical ideas about existing policies and institutions in order to change or maintain them (Schmidt 2012b). By clarifying the interaction between coordinative and communicative discourses, discursive institutionalism⁹ emphasises policy responses and their changes, which are contingent upon ideational and political processing.

⁸ Some scholars combine discursive institutionalism and constructivist institutionalism because they both rely on a constructivist approach and give actors a considerable creative capacity to change rules and norms (Wahlström and Sundberg 2018; Peters 2012). It is difficult to divide them because they both emphasise the ideas and discourses of individual actors regarding their role in changing institutions and policies. However, it could be said that discursive institutionalism focusses more on the communication process among actors (Olsson 2016).

⁹ Discursive institutionalism is one of the most recent additions to the family of institutionalism. Guy Peters (2012), for instance, identifies four dominant versions of new institutionalism: normative, sociological,

In this process, the changes in institutions and policies are shaped by the exchange of actors' ideas (Telò 2014). The implication of this is that all policy responses are conditional upon the actors' ideational filters through which the problems are generalised. In this less hierarchical understanding of the relationships among political actors and the public, political actors are able to criticise the elite-based ideational structure. In this sense, political actors who share their ideas can be seen as similar to the 'civil society alliance' (Barrientos 2013) and 'advocacy coalition framework', which elaborate and coordinate policy ideas (Sabatier and Jenkins-Smith 1993). This communicative understanding of political actors also helps us to discuss a wide variety of issues, including human rights in new institutionalism (Schmidt 2008a).

Here, I use institutions when referring to formal and informal rules created by political actors, which are based on their particular ideas of human trafficking and modern slavery. The meaning of formal rules here is laws, regulations and policies that have passed through Diet deliberations. Accordingly, institutions overlap with policies when we consider them as official rules; however, they are different in the sense that institutions include unofficial rules and norms that are embedded in society such as guidelines for workplaces. Institutions and regulations also overlap as they both refer to laws and formal rules, but regulations include more details of application of general principles stated in legislation. I understand that institutions are constructed in the process of social and political interaction among domestic political activists, government authorities and international organisations such as the ILO and UN.

rational choice and historical institutionalism, but until very recently, there has been very little if any reference to what is now described as discursive or constructivist institutionalism (Olsson 2016; Peters 2012).

This understanding of institutions is, however, not inspired only by discursive institutionalism. The definition of institutions provided by Discursive institutionalism is confusing. Discursive institutionalism regards institutions as ‘essentially ideational constructions’ by political actors (Peters 2012:112).¹⁰ The problem with this understanding, however, is that this perceives only one dimension of the two-way interactions between institutions and actors: the dimension of institutions shaping actors’ behaviours. As Stephan Bell (2011) also suggests, this understanding does not include the possibility that political actors who do not have direct access to the policy process might overturn or deny the existing institutions. Instead of relying only on the meaning of institutions developed by discursive institutionalism, therefore, my use is closer to the definition provided by Peter Hall (1986), who regards them as formal rules and procedures;¹¹ it is also shaped by James Mahoney and Kathleen Thelen’s (2010) understanding of institutions as non-codified and informal conventions. In practice, discursive institutionalism also develops its account of incremental changes in rules and policies based on both historical and sociological institutionalism (Schmidt 2012b). In taking this approach, this thesis tries to distinguish institutions from actors and organisations.

This understanding of institutions helps us identify political actors playing their roles in discursive institutionalism. As briefly mentioned above, there are two types of discourses ranged over types of political actors. According to Schmidt (Schmidt 2008a), coordinative discourses are constructed by actors who are closely working with policy-makers. This includes politicians, bureaucrats, political activists consisting of leading NGOs, lawyers,

¹⁰ Schmidt (2008a:314) explains institutions ‘as given (as the context within which agents think, speak, and act) and as contingent (as the results of agents’ thoughts, words, and actions)’.

¹¹ Hall defines institutions as ‘the formal rules, compliance procedures, and standard operating procedures that structure the relationship between people in various units of the policy and economy’ (1986:7).

and shelters. On the other hand, communicative discourses are considered as the ones which do not have a direct impact on policy changes. In this sense, the range of actors is broader, including local community unions, the media and the international organisations who try to influence domestic policies indirectly. Clarifying these actors and separating them from institutions also help us escape from the criticism of what constitutes an institution (Bell 2011).

Discursive institutionalism is also applicable to the debate on human trafficking and modern slavery. As discussed earlier, the meanings of human trafficking and modern slavery can vary depending on political actors' interpretations, which are based on their policy ideas. Their perspectives on 'reality', that is, on the particular interests of specific groups, allow us to critically interpret their ideas and discourses. For instance, the media and NGOs for migrant labourers often frame TITP labourers as victims who are forced to work in 'slavery-like conditions' without any clarification of the meaning of such conditions. However, some scholars believe that those who work in the agricultural industry are quite relaxed, and to some extent, enjoy their lives as TITP workers in Japan (Liang 2014). Such construction of discourses by the media and NGOs to support migrant labourers can be illustrated by the constructivist approach. However, this does not explain how this construction of discourses affects institutional changes. In this sense, discursive institutionalism offers a clearer insight into the dynamics of change, by showing how political actors with new ideas overcome institutional obstacles to change, through the process of communication (Zurnić 2014). This less hierarchical view of the communication between actors and institutions is particularly useful for understanding the data from discussions between political activists and authorities, and the policy and institutional changes which result from them.

In practice, similar to the new institutionalism, the roles of discourses and ideas have provided a major analytical frame for human trafficking literature over the last two decades in America and European countries (Béland and Cox 2011). Examining discourses provides important insights into responses to human trafficking and modern slavery. Diverse individuals, states and international communities have responded in different ways depending on the ideas that have constructed that response. From feminist scholars (Doezema 2010; 2002; Anderson and O'Connell Davidson 2004; Kempadoo and Doezema 1998) to scholars of international relations and international law (Meriläinen and Vos 2015; Gallagher 2010), each discourse provides its own nuance. These scholars also imply the importance of the relations between institutions and discourses of political actors. For instance, Ronald Weitzer (2007) describes the 'institutionalisation' of moral activists in explaining that American activists against sex trafficking enjoyed remarkable success in getting their ideas incorporated into government and international organisations' practices. Anderson and Julia O'Connell Davidson (2004) also highlight the importance of institutions. Their study shows that institutions determine the access of those working in the domestic service and sex sectors to formalised organisations such as trade unions. However, these scholars do not refer to the new institutional approach. One consequence of this is that the meaning of institutions is limited to formal structures such as laws and government authorities. Another consequence is that these scholars underestimate how the discourses and ideas of political actors affect formal and informal rules, and policies. Taken together, the potential of new institutionalism remains to be developed in human trafficking and modern slavery literature.

However, while discursive institutionalism explains how discourses based on ideas come to be understood among political actors and how this process influences institutional shifts, it

does not explain where problems originate. It is also difficult to see the gap between the constructed ‘reality’ of migrant labourers and the reality in their workplaces. For instance, industrial association organisations and employers in the clothing/textile industry often make their own rules for labourers’ working conditions. There is, therefore, a gap between the discourses constructed by NGOs and community unions versus those created at workplaces. This gap also raises the question of to what extent migrant workers and employers are able to exercise their agency under the structure. The following section will therefore introduce the concepts of the forced labour chain and semi-compliance as supplementary theoretical perspectives. By doing so will help us understand employers and migrant labourers’ motivations and strategies at workplaces under the structure.

1-3. The forced labour chain and a space of ‘semi-compliance’ as supplementary perspectives

As previously argued, my thesis relies on the constructivist approach by using discursive institutionalism, and my academic interests in human trafficking and modern slavery are based on constructivists such as Anderson and O’Connell Davidson. Taking this one step further, however, I introduce the concepts of forced labour chains and so-called ‘semi-compliance’ developed by Martin Ruhs and Bridget Anderson (2010) to understand what sort of strategies and motivations migrant labourers and their employers have at their workplaces. Introducing these concepts leads this thesis to a more empirical approach by clarifying the degrees in the continuum of exploitation of labourers at work. These concepts are the supplementary materials which relate to institutional changes in production and employment. Notably, they highlight the role played by labour chains, designated by

Barrientos as coordinated chains or network of procedures in producing and outsourcing goods and services which change employment and labour relations (2013). They also shed light on the development of value chains which spread across borders, becoming global value chains.

The concept of the forced labour chain originated in two different critiques: the literature on human trafficking and modern slavery, which avoids measuring the terms deception, coercion and exploitation; and two overlapping streams of literature—global value chains (GVCs) and global production networks (GPNs). The former includes constructivist scholars who are reluctant to measure the border between unfree and free because such a concept is socially and legally constructed (O’Connell Davidson 2017b). In contrast, the latter explains globalisation and the vertical integration of manufacturers in developing countries. It also focusses on how political activism responds to the exploitation of labour in GPNs.

O’Connell Davidson (2017b; 2013; 2010) and Anderson (2012; 2011), both of whom initially explored the commercial sex industries (O’Connell Davidson and Anderson 2004), have extended the term ‘trafficking’ to the non-sexual and non-criminal realms. These constructivist scholars suggest that it is wrongly assumed that most prostitutes have no choice but to work in the sex industry. It is widely acknowledged that people can choose to migrate to other countries to work in other sectors such as the fishery, construction, and textile industries. It is also widely known that these migrant workers mostly accept so-called 3D jobs (dirty, dangerous and difficult) and commonly have to indebt themselves to cover recruitment, visa, and transportation fees. Depending on how ‘exploitation’ is defined, and on the degree of deception regarding the working conditions at the destination point, the

problems of ‘labour trafficking’ could be limited to temporary labour migrant schemes (O’Connell Davidson 2017b). In this respect, Anderson and O’Connell Davidson warn that the language adopted in the literature on trafficking suggests a special category of deserving ‘victims’. This normalises the abuse experienced by those falling outside the category of victims such as temporary migrant workers. For this reason, these scholars have not measured the degree of deception, coercion and exploitation, which are the key terms comprising trafficking as declared in the UN Palermo Protocol (2000).

In contrast, the concepts of GVCs and GPNs have a different root. They derive from an initiative to understand the role of manufacturing in the global supply chain. Many studies of GVCs characterise governance as unipolar and thus rely on the dominant power of a leading firm for any changes. More recently, however, scholars have paid increasing attention to the roles of broader political activism outside the chain (e.g., NGOs and labour unions) in raising labour standards (Stringer et al. 2016; Ponte 2014). Conversely, GPNs pay more attention to the ‘institutional, societal and territorial embeddedness’ of production networks and the asymmetric power relations among various actors (Barrientos 2013:1064). These perspectives help us understand how political activism has attempted to raise labour standards. However, they fail to discuss the abuse of labourers within the labour chains and seldom acknowledge labour, which makes workers ‘invisible’ (Stringer et al. 2016). While these perspectives explain the way in which NGOs and labour unions lobby, there is little or no information relating to how these actors rescue labourers (cf. Shih 2015).¹²

¹² Elena Shih (2015) describes rescue organisations in Beijing and Bangkok, which rely heavily on moral rehabilitation embedded in human trafficking rescue groups run by American evangelical Christians.

Despite the fact that constructivists and business studies' scholars differ fundamentally on the use of the labels 'human trafficking' and 'modern slavery', they both agree on the importance of investigating the temporary nature of migrant labour (O'Connell Davidson 2017b; Barrientos et al. 2013; Kothari 2013; Bastia and McGrath 2011; Anderson 2008). Although some of the above scholars question these labels, this thesis does not discard them because, as mentioned earlier, the major topic for investigation here is how these discourses have been constructed in Japan. This is the reason that I introduced a constructivist approach as a major theoretical framework.

Yet, to acknowledge the fluctuating levels of illegality and unfreedom at work, this thesis adds the concept of the forced labour chain, which highlights labourers rather than the governance of the global supply chain (Stringer et al. 2016; Barrientos et al. 2013; Kothari 2013). This perspective helps us assess the extent to which the participants of my interviews were exploited, deceived and coerced at their workplaces compared to the constructed discourses about them. Based on the idea that the dynamics of unfree labour could be said to arise predominantly in the labour relationship rather than directly at the site of entry, Christina Stringer et al. (2016) assess the conditions that prevent labourers from leaving their workplaces. Because the exact nature of illegality and unfreedom may vary at different moments in time (Kothari 2013), it is crucial to understand various degrees in the continuum of exploitation of industrial labourers. Hence, Stringer et al. (2016) introduce operational indicators to identify trafficking for the forced labour which were developed by ILO and the EC (2009).¹³ By using the ILO/EC operational indicators, they provide some ideas regarding coercion, exploitation and deception at workplaces in the manufacturing industry. Moreover, they extend this framework to include the exit dimension (Stringer et al. 2016). I also rely

¹³ Stringer et al. created Figure 1 based on ILO/EC operational indicators. See p. 74.

on the ILO/EC operational indicators developed by Stringer et al. (2016) in mapping my interview data from the second stage of fieldwork, which I explain in the method section below.

The concept of the forced labour chain is evidenced by the withholding of legal documents, forced deportation, curfews and unpaid wages in the clothing/textile industry in Japan. As shown in Chapter 5, my data reveal that some of the trainees in garment factories in Shikoku had to work 15 hours per day while receiving less than 300 yen per hour.¹⁴ Notably, however, my data also reveal that there is a kind of negotiation space between employers and migrant labourers, used by both to bend the rules in their own interests. Some employers and labourers admitted that they made oral agreements to work overtime at a poor hourly wage in return for receiving some food. An industrial association organisation also revealed that some employers and labourers agree not to pay the correct health insurance fees so that the labourers can receive more wages while the employers can increase production.¹⁵ This negotiation space blurs the border between illegality and unfreedom, as these cases show that illegal activities do not necessarily cause unfreedom.

To understand such data, this thesis also applies the concept of ‘semi-compliance’. This conceptual tool provided by Ruhs and Anderson (2006:1) explains ‘the employment of migrants who are legally resident but working in violation of the employment restrictions attached to their immigration status’.¹⁶ The conceptual tool of the forced labour chain provides a wide range of examples of exploitation, deception and coercion, while downplaying the important fact that some workers are satisfied with their conditions. As in

¹⁴ A community union in Tokushima Prefecture provided a diary written by a former trainee from China.

¹⁵ See Table 6 in Chapter 6.

¹⁶ To them, compliant migrants are legally resident, working within the conditions attached to their status; non-compliant residents lack their right to stay in the host countries (Ruhs and Anderson 2006:1).

Ruhs and Anderson (Ibid.), illegality may be the best choice for both employers and employees, and it cannot simply be assumed that illegality results in a degree of exploitation. Illegality is created by state laws and policies (Samers 2004), but it is not a neutral framework. This is because there are some cases where practice may be regarded as morally acceptable although it is illegal under the law. Similarly, the concepts of ‘exploitation,’ ‘deception’ and ‘coercion’ cannot simply be dichotomised. This raises the possibility that the illegality associated with these concepts does not necessarily lead to unfreedom at work. Therefore, introducing this extra perspective could extend the range of the forced labour chain framework to include the sphere of negotiation between employers and migrant labourers.

The concept might have limitations for my purposes, as it has been developed to explain the relationship between employers and migrant workers primarily in the context of the United Kingdom. Therefore, it was necessary to investigate a similar but different concept, such as ‘semi-formal employment’, which might have more relevance to a non-British sphere (Iskandar 1999). Natasha Iskandar (Ibid.) promotes this concept to illustrate the way manufacturing firms build flexibility into their production systems (i.e. workers in one firm are borrowed by another).¹⁷ While this provides a similar concept to the one developed by Ruhs and Anderson (2006), it is not applicable to IT-TIP/TITP cases because ‘semi-formal employment’ focusses more on the situations of undocumented workers,¹⁸ whereas ‘semi-compliance’ is a result of the tension between the need for flexibility in the labour market

¹⁷ In terms of what it means by ‘flexibility’ from employers’ perspectives, Ruhs suggests that employers enjoy the benefit of varying degrees of control over the supply of migrant workers, and such preference for migrant workers can easily become structural (Ruhs 2014). George Menz (2014) also discusses the ‘flexibility’ of using migrant labourers. He argues that employers try to drive disparities to accrue benefits to themselves.

¹⁸ Some scholars also use the term ‘semi-legality’ to denote a range of migrants’ legal statuses. This concept captures the various shades of uncertainty that leave migrants in different types of legal ambiguity, but the analysis of ‘semi-legality’ still remains ‘fuzzy’ (Kabul 2012:122).

and the state's desire to control migrant workers with legal documents. Semi-compliance therefore seems to characterise some of the situations of IT-TIP/TITP labourers: they have residency for 3 to 5 years but are not allowed to change their workplaces. In this way, the violation of rights is restricted to labour law but not to residency (cf. Lutz and Palenga-Mollenbeck 2010). A semi-compliant attitude like this is quite convenient for the government because this flexibility solves the issue of labour deficits for a short period of time while avoiding discussions regarding the settlement of migrants. This also clarifies some of my data from my participants' observations. As such, this concept not only complements the concept of the forced labour chain but also aids in understanding the idea behind public discourses on labour migration issues.

In summary, this thesis relies on discursive institutionalism to analyse the construction of discourses on human trafficking and modern slavery, as well as how this has influenced changes in policies and institutions since 1990. As explained, this constructivist approach helps us understand the representation of problems within the discourses of political actors. While this constructivist approach elaborates the idea that the border between unfree and free is legally and socially constructed, this thesis introduces the additional concept of critically assessing the constructed discourses on human trafficking and modern slavery. The following section explains the method used in this thesis.

2. Method – data collection, data analysis and methodological challenges

Institutional and policy changes from the perspective of discursive institutionalism must be studied inductively, as this form of institutionalism is based on the notion that institutional

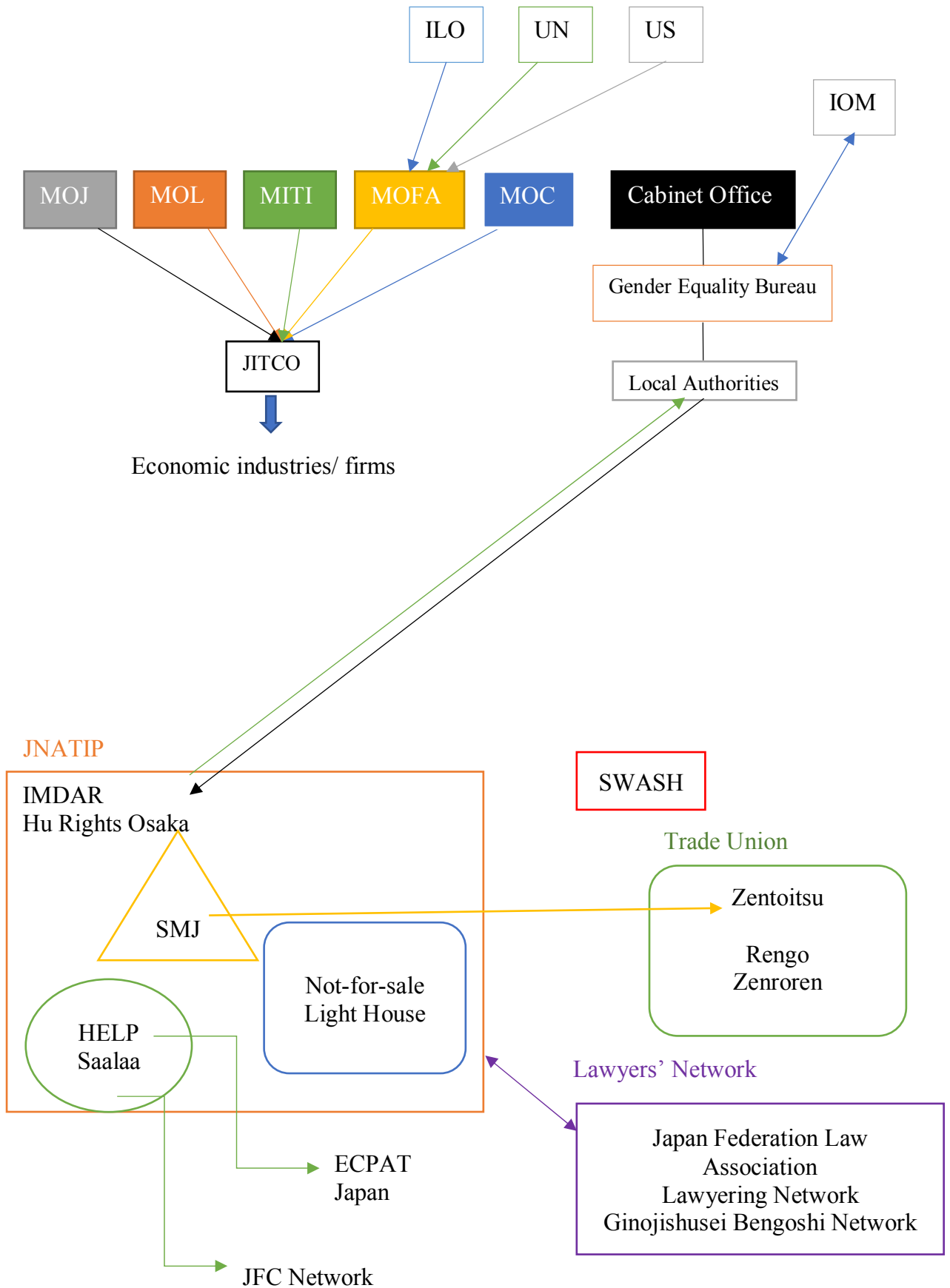
changes are shaped by the ideas and discourses of political actors (Hay 2016; 2008). To analyse the ideas which constitute discourses, this study relies highly on a qualitative approach, as it provides complex descriptions of how people experience a given research topic. As Hay emphasises (2016), such descriptions have changed over time. This approach therefore required me to conduct fieldwork in Japan, and prior to beginning the fieldwork, the identification of the political actors was necessary. In the fieldwork, I sought to collect data on how political actors develop their ideas on human trafficking and modern slavery, as well as on how they negotiate and exchange their policy ideas. To do so, during the fieldwork, I collected data through archival research, participant observation, and semi-structured interviews. In analysing the data, I draw attention to explanatory process-tracing and critical discourse analysis. Before moving on to the data analysis, the following section will start to illustrate the identification and mapping of the political actors.

2-1. Data Collection

2-1-1. Mapping political actors

The mapping of international organisations, NGOs, shelters and community unions, as well as the identification of the politicians and lawyers involved in this issue, was essential prior to beginning the fieldwork. The following chart shows the relations among political organisations working on eradicating human trafficking and modern slavery in Japan, and some international organisations which wield influence in Japan.

Chart 1: Mapping of Political Actors (created by author based on the fieldwork)



Unlike America and European countries, where human trafficking discourses have been developed, in Japan, organisations working to combat trafficking rely heavily on abolitionism, which holds that all prostitution should be banned. In short, discourses on sex workers' rights that consider the labour conditions in the sex industry hardly exist in Japan. This abolitionist viewpoint continues to be the central moralising idea in hegemonic arguments. The debate has therefore centered on controlling social order to avoid losing 'ordinary school girls' to the commercial sex industry, on eradicating victims of domestic violence in international marriage, and on rescuing 'entertainers', especially those from the Philippines, as sex traffic victims. As shown in Chart 1, there is an umbrella organisation called the Japan Network Against Trafficking in Persons (JNATIP), which is based on the International Movement Against All Forms of Discrimination And Racism (IMADR)¹⁹ in Tokyo. This organisation has had meetings with the Cabinet Office twice a year since 2003 to discuss measures of human trafficking. It was established by feminist organisations, Christian charity-based shelters, and professionals who had been working to combat child sex tourism and domestic violence. As Laura Agustín (2007) describes, there was energetic activism to counter issues related to human trafficking during the 1990s in America and European countries, but progress has since been impeded by angry reactions from those favouring the eradication of commercial sex.

This is a similar lack in Japan. A shelter called the House in Emergency of Love and Peace (HELP) was set up in 1986 by the Japan Christian Women's Organisation [*Kyofukai*],²⁰

¹⁹ IMADR is an international non-profit, non-governmental organisation fighting against discrimination and racism, and advocating the international human rights system. It has a Tokyo office which is shared with JNATIP.

²⁰ *Kyofukai* is a Catholic-based abolitionist feminist organisation which was set up in 1886 to ban prostitution. The term *Kyofukai* literally means 'the organisation for moral reform'.

which has been involved with the abolition of licensed prostitution since 1886. End Child Prostitution in Asian Tourism (ECPAT) Japan began working with HELP in campaigning against child sex trafficking and sex tourism at the end of the 1990s, but is specifically focussed on child pornography. The Japanese Filipino Children's (JFC) Network has the same origin as HELP, but has recently started to develop discourses on Filipino children as trafficked victims. Meanwhile, Not-For-Sale and Light House pay attention to forced pornography and prostitution, but they mainly focus on Japanese nationals as victims. Unlike America and European countries, groups advocating sex workers' rights barely exist. In fact, a group called SWASH is the only group that represents the rights of sex workers in Japan. The SMJ, a group advocating migrants' rights, joined JNATIP in 2006 when the US Embassy started to discover the labour exploitation issues in Japan. Since then, the organisation has provided information on IT-TIP/TITP with regard to labour trafficking issues. IMADR and Human Rights Osaka are the original members of JNATIP. They have rights-based perspectives, but their focus is mostly on the discrimination against foreigners in Japan. Based on my mapping of the key political actors, I approached 17 potential participants—two former politicians, seven lawyers, six advocacy groups, one retired officer from the Immigration Bureau and one former ILO Tokyo representative.²¹ In so doing, I applied the Central University Research Ethics Committee (CUREC) A/1, saying that this fieldwork would involve elite interviews. CUREC A/1 is an ethics regulation for the researcher to conduct a straightforward type of interview. During the fieldwork, participant observations and semi-structured elite interviews were conducted.

²¹ See Appendix 2.

2-1-2. Fieldwork experience – the first journey to Japan

To collect materials, the initial fieldwork was carried out from October 2015 to January 2016, aiming to identify inductively factors leading to policy and institutional changes in human trafficking. It was also crucial to understand the ideas of actors fighting against human trafficking.

During the first period of fieldwork, archival research at the National Diet Library and relevant NGOs offices, semi-structured interviews, and participant observation served as major data sources. As an interview strategy, I tried the snowballing by actively seeking the relevant contacts in the elite interviews. According to Oisín Tansey (2007:770), snowball sampling is commonly used to identify an initial set of relevant respondents, who are then asked to suggest other potential subjects involved with the same issue. The researcher then interviews the second set of participants and requests that they also name other possible contacts. This is an ideal method for creating a participant network with a strong connection to the subject. In terms of the first fieldwork trip conducted in Japan, two NGO coalitions advocate against sex trafficking and labour trafficking— JNATIP and SMJ. A lawyer network also exists to support migrant labourers, especially those working within the TITP institution.²² Within these networks, snowball sampling was quite effective; however, it was not successful in accessing supporters for sex workers. This difficulty is partly because most NGOs involved in anti-trafficking issues hold an abolitionist view of prostitution, and thus they have no connection to sex workers or their supporters. To overcome this lack of

²² See Chart 1.

network connection, I utilised a personal academic connection in Japan—the author of the book, *Thai Migrant Sexworkers* (Aoyama 2009). Through this academic scholar, I gained access to an activist who advocates for the protection of sex workers' rights. Aside from this activist, the contacts I made were mostly working together at some point. Therefore, I did not need to be concerned about any conflicts of interests on their part. The semi-structured interviews with these actors were straightforward, but I draw particular attention to how these actors understand human trafficking and modern slavery and where their ideas come from. The questions I asked in the semi-structured interviews are contained in Appendix 1.

Two factors, however, necessitated changes to the original plan. First, limited access to relevant politicians made it difficult to identify the ideas underpinning their discourses. Accessing empirical data from the NGOs was the only way to fill this gap in the data. In addition, I was able to discover cases of labour trafficking in the clothing/textile industry, which relies heavily on the IT-TIP/TITP recruitment scheme to keep its workforce. These cases came to light through an evaluation of interviews and various materials written by NGOs and lawyers. I became intrigued by changes in policies and institutions associated with the foreign trainees and interns, especially in the clothing/textile industry. This encouraged me to explore a second set of participants in an effort to learn more about these particular industries.

2-1-3. Discovering the clothing/textile industry – the second journey

Data from the first period of fieldwork show that there was a target shift in JNATIP around 2006, from sex trafficking to issues related to trafficking for the purpose of labour

exploitation. Advocacy groups have mostly paid attention to IT-TIP/TITP due to migrant workers being the main focus of their advocacy. In their practices at that time, it seemed that the cases in the clothing/textile factories and agricultural industry represented discourses on IT-TIP/TITP labourers who were abused at their workplaces (*The Wall Street Journal*, 14 April 2015; Asahi Shimbun, 27 July 2008a; Asahi Shimbun, 23 August 2006a).²³ While the first fieldwork trip clarified what kind of actors came to fight against trafficking, it was still unclear how and why they shifted their advocacy focus from sex trafficking to trafficking for the purpose of labour exploitation. Nor was it clear why the clothing/textile industry, in particular, was singled out in their advocacy. If cases of labour trafficking can be found in the clothing/textile industry, how does its industrial structure affect labour conditions?

These questions from the first fieldwork trip encouraged me to conduct in-depth interviews to uncover any industrial structure putting pressure on the clothing/textile industry. To do so, however, I was required to revise CUREC A/1, as my initial application was limited to NGOs, lawyers, and policy-makers as interviewees. Since the applicants of CUREC A/1 are not allowed to ask sensitive questions such as those related to race, ethnic origins and health issues (University of Oxford 2016), I emphasised that I would ask the questions of migrant labourers' immigration process to work in Japan and their relations with their employers. In the first stage of the fieldwork, I also prepared my questions and an information sheet about my research. These semi-structured interviews also served as the primary data source in the second stage of the fieldwork, which was conducted from August 2016 to December 2016.

²³ Liang Meng (2014) demonstrates that some workers in TITP actually hold a relatively positive view of their lives in Japan.

Initially, contacts in Japan encouraged me to visit one of the biggest textile resource companies located in Sumida, Tokyo. The Tokyo Resource Centre is one of four companies that has been funded by the Ministry of International Trade Industry (MITI) since 1993.²⁴ According to the Centre and some previous studies (Kamibayashi 2015), the Hokuriku area is commonly associated with the textile industry. They also clarified that the further the distance is from the major apparel companies in Tokyo or Osaka, the more the factories feel squeezed in the distribution process. Therefore, I needed to find factories outside Tokyo and Osaka. In addition, as the Tokyo Resource Centre also has a contact in Tokushima Prefecture, I decided to start my investigation in both the Hokuriku and Shikoku areas. During this fieldwork, I was looking for data related to the demand for foreign labourers and how those labourers are treated. All my interviewees were in the clothing/textile industry, which includes the manufacturing of fabric and clothing (such as dresses), uniforms, underwear, hijabs,²⁵ lace fabric, medical supplies and curtains.

Unlike the elite interviews that I conducted during the first fieldwork, I found it difficult to utilise snowballing effects to recruit participants. Although I could identify the areas to explore, accessing garment factories and labourers was the hardest part of the second fieldwork because they did not advertise their phone numbers online and they did not have their own homepages. Therefore, the strategy I relied on is similar to the ‘guerrilla interview’, which Thomas Gold (1989:180) defines as ‘unchaperoned, spontaneous but structured participant observation and interviews as opportunities present themselves’. I contacted the industrial association organisations, which are part of the acceptance organisations in

²⁴ Originally, there were six resources companies established based on this funding. They were in Tokyo, Osaka, Kanazawa, Hamamatsu, Imabari and Nagoya. However, the Hamamatsu and Osaka resource centres were closed due to their unprofitable operation.

²⁵ Hijab is a headscarf for Muslim women.

TITP,²⁶ and whose phone numbers are available online (Ginojissusei.com). This website only provides the phone numbers of the industrial association organisations in each prefecture and not those of employers. Therefore, I called the contacts on this website one by one on to make appointments to see the industrial association organisations first. To select employers and labourers as interview participants, I had to use the appointments to strike up conversations with members of the industrial association organisations.

In this recruitment process, I did not clarify my topic to the employers and association organisations in the clothing/textile industry, emphasising that I was interested in the relationship between employers and migrant labourers in the industry (for instance, rules about workplaces, including accommodations).²⁷ Due to the increasing number of trial cases and media attention, some of them refused my interview requests, even though I emphasised that I was seeking to observe the relationship between employers and migrant labourers. Some of them directly asked me if I was a member of the US Department of State, which has criticised Japan every year since 2007 on the matter of IT-TIP/TITP labourers (US State Department 2007–2017). In terms of recruiting labourers, I mostly relied on community unions in those areas that provide shelters for TITP/IT-TIP workers. In addition, some of the industrial association organisations and employers kindly allowed me to observe interns working in the factories, but in most of the cases I could not talk to them in person since there was usually no translator in their workplaces.²⁸ That said, to most of the employers, it does not really matter whether they have the ability to communicate with their workers in any circumstances.

²⁶ Acceptance organisations usually consist of industrial association organisations and employers.

²⁷ See Appendix 1.

²⁸ In only one case, the industrial association organisation specialised in recruiting Vietnamese labourers, and brought a translator for me to talk to their Vietnamese workers in Noomi, Ishikawa Prefecture.

In the process of interviewing, I asked both the acceptance organisations and the workers some questions associated with the migration process. As can be seen in Figure 1,²⁹ there are roughly three different dimensions: country of origin, destination (workplaces in Japan) and point of exit. With both the acceptance organisations and migrant workers, I used ‘the co-construction of meaning strategy’³⁰ which intends to ‘co-create meaning with interviewees by reconstructing perceptions of events and experiences’ (DiCicco-Bloom and Crabtree 2006:316). As these participants are placed in a grey zone of legality, their understanding of morally accepted practices varies immensely. The difficulty in constructivist research is that a researcher has to negotiate the gap between his or her understanding of an incident and the participants’ views of the incident. To be sure what the participants mean, I sought clarification by repeating literally what they said (Taylor et al. 2007).

When interviewing industrial association organisations and employers, even though I did not use certain specific phrases associated with illegal activities, they often openly talked about their workplaces and expressed their feelings. Some of them referred to their migrant workers as ‘my girls,’ ‘my children’ or ‘this kind of people,’ while stressing that they treat their workers very well. Because, as this implies, employers seem to have a wide variety of understandings of ‘morally acceptable practices’, I needed to help them clarify what they meant by ‘morally acceptable’ (Taylor et al. 2007). In addition to the co-creation of meaning strategy, I was also concerned about potential ‘conflict of interest’ among participants.³¹

During the interviews, I tried not to mention the names of community unions, as some of

²⁹ See p.74.

³⁰ Reza Mojtahed et al. (2014:88) describes it as ‘co-creation of understandings between researcher and participant’.

³¹ While there is no single definition of ‘conflict of interest’, Michael Davis recognises that conflict of interest occurs when a personal or organisational interest interferes with the ability of an individual or organisation to act in the interest of another party (Davis 1982 in Norman and MacDonald 2009).

the employers had strong opinions about them, wrongly calling them ‘brokers’ that lure and manipulate their workers. In a few cases, it became evident that the employers had become emotional. They expressed their anger against ‘brokers’, and sometimes this anger was directed towards me. Apparently, community unions providing rescue work³² for migrant labourers and acceptance organisations have conflicting interests. Hence, the information that I received remains anonymous and is protected from those whose interests conflict with those of the interviewees (DiCicco-Bloom and Crabtree 2006).

I also asked the migrant workers questions related to their migration process and work experiences, relying on the ‘co-construction of meaning strategy’ and paying attention to conflicts of interests. Because the migrant labourers I interviewed were located in the low end of the labour market, which is often the target of exploitation, I was concerned more about the procedural sensitivities in the interviews to ensure that the research would not be used further to marginalise the people I approached (Pyett 2001). There is a variety of discussions regarding who counts as vulnerable. For instance, the Trade Union Congress Commission on Vulnerable Employment in the United Kingdom defines vulnerable employment as ‘precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship’ (TUC 2008:11). Undocumented migrants or overstayers are often highlighted as subjects of vulnerability, but legal migrant workers may also be subject to threats by employers, for

³² I use the term *rescue work* to describe various forms of support provided by organisations such as community unions and NGOs which have been involved with political activism against IT-TIP/TITP in Japan, as I explained in Chapter 5. The term *rescue* tends to be used with *raid* as one of the responses to sex trafficking. Because the meaning of ‘rescue’ and ‘raid’ are two sides of the same coin in a sense that the police ‘raid’ the sex industry and liberate trafficked victims, this term has been used in the context of criminal control against sex trafficking. Although it still focsses on rescue work in the context of sex trafficking, current studies provide details in how such rescue organisations ‘protect’ trafficked victims. For instance, Shih’s work reveals that these rescue organisations provide former sex workers with jewellery making jobs, but it appears that these groups restrict the freedom of those workers by putting them on curfew and trying to convert them to Christianity as a ‘rehabilitation’ project (2015).

example, not to renew their visas (Jayaweera and Anderson 2008). For this reason, I needed to care about their anonymity.

To show my extra concern for the privacy of these people, I asked community unions in advance to prepare a quiet room and translators whom they hired to show my extra concern for privacy, although I only accessed former TITP labourers who stayed at community union shelters and were technically not ‘at risk of continuing poverty and injustice’ (Pyett 2001). Even if they were not in a vulnerable situation when I interviewed them, these workers had experienced inequalities and were subjected to discrimination at some point because of gender and nationality. They were also hard-to-reach participants. I therefore tried to be more vigilant about the interview procedures. As with the acceptance organisations, at the beginning of the interviews I carefully informed all the participants about the nature of the study and received oral consent to participate (Liamputtong 2007). At this point, trust building was crucial, so I tried to show my sympathy with them, emphasising that I was a researcher from a British academic institute and was writing my thesis in English. In this way, I asked their translators to ensure that what they were saying in the interviews was confidential and would never be read in Japanese or in their own languages. Even so, some participants asked me not to record their voices. Whenever they disagreed with recording, I wrote down some key points, although some researchers have argued against taking notes as it impedes conversation (Lora-Wainwright 2006). The interests of rescued labourers also conflict with those of employers, although I did not choose employers and employees from the same companies. Some of the labourers expressed their frustration and anger with their employers. Hence, like the other interviewees in the second fieldwork, their data also remain anonymous. Ensuring confidentiality and anonymity is, of course, an important dimension

of in-depth interviews, but the impact of this on the investigator should also be discussed. The next section attempts to shed light on this point.

2-1-4. Positionality and reflexivity as a female researcher studying her own country

Scholars, particularly those in the field of anthropology, often debate how researchers impact their projects. Ultimately, such scholars talk about how the positionality of researchers, including their gender and cultural background, impacts the negotiation of the fieldwork relations (Al-Natour 2015; Sin 2007). However, the way in which the process of research impacts researchers has only come to the forefront recently. Wherever researchers engage in fieldwork, or whether they conduct elite or non-elite interviews, such a process impacts the participants as well as the researchers.

Three factors in particular concerned me about my positionality as a female Japanese researcher from a British research institute: gender, race and language. In both fieldwork trips, gender played a significant role in the interview process (cf. O'Loughlin 2000).³³ During both elite and non-elite interviews, I received similar questions regarding my age and marital status. Despite preparing for such situations, this sometimes affected my data access, as some of the interviewees asked me to go for dinner in exchange for providing the information I was looking for. I was also sexually and verbally harassed by one of my informants during the second stage of fieldwork. Such an experience challenges the belief that Japan is a safe place to conduct fieldwork. As for the second factor, racial discrimination

³³ Conversely, Kieran O'Loughlin (2000) finds no evidence of the hypothesised differences between male and female interviewers in terms of their behaviour.

against migrant workers created a distance from the interviewees. During the second stage of fieldwork, in particular, I often heard hurtful comments concerning the race of migrant workers from the firm owners. This was another element that made it hard for me to become integrated into the Japanese participants' communities. At the same time, I also felt a distance from the migrant workers because of my limited language abilities. During the interviews, some translators from the labour unions and industrial organisations helped me to have conversations with the workers. Since the second stage of fieldwork occurred during a transition period for migrant workers in the Japanese textile industry, with a change from Chinese labourers to Cambodian, Vietnamese and Bangladeshi, it was almost impossible to learn all the necessary languages for the sake of the research. Although I had translators, it is possible that they deliberately did not translate properly so as to hide some inconvenient information concerning migrant workers or industrial associations. This language barrier with other non-Japanese communities placed me as an 'outsider' in my home country. These experiences clearly indicate that the difference between insider and outsider is not a simple dichotomy, and that we as researchers cannot clearly be situated in either group. This complex positionality serves to limit our data access.

Similarly, some recent academic research has revealed that various signifiers mark insiders/outsiders beyond the categories of gender, race and class (Al-Natour 2015; Sin 2007). These categories are fluid depending on the socio-political context of the time of the research (Naples 1996). Following Ryan Al-Natour's (2015) work on Islamic schools in Camden, which is located in Sydney's far south-west, researchers should acknowledge the increasingly complicated positions, influences and relationships that manifest themselves in the stories of researchers and their subjects. This is because, as Chih Hoong Sin argues (2007), the notion of 'us' or 'others' is always contingent, contextual and constructed.

Notwithstanding such a complicated position in the fieldsites, researchers conducting qualitative research are expected to follow the narrow data collection and interpretation methods developed in Euro-American academic circles (Sin 2007). The gap between this context and the complex, ever-changing context of fieldwork has an impact on investigators, as well as factors such as gender, race and language.

2-2. Analysing Data – tracing process and critical discourse analysis

I use two methods for data analysis that are applicable to the constructivist approach: explanatory process-tracing and critical discourse analysis.

2-2-1. Explanatory process-tracing

This thesis relies on explanatory process-tracing to inductively identify factors, in order to analyse the ideas which constitute the discourses on human trafficking constructed by political actors. As in Derek Beach and Rasmus Pederson (2013:18), the case for explanatory process-tracing is to ‘craft a minimally sufficient explanation of a particular outcome’. Process-tracing shows how discourses on human trafficking and modern slavery are tied to action, by highlighting key actions that political actors take and their justifications for doing so. Given this understanding, the purpose of my explanatory process-tracing is to clarify key moments in the interaction among political actors. These are the mechanisms which have caused a change in discourses and institutions associated with human trafficking and modern slavery since 1990.

To identify causal processes in this bottom-up type of analysis, this study uses empirical materials to build a plausible explanation of the processes. In doing so, during the two periods of fieldwork, I collected materials from the National Diet Library and NGOs, community unions, charities' and lawyers' offices, firms, and industrial association organisations in the clothing/textile industry. The data I collected were as follows: International legislation from the UN and the ILO, Diet records, government reports, surveys, local authorities' reports, trial cases, materials from business sectors, newspapers, social media, NGOs' empirical (un)official records including dialogue with international organisations and the Japanese government, labourers' diaries and notes and interview materials. In particular, Diet records demonstrate policy-makers' discourses on Japan's desire for legitimacy in the area of migrant rights. The state defends itself against international criticisms for its reluctance to deal with this issue. In addition to the sources mentioned above, a survey on migrant workers taken by the authorities provided fundamental information regarding their gender, age and nationality. Data from newspapers from both Japan and other countries such as the US also proved fruitful. They highlighted an empirical shift in the Japanese attitude to matters concerning foreigners. There was a similar shift in how other countries observe migrant workers' conditions in Japan. NGOs' materials are also essential resources for tracing the construction of their discourses on human trafficking and modern slavery. To represent the reality of the business sector, I not only use the documents published by economic pressure groups, but I also introduce the voices of firm owners and their migrant workers. These materials have helped me inductively to identify explanatory factors in examining a little-studied outcome (Beach and Pederson 2013).

2-2-2. Data interpretation

This thesis uses two key approaches to analysing data, depending on the type of materials being used. In interpreting the sources from international organisations, such as international legislation and legal texts, I rely upon the organisations' views of their statements. By doing so, I explain the situation of concern or the relationships of their interests. On the other hand, data from government materials and from fieldwork, such as participant observations and interviews, are interpreted through critical discourse analysis. Since critical discourse analysis draws attention to the discursive practices of political actors, which mediate the relationship between texts and their practices, this helps us to interpret the ideas behind their texts (Visoka 2016). This approach helps us to conduct policy and institutional studies in a critical way, by considering both a wide range of ideas in discourse and the way in which political actors articulate such ideas in policy construction (Schmidt 2008a). In this way, critical discourse analysis helps me to analyse the way in which political actors talk, as well as the content of their speech about existing institutions. These approaches support the use of process-tracing to identify the linkage between political actors' ideas and their practices. This methodological conglomeration is therefore consistent with discursive institutionalism.

In analysing data, I mostly code by hand. In qualitative inquiry, coding is one of the ways to make keywords clearer in discourses in various types of materials. Hence, in coding, data can consist of interview transcripts, field notes (participant observation), journals, documents, legal texts, photographs, videos, websites, emails and literature. In the analysis, the code should be a research-generated construct that explains the interpreted meaning of the text. It is necessary to have legal knowledge to interpret legal texts (Issar 2016). To fulfill this requirement, I went back to the follow-up interviews with the same lawyers a couple of

times and exchanged emails with them to make sure that my interpretations made sense before coding. According to Sukriti Issar (Ibid.), the coding process can be subjective, because researchers use a filter to code particular phrases or sentences depending on their values or disciplines. Johnny Saldaña (2013) also suggests that the researcher's level of personal involvement as a participant observer filters the way he or she perceives, documents and thus codes the data. The coding filters also depend on the questions asked and the types of responses received during the interviews, as well as the specific themes taken from field notes, such as the gender, race and social class of the participants (Behar and Gordon 1995).

The coding process is also used to arrange words in a systematic order to make them part of a system or classification. Russell Bernard (2011) claims that analysis in coding is used to search for patterns in the data, and for ideas that help to explain why those patterns are salient in the first place. Coding is therefore useful for making the characteristics of discourses clearer, as this process extracts the ideas represented in the discourses. Through this process, this thesis uncovers the reasons why certain ideas are successfully incorporated within policies and institutions while others fail. In order to organise the interview scripts, in particular, this thesis introduces NVivo. This program is particularly useful for categorising the contents of interview transcripts. Thus, I created nodes that play as labels of containers, and classified specific words and sentences related to these labels. For instance, a node could be the age of an industrial firm's owners or their workers' gender. Since this thesis focusses on female migrant labourers, one way to organise interview scripts is to create gender as a category and ethnicity as a sub-category. In critical discourse analysis, this coded information is used to consider how these words are framed in a particular way.

2-3. Challenges in data analysis – overcoming ambiguous terms in mapping data

As the theoretical section suggests, methodological problems arise from definitional issues, especially when studying human trafficking and modern slavery. Further, such difficulties are associated with the ambiguous concepts of ‘exploitation,’ ‘coercion’ and ‘deception’. The Oxford Dictionary defines ‘exploitation,’ ‘coercion’ and ‘deception’, respectively, as follows: ‘the action or fact of treating someone unfairly in order to benefit from their work’; ‘the action or practice of persuading someone to do something by using force or threat’; the action of causing ‘someone to believe something that is not true, especially for personal gain’ (Oxford Online Dictionary). Although the dictionary defines these three terms separately, they are not entirely separable in practice. If you see a snapshot of migration, you might be able to identify the meanings of these terms. However, if you observe migration as a continuum process, it is hard to judge what kind of ‘coercion’ exists and how it leads to ‘exploitative’ conditions—or when ‘exploitative’ working conditions begin (Anderson 2013). This is where I am required to re-construct the participants’ experience or understanding of these ambiguous concepts.

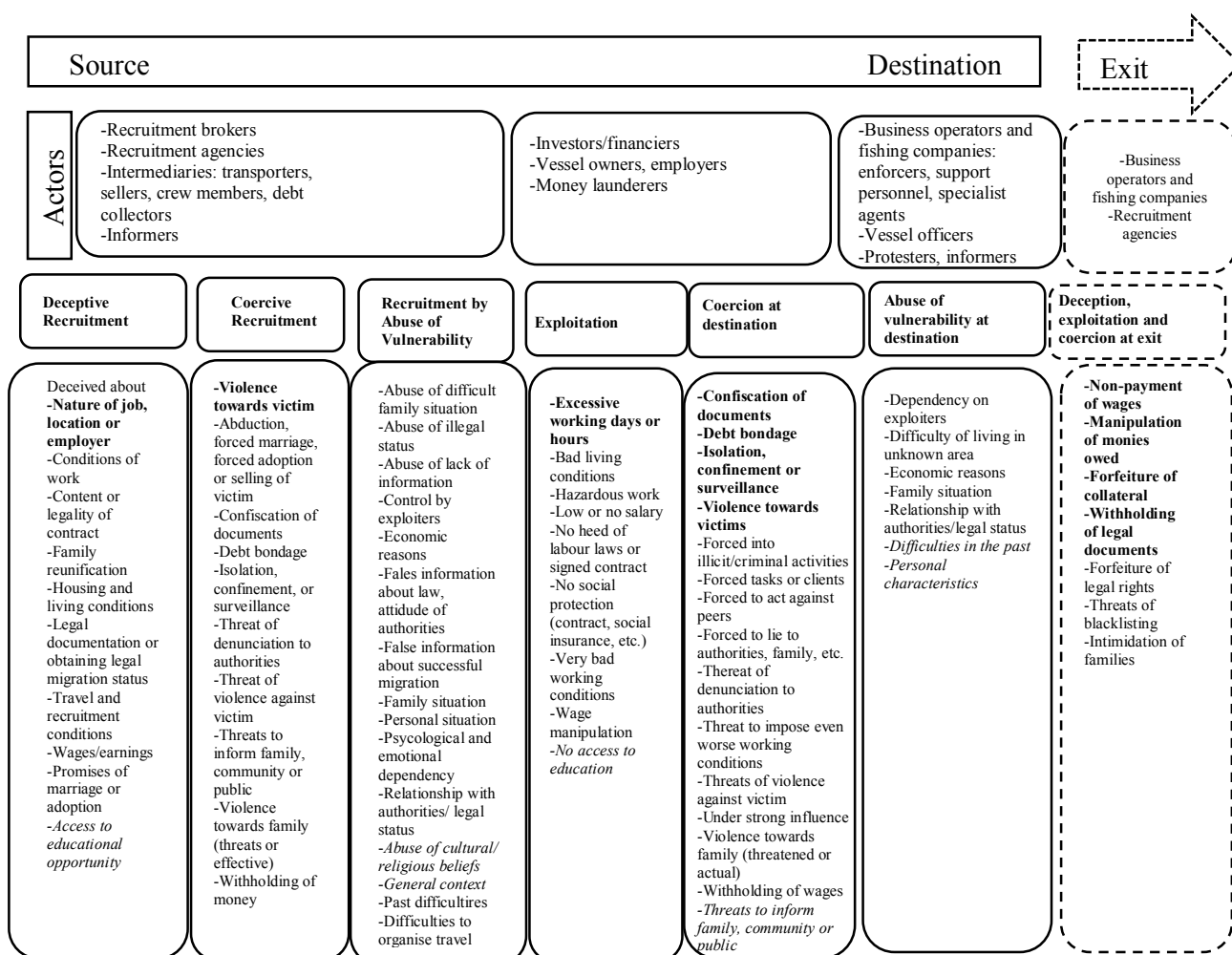
To make these concepts clearer, this thesis applies the operational indicators of human trafficking developed by ILO and EC (2009). These can be used to identify trafficked victims. The ILO/EC operational indicators establish six different dimensions of deception, exploitation and coercion in the process of labour migration, as follows:

- Deceptive recruitment (or deception during recruitment, transfer and transportation):
10 indicators

- Coercive recruitment (or coercion during recruitment, transfer and transportation):
10 indicators
- Recruitment by abuse of vulnerability: 16 indicators
- Exploitative conditions of work: 9 indicators
- Coercion at destination: 15 indicators
- Abuse of vulnerability at destination: 7 indicators

There is one set each for adults and children for labour and sexual exploitation, but this thesis only considers adults in labour exploitation. Some of the indicators in the six dimensions listed above are categorised as strong, medium and weak in the ILO/EC operational indicators (2009). According to the indicators, the data show that an individual is a victim if there is one dimension that meets at least one of the following conditions: (1) two strong indicators; (2) one strong indicator and one medium or one weak indicator; (3) three medium indicators; and (4) two medium indicators and one weak one (Ibid.,3). Stringer et al. (2016) modify this operational guideline, as shown in Figure 1. In their model, they clarify that strong indicators are in bold text, medium indicators are in regular text and weak indicators are italicised in Figure 1 below.

Figure 1. Trafficking for forced labour framework (extended to include exit dimension)



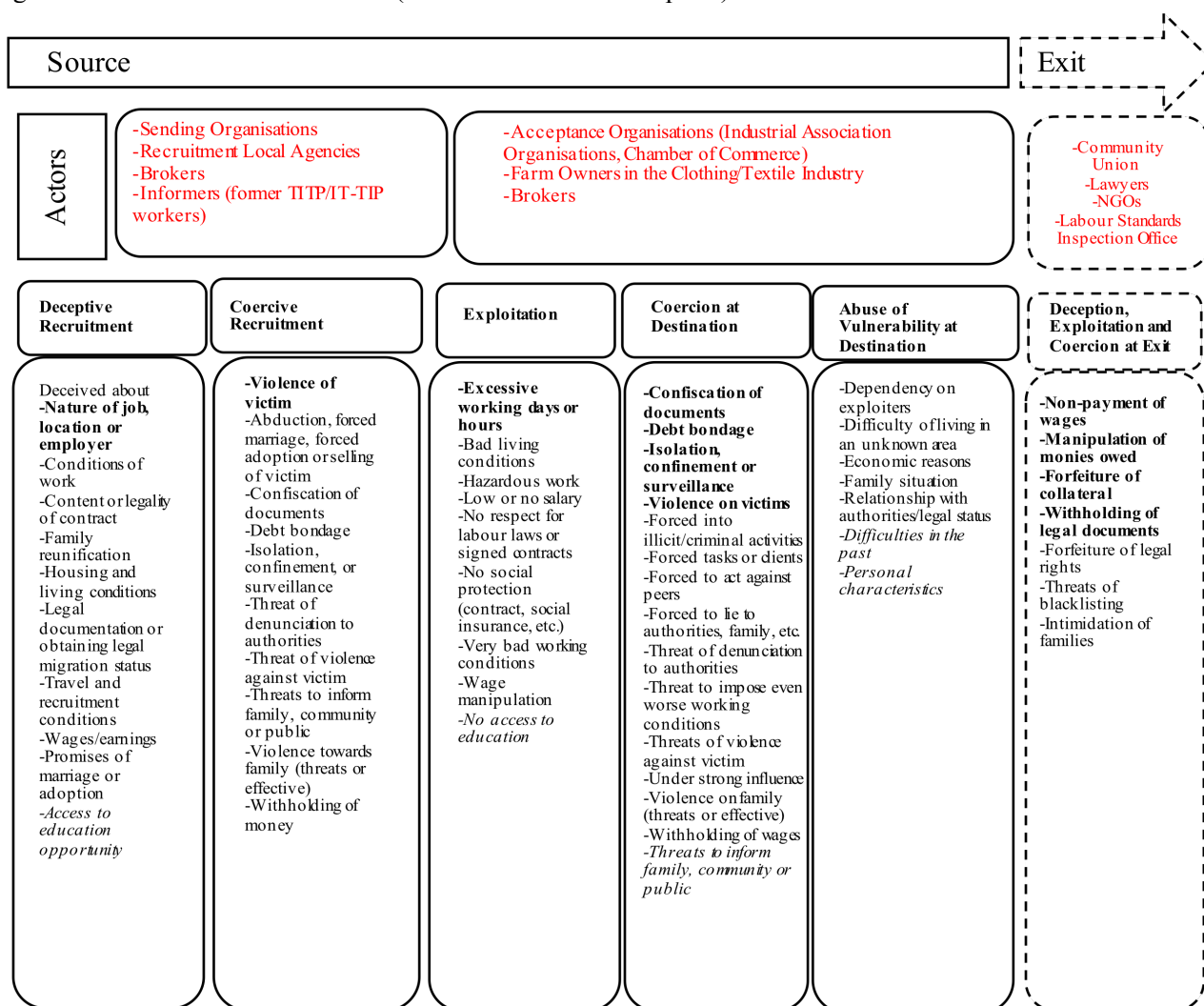
Note: Strong indicators are in bold text; medium in regular text; weak indicators in italics.

Source: Derived from ILO and EC 2009; Wheaton et al. 2000 Schloenhardt 1999; and extended by Stringer et al. (2016)

In this way, this model indicates the meaning of exploitation, coercion, and deception in their study, and is used to identify trafficked victims in the fishery industry. Moreover, this model introduces the dimension of the exit point to emphasise unfreedom and labourers' strategies when they leave their workplaces (Stringer et al. 2016). To be clear, although I introduce these indicators to analyse my data, my purpose of using these indicators is to clarify the situations of 'exploitation', 'deception' and 'coercion', but not to judge which

data is associated with ‘strong’, ‘medium’ and ‘weak’ indicators.³⁴ In mapping the data from the 54 interviews conducted in my second period of fieldwork, I use Figure 1, with the intention to clarifying the situations associated with ‘exploitation’, ‘deception’ and ‘coercion’. Consequently, I modify ‘the actors’ and edit some parts of Figure 1 to make them applicable to the data from the clothing/ textile industry in Japan (Figure 2).

Figure 2. Indicators for unfree labour (extended to include exit point)



Note; adjusted and created by author in reference to Figure 1. in p.71

³⁴ In the first place, it is not clear how the ILO and EC categorise ‘strong’, ‘medium’ and ‘weak’ indicators. As I explain in the text, my purpose is not to suggest how the ILO and EC should improve their indicators by suggesting clear borders among ‘strong’, ‘medium’ and ‘weak’ indicators.

Conclusion

This chapter explains why I use discursive institutionalism as a major theoretical concept to illustrate institutional and policy changes associated with human trafficking and modern slavery since the early 1990s in Japan. This theoretical concept provides us with a lens to observe how discourses representing particular issues of human trafficking and modern slavery have been constructed by political actors in Japan. In addition, this provides the insight into shifts in institutions and policies, based on the ideas which constitute the discourses of these political actors.

Although scholars in human trafficking studies do not often use new institutionalism as a theoretical framework, quite a few scholars suggest the importance of the relationship between the discourses of political actors and the process by which such discourses affect government policies (Doezema 2010; Weitzer 2007; Anderson and O'Connell Davidson 2004). By introducing discursive institutionalism, this thesis aims not only to explore the processes of constructing discourses but also to clarify how these discourses influence changes in policy and institutional arrangements.

In addition to discursive institutionalism, this thesis also draws attention to two additional concepts: the forced labour chain and semi-compliance. These concepts help us not only understand the temporary migration process of labourers who are often placed at the low end of the labour market, but also assess constructed discourses on human trafficking and modern slavery by political actors. These concepts combine to give a broad critical understanding of the relationship between employers and migrant labourers, including 'the

exit point' reinforced by Barrientos et al. (2013) and the negotiation space highlighted by Ruhs and Anderson (2010).

As methodology, this thesis conducted explanatory process-tracing and critical discourse analysis to analyse the constructing process of discourses and its impact on institutional policy changes. To assess such constructed discourses by political actors, this thesis also introduces the ILO/EC operational indicators to analyse my interview data, especially collected through the second period of fieldwork. By doing so, my methodology offers two levels of analysis to see the gap between the dominant discourses developed by political actors and the ones from the clothing/textile industry.

Chapter 3

Literature Review on Human Trafficking and Modern Slavery in Japan

[I]t should be clear that the karayuki-san was the pathetic victim of modern Japan's policy of aggression towards Asia. When we, as Japanese women, seek those who moan in suffering at the bottom rung of society, the more deeply and seriously we probe, we find that time and again what we run into is the modern Japanese state.

- Tomoko Yamazaki (1999) *Sandakan brothel no. 8: an episode in the history of lower-class Japanese women*, London: M.E. Sharpe, p.191

The women [Karayuki] were viewed as playing a major role in promoting and advancing Japan's commercial presence in locations overseas.

- Bill Mihalopoulos, "The Making of Prostitutes in Japan: The *Karayuki-san*," *Social Justice: A Journal of Crime, Conflict, and World Order*, Vol.21 (2), p.165.

Introduction

The first goal of this chapter is to highlight the studies on human trafficking and modern slavery which have been mostly developed by American and European scholars especially over the last two decades and to situate the ones written by scholars paying attention to Japan. This chapter also clarifies how the dominant discourses on human trafficking, which are based on abolitionist feminism, have been established in Japanese literature. Based on the review of the literature, I suggest that the dominant discourse about trafficking and slavery is about female prostitutes as trafficked victims. This arises from a debate which has been primarily developed by the ideas and discourses of feminist abolitionists. Because of this dominant discourse, historical lessons about forced labour have been omitted. Despite

its close tie with indentured servitude in history, the literature on trafficking in Japan mostly focusses on sexual exploitation.

This insight into dominant discourses which historically developed by abolitionist feminists is particularly valuable to think about how political activists utilise historical accounts on trafficking to represent their ideas of the current issues. As discursive institutionalism emphasises, “a successful discourse ‘gets it right’ in terms of a given ‘meaning context’ according to a given ‘logic of communication’” (Schmidt 2008a:313). In short, a discourse constructed within a particular ideational setting follows rules and norms that are socially and historically constructed. For this reason, it is crucial to clarify what sort of discourses on trafficking and slavery addressed in the literature paying attention to Japan, and what is the background of creating successful (or failing) discourses remained to date. This insight into dominant or failing discourses, in particular, feeds into the understanding of the discourses on sex trafficking, and its shift towards labour trafficking and modern slavery in the following empirical chapters.

Human trafficking has been well publicised especially over the last two decades by politicians, lawyers, and NGOs, especially in North American and European countries. Despite the vagueness of its definition, trafficking has been adopted within various agendas, including drawing attention to sensational stories of trafficked women who were exploited in the sex industry. This activism has attracted the scrutiny of media, governments, and international organisations. As discussed in Chapter 2, trafficking is not discursively neutral terrain from which facts and responses can simply be extracted. Each country has its own understanding of human trafficking embedded in its history and social norms, which create a wide variety of discourses on trafficking. In Japan, human trafficking is mostly recognised

as a sexual exploitation issue, which represents a highly racialised and sexualised view of the situation. However, few studies have discussed Japanese human trafficking as one of the issues that fall into the category of labour rights or human rights.¹

As I indicated in the introductory chapter, the literature on human trafficking and modern slavery has initially been developed by North American and European feminist scholars since the early 1990s. These scholars started to focus on human trafficking in the context of migration following the fall of the Berlin Wall in 1989. Their discourse to protect women and girls trafficked for the purpose of sexual exploitation has, however, been linked with ‘white slavery’, which makes trafficking more understandable there (Doezema 2010; Kempadoo and Doezema 1998). In other words, an understanding of the 19th-century preoccupation with white slavery is essential to understanding European preoccupation with trafficking in the 1990s. Although the feminist debate on sex trafficking and prostitution still remains, literature written by European and North American scholars has also developed to include perspectives on labour and human rights. Within this broader context, some scholars have emphasised discourses on modern slavery, arguing that the majority of modern slaves are in forced labour who are exploited at their workplaces (Gold et al. 2015).

This shift in the focus of studies around human trafficking has brought new attention to the supply chain. Given the development of such research focussing on trafficking and modern slavery, scholars such as Anderson (2013) and O’Connell Davidson (2006) have endeavoured to depart from trafficking and slavery in their critical analysis to discuss

¹ For instance, Aoyama illustrates that trafficked persons have been recognised as ‘victims’ or ‘perpetrators’ who are involved with criminal activities, based on the fact that prostitution is illegal and that people working as prostitutes cannot be ‘migrant labourers’ (2007:15). Although these studies acknowledge that human trafficking is a kind of human rights abuse, they have mostly discussed human trafficking as a crime or a security issue (Also see Okubo 2007).

domestic workers, indentured servitude, trainees and interns. Conversely, literature paying attention to Japan has not developed much due to the obsession with limiting human trafficking to the single issue of sexual exploitation. This knowledge gap shows there have been lacunae in understanding human trafficking in Japan, in the area of the cross-border labour market and the various motivations behind it.

Given that, this chapter strives to meet two challenges. First, we need to look at the literature on human trafficking to see what kind of discourses have come to be (or failed to be) dominant in such studies. As shown in Chapter 2, this thesis clarified the Japanese understanding of human trafficking and the gap between it and the definitions in the UN Palermo Protocol (2000) and the ILO (ILO Homepage 2017b). This chapter then demonstrates how the literature provided by Japanese feminist scholars and their activism has contributed to creating this knowledge gap. The second key concern is to bring indentured servitude, which used to be closely linked with human trafficking, back into our understanding of human trafficking discourses in Japan. The understanding of indentured servitude in Japan is historically close to apprenticeship, that is, a programme which is supposed to provide vocational training to labourers. This historical understanding helps to explain the sometimes exploitative working conditions of current trainees and interns. In the past, some people worked in slavery-like conditions under their indentured labour contracts. This implies that indentured servitude has, at times, provided camouflage for human trafficking in Japan by emphasising vocational training, although this element has been ignored in recent discussions of the topic.

Understanding the position of indentured servitude in the debate on human trafficking and modern slavery opens up space to examine Japan's IT-TIP scheme, and its successor, TITP.

In fact, since 2007, Japan's IT-TIP/TITP, a state-sponsored vocational training programme, has been criticised as human trafficking by the *Trafficking in Persons Report* by the State Department of the United States and by the Special Rapporteurs of the United Nations (The US Department of State 2007-2017; UN Office of High Commissioner of Human Rights 2014; 2009). Although these criticisms have lasted for 10 years, trafficking for the purpose of labour exploitation has not been sufficiently discussed by academic, journalistic and political circles in Japan, who mostly believe that such a phenomenon does not exist there.

To clarify empirical discourses on human trafficking in the literature paying attention to Japan, and to include the labour-rights perspective, we need to investigate how the literature has developed and what kind of agenda has been embedded. Previous studies have exclusively focussed on two groups: Japanese women and girls sold into indentured servitude as prostitutes in the nineteenth century, and entertainers from Southeast Asian countries in the 1980s. These studies are highly gendered, sexualised, and racialised, but they do not sufficiently discuss the various motivations of female labourers. This chapter therefore invites discussion on female migrant labourers.

This chapter consists of three parts. The first section clarifies the key discussions of human trafficking and modern slavery in literature developed by North American and European scholars. Based on the discovery of a knowledge gap with the Euro-American discourses developed here, this section moves on to describe what counts as human trafficking in Japan. It explains the understanding of human trafficking in Japan by tracing historical discourses associated with slavery and trafficking. The final section follows on from this to clarify how discourses on trafficking and slavery in the literature could feed into the current discussions on these issues.

1. Discourses on human trafficking and slavery in literature

As clarified in the introductory section, the literature on human trafficking and modern slavery has been developed over the last two decades by feminist scholars paying attention to trafficking for the purpose of sexual exploitation, particularly prostitution (Doezema 2010; 2001; Kempadoo 2005; Anderson and O'Connell Davidson 2004; Kempadoo and Doezema 1998). Those studies emphasise the dichotomy between protecting sex workers' rights and the abolition of prostitution as a measure against human trafficking. Academic discourses on modern slavery have begun to include labour rights and the human rights of victims, paying attention to the exploitation of forced labourers at their workplaces, rather than whether the labourers have been trafficked. Bales (2007), for instance, emphasises that the majority of modern slaves are in forced labour, although other scholars have criticised this because it is impossible to obtain accurate statistics on modern slavery (O'Connell Davidson 2017b; Anderson 2012). The ILO (2014a) also points out that 78% of modern slaves are forced labourers while only 22% are in forced sexual exploitation. Although Bales' argument that there are billions of modern slaves exist in the world remains controversial (O'Connell Davidson 2017b; Quirk 2009), the shift of attention from sexual exploitation to modern slavery allows us to explore the situation at the low end of the labour market.

In the development of the literature towards labour and human rights, scholars look at exploitative practices that function to provide a stable feature of the global economy, although this tendency sidelines the role of the state (LeBaron and Phillips 2018). In such literature, exploitative work conditions have been well documented in industries including

seafood processing, mining, construction and garment factories (Sylwester 2014; Barrientos et al., 2013). In the business context, those studies suggest that labourers at the low end of the labour market tend to be used in the outsourced portion of labour in supply chains (New 2015). These studies of labour conditions and business responsibility shed light on the existence of deception, coercion, and exploitation – three key components of human trafficking. In this context, enterprises developing their global supply chains have come to be criticised for the maltreatment of labourers at the low end of their labour chains. However, the implication here is that the exploitation of these labourers is led by individuals or firms in the private economy whose actors are separated from the states (LeBaron and Phillips 2018). Although some of the scholars in this area have attempted to use a rights-based perspective to discuss the role of the state since the mid-2000s (Anderson 2007), the current trend of human trafficking and modern slavery in business has put the state's role aside.

The above is a brief overview of the developments in research by American and European scholars. But where does the literature on Japan fit in? In comparison to the American and European literature, there are some omissions in the studies which pay attention to Japan. One can be seen as a lack of discussion on the line between free and unfree. The slippery definition of human trafficking and modern slavery inspires liberal thinkers² to the classic mistake of assuming a clear border between free and unfree labour. A large number of philosophical studies have attempted to distinguish between the two; these studies discuss the conditions of slavery and examine how slavery can be separated from non-consensual servitude (Harris and Gerber 2011; Steinfeld 2009). Distinguishing so clearly between slavery and servitude, between force and contract, places a great deal of weight on the notion

² Liberal thinkers tend to celebrate labour contract as the principle which makes sense of 'economic and political arrangements in modern capitalist democracy. (See MaCInnes, 1998). Doing so locates slavery in 'pre-capitalist world' in a bright distinction from free labour (O'Connell Davidson 2010; Brace 2004).

of consent. It obscures how some forms of servitude involve coercion and legal ownership, while some forms of slavery allow slaves to own slaves themselves (Brace 2004). This complexity reveals blurred lines between slaves and property, and between servants and labour. Thus, human trafficking challenges liberal thinkers who have insisted on the existence of a clear line between free and unfree labour.

One must acknowledge here that there are two main components of the concept of ‘exploitation’. The first is related to a Marxist standpoint: capitalism itself is exploitation. As put forth by Alfredo Saad-Filho (2003), labourers can be exploited if they do not own their capital. In this sense, Marxist thinkers suggest that all capitalists exploit labourers (Joseph 1923), and in particular, slaves and serfs are exploited as they clearly do not own their labour power. Wage labourers are also exploited to some extent, as they own no means of production (Cohen 1995). In other words, Marxist scholars believe that capitalism’s systemic features demand the exploitation of workers to remain in business. In this system, an employer may take advantage of a labourer by paying a small salary while earning a huge profit, and that labourer has limited power to resist this exploitation, since the alternative is poverty. The second is to what extent taking advantage of migrant workers at the low end of the labour market can be defined as exploitation. To answer this question presents two difficulties.

The first difficulty is to link the different nature of exploitation between the transportation process and the workplace. As Yun Gao explains (2010), the nature of exploitation in transportation can be seen in the unreasonable fees, legal or illegal, demanded to cross borders. While this exploitation ends when migrants complete their journey, another type of exploitation might arise in their workplaces. The link between the two in this scenario is the

existence of a debt which will lead them to accept exploitative conditions of labour. Due to the existence of a debt owed to their brokers, they will be exposed to coercion in their workplaces. This ongoing process is difficult to identify, as some smugglers become trafficked victims at some point in their journeys, while guest workers who legally arrive in destination countries could become undocumented or overstayers.

The second difficulty concerns how the development of criteria to measure labour exploitation often depends on moral and political judgment. The very idea of exploitation, in other words, the border between free and unfree, is socially embedded and historically particular, so it seems to be challenging to set a universal measure of exploitation. To get around this, the current studies (Stringer et al. 2016), including this thesis, have attempted to link different types of exploitation at different stages of the migration process by introducing the ILO/EC operational indicators (2009) discussed in Chapter 2.

Besides this, the matter of consent is another key issue which has not been sufficiently discussed in studies focusing on Japan. According to Chapter 2, the existence of ‘consent’ has become meaningless as a way of identifying trafficked victims under the definition provided by the ILO (2005a). This is despite the fact that consent is often essential to the formation of judgment in domestic trials on a worker’s exploitation in some countries such as Japan. The issue of consent arises due to the ambivalent relationship between employers taking advantage of the vulnerable status of their workers and employees being desperate to earn money for subsistence or repayment of debt. This is partially illustrated in the following question: ‘If one were in extreme poverty and accepted a contract for 20 years in order to obtain 3 square meals a day, would the contract have been entered into voluntarily or

involuntarily?’ (Steinfeld 2009:4). If this labourer remains in this position to avoid extreme poverty or to repay their debt, is it truly possible to argue that labour is voluntary?

An extreme version of this situation is often framed as ‘modern slavery’, casting exploitative owners as ‘slave masters’ and brokers as ‘traffickers’ (Anderson 2013). However, this suggests that the problem lies with abusive ‘slave masters’, and distracts attention from the state mechanisms which invest such owners with power. For this reason, Anderson argues that slavery and trafficking are metaphors. Rather, the terms slavery and trafficking raise issues of foreignness, race, and mobility (2014). Anderson also suggests that these terms might be able to provide a better understanding of the conditions of migrant workers in an indenture, vocational training, and internship (Ibid.). However, these have been omitted in the historical development of the debate on slavery and human trafficking in Japan. It is partially because, while a contract is key to solving the problem of slavery, the contract itself is the problem in indentured servitude. Robert Steinfeld (2009) notes that indentured workers could be physically abused and forbidden from marriage in eighteenth-century America, but they were recognised as free labour, not as slaves, due to their contract.

What do these insufficient discussions of indentured servitude, interns and trainees imply? This question requires us to reconsider the labour rights of migrant workers under those types of contracts. They are not illegal, but the practical question of how we could treat these labourers remains unaddressed (LeBaron 2014). This ethical question has been asked since the mid-2000s in Japan, throughout the gradual shift of discourse from *whether* Japan should accept migrant workers to *how* to treat them. This ethical question of the treatment of migrant labourers is also related to the distinction between free and unfree at the borders and in workplaces. The components of exploitation of these labourers and the question of

consent have invited liberal thinkers to discuss issues of human trafficking and modern slavery. These have been key features of American and European literature on human trafficking and modern slavery over the last two decades. They are, however, mostly lacking in the literature paying attention to Japan. These omissions are one reason why perspectives on labour and human rights are missing from the understanding of human trafficking in Japan. The following section aims to understand how the constructed discourse on Japan's human trafficking has become so narrow.

2. Historical definitions of human trafficking and slavery in Japan

2-1. The term jinshinbaibai

In order to place human trafficking and slavery in a Japanese context, this section is going to trace the historical transition in the understanding of trafficking. This will allow us to see how certain aspects of the labour market, including the existence of work contracts or workers' and employers' various motivations, have been omitted in previous literature on Japan. In Japanese, an emphasis on the definition of human trafficking relies on 'sale' [*baibai*] of human beings but not on 'traffic' [*torihiki*]. Because 'sale' implies the meaning of 'selling bodies', most literature looking at current phenomena of human trafficking and modern slavery in Japan has paid attention exclusively to prostitution (Hitomi 2011; Okubo 2007). In this context, victims of trafficking in the current literature focussing on Japan are often highly feminised, sexualised and racialised. Some historical studies have pointed out that the 'sale' of human beings in Japan originally had a different meaning. These are the studies written before the 1970s when Japanese feminists reviewed the early twentieth

century's transnational abolitionist movement. Those studies define the 'sale' of a human being as the use of an indentured servant, working for a certain amount of time, for a certain amount of money (Fujino 2012; Shimoju 2012; Maki 1971). In this context, discourses on *jinshinbaibai* initially involved a concept of indentured servitude which were neither sexualised, racialised or victimised (Mihalopoulos 1994).

The following section will therefore look back to the emergence of the indentured recruitment system in the nineteenth century. It will clarify how women and girls entered into an 'another form of labour'. It will explore how discourses of *karayuki*, which deal with Japanese emigrants working overseas, became dominant discourses on sexual exploitation and separated from indentured servitude by the feminist revisionists in the 1970s. In this way, this chapter clarified dominant discourses which were feeding into the discussion on sex trafficking in the 1990s.

2-2. The segregation of human trafficking from indentured servitude as a meaning of sexual exploitation in the sex industry

The emergence of an indentured recruiting system meant that many people had to leave their families at the end of the seventeenth century, and working as prostitutes in licensed quarters was part of this indentured servitude. Licensed quarters remained one of the worst areas of servitude within the indentured recruiting system, but was considered as just 'another form of labour'. The *yujo* [prostitutes'] indentured contract has, however, been singled out as a symbol of human trafficking based on the following two interpretations of historical indentured servitude.

First, when it comes to discussing how exactly indentured prostitution differs from ordinary indentured servitude, some scholars emphasise the paternalistic culture where men make contractual decisions on the destiny of female family members in return for cash advances (Maki 1971). This literature highlights the paternal[istic] relationship between male and female family members in decision-making about their contracts. It also highlights the role of masculinity within a family on such decisions (cf. Hartman 1981).³ For instance, Hidemasa Maki (1971) clarifies that adoption was also used as recruitment for indentured servitude. Maki points out that human trafficking had occurred via adoption between families since it was a domestic matter that fathers and brothers should deal with. Hence, paternalistic decisions over wives and daughters might be one of the factors in cultivating exploitative conditions for women. These women in yujo indentured servitude, and its successor, licensed prostitution, endured these conditions in the Meiji-Taisho era (1868-1926) when a series of famines hit villages in Hokkaido and Honshu (Ibid.).

Another possible reason behind the emphasis on sexual exploitation can be seen in the literature on the international *Maria Luz* incident in 1872 and the Meiji government response to it.⁴ This is a diplomatic incident between the Republic of Peru and the early Meiji government on the matter of the fact that the Republic of Peru was sending Chinese slaves by the *Maria Luz* from Shanghai to Peru. At the trial of the Peruvian captain, the government required him to release the Chinese slaves on the ship. In response, the captain's barrister,

³ As a Marxist feminist, Hartman (1981) proposes that the material basis of paternalism is the male dominance over women's labour force.

⁴ This incident occurred when a Chinese indentured labourer escaped from the *Maria Luz* to the British warship in Yokohama. Since the Chinese labourer revealed his Peruvian captain's physical abuse in the *Maria Luz*, the British consul Robert Grant Watson approached a Japanese foreign minister to take action. The Japanese government was initially hesitant to deal with this issue as it had not had a formal diplomatic relationship with Peru at that time. However, with support from the British navy, Oe Taku, the governor of Kanagawa, ruled that the Chinese servants were freed of their contracts.

Frederick Victor Dickins, criticised Japan for having yujo servitude in licensed quarters. He was concerned that involuntary servitude was being practiced in Japan, in the form of prostitution, contractual apprenticeships, and indentured servitude. As a response to such criticism, legislation banning yujo servitude [*geishogi kaihourei*] was established in November 1872, and in this legislation, yujo servants were stipulated as people who are ‘equivalent to horses and cows’ as they lose the ownership of their bodies (*Dajokanfutatsu Dai 295 Gou* quoted by Imanishi 2007:127). Since they did not have physical freedom nor freedom to make any decisions about their work, yujo servitude was separated from other types of indentured servitude. Over time it became primarily identified with unfree female labour in the licensed brothels, which came to be labelled as ‘human trafficking’.

The exploitative aspects of women in licensed prostitution in the late 19th and the early 20th century were represented in the discourses written by abolitionist feminist scholars since the 1970s (Yamazaki 1999; Takahashi 1977;1974; Morisaki 1976; Tanaka 1975; Matsui 1974). The early 1970s saw the new feminist movement in South Korea and Japan, and within this movement, feminist scholars raised issues of sex tourism in Asian countries. In particular, the origin of this feminist movement derived from a catholic feminist solidarity between Japan and South Korea to fight against sex tourism in South Korea (Park 2011; Kaji 2003). It is because these feminist scholars became aware of sex tourism between Japan and South Korea which turned to be a growing business since the normalisation of Japan-South Korea diplomatic relations in 1965. These scholars suggest that sexual exploitation in sex tourism in Asian countries originated from a lack of historical awareness of sexual exploitation in licensed quarters and comfort women in Asian countries (Matsui 1974).⁵

⁵ From the late 1960s to the early 1970s, a series of feminist groups were established in Japan. For instance, Tomoko Yamazaki established *Asia Josei Koryushi Kenkyukai* in 1966 [The Association of Asian Women History of Mobility], Tomoko Yamaguchi and Kikue Takahashi set up *Kisen Kanko ni Hantaisuru Kai* in 1973

Their discourses regarding women working in the sex industry as victims appear in their historical view of karayuki and the transnational abolitionist movement of the early twentieth century (Yamazaki 1999; Suzuki 1993; Morisaki 1976). The transnational abolitionist movement in the early twentieth century was shaped by a purification campaign, which in turn was influenced by European purity reformers⁶ who opposed white slavery (Limoncelli 2010). The European purity reformers emphasised the fear of losing innocent white girls to vicious foreign brokers who would lure them into prostitution. By contrast, discourses of karayukai raised by Japanese feminist scholars did not derive from a similar fear of losing innocent Japanese girls into the hands of foreign men. Rather than a fear of interracial sexuality, in this case between Japanese prostitutes and foreign customers in their colonial territories, their discourses come from two main perspectives.

One perspective is the discourse of discrimination against karayuki, which emphasises their vicious image by noting that they provide sexual services to foreign customers. Yuko Suzuki cites the leading Japanese purity reform organisation, kyofukai, as calling prostitutes *shugyofu*, which implies ‘ugly workers’ in Japanese (1993). Their discourses are based not on a stand against prostitution in general, but on discrimination against those women for having foreign customers. This is illustrated in the following quote: ‘Women working as *shugyofu* have emerged as a national disorder, since they are losing the honour of being Japanese ... Their appearance is also so ugly that they no longer look Japanese’ (Ibid., 216-

[Opposition against Sex Tourism], Yayori Matsui established *Asia no Onnatachi no Kai* [Asian Women’s Association] (translated by author) (Park 2011; Takahashi 2003).

⁶ Purity reformers, consisting of middle-class women, organized the social purity movement to fight against prostitution, which in the late nineteenth century was largely seen as a vice. In 1875, the International Abolitionist Federation was set up in Liverpool and started to discuss prostitution as a transnational issue. The International Bureau for the Suppression of the White Slave Traffic stemmed from a similar organisation in England, and was also active in European countries. The dominant discourse on white slavery was largely constructed within the European purity movement, which highlighted the juxtaposition of dangerous foreign men and young innocent white girls (Lammasniemi 2017; Gerodetti 2004; Doezeema 2001).

217). Yuki Fujime also pointed out that discrimination against the lowest class in society played a significant role in understanding karayuki as a social problem (1997b). Fujime introduced arguments presented by Japanese purity reformers about women and girls in licensed quarters which stated that ‘people engaged in businesses such as brothels are from a completely different race to Japanese people. In other words, they are nothing more than a type of *eta* who originated from the despised class called “*kawara eta*” plastering walls during the fourteenth and fifteenth centuries’ (Yamaji 1911 quoted by Fujime 1997a:155; Nagahara 1979:396-397). For them, not only brothel keepers, but also Japanese prostitutes, were villains who came from the lowest class, although they recognised that poverty made those women turn to prostitution.

Related to the discourses of the deviant karayuki, there is a similar discourse that draws attention to the forms of violence used against those women. As Bill Mihalopoulos pointed out (1994), Japanese feminist scholars in the 1970s such as Tomoko Yamazaki successfully reconstructed discourses on karayuki by emphasising the exploitative aspects of indentured prostitution. She even popularised the term karayuki by using it in her best-selling novel, *Sandakan Brothel No.8* (1999).⁷ Although such feminist scholars in the 1970s also stand with the idea of karayuki as ‘losers’ in society (Yamazaki 1985:28), they assumed that karayuki suffered more than domestic prostitutes because they had to sell their bodies to customers of another nationality (Hastings 1999). These feminist discourses on karayuki lobbied for the criminalisation of trafficking in women and girls, and for banning prostitution as the root of the social problem. This is the very aspect which Japanese abolitionist feminist activists have emphasised since the 1990s, when sex trafficking became one of the key international agendas in the context of violence against women.

⁷ The first edition was published in 1972.

Rather than paying attention to the exploitative working and living conditions of karayuki, some studies revealed that other discourses praising karayuki had existed before World War II (Warren 1993; Kawano 1941). For instance, at least in the 1890s, the term *roshigun*⁸ was used as an alternative to karayuki to denote prostitutes sent abroad as ‘female warriors’ (Weiner 2004:31). A series of victories in the Sino-Japanese War of 1884 and the Russo-Japanese War of 1904 led to militarism and expansionism, and laid the foundations for the further modernisation of Japan. In this context, the expansion of international business raised the demand for indentured prostitutes in brothels and facilitated the movement of these women across borders (Warren 1993). The Japanese army, like the European armies, also encouraged women and girls to cross borders to work as prostitutes.⁹ In this context, those women were engaged in indentured prostitution as ‘sex workers’ as part of the advance guard of Japanese overseas expansion in the pre-war period. Such discourses valued karayuki and their Japanese-run brothels for their capacity to establish themselves and flourish overseas. These discourses were epitomised by Japanese newspapers such as *Nanyo Nichinichi* [South Sea Diary] (Mihalopoulos 1994). These newspapers also emphasised that such an enterprising spirit was said to have been comparatively lacking in other contemporary Japanese enterprises. This was because of the self-imposed 200-year isolation from the rest of the world under the Tokugawa Shogunate. Besides, Mihalopoulos also

⁸ According to Mihalopoulos (1994), this term came from the term *Joshigun* [Amazonian troops] referring to an army of women in a Chinese legend of the T’ang Dynasty.

⁹ As in Stephanie Limoncelli (2010:97), ‘racial, ethnic and imperial concerns’ certainly played a crucial part in the European states’ colonial governance. For instance, the Dutch made efforts to reduce trafficking and prostitution in the Dutch East Indies by raising the issue of Japanese and Chinese women trafficked into their territories. This was with the aim of defusing racial conflict between Javanese and Asian migrant groups. French purity reform and prostitution policy in colonial territories also relied on racial segregation to prevent racial conflict within their territories. Another study also shows that British colonial authorities banned the activities of British prostitutes in British Malaya as they were concerned that those women would tarnish British prestige (Shimizu 1997). For these European countries, interracial matters in colonial areas scared the colonial government. By contrast, Japan had a different motivation. MOFA showed its positive attitude in abolishing licensed prostitution, but for them, dealing with this issue was crucial for its international reputation as a first-class empire and for controlling military health.

pointed out that these women working overseas were regarded as emigrant workers, who were playing a central role in the social maintenance and economic survival of their home villages. Images of such independent women are seen by some newspapers as a crucial aspect of Japanese modernisation and nation-building (Ibid.).¹⁰ This favourable assessment of *karayuki* was underscored by the frames of militarism, national pride, and the patriotic virtue of *chukun aikoku* [emperor worship and love of country] (Warren 1993:85; Kawano 1941:332). Along with the expansion of Japanese overseas territories, those Japanese females were being labelled in sets according to destination such as ‘Chosen yuki’, ‘Siberia yuki’, or ‘Manchuria yuki’. Placed in this context, the women’s sexual labour overseas was not seen as a violation of prevailing codes of moral conduct. It was regarded as another form of legitimate labour, by which to ensure the continuation of a household and uphold Japanese patriotic virtue.

Such discourse praising *karayuki* as labourers and their willingness to contribute to the war was, of course, missing from the abolitionist feminist review of the sexual exploitation of women. The review of the sexual exploitation of women took place in the 1970s when the feminist movement emerged in response to sex tourism in Asian countries. As briefly mentioned earlier, the 1970s saw the transnational catholic feminist movement between South Korea and Japan to raise awareness of sex tourism (Takahashi 1977;1974; Tanaka 1975; Matsui 1974). To raise this issue, some of the abolitionist feminist scholars looked back at the history of *karayuki* as a Japanese experience of sexual exploitation (Yamazaki 1999; Morisaki 1976; Yamaguchi 1976). In the typical view of *karayuki*, ‘victims’ are homogeneous as Japanese women and girls who are ‘forced to work’ as prostitutes, while

¹⁰ Modernisation does not only imply economic growth, but also the means by which Japan could remain free from the militarily superior West that had threatened China and the Korean Peninsula. Through modernisation, redressing the restrictions imposed by unequal treaties upon Japan’s autonomy was also one of the crucial goals of Japan in the Meiji era. See Miyamoto (2017).

traffickers are supposed to be male. Abolitionist feminist literature, in particular, characterised their interaction with other overseas ethnic communities by emphasising that they had to take male customers with different racial backgrounds (Yamazaki 1999; Morisaki 1976; Yamaguchi 1976). The fact that the *karayuki*'s clientele was overwhelmingly non-Japanese emphasised their vulnerability in relations to male customers with different skin colours and bigger body shape. These abolitionist arguments paint a simple dichotomy between the passive image of *karayuki* and oppressive male traffickers or customers, although recent studies clarify that some of those women made their own decisions to work as overseas prostitutes, and there were also female intermediaries (brokers) involved who used to be prostitutes (Takemoto 2011).

The abolitionist feminist movement in the 1970s had also shed light on discourses on *Japayuki* [people who are going to Japan to work] since the 1980s. By carefully separating between Asian women as victims and Japanese women as supporters who tolerate their husbands' wrongdoing in Asian sex tourism, these feminist scholars had constructed discourses on Asian women working in the sex industry for Japanese clients as victims (Takahashi 1977; Yamaguchi 1976). Doing so these scholars emphasise Japanese discrimination against women, particularly in Asian neighbours. In this sense, the way in which *Japayuki* are visualised as sex trafficked victims is, to some extent, 'pejorative but also colonial' (Suzuki 2011; Tomita 1998). This is because the term was created by comparing contemporary migrant workers from the Global South, mostly entertainers, to the women and girls from rural Japan who worked as prostitutes in Japanese colonies in the late nineteenth century. To be precise, the term *japayuki* did not originally exclude male workers, but this term has now become highly feminised and sexualised. In this context, discourses on Filipina entertainers as victims who were 'forced into prostitution' arose. This

was especially true in the wake of the mysterious death of Maricris Sioson, a 22-year-old ‘dancer’ in the Fukushima region in September 1991.¹¹ As demonstrated by Cheng (2010), those Filipina women have also been observed in U.S. military camp towns in other Asian-Pacific regions such as Gijichon in Korea. The image of the Filipina entertainer as a sexualised victim has been widely discussed among abolitionist feminists, including politicians and activists who have criticised the eager consumers of such entertainers (Suzuki 2011). The heart-wrenching image of trafficked foreign women also denies them any other motivation for crossing borders, such as looking for work or erotic desire. Their displacement of the labour aspect of trafficked women fed into the standpoint of feminist activism during the 1990s (Oshima 2003; Kajo 1994). Abolitionist feminists such as Yayori Matsui and Kikue Takahashi who had raised awareness of sex tourism and sexual exploitation against women since the 1970s also worked with leading activist and lawyers such as Keiko Otsu and Yoko Hayashi to raise the issues of sex trafficking in the early 1990s. Chapter 4 will discuss this point further.

2-3. Failing discourses in the literature

While feminist abolitionists in the 1970s focussed one historical aspect of physical unfreedom of women working in the licensed brothels and used it in constructing dominant discourse to raise awareness of sexual exploitation, such discourse has wiped away other discourses from debates on human trafficking and slavery. Aside from the praising discourses on karayuki as warriors, these failing discourses include Japanese slaves who were sold to work in different countries, convict and non-convict labourers, takobeya

¹¹ The Daily Yomiuri (1991) “R.P. Set To Ban Japan-Bound Entertainers,” on 20th November.

indentured servitude and child indentured servitude. For instance, after opening diplomatic relations at the beginning of the Meiji era in 1869, Chugai Shinbun uncovered that Japanese people who went to Hawaii to work only received \$5 per month for a five-year contract, and it was said that ‘it was a similar situation to that of black slaves’ (Chugai Shinbun quoted by Maki 1971:316). In 1870, the phenomenon of child trafficking was described in MOFA’s command to ports (*Dainihon Gaikoubunsho* quoted by Maki 1971). In this description, both males and females from age 8 to 13 were trafficked by the Qing people (Ibid.). More famously, the stories of female indentured servants in textile mills [*Joko-Aishi*] uncovered abusive working and living conditions, including sexual exploitation and the restriction of physical freedom (Hosoi 1925). Due to the exploitative conditions faced by young women working at textile mills, the first labour rights legislation in Japan, *kojoho* [the factory law], was established in 1911 (Ibid). However, none of these historical cases, nor the question of whether those in indentured servitude are free or unfree labourers, are discussed in the current literature about trafficking and slavery in Japan.

Current studies paying attention to Japanese history in the 19th and 20th centuries also uncovered that there were discourses on various types of ‘slavery-like’ labour, although they do not discuss these historical narratives in the relations of human trafficking and modern slavery. Two of these were non-convict and convict labour [*kangoku rodo*]¹² in the mining industry in Japan from the late nineteenth to the early twentieth century (Vogler 2005). For instance, the Mitsui Miike Coal Mine, located in northern Kyushu, was one of the driving forces for economic growth in Japan until the end of World War II. In this mining industry, for instance, some of the labourers were from areas in rural Japan, such as Yoronoto,¹³ and

¹² In terms of how convict labour was used in the context of development of Ezo in the Meiji era, see Jolliffe (2018), *Prison and forced labour in Japan: The colonization of Hokkaido, 1881-1894*, forthcoming with Routledge.

¹³ This is an island which is located in Kagoshima Prefecture.

they were deceived about work and living conditions (Tanaka 2009). Coal mining used to be done using Japanese convict labour, but when the administration of prisons was transferred from the Home Ministry to the Ministry of Justice in 1890, both were reluctant to continue this practice. To bridge the gap, the company started seeking labour from the local population and prisoners from Taiwan (Miyamoto 2017). It was not until 1931, due to the ILO's 1930 Forced Labour Convention, that convict labour was abolished (Ibid.). The term *forced labour* tends to bring to mind people captured during the Japanese occupation of (South) East Asia during World War II, such as the Korean Peninsula, Taiwan, or Java (Melber 2016; Kratoska 2014). However, there were also various local labourers in the coal mining industry, including women who were working in poor conditions (Nakahara 1988).¹⁴

Takobeya indentured labour is a less well-known aspect of Japan's forced labour system.¹⁵ Compared to convict labour, *takobeya* labour was, at least on the surface, based on free labour contracts. Although the studies are still scarce, Yohei Achira (2015) uncovered *takobeya* indentured labour during construction in wartime Hokkaido. These labourers were recruited by intermediaries who lured away the younger sons of farming families, or visited places such as Asakusa park in Tokyo where impoverished people often gathered (Ibid). The intermediaries gave them money in advance, but once at the construction site, they added extra fees which had to be repaid. In this way, the labourers became burdened with debt, and ended up signing a contract to work there (Ibid.). There were also some cases of child forced labour in indentured servitude, for example after World War II in the Okinawa area. Maki

¹⁴ For instance, Takashi Nakahara (1988) uncovers the lives of convict and non-convict labourers in the mining industry in Hokkaido.

¹⁵ There are multiple theories about the root of the word *tako*: (1) *ta* means other, and *ko* implies employment, referring to people employed from regions other than Hokkaido; (2) *tako* means octopus, which is fished by being trapped in the octopus pot it cannot ever escape. *Takobeya* means *tako* camp, from which labourers there are never be able to escape; (3) *tako* referring to people who got callouses on their shoulders from the intense physical work; (4) *tako* means kite implying that their tie with their workplaces or work contract is fragile, so they left or escaped from their workplaces quickly (Seaton 2015).

(1971) and Fujino (2012) demonstrate that children were working in exploitative conditions of indentured servitude in the fishing industry there.¹⁶

In addition to praising discourses on karayuki as warriors, discourses on Japanese labourers working in slavery-like conditions, convict and non-convict labourers, takobeya indentured servitude and child indentured servitude in history have been omitted in the scope of human trafficking and modern slavery. These failing discourses imply that the existence of contract or consent does not matter to draw a line between unfree or free labour. This perspective, however, has not been reflected in the literature on human trafficking, which prevents scholars from extending it beyond sexual exploitation in Japan.

3. The (de)linkage between history and the present

The previous sections have presented how the literature on human trafficking and slavery has been developed in Japan. Before moving to Chapter 4, this section will illustrate how complex history of trafficking and forced labour could feed into the current discussions of entertainers and IT-TIP/TITP labourers. The current political activists have referred back to a historical discourse to describe the current issues of those labourers.

Discourses on entertainers, who used to be called Japayuki, as sex trafficked victims are still dominant, although after 2005 little analysis on entertainers has been done. It is because entertainers had been exclusively considered as trafficked victims, and hence restriction of

¹⁶ The Women's and Young Workers' Bureau supervised by the Ministry of Labour published its report entitled *About the So-Called Human Trafficking 1948-49*, clarifying that over 70% of victims were minors at that time.

entertainment visas was regarded as a solution of human trafficking around 2005. However, there are some analyses on the impact of the restriction of entertainment visas since 2005. One is related to the conflation of discourses between entertainers and victims of domestic violence (Saito 2011b; Fujimoto 2007). Based on the assumption that women who used to apply for entertainment visas have come to Japan with spousal visas, Yuriko Saito (2011b) and Nobuki Fujimoto (2007) suggest that the former entertainers became victims of domestic violence. The other analysis can be seen in feminist scholars who emphasise discourses on sex workers' rights (Parreñas 2011; Aoyama 2009). These scholars discuss the degree of agency based on their ethnographic studies on Filipina and Thai entertainers in Japan, suggesting that those women are not victims of trafficking but workers. By doing so they question anti-trafficking paradigm which justifies the deportation of entertainers as victims to their home countries. This also reminds us of the fact that *yujo* indentured servitude was a type of work related to human trafficking in Japanese history. However, perspectives of sex workers' rights and their agency have not been reflected by the current activism against sex trafficking.

Although there is a link between indentured servitude and trafficked labour, it is more difficult to see such linkage in the literature on IT-TIP/TITP. As explained in the previous sections, in Japan indentured servitude was historically recognised as a scheme in the Edo era to justify exploitative working conditions under the name of 'vocational' training. Even so, the IT-TIP/TITP which is supposed to provide vocational training to the foreign labourers have still been largely excluded from the literature on trafficking and modern slavery. It is because the concept of forced labour which encompasses labour trafficking and slavery is recognised as non-consensual work in Japan. In other words, labourers exploited under the contracts of indentured servitude have never been seen as forced labour. This

picture also overlooks the state's power to create the regulations and mechanisms involved, and it overemphasises the abusive power of employers over labourers (LeBaron and Phillips 2018; Garofalo 2006; Andrijasevic 2003; Agustín 2003). Historical and colonial images of labourers who were working at Japanese colonial territories also prevent us from paying attention to a far more common situation for current migrants: indentured servitude (cf. O'Connell Davidson 2017a).

Hence, by placing IT-TIP/TITP in an attempt to extend beyond sexual exploitation, this thesis brings indentured servitude back in the discussion of trafficking and modern slavery as a traditional labour contract which covers up exploitative working conditions. Focussing on the circumstances of entertainers and trainees provides a good starting point for the discussion of labour rights and exploitative working conditions under the ambiguous labour contract like indentured servitude. Before a 2010 revision of the ICRRA, in practice, there were questions of whether 'entertainers' and 'trainees' could be considered 'labourers' and thus deserving of protection from the Labour Standards Act (the Industrial Safety and Health Centre: ISHC 1992). Because trainees are not yet qualified as professionals, and because entertainers are considered as trafficked victims but not as labourers, they represent the most powerless in the workplace, and the most likely to be exploited.¹⁷

Entertainers in the sex industry and trainees in the clothing/textile industry – both are traditionally related to indentured servitude – raises a discussion regarding labour rights of female migrant workers coming to work in Japan. Both industries are highly gendered and racialised (Mahler and Pessar 2006), with some of those workforces originating from

¹⁷ As in Chapter 2, feminist activist groups mostly share abolitionists' positions in terms of prostitution, which mainly relies on criminalization of offenders and victimization of trafficked victims.

neighbouring Asian countries. Whether these economic sectors are regulated or unregulated, they both offer poor working conditions under the labour contract embedded within immigration legislation. Examining cases of entertainers, trainees and interns will also enable a discussion of feminised transnational migration, which will, in turn, clarify the specific issues of female migrants, and their motivations to stay in Japan despite these issues.

The case of trainees and interns in the clothing/textile industry under IT-TIP/TITP reminds us of the failing discourses as trafficking in history suggesting that some of the indentured servants were transported and exploited under the structure. The discourses on female migrant workers in the sex industry have been already firmly within that discussion, but as I have discussed earlier, trafficking for labour remains under-represented. At least, regarding the current situation, textile and garment factories have been affiliated with a type of contract under the purview of the IT-TIP/TITP which is supposed to provide vocational training to the labourers. The textile industry was also a historically popular destination for *dekasegi* women and girls working under their contracts of indentured servitude, as with the licensed brothels of the Meiji era (Tsurumi 1990). As Tsurumi suggests (Ibid.), some of indentured girls working at cotton mills were resold to the licensed quarters. For this reason, a leading labour activist, Ippei Torii in SMJ, and their Advocacy Network have started to focus on the situations of IT-TIP in the clothing/textile industry. Torii also emphasises that IT-TIP/TITP labourers are more exploited under their contracts compared to overstayers or undocumented workers (Interview with Torii 25th October 2015; Torii 2007). Although the literature on human trafficking and modern slavery paying attention to Japan does not discuss exploitative situations of indentured servitude, those current activists have introduced this historical perspective in their activism against IT-TIP/TITP. On the other hand, they barely

use the term *forced labour* as some of them believe this term only refers to non-consensual work. Further discussion will be in Chapter 5.

Determining how and when exploitation begins and how it morphs into the phenomenon of trafficking and slavery, depends largely on moral and political judgments about what constitutes unfree and free labour. The exertion of physical control over migrant labourers—denying them freedom to change their employers, holding their passports, requiring them to deposit income and forcing them to work long unpaid hours—is consistent with definitions of exploitation in the continuum process of migration. It is, however, difficult to draw a clear line between unfree and free labour. It might be the case that informal rules made by the agreement between employers and labourers contribute to creating an abusive structure and inequality at the low end of labour market. These labourers at the low end of labour market also require more flexibility than is possible under the labour regulation. Therefore, it is essential to evaluate the construction of discourses on entertainers and IT-TIP/TITP labourers, and on their impact on changes in institutions and policies. This will provide a lens through which we may also assess the role of the state in creating such an abusive and unequal structure. More importantly, it will also be key to ask how these labourers make decisions to survive in the structure they are given; it might be the case that ‘unfreedom’ or various nature of illegality sometimes derive from how and when they make these decisions for the sake of survival. Therefore, through the evaluation of these two cases from the perspectives of discursive institutionalism, I am hoping to clarify how changes in policy and institutional arrangement based on discursive interactions have altered (or have not altered) the space that allows labourers and employers to enjoy a degree of agency.

Conclusion

This chapter represented an overview of literature on human trafficking and modern slavery which has been developed by American and European scholars over the last two decades, and it also clarified the omissions of key elements of the discussions in the literature as it applies to Japan. In the first section of this chapter, I attempted to clarify the transition of research focus in the literature developed by American and European scholars. The literature was first developed by feminist scholars over the 1990s but has expanded to include rights-based perspectives since the mid-2000s. Based on such endeavours to discuss labour and the human rights of trafficked victims and modern slaves, some scholars have recently introduced the concept of unfree labour as part of human trafficking and slavery in a business context.

Based on the explanation of literature developed by American and European academic circles, this chapter demonstrated how discourses on sexual exploitation associated with entertainers have become dominant in Japan. To do so, this chapter reviewed various discourses on trafficking and slavery in Japanese historical literature which pay attention to the situations of labourers at the low end of labour market. This process clarified that other types of discourses existed as well as the dominant discourses on *karayuki*, which are embedded within abolitionist ideas about indentured prostitution in the late nineteenth century and the early twentieth century. For instance, some scholars suggested that the media under the Japanese militarism and expansionism praised Japanese sex workers as patriotic female emigrants. Other scholars also shed light on forced labour in various types of work contracts at that time. But because of the revision of *karayuki* discourses in the 1970s, and the abolitionist feminists' awareness of entertainers from Asian countries who might be

exploited in the sex industry, their discourse on sex trafficking has been singled out. Because of this emphasis on sexually exploited entertainers and their vulnerability, no literature has raised the point that the Japanese definition of trafficking was originally linked with indentured servitude. This omission prevents academic research on Japan from developing the literature on trafficking in the area of labour, such as discussing the existence of consent and contract. A dominant discourse built on an abolitionist idea of trafficking also shows why feminist activism since the 1990s has focussed on entertainers, while discourses on other workers failed to appear in Japan until the mid-2000s.

To update the existing literature on trafficking and slavery paying attention to Japan, focussing on the cases of entertainers, trainees and interns in Japan contribute to the debate on trafficking and slavery in two ways. First, these two cases express the differing motivations of female migrants coming to Japan and their varying ability to work and stay. The cases of entertainers and trainees were not recognized as labourers who are protected by the Labour Standards Act, though trainees are now recognized as workers. Although their abusive stories are well documented, it is also true that these migrant women would still like to stay and work in Japan. Because these migrant workers are mostly females exploited at their workplaces, their cases illustrate specific issues for female migrants in Japan. Second, the cases of entertainers, trainees and interns raise the question of the meaning of institutions and a degree of agency. Most of these female migrants consent to work in Japan, but in their process of migration, there are experiences of exploitation and deception. The literature on entertainers implies that some of them stay here as overstayers and undocumented migrants, but it also suggests that they could somehow marry Japanese locals. Conversely, trainees and interns are supposed to receive vocational training, but in practice, they have to work as regular workers and face exploitative working conditions. They are, in principle, also not

allowed to change their employers. Given those such situations, discourses on forcing trainees and interns as trafficked victims or modern slaves have gradually appeared.

Clarifying what kind of discourses associated with human trafficking and modern slavery existed and what sort of discourses became dominant (or failed) in the literature will provide an idea of how current political activists use (or do not use) particular discourses to represent their issues. The aim of this chapter was, therefore, to feed into the rest of my empirical chapters to think of how particular discourses been constructed by current political activists against human trafficking and modern slavery.

Chapter 4

Commercial Sexual Exploitation – the Mixed Discourses of Entertainers and Domestic Violence Victims as Trafficked Victims

In terms of human trafficking for the purpose of sexual exploitation, Japan does not have legislation to criminalise male clients who buy trafficked women as a commodity in the commercial sex industry, while The Beijing Declaration requires states to prosecute them in both civil and Penal Codes.

- Hayashi Yoko, the representative of The Japan Civil Liberties Union attending the World Conference on Women in Beijing in 1995, *Asahi Shimbun*, 30 August 1995.

International society regards the commercial sexual exploitation and pornography of children as a human rights issues, while Japan is only concerned with whether it is obscenity or pornography. Given this gap, there is a risk for Japan of being isolated as a state that is indifferent to children's rights (in terms of child sexual exploitation).¹

(Looking back at the past), I was ashamed of being at The World Conference as Japan did not have the proper legislation to deal with men's sexual morality and the purchase of young women as commodities.

- Shimizu Sumiko, the Chief Representative of Japanese Government in Stockholm World Conference, *Asahi Shimbun*, 11th September 1996a; 20th November 1998.

Introduction

The purpose of this chapter is to illustrate how the discourses on human trafficking have been constructed within feminist activism since the early 1990s, and to what extent such discourses have affected changes in domestic policies and institutions to fight against trafficking. Following Chapter 3, the theme of this chapter is to see the process by which

¹ A child is defined as any minor under the age of eighteen as prescribed in the United Nations Convention on the Rights of the Child (1989).

Japanese feminist actors, mostly with abolitionist standpoint, acknowledged global ideas of fighting against trafficking, and how these ideas were incorporated into their discourses against trafficking. As in the introductory chapter, discursive institutionalism suggests political actors are not limited to domestic actors, but also include discursive practice through which global ideas and norms are incorporated into a domestic context (Alasuutari 2015). In other words, discursive institutionalism provides an insight into the process through which global ideas are integrated into local contexts. It also sheds light on the role of political actors in shaping dominant discourses in reference to local and global interactions (Wahlström and Sundberg 2018). In this respect, this chapter mostly highlights coordinative discourses consisting of individuals and groups who are at the centre of policy construction and elaboration, such as politicians, civil servants, experts, and leading activists. As Peter Haas also implies (1992), these coordinative discourses may be the domain of individuals loosely connected in a transnational setting. At the same time, I also recognise other actors such as media, local community unions and international organisations as groups creating communicative discourses.

Based on discursive institutionalism, I argue that several factors have made it even more difficult for migrants who claim to be trafficked victims to stay in Japan. These include the exclusive attention paid to Filipina entertainers as trafficked victims and insufficient discussion in the law-making process. The changes in institutions and policies have occurred not only because external pressure from the United States and the domestic interest in restricting the entertainment visa coincided. It is also because feminist political actors have built up their policy ideas based on discourses on *Japayuki* – some of them former entertainers, mostly Filipina, trafficked into Japan, and later victims of domestic violence.

The 1990s saw the emergence of international norms against human trafficking for the purpose of sexual exploitation at the international level. Discourses on trafficking, at that time, typically assumed ‘passive female victims’ who are threatened and transported by ‘violent traffickers’. This gendered trafficking was discussed in the context of violence against women and children, and was used to legitimise the intervention of international organisations in states over the 1990s. As in Anne Gallagher (2001), the Palermo Protocol had its origins in a proposal from Argentina for a new convention against trafficking in minors, which came at the same time as international and regional organisations started to develop their policies on trafficking. At the same time, the US had also issued a memorandum on measures to be taken to combat violence against women including trafficking (Chuang 2010). This also overlapped the period of increased intra-European migration after the fall of the Berlin Wall. Although discourses on trafficking for the purpose of sexual exploitation had emerged from American and European countries, Japan had also begun to be accused of poor protection for women’s and children’s rights.

The comments at the start of this chapter both come from female representatives of Japan, and were made at two international conferences, one in Beijing in 1995 and one in Stockholm in 1996. Both comments demonstrate that the Japanese delegation saw a clear gap between itself and the international norm against sex trafficking. The members of the Japanese delegation were mostly female members of parliament (MPs), while other countries dispatched government ministers (*Asahi Shimbun* 1996a). Although the Japanese government did not initially prioritise these issues, international criticisms at these two world conferences against Japanese clients of the sex industry became a driving force behind changes in institutions and policies in 2005.

As in Chapter 3, in Japan the trafficking of migrant women for sexual purposes was already known to feminist abolitionist groups by the late 1980s such as shelters founded by the Catholic church. The increasing number of female migrants, so called '*Japayuki*', coming from Southeastern Asian countries often appeared in the media cast as trafficked victims (Asahi Shimbun, 16th March 1993a; 27th July 1991). In these stories, migrant women were drawn as victims of sex trafficking, but ones who resorted to murdering their brothel-keepers. In other words, in the media at that time, these women from abroad were often highlighted as villains who could be a danger to society. The death of a Filipina dancer, however, raised a national outcry in the Philippines, resulting in the visit of the Filipino Minister of Labour to Japan in 1991 (Forman 1994; Agence France Presse, 17th October 1991; The Daily Yomiuri 20th November 1991).² This incident, in particular, led to mounting public condemnation of the abuse suffered by Filipina entertainers working in Japan. This was reinforced by the International Organisation for Migration (IOM), which is an inter-governmental organisation and is now working with the Immigration Bureau to deport trafficked victims. The IOM published a report in 1997 exposing the pitiful stories of Filipina women trafficked into Japan by organized criminals (1997). These events singled out Filipina entertainers as victims, while other entertainers from different countries remained cast as villains (Forman 1994; Chicago Tribune, 20th November 1991).

As a result of these stories emerging since the 1980s, female political actors became quite vocal against violence towards migrant women and children over the 1990s. These female political actors included politicians of all parties, lawyers, academic scholars, NGO officers,

² Discourses of Filipino entertainers as victims who were 'forced into prostitution' arose after the mysterious death of Maricris Sioson, the 22-year-old 'dancer', in Fukushima Prefecture in September 1991 (The Daily Yomiuri 20th November 1991). Triggered by this case, the public outcry in the Philippines required the Filipino Ministry of Labour to impose severe restrictions on overseas employment of women under the age of twenty-three. In practice, this outcry pushed Labour Secretary Ruben Torres to visit Japan in order to demand the opening of an investigation into this case (The Nikkei Weekly, 26th October 1991).

and charity workers. They were in line with the groups working on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and had shared the humiliation of Japan's delay in fighting for women's and children's rights. In particular, in terms of granting a permanent seat of the UN Security Council, international criticism of the sexual morality of Japanese men risked losing its legitimacy as being a civilised member of international society (Neary 2003).³

However, Japanese politicians were sensitive towards international criticisms of its slowness in promoting women and children's rights, and of sex tourism and trafficking in Asian countries. This initially raised two domestic issues: compensated dating with school girls (*enjo kosai*)⁴ and domestic violence against women. Feminist activism against child sexual exploitation in Asian sex tourism and trafficking caused a moral panic about compensated dating in Japan. At the same time, discourses on domestic violence laid a foundation for feminist political activism against sex trafficking after 2003. Within this activism, discourses on domestic violence and sex trafficking are conflated. This is because entertainers, especially Filipinas, who were trafficked into the Japanese sex industry in the late 1980s, have escaped from their employers and become wives of Japanese locals. For this reason, some activists strongly believe that these migrant women have become domestic violence victims, at the hands of the local Japanese men that they married.

Despite this evidence of domestic activism, previous studies have predominantly emphasised the influence of the 2004 *Trafficking In Persons Report (TIP report)* by the US

³ Although academic scholars have not explicitly discussed what the standard of civilization means for a long time, some recognize that international norms set the standards by which states can receive legitimacy. (Flowers 2009; Tannenwald 1999; Gong 1984).

⁴ This refers to a practice of schoolgirls offering their companionship to older men in exchange for luxury gifts or money.

State Department in changing Japan's domestic legislation (Yokoyama 2010; Dean 2008). This report classifies countries into three different tiers, depending on how far they comply with the US Trafficking Victim's Protection Act. The purpose of this Act is to punish traffickers, protect victims, and prevent trafficking from occurring. The TIP report states that those countries in Tier 3 'may face U.S. opposition to international financial assistance, such as the International Monetary Fund, and multilateral development banks such as the World Bank' (the US State Department 2004:31).⁵ Japan was not in Tier 3, but was placed on the Tier 2 Watch-list, which warns countries to improve their efforts. While this was undoubtedly a major variable, the literature reads as if it was only the 2004 US State Department report that caused change to institutions and policy in Japan. In short, domestic factors and their interaction with external pressures, such as feminist activists and their discursive interactions with international organisations, have not been properly considered. This chapter therefore aims to clarify the discursive process of changes in policies and institutional arrangements relating to sex trafficking in Japan since the 1990s.

1. Feminist political activism against sexual exploitation in the 1990s

This first section traces the processes by which Japanese female activists started to draw attention to international norms related to violence against women in the early 1990s. In this early phase of norm acceptance, Japanese female elites such as politicians and lawyers had developed their knowledge and discourses on human trafficking for the purpose of sexual

⁵ Tier 1 refers to countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standard. Tier 2 categorises countries whose governments do not comply with the TVPA, while still making a significant effort to fight against human trafficking. Within Tier 2, there is a Watch-list to warn countries which are failing to prove their effort. Tier 3 comprises countries which have no intention of improving their measures against human trafficking. This implies that countries in the Watch-list are on the border between Tier 2 and 3. However, there are only penalties for governments of countries in Tier 3.

exploitation. Rather than setting up measures against sex trafficking, however, the measures against compensated dating were established first, due to the moral panic in the late 1990s.

Since the UN Commission on the Status of Women (CSW) adopted the draft declaration against gender-based violence in 1993, many different international and regional conferences about violence against women and young girls have been held. Asian countries were no exception. As the first Asian regional conference, some abolitionist feminist activists such as Yayori Matsui, Keiko Otsu, a director of HELP, and Yoko Hayashi, a leading lawyer for protecting women's rights, set up the Women's Rights Asian Tribunal at Waseda University in Tokyo. This was supported by the Asia Japan Women's Resource Centre prior to the fourth World Conference on Women in Beijing (Kajo 1994). In this regional conference, powerful messages were sent by mothers looking for daughters who were thought to have been trafficked, which raised awareness of sex trafficking (Ibid.). A series of media reports about brothel owners murdered by Thai women, however, were still constructing the image of trafficked women as villains, while Filipina entertainers had been singled out as victims due to the national outcry over the murder of the Filipina dancer (Asahi Shimbun, 20th November 1998;1993a; 27th July 1991).

According to Yoko Hayashi (1996), one of four female delegates from the private sector, NGOs in a variety of countries tried to convince their governments to set up new international treaties to ban sex tourism and to protect trafficked women. However, Japanese government male representatives suggested that new international treaties were not required for Japan as banning sex tourism was already set up within Japanese domestic legislation. They cited the 1956 Prevention of Prostitution Act, though at that time it had not even set up legislation to criminalise Japanese clients who buy female minors in the sex industry

(Hayashi 1996). Under Article 176 in the Penal Code, the age of consent is thirteen, which has not been changed since 1880.⁶ This meant, at that time, that the person who engaged in sex with a teenager just over age thirteen would not be punished if the child consented, regardless of whether there was an exchange of money.

Japan's reluctance to penalise male clients in the commercial sex industry can be seen in the Japanese Judicial Affairs' Committee after the Beijing Conference (The House of Councillors, 9th November 1995). In this Committee, Yoriko Yamasaki,⁷ a female member of parliament from the New Frontier Party, suggested that Japan should amend both the Civil and Penal Codes to protect sexually exploited women who were sold as sexual commodities. However, her efforts failed to place the issues of trafficking in prostitution, because she focussed on men's role in prostitution. At the beginning of her question, Yamasaki tried to convince the government to take appropriate measures 'to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialised sex, forced marriages and forced labour in order to eliminate trafficking in women' (The UN Fourth Conference on Women 1995). Yamasaki, however, mostly focussed on the omission of an Article in the Penal Code to criminalise male clients in prostitution.

⁶ In the old Penal Code introduced in 1880, Article 346 prescribed the consent of age, which was abolished and replaced by the current Penal Code in 1907. In the process of colonialism of the Japanese empire through the Sino-Japanese War (1894-95) and the Russo-Japanese War (1904-5), the military expansion had oppressed peasants' lives in particular. At that time, there were many cases where parents in extreme distress sold their daughters to brothels. As in American and other European countries, there was an abolitionist movement against licenced prostitution in Japan, but it was to protect Japanese soldiers from sexually transmitted disease (Fujime 1997b).

⁷ Yamasaki changed her surname to Madoka and became a deputy representative of the Democratic Party of Japan (DPJ) in 2002. She had been working on issues related to women's rights such as domestic violence and gender inequality at workplaces since the 1980s.

As a response, Kiichi Miyazawa, the Minister of Justice insisted that controlling social order and morality would solve sexual exploitation, implying that the fault lies solely with women selling their bodies (The House of Councillors 1995). Here, Miyazawa emphasised controlling women's behaviour as follows:

The most crucial thing is to give guidance to women in order to prevent them from selling their bodies and provide them with safeguards, rather than introducing a Penal Code to criminalise [male] clients. Selling sex itself is a threat to the public order and standard of decency (Miyazawa in the House of Councillors 1995).

This reluctance to penalise male clients in the sex industry has, however, gradually changed since Japan faced the criticisms of the First World Congress against Commercial Sexual Exploitation of Children in Stockholm in August 1996. The international campaign against child prostitution and trafficking for the purpose of sexual exploitation itself started in Bangkok in 1992, raising awareness of child sexual exploitation as a children's rights issue. At the First World Congress in 1996, ECPAT and The UN Children's Emergency Fund (UNICEF) played a leading role in seeking solutions to child sexual exploitation with 122 countries. ECPAT Australia emphasised that Asian sex tourism and trafficking for the purpose of sexual exploitation was the worst case of human rights' abuse, which international organisations regarded as modern slavery (Tsuboi 1998). Here, Japan was named and shamed as one of the major states that provide customers of sex tourism in Southeast Asia, and also as a mecca for child pornography (Asahi Shimbun 1998).

The gap between other participant countries and Japan in promoting women's and children's rights was striking. Sumiko Shimizu, a female representative of the Japanese delegation and a member of the SDP, pointed out Japan's delay at the World Congress as follows:

The problem is that Japanese society will not consider child pornography and prostitution as children's rights issues. Unless we set up the legislation to protect children's rights, Japan cannot be morally accepted in international society... I found it shameful that we have ignored those issues (Shimizu in Inoue 1996:34-35).

Shimizu also pointed out that Japan did not have the authority to deal with special issues related to children and women. Indeed, this World Congress exposed Japan's delay in undertaking to fight against this abuse of human rights. As a response to the criticism, the government established a liaison meeting between the MOJ, MOFA, the Ministry of Education, and the Ministry of Health, Labour and Welfare (MHLW) just after the First World Congress. The purpose of the meeting was to enforce the new legislation resulting in the Act on the Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children, in 1999 (the Act on Child Prostitution and Pornography).

In the process of establishing this new Act, international criticisms against Japan's insensitivity to issues involving sexual morality, however, became linked to a domestic social problem: compensated dating. Compensated dating with schoolgirls was a controversial issue to which the media sensationally paid attention in the public arena. A series of foreign newspapers resorted to shaming tactics, and emphasised that sex with schoolgirls is a booming industry in Japan (*The Sunday Times*, 2nd October 1999; *Reuters*, 10th October 1997;

The Guardian, 9th June 1997; *The Guardian*, 30th October 1996). Those media stories also suggested that compensated dating ‘spread to ordinary girls who appear to lead perfectly normal lives with good school attendance records’ (*The Sunday Times*, 11th January 1998).

Because of this level of sensationalism in the media, some literature argues that the issue of compensated dating is a phenomenon of moral panic (Kinsella 2012).⁸ As in Sharon Kinsella, there has been very little hard evidence to prove that compensated dating is widespread in society (Ibid.). Despite this, the media continued to publish stories about how ordinary schoolgirls ended up earning money by dating old men (*Asahi Shimbun*, 25th January 1997a; *Yomiuri Shimbun*, 11th May 1999). While this media coverage undoubtedly led to moral panic, it also raised questions about contemporary sexual morality. The anxiety, exaggerated by the media, about losing ‘ordinary schoolgirls’ into commercialised sex was also discussed in politicians’ comments in the Diet, implying the urgent need to control the social order (The House of Councillors, 12th March 1998). Whether compensated dating is moral panic or not, international criticism of Japanese clients in Asian sex tourism and compensated dating in Japan was effective. Shimizu in the Judicial Affairs’ Committee also uncovered that Japanese delegates of the World Congress reported to the MOFA about the need of policy reform to follow the international standard of child protection (The House of Representatives, 14th May 1999). It resulted in the introduction of the new Act on Child Prostitution and Pornography, to criminalise Japanese clients who buy sex with children under eighteen years old. However, the Penal Code has still maintained the age of consent at thirteen.⁹ To distinguish buying sex with children from with adults, this Act is called

⁸ Moral panic was a well-established academic term originally developed by Stanley Cohen in 1972. It refers to ‘an exaggerated response to a type of behaviour that is seen as a social problem’ (Marsh and Melville 2011:2). In other words, the term indicates an over-reaction on the part of the media that magnifies the original area of concern.

⁹ After the Act on Child Prostitution and Pornography in 1999, it became illegal to exchange sex for money with anyone under the age of eighteen, which defines children as under the age of eighteen. However, each

Jidokaishunho, which emphasises punishment of buyers (The House of Councillors, 27th April 1999).

To regain its international reputation and to keep a grip on social order, Japan had to show that it was making an effort to solve the problems of sexual exploitation. As the *International Herald Tribune* pointed out in 1999, Japan's position was even more embarrassing because of 'the knowledge that supposedly "less developed" Asian countries [had] long had more comprehensive laws against child prostitution and sexual abuse' (the *International Herald Tribune*, 23rd May 1999). Japan's Prime Minister Keizo Obuchi took this Second Congress seriously (Obuchi 1999). It may have been particularly crucial at that moment to bow to international pressure by addressing the issue of sexual violence. At this time, the coalition government of Obuchi was finding it hard to convince other Asian countries that Japan had positive aspects aside from its economy (*International Herald Tribune* 1999). Therefore, hosting the Second World Congress in Yokohama in December 2001 was intended to show that Japan had changed and was dealing with sexual abuse against women and children. Unlike the First Congress in Stockholm in 1996, the Koizumi cabinet actively encouraged the Second Congress in Yokohama by dispatching both members of the Imperial family and a succession of ministers to its formal and informal sessions (Buckley 2002).

This behavioural change was also supported by Masako Owaki in her interview. Owaki, a former member of the SDP, attended both the Beijing Conference on Women and the First World Congress in Stockholm, and has been vocal at the debates in the Diet on this issue since 1993 (Yamashita 1995). According to Owaki, MOFA would not listen to female MPs

prefecture has different municipal bylaws which prescribe various age of consent, while the Penal Code still maintains the age of consent as thirteen years old. Because of this, it is hard to identify victims of child prostitution (Wakabayashi 2003).

even after the Beijing Conference. However, once Japan was named as a major culprit of sexual exploitation against minors and a state lacking morality, the diplomats' attitude towards sexual exploitation changed (Interview with Owaki, 3rd December 2015). This is backed up by Mayumi Moriyama, Minister of Justice, in her keynote speech in the Second Congress in 2001. She notes that the response of her fellow Diet members to the First Congress in 1996 was an important spur to the enactment of the Act on Child Prostitution and Pornography in 1999 (Moriyama 2000). In this context, Makiko Tanaka, Minister of Foreign Affairs, also underlined Japan's efforts to protect child victims when she spoke at the World Congress in Yokohama:

In Japan, MPs took the initiative in developing the Law for Punishing Child Prostitution and Child Pornography, which took effect in 1999. In addition, Japan concluded the ILO Convention No. 182 concerning the Elimination of the Worst Forms of Child Labour in June this year. [...] Japan will seriously tackle this issue, work with international organisations including UNICEF, and construct close cooperative ties with Japanese and overseas NGOs (Statement by Ms. Makiko Tanaka Minister of Foreign Affairs of Japan on the UNICEF Homepage 2001).

This introduction of the new Act, and the hosting of the World Congress, showed the discursive power of Japanese feminist activism which persuaded members of the Diet, across the political spectrum to tackle a major blot on Japan's international reputation in the 1990s. However, the question has remained whether it was truly a victory for their efforts. Because the new Act was conceived as a consequence of moral panic over compensated dating, it is mostly used as legislation to maintain social order. It aims to solve the social

problem of Japanese schoolgirls who earn their own money through compensated dating, which had emerged through communicative discourses (Tsuboi 1998; *The Guardian* 9th June 1997; Mainichi Shimbun 23rd April 1998). As in Roger Buckley (2002), we could view the NGOs' contribution as significant. They connected a domestic issue of compensated dating with commercial sexual exploitation in the international arena. However, the question remains as to how Japan could offer measures which would solve trafficking into the commercial sex industry in Southeast Asian countries. In this respect, Makiko Tsuboi, a member of ECPAT Japan, expressed her disappointment that the new Act made no provision to protect children's rights in Southeast Asian countries. It did not include banning the possession of child pornography, nor measures for cooperation with other Asian countries for the investigation of Japanese offenders. In particular, Tsuboi pointed out that the new Act turned out to say nothing about protection for Asian children who were trafficked and exploited in the commercial sex industry (1998).

So we can see that Japanese feminist activism against violence against women and girls, who are mostly trafficked in Asian countries, ended up linking with a domestic issue of compensated dating. As a result, the new Act was introduced to control the social order of sexual morality in Japan's domestic context in the late 1990s. The issue of child sexual exploitation was, however, only interpreted within a domestic context. It neglected to protect females and girls who are trafficked and sexually exploited in Southeast Asian countries. Feminist political activism has been addressing violence against women since the late 1990s, which led to the debate on sex trafficking in the early 2000s. However, discourses on trafficking have been conflated with domestic violence in this context. The next section will explore this in greater detail.

2. Overlapping discourses between Domestic Violence and Human Trafficking for the purpose of Sexual Exploitation

2-1. Domestic Violence

In Japan, it has been suggested that some victims of domestic violence were also trafficked victims when they entered Japan (JNATIP and Ochanomizudaigaku 21 seiki COE 2007). Shelters and academic scholars had been aware of foreign women entering Japan as entertainers, and stressed the vulnerability of those women due to their visa status (Saito 2011a; JNATIP and Ochanomizu 2007).¹⁰ The conflation in discourses between domestic violence and trafficking has become even stronger since the restriction of entertainment visas in 2005.

At the international level, those two different issues were raised in the context of General Recommendation No.19 by CEDAW in 1992, and in the declaration against gender-based violence by UN CSW in 1993 (Hayashi 2011). This declaration became the first international instrument explicitly addressing violence against women and girls. It also provided a framework for national and international action, as gender-based violence, trafficking of women, and domestic violence were classified in the same broad category of ‘violence against women’ (Ibid.).

¹⁰ There are no reliable statistics to show the number of foreign DV victims in Japan.

As leaflets from NGOs and shelters have indicated (Faier 2008; Saalaa 2001; RINK 1996), discourses on sex trafficked victims from Southeast Asian countries already existed in the late 1980s in Japan. To rescue those women, HELP was built in Tokyo in 1986 on the 100th anniversary of Kyofukai, in order to provide shelters for migrant women who came to work in Japan but were in trouble. Subsequently, for the same purpose, Saalaa started to run its shelter in Kanagawa Prefecture in 1992. Through those private shelters, Asian women who escaped from their brothel owners or their Japanese husbands became more visible during the 1990s. A 1993 civil suit also uncovered that a Bangladeshi woman had been deceived into coming to Japan, and was then forced to marry a Japanese man. In order to pay her debt to the agent who helped her in the migration process, she had to stay with her abusive ‘husband’ (Kyoto District Court 1993, No.1809).¹¹ This implies that violence against migrant women regardless of nationality had been one of the major issues for shelters in the early 1990s (Kanagawa Shimbun, 11th February 2002).

Given this, the Headquarters for the Promotion of Gender Equality [*Danjo Kyodo Sankaku*] initiated action against domestic violence in June 1997.¹² After it did this by establishing a working group to look at issues of violence against women, the Bureau of Citizens and Cultural Affairs in the Tokyo Metropolitan Government undertook an official investigation on domestic violence in 1998 (Yoneda 2000).¹³ This pioneering survey overturned the opinion of the Japanese ambassador to the UN who had argued that domestic violence was not a problem in Japan. He gave this opinion while serving on the Committee on the Elimination of Discrimination against Women in the early 1990s (Chan-Timberghien 2004).

¹¹ This was a civil suit in which the wife sued her husband for damages.

¹² This office was set up in the Cabinet Office in 1994. With the implementation of the Basic Law for a Gender-Equality Society, both the Gender Equality Council and the Gender Equality Office were established. However, along with the governmental reform in January 2001, the Gender Equality Bureau was set up in 2001.

¹³ The Cabinet Office also began to explore domestic violence in September 1999, resulted in publishing the report ‘An Investigation into Domestic Violence between Men and Women’ (2000).

Based on the survey, female members of all parties formed the Research Committee of the Society of the Cooperative Way of Life and started in 1998 to discuss new legislation to ban domestic violence. In particular, they demonstrated the lack of remedy for victims of violence against women in Japan (The House of Councillors, 26th November 1998). Through the debates in the Diet and civic workshops such as the Men's Liberation Festival,¹⁴ the traditional legal principle ('law does not apply within families') was exposed. Because of this, Japanese female politicians set the goal of finding a legal foundation for tackling domestic violence as a gender-based problem. This goal was set at the end of the 1990s in order to prove that Japan endeavoured to promote gender equality (*The Nikkei Weekly*, 29th March 1999).

As part of the process of creating a policy banning domestic violence, a director of HELP, Otsu, was invited as an expert witness when the Human Rights Promotion Council in the MOJ¹⁵ organised a hearing. In this hearing, while Otsu admitted that the number of Japanese women as victims of domestic violence had increased, foreign women and their children were even more vulnerable due to their visa status (Kondo 2006; Human Rights Promotion Council Hearing 1999). It is because, Otsu believed, some of those women were married or in a relationship with Japanese men after being trafficked as mostly entertainers into Japan, and those men exploited them while failing to update their status with a spousal visa (Shorinji 2006; Saalaa 2001). For this reason, it is crucial to set up the protection for those vulnerable women irrespective of their nationality. As illustrated above, Otsu was one of the organisers

¹⁴ This was one of the men's liberation movements to identify the causes of domestic violence. To review causes of domestic violence from the perspectives of male identity and positions of masculinity, this workshop was set up in some prefectures such as Kanagawa Prefecture.

¹⁵ This Council was set up along with the establishment of the Human Rights Protection Measures Promotion Law in 1997.

of the Women's Rights Asian Tribunal in 1993 and has raised awareness of sex trafficking into Japan since then.

Not only these abolitionist feminists but local NGOs in Kumamoto, Osaka, and Kyoto¹⁶ had also recognised that foreign women whom they rescued were originally victims of trafficking who turned out to be domestic violence victims. In short, discourses on former entertainers suffered domestic violence have been widely shared among NGOs and shelters closely working with the Cabinet Office since 2003. One of the NGOs explained their experience with trafficked women who became victims of domestic violence:

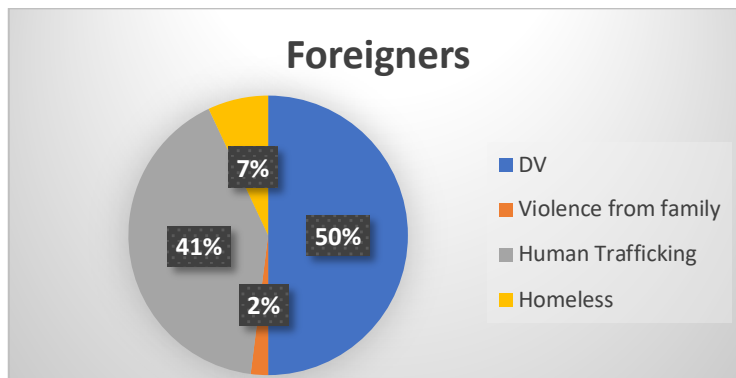
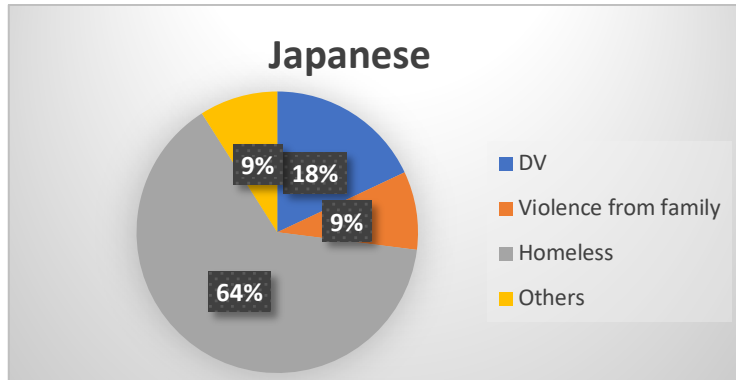
Trafficked victims for the purpose of sexual exploitation were already visible in the late 1980s. We often rescued Filipina and Thai trafficked women who escaped from their owners and were married to Japanese men – those men physically and mentally abused their wives. Therefore, the issue of sex trafficking was already in existence, but was not dealt with until around 2005 (Interview with the director in Komusutaka in Kumamoto Prefecture, 23rd November 2015).

Discourses on 'foreign wives' [*gaijinsuma*] suffering from their partners/husbands' abuse were also highlighted in the press. In particular, some media stories implied that there might be a larger population of those migrant women in Japan than Japanese victims (Asahi Shimbun, 14th February 2001; 9th April 1997b; The Japan News, 30th June 1999).

¹⁶ These NGOs have also been members of the Advocacy Network for the Rights of IT-TIP/TITP labourers in Chapters 5 and 6.

Furthermore, according to Otsu (2004), domestic violence victims from abroad exceeded Japanese nationals in number in 2004. See Chart 2 below:

Chart 2: A breakdown of the total number of women in HELP from April 2003 to March 2004 (Created by the author using data from Otsu, 2004:61)



Note: The total numbers of Japanese and of foreigners were 102 and 56 respectively. This Chart shows that the number of Japanese DV victims is 18, while the one of women from abroad is around 28.

Even so, when it came to protecting DV victims, the phrase ‘irrespective of nationality’ was not included in the draft of the Law on the Prevention of Spousal Violence in 2001. It is because, at that time, the focus of discussion was mostly on the role of the Women’s Consultation Office, specifically on whether it should be extended to look after victims of domestic violence. It was controversial because the Women’s Consultation Office was originally set up after the Prevention of Prostitution Act in 1956 to work with prostitutes

(The House of Councillors, 19th February 2001).¹⁷ Moreover, because of the omission of the phrase ‘irrespective of nationality’, migrant women who had not renewed their visas but were victims of violence by their husbands or partners were placed outside the target group of victims (Saito 2011a:50). The Japan Federation of the Bar Association (JFBA) also raised the point that these vulnerable women from abroad were mostly turned into overstayers because their husbands or partners neglected to sponsor their visa renewal. The JFBA suggested another revision of the Act to include such situations (2003).

As a result, the wording ‘irrespective of nationality’ was included in the 2004 revision of the Prevention of Spousal Violence Law, in order to protect migrant women abused by their Japanese husbands or partners (Saito 2011a; The House of Representatives, 26th May 2004).¹⁸ Whether they are allowed to stay or not, however, depends on the discretion of the Minister of Justice. For this reason, including a wording ‘regardless of residence status’, instead of ‘nationality’ in the revision of the Prevention of Spousal Violence Law would have been hugely beneficial to those migrant women who are abused by their husbands or partners. In the end, the 2004 revision introduced a provision to extend a special residence permit to foreign spouses who are DV victims, but this did not necessarily mean that this residence permit can apply to the foreign victims who became overstayers or undocumented. In the process of this revision, HELP was again invited as a witness and emphasised the issue of foreign spouses, including former trafficked victims from the Philippines and Thailand. Although Otsu insisted that women from abroad were eligible to stay in Japan if they married Japanese locals, this does not mean that permission to stay is automatic. In other words, a migrant woman who legally marries a Japanese man is still subject to deportation unless her

¹⁷ In terms of victim protection, the Spousal Violence Counselling and Support Centres were equipped by local governments in all prefectures in April 2002.

¹⁸ Article 23 in the 2004 revision respects women’s human rights regardless of their nationality or disability.

husband or partner keeps renewing her visa. In this way, their residency status relies heavily on their husbands or partners (The House of Councillors, 20th April 2004).

There is, however, a loophole in the immigration legislation which has helped those migrant women whose resident status became irregular. Under certain conditions, migrant women who became overstayers or undocumented migrants could stay in Japan. According to Article 50 (1)-4 in the ICRRA, they could stay in Japan if they: a) are adopted children or legally acknowledged children of a Japanese national or of a special permanent resident; b) are biological children of a Japanese national and a special permanent resident; c) legally marry a Japanese national or special permanent residents; d) taking care of their biological child who is going to an elementary school or junior high school which provides classes in Japanese in Japan; or e) have an incurable disease or are taking care of a family member who has a serious disease and needs medical care in Japan.¹⁹ It is, however, hard for those female migrants to know such a way to avoid deportation unless they consult with lawyers.

As explained above, the development of institutions and policies to ban domestic violence was achieved by feminist political activism against women from the late 1990s. Domestic violence was prioritised first, because legislation to prevent spousal violence did not itself exist at that time. This is partly because family matters had been left behind in Japanese legal structure, due to the traditional legal principle: ‘law does not apply within families’. For this reason, in order to protect women suffering from violence regardless of nationality,²⁰ Japan needed to establish legislation to prevent spousal violence first. The political actors also acknowledged that some of the women who suffered from domestic

¹⁹ In October 2006, the MOJ website published the criteria by which the Minister of Justice decides on granting migrants special permission to stay (Kodama et al., 2012). This was prescribed in Article 50 (1)-4 in the ICRRA.

²⁰ The second revision in 2007 finally introduced the phrase, ‘irrespective of migrant status’, in the context of spousal violence victims (Gender Equality Bureau Cabinet Office, 2008).

violence were originally trafficked into Japan as entertainers. As the next section will illustrate further, this conflation of discourses between human trafficking and DV, and the institutions set up for protecting DV victims, became part of the measures against human trafficking.

2-2. Human Trafficking for the purpose of Sexual Exploitation

The umbrella organisation called JNATIP was established in October 2003 in Kyoto by lawyers and shelters, who had been working on sex trafficking and domestic violence. This was based on their advocacy addressing violence against women over the 1990s.²¹ Female politicians who had been involved with those issues also supported this group. This umbrella group was established due to an international symposium, which was organised by the ILO Japan Office in January 2003. The symposium raised awareness of victims of sex trafficking from Thailand and Columbia (ILO Japan 2003). Not only police authorities, female politicians and embassies, but also lawyers, NGOs and academic scholars attended this symposium to exchange their knowledge of sex trafficking. Based on this network, JNATIP subsequently organised a couple of workshops with female politicians and lawyers (JNATIP 2004).

In May 2003, Mizuho Fukushima, a leader of the SDP, suggested collecting data on sex trafficking in Japan in these workshops. This resulted in the cooperative research project between JNATIP and Ochanomizu Women's University. In January 2004, the JNATIP office

²¹ Members have occasionally changed, but the original members were as follows: HELP, Saalaa, IMADR-JC and some professionals such as Yoshida Yoko (a lawyer), Kaino Tamie (a female professor in Ochanomizu Women's University), and Kyoto YWCA.

was taken over by IMADR in order to negotiate with embassies and authorities in Tokyo (Ibid.). At that time, Otsu who used to be a director of HELP and became one of the JNATIP directors,²² and a lawyer, Yoko Yoshida, were also asked to work with the Gender Equality Committee in the JFBA to create a working group against human trafficking. Subsequently, the Inter-Ministerial Liaison Committee for Anti Human Trafficking was set up in the Cabinet Office in April 2004 (Ibid.). Since then, JNATIP and the Liaison Committee in the Cabinet Office have had meetings twice a year. JNATIP, along with female politicians from all parties, requested the government to establish a Bill of Protection for Victims of Human Trafficking based on the 2002 UN Recommended Principle. However, this has not been enacted. In practice, the archive of JNATIP (2005) revealed that, at that time, there were two drafts of a victim protection bill: one from the Liberal Democratic Party (LDP), and one from the Democratic Party of Japan (DPJ), SDP and Communist Party. The ruling party, the LDP, supported the idea of using existing institutions and the organisation for domestic violence victims and extending their remit to include trafficked victims. However, the latter three parties insisted on the need for a separate Victim Protection Law specifically for trafficked victims. In the end, the Bill for the Protection of Victims of Human Trafficking was dropped without further discussion.

Despite these efforts of all these groups to achieve greater protection for trafficking victims, the changes in institutions and policies in 2005 only resulted in making them even more invisible. The following sections are going to clarify the explanatory factors which affected these changes in 2005.

²² Otsu, a former director of HELP, and Professor Tamie Kaino in Ochanomizu University were other co-directors.

2-2-1. Discourses on Filipina entertainers as 'trafficked victims'

Most previous studies regard US pressure as a major factor in changes to Japanese institutions and policies in 2005. In fact, in 2003 the UN Committee on the Elimination of Discrimination against Women suggested to the Japanese government to make more efforts to combat sex trafficking, but this pressure received little public attention (Hashimoto 2008). External pressures from the UN and the US by themselves did not have a huge impact on how changes were made in these institutions and policies. Rather, domestic political actors such as civil servants, politicians, and activists used these pressures to reflect their ideas in policy reforms. American pressure coincided with the discourse on Filipina entertainers as 'trafficked victims', which matched the interests of the Immigration Bureau at the time. I consider that it was this combined pressure which had the major impact. The Tokyo Immigration Bureau had wanted to reduce the number of entertainers since the 1990s, and the US TIP report put the focus on Filipina entertainers as major trafficked victims. This provided the Tokyo Immigration Bureau with the good reason it had been looking to restrict applications for entertainment visas.²³ This discourse on Filipina entertainers constructed by the Tokyo Immigration Bureau also fits nicely with the abolitionist feminist idea of sex trafficking, as well as with the government's zero-immigration principle for unskilled migrants. Within this principle, it clearly targeted Filipina entertainers, who made up 48 % of applicants for this visa by 2005 (MOJ Homepage 2006).²⁴

²³ Although there was indeed a mention of Colombia as another major resource, the TIP report points out that 'Japan issued 55,000 entertainer visas to women from the Philippines in 2003, many of whom are suspected of having become trafficked victims' (2004:15).

²⁴ According to the MOJ's survey in 2005, the number of the total applicants was 99,342 while Filipina applicants were 47,765 (MOJ Homepage 2006).

The special advisor for the US State Department, John Miller, warned that the State Department was planning to put Japan alongside North Korea in Tier 3, the worst rank, in the 2004 TIP report (Yomiuri Shimbun, 20th November 2004). On his visit to Japan in February 2004, Miller highlighted the fact that ‘Tokyo had issued 85,000 visas to female “entertainers” from the Philippines in 2003’ (Miller 2008:52). The media also shed light on ‘Japan’s delay’ in fighting against sex trafficking, by quoting the comment from Miller, arguing that ‘Japan is an unusual case among advanced countries in not providing enough shelters for trafficked women’ (Asahi Shimbun, 23rd July 2004a). In the end, Japan was placed in the Tier 2 Watch-list in the TIP report, but this could still have damaged Japan’s reputation, for instance in comparison with South Korea which was ranked in Tier 1 (Miko 2005).

In response to the criticisms from the US State Department and the media, the Committee on Judicial Affairs in Japan was concerned to discover how seriously South Korea took the US TIP criticisms (The House of Representatives, 21st May 2004). In this Committee, Choya Masuda, the Director of the Immigration Bureau, and Mayumi Moriyama, the Minister of Justice, expressed their exasperation over criticisms from the US State Department. These politicians stressed that Japan did not need to follow South Korea which introduced the two new Articles in South Korea in 2004: the Act on the Punishment of Procuring Prostitution and Associated Acts (Punishment Act) and the Act on the Prevention of Prostitution and Protection of Victims Thereof (Protection Act). South Korea was placed in Tier 3 in the TIP report in 2001, which was warning that it would risk losing non-humanitarian, non-trade assistance from the US. For this reason, being placed in Tier 3 was a great humiliation for the South Korean government, which in turn made it welcome its domestic female activism proposing the above-mentioned legislation (Kim 2007). For the Japanese politicians,

however, Japan was not yet placed in Tier 3, and complained that Japan had not been correctly evaluated in the TIP report (Asahi Shimbun, 23rd July 2004a). To prove that they were working and making progress on this issue, Masuda declared that the Immigration Bureau was planning to restrict the entertainment visa (The House of Representatives, 21st May 2004).

Restriction of the entertainment visa had been one of the long-standing issues in the Tokyo Immigration Bureau since the early 1990s when Filipina entertainers rose to visibility due to a series of stories about them being abused (Akashi 2010; Sakanaka 2005). As a response, the Immigration Bureau restricted the visa once in 1995, but the number of the visas granted had increased again by 2004. Hidenori Sakanaka, a former Justice Ministry official and director for the Tokyo Immigration Bureau, illustrated how he had run the campaign against the entertainment visa.

When I came to be a director of the Entry and Status Division in 1995, I started to pay attention to the Filipina entertainers because of their disproportionately high numbers. After I restricted the visa around 1995, I was relegated to the Sendai immigration bureau following pressure from LDP politicians. When I came back to the Tokyo Immigration Bureau as a director in April 2002, the number of the entertainers had steeply increased by 120,000. For this reason, I had been wondering if there was any chance to restrict this visa again. The TIP report published in June 2004 therefore provided me with a good excuse to restrict this visa again and to begin raiding the Filipino pubs in July 2004... For me, Filipina entertainers are different from the Thai and Colombian prostitutes. Some of them came to Japan on a tourist visa and were forced to work as

prostitutes, while Filipina entertainers usually work at Filipino pubs as hostesses. They do not necessarily sell their bodies whereas Thai and Columbian women are mostly prostitutes. The small number of Thai and Columbians also convinced me to ignore their issue as this was not a huge problem. Therefore, I emphasised ‘the human trafficking of entertainers’ so that I could focus only on this visa (Interview with Sakanaka 18th December 2015).

Sakanaka’s next attempt of restricting entertainment visas came around 2005. To achieve his purpose, Sakanaka used the timing - his retirement and TIP report published in 2004. To do so, Sakanaka began to leak his stories of raids on the Filipino pubs in Tokyo from the end of February 2005, as he faced retirement in March (Asahi Shimbun, 28th February 2005a; 11th March 2005b; Shukan Gendai 2005; Shukan Asahi 2005).²⁵ In those articles, discourses on the Filipina entertainers were exclusively highlighted as a stereotype of trafficked victims for the purpose of sexual exploitation, although many of these women do not directly exchange sex for money (Parreñas 2011). This was despite the fact that the Thai and Columbian embassies had lobbied the Japanese authorities to protect their nationals who were victims of sex trafficking (Omaira 2006; *The New York Times*, 16th February 2005; ILO 2004). For this reason, the authorities would not recognise Columbian and Thai entertainers as victims of trafficking, while Filipina entertainers were successfully recognised as victims this time.

This was also pointed out in July 2005 when JNATIP unofficially invited Sigma Huda, a special rapporteur of human trafficking, to investigate issues of human trafficking in Japan.

²⁵ Shukan Gendai and Shukan Asahi are both weekly magazines published by Kodansha and Asahi Shimbun Publishing Cooperation.

For Huda, Japan's authorities only showed provisions which recognised 'entertainers from the Philippines as victims of trafficking' (Huda in JNATIP 2005:15), with little focus on other nationalities. She wondered if there were any provisions to support Thai and Colombian women, who were the other two largest groups of trafficked victims (Ibid.). Motohisa Suzuki, chair of the Inter-Ministerial Liaison Committee from the Cabinet Office, responded to this as follows:

I'm afraid there seems to be some misunderstanding. The media coverage of entertainment visas being used as a cause of trafficking may have given the impression that the majority of the victims of trafficking are those who entered Japan with an entertainment visa. However, we do not think that our anti-trafficking policies' main targets are those with entertainment visas. There are various types of trafficking, such as illegal entrance, entrance with a sightseeing visa, and fictitious marriage (Suzuki in JNATIP 2005; 14).

Although this bureaucrat's idea suggests that there were victims with different visa categories, Japan only reached an agreement on the issue of an entertainment visa with the Philippines within its coordinative discourses (Ibid., 13). On the other hand, Thai and Colombian victims were placed at margin of such discourses. In this respect, *the New York Times* (2005) uncovered that the Colombian Ambassador, Francisco Sierra, complained about the MOJ and MOFA's lack of attention to Colombian victims when he approached them to discuss this issue, suggesting that they 'were evading this topic'. In this article, there is also a mention of Suzuki's comment: 'How many of those with an entertainment visa end up as trafficking victims and are coerced into prostitution is unclear, Mr. Suzuki said, but he added that the visa "offered a tool for human trafficking"' (Ibid.).

In short, the policy idea of the restriction of the entertainment visa, especially targeting Filipina entertainers, was common ground between US criticism and domestic ideas of human trafficking. In addition, restricting entertainment visas in immigration legislation and introducing the new article to criminalise human trafficking in the Penal Code were agreed among policy-makers and achieved abruptly without further discussions.

2-2-2. Law-making structure in the MOJ

The MOJ's inhibitive law-making structure is another explanatory factor in tracing changes to the immigration law and the Penal Code. The revisions of the Penal Code and ICRRA in 2005 were evaluated in previous studies as main countermeasures to human trafficking (Okubo and Shelley 2011; Yokoyama 2010).²⁶ At the same time, the process of these revisions revealed how lax the MOJ's responses were. When asked about the revision in the ICRRA, Sakanaka admitted how simple it was to obtain agreement to his proposed visa restriction from the Immigration Policy Advisory Committee, the body set up to discuss the new policies in the MOJ (Interview with Sakanaka 2015). Because this committee only invites 'specialists' who usually would not criticise bureaucrats and do not have any power to determine the outcome, it merely discussed individual cases further (Arakaki 2008; Akashi 2006).²⁷ As I will explain later, for instance, a change in the ICRRA in 2005 also introduced Article 50 (1)-3, which allows victims of trafficking a residence permit as a protective measure. However, because of the government's zero-immigration principle, this, in turn,

²⁶ There was also an amendment to the Entertainment Business Law, but this only obliged employers in the entertainment and amusement trades to check their sex workers' visa status.

²⁷ This was also supported by comments from interviews with Lawyer 1 in 2015 and Sakanaka 2015.

prevents victims from staying in Japan by introducing the phrase: ‘under the control of another due to trafficking in persons’ (Article 50 (1)-3 in ICRRA). This means that victims must be ‘under the control of another due to trafficking in persons’ when they claim victim status. This is also supported by comments from interviews with Lawyer 1 conducted on 10th December 2015.

This inhibitive trait of Japan’s law-making structure can be observed in a series of discussions at the Expert Committee of Crimes against Freedom in the Legislative Council at the MOJ from 4th October to 20th December 2004 (the Legislative Council of the Ministry of Justice 2004). In this Committee, three lawyers including Yoshida working with JNATIP were invited as professional consultants. Here, the Committee illustrated that the revision of Article 226 (Abduction and Kidnapping) was required in order to close a gap with the UN Protocol. The UN’s wording read: ‘by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person’ (Article 3a, the UN Protocol 2000). In the Japanese Penal Code, however, the purposes of trafficking mentioned in the UN Protocol are still not clarified, while other countries have passed legislation to close this gap. For instance, Pennsylvania’s Human Trafficking Statute Act 105 was established in 2014 in order to punish people who directly or indirectly benefit from human trafficking.²⁸

Yukio Yamashita, one of the three lawyers who attended this Committee, suggested that the Committee should drastically change the draft of Article 226 (2), as this focussed on the

²⁸ Lawyer 1 illustrates that they have to refer to the Article 2-7 in the ICRRA which provides the purposes of human trafficking (Interview with Lawyer 1, 2015).

wording of ‘buying and selling people’, instead of paying attention to ‘transporting people’. Yamashita insisted that traffickers cannot be punished by Article 226 (2) because it only emphasised ‘buying and selling’ and abducting people, whereas the phrase in the UN Protocol had the broader means of controlling people (the Legislative Council of the Ministry of Justice, the first meeting on 4th October 2004).²⁹ Thus, the Committee omitted to discuss the meanings of ‘exploitation’, ‘coercion’ and ‘deception’ in this meeting (Interview with Yamashita on 20th December 2004). Besides, while the UN Palermo Protocol suggests that the existence of consent does not matter if coercive means such as threat and deception are used to control victims, the matter of consent was not discussed in this law-making process. Therefore, Yamashita strongly suggested dropping the phrase ‘under the control of another due to trafficking in persons’ before voting to adopt the measure (Ibid.). Yamashita also warned about the danger of understanding trafficking without the sense of ‘transportation’, as this is one of the crucial elements of human trafficking in the Protocol (Ibid.). Although Yamashita gave these warnings in the last session, the Committee’s decision operated on majority rule.³⁰ Given this law-making structure, these lawyers would not win the vote even though they emphasised the importance of changing the wording from ‘buying and selling’ to ‘control’ including an action of transportation. Thus, we can see that there was an insufficient discussion of penalising human trafficking in the Diet (The House of Councillors 8th April 2005; 19th April 2005). In the end, the limited revisions of both the Penal Code and the ICRRA were enforced in June 2005. In addition, Article 226-2 of the Penal Code (Buying or Selling of Human Beings) was introduced to criminalise human trafficking in 2005. This

²⁹ See the definition of human trafficking in the UN Palermo Protocol which I introduced in Chapter 2.

³⁰ The total number of the Committee was fifteen. Among those, there are three lawyers including Yamashita. Since Yamashita was a chair of this Committee, he had no right to vote although he could raise problems. The vote for changing the wording including transportation supported by the other two lawyers, both of whom were obviously from the JFBA. The evidence of the Legislative Council of the Ministry of Justice (2004) does not show the name of these two voters, but an interview from Yamashita admitted that they were from the JFBA.

is an addition to the original Article 226 (Kidnapping for Transportation out of a Country), which was established in the late 19th century when Japanese women were trafficked to foreign countries.

The definitions of human trafficking in the Penal Code (Yamaguchi 2015) and ICRRA (Immigration Bureau Homepage 2005) are slightly different. When the new section of Article 226-2 was introduced to the Penal Code, no other means of ‘controlling people’ were included besides ‘buying and selling’ (Article 226-2). This is because the existing Articles 225 and 227 in the same chapter XXXIII proscribe both kidnapping for profit and harbouring (Crime of Kidnapping and Buying or Selling of Human Beings). In short, in order to understand human trafficking in Japan alongside the definition of human trafficking prescribed in the UN Palermo Protocol (2000), we need to look for context at the whole of Chapter XXXIII of the Penal Code (Articles 224 to 229) (Yamaguchi 2015). Whilst Article 226-2 in the Penal Code does not clarify the purposes and means of trafficking, Article 2-7 in the ICRRA of 2005 emphasises the purposes: ‘for the purpose of profit, obscenity or threat to a person’s life or body’ [*eiri, waisetsu, moshikuha, kagai mokuteki de*] (Kodama et al., 2012:46; Immigration Bureau Homepage 2005). In other words, if someone was trafficked for a different purpose, he or she cannot be a victim of trafficking under the Act. These points are also supported by my interview with Lawyer 1 who is a former administrative scrivener at the Immigration Bureau (10th December 2015).

This lax discussion of the law-making process implies that there is no intention to provide victim status to trafficked persons. The policy idea of the restriction of entertainment visas to reduce the number of Filipina women was the only factor reached an agreement among authorities and activists consisting of coordinative discourses. On the other hand, discourses

on Thai and Columbian entertainers, and providing protection to the victims, were placed at margin of discourses and the revised institutions. As explained further later, such insufficient discussion in the law-making process causes problems when cases of human trafficking come to trial.

3. Consequences of changes in 2005

3-1. The Anti-trafficking institution built on the conflation between trafficked and DV victims

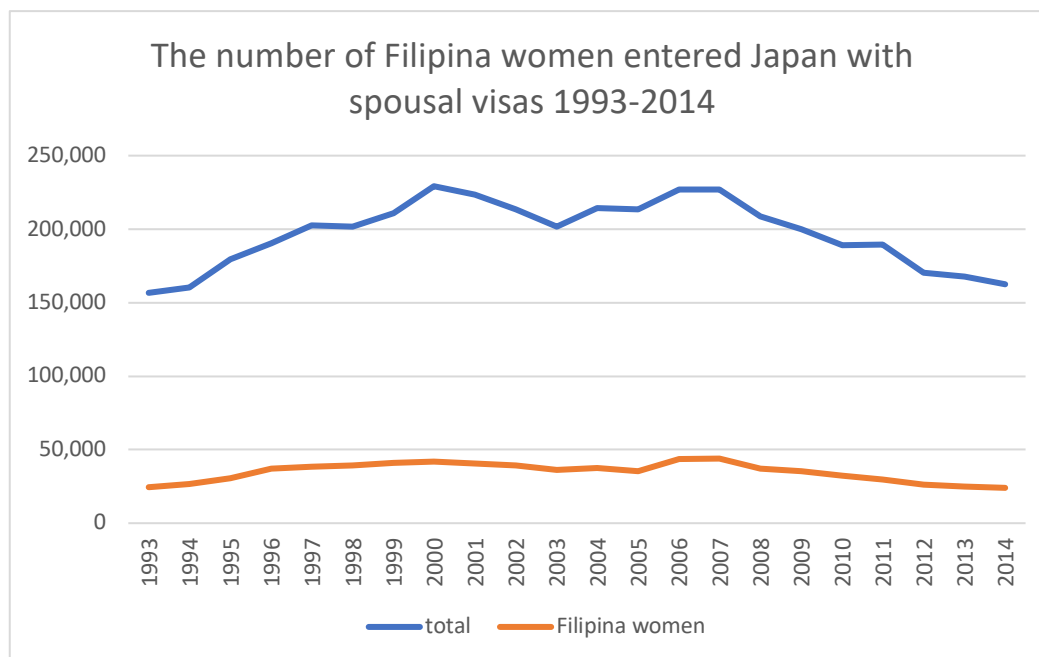
As explained in the previous section, some parts of the Penal Code and ICRRA have been revised as anti-trafficking institutions. In addition to these, MHLW has begun to provide remedies by using the existing institutions and organisations such as the Women's Consultation Office based on the conflation of discourses between entertainers and DV victims (The House of Representatives, 10th June 2005). These changes for anti-trafficking have, however, rendered trafficked victims even more invisible. After the revisions in 2005, the Women's Consultation Office has come to play a significant role in deciding whom private shelters will accept. Because of this, it has become difficult for those shelters freely to accept trafficked women, even if they receive rescue calls directly from possible victims. Under the supervision of the Consultation Office, the private shelters which were originally set up for exploited migrant women have come to accept both DV and trafficked victims. The Women's Consultation Office was, as suggested above, originally set up to deal with prostitutes, but it came to be used as the institutions and organisations supporting DV victims. This means that the remedy for trafficked victims of DV was only added to an existing institution, and no special provision was made. By doing so, the government uses this

institution as a ‘remedy’ to let victims stay briefly before deportation while justifying the usage of private shelters to accept both trafficked and DV victims including Japanese nationals.

In addition, some academic scholars who are also the committee members of JNATIP have contributed to developing an anti-trafficking paradigm embedded within institutions against domestic violence (JNATIP 2009a). These scholars have emphasised that the number of victims entering the country with an entertainment visa has steeply decreased since 2006, while the number of spousal visa holders staying in Japan has increased (Saito 2011b; Fujimoto 2007). By doing so, these scholars suggest that those women who used to come to Japan with entertainment visas switched their visas to spousal visas. There is, however, a question about the reliability of such arguments. Fujimoto insists that the number of the Filipina spousal visa holders has kept growing (2007), but the MOJ’s statistics indicate that the number had fallen from 43,813 in 2006 to 24,037 in 2014 (MOJ 2006-2014).³¹

³¹ The MOJ Homepage provides statistics for the last 10 years online.

Chart 3: The number of Filipina women entered Japan with spousal visa 1993-2014



Despite doubts that the number of Filipina women with spousal visas have increased, the conflated discourse of trafficking and domestic violence has been emphasised in a series of reports by JNATIP (2009a), since academic scholars such as Fujimoto and Saito have worked closely with this organisation. Prior to the government's 2009 Action Plan, the UN Special Rapporteur on Trafficking in Persons, Joy Ezeilo, called attention to some issues which are also listed in the 2009 Action Plan. These issues suggest a 'high incidence of domestic violence against women and girls' (Ministerial Meeting Concerning Measures Against Crimes 2009:3). These discourses were also reflected in MHLW's countermeasure against domestic violence and trafficking (2011). In this report, without any survey, there is a mention that the number of foreigners married to Japanese citizens is increasing (MHLW 2011). Based on 'the increasing number of spousal visas', MHLW also suggests that, by using this visa, migrant women might be trafficked.

In 2010, JNATIP also used the UN Special Rapporteur to shed light on former entertainers who have suffered from domestic violence. In discussion with Jorge Bustamante, the UN Special Rapporteur on the Human Rights of Migrants, JNATIP and other migrant support groups such as SMJ echoed the invisibility of migrant women in society. They argued that marriage migrants were protected only when they were recognised as victims of domestic violence under the Prevention of Spousal Violence Act, and ‘minimally when they were victims of trafficking’ under the Penal Code and the ICRRA (The UN Human Rights Council 2011b: 2; SMJ and JNATIP, 2010:1).

The conflation of discourses between trafficking and domestic violence has however been used for the state’s anti-trafficking paradigm to make victims from abroad invisible. Because of this, while being a member of JNATIP which emphasises this conflation of discourses, the director of HELP described their frustration through this interview:

Since the Prevention of Spousal Violence Law in 2004 and the National Action Plan Against Human Trafficking in 2004 were established, HELP has been unable to accept trafficked victims on our own decision. Whenever we receive a rescue call from potential victims, officials from the Women’s Consultation Office come over to interview them. Since the revision in 2005, the IOM has provided a deportation service to the victims. Within this new rule, we just provide the shelters for people who are waiting for their deportation. For the government and IOM, ‘victims’ desire to go home, whereas some people obviously would like to stay here. In short, the more the government sets up rules to deal with trafficking, the more difficult it becomes for trafficked women to stay (Interview with the director of HELP, 5th December 2015).

To give an impression that Japan has been fighting against sex trafficking, the Cabinet Office and MOFA have again started to make use of existing institutions and organisations, such as using Official Development Assistance (ODA) under the Human Security Fund (Cabinet Office for Gender Equality 2008; MOFA 2007). ODA's new role to prevent trafficking can be seen in the government's use of the Human Security Fund through international organisations such as the United Nations Development Programme, UNICEF and the ILO (Ibid.). By using this fund, the MOFA also started a deportation project with the IOM since 2005 (MOFA Home Page 2004). MOFA and IOM have helped deportation procedure such as travel procedures and arranged the receipt of victims by the embassies of the country to which the victims belong (Ibid.). Through the IOM's support, it provided rehabilitation programmes and employment support in their home countries. Although the government has made use of the existing institutions and organisations dealing with DV victims and the one belonging to development policy, a member of the Committee on Foreign Affairs and Defence stressed that support via the Human Trafficking Fund should be worthy of praise (the House of Councillors 20th April 2004). In this way, the government prevents foreign entertainers from coming back to Japan. Even if those entertainers who are trafficked exist in Japan, the government prevents shelters from identifying them as trafficked victims.

To sum up, the government's anti-trafficking paradigm based on the mixture of DV and trafficking resulted in changing the target from former entertainers from abroad to Japanese women who were 'forced to work' in the sex industry (Tokyo Metropolitan Police Department 2018). The government's report in 2017 now argues that, since 2007, Japanese trafficked victims who were 'forced to work' in the sex industry have started to be identified since 2007. This number has steeply increased to date and now shows that half the total

number of trafficked victims (25) are Japanese (Ministerial Meeting Concerning Measures Against Crime 2017). This shows the government's rhetoric leading to the preposterous suggestion that deportation is the best interest of trafficked victims while justifying protecting Japanese nationals as a new category of 'trafficked victims'. The final section will explore the consequences of the 2005 'changes' reflected in the trial cases of some entertainers.

3-2. Where are 'trafficked' victims? – the court cases

How have the changes in institutions and policies, explained in the section above, worked out in practice? To clarify this point, this section discusses how cases of 'trafficked women' have been treated at trial cases associated with human trafficking.

These trial cases show that changes in institutions which the government made are not effective in identifying victims. It is because, while entertainers were the main target of the government, there are, of course, migrant women who were trafficked for the purpose of sexual exploitation who entered Japan on different visas such as tourist or student visas.³² Moreover, as explained in the previous section, the revisions have prevented trafficked victims from staying in Japan. To stay in Japan, some of the entertainers, even those who were initially trafficked into the sex industry, became overstayers or undocumented migrants and legally married Japanese nationals. The problems derived from the institutional and policy changes made in 2005 can be seen in some trials.

³² One example of this is the trial case in 2012 involving a Korean woman who was deceived by a broker and entered into Japan on a 'student visa'. She wanted to choose a different job to pay her transportation costs to the agency, but she had no choice but to work in the sex industry (Tokyo District Court 2012, No.763).

The problems in these trials derive from the lack of consensus on the meaning of the following phrase: ‘under the control of another due to trafficking in persons’ (Article 50 (1)-3 in the ICRRA). Article 50 (1)-3 in the ICRRA 2005 regulates special permission to stay for trafficked victims who are under the control of another person. This means that victims should be literally under someone’s control when the MOJ makes a decision on whether it should grant them permission to stay. It goes without saying that it is unimaginable for a person controlled by someone else to be capable of seeking legal permission to stay in Japan. In short, this provision itself is a barrier to victims staying. In other words, this suggests that it is almost impossible for women who were trafficked into Japan to receive legal permission to stay as victims. In this respect, Lawyer 1 expresses how hard it is for trafficked victims to receive this legal status:

When traffickers are exposed and victims are rescued, those victims are, of course, relieved to be out of their control. At this stage, they are supposed to be physically separated from the persons who forced them to work or restricted their freedom. Therefore, it is reasonable to argue, Article 50 (1)-3 is a dead letter. Even if they were to be lucky enough to receive permission to stay, they are not allowed to work with this residence permit based on Article 50 (1)-3. This means that there is no way to survive in this country except by working here illegally (Interview with Lawyer 1, 10th December 2015).

There are two cases which support this comment. The first involves a Thai woman who was tricked by a broker putting her in debt to go to Japan. She was forced to work as a prostitute, but eventually escaped from her owner with her client’s help. By the time she was arrested

as an overstayer, 14 years had passed. During this period, she married a Japanese man. Regardless of having been trafficked into Japan and exploited as a prostitute in the past, she was not identified as a trafficked victim, on the grounds that she was not under the control of anyone when she was arrested as an overstayer (Tokyo District Court 2011, No.308). This means that she was not eligible to enjoy the special permission to stay prescribed in Article 50 (1)-3.

The second case provides a similar story, though the verdict was different. A Filipina woman faced deportation. She visited Japan six times before 2005 on an entertainment visa in order to work as a hostess. However, because of the restriction of these visas, it became hard for her to work in Japan. When her application for an entertainment visa was refused in 2007, two brokers were waiting for her in front of the embassy. They offered her work as a hostess in Tokyo in exchange for her travel costs. Even though she changed her mind about going to Japan, they threatened her that they were going to abuse her sister if she decided not to work there. Her freedom was restricted even in her accommodation. Eventually, a client helped her to escape. After four years, she was engaged to this man, but she was arrested due to overstaying her visa. In the trial, her lawyer argued that she was trafficked into Japan. On similar grounds to the first case, however, she was not identified as a victim, although she did manage to receive permission to stay (Tokyo District Court 2011, No.479).

What are the implications of these two cases? One similar characteristic of these two cases is that those women who were trafficked and exploited in the commercial sex industry somehow escaped from their employers or brokers and settled in Japan. The difference between these two cases is that the Filipina woman was pregnant and gave birth to the child of a Japanese citizen during the trial. Because there have been many cases of trafficked

women coming from Southeast Asian countries and settling in Japan since the 1980s, proof of marriage is not enough to receive permission to stay (Interview with Lawyer 2, 6th January 2016). Those women who were trafficked and escaped from their employers needed extra evidence to prove that they were in genuine relationships with Japanese citizens. A lawyer who dealt with the Filipina's case commented as follows:

Since I have experience of how difficult it is for foreign people to stay as trafficked victims, I did not even attempt to acquire the status prescribed in Article 50 (1)-3, although I argued that she was a victim of trafficking when she entered Japan. Rather, I tried to fight over Article 50 (1)-4 in this case. This declares that 'the Minister of Justice finds grounds for granting special permission to stay, other than previous items'. This includes being a wife of a Japanese citizen or having a new-born child with a Japanese citizen. When my client sought my advice, she was already engaged to her boyfriend. However, if she did not have his child it might be risky because the court might consider this marriage a sham marriage. Therefore, I suggested that they have a child as soon as possible, hopefully during the dispute. In particular, given the fact that she stayed as an irregular migrant, she needed extra grounds to justify her stay, such as being the mother of a Japanese citizen (Interview with Lawyer 2, 2016).

According to a textbook on visas that these lawyers usually consult, being married to a Japanese man and having children with him can help the application for special permission to stay (Kodama et al., 2012). On the other hand, the above-mentioned comments from lawyers and the textbook suggest an inability to support trafficked victims as prescribed in Article 50 (1)-3 (Ibid.). It is because the MOJ grants this status for the purpose of deporting

victims (interview with Lawyer 1, 2015). Although Article 24 (Deportation) also introduced section 4 – ㄗ in order to exclude the case of trafficked victims, they still face deportation if they entered (Article 24-1), landed (24-2), or stayed in (24-4-ㄱ) Japan illegally (Ibid.). Needless to say, some of the former entertainers do not stay in Japan legally, as they have escaped from employers who confiscated their passports. Or, even if they have stayed with them, they easily turn into overstayers, if their employers are not willing to update their visas. Even if they have found partners or husbands, these migrant women have to rely on them to renew their visas. Therefore, they are most likely to be committed to the detention house as referred to in Article 39-1(Detention). This legal structure preventing victims from staying in Japan was well illustrated in the comment from Lawyer 1:

This legal structure is one of the reasons why there is only a small number of legal cases related to human trafficking in Japan. No one wants to be labelled as a victim of trafficking, since migrants know that they cannot stay in Japan as victims. In Japan the Immigration Bureau does not prioritise protection. It is partially because most of the important positions in this office are taken by public prosecutors. Basically, for them, immigration governance is all about border control, not about the integration of foreign labourers who might contribute to future economic development (Interview with Lawyer 1, 2015).

As Lawyer 2 also implies, it may be better for trafficked victims to stay regardless of their visa status and seek opportunities to receive the status prescribed in Article 50 (1)-4, rather than being victims of trafficking. This means that it is much more difficult for a migrant woman who does not have a child to stay in Japan, even if her employer is willing to be her visa guarantor (Motoyama and Tolentiono 2008). In short, it is possible to conclude that the

current immigration law forces migrant women to be dependent on men. The immigration law places those women as subjects to be controlled by their husbands or partners. In this respect, the immigration law does not allow migrant women to be recognised as independent agents who can make certain decisions.

For this reason, ‘trafficked victims’ can be visible only if they are lucky enough to escape from their employers and meet someone they can build a genuine relationship with. This suggests that ‘trafficked victims’ could ultimately prove legitimate reasons to stay only if they became Japanese wives or mothers of Japanese citizens. Due to the above-mentioned legal structure, it is hard to find ‘ideal victims’, that is, under someone’s control as prescribed in Article 50 (1)-3. The comments from Lawyer 3, working on issues of foreigners in Japan, express her frustration on this issue.³³

When we invited Douglas Maclean, the director of Justice Without Borders, he criticised us for our lack of effort to find trafficked victims. We as lawyers in the Lawyers Network for Foreigners, however, would love to ask where typical trafficked victims exist. We definitely have tried hard, but never seen them (Interview with Lawyer 3, 19th December 2015).

From these trial cases and the lawyers’ perspectives, it is apparent that the revisions of the Penal Code and the ICRR in 2005 have only worked for preventing ‘victims’ from staying in Japan. For this reason, despite being trafficked, some of those who want to stay in Japan tend not to claim themselves as trafficked victims. To stay in Japan, those women became

³³ Lawyer 3 organises the Lawyers Network for Foreigners, but this network group does not work with JNATIP and other lawyers’ networks, such as the IT-TIP (TITP) Lawyers Network which Chapter 5 will describe.

overstayers or undocumented and they only raised their ‘victim’ status once they were accused of being overstayers and faced deportation. Trial cases related to trafficking, therefore, mostly involve requests for the repeal of deportation by women who were trafficked into Japan as entertainers.³⁴

Those trials related to ‘former’ trafficked victims who have settled with irregular statuses such as overstayers or undocumented in Japan uncovered the fact that it might be easier for them to receive special permission to stay if the requirements of Article 50 (1)-4 in the ICRRRA are met. This shows that the anti-trafficking institutions and policies developed since 2005 have not been effective in providing remedies to the trafficked persons who are controlled by someone else. However, the lawyers representing former trafficked victims, who mostly came to Japan as entertainers, use Article 50 (1)-4 as a loophole. This suggests that we should also focus not only on exploitation at the entry point. There should also be a focus on the rest of the migration process, including migrants leaving workplaces and how they settle afterward.

Conclusion

To understand the changes in institutions and policies associated with anti-trafficking in 2005, we need to trace the ideational mechanism within feminist activism since the early 1990s in Japan. This has affected the construction of discourses on entertainers as victims of ‘human

³⁴ There are few criminal trials looking at the crime of trafficking itself, so I could only find a criminal case of two Chinese young women (one of them 17 years old) in July 2009. These two women were sold after they entered Japan by defendants *X* and *Y*. A buyer, *Z*, took their passports away and they were often forced to work as prostitutes. In this case, however, these defendants were not prosecuted as the court concluded that these young women were not under their control (Tokyo High Court 2010, No.992).

trafficking'. At the beginning of the 1990s, although society recognised entertainers trafficked for the purpose of sexual exploitation, it took almost fifteen years to change institutions and policy in Japan. International criticisms in the middle of the 1990s painted Japan as a major sending country of male clients for sex tourism. To raise the issue of sexual exploitation, at that time, these were driving forces which encouraged Japanese female political actors. However, those actors' efforts to ban sexual exploitation including trafficking, resulted in new institutions and policy being introduced. These aimed to deal with domestic issues of compensated dating and domestic violence, in the context of combatting violence against women. This feminist activism solved nothing about Asian sex tourism, due to the moral panic about compensated dating at the end of the 1990s in Japan. However, discourses on domestic violence were closely linked with those on sex trafficking.

In terms of changes in institutions and policies in 2005, this chapter also regards the pressure from the United States in 2004 as one of the major agents of change. However, the ideational mechanism which I clarified in this chapter suggests that domestic factors interacted with these external pressures explain more about how institutions and policies changed in 2005 and how they have evolved since then. These factors include dominant discourses on Filipina entertainers who also became domestic violence victims and the current law-making structure in Japan. Anti-trafficking measures established in the revision of the Penal Code and the ICRRA in 2005 were ineffective for the following three reasons.

The first reason is the exclusive discourse on Filipina entertainers as major victims of trafficking. Most of the previous studies regard the US pressure in 2004 as a major factor in changing the Penal Code and the ICRRA. However, it looked only influential because what they were saying in the TIP report in 2004 corresponded with the dominant discourse on

Filipina entertainers which had been constructed in Japan since the early 1990s. It was the domestic discourse, rather than foreign pressure, which carried the most weight for Japanese politicians at the time. Second, the law-making structure used in revising institutions and policies in 2005 actually made them less effective in the fight against trafficking. A lack of discussion on the matter of consent, and on the means of controlling trafficked persons, meant that revisions to the laws fighting trafficking were difficult to use in practice. In particular, interviews with immigration lawyers uncovered that Article 50 (1)-3, introduced as a remedy for trafficked victims in the 2005 revision of the ICRRA, actually prevents trafficked victims from staying in Japan. Third, the conflated discourses between trafficking and domestic violence meant that there was a lack of substantial change. This justified the government in thinking that it did not need to change institutions drastically to deal with trafficking. Instead, it stretched the existing development policy, and the institutions and organisations for supporting domestic violence victims, to provide support for trafficked victims.

Consequently, my research shows that changes in institutions and policies have made it even more difficult to bring visibility to trafficked victims from abroad. The Women's Consultation Office is now in charge of identifying victims of trafficking while dealing with domestic violence issues. As the current director of HELP also clarified in the interview, combining this institution with responsibility for domestic violence victims has made it difficult for private shelters for migrant women to freely accept trafficked women. The lawyers also argue that Article 50 (1)-3 as a remedy for trafficked victims is a dead letter. Instead of using this Article to support their female migrant clients, these lawyers suggest using Article 50 (1)-4, instead, because some of the trafficked victims have stayed in Japan as wives or partners of Japanese locals. These conclusions indicate that the dominant

discourses on Filipina entertainers who became domestic violence victims have come to be absorbed into the government's anti-trafficking paradigm. This paradigm has made it even more difficult for trafficked victims to be identified and to stay in Japan.

Chapter 5

Labour Immigration and Human Trafficking: IT-TIP/TITP in Immigration and Labour Institutional Changes since 1990

Regarding the Technical Intern Training Programme [TITP], the number of missing technical intern trainees reached over 4,800 in 2014. This is the worst record in the last 10 years. During that time, the total number of missing intern trainees was 25,000, according to the Ministry of Justice.

- Sankei West (7 March 2015; “Kakokuroudou no higeiki! Gaikokujin Ginoujishusei 25,000 nin ga shissou, Nyukan ‘shinkoku na mondai’, kako 10 nenkan, Heisei 26 nen ha saita 4,800 nin”.)

We find that the exploitation and violence faced by the [foreign] trainees are in fact typical features of small companies that heavily rely on women’s labour, which continue to exist in Japan. In that sense, [exploitation and violence] is typical of women’s labour in Japan, rather than exceptional. I was struck by the fact that migrant women as workers are relatively invisible compared to men, often regarded only as wives or “victims of trafficking”.

- Hisako Motoyama (in Motoyama and Tolentiono 2008; “Migrant Women as Working Subjects: A Conversation with Leny Tolentino, Kalayaan—Migrant Women Employment Centre.” *Women’s Asia: 21 Voices from Japan*, No. 20)

Introduction

When human trafficking was first raised as an item on the international agenda in the 1990s, the focus was very much on combatting violence against women and children in the commercial sex industry. Over the past decade, this has broadened to include what is described as ‘labour trafficking’ or ‘modern slavery’ in a variety of industrial sectors in

different regions. This extension to a much wider range of sectors has not been fully discussed in the literature paying attention to Japan. In Japan, anti-trafficking activists have been constructing discourses on IT-TIP/TITP as ‘labour trafficking’ or ‘modern slavery’ since the mid-2000s.

There are therefore two questions I ask here. First, how has political activism against human trafficking shifted discourses towards labour trafficking and modern slavery? Second, how and why has it taken so long for the government to solve the problems represented in these discourses? I argue that there has been a discursive shift in favour of migrant unskilled workers, which has made the government more aware of the problems of IT-TIP/TITP labourers. As a positive consequence, this shift led to the public debate on the matters of these unskilled labourers, which convinced the authorities to change policies and institutions to provide remedies to TITP labourers by 2017.¹ The government recognised the problems of IT-TIP/TITP as labour trafficking and modern slavery which resulted in the 2014 Action Plan against trafficking. In 2017 the government also enforced the protection for TITP labourers and expressed its intention of establishing the Action Plan to fight against broader issues including modern slavery and forced labour. However, the government has still kept the TITP scheme as there is a belief that it works well compared to the ones in other countries. While keeping the TITP scheme, the government still avoided discussing the settlement of these labourers and drastically revising the Labour Standards Act.

¹ The government has recently announced a new working visa for those who finish TITP or acquire sufficient knowledge and skills from it. This visa will allow work in some industrial sectors, such as construction and agriculture. The government aims to introduce this new visa category by April 2019, but it emphasises that it is different from immigration policy (Mainichi Shimbun on 16th June 2018). With this new visa, migrant unskilled workers could stay and work in Japan for five years but are not allowed to bring their families (Mainichi Shimbun on 29th May 2018).

To answer the above-mentioned questions, this chapter provides contextual information about the immigration and labour regulations which govern IT-TIP, and its successor, the TITP scheme. It follows on from the discussion in Chapter 4, which focusses on domestic institutional changes to deal with sex trafficking from the early 1990s to 2005. This chapter describes how discourses on IT-TIP/TITP as ‘labour trafficking’ and ‘modern slavery’ have been constructed, in the prevailing climate of neoliberal reform in Japan.² By drawing attention to both discursive institutionalism and the forced labour chain, I aim to place IT-TIP/TITP as one of the core government-sponsored schemes for recruitment within the context of neoliberal reform. The current climate of reform aims to provide flexible labourers to rural firms. Some of those firms supply their products only to the domestic market, but others are also embedded within global supply chains. In fact, some of the garment and textile firms in Hokuriku work with global brands such as Burberry, UNIQLO and Victoria’s Secret, and supply their products to North America and European countries, while supplying their products for the Japanese market.³ Within this context, there have been changes in immigration and labour policies, and in institutional arrangements associated with unskilled migrant labourers to protect them. In these changes associated with neoliberal reform, the exchange of ideas and discourses about these labourers among political actors has played a significant role.

Neoliberal reform since the early 1990s has seen a growth in precarious and irregular employment. In such reform, unskilled workers have been used as a cheap, flexible

² Given an increasing number of unskilled migrants since the early 1990s, Mike Douglass and Glenda Roberts (2003) argue that unskilled migrant workers make up part of ‘the neoliberal transformation of capital-labour relations’ in Japan which can be characterized by rising income inequalities and the increased vulnerability of those migrant workers.

³ Employer 10 in Toyama revealed that they are manufacturing UNIQLO’s lingerie in their factories in China, but their domestic factory in Toyama is producing more lingerie for the Japanese market. The firm owned by Employer 9 is producing pleated clothes for Burberry for North American and Japanese markets. It also produces some clothes of Japanese brands (Interviews with Employer 10 on 1st October 2016; Employer 9 on 30th September 2016).

workforce, to maximize Japanese competitiveness in the global manufacturing scene. This competitiveness has been crucial, since domestic firms are absorbed into global and domestic supply chains involving firms, regions, and even nations. On the surface, the Japanese government officially maintains its clear policy of not allowing unskilled workers to immigrate. Meanwhile, IT-TIP/TITP and visas for *Nikkeijin* (descendants of Japanese people living in other countries, mostly Brazil and Peru), allow hard-pressed employers in labour-intensive industries to employ unskilled workers. Both of these visa categories are the results of a compromise by which Japan attempts to remain a zero-immigration country, whilst permitting small and medium-sized companies to employ low-skilled migrant labourers.⁴

To supply workforces to those small and medium-sized factories, *Nikkei* workers are allowed to stay as ‘settlers’ or as ‘a spouse or a child of a Japanese national’. As settlers, they enjoy an unrestricted right to carry out economic activities. On the other hand, IT-TIP/TITP is a government-sponsored vocational training programme which in fact supplies unskilled labourers to the manufacturing sectors for up to three or five years.⁵ By 2016, the proportion of trainees was around 20 % of the total population of migrant workers in Japan (MHLW Homepage 2017).⁶ This is less than 1 % of the total workforce in Japan (Statistics Japan Homepage 2018). In this way, whilst the government officially retains its ‘zero-immigration principle’ and keeps the population of these unskilled labourers low, it does not

⁴ The Japanese government has a clear definition of small and medium-sized companies. The Small and Medium Enterprise Agency (SMEA) defines manufacturing firms with less than 300 employees as small or medium-sized (SMEA Homepage). Chart 4 indicates that 99.7% of all firms in Japan consist of small and medium-sized companies.

⁵ According to *the White Paper on Manufacturing [monodsukuri hakusho]* published by the Ministry of Economy, Trade and Industry (METI) in 2016, the manufacturing sector can be defined as follows: the chemical industry, the iron and steel industry, and the manufacturing industries of general-purpose machinery, production-use machinery, business-use machinery, electrical machinery, information and communication equipment and transportation machinery and equipment, among others (METI 2016a:3).

⁶ MHLW uncovered that the total number of foreign workers in Japan was 1,080,000, while TITP labourers consist of 228,589.

deny accepting migrant labourers with a hidden expectation of using them as flexible workers. The government has emphasised that accepting unskilled migrants as trainees and interns is a part of its development policy,⁷ although it plans to willingly accept ‘valuable’ foreign nationals who could revitalise Japanese society. This double standard was highlighted in the fourth edition of the Basic Plan for Immigration Control in March 2010 (MOJ 2010).

The IT-TIP/TITP institution is a legacy of the Japanese government’s ongoing double standard on immigration. This double standard allows the government to frame IT-TIP/TITP as a contribution to the international community, providing employment opportunities to people from mostly Asian countries. During their stay, workers are supposed to receive vocational training and improve their skills in their respective industries, but they are expected to contribute their knowledge and skills back home afterward. From the beginning of the 1990s, however, some employers were clearly committing serious abuses of human rights, including non-payment, taking custody of trainees’/interns’ passports and forced deportation. These problems came from the ambiguous status of trainees who were not covered by the Labour Standards Act. Even when this trainee status was abolished in the revision of ICRRA in 2009, and replaced by the three-year internship, in principle interns were still not allowed to choose or change their employers for themselves.⁸ Discourses on IT-TIP/TITP as a form of ‘modern slavery’ have appeared in this context, and IT-TIP/TITP

⁷ The meaning of internship is different for foreign interns under the purview of IT-TIP/TITP and for Japanese interns. The MHLW illustrates that IT-TIP/TITP is designed to contribute to developing technologies in developing countries by training labourers from those countries. Conversely, the Ministry of Economy, Trade and Industry (METI), the Ministry of Education, Culture, Sports, Science and Technology (MEXT), and MHLW, published the basic idea of internship for Japanese citizens in September 1997, and revised it in April 2014. These clearly indicate that internship is a part of education for Japanese university students (2014; 1997).

⁸ According to the MHLW Homepage (2009b), those workers can change their employers if their employers go bankrupt or are confirmed to have acted unfairly.

has been harshly criticised by domestic activists, as well as the international society, since 2006.⁹

Given this context, changes for migrant labourers might be best understood in light of the studies arguing a double standard in Japanese immigration. These studies suggest that the Japanese government accepts immigration while retaining its official non-acceptance of unskilled migrant workers (Komine 2014; Akashi 2010). Ayako Komine (2014) and Junichi Akashi (2010) describe the government's standpoint on immigration as an *ad hoc* immigration policy, meaning one that is based on the principle of zero-immigration but invites people from abroad on a temporary basis. David Chiavacci (2012) also stresses the contradiction between official immigration policy and actual immigration movements, arguing that in reality about 80 percent of all foreign workers in Japan are in occupations defined as low-skilled. Although these scholars do not clearly place IT-TIP/TITP in their discussion of policy change in immigration, they provide us with changing ideational perceptions of immigration since 1990 in Japan.

For the purposes of this chapter, discursive institutionalism, especially insight into the interaction between coordinative and communicative discourses, illuminates the process by which ideas and discourses on IT-TIP/TITP as 'labour trafficking' and 'modern slavery' have been constructed and become institutionalised (Schmidt 2008a). However, it does not capture the broader context of forced labour chain and the activism against forced labour (Lebaron et al., 2018). To overcome this point, this chapter introduces the concept of the

⁹ The interview with a former officer at SMJ clarified that they were invited by the US Embassy to discuss the problems of IT-TIP trainees with an officer from the US State Department in March 2006 (Interviewed with a former SMJ officer on 15th December 2015). She also published her paper and discussed IT-TIP as human trafficking for the purpose of labour exploitation. See Kawakami, S. (2007) "Gaikokujin Kenshu · Ginojissshuseido: Mouhitotsuno Jinshinbaibai?" in IMADAR-JC, *Kouza Jinshin Baibai Samazamana Jittai to Kaiketsuh eno Michisuji*, Osaka: Kaihoshuppan, pp.100-121.

forced labour chain, which has been developed by some scholars from business studies (Stringer et al. 2016; Barientos et al. 2013; Kothari 2013). Since the concept of the forced labour chain looks at political activism aside from the governance in GVCs, this helps us understand the broader issues deriving from migrant workers being hired as flexible labourers by domestic manufacturing firms.

The following sections will present the context of neoliberal reform which introduced the IT-TIP scheme and the deregulation of the immigrant labour market since 1990. They will then examine the changes in the role of political activism for migrant labourers since the early 1990s. Based on this, the next sections will discuss how discourses on IT-TIP/TITP as ‘modern slavery’ have been constructed since the mid-2000s.

1. Labour and migration institutions since the 1990s and the deregulation of the labour market

This section will explain the climate of the neoliberal reform which introduced the IT-TIP and the deregulation of the labour market.

1-1. IT-TIP – a new labour supply scheme to the rural manufacturing firms embedded in globalised production

The globalisation of production is one of the most significant transformative developments of the neoliberal era. Its driving force is the so-called ‘global labour arbitrage’: firms in Europe, North America and Japan trying to cut costs and boost profits by replacing domestic

labour with cheaper migrant labour. This has been achieved either through moving production offshore, or through the immigration of workers from low-wage countries in Global South (Smith 2015). The global labour arbitrage is therefore understood as the exploitation of southern living labour by northern capitalists. In fact, Japan's ties with Southeast Asian economies began in the late 1950s and the 1960s as part of the effort to secure supplies of natural resources, with major investments in resource extraction in those countries, rather than inviting migrant labourers to Japan at that time (Chiavacci 2017; Hook et al., 2012). With a significant rise in domestic labour and the imposition of import restrictions on Japanese goods by these states, Japan's response was to move manufacturing industries offshore and to find lower-cost production sites (Hook et al., 2012).

In this context, even though many textile manufacturers went offshore, and cheap migrant labourers started to come to Japan through the first trainee system in the 1960s, the opportunities and the number of these trainees were limited to big Japanese enterprises (Sellek 2001; Asahi Shimbun 7th October, 1972).¹⁰ However, as explained further below, this was revised as IT-TIP in the immigration reform of 1990, so that it could be accessed by small and medium-sized factories in Japan in the immigration reform in 1990 (Table 1 and Chart 4).¹¹ Especially since the economic bubble burst in 1991, small-sized firms have proved particularly vulnerable. These small local firms have also been pressed by their global parent enterprises to implement aggressive cost-cutting measures (Papademetrius

¹⁰ Trainees were categorised into three types before the 1990 reform which restructured visa categories (Mori 1997). The first channel was mainly used by Japanese government authorities when they invited public officers from abroad as trainees. The second channel was private, and it used subsidies to encourage Japanese companies to develop export, direct investment, and invite trainees from their partner companies abroad. The third channel had no subsidies. It consisted of completely private companies, mostly Japanese multinationals, which received trainees from their foreign subsidiaries without any government subsidies. In this scheme, the foreign trainees were sent back to their companies at home after a year of training in Japan.

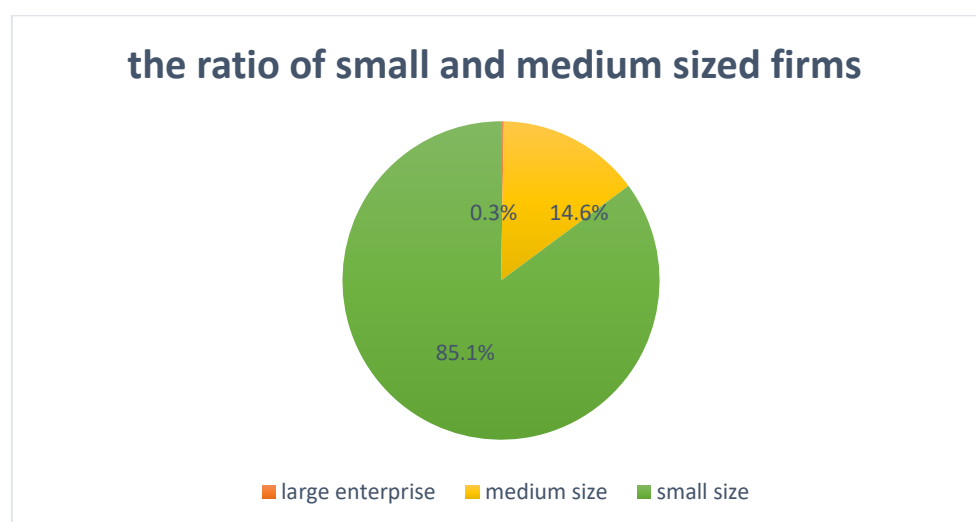
¹¹ The 1990 immigration reform expanded the number of visa status categories from 17 to 27. New categories included 'Specialist in Humanities and International Service' [*jinbun kokusai gyommu*] and 'Temporary Visitor' [*tanki taizaisha*] (Saito and Sakanaka 1994). See Table 2.

and Hamilton 2000; Interview with Employer 2, Nanao, 28th September 2016). In addition, Japanese global firms began to look for low-cost suppliers in Asia, especially China, at the end of the 1980s. The number of small-sized firms using this trainee system, especially since 2000, has therefore been distinctively increasing in order to cut the cost of human resources (Chart 5). Under this scheme and these pressures, migrant ‘trainees’ have come to be exploited at workplaces in Japan.¹²

Tabel 1: The definition of small and medium sized firms

	Small and medium sized firms		Small scale enterprises
Type of industry	Capital stock	employee number	Employee number
Manufacturing business	Less than 3 hundred million yen	Less than 300	Less than 20
Wholesaler	Less than 1 hundred million yen	Less than 100	Less than 5
Service sector	Less than 50 million yen	Less than 100	Less than 5
Retailing	Less than 50 million yen	Less than 50	Less than 5

Chart 4: The ratio of small and medium-sized firms



Note: This table shows that small and medium-sized firms make up 99.7% of industry in Japan.

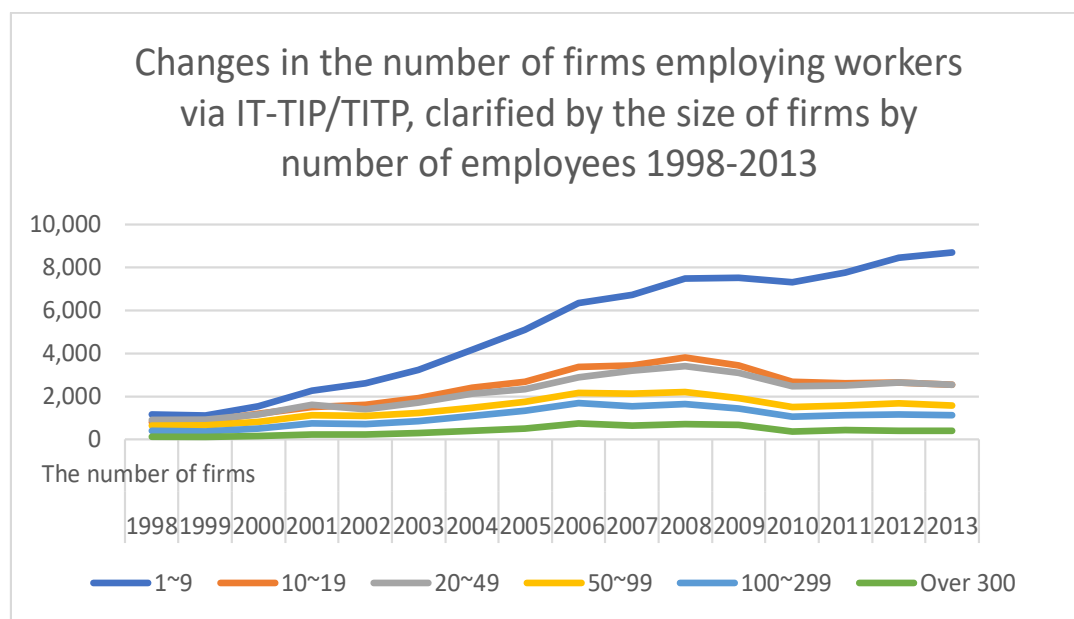
¹² Asahi Shimbun also reveals in 1972 that Gifu Prefecture had already started to invite Korean women as ‘trainees’ who had been abused in garment factories there (Asahi Shimbun, 7th October 1972).

Table 2: The Status of Residence (27 categories) clarified in 1990 reform (produced and updated by author in reference to Saito and Sakanaka 1994, and updated in reference to the Immigration Bureau Homepage

① Permissible Intake Categories	
(1) Permissible work within qualification of stay	
-without criteria for landing permission	1) Diplomat 2) Public Servant 3) Professor 4) Artist 5) Religionist 6) Journalist 7) High Professional Occupations
-with criteria for landing permission	1) Investor/Business Manager 2) Legal/Accounting Service 3) Medical Care Service 4) Research Officer 5) Education 6) Technical Expert 7) Specialist in Humanities/ International Services 8) Intra-Company Transferee 9) Entertainer 10) Skilled Worker (<i>Ginou</i>) 11) Technical Intern Training (<i>Ginoujishu</i>) 12) Care Work
(2) Non-permissible work categories	
- without criteria for landing permission	1) Cultural Activities 2) Temporary Visitor
- with criteria for landing permission	1) Study 2) Training 3) Dependent
(3) Permissible work within the conditions provided by Ministry of Justice's discretion	Designated Activities
② Permissible Establish Categories	
-Activities as a person with a status or position	1) Permanent Resident 2) Spouse or Child of Japanese National 3) Spouse or Child of Permanent Resident 4) Long-Term Resident

Note: *Ginou* and *Ginoujishu* are completely different categories. An example of occupation in *Ginou* is a head chief of restaurant.

Chart 5: Change in the number of firms employing workers via IT-TIP/TITP clarified by the size of firms 1998-2013 (created by author in reference to JITCO White Paper from 1999 to 2014)¹³



Note: Surveys of IT-TIP/TITP data before 1998 do not exist.

The chronic labour shortage which caused the demand for undocumented migrant workers was already a problem in the late 1980s, but the government was worried that hostility would result if a wave of migrants came. The introduction of IT-TIP was therefore a compromise between the ‘zero-immigration principle’ and the need to find a solution to the problem of clandestine migrant workers. Hidenori Sakanaka, a former Justice Ministry official and director for the Tokyo Immigration Bureau, supports this view in his interview (Interview with Sakanaka 2015).

¹³ Chart 5 was created by the author in reference to *JITCO White Paper* from 1999 to 2014. JITCO has published its annual survey, called the *JITCO White Paper (Hakusho)* only since 1999 (JITCO). Some of the data, however, might not accurate as the tables in 2006 and 2009 give a slightly different number of firms (See *JITCO White Paper* 2006:159 and 2009:144). Overall, however, empirical data clearly shows that IT-TIP/TITP employment system has been primarily used by small-sized firms with less than 10 employers. I could not update this table as *JITCO White Paper* has changed the range of the number of employees from ‘1-9’ to ‘1-19’ since 2014.

To administer the IT-TIP, the public interest foundation Japan International Training Cooperation Organisation (JITCO) was established in 1991. It operates under the joint jurisdiction of the MOJ, the Ministry of Labour (MOL), MITI and MOFA.¹⁴ The first reform of this system was completed as a part of the 1990 immigration reform so that, as mentioned above, small companies could receive trainees from abroad for one year. Further reform of this training system was introduced in 1993 through what was called the ‘Practical Skills Training System’ [*ginojisschusei seido*]. This reform provided a two-year visa extension to existing trainees to work as ‘Technical Trainees’ [*jisschusei*]. Under this system, practical trainees were permitted to work at the end of their first year on passing a skills assessment. Thus, the 1993 revision provided some migrant workers with permission to stay for an extra two years, but the Labour Standards Act did not apply to first-year trainees until the 2009 revision of ICRRA. Until this revision, therefore, the non-worker status and resulting flexibility of first-year trainees had been very useful to their employers.

Since the 1993 revision, there have been two channels for accepting foreign trainees at large enterprises and at small and medium-sized companies: acceptance managed by individual enterprises [*kigyotandokugata*]¹⁵ and acceptance supervised by organisations [*dantaikanrigata*] (MHLW 2007a). In these two channels,¹⁶ the problems of migrant labourers have become most obvious among those rescued through the channel supervised

¹⁴ In addition to these four authorities, the Ministry of Construction (MOC) joined in 1992. When the central government and ministries were restructured in June 2001, the MOC, the MOL and the MITI came to be the Ministry of Land, Infrastructure and Transport (MLIT), the MHLW and the METI, respectively.

¹⁵ The acceptance managed by individual enterprises is similar to the above-mentioned trainee visa category, where Japanese companies recruit workers for in-country training from their subsidiaries abroad (JITCO 2017). After three years, these Japanese multinationals send the workers back to their home companies, which can then make use of their experiences and skills. No industrial associations nor brokers are involved in this channel.

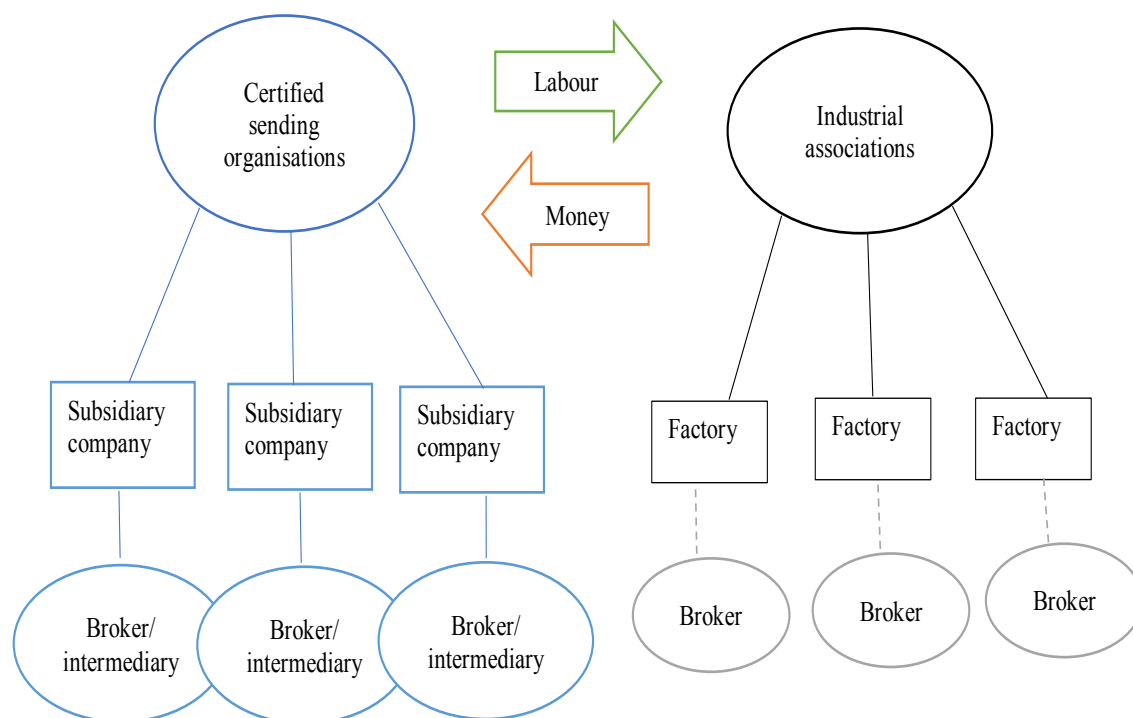
¹⁶ In this recruitment system, the visa status for first-year trainees is ‘technical intern training (i) (a)’, and this changes to ‘technical intern training (ii) (a)’ when trainees become interns after a year (JITCO 2017:2). As in these visa categories, trainees who are supervised by organisations are classified as ‘technical intern (i) (b)’ while interns are ‘technical intern (ii) (b)’ (Ibid.).

by organisations. The problems derive from its recruitment process and the overwhelming number of firms using this particular scheme. The system of acceptance supervised by organisations is designed for small and medium-sized companies, and foreign trainees must work directly for local industrial associations (Chart 6).¹⁷ This channel involves both sending organisations in the sending countries, and industrial association organisations in Japan. In the sending countries, brokers sometimes intervene in the recruitment process between potential workers and certified sending organisations in the sending countries. Conversely, in Japan no other recruitment agencies are permitted involvement in the recruitment process. To make sure that no recruitment agencies or brokers are involved in this system, the Japanese government stipulated that employers, industrial associations, or chambers of commerce could receive trainees. These accepting organisations could be clothing manufacturers or agricultural cooperative associations, for instance, depending on the types of industries involved. Some of my interview participants from these accepting organisations in Japan, however, disclosed that several brokers lure TITP workers into shady business such as selling some parts of mobile phones in a black market (Interview with the Industrial association organisation 1 in Tokushima, 7th September 2016; Industrial association organisation 2, Fukui, 15th September 2016).¹⁸ Given that 95.4% of trainees were accepted under the supervision of organisations (MHLW 2007a), this route still accounts for the majority of IT-TIP/TITP problems.

¹⁷ Brokers in Japan are not supposed to get involved with the recruitment process under the IT-TIP/TITP scheme. However, when trainees or interns decide to leave (or escape from) their workplaces in Japan, some evidence shows that some of them are in touch with brokers who lure them into the new business (Interview with Industrial Association Organisation 1 in Tokushima, 7th September 2016; Interview with Tokushima Roren, 8th September 2016). Industrial Association Organisation 1 also has its own garment factory.

¹⁸ Some of the industrial association organisations clarified in the interview that one of their female interns was lured by a broker in the middle of her contract and moved to Ibaraki prefecture to work in an agricultural firm.

Chart 6: The recruitment process of the acceptance supervised by organisations under IT-TIP/TITP (created by author in reference to the data from SMJ 2009)



This recruitment process indicates that the accepting organisations ideally contract with the sending organisations in foreign countries. These sending organisations are supposed to be certified by the governments in their countries. However, this does not mean that the accepting organisations in Japan always use certified sending organisations. In practice, these acceptance organisations are often introduced by the certified sending organisations to local subsidiary companies, which rely heavily on local brokers. Thus, the accepting organisations actually recruit labourers through local brokers and subsidiary companies, who are working with the government-approved sending organisations. However, JITCO does not have any responsibility for choosing the sending organisations (JITCO 2017). In a 2015 meeting with the SMJ, a leading organisation for migrant workers, and its community union *Zentoitsu*, the MOJ bureaucrat emphasised that ‘problems derived from the

relationship with sending organisations are private matters' in which the government does not need to be involved.¹⁹

There are also problems in IT-TIP/TITP workplaces. In practice, workers' visa categories are changed from 'trainee' to 'intern' by their employers after one year, but what trainees and interns do at work is basically the same. According to JITCO, trainees should receive off-the-job training for at least a year to acquire skills, and over the next two years, they should develop their skills as interns within on-the-job training (JITCO Homepage 2017). They are also expected to undergo more than 320 hours of Japanese language training (JITCO 2010).²⁰ Whether the first-year trainee receives vocational training, however, depends on the type of factories involved. For example, in the textile industry, factories provide a brief period of training to teach workers how to use spinning machines and set up bobbins in the machines (Interview with Employer 3 in Kahoku, 29th September 2016). In garment factories, however, IT-TIP/TITP labourers do not usually receive vocational training, except learning basic Japanese for a month after entering Japan. This is simply because these employees are expected to work as professionals. This is despite the fact that JITCO emphasises that IT-TIP/TITP labourers in all industries should all receive vocational training (2017; 2009).

Another problem derives from immigration and labour regulations designed to control trainees/interns. In principle, trainees/interns are not allowed to change their workplaces. However, employers who own multiple factories may dispatch their IT-TIP/TITP labourers to their other factories. IT-TIP/TITP labourers are also not allowed to convert their TITP

¹⁹ An MOJ official made this comment at a meeting which I attended as an observer from SMJ on 5th November 2015.

²⁰ If they have not taken any Japanese lessons, they have to take 320 hours after their entry. If they have already taken over 160 hours before they come to Japan, they must take another 160 hours after they arrive in Japan.

visas to other working visas, such as ‘Specialist in Humanities and International Service’ [*kokusaigyomu* or *jinbunchishiki*], in order to extend their period of stay in Japan after their TITP experience. In addition, JITCO has prohibited unofficial recruitment, such as families and siblings of trainees/interns, but some acceptance organisations allow employers to hire someone through personal connection. Employers are also not allowed to hire former trainees or interns as they are supposed to return to their home countries and contribute to developing the industries there. Despite this, my interview data from both textile and garment firm owners uncover that some former trainees came back on tourist visas to work at the same factories (Interview with Employer 4 in Noomi, 29th August 2016; Employer 5 in Tokushima, 5th September 2016).²¹ Although IT-TIP/TITP is supposedly a contribution by Japan to the international community, these issues indicate that this institution has provided a wide range of flexible working practices for small and medium-sized industries in Japan.

While these illegalities are embedded within IT-TIP/TITP institution, the number of industries partaking in IT-TIP/TITP and labourers has increased to date. In 1993, only 17 occupations were affiliated with this system, but this figure gradually increased to 77 by December 2016 (Table 3 and Chart 7). The number of accepted trainees depends on the size of the accepting companies. If a company has over 301 employees, it can accept migrant trainees (technical interns) up to 20% of its total number of Japanese employees. If it has less than 50 employees, it can accept up to three foreign workers per year (JITCO 2017) (Table 4). This means that a small firm with less than 50 employees can have a maximum of nine foreign workers if it hires them cumulatively. If there is no Japanese employer in a company, this company is not allowed to employ IT-TIP/TITP labourers.

²¹ Foreigners who enter Japan with tourist visas cannot work during their stay.

Table 3: The number of occupations in 1998: 20 occupations in IT-TIP (created by author in reference to JITCO White Paper in 1999)

	The number of trainees and interns	The ratio
Clothing/textile industry	5,406	20.7
Transportation machinery and equipment	3,934	15.1
Food manufacturing	2,516	9.6
Construction industry	2,084	8
Electrical machinery	2,024	7.8
Manufacture of general-purpose machinery	1,700	6.5
Metalworking factory	1,662	6.4
Agriculture, forestry and fishing	1,049	4
Rubber and plastic products	864	3.3
Other skilled crafts	715	2.7
Other technical experts	704	2.7
Watches and optical instruments	637	2.4
Metallic material factory	492	1.9
Metal welding	266	1
Tree and bamboo product factories	202	0.8
Spinning factories	197	0.8
Service sectors	178	0.7
Correspondence clerking	143	0.5
Environment sanitation service	132	0.5
Others	1,170	4.5

Chart 7: Change in number of occupations in IT-TIP/TITP from 1998 to 2016 (created by author in reference to JITCO leaflets in 2009 and 2017)

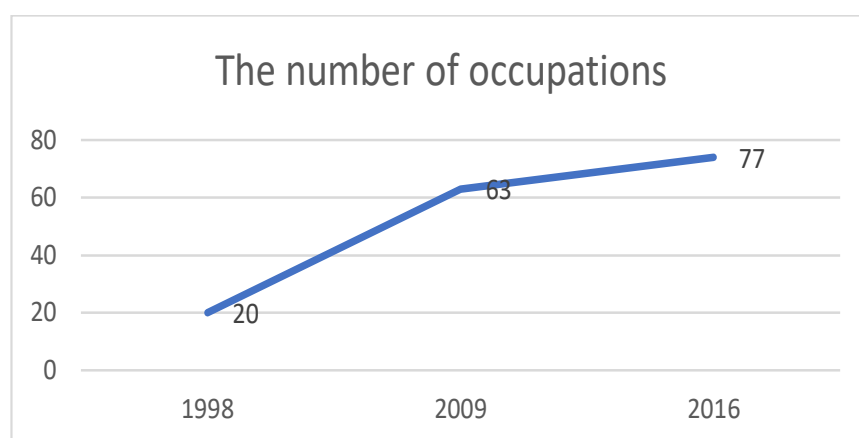


Table 4: Maximum number of TITP workers by size of company

The number of Japanese employees in total	The acceptable number of TITP workers per year
more than 301	up to 20 % of the total number of employees
201 – 300	15
101 – 200	10
51 – 100	6
less than 50	3

In summary, in the context of the globalisation of production and neoliberal reform to maintain international competitiveness, the Japanese government introduced the IT-TIP programme in 1990. IT-TIP was instituted as part of the immigration reform in 1990, as a solution to the chronic demand for unskilled labourers in rural Japan. By introducing this *de facto* guest worker scheme, trainees, in particular, provided flexibility to small-sized rural factories due to their ambiguous status as workers (Milly 2014).

1-2. Deregulation of labour market since the 1990s

The other way in which the government secured workforces for small and medium-sized factories was by deregulating the labour market. Labour market deregulation in Japan has accelerated since the early 1990s. During the 1990s, flexibility in production and responsiveness to market demand increased tremendously in many industrial sectors in Japan, especially after the bubble burst in 1991 (Chiavacci 2014). To retain the

competitiveness of Japanese export industries, the deregulation of the labour market has played a key role in providing flexible labour forces, in addition to a series of immigration reforms. In June 1993, along with the introduction of visas for Nikkeijin, the Brazilian government legalised sending agencies to dispatch Nikkeijin to Japan (Asahi Shimbun, 17th July 1993b). The number of arrests involving contractors who dispatched mostly Nikkeijin as unskilled workers increased in the late 1980s (Higuchi and Tanno 2003).²² However, in June 1999, the Labour Dispatch Law was enacted in the Diet and implemented by the end of the year. This made it legal to dispatch contract labourers to work in unskilled job sectors. This provided a channel for factories to hire mostly Nikkeijin as unskilled workers. The recruitment process was conducted through the Employment Stabilization Offices [*Shokuan*], which is the employment organisation administered by the government. This recruitment system made Brazilians compete with other peripheral workers such as Japanese female workforces at the early 2000s (Ibid.).

The Labour Dispatch Law was the last in a series of immigration and labour reforms throughout the 1990s which made it easier for employers to employ unskilled workers from abroad. However, the government again expressed its unwillingness to accept unskilled migrants. It published the 9th Employment Countermeasure Plan [*Dai 9 ji koyoutaisaku kihonkeikaku*] approved by the Japanese Cabinet in 1999, and the 2nd Basic Plan for Immigration Control [*Dai 2 ji shutsunyukoku kanri kihonkeikaku*] announced by the MOJ in 2000 (MOJ 2000). In 1999, Sakaiya Taichi, director general of the Japanese government's Economic Planning Agency [*Keizai Kikakucho Chokan*], suggested that Japan should consider accepting a substantial number of skilled workers, but it did not include unskilled

²² According to Mituaki Yoshimitsu (1988), a director at the Employment Security Bureau in the Ministry of Labour, the number of overstayed workers reached around 10,000 in 1987, which was double the number in 1985.

workers (Keidanren 2000).

Despite this, the Koizumi Cabinet began structural changes in April 2001 which accelerated the deregulation of the labour market. This enabled the invitation of unskilled migrants at the low end (Hosen 2006; Elder 2002). This deregulation was a response to pressure from leading economic lobbying organisations. In their lobbying activities, the emergence of discourses on the need for unskilled workers was driven by the Japan Chamber of Commerce and Industry [*Nihon Shoko Kaigisho*], the Japan Federation of Employer's Associations [*Nikkeiren*] and the Japan Business Federation [*Keidanren*], which attempted to use this opportunity to make the IT-TIP scheme more flexible. In June 2002, Keidanren (2002) put forward suggestions on the mobility of human capital and revealed the demand for IT-TIP labourers in rural factories, while carefully avoiding mention of unskilled migrants. A new proposal in April 2004, however, openly criticised the government's standpoint on unskilled migrant workers. It argued that the government should admit the settlement of unskilled migrants, as in the case of Nikkeijin community (Keidanren 2004).²³ Furthermore, this report suggested shifting from the question of whether accepting immigrants was right or wrong, to the one of 'how to accept unskilled workers' (Ibid., 39).

Whilst Keidanren regularly published proposals in the early 2000s suggesting allowing more unskilled workers (2004: 2003a; 2003b), the Koizumi Cabinet facilitated this requirement in the special zones. These were introduced in the Promotion of Special Zones for Structural Reform Act [*kozo kaikaku tokubetsu kuiki ho*] in December 2002 to revitalise local economies. At the same time, the IT-TIP Special Zones [*gaikokujin kenshusei tokku*] were

²³ This proposal was based on the report published in January 2003. As this report was in turn based on the new suggestions from the Chairman of Keidanren, Okuda Hiroshi, it was called 'the Okuda Vision'.

also set up in July 2007 by the Development Office of the Special Zones for Structural Reform.²⁴ In November 2002, before the establishment of the Structural Reform Act in December, the Development Office invited proposals from economic sectors and local authorities in November 2002.²⁵ The cities of Saijo, Imabari, Shin-Niihama and Toyo in Ehime Prefecture asked for the introduction of the IT-TIP Special Zones to revitalise labour-intensive industries, such as garment factories. Kamikatsu in Tokushima Prefecture also proposed setting up IT-TIP Special Zones for the same reason (Hashimoto 2011). In these proposals, some industrial associations suggested expanding the occupations in IT-TIP, whereas others requested increasing the number of trainees and extending the length of their stay from three to five years. The MOJ did not accept the extension of trainees' stay, but it permitted an increase in their number. As a result, the firms in the IT-TIP Special Zones could accept double the number of trainees compared with others in different areas (Ibid.). This means that these firms in the Special Zones are able to accept a maximum of six trainees per year if they have less than 50 employees, and a maximum of 18 IT-TIP/TITP labourers (cf. Table 4). Thus, the structural reform which aimed to revitalise the local economy has been underpinned by the expansion of the use of trainees and interns in IT-TIP/TITP. The METI describes why the IT-TIP scheme is crucial for Japanese small manufacturing enterprises:

As sewing companies are competing with low-priced products from abroad, they have to pay attention to labour costs. Hence, as sewing companies cannot find

²⁴ This office was established in the Cabinet Office in December 2002. It was taken over by the Regional Revitalization Promotion Office [*Chihou Sousei Suishin Jimukyoku*], set up in the Cabinet Office in September 2014 under the second Abe Cabinet.

²⁵ The invitation of proposals from local private sectors has been held every year since 2002. Ishikawa Prefecture, which the next chapter focusses on, submitted proposals to the 5th National Strategy Special Zone hearing in 2013 to request the extension of interns' stay from three years to five years (See the Regional Revitalization Promotion Office Homepage 2016).

workers, the reliance on foreign trainees is a very important factor for the international competitiveness of this industry. The trainee programmes are of central importance for the continuance of the Japanese sewing industry. This is also the case in the car parts industry and among very small companies in all sectors (Asahi Shimbun 17th July 2007, translated by Chiavacci 2014:14).

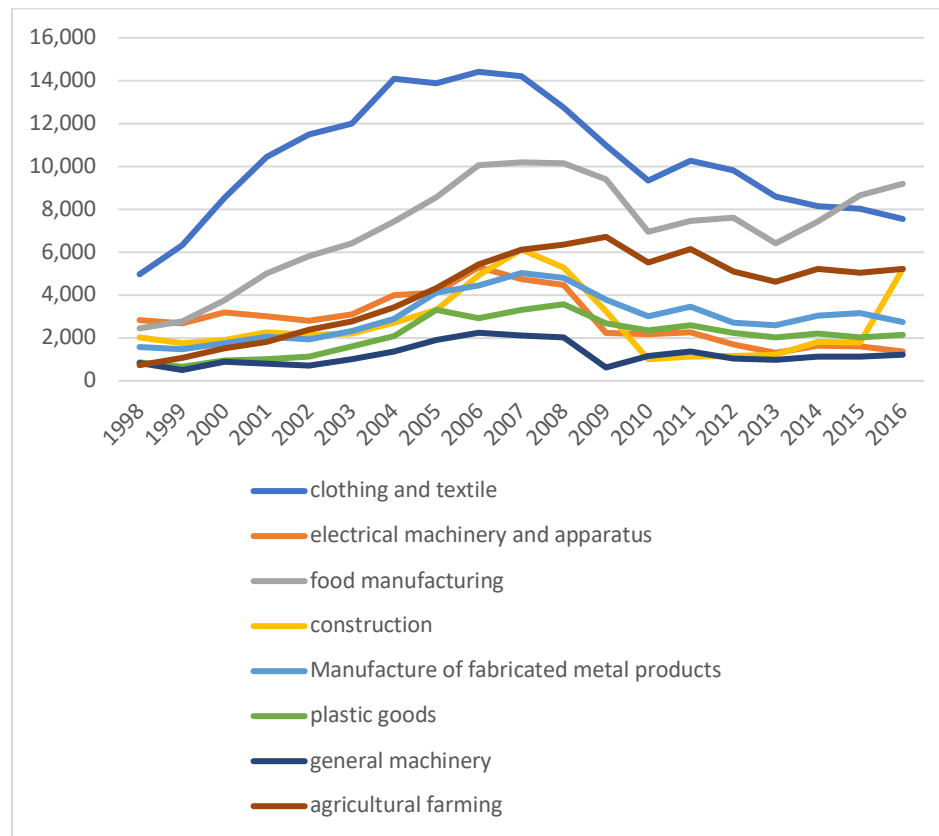
As METI's comment implies, IT-TIP was key to the survival of small Japanese factories in the global marketplace through its supplying of workers. Representing the interests of the clothing/textile factories in rural areas was also crucial for the LDP politicians whose main basis of electoral support is in this industrial area.²⁶ Through IT-TIP/TITP, the number of registered participants in the clothing/textile industry, in particular, rose dramatically from 4,970 in 1998 to 14,413 in 2006, although it had decreased to 7,900 by 2016 (Chart 8).²⁷ Even so, as can be seen in Chart 8, the number of trainees and interns in the clothing/textile industry has been much higher than those in other industries for over 15 years. Such high demand for labourers, of course, also derived from other industries. A series of requirements from the leading economic lobbying groups were therefore absorbed in the government's idea to accept labourers from abroad (Chiavacci 2017).²⁸

²⁶ For instance, there has been the LDP special committee of textile industry [*Jiminto Senitaisaku Tokubetsu Innkai*], which represent the voice of the clothing industry. The former prime minister, Mori Yoshiro, was a member of this committee. Since 2006, the name of this committee has changed to the special committee of textile and fashion industry [*Jiminto Seni Fasshon Tokubetsu Innkai*] (Japan Textile Fedelation Homepage).

²⁷ JITCO (1999-2016) has published its own annual statistics of labourers in the TITP programme since the 1999. It is hard to show changes in the number of participants in each occupation as the categories of occupations have expanded over the last 20 years. Therefore, this chart only gives the data of the number of participants in the occupations within the top 10.

²⁸ Chiavacci (2017) also suggests that economic sectors have a strong insentive to commit a development of national immigration policy in order to maximise their own profit.

Chart 8: Change in the number of trainees in IT-TIP/TITP from 1998 to 2016 (created by author in reference to JITCO White Paper 1999-2016).



These policy ideas can be seen in the Basic Plan for Economic and Fiscal Management, published by the Council on Economic and Fiscal Policy (CEFP) in June 2004 (CEFP 2004).²⁹ In this report, the CEFP clarified that the government was willing to consider approving nurses and care workers under the Free Trade Agreement (FTA) with Southeast Asian countries (Ibid.). At that time, the Thai, Filipino and Vietnamese governments had already requested the Japanese government to accept these workers in Japan under an FTA or economic partnership agreement (EPA) (Mizokami 2004). In May 2004, Keidanren

²⁹ The CEFP was a new advisory council proposed by the Hashimoto Cabinet in December 1997 and set up by the Mori Cabinet in January 2001. This has become a core body for coordinating important policies under the Koizumi Cabinet since April 2001. Structural reforms begun by the Koizumi Cabinet were taken over by the Abe Cabinet starting in September 2006.

lobbied in the FTA Special Mission Committee in LDP on the acceptance of migrant labourers in the nursing and care sectors (Ibid.). As I explain later, the TITP scheme had been extended to include the nursing and care sectors by 2016.

In this sense, the profiles of unskilled migrants have changed to date, although Nikkei labourers still played a crucial role in providing flexibility at the low-end of the labour market around the revision of the Labour Dispatch Law in March 2004.³⁰ According to the 1993 report published by the Foreign Workers Affairs Division (FWAD) [*Gaikokujin Koyou Taisaku Ka*], the ratio of Nikkeijin from Brazil and Chile accounted for 60% of the total number of migrant labourers.³¹ It had dropped to 29.1% by 2006, whilst the percentage of East and Southeast Asian workers was around 60% in the same year (FWAD 2006; 1993). This survey shows that Nikkeijin comprised the majority of migrant labourers in the early 1990s, but they were outnumbered by people from East and Southeast Asian countries by the mid-2000s.

This survey also aligned with the data from JITCO (1999-2014). The total number of migrant workers from Asian countries under IT-TIP/TITP scheme has also more than quadrupled over the last two decades.³² As shown in Chart 9 (1), the number of IT-TIP/TITP

³⁰ Aside from the increased usage of the IT-TIP institution, the revision of the Labour Dispatch Law in March 2004 increased the flexibility of other migrant labourers, especially the Nikkeijin. Introducing the labour dispatching systems called contract labour scheme [*ukeoi*] and dispatched workers scheme [*jinzai haken*] made it easier to source labour. Contract labourers sign a labour contract with contract agencies to send them to accepting industries. Conversely, dispatched labourers are sent by dispatching agencies, but they have labour contracts with the workplaces they are dispatched to. These new deregulations are applicable to any potential workers, regardless of nationality. These workers take contracts of only a few days and work overtime or night shifts on very short notice. By using these flexible and temporary workers, manufacturing sectors quickly respond to the demand from the market. Thus, secondary and tertiary subcontractors especially depend on contract agencies which in migrant workers.

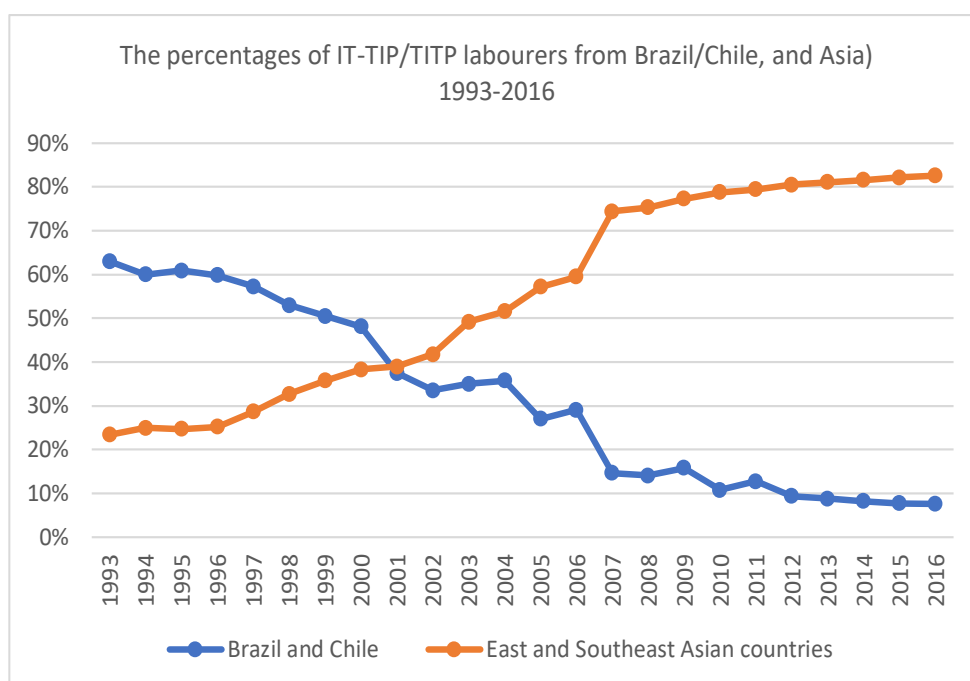
³¹ In 1993, the MOL introduced the Reporting System on the Employment of Foreign Workers [*Gaikokujin Koyo Houkoku Seido*], with the aim of collecting information annually (MHLW Homepage 1993-2006).

³² According to the JITCO White Papers from 1999 to 2014, the total number of registered participants has dramatically risen, from 36,612 in 1994 to 169,054 in 2013.

workers from Southeast Asian countries has been much greater than Nikkei workers since 2001, which the following section will explain further. Chart 9 (2) also indicates that the major nationalities of IT-TIP/TITP labourers has changed. The percentage of IT-TIP workers from China accounted for around 80% in 2008, but that of TITP workers from Vietnam (44%) is now slightly higher than that from China (40%). Overall, the increasing number of IT-TIP/TITP labourers also implies that this scheme has been one of the key recruitment measures for domestic factories since 1991. With this increasing number of IT-TIP/TITP labourers, it could be argued that some small manufacturing industries particularly employ migrant workers coming to Japan via this scheme.

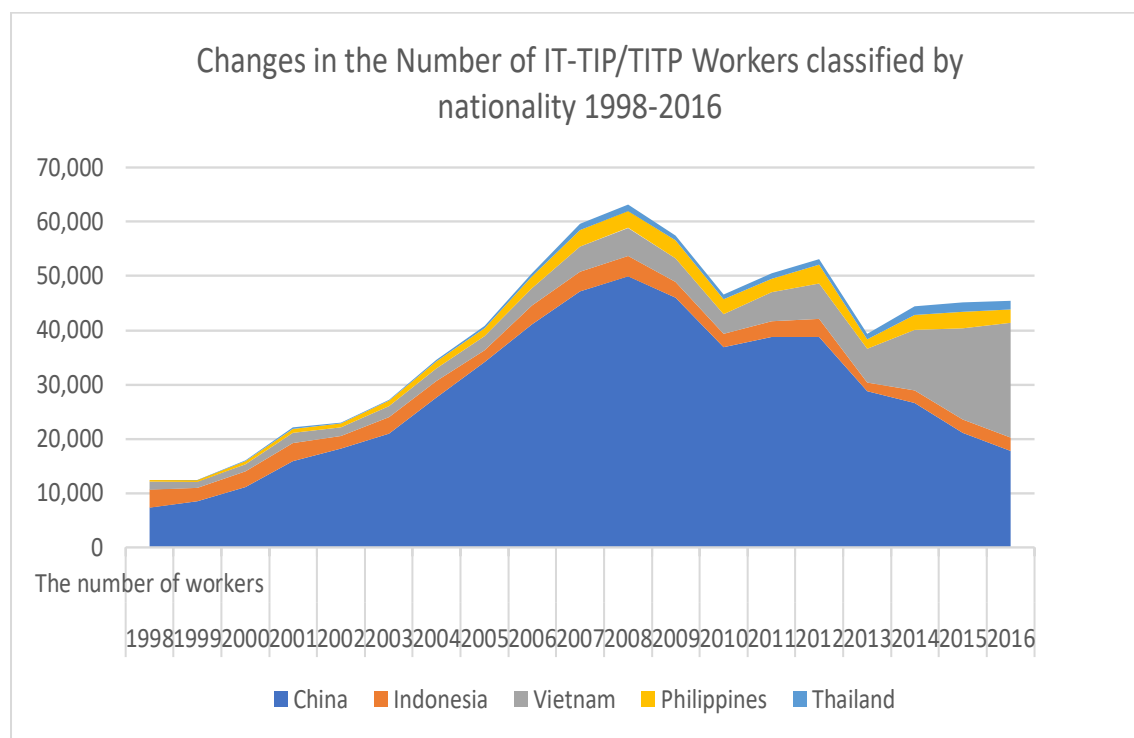
Chart 9: The information about foreign labourers

- 1) Change in the percentage of *Nikkei*, and of migrants from East and Southeast Asian countries (produced by author in reference to annual reports on employment of foreign workers published by FWAD from 1993 to 2006, and updated by MOJ's survey of foreign residents by 2017)



Note: MOJ's survey of foreign residents can be accessed online (see MOJ Homepage).

2) Changes in the Number of IT-TIP/TITP Workers classified by nationality 1998-2016 (created by author in reference to JITCO White Paper from 1999 to 2014 and JITCO Homepage 2017)



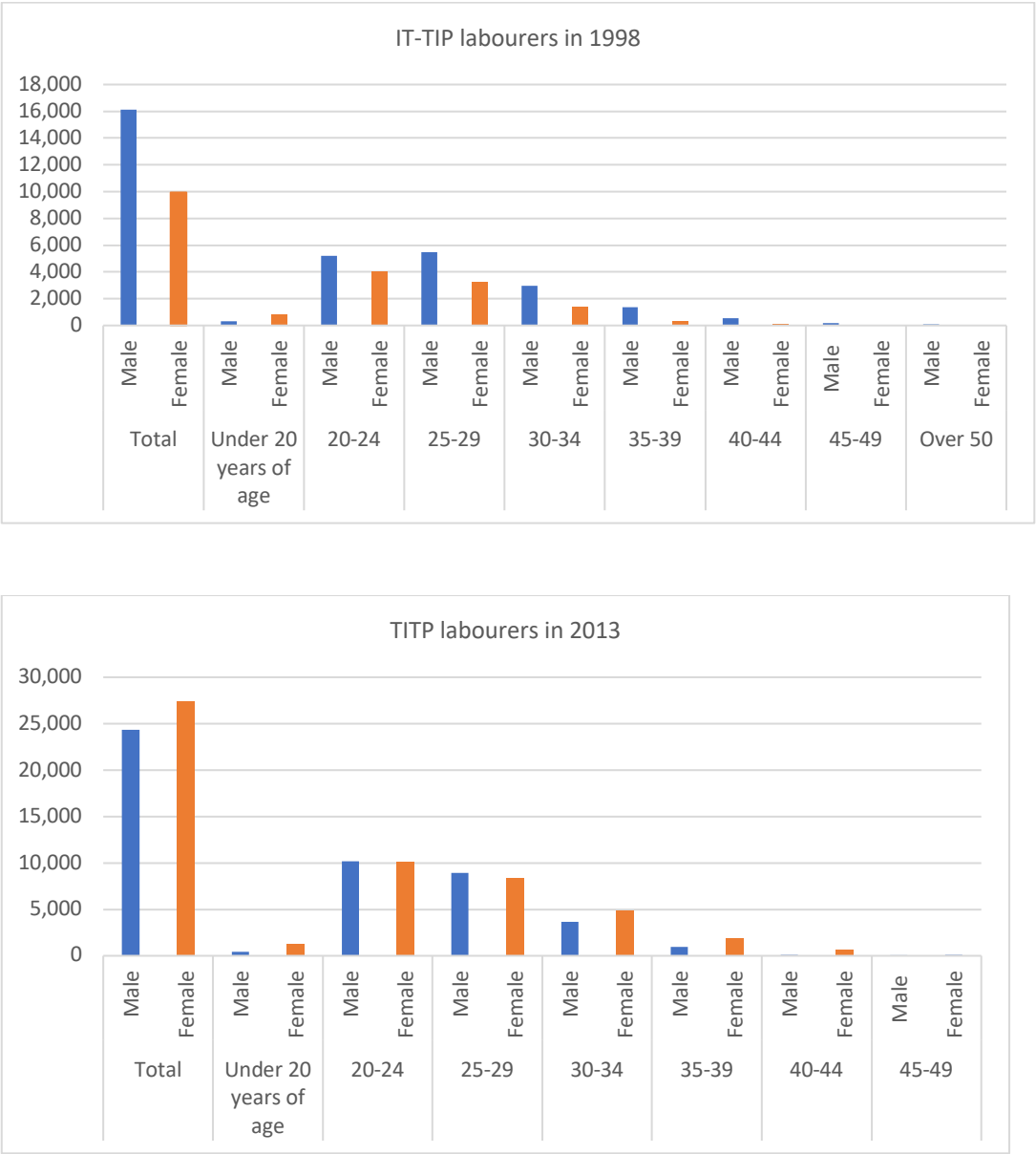
As some of the owners in garment factories in Hokuriku also clarified, they hired the third generation of Nikkeijin in the early 1990s, but they later switched to employing migrant workers through IT-TIP. This was because most Nikkei workers were already around 40 years old in the early 1990s, and they were acquiring a reputation for not being reliable workers (Interview with Employer 6, Sabae, 7th October 2016; The industrial association organisation 2, Fukui 15th September 2016). Some empirical work on Nikkei workers from Brazil also corroborated this comment (Ishikida 2005; Mori 1997).³³ In the late 1990s and in 2013, Asian workers were mostly in their 20s, as can be seen in Chart 10. Aside from their aging issues, the dispatching agencies exclusive to Nikkei workers also reveal that

³³ For instance, Hiromi Mori (1997) also demonstrates the large proportion of middle-aged Brazilian Nikkei compare to their disadvantage with workers from Asia via IT-TIP/TITP.

these workers quit their jobs very quickly to seek higher-paid opportunities. This made it difficult for these agencies to supply Nikkei labourers to small enterprises in rural Japan (Asahi Shimbun, 9th February 2008b).

It might be because Nikkei workers have settlement status, they try to seek better opportunities in big cities rather than staying in rural factories. As Naoto Higuchi and Kiyoto Tanno suggest (2003), deregulation of labour market made Nikkei workers competitive workforce to other peripheral Japanese labourers. However, as Hirohisa Takenoshita suggests (2013), the structure of labour market that has been evolving since the 1990s has also increased the difficulty for Nikkei workers to obtain stable jobs due to the lack of support for the integration of these labourers. Such a structure has made it less attractive for Nikkei workers to work in Japan. In fact, rural firms in export-oriented industries like clothing/textile industry whose demand fluctuated seasonably tend to need temporary workers, rather than Nikkei labourers (Ibid.). Instead of keeping Nikkeijin, therefore, employers had become more interested in hiring young workers via IT-TIP/TITP. In describing the unskilled labour market before 1992, Sellek (2001) suggests that Nikkeijin had emerged as a sort of migrant labour aristocracy because of their position in the labour market. After two and a half decades, however, this picture has slightly changed. IT-TIP/TITP labourers were distributed across most of the manufacturing sectors especially in rural Japan. Along with the increasing number of IT-TIP labourers, the poor working conditions of trainees have been made visible through the labour movement and media since the beginning of the 1990s (Asahi Shimbun, 10th December 1999; 18th October 1996b: 1st October 1993c).

Chart 10: The gender and age of IT-TIP/TITP in 1998 and 2013 (created by author in reference to JITCO White Papers from 1999 to 2014)



To sum up, this section has shown that a series of immigration and labour reforms have served in supporting local manufacturing industries which have been struggling to survive after the bubble burst in 1991. This has also indicated how much small and medium-sized factories in rural Japan have relied on IT-TIP/TITP scheme. The following section will

illuminate how political activism for IT-TIP/TITP labourers has emerged since the early 1990s.

2. Political activism for migrant labourers since the early 1990s

The new labour and immigration structure brought about by neoliberal reform required labour unions to reconsider their roles. Community unions, among others, arose to deal with new issues related to unskilled migrant workers. Political activism on this scale has played a significant role in constructing a sympathetic portrayal of migrant labourers. This section will clarify the development of this role.

2-1. The rise of community unions and their activism for IT-TIP labourers

The recent increase in labour market casualization, including the expansion of IT-TIP has also influenced labour unions and their activism. To understand the incremental changes in institutions and policies associated with IT-TIP/TITP labourers, we must consider political activism for migrant labourers since 1993. As in Barrientos et al. (2013), political activism plays a significant role in safeguarding the rights of the mostly migrant labourers at the low end of global manufacturing networks. As clarified above, IT-TIP labourers have become key to the survival of small manufacturing factories in Japan, trying to meet the economic imperatives of globalisation with migrant labour. In this context, political activism has begun to represent IT-TIP/TITP labourers.

The rise of political activism for trainees in the IT-TIP in the early 1990s was a consequence of the bursting of the economic bubble burst in 1991 and a resulting shift in the focus of labour unions. As discussed earlier, industrial globalisation since the late 1980s and the recession since 1991 had directly hit small and medium-sized firms in rural Japan. As Song Jiyeoun illustrates (2014), in economic distress after the bubble burst, the decentralising pressure of wage bargaining began to weaken the role of *Shunto*, the ‘spring offensive’, as a wage coordination mechanism between enterprise unions³⁴ and employers. The recession also rendered Japanese firms unable to continue providing enhanced welfare. In short, the ability of enterprise unions to sustain traditional patterns of corporate welfare had diminished (Urano and Stewart 2009). The deregulation of the labour market after the revision of Labour Dispatch Law in 2004 made marginal workers more insecure, especially migrant labourers. Under these circumstances, the mainstream labour movement needed to reconsider its representation of marginal workers, including foreign trainees. In other words, as Hugh Whittaker suggests (1998), the necessary adjustment was derived from the economic and labour restructuring that began with the end of the bubble economy in late 1991.

Just before the economic bubble burst, *Rengo* (Nihon Rodokumiai Sourengokai), the main national centre of labour unions, was established after the dissolution of *Sohyo*. This had resulted from efforts to unify *Sohyo* and three other organisations (Domei, Shinsanbetsu, Churitsuroren) into one organisation in 1989 (Fujii 1989). To compete with *Rengo*’s policy line, the majority of leftist unions set up two rival confederations, *Zenroren* (Zenkoku Rodokumiai Sourengo) and *Zenrokyo* (Zenkoku Rodokumiai Renrakukyogikai).³⁵ Although

³⁴ Japanese-style employment consisted of lifetime employment, seniority-based wages, and enterprise unions.

³⁵ The number of memberships for *Rengo* is around 6.5 million; *Zenroren* has 550,000; and *Zenrokyo* has 90,000 as of 2017 (MHLW 2017).

Rengo had begun to respond to the needs of non-regular workers (dispatched and contract workers), it kept opposing the idea that the government should accept temporary migrant labourers through IT-TIP/TITP scheme. Partially because, unlike Nikkei workers, Rengo believes they cannot establish social solidarity for those labourers as they could only stay here up to three or five years. To avoid the costs of protecting IT-TIP/TITP workers, Rengo states that its official stance on IT-TIP/TITP is ‘to reconsider the programme including abolition’ [*haishi wo hukumeta bapponteki kaikaku*], and it has strongly opposed the idea of extending the working period from three to five years (Rengo 2016). In addition, because of their historical background, these national centres do not usually cooperate with one another at the national level. To a great extent, the workers belonging to these national centres are also members of enterprise unions. As such, these national centres cannot serve as alternatives to enterprise unions, and they have faced a decreasing number of affiliated members (Nakamura 2005).

To fill this gap, the new community unions appeared to be concerned with socially and economically marginalised people regardless of nationality. The Tokyo community unions *Zentoitsu* and the *Edogawa* Union, established by Sohyo in the 1980s, started dealing with issues of migrant labourers in small local firms.³⁶ These unions, however, used to pay attention to overstayers and undocumented migrant workers over the 1980s. The chief of *Zentoitsu*, Torii Ippei, clarifies that the labourers working in small local firms were mostly overstayers in the late 1980s, but local police authorities and the Immigration Bureau sometimes turn a blind eye to the undocumented migrant workers on whom small and medium-sized firms rely (Interview with Ippei Torii on 25th October 2015; Papademetriou

³⁶ In this respect, Edson Urano and Paul Steward (2009) suggest that the emergence of community unions might be the result of the dissolution of Sohyo and the shift in axis toward Rengo rather than enterprise unions since 1989.

and Hamilton 2000).³⁷ Under this lax control, however, the rights of overstayers and undocumented migrants were also neglected. Community unions therefore focussed on these labourers over the 1980s. The increasing number of arrests of overstayers has also resulted in the creation of a lawyers' network to support migrant workers. Tadanori Onitsuka, a lawyer and a former chief of a lawyers' network called *Lafuru*, started to point out the omission of human rights protection in deportation proceedings at the end of the 1980s (Onitsuka 1995).

Their focus has changed from overstayers and undocumented migrant workers to trainees in IT-TIP institution for the following two reasons. First, the notification from MOL [*kihatsu*³⁸ *dai 50 go*] in 1998 clarified that the Labour Standards Act, the Minimum Wage Law, the Industrial Safety and Health Law, and the Labour Insurance Law are all applicable to labourers regardless of their resident status. In short, this notification implies that overstayers can still enjoy their rights to collective bargaining and injury compensation (the Japan Institute for Labour Policy and Training Homepage). Second, while this may be true for overstayers, a white paper published in 1992 by ISHC (the Industrial Safety and Health Centre) [*Zenkoku Rodo Anzen Eisei Senta*] clarified that the trainees in the IT-TIP and entertainers were part of unregulated workforces (1992).³⁹ Labour protections, then, would not apply to first-year trainees in IT-TIP, or to entertainers coming to Japan with entertainment visas.

³⁷ In this respect, Papademetriou and Hamilton (2000) suggest that, in comparison to Japan's official anti-immigration position, there seems to be a more complacent attitude among local officials.

³⁸ *Kihatsu* is the notification from the director of the Labour Standards Bureau in the Ministry of Labour to the Labour Office on the local authority level (MHLW Labour Standards Bureau 2015, 14th ed.).

³⁹ Unregulated workforces mean here people who are not recognised as workers working in the regulated industries.

For this reason, Torii uncovers why such community unions would rather support trainees in IT-TIP:

Unlike overstayers, trainees in IT-TIP cannot be free nor fluid. Overstayers have freedom to change their employers; if they are not happy working in their current workplaces, at least, they can always change or escape from their employers. However, trainees have no right to choose their employers, nor freedom to have any relationships with people in Japan (Interview with Torii 25th October 2015; Torii 2007).

This comment clearly shows his view that overstayers or undocumented migrants could enjoy a certain level of freedom, such as the freedom to choose their occupation or to be married, whilst some trainees with work contracts have to work in slavery-like conditions (Ibid.). For this reason, although authorities have noticed that many trainees and interns have escaped from IT-TIP/TITP and might be at risk of being forced to work in even worse conditions, community unions do not target them (Sankei West 2015).

While emphasising that the prohibition of changing employers, taking custody of employees' passports and unpaid wages had been major problems to make trainees and interns escape since the 1990s, Torii however suggested that the number of those who escaped from their workplaces is fewer than in other countries (Advocacy Network for the Rights of IT-TIP Workers 2000; Interview with Torii 2015; Torii in the Judicial Affairs Committee, the House of Representatives on 23rd May 2014). Because of his background of working in a small factory in the 1980s, Torii was aware that those small factories could not survive without foreign labourers. For this reason, during the 1990s when his organisation and community

union were less effective, he and his network organisations did not vocally suggest the abolition of IT-TIP. Rather than abruptly abolishing this scheme, Torii suggests that we should focus on how to solve these problems derived from TITP.⁴⁰

With some other community unions,⁴¹ Zentoitsu and ISHC have exchanged ideas and information about unskilled labourers from abroad, and have been submitting a joint statement to the Japanese government every March since 1993. At the same time, these unions joined together and organised a protest demonstration in Hibiya Park. Since its sister NGO, SMJ, was established in 1997, Zentoitsu and SMJ have had two annual meetings at the House of Councillors to negotiate on IT-TIP/TITP matters. Due to their activism, stories of exploited trainees began to appear in the media (Asahi Shimbun, 14th May 1993d). These community unions have also run a horizontal network since 1999 called Advocacy Network for the Rights of IT-TIP Workers.⁴² Their network groups from different prefectures often attend the meetings at the House of Councillors. Union Osaka, which stems from Rengo's local branch, has worked and shared offices with the Rights of Immigrants Network in Kansai (RINK) in Osaka.⁴³ RINK is also a member of the network for IT-TIP/TITP workers, and cooperates with community unions and NGOs in the same network in different

⁴⁰ For instance, in South Korea the number of irregular migrants including missing trainees reached 189,000 in 2000 (Haruki 2010). As a result, the South Korean government introduced the Employment Permit System in 2004 as a scheme of the acceptance of unskilled labourers. In 2006, it completely abolished its industrial trainee system (Yamanaka 2010).

⁴¹ For instance, there are some community unions such as Zenkoku Tokyo Ippan Nambu and Kanagawa Union. Ippan Nambu has been paying attention to Anglophone workers such as English teachers whereas, Kanagawa Union has been supporting migrant workers, especially Koreans and *Nikkeijin* in the construction sectors. According to interviews from Zentoitsu and Kanagawa Union, in the 1980s, migrant workers in construction sectors were mostly Korean overstayers, but *Nikkeijin* have become dominant since the early 1990s.

⁴² It has been called the Advocacy Network for TITP Workers' Rights [*Gaikokujin Ginojishusei Kenri Network*] since 2013, but used to be the Advocacy Network for IT-TIP Workers' Rights [*Gaikokujin Kenshusei Kenri Network*].

⁴³ Akira Suzuki (2008) points out the tendency of Rengo's regional organisations to fail in providing support to community unions. This is because Rengo's policy emphasises organising unaffiliated workers along industrial lines rather than at regional levels. However, at least in terms of migrant labourers' issues, cooperation between Rengo's regional organisations and community unions can be observed in some prefectures.

prefectures. A new lawyers' network specifically for IT-TIP workers was also set up in 2008, working closely with the Advocacy Network for IT-TIP/TITP Workers' Rights. While maintaining their basic idea of the abolition of IT-TIP/TITP, these organisations have helped trainees and interns to negotiate with their employers.

In summary, the economic recession since 1991 and the shift in focus of community unions were driving forces behind a new focus on IT-TIP trainees in the early 1990s. As this chapter will explain later, their activism for trainees has come to link with discourses on human trafficking and modern slavery in the middle of the 2000s. The mid-2000s saw the gradual emergence of the discussion on how to treat migrant labourers. Before moving to discuss constructing discourses on trafficking and slavery, the following section will explore the discursive shift on immigration since the mid-2000s.

2-2. Discursive shift on immigration

Discourses on migrant workers as an indispensable future workforce for the industries in rural Japan have become influential, especially since the UN Population Division (UNPD) clarified that Japan would need about 10.5 million immigrants between 2000 and 2050 (UNPD 2001). However, in the early 2000s, both coordinative and communicative discourses on migrant workers as a future workforce were not dominant. A typical discourse on foreign nationals [*gaikokujin*] as an internal security threat can be seen from Ishihara Shintaro, a former governor of Tokyo, in April 2000. His famous speech in Tokyo before the ceremony of the Japanese Defence Forces is as follows:

In Tokyo, many sangokujin [people from third countries], or foreign nationals who entered this country illegally, are repeating very vicious crimes...If large disasters or riots were caused by these people, I would like the Defence Forces to take action for the maintenance of public order (Nihon Keizai Shinbun, 15th April 2000).

The term *daisankokujin* refers to people from third countries, which implies discrimination against foreign nationals in Japan. *Gaikokujin* in Japanese, is also used in Japanese to describe foreign nationals in general, but often implies ‘outsiders’ who cannot partake in society. The idea of their criminality and resulting discrimination against foreign nationals remains to some extent in Japan. One of the firm owners in the clothing/textile industry in Fukui Prefecture expresses their opinions about their migrant workers as follows:

Deregulation of border control to invite these workers is the same question as deregulation of gun policy in Japan. Migrant workers can be criminals. As a factory owner, I would love to hire migrant workers. However, as a Japanese citizen, I oppose the idea of developing a guest worker scheme including, extending the TITP working period (Interview with Employer 7 in Sakai, 7th October 2016).

While IT-TIP provided backdoor immigration for unskilled migrants in the early 2000s, the dichotomy between the acceptance and denial of immigration was still a focus of the discussion on immigration among politicians and bureaucrats. The 4th Round-Table Conference in the Immigration Bureau [*Dai 4 ji Shutsunyukokukanriseisaku Kondankai*] (2004) in December 2004 maintained the idea that the government should carefully consider

the approval of unskilled workers. Unlike South Korea at the early 2000s,⁴⁴ in Japan the needs of dealing with the official acceptance and treatment of unskilled migrant workers has arisen not only from NGOs for those migrant labourers but also from the economic sectors. In this respect, Keidanren had played a major role to represent the needs of unskilled labourers since 2002. Keidanren criticised the government's standpoint and argued that 'the denial of unskilled workers is far from reality' (Economist 2008:24). Before the comment from Keidanren, Nihon Shoko Kaigisho (2003) also suggested that the government should seriously consider the acceptance of unskilled workers. Despite the government's official opposition to unskilled workers, discourses on their use gradually emerged from leading economic lobbying groups, and the question of how to treat migrants began to be highlighted in public discourses around 2004.

In particular, it was the question of nurses and caregivers from Southeast Asian countries which sparked a public discussion of how migrant workers should be treated because many such workers had come to Japan under the EPA since 2004 (The House of Representatives, 26th October 2006; The House of Councillors, 9th November 2004; The House of Councillors, 14th October 2004; Asahi Shimbun, 4th November 2004b). Although the idea of accepting caregivers in view of the labour shortage had already been mentioned in the 2nd Basic Plan for Immigration Control (MOJ 2000; Asahi Shimbun, 24th March 2000), like IT-TIP/TITP, this was also framed as a development policy *via* EPA. However, because nurses and caregivers are more visible in society than migrant labourers in rural factories, their acceptance revitalised the public debate on how to treat these workers (Shoichi Nakagawa,

⁴⁴ In South Korea, as of 2013, more than one million foreign nationals reside there, and majority of these foreigners are unskilled labourers. Unlike Japan, the South Korean government has actively encouraged the official acceptance of unskilled labourers due to the increasing number of irregular migrant labourers (Berndt, R. 2017). The Korean Federation of Small Business (KFSB) which monopolised the recruitment of foreign trainees opposed the idea of abolition of trainee system (Lim 2006).

The House of Councillors 16th November 2004).⁴⁵ In the Diet, Ryu Hirofumi, a politician of DPJ, shed light on the importance of improving labour standards for migrant workers in light of the acceptance of nurses and caregivers:

The government has only accepted skilled migrants while maintaining a zero-immigration principle for unskilled workers. However, it has expanded the types of legal resident status, regardless of skilled or unskilled migrants. In the context of our aging society, it is crucial to consider how to accept and treat migrant workers (Ryu, the House of Representatives on 26th October 2006).

In September 2006, the EPA was signed between Japan and the Philippines, agreeing on the acceptance of nurses and care workers from 2008 (came into force in October 2008). In the same way, the EPA between Japan and Indonesia was signed in 2007 and came into force in July 2008 (Roberts 2012; Ogawa 2010).⁴⁶ Nurses and caregivers coming to Japan through EPAs are, indeed, skilled workers as they are required to complete a four-year university degree and to be qualified as care workers in their home countries (Ogawa 2012).⁴⁷ The nurses and caregivers in EPAs also need to pass the Japanese Language Proficiency Test (JLPT) N2 before they come to Japan (MHLW 2016a).⁴⁸ However, the extension of the TITP to caregivers in 2016 blurs the border between skilled and unskilled. This is because these workers in TITP are not required to have university degrees and only need to pass

⁴⁵ Nakagawa was a former LDP member, who served as Minister of Foreign Affairs from September 2008 to February 2009.

⁴⁶ Japan has also entered a new EPA in 2011 to bring caregivers and nurses from Vietnam. The acceptance of Vietnamese caregivers started in 2015. So far, Japan has accepted workers from the Philippines, Indonesia, and Vietnam with the aim of filling the projected 900,000 nursing care workers needed from abroad by 2025 (Asahi Shimbun, 27th March 2015).

⁴⁷ Although the distinction between skilled and unskilled workers is socially and politically constructed, these requirements suggest that EPA nurses and caregivers are skilled workers if we define them as ‘those with university degrees or extensive experience in a given field’ (Iredale 2000).

⁴⁸ In JLPT, there are 5 levels to classify Japanese language abilities. The easiest level is N5 and the most difficult level is N1.

JLPT N4 upon entry (MHLW 2016b). In short, the applicants for TITP do not need to be qualified caregivers when they apply for this scheme (Hirano 2017).

The media has also offered systematic portrayals of these foreign labourers coming to Japan since the mid-2000s. Because some of these workers, especially in the nursing sector, are responsible to take care of people's health and lives, how they should be treated at workplaces has been raised by media. A series of the media coverages criticised the government's idea of opening the country to human resources [*Jinzaikaikoku*] (Asahi Shimbun 26th September 2006b). They suggest that it is the same as bringing people into Japan on a limited basis, but once problems arise, sending them home. In this sense, Asahi Shimbun raised the anxiety that '[the] world is going to surely doubt whether Japan really wanted these people in the first place' (Asahi Shimbun 25th August 2010, quoted and translated by Roberts 2013:207). Asahi Shimbun also quoted some criticisms from leading academic scholars such as Stephen Castles,⁴⁹ arguing that 'the Japanese government should treat migrant labourers with the same treatment as Japanese workers. It should not use them as disposable workers without the rights of settlement' (Castles in Asahi Shimbun June 14th 2009).

While ideas of how to treat migrant labourers had been discussed through the interaction between coordinative and communicative discourses, settlement of these unskilled labourers including bringing their families and naturalisation is a key point to make coordinative discourse either successful or unsuccessful. This also affected the revision plan of IT-TIP in 2009. In terms of revisions of IT-TIP, there were four ideas arisen since 2006.⁵⁰ First is from

⁴⁹ Stephen Castles is a professor at the University of Sydney, who used to be the Associate Director of the International Migration Institute (IMI), University of Oxford.

⁵⁰ The Basic Policies for Economic and Fiscal Management and Structural Reform 2006 (Basic Policies) approved by the Koizumi Cabinet in July 2006 uncovered the need for the IT-TIP revision (Kitawaki 2008).

Taro Kono, the vice Minister of Justice at that time, who tried to implement his radical idea of introducing the new visa scheme [*tokutei gino rodosha*]. The new idea in this plan was that it did not deny the settlement of migrant labourers (Seki 2010; Kono Taro Official Website 2006). The second was from the Council of Promotion and Regulatory Reform (CPRR) [*Kiseikaikaku Minkankaihou Suishin Kaigi*]. As in the CPRR's second report (2007), the government recognised some problems of trainees and interns under the IT-TIP, such as employers taking away their passports⁵¹ and not paying their salaries. The CPRR compromised between MHLW's (2007b) and METI's (2007) ideas.⁵² In their reports, MHLW suggested a three-year practical internship by banning one year of training, whereas METI proposed maintaining the existing system, including the one-year traineeship. Despite this difference between the two, both bureaucracies agreed that the revision of IT-TIP needs to include the extension of these workers' stay, rather than settlement (Seki 2010).

The third idea derived from 'private suggestion' in July 2008 from the former Minister of Justice and the chairman of the Foreign Workers Project Team in the LDP's National Vision Project Headquarters [*Jimintou Kokka Senryaku Honbu*], Jinen Nagase. This suggestion proposed the abolition of IT-TIP and the establishment of an unskilled workers' scheme for three years as a replacement (Nagase 2007). However, this does not support their settlement. Rather than letting them settle, it suggested replacing these labourers every three years. The most radical idea was set up by the LDP Diet Members' Caucus for the Promotion of Foreign Human Resources (hereafter Caucus) [*Gaikokujinzaikouryu Suishin Giin Renmei*]. The

The Basic Policies did not admit that IT-TIP should be revised due to the gap between the reality and how the government frames this scheme, but it invited various plans and discussions of the revision.

⁵¹ The number of cases where employees' passports have been held have decreased since 2009, when the Immigration Bureau clarified in its guideline that taking custody of employees' passports is illegal (Immigration Bureau 2009).

⁵² MHLW submitted a final revision of its plan in June 2008 with regulations of the number of trainees and the extension of punishment to accepting organisations which treat trainees and interns illegally.

Caucus' first meeting was held in February 2008 with 80 parliament members from the LDP, including Hidenao Nakagawa as a leader. In this meeting, Sakanaka was invited as a lecturer and proposed a radical plan which called on Japan to accept 10 million immigrants (Sakanaka 2011). After seven meetings, the Caucus published its immigration plan including settlement (Caucus 2008). Although this private suggestion from the former Minister of Justice included settlement of unskilled migrant workers, using these labourers as interns for three years without their settlement was shared as a basic revision plan of IT-TIP suggested by the CPRR.

The Advocacy Network for IT-TIP Workers' Rights also shared this point at that time. In their meeting with bureaucracies supervising JITCO in November 2008, they emphasised the importance of banning the status of trainees so that these migrant labourers can access the Labour Standards Act (SMJ 2009). For this reason, in the case of the government keeping this guest worker scheme, they strongly supported the MHLW's revision plan. In principle, this plan suggests that these workers should be treated as interns, and even if some industries only have a trainee scheme, the Labour Standards Act should apply to them.⁵³ In this meeting, SMJ also raised the criticisms in the TIP report published by the US Department of State in 2007, and the report from the UN Human Rights Committee published in October 2008 (Ibid.). In the UN report (2008), SMJ warned the Japanese government to extend social welfare based on the Labour Standards Act to trainees and interns in the IT-TIP, and suggested that it should impose appropriate sanctions on employers who exploit these labourers (Ibid.). As a response, during the meeting, the MOFA and MHLW clarified their intention of protecting the labour rights of interns and trainees (SMJ 2009). As a result, the

⁵³ For instance, the cleaning industry only has a one-year training scheme.

policy ideas proposed by the CPRR were absorbed into the revision in 2009. This is presumably because this did not mention the settlement of unskilled labourers.

In short, through the interaction between coordinative and communicative discourses, the portrayal of immigrant labourers in Japan has changed from a nuisance in society to pitiful labourers (Asahi Shimbun, 10th January 2017; Roberts 2012). The radical immigration discourses supported by some LDP politicians such as Kono and Nakagawa were, however, not converted into a policy, due to the lack of support for these labourers' settlement and the economic recession and the regime change to the DPJ in September 2009 (MHLW 2009; The New York Times, 22nd April 2009; The Washington Post, 23rd January 2009). However, the incremental changes in channels of immigration through the EPA and IT-TIP imply the desire of the government and industries to invite unskilled workers on a temporary basis.

3. Introducing discourses on IT-TIP/TITP as trafficking and modern slavery since the Mid-2000s

While the previous section explained the discursive shift towards accepting unskilled migrants, it did not illustrate the reason why IT-TIP/TITP institution has moved towards protecting labourers, and why it had taken so long time to provide such remedies. In order to shed light on the problems of IT-TIP/TITP labourers, this section will demonstrate how the activists changed their priority from sexual exploitation to 'labour trafficking' or 'modern slavery'.

As previous sections have discussed, immigration and labour regulations have changed since 1990. The government has expanded the channels by which unskilled migrant workers can come to Japan. This expansion has led to a discursive shift, from *whether* Japan should accept these labourers, to *how* to treat them. Under these circumstances, discourses on trainees and interns working in slavery-like conditions have started to emerge since 2006 through the interaction of domestic and international actors. By 2016, the government changed to provide remedies to those labourers. To explain this change, it is worth looking at how the domestic actors who were loosely connected with international organisations actively use the resources from local community unions and lawyers, the media and the international organisations.

Since 2006, JNATIP shifted its priority to solve the problems of IT-TIP/TITP. As in Chapter 4, JNATIP has lobbied against the government on sex trafficking since 2003, and has maintained a negotiation channel with the Cabinet Office on women's rights issues. When one of its members started to focus on the maltreatment of trainees in 2006, JNATIP invited SMJ to join its work on combatting trafficking for the purpose of labour exploitation (Interview with Torii 2015). SMJ, and its national network group, the Advocacy Network for IT-TIP/TITP Workers' Rights, have started to share information with JNATIP on cases of trainees trafficked for labour exploitation. In addition, the IT-TIP Lawyers Network [*Gaikokujin Kenshusei Bengoshi Nettowaku*] was established in June 2008 by four lawyers working in Tokyo, Aichi and Kumamoto Prefectures.⁵⁴ Since one of these lawyers has worked with the Advocacy Network, they also share the data of trainees' cases. According to interviews with Torii, and the lawyer in the IT-TIP Lawyers Network, the US embassy in Tokyo invited them in 2006 to exchange their knowledge and ideas to develop data for the

⁵⁴ The name was changed to TITP Lawyers Network after the trainees' system was banned in 2010.

TIP report published by the US Department of State. As a result, the maltreatment of trainees in IT-TIP/TITP has been represented as trafficking for the purpose of labour exploitation in the TIP reports since 2007 (the US Department of State 2016; 2007).

As part of their campaign to abolish IT-TIP and introduce the guest worker system, the Advocacy Network highlighted the problems of trainees over the late 2000s, as these often stemmed from the ambiguous status of trainees (SMJ 2007). As non-regular workers but working as full-time labourers, trainees were denied the status of workers, which made the Labour Standards Act inapplicable to them. This ambiguous status meant that even if employers avoided following the Minimum Wages Law during these workers' one-year traineeship, this act was not considered illegal. According to the white paper annually published by JITCO, the average monthly salary of trainees was around ¥64,000 [£450] (JITCO 2007).⁵⁵ The monthly minimum wage in prefectures with the lowest minimums was around ¥146,000 [£1020],⁵⁶ so the average salary of trainees was so low that surviving in Japan was almost impossible for them. The above-mentioned activist groups had especially paid attention to the clothing/textile industry, suggesting that garment factories especially paid extremely low wages. Evidence from the community unions and lawyers showed that some female trainees in a garment factory only received ¥24,400 [£170] per month during their traineeship (Osaka 2014; Anonymous 2008), although they worked as if they were full-time regular workers (Interview with Tokushima Roren, 8th September 2016).

Grassroots activities run by local community unions had also supported the Advocacy Network to collect materials to represent those discourses on pity female labourers in this

⁵⁵ This thesis uses the OANDA's currency calculator tool.

⁵⁶ The author calculates based on the data of minimum wages of each prefecture provided by MHLW in September 2007. According to these data, Akita and Okinawa had the lowest minimum wages (MHLW Homepage 2007).

industry. The Advocacy Network used some materials from these local organisations in exchanging knowledge of modern slavery with international organisations. A diary from a former trainee collected by Tokushima Roren was one of these materials. As explained later, this diary was provided by SMJ and JNATIP to Joy Ezeilo, the UN Special Rapporteur on Human Trafficking, on his visit in July 2009. This diary proved that they had to work for 15 or 16 hours almost every day as trainees, but they only received around £345 per month. They were not paid regularly, so they worked with no pay for a couple of months. She expresses her despair as follows:

Today was the first payday since I came here. I was almost crying when I only saw ¥49,500 [£345] in my envelope. I do not know why I only received this small amount of money, although I worked like a slave (Anonymous 2008:8).

In addition to the remarkably low wages (or unpaid salary), some of the other major problems faced by trainees were forced deportation, forced deposit, confiscation of their passports and bankbooks, dispatch to different companies and curfew imposition. These restrictions on freedom of migrant labourers in IT-TIP have fed into creating the current discourses on trafficking and modern slavery.

A series of criminal and civil cases on trainees and interns had also supported the discourses constructed by the Advocacy Network. Two major court decisions in which the IT-TIP Lawyers Network was involved made the recognition of trainees as labourers possible. The first trial case which involved admitting trainees to be workers was concluded on March 18, 2009 in Mie Prefecture. The case was related to trainees and interns in a garment factory, which only provided them with a couple of days' training and forced them to work long

hours. As it was difficult to draw the line between trainees, interns and full-time Japanese labourers, the Tsu District Court concluded that trainees should be treated as labourers (2009). Taking this one step further, the second case concluded on January 29, 2010 by the Kumamoto District Court confirmed trainees' status as workers. Here, both employers and trainees recognised that wages should be paid in exchange for trainees' services to their employers (Kumamoto District Court 2010). Given that the government had decided by July 2009 to abolish the IT-TIP one-year trainee system and to introduce TITP as a revised three-year-internship scheme, these trial cases might not be the major explanatory variable that led to the revision. These domestic trial cases, however, freed trainees from the same category as entertainers and/or sex workers who are not considered workers. In other words, these cases opened the door for trainees to claim their labour rights.

The Advocacy Network also actively used media to highlight discourses on female labourers in the clothing/textile industry. The low wages of female trainees who agreed to work as garment factory labourers, but were deceived into working in cleaning companies, were also highlighted by a Chinese journalist in Japan (*Nikkei* BP Net, 16th September 2009; *Mainichi Shimbun* on 5th January 2009). This journalist, Mo Bangfu, was working with SMJ, and had written a series of articles about IT-TIP labourers around 2008. In his articles, he noted that the situation of TITP labourers in the clothing/textile factories in Japan was 'modern version of *Joko-Aishi*' which are the tragic stories of female indentured servants in textile industry in the Meiji and Taisho eras (1868-1912; 1912-1926) (*Nikkei* BP Net, October 2008; *Diamond Online* 19th September 2008).⁵⁷ His articles had also been circulated and raised an outcry in mainland China (*Nikkei* BP Net, 16th September 2009). As explained in Chapter 3, *Joko-Aishi* is a title of a historical book written by Hosoi Kikuzo in Japan (1925), describing

⁵⁷ See p.98 in Chapter 3.

the experiences of exploited Japanese female labourers at textile mills. Due to the outcry in China, the Ministry of Foreign Affairs of the Republic of China warned that ‘the Japanese government should protect the legitimate interests of Chinese workers in IT-TIP’ (Nikkei BP Net, 6th October 2008, translated by author). These discourses are used to justify policy ideas of the Advocacy Network whose purpose is to abolish the IT-TIP.

The Advocacy Network, JNATIP and the Lawyers Network have also kept communicating with international organisations after the abolition of trainees’ status in 2009 because the situation of these labourers had not changed. For instance, when Joy Ezeilo, the UN Special Rapporteur on Human Trafficking, visited Japan in July 2009, JNATIP published an informal report (2009b). In this report, based on its understanding of human trafficking as a gender-related issue of female migrants, SMJ and JNATIP gendered discourses on female labourers emphasised that the number of female workers was much greater than that of males. This raised the issue of the sexual exploitation of female workers as a specific problem (Ibid.). They also provided to Ezeilo the above-mentioned diary written by a former trainee in Tokushima Prefecture (Interview with Tokushima Roren). Chart 10, however, shows that there is almost the same number of male and female workers. On Ezeilo’s visit to Japan, the US Polaris Project members working for the US Department of States visited one of the NGOs in Fukui Prefecture. This local NGO which belonged to the Advocacy Network for IT-TIP/TITP Workers’ Rights took the Polaris Project to the garment factories to show them the situation of labourers there (Mainichi Shimbun 2009; Interviewed with the Advocacy Network for IT-TIP Workers’ Rights, Fukui branch, 16th September 2016). As a result, the final report written by Ezeilo concluded that IT-TIP/TITP ‘was used by some companies as a conduit to bring in unskilled workers to Japan at very low wages, under conditions that may well amount to trafficking’ (UN Office of High Commissioner of

Human Rights 2014:23; 2009:2). Along the same line, the UN Special Rapporteur on Human Rights on Migrants, Jorge Bustamante, received similar information from these domestic activists and argued that some of the situations of trainees and interns ‘amount to slavery or trafficking’ (UN Human Rights Council 2011b:10).

Despite these criticisms of the maltreatment of female trainees and interns from international society, the Second Abe Cabinet declared it would use women, senior citizens and foreigners to address the diminishing workforce, and it identified the expansion of TITP as one of its principal plans to use foreigners (Prime Minister’s Office 2014). Again, Prime Minister Abe, however, emphasised this was not a policy to encourage immigration (Sankei News 2014). Given that women and foreigners are now identified as a part of the core workforce for Japan, it would be crucial to deliberately represent the problems of female interns to introduce the labour protection for TITP labourers. In their questionnaire to the Japanese government in July 2014, the UN Human Rights Committee linked human trafficking and TITP issues in relation to female labourers. The UN Human Rights Committee (2014) began by asking for the definition of human trafficking used in the Japanese government’s 2009 Action Plan. It then asked if the government was planning to replace TITP with a new employment programme for foreign labourers. The Committee likewise asked why the government was not planning to introduce the legislation on prohibiting sexual harassment at workplaces (UN Human Rights Committee 2014). As a result, despite the government’s official denial of labour trafficking, it stated TITP as a potential cause of trafficking and uncovered its intention of providing remedies to these labourers in the 2014 revision of the government’s Action Plan (House of Councillors, Health, Labour and Welfare Committee on 21st October 2014; Ministerial Meeting Concerning Measures against Crimes 2014).

Although discourses on IT-TIP/TITP as ‘labour trafficking’ or ‘modern slavery’ have been constructed through multiple levels of communications, this does not necessarily mean that the Advocacy Network and lawyers have a clear idea about what human trafficking and modern slavery are (Ibusuki 2013; 2009; Torii 2007). Even without a clear definition or understanding, Torii emphasises the benefits of using these terms in justifying their idea to abolish IT-TIP/TITP (Interview with Torii 2015). Lawyer 4, the head of the IT-TIP Lawyers Network, uncovers the problems and the advantages of using these terms as follows:

In practice, it is hard to apply the Penal Code related Human Trafficking introduced in 2005 and Article 5 (Forced Labour) in the Labour Standards Act to the cases of IT-TIP/TITP. These labourers are not necessarily forced to work. Rather, in some cases, they are forced to stop working and are deported to their own countries. In addition, if legislation like the Modern Slavery Act which was established in England was set up here, many companies using TITP would be destroyed. Therefore, if the Japanese government would like to facilitate laws to punish those companies, it should abolish TITP in the first place... Indeed, discourses on human trafficking and slavery are tricky, as we are not so sure our cases can be recognised as trafficking. Moreover, victims are not necessarily only females. However, those discourses on vulnerable female labourers have helped us raise the question of decent work for migrant workers (Interview with Lawyer 4, 1st December in 2015).

This comment suggests that these activists have used the terms *human trafficking* and *modern slavery* interchangeably to problematise IT-TIP/TITP and cause it to be banned. In their meetings with bureaucracies on combatting human trafficking in November 2012,

JNATIP and SMJ quoted a series of criticisms from the UN Special Rapporteurs from 2009 to 2011, suggesting that TITP causes human trafficking for the purpose of labour exploitation (JNATIP 2012). In 2013, Torii also received the Trafficking in Persons Award from the US Department of State for his long dedication to fighting against human trafficking (US State Department 2013). This was a very symbolic gesture to appeal the existence of labour trafficking and modern slavery despite Japan's denial of these issues. However, it is also dangerous to emphasise the rhetoric of the anti-trafficking and anti-slavery. The risk of relying on such rhetoric can be seen in the way in which the government has changed in institutions and policies to deal with these issues since 2014.

In December 2014, the MOJ also uncovered that around 25,000 trainees and interns had left their workplaces in the middle of their contracts by 2014, presumably because of abusive working conditions (The House of Representatives Homepage 2015; Sankei West 2015). Whilst the Cabinet Office still has not admitted that labour trafficking or modern slavery exists in Japan, it promulgated the new legislation to protect the rights of TITP workers on November 28, 2016 (Ministerial Meeting Concerning Measures Against Crimes 2018; 2014; MHLW Homepage 2016). This entered into force in November 2017 (The Japan Times, 1st November, 2017a). Based on this revision, a new body called the Organisation for Technical Intern Training: OTTI [*Ginojishusei Kiko*] was set up in January 2017 to oversee TITP under the MOJ and MLWH. This body has the legal authority to conduct investigations with labour and justice ministries. Some measures were also put in place to improve the regulation of the business associations and enterprises involved in the programme (MOJ and MLWH 2016). The Immigration Bureau also revealed a rise in the number of cases of abused TITP labourers in 2016. Although it carefully avoided the terms *labour trafficking* and *modern slavery*, it said that 'numerous human-rights violations have been reported' (The

Japan Times, 8th March 2017b). As a result, the government also announced it would commit to the global initiatives of the UN SDG 8.7., which emphasise the human trafficking and modern slavery paradigm (Hayakawa and Barnes 2017).

These changes in the government's perception from Filipina entertainers as human trafficking towards the IT-TIP/TITP as 'labour trafficking' and 'modern slavery' can be assessed positively. On the positive side, domestic activists who used their materials and international norms could be said to have improved the lot of IT-TIP/TITP labourers. However, it is dangerous to overlook the fact that the content of the new legislation for TITP labourers is almost the same as the JITCO white paper based on the Labour Standards Act (MHLW Homepage 2016). Despite Article 5 in the Labour Standards Act proscribing 'forced labour', which could be a legal tactic to eradicate 'modern slavery', activists do not suggest revising this Article. As explained in Chapter 3, in Japan the meaning of forced labour does not include any case where labourers consent to work. For this reason, these activists are reluctant to revise Article 5. Instead of drastically revising the Labour Standards Act, the government forces business enterprises to take responsibility while keeping the TITP scheme as a convenient backdoor for flexible labour.

We also cannot avoid the fact that domestic activists have not achieved their fundamental goal – abolition of TITP scheme. As Torii illustrated, the number of trainees and interns who 'disappeared' and became irregular migrants are relatively small, in comparison to the case of South Korea. As briefly illustrated above, in South Korea the number of irregular migrants consisting of former trainees and interns reached 189,000 in 2000. This convinced the South Korean government to introduce the new scheme to invite unskilled labourers in 2004 (Haruki 2010). Compared to South Korea in the early 2000s, both JITCO and Torii

suggested that the proportion of missing TITP labourers was only 1% of the total number of these labourers (the Judicial Affairs Committee, the House of Representatives, on 23rd May 2014).⁵⁸ While believing that Japan should abolish the TITP scheme and replaced it by an official unskilled labour programme, Torii also implied that the Japanese TITP scheme has worked better than in other countries (Ibid.). This has also convinced the Japanese government to believe that it would be possible to maintain this scheme rather than abruptly abolish it.

To sum up, while the government has officially denied the existence of unskilled labourers and their risks of being trafficked, discourses on IT-TIP/TITP as ‘labour trafficking’ and ‘modern slavery’ have emerged since 2006. Discourses constructed within domestic activism, and their use of information from community unions and lawyers, and their network with international society, have facilitated changes in institutions and policies to provide remedies to TITP labourers by November 2017. Regardless of whether IT-TIP/TITP comprises trafficking or modern slavery, these activists have successfully raised the problems of unskilled migrant labourers in IT-TIP/TITP. Human trafficking discourses have been extended to modern slavery in order to discuss labour rights since the late 2000s. However, these activists have failed to achieve their aim of banning the TITP scheme; the government has tried to expand the use of TITP and pass the responsibility for their trainees to businesses.

⁵⁸ The number of TITP labourers who went missing was 1,500 in 2012, while the total number of these workers was 150,000.

Conclusion

The purpose of this chapter was to illuminate the neoliberal context for the expansion of immigration and labour institutions within a global market. It also showed how discourses on labour trafficking and modern slavery played a significant role in improving working conditions for IT-TIP/TITP labourers. To achieve these purposes, this chapter explored the process by which discourses on IT-TIP/TITP as ‘trafficking’ and ‘modern slavery’ emerged within political activism for unskilled migrant workers from 1990 to 2017. In particular, it demonstrated how these discourses have come to be recognised by the government through the interaction between coordinative and communicative discourses. In this respect, this particularly showed how activists who are closer to the policy-making process had used their domestic and international networks as well as the media that create their discourses in public. This also explained the reason why it took so long for the Japanese government to provide remedies to TITP labourers.

Global competition in manufacturing since the 1980s has forced Japanese industries to seek lower manufacturing costs, including cheap labour. Expanding the visa categories to invite cheap labourers from the Global South, and deregulating the labour market, have been crucial to providing factories with flexible labour. Domestic demand for workers in different economic sectors has increased in an aging society with low fertility. This has shifted the debate towards accepting migrant labourers in the context of the radical structural reform implemented by the Koizumi Cabinet since the early 2000s. By the mid-2000s, a series of reports from Keidanren (2004), in particular, clarified that the question was no longer whether Japan should accept immigrants. Rather, the clamour of the economic sector

strongly suggested that the government should deal with the treatment of migrant workers in Japan.

The emergence of a new type of labour union in the early 1990s, called a community union, has been key in protecting migrant labourers. The end of the bubble economy and the labour market reforms since the 1990s have created a demand for a wide range of workers. This made it impossible for enterprise unions to be effective. Since the extension of IT-TIP/TITP blurred the line between skilled and unskilled workers, the discussion of labour rights has become more prominent. This has prompted a discursive shift since the mid-2000s, from *whether* Japan should accept migrant labourers to *how* it should treat the ones it already has.

To push for the abolition of IT-TIP/TITP and replace it with a new guest worker visa scheme, political activists have strategically used discourses on ‘labour trafficking’ and ‘modern slavery’ to problematise IT-TIP/TITP, without considering what these terms mean. Their empirical appeals have been highlighted in the US TIP reports for 10 years since 2007, as well as in a series of reports on human rights and human trafficking published by the UN Human Rights Council and Committee since 2009. As a result, the government not only admitted trainees to full worker status in the revision of the ICRRA in 2009, which introduced TITP. It also started to mention TITP and uncovered its intention of providing remedies to the TITP labourers in the Action Plan on Combating Trafficking in Persons in 2014, and introduced the investigation body called OTTI and the remedies to protect TITP labourers enforced by November 2017. Moreover, it began to take part in the initiatives for the UN SDG 8.7., in order to eradicate human trafficking and modern slavery.

In this sense, political activism for TITP labourers could be evaluated positively. However, it is also crucial to warn that the government has made an only minor change in providing remedies to TITP labourers implemented in 2017. While avoiding making use of Article 5, Labour Standards Act which criminalises forced labour in Japan, the government implemented the legislation to protect TITP labourers in 2017 which mostly overlapped with the existing Labour Standards Act. It is because the concept of forced labour traditionally refers to the situation in which labourers do not consent to work but are forced to work. In addition, because activists and the government have shared the idea that the number of trainees and interns who left their workplaces has been fewer than in other countries, the TITP scheme has remained to date. While keeping this scheme, the government blames businesses, while avoiding accepting these labourers' future settlement.

Chapter 6

IT-TIP/TITP as a device of ‘Modern-Slavery’?: A case of the clothing/textile industry in Japan

[A garment factory K¹ in Ishikawa Prefecture] forced [Chinese women] to work excessive hours at below minimum wage. In 2011, their busiest year, the women were working 16 hours a day, six days a week, with 15 minutes for lunch, according to the lawsuit and work records. For that, they were paid around ¥400 per hour, according to records reviewed by Reuters.

- The Japan Times (2014a), *Interns abused as labour crisis grow*, on 12th June 2014.

I am exhausted, physically and mentally. However, I have to remind myself of the amount of money I paid to the agent in coming to Japan. I know that I cannot give up on this job, but cannot stop crying...

- A diary written by a former TITP garment labourer in the period of her stay from 2009 to 2011 in Tokushima Prefecture.

Introduction

The purpose of this chapter is to explore the nature of the clothing/textile industry² which creates the demand for migrant labourers in Japan, and to assess the discourses on IT-TIP/TITP labourers constructed within political activism. As Chapter 5 which mostly traced ideational processes that caused changes in institutions and policies by 2017, this chapter

¹ The company *K* is one of the interviewees as Employer 9. I interviewed the firm owner of the company *K* during my fieldwork. During the interview, the owner has kept calling the female TITP labourers who sued him ‘that kind of people [*aitsure*]’.

² As in Chart 11, the clothing/textile industry consists of various types of factories and processes, but I only accessed textile and garment factories as there are a limited number of spinning factories exists in Japan. I accessed dying factories in Sumida in Tokyo, but they do not hire any TITP labourers there.

assesses if these labourers amount to slaves. One step further, this also considers to what extent these institutional changes by 2017 might be able to influence the strategies and abilities of migrant labourers and their employers at workplaces.³ To do so, this chapter provides a different level of analysis from the previous empirical chapters. It argues that discourses on IT-TIP/TITP labourers as ‘trafficked victims’ or ‘modern slaves’ have been constructed within activism since 2006, whether or not they had been working in exploitative conditions. My evidence from the fieldwork suggests that these labourers were, at some point, deceived, exploited, and threatened. However, most TITP labourers have access to information about supporting organisations and have strategies to claim their labour rights. They are allowed to use mobiles and internet, and sometimes independently negotiate their working conditions with their employers. The evidence from fieldwork indicates that these labourers are not mere victims. They are even allowed to change their employers through informal arrangements if they have decent reasons, despite the fact that changing workplaces is forbidden in principle.

As clarified in Chapter 5, IT-TIP and its successor, TITP, has been one of the core recruitment schemes to supply unskilled workers to small and medium-sized factories in rural Japan. It shows that by late 2017, immigration and labour institutions associated with IT-TIP/TITP had changed to provide remedies to labourers exploited by their employers. In these discursive and institutional shifts, the role of political activism against IT-TIP/TITP as labour trafficking and modern slavery have been significant. In particular, since the mid-2000s activists have highlighted the problems of IT-TIP/TITP labourers in rural factories, but these factories are also associated with global supply chains. The problems of the IT-

³ This chapter does not provide the analysis of policy consequence based on the government’s revisions in November 2016 as my two periods of the fieldwork were conducted from October 2015 to January 2016, and from August 2016 to October 2016.

TIP have derived from the ambiguous status of its trainees particularly in the clothing/textile industry, who had the long-working hours, but not the pay or protection as regular workers.

The impetus for promoting the rights of insecure migrant labourers in the global supply chains came from the 2001 UNGPs adopted by the UN Human Rights Council. The purpose of these principles is to measure human rights performance of companies and states in the business sector (Vogt 2017). John Ruggie, the UN Special Representative on business and human rights, developed the framework for protecting human rights in business in 2008. Based on this framework, in 2011 the UN Human Rights Council (2011a) established the UNGPs to codify the human rights responsibilities of states and business enterprises in protecting human rights. In the same way, in 2014 the ILO adopted the Protocol of the Forced Labour Convention, which supplemented the 1930 Convention, in order to fight against forced labour including labour trafficking and modern slavery. Along with these international norms against trafficking and modern slavery, some American states and European countries have established new legislation punishing employers who are involved with trafficking and modern slavery.⁴ Against the background of these international norms, not only states but also business enterprises now have responsibility for human rights. Discourses on trafficking and modern slavery now demand that business enterprises promote the human rights of labourers in GVCs, regardless of gender and ethnicity, more specifically described as the forced labour chains.⁵ By raising awareness of maltreatment of labourers in GVCs, policy-makers, business leaders, and civil society organisations now routinely call for the intervention of business, in order to tackle forced labour (Lebaron et al., 2018). One step further, to understand the nature of forced labour and to raise awareness

⁴ California state introduced the California Transparency in Supply Chain Act in 2010. The United Kingdom passed the Modern Slavery Act 2015, just before the ILO protocol went into effect (Gov.UK Homepage 2015).

⁵ My understanding of GVCs and the forced labour chain which Barrientos develops is placed in Chapter 2.

of these labourers' rights, the concept of forced labour chain has been developed (Stringer et al., 2016; Barrientos et al., 2013).

As Chapter 5 clarified, Japan is one of the advanced countries which have been seeking to cut costs and boost profits by hiring cheaper migrant labourers from Global South especially since the early 1990s, while it has not signed or ratified the 2014 ILO Convention.⁶ While Japan is a key market for the North American and European luxury brands, factories in rural Japan are also producing clothing products for these countries. Some of the rural factories in Japan are also embedded in the global clothing supply chains while supplying their products for the Japanese market. For instance, the above-mentioned factory *K* in the first quote was a contracted garment factory in Burberry, and some of Burberry's products made of pleated fabric is sewn in this factory even for the North American market. In this context, as Chapter 5 illustrated, activism against IT-TIP/TITP as a cause of labour trafficking and modern slavery has appeared since the mid-2000s.

Around the mid-2000s, the chronic shortage of labourers in Japan and the economic pressure resulted in a shift in the discourses on unskilled labourers. The shift raised awareness of the lack of protection for trainees at their workplaces. In July 2009 the government promulgated the revised ICRRA which was planning to abolish the first-year trainee period, and the new legislation for protecting the rights of those labourers was introduced in November 2016. In these revisions of immigration and labour regulations, the discourses on IT-TIP/TITP as trafficking and modern slavery were shaped in a loose network between domestic political actors and international organisations.

⁶ See ILO Homepage (2017a).

However, there has not been enough assessment of how far these migrant labourers in Japan amount to modern slaves. As shown in Chart 8 in Chapter 5, the number of IT-TIP/TITP labourers in the clothing/textile industry was much greater than those in other business sectors by 2014 (JITCO 2015). Partly because of the number of trainees and interns accepted into this industry, the worst cases of forced labour have come from factories in major clothing supply chains. In particular, as garment factories are highly gendered in Japan, leading NGOs such as SMJ have emphasised the discourses on those female labourers as ‘trafficked victims’ or ‘slaves’. The media also highlighted the exploitative working conditions of those labourers, arguing that those in garment factories in rural Japan are forced to work and have no way to escape (Asahi Shimbun, 21th November 2016; The Japan Times, 13th August 2014b). Some of the evidence which I collected during fieldwork also indicate that female garment trainees in Shikoku had to work for 15 hours every day during their stay.

At the same time, however, previous studies and my experience in the field suggest that some of these labourers are actually pleased to work there and are eager to stay in Japan (cf. Liang 2014). Moreover, the data show that those ‘vulnerable’ migrants negotiate with their employers, to maximise their mutual economic benefits while minimizing the threat of state sanctions. In short, there is a gap between constructed discourses as labour trafficking and modern slavery versus the situations at the workplaces. This is the point which some of the previous studies, though mostly paying attention to the sex industry, discuss the degree of agency of those who are described as ‘trafficked victims’. These studies show that the degree of agency contributes to creating the nature of illegality (Aoyama 2014; Parreñas 2011; Samad 2010).

To assess what sorts of actions and possibilities the gap between constructed discourses and the situations at workplaces has facilitated, it is helpful to understand not only the discussion of the border between unfree and free (Lerche 2007), but also how the nature of illegality blurs such a line (Ruhs and Anderson 2010; Lutz and Palenga-Mollenbeck 2010). The existing literature on human trafficking and modern slavery has uncovered that there are various types of unfreedom and illegality at different points in the immigration process.⁷ Stringer et al. (2016) analyse the work conditions of migrants in the fishing industry in New Zealand, emphasising their unfreedom at the exit point of their labour contract. Barrientos et al. (2013) also discuss migrants with regular contracts who are subjected to various forms of exploitation, coercion, and deception at their workplaces and on exiting their contract. These scholars working on modern slavery in business have attempted to classify these ambiguous terms by exploring different industries in various countries whose labourers may be exploited.

It is, however, crucial to clarify what kind of agreements also exist between employers and labourers at some workplaces on the matter of illegal working conditions.⁸ As Anderson and Ruhs suggest (2010), there can be various informal agreements between employers taking advantage of their status as visa sponsors and vulnerable migrants trying to maximise their benefit. Anderson and Ruhs define such situations as ‘semi-compliance’ with reference to ‘breaking employment conditions, but there are many other ways in which a migrant can be legally resident but violate the restrictions attached to their status’ (Ibid.). Such semi-

⁷ As explained in Chapter 2, there are multiple meanings of unfreedom depending on what kind of aspects you focus on. In terms of borders between unfree or free, it is hard to establish the yardstick to draw such borders because they are embedded within political and social contexts. I am going to use this term to include not only economic coercion such as debt bondage, but also physical and psychological pressure on the labourers.

⁸ As mentioned in Chapter 1, various aspects of illegality associated with migrant labourers have been developed for the last 10 years. For instance, Nelson et al. (2015) and Cheng (2010) discuss how ‘intimacy’ works in the sex industry.

compliance is relatively harmless, though this view has been pushed away in constructing discourses on human trafficking and modern slavery. It is because the term *illegality* is easily conflated with the concept of unfreedom. The particular types of illegality might not be even visible depending on the motivation of labourers and employers, and the way in which political activists construct discourses. Conducting an in-depth investigation on the relationship between employers and migrant labourers is therefore required to assess how the degree of agency between the two plays within the structure.⁹

The data was collected during fieldwork conducted in Hokuriku and Shikoku in Japan from August 2016 to October 2016.¹⁰ During the fieldwork, I interviewed around sixty participants including activists and lawyers whom I mentioned in Chapter 5, and industrial association organisations, employers and employees mostly from China in the clothing/textile industry.¹¹ In analysing discourses in the interview data from the fieldwork, I mostly code by hand while partially using Nvivo to organise the data. I also introduce the ILO/EC (2009) operational indicators which provide the guidelines to clarify the concepts of coercion, exploitation, and deception at workplaces in the manufacturing industry. To analyse my data from the clothing/textile industry in Japan, I adjust the political actors in the operational indicators as in Chapter 2.

This chapter starts to illustrate the context of globalisation which has influenced the clothing/textile industry in Japan and how the Japanese clothing/textile industry and their labourers in Japan fit in the constructed discourses on human trafficking and modern slavery. In this process, I map my data from this industry by using the ILO/EC framework. Finally,

⁹ To understand the situations of TITP labourers in the agricultural industry in Japan, see Liang (2014).

¹⁰ Hokuriku and Shikoku are traditionally famous for manufacturing products related to clothing.

¹¹ In a total of 8 labourers, 6 were from China, 1 was from Vietnam and 1 was Bangladesh. In terms of other interviewees, please see Appendix 2.

this chapter discusses factors which contribute to creating the nature of illegality experienced by TITP labourers in this industry.

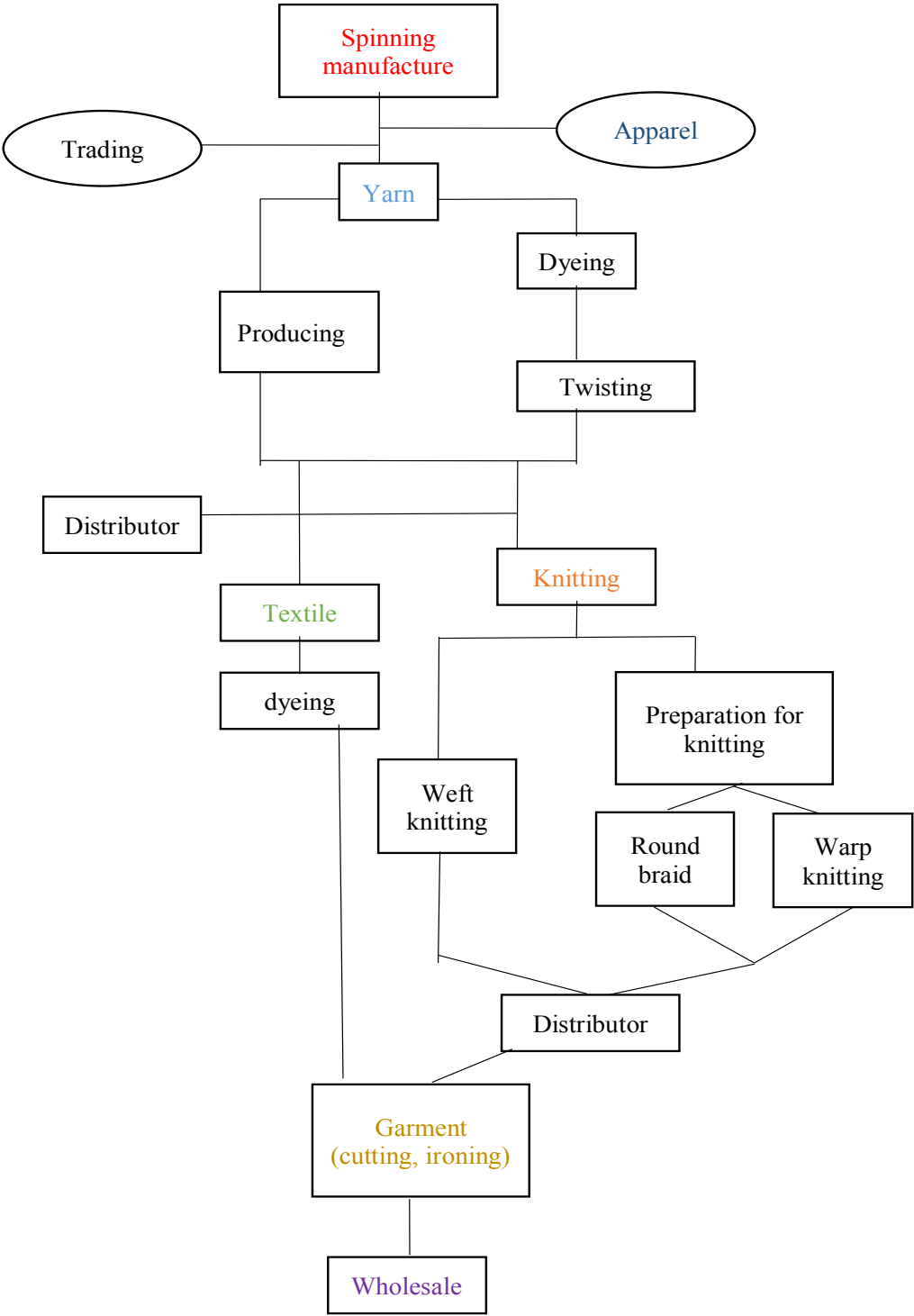
1. The Japanese clothing/textile industry inviting forced labourers in globalisation

Forced labour, especially in a migrant workforce, takes place in a variety of contexts. To understand these labourers in the clothing/textile industry in Japan (Chart 11),¹² it is crucial to know the globalisation in this industry and how Japanese manufacturing factories are embedded in it. The globalisation in the Japanese clothing/textile industry started in the 1980s and has accelerated since the 1990s. The falling prices of clothing encouraged by using cheap labour in developing countries damaged the competitiveness of the Japanese apparel industry in the global market. To seek low manufacturing costs using cheap labourers, Japanese apparel and trading enterprises decided to contract factories in mainland China in the late 1980s (Watanabe 2003). Since then, some of the textile and garment factories have gone offshore to keep their contract with those apparel and trading enterprises, while others have remained in Japan. However, it does not necessarily mean that those companies which have moved their factories offshore do not produce clothing for the Japanese market. For instance, as explained in Chapter 5, Chinese factories run by Employer 10 produce UNIQLO lingerie for the European and North American market, while his Japanese factory in Toyama produces luxury lingerie for the Japanese market. To operate their factory in Japan, this company has hired TITP labourers. Employer 4 in Noomi also uncovered that they are making hijab for the Middle Eastern market, while having a contract

¹² There are, if it is classified precisely, 10 to 11 processes needed to produce clothing. The business relationship between textile and garment factories is usually barely seen. For this reason, most of the owners of textile factories suggest that they have no idea which garment factories are going to dye or sew their fabric.

with American lingerie brand, Victoria’s Secret (Interview with Employer 4 in Noomi, 29th August 2016). In this sense, these factories have been taking part in the structure of global supply chains while engaging the domestic market.

Chart 11: The structure of the clothing/textile industry



A major Japanese apparel company, UNIQLO, emerged as a low-cost supply chain in 1995. UNIQLO presented a new business model, called Special Retailer of Private Label Apparel (SPA), in which the company negotiates directly with material suppliers around the world and owns their garment factories, or buys lines in their contractors' factories to produce their products. This new business model spurred on the fast fashion trend, where companies manufacture quickly, and consumers buy current clothing styles at a low cost. This market-based model of fast-fashion was developed based on a manufacturing model called 'quick response', created in the US in the 1980s. Based on this transformed business model, Japanese factories were expected to produce clothing quickly to meet the demands of the market. In order to be competitive against China in particular, quick response is required, because by 2013 China supplied around 85% to 90% of Japan's clothing products (METI 2013a). This need to provide a quick response, and to produce competitive products for the global market, was emphasised in the MITI's 1998 strategy for the textile industry (Takahashi 2013). As part of this trend, major textile companies such as *Toray* and *Teijin*, who used to have their textile and garment factories,¹³ dismantled their group's factories to go offshore. As these factories are subcontractors which automatically receive orders from their parent enterprises, these enterprises' decisions to go offshore caused enormous damage to these factories (Oi 2014).

The sharp increase in the average minimum wage in China over the last decade has pushed the globalisation of industry even further. This has made it difficult for manufacturing factories to use Chinese labourers, as they seek better-paid jobs (cf. Shih 2015). In addition,

¹³ These enterprises relied on the vertical *keiretsu* system of affiliated firms which were expected to be flexible and efficiently integrated firms (Noland 2007). For those factories, it was almost impossible to work together going over their affiliated supply chain.

to avoid the risk of overconcentrated investment in China, global enterprises turned their attention to Southeast Asian countries. This tendency (called ‘China plus one’) has focussed on Vietnam, in particular, because of its constant population growth and the expectation that it will be the US’s export base (Nakamura 2016; Goto 2011). In addition to low-wage workers in Vietnam, the US’s export tariff to Vietnam was projected to fall, especially if the Trans-Pacific Partnership (TPP) had been implemented.¹⁴

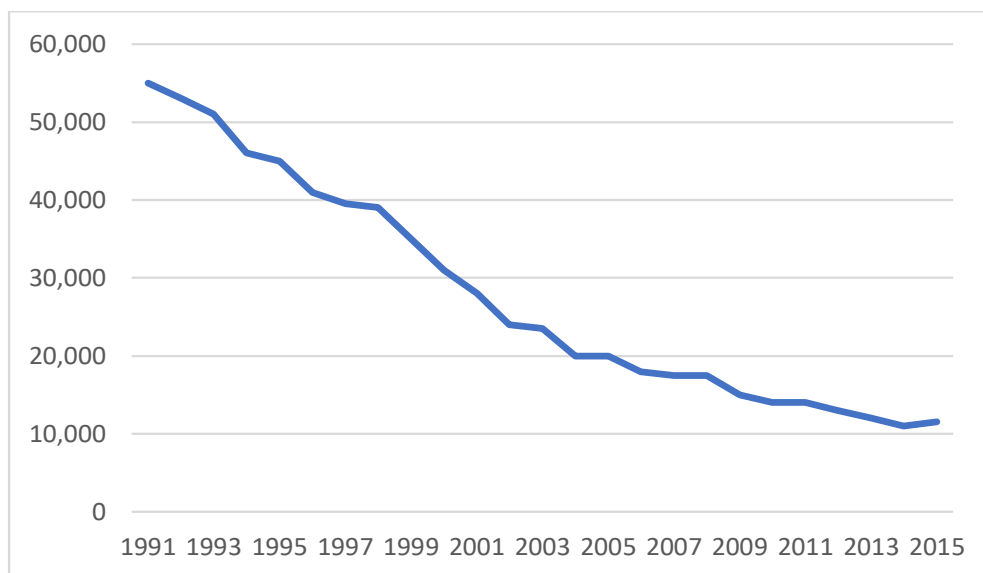
This competition in global trade put pressure on Japanese employers in the clothing/textile industry to survive, motivating them to develop their business network in Southeast Asian countries. To survive this competition, some textile firm owners reveal in the interview that they are strategically planning to employ labourers from Vietnam with their expectation that it will be one of the fastest-growing economies in Southeast Asia (Interview with Employer 4, 2016; Nikkei Asian Review 2017).¹⁵ While developing their business network in Southeast Asian countries, some medium-sized textile companies in Hokuriku and Shikoku also own their Japanese garment factory in Ishikawa and Tokushima for the purpose of quality control. Some of them have hired migrant labourers in their garment factories, but these medium-sized companies invite those labourers through the channel of acceptance managed by individual enterprises. As in Chapter 5, no industrial association organisations or intermediaries are involved in its recruitment system.

¹⁴ The fieldwork was conducted from August 2016 to October 2016, which was before the US president election. At that time, there was an expectation that the TPP would raise trading opportunities for Vietnam among textile business circles. Trump declared America’s withdrawal from TPP in January 2017.

¹⁵ Some Japanese textile factories have produced unique textures or sub-materials of clothing have received a positive evaluation in world textile competitions such as the *Première Vision Paris*. For instance, *Komatsu Seiren* is one of the medium-sized enterprises in Ishikawa Prefecture working with international fashion brands such as Louis Vuitton. This enterprise won the prize at *Première Vision Paris* and developed their business networks around the world even without recruiting foreign trainees and interns.

On the other hand, the number of garment factories in Japan has shrunk due to the higher labour costs compared to those in developing countries (Ishikawaken 1979). The number of factories has decreased from 55,000 to around 10,000 by 2015 (Chart 12). This has happened not only to Japan. Most advanced countries have simply exported bad working conditions to developing countries in establishing their global supply chains. As some studies discuss, the garment factories have always been low-paying and had long working hours, which makes the industry infamous as an exploitative workplace (Mezzadri 2017; Kabeer 2004). Globalisation and technological changes allowed for the fragmentation of production processes, while the international wage gap encouraged the relocation of labour-intensive industry. Garment factories, among others, moved from a highly paid workforce in the North to low-paid one in the South (Standing 1999).

Chart 12: The number of clothing/textile industries in Japan (source: Kogyo Tokei by METI, 2018)



Under such circumstances, it seems there would be no demand for Japanese garment factories, but the ‘made-in-Japan’ label is still valued in this industry. In Japan, the Japan Apparel Industrial Association [*Nihon Apparel Sangyo Kyokai*] decided in 2006 that the

country of origin for clothing products should be the country that completes the sewing process. To differentiate themselves from other countries, Japanese apparel makers have tried to add value to their products as Japan-made products (Sakaguchi 2011; Koyama 2007). This 'J-Quality' movement has motivated Japanese apparel companies to use domestic garment factories so that their products are valued for their high quality (METI 2016b).¹⁶ This trend in the domestic Japanese fashion industry has made the industry competitive with foreign products and has maintained domestic garment factories. For this reason, although around 90% of clothing in Japan is tagged as 'made in China', the clothing/textile industry still tries to keep at least one domestic garment factory to develop new products and control quality.¹⁷

Globalisation has also encouraged the development of direct links between domestic factories and the major apparel enterprises in Tokyo and Osaka. These garment factories are the ones in the Japanese clothing/textile industry who survived the dismantling of domestic supply chains. They have managed to create exclusive lines, using these direct links to promote unique sewing patterns or fabric.¹⁸ Building direct business links with major apparel enterprises is, however, no easy task because apparel companies have several metrics they can use to choose their factories.¹⁹ Having a direct link with major apparel companies is crucial for local factories to survive, especially in this twilight period for the industry. They are the last part of the production process, and their manufacturing costs

¹⁶ See J Quality Homepage (<https://jquality.jp/en/>). In practice, some of the luxury and upper-middle apparel brand such as WORLD.Co.Ltd. has advertised that they have obtained J-Quality on their websites. See WORLD.Co.Ltd Homepage (<http://corp.world.co.jp/news/1631/>).

¹⁷ This statement is also supported by some of the firm owners (Employer 1-3).

¹⁸ Some factories are now required to offer a suggestion on designs and to develop the new products to the apparel factories. This business model is called Original Design Manufacturing (ODM), which differentiates from Original Equipment Manufacturing (OEM).

¹⁹ It depends on what they need to make products, but they mostly consider the following factors: pattern makers' skill, their time management skill, and their ability to respond to trends. If factories cannot meet these standards, they cannot have a direct relationship with major apparel companies.

(material cost + labour cost + processing fee) remains only around 20 % of the selling price. As the largest part of the manufacturing cost, the labour cost comes to around 10% of the selling price. The labour cost could be squeezed even more depending on how many trading companies and merchants are involved before the product reaches a garment factory. This means that if the factory is a sub (-sub) -contractor of a bigger garment factory, the unit price received by the company becomes lower than 20 %.

Moreover, it has been said that the average age of employers and labourers in this industry has been getting higher since the 1970s. The historical evidence from Ishikawa and Tokushima Prefectures indicates that they already face the aging of owners and labourers, and anxiety about their lack of successors (Tokushimaken 1975; Awa Oegun Kouiki Shoukougyou Shinkou Kyogikai 1980; Ishikawa Housei Kyokai 1980). For instance, the data from Tokushima Prefecture indicates that both the average age of firm owners and labourers in garment factories was over the age of 45 (Table 5). In addition, higher education and the rise of minimum wages have also caused this industry to shrink. The decline was already projected for factories in clothing manufacture at the beginning of the 1980s.

Table 5: The average age of firm owners and employers in Tokushima prefecture in the 1970s (created by author based on the survey conducted by Tokushima prefecture: Tokushimaken 1975)

The total number of owners	The average age of owners
224	45.6

	The number of firms	The average age of labourers
The number of labourers: 1-5	57	44.6
: 6-10	71	46.6
: 11-15	51	45.3
: 16-20	45	45.5

In this context, migrant labours have come to be an indispensable part of the workforce in small factories in rural Japan. As Chapter 5 clarified, METI also understood the difficulties in garment factories, arguing that the expansion of IT-TIP was key to the survival of small factories in global competition, as this provides flexible labourers. ‘Flexibility’ for these small firms, however, often includes the unnecessary control of labourers, such as taking custody of their passports, forced deportation, and placing them under surveillance. In order to promote the labour rights and wages of migrant labourers at the low end of labour market embedded within both domestic and global supply chains, discourses on IT-TIP/TITP in the advocacy against labour trafficking and modern slavery have emerged in Japan.

Despite this, research into forced labour chains in the clothing/textile industry is fragmented. The ILO and some leading scholars have paid attention to this industry, especially the labour chain in India (Mezzadri 2017; ILO 2015; Lerche 2007), but research exploring this industry and its migrant labourers in Japan is still scarce. As in Chapter 2, the terms ‘exploitation’, ‘deception’, and ‘coercion’ are often used to describe the situations of those labourers, but few studies assess if these terms are truly applicable to TITP labourers. To fill these omissions, in the following section I introduce the ILO/EC operational indicators (2009). By using the indicators, I examine the working conditions of TITP labourers in the clothing/textile industry in Japan. As in Stringer et al. (2016), I also try to clarify the exit strategies of those labourers – how they respond to various types of exploitation and how these labourers are rescued. In doing so, I clarify various types of illegality experienced by labourers in this industry.

2. 'Forced' labour in the Japanese clothing/textile industry

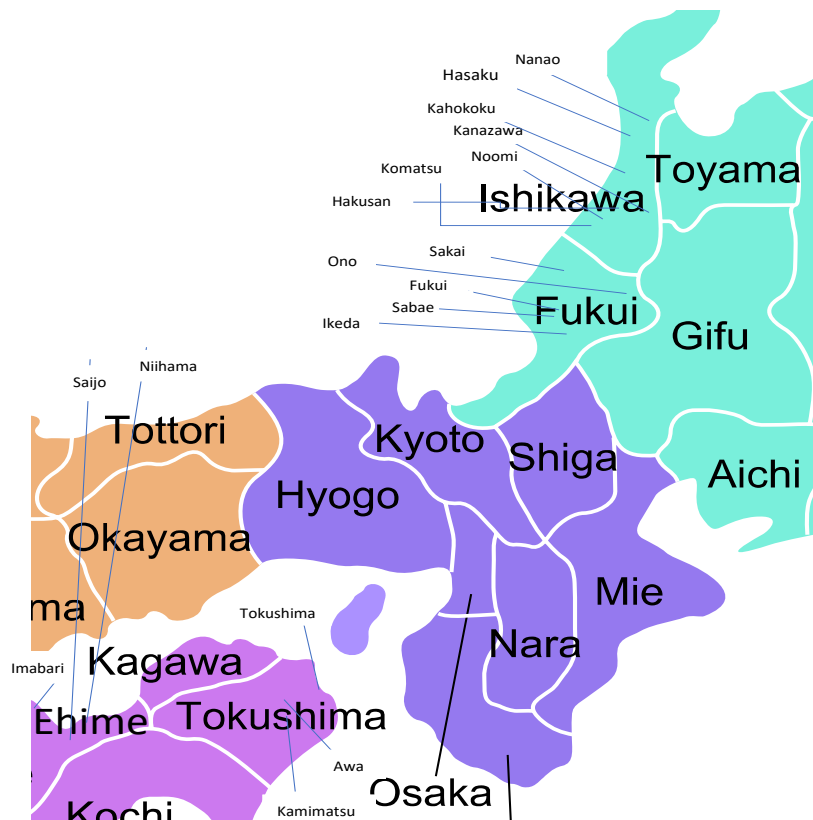
The previous section placed the Japanese clothing/textile industry in domestic and global supply chains that have created the demand for migrant labourers. Before going further into findings from the fieldwork, the following section will explain the areas which I focus on.

2-1. Clothing/textile industry in Hokuriku and Shikoku

Hokuriku and Shikoku²⁰ are traditionally famous for the manufacture of clothing products. As discussed in Chapter 5, in the early 2000s, the Koizumi Cabinet facilitated the development of Special Zones in order to expand the number of unskilled migrant workers. Creating Special Zones was also a part of neoliberal reform which the government has facilitated to invite more flexible labourers to the rural factories in Japan. These IT-TIP Special Zones were set up in July 2007 by the Development Office of Special Zones for Structural Reform. Some cities in both Hokuriku and Shikoku submitted proposals to the Special Zones to enable the expansion of the number of TITP labourers and the extension of their stay. This shows that the manufacturing sectors in both areas have requested more IT-TIP/ TITP labourers.

²⁰ I identified Hokuriku and Shikoku to investigate at the beginning of my fieldwork conducted from August 2016 to October 2016, based on information from the Tokyo resource centre located in Sumida, Tokyo. According to the Tokyo resource centre, Hokuriku is famous for the textile industry, while garment factories have spread all over Shikoku. They also clarified that the greater the distance from the major apparel companies in Tokyo or Osaka, the more factories feel squeezed in the distribution process. Therefore, I needed to find factories outside Tokyo and Osaka.

Map 1: Map of areas I visited in the fieldwork (created by author)



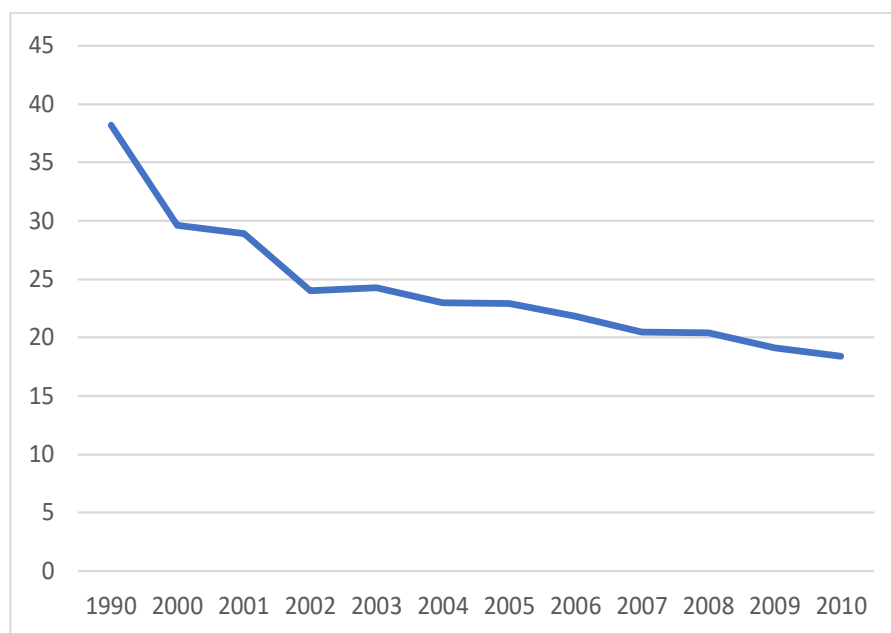
Textile industry in Hokuriku produces 13.3 % of the nation's textile products, mainly synthetic fibre (Mizuho Jouhousouken Kabushikigaisha 2013).²¹ According to Hoshimi Uchida (1970), the 1950s recession forced the textile industry to shift from producing rayon textiles to other synthetic fibres, such as polyester. The textile industry can be seen in the cities of Fukui, Sabae, and Ono cities, as well as Ikeda and Sakai in Fukui Prefecture. In Ishikawa Prefecture, the cities of Hasaku, Komatsu, Nanao, Kahoku, and Noomi provide distinctive features. Before the monopolistic textile makers (such as Toray, Teijin and Asahikasei) and major trading companies went offshore in the late 1980s, factories in these areas were integrated into their domestic supply chains.²² A series of external factors—

²¹ This is a research paper authored by the Mizuho Jouhousouken Kabushikigaisha consulting company. This project was commissioned by METI.

²² According to Fukui Shinbun in 1965, the major textile makers controlled 84.7 % of the garment factories in Fukui Prefecture (quoted by Takeda 1976:45). Given these figures, these textile makers appear to have the region's factories under their control.

including oil shocks and the fluctuation in exchange rates—had already been putting pressure on business in Hokuriku since the 1970s (Saito et al. 2005); However, the dissolution of domestic supply chains by major enterprises directly hit businesses in Hokuriku, which is reflected in the drop in the proportion of textile factories in the Ishikawa Prefecture (Chart 13). During this period, local trading companies almost disappeared in Ishikawa Prefecture. They lost the reason for which they had been set up, especially when part of the manufacturing process was outsourced to China, where local trading companies do not exist.

Chart 13: The proportion of textile factories in the Ishikawa prefecture compared to all of the textile factories in Japan (created by the author in reference to *Ishikawaken no Kogyo* by Ishikawa Kenminbunkakyoku from 2000 to 2013)



Some of the factories, however, have maintained their business with big trading enterprises, and provide vocational training to migrant labourers so that these labourers can take advantage of their skills back home. For instance, several trading companies offered a teaching job to the owner of a textile factory in Ishikawa Prefecture, so that they could

develop the skills of textile manufacturing workers in Southeast Asia (Interview with Employer 2, Nanao, 28th September 2016).²³ Through these links with trading enterprises, some of these factories in Ishikawa have decided to use the TITP scheme to invest in human resources for their contracted factories abroad. Other factories in Noomi in Ishikawa Prefecture—which have developed their business by making a variety of products such as lingerie for Victoria’s Secret—made a similar informal arrangement (Interview with Employer 4 in Noomi, 29th August 2016). They agreed with their contracted factories in Vietnam to accept their labourers and provide them with training in Japan. As discussed in Chapter 5, JITCO has prohibited such informal recruitment agreements. This is because it is argued that employers should recruit potential workers through the sending organisations certified by the government of the sending country, and under the supervision of an accepting organisation in the TITP.²⁴

By contrast, Tokushima has a smaller clothing/textile sector than Hokuriku. In 2008, Tokushima Prefecture had 254 clothing/textile factories (METI 2008), in comparison to 775 in Ishikawa (Ishikawaken Kenminbunkakyoku 2008). Unlike in Hokuriku, factories in Tokushima do not have their own brands nor tight networks with SPA enterprises. According to a report published by Tokushima prefectural authority in 1975, 25 % of the 224 factories had less than 5 employees (Tokushimaken 1975). Most of the factories were the second or third-tier subcontractors of major trading companies, and most were small family-run factories that had remained relatively unchanged for over 40 years (Ibid.). These factories in Tokushima often sew female and children’s clothing, uniforms and stretch fabric for the Japanese market.

²³ In other words, this shows that the idea of promoting the ‘Japan model’ within Asia in the late 1980 and the early 1990s by providing the form of training and exchange programmes still existed, to some extent (Noland 2007:12).

²⁴ See p.167, Chapter 5.

These features in Tokushima have not changed since the 1970s. Unlike the factories in Hokuriku, the factories I accessed in Tokushima have not cultivated direct networks with major trading and apparel enterprises. Evidence from 40 years ago indicates that the average monthly income of the Japanese garment worker in Tokushima at that time was around ¥51,000 (£350) (Ibid.), which is almost equivalent to the wage that current TITP labourers receive there now. Ehime and Tokushima in Shikoku have the highest (67.1%) and third highest (64.3%) proportion of TITP labourers, as against other foreign workers with different visa categories. This is according to the MHLW data on foreign labourers in 2016 (2016c). This is also consistent with my fieldwork data, which indicates that most of the garment factories I accessed in Shikoku only use TITP labourers, even though it is illegal (Industrial association organisation 1, 7th September 2016).²⁵ As shown in Chapter 5, work visa categories—such as humanities, international service, and the special skills—could also be ways to recruit foreign workers, but these are not appropriate for the manufacturing sector. The IT-TIP /TITP scheme has therefore been one of the most legitimate ways to keep domestic textile and garment factories in business and quickly meet the demands of the market.²⁶

²⁵ As Table 4 in Chapter 5 shows, IT-TIP/TITP is not designed for firms without Japanese workers to hire IT-TIP/TITP workers. This goes against the idea that these migrant workers should be trained under the supervision of Japanese workers.

²⁶ According to empirical data from both Hokuriku and Shikoku, the garment factory owners often hired home workers [*naishoku*] to fill a deficit of labourers. For instance, Tokushima authority's report indicates that, in 1975, 86.2% of garment factories had contracts with home workers (Tokushimaken 1975). In Ishikawa, there is also a note in the authority's material in 1979 that refers to the increasing number of factories coming to rely on family labour (1979). In both prefectures, however, there is no official updated material indicating the number of clothing/textile factories using home workers, nor of the number using TITP workers.

2-2. Findings from Interviews

Findings from interviews with employers and the clothing/textile association organisations (acceptant organisations) also convince me that the TITP scheme has played a major role in mitigating the above-mentioned industrial pressures in Hokuriku and Shikoku. This section maps data from in-depth interviews with the industrial association organisations, and employers and employees in reference to the ILO/EC operational indicators (2009). As in Chapter 2, these indicators provide a guideline to assess whether there is any coercion, deception, and exploitation in the process of migration. By introducing these indicators, this section assesses to what extent IT-TIP/TITP labourers amount to ‘trafficked victims’ or ‘modern slaves’.

2-2-1. Point of entry

The IT-TIP/TITP labourers primarily come from China to work in the Japanese clothing/textile industry. According to some employers in the garment and textile factories, over the last 20 years, the origins of these labourers have moved from Liaoning province (in the cities of Jiangsu, Shandon and Hubei) to Sichuan province. The average age of Chinese labourers coming to Japan under the TITP has increased, ranging from 30 to 45 years of age. This is because it became hard to hire younger labourers who can get better opportunities in China due to the increasing minimum wages there, while older labourers in China struggle to get well-paid jobs at home. However, Japanese textile factories tend to hire younger labourers in their early 20s from Southeast Asian countries such as Vietnam, Cambodia, and Bangladesh. Most of the labourers whom I interviewed were married, and their families

were living in their hometowns.²⁷ As discussed previously, the diversity of labour backgrounds is the result of the aging of Chinese labourers, the increasing minimum wage in China, and the industrial trends associated with the ‘China plus one’ strategy. Despite the decreasing number and increasing age of Chinese labourers, some small factories in Shikoku hire former Chinese interns by using other visas, although re-employment of former TITP labourers is forbidden.²⁸

At the entry point of the contract, my data provides evidence of ‘deceptive recruitment’ in reference to the ILO/EC operational indicators (2009). At the beginning of the recruitment process, there are usually mediators or brokers in local provinces to recruit labourers. These mediators are local branches of the major sending organisations in big cities such as Shanghai.²⁹ However, brokers might include friends, neighbours, relatives, or former interns (Labourers 1, 2, 4 and 5).³⁰ In recruitment, they lure potential labourers by suggesting that it will be possible to earn between £32,400 and £38,900 for three years if they join this programme (Industrial association organisation 3, Fukui, 15th September 2016; Labour 2, 13th September 2016). This is six times the minimum wage in Sichuan (£ 2,000 per year). Such deception about wages/earnings was often mentioned not only by migrant labourers but also by industrial association organisations (Industrial association organisation 1 and 3).

²⁷ As in Pei-Chun Ko and Karsten Hank (2013), grandparenting in caring children of young rural parents in China is quite common if they look for employment in the cities (see also Chen et al., 2011).

²⁸ See p.170, Chapter 5.

²⁹ According to Labourers 1 and 2 (Interview in Gifu on 13th September 2016), they heard about TITP through their local friends and relatives. However, they also mentioned mediators at their local province, who introduced them to the sending organizations in Shanghai. In terms of Chinese local mediators, Zhou Yuan (2011) also mentions that although these mediators surely earn a profit from ‘the introduction fee’ paid by the labourers, these labourers from rural provinces would find it difficult to investigate job information by themselves. In this respect, these intermediaries play a crucial role in helping these labourers find their jobs under the TITP scheme.

³⁰ Labourers 1, 2, 4, 5 and 6 were interviewed in the shelter provided by a community union in Gifu Prefecture. Labourer 3 was interviewed in Rengo Tokushima. Labourer 7 was interviewed in Noomi with her employer and the association organisation. For this reason, I could not ask Labourer 7 many questions. Labourer 8 in Awa, Tokushima is not classified as trafficked because she came to Japan *via* a process supervised by an individual enterprise. As discussed in Chapter 5, this is similar to reassignment of staff within enterprises.

Some of the labourers also admitted that they were told they would work in big cities, but soon discovered that they had to work in more rural parts of Japan (Labour 1, 13th September 2016).³¹

In addition to deception at the entry point, the imposition of insurance by the mediators increases the labourers' costs still further. For instance, before setting off to work, the labourers I interviewed paid around £4,500–5,500 to their mediators as a management fee that covered transportation and Japanese language training. The following comment is from one of my interviewees:

The mediator I met in my home town said, I could earn £ 38,900 for 3 years.³² So I paid £4,400 to them. I borrowed this money from my relatives. Someone I know who chose to work in the food industry in Japan paid £5,600 to the mediator. He paid a larger fee because working in the food industry can make more money, according to the mediator...Except for three months of language training in Shanghai, I did not have any training in Japan (Labourer 1, 13th September 2016).

In addition to the deposit mentioned here, some acceptance organisations implied that the sending organisations imposed 'pregnancy insurance' on female TITP labourers (Lawyer 5, 20th October 2016). According to the acceptance organisations, the issue of pregnancy is a problem which has been often seen in garment factories in Japan because they are highly

³¹ Labourer 1 and 2 were informed by their sending organisations that they were going to work somewhere in Aichi Prefecture. However, labour 1 had to work in Fukui Prefecture and labour 2 worked at Gifu Prefecture.

³² Employer 5, industrial association organisation 1 in Tokushima, and industrial association organization 2 in Fukui told me very similar stories about their Chinese workers.

gendered (Industrial association organisation 3; Employer 8 in Ono, 15th September 2016).³³

This insurance is valued by Japanese employers, because TITP labourers are temporary labourers and their pregnancy could damage the business of a small factory. As explained in the previous section, a quick response has been required to maintain small factories which are sub (sub) contractors in the global value chain. In practice, inviting migrant labourers *via* TITP is an expensive investment. Under the TITP, for instance, JITCO requires employers to provide accommodation to TITP labourers. This means that those employers have to invest in preparing facilities for their trainees and interns including accommodations. Hence, some acceptance organisations choose sending organisations which provide this type of insurance.³⁴

Labourer 2 also revealed the deception about the nature of the job. She decided to work at a garment factory in Japan because she had experience working at her local garment factory. However, her workplace in Japan also had an iron press factory on site. So, in the first year, she had to work at the iron press factory, instead of working at the garment company. Labourer 2 expressed the experience of deception at the entry level as follows:

A local mediator introduced me to the sending organisation in Shanghai. To the mediator, I paid £4,500. I thought that I was going to work at the garment factory, but I had to work at the iron press company in Gifu Prefecture. More surprisingly, 6 months after I came to Japan, my employer explained that he was thinking of

³³ Although it was the case in the food industry, a female TITP intern was recently arrested on 29th January 2019, due to abandoning her infant after giving birth. She left her baby as she would have faced deportation if her employer came to know about it (Bengoshi.com on 3rd February 2019).

³⁴ Barrientos (2013) also discusses 'runaway insurance', which is a deposit that compensates employers when their migrant workers run away from their workplaces. Zhou (2011) also reveals that the intermediaries in rural China often require TITP labourers to provide their housing ownership certificates as collateral, in case they escape from their workplaces in Japan. Although the Ministry of Commerce in China prohibits this practice, it still occurs in the recruitment process.

closing his company. He tried to find other employers who could accept me, but the sending organisation suddenly informed me that I could not avoid going back to China and asked me to wait there for the next step. However, I decided to stay here because I couldn't trust the sending organisation (Labourer 2, 13th September 2016).

Although deception about the nature of the job, locations and employers, wages/earnings, and the access to education opportunities can be seen in my interviews with TITP labourers, my data does not contain any indication of 'Coercive recruitment' or 'Recruitment by abuse of vulnerability' at the entry level. However, these stories also imply that some of the TITP labourers are debt labourers, given the fact that they borrowed a certain amount of money to work in Japan. A diary written by a Chinese trainee in Tokushima Prefecture also suggests that the deposit which she paid to the sending organisation convinced her to carry on working, in order to pay off her debt (Anonymous 2008). This is the diary which was provided to Joy Ezeilo on her visit to Japan, as I clarified in Chapter 5.

2-2-2. Exploitation, coercion, and deception at workplaces

Long working hours, low or non-existent wages, wage manipulation, and lack of respect for labour laws are common in the clothing/textile industry (Labourers 1–6). However, the nature of the work differs between garment and textile factories. Typically, garment labourers must work from 8 am to 4 pm in addition to performing long overtime work (up to seven extra hours). Conversely, textile workers work on a three-shift basis (i.e., eight hours per day). Most of the employers from the textile companies explained that they hire

TITP labourers to work nightshifts, because they can still find Japanese local labourers for day-time work. In principle, JITCO prohibits TITP labourers from working nightshifts without a Japanese worker (JITCO 2016).³⁵ However, most employers in the textile industry let them work alone at night. While working unsupervised during the night shift is technically illegal, I could not find any evidence of the ILO/EC operational indicator for exploitation among textile workers. This is in stark contrast to the case of the garment workers mentioned in the previous section. Although both textile and garment factories are in relatively isolated rural areas with no convenient transportation, the workers at these factories are not physically isolated, unlike, for example, a fishing crew who cannot easily leave their workplace.

Descriptions of the abuse of migrant labour have mostly come from garment factories, not only from migrant labourers but also from the acceptance organisations in Japan, who outline their experiences in the interviews. Long work hours and extremely low wages are quite common in garment factories. According to a series of interviews I conducted with acceptance organisations in Tokushima, TITP labourers received around ¥90,000–120,000 [£590–770] per month, which is slightly lower than the wage for Japanese garment labourers: ¥110,000–130,000 [£710–840]. After deducting various fees for accommodation [£95–190], management [£65–95], and health insurance (depending on their income), however, TITP labourers can only take home around ¥60,000 [£400–600] per month. Labourer 3 in Tokushima Prefecture described her experience with unpaid wages:

I worked four hours of overtime every day, but my employer told me that overtime work is a domestic side job [*naishoku*], so he did not need to pay extra

³⁵ See the JITCO *White Paper* (2016).

for overtime work.³⁶ I only received £2–2.50 per hour for overtime work. In the first year, it was £2 per hour, but it only went up to £2.50 for my second and third years (Labourer 3, 17th October 2016).

Such an exploitative feature was even confirmed by some of the employers whom I interviewed (Employer 5 in Tokushima, 5th September 2016). Some of the pay slips of TITP labourers provided by the local community unions indicate that they had to work around 15 hours every day (Photo 1).

Photo 1: Payslips provided by the Advocacy Network for IT-TIP/TITP Workers' Rights in Fukui

陸 [redacted] (実習生時 残業時間・未払残業代) (2010.4/8 ~ 2012.10/30)

	H22.11	H22.12	H23.1	H23.2	H23.3	H23.4	H23.5	H23.6	H23.7	H23.8	H23.9
時間外労働時間数 (A)	10.45	113.00	147.45	94.30	136.00	154.45	159.45	118.30	99.15	127.15	120.00.00
深夜労働時間数 (B)	0.00	2.00	5.30	13.00	13.30	17.00	15.30	9.00	0.00	2.30	3.00.00
休日労働時間数 (C)	0.00	28.00	40.00	46.00	38.00	36.30	40.00	42.00	28.15	47.00	34.00.00
時間外割増賃金	9,288	97,632	127,836	81,846	117,304	133,704	138,924	102,384	85,752	109,944	103,680
深夜割増賃金	0	348	851	2,240	2,335	2,941	2,681	1,557	0	432	519
休日割増賃金	0	26,124	37,320	45,717	35,454	34,055	37,320	39,186	26,357	43,861	31,722
合計	9,288	124,102	165,927	129,814	155,293	170,699	178,925	143,127	112,109	154,227	135,921
支払済額		56,355	74,995	71,745	86,917	95,587	99,705	80,198	63,725	86,917	70,847
未払額	9,288	67,747	90,931	57,869	68,376	75,112	78,320	62,929	48,384	67,310	58,974

	H23.10	H23.11	H23.12	H24.1~12/31	H24.1(1/1~)	H24.2	H24.3	H24.4	H24.5	H24.6	H24.7	H24.8
時間外労働時間数	152.30.00	135.45.00	131.15.00	83	101.75	125.30.00	170.00.00	184.30.00	164.00.00	64.45.00	90.45.00	103.00.00
深夜労働時間数	14.00.00	6.30.00	2.00.00	0	2.5	3.00.00	24.00.00	17.00.00	18.30.00	0.00.00	0.00.00	0.00.00
休日労働時間数	28.15.00	44.45.00	16.30.00	0	8.75	38.45.00	42.45.00	24.15.00	23.30.00	0.00.00	0.00.00	23.15.00
時間外割増賃金	131,760	117,238	91,125	47,700	32,186	113,703	154,020	148,037	148,584	58,663	82,219	93,318
深夜割増賃金	2,422	1,124	360	0	453	543	4,344	3,077	3,348	0	0	0
休日割増賃金	26,357	41,752	16,038	0	8,566	37,936	41,852	23,741	23,007	0	0	22,762
合計	160,539	160,164	107,523	47,700	49,804	157,182	200,216	175,855	174,939	58,663	82,219	116,080
支払済額	90,168	90,250	64,762	89,925	90,337	117,612	122,687	121,875	42,087	58,867	82,062	
未払額	70,371	69,914	42,761	58,979	59,467	61,845	83,204	53,188	53,064	16,576	23,232	34,018

	H24.9	H24.10	H24.11	総合計
時間外労働時間数	99.45.00	86.00.00	0.00.00	6453.15.00
深夜労働時間数	0.00.00	0.00.00	0.00.00	226.00.00
休日労働時間数	34.00.00	15.30.00	0.00.00	884.15.00
時間外割増賃金	90,373	77,916	0	2,555,109
深夜割増賃金	0	0	0	29,604
休日割増賃金	33,286	15,175	0	647,577
合計	123,659	93,090	0	3,232,310
支払済額	86,937	65,975	0	1,616,155
未払額	36,722	27,115	0	1,616,214

□ 残業代

研修生時 1H=350円 最賃686円(858円~)

実習生1年目 1H=400円 最賃687円(859円~)

実習生2年目 1H=550~650円 最賃693円(866円~)

□ 残業時間 □ 内職(出来高制→残業時間に換算)

研修生時 : 1ヶ月平均15.5H : 1ヶ月平均4.0時間

実習生1年目 : 1ヶ月平均17.3H : 1ヶ月平均3.5時間

実習生2年目 : 1ヶ月平均12.2H : 1ヶ月平均2.3時間

³⁶ In Japan, overtime pay is 1.25 times the usual hourly rate. Labourer 3 was also physically abused by her employer when she complained about her wages.

To compensate for the unpaid wages, some employers provided food instead of overtime pay. The problem is that they did not think that such treatment was illegal. Intriguingly, an interview with an officer working at the Labour Standards Inspection Office at Fukui Prefecture showed his sympathy for the firm owner:

Some employers and their wives often claim that it is unfair for them to be blamed for unpaid overtime pay. Some of them genuinely believe that they can feed their labourers instead of providing full payment. I personally sympathised with those firm owners because providing food is also a benefit for the labourers (Officer at the Labour Standards Inspection Office in Fukui, 14th September 2016).

Regardless of the industry, employers must pay management fees to sending organisations under the TITP scheme, which is often deducted from the monthly wage of labourers. Acceptance organisations are expressly forbidden to extract the management fee from their employees or to pay fees to sending organisations abroad (JITCO 2012).³⁷ However, JITCO has no power to regulate the sending organisations. The amount of management fee depends on the contract with the sending organisations. Employer 5 discussed the range of the management fees for different sending organisations:

The management fees range from around £30-130 per worker per month. This depends on the sending organisations that the acceptance organisations choose. I have no idea how the sending organisations set up such a fee, but I think it

³⁷ The prohibition on extracting the management fee from employees was introduced in the *Gaikokujin Ginoujishusei Roumukanri Handbook* in 2012.

partially depends on the length of language training they provide for the workers in China before they start working in Japan. Usually the employers deduct this fee from their TITP labourers, and then pay it to the sending organisations via the industrial association organisations. As a handling charge [*tesuryo*], some industrial associations in Japan also ask the employers to pay extra. Sending organisations should be blamed for exploiting TITP workers, but we [the employers] should not be blamed (Employer 5).

Although Employer 5 emphasised that employers in Japan should not be blamed, some evidence from the local community union reveals unpaid and overlong working hours at his company (Tokushima Roren, and Zennihon Kouan Rodo Kumiai, 8th September 2016).

It is not only unpaid wages, but Labourer 3 stated that her employer deliberately chose the National Health Insurance [*kokumin hoken*] so that he did not need to pay any health insurance fees for her (labourer 3).³⁸ Participating in the Welfare Annuity Insurance [*kousei nenkin*] tied to the Health Insurance [*kenko hoken*] is one of the requirements for employers so that migrant labourers are protected.³⁹ JITCO also requires employers to provide welfare and health insurance to each TITP labourer. Welfare annuity insurance is a company-based insurance plan for full-time workers, which is tied to health insurance (Komine 2014). In this system, both employers and labourers have to pay the same amount of money, which could put pressure on both employers and TITP labourers. However, by choosing another

³⁸ National Health Insurance is for those who do not qualify for the company-based scheme, and employees have to cover the fees. Instead of this, the employers under the TITP scheme are normally asked to choose the Welfare Annuity Insurance, which requires both employers and employees to contribute to the monthly payment (Komine 2014).

³⁹ According to Mari Miura (2012), it can be difficult to understand the inconsistencies of the Japanese welfare system. However, at the very least, TITP workers are supposed to receive welfare insurance through their employer and in accordance with their level of income.

type of health insurance that does not require employers to pay a fee, the employer of Labourer 3 tried to reduce his responsibility (Rengo Tokushima, 17th October 2016).

However, I also found an example of the negotiation space which Anderson and Ruhs discussed (2010). Some employers and labourers work together to cheat this insurance system so that neither of them has to pay as much. As shown in Table 6, the more labourers earn, the more the employer and the labourers must pay for this insurance. To receive this insurance, labourers are also able to claim back 20 % of the insurance premiums they have paid after they go back to their home country, whereas the employers will get nothing back. Because of this, most of the employers do not want to pay this fee for their labourers. In an interview, Industrial association organisation 3 in Fukui (2016) reveals how they work together to cheat this insurance system:

One of the garment factories which my industrial association organisation has taken care of is doing well in their business. In this factory, TITP labourers usually earn ¥5,000,000 [£36,680] over three years. This means that these labourers received ¥140,000 [£989] per month. To avoid paying much for the insurance, no matter how much they earn, we have agreed with employers that they pay the welfare annuity insurance fee prescribed in the level 9 (which means ¥ 11,454 per month).

According to Table 6, if employees receive ¥140,000 [£989] per month, they are supposed to pay ¥12,909 [£89] per month as (level 11). For their mutual benefits, employers and labourers agree on paying only ¥11,454 [£79] per month after their negotiation (level 9). Problems, however, often arise when the employers cannot pay enough salary for employees

to cover this contribution, which makes it difficult for those employees to be satisfied with an informal agreement like this.

Table 6: A Price List for Health Insurance and Wealth Annuity Insurance (created by the author in reference to the material produced by the Japan Health Insurance Association 2016)

Wages		Monthly wages	Health insurance		Wealth annuity insurance	
Level	Average monthly pay		Total	Half	Total	Half
1	58,000	<63,000	5,759	2,879		
2	68,000	63,000-73,00	6,752	3,376		
3	78,000	73,000- 83,000	7,745	3,872		
4	88,000	83,000-93,000	8,738	4,369		
5	98,000	93,000-101,000	9,731	4,865	17,818	8,909
6	104,000	101,000-107,000	10,327	5,163	18,909	9,454
7	110,000	107,000-114,000	10,923	5,461	20,000	10,000
8	118,000	114,000-122,000	11,717	5,858	21,454	10,727
9	126,000	122,000-130,000	12,511	6,255	22,909	11,454
10	134,000	130,000-138,000	13,308	6,653	24,363	12,181
11	142,000	138,000-146,000	14,100	7,050	25,818	12,909
12	150,000	146,000-155,000	14,895	7,447	27,273	13,636
13	160,000	155,000-165,000	15,888	7,944	29,091	14,545
14	170,000	165,000-175,000	16,881	8,440	30,909	15,454
15	180,000	175,000-185,000	17,874	8,937	32,727	16,363

Only one case in my fieldwork shows physical abuse from an employer (Labourer 3), although there is some evidence of inhuman control and threats, arising from the employers' discrimination against migrant labourers (Employer 4; Employer 5; Industrial association organisation 4 in Tokushima, 17th October 2016). In the interviews, some of the employers often referred to their labourers as 'this kind of people [*aitsura*]', 'my girls [*onnanokotachi*]' or 'my children [*kodomotachi*]'.⁴⁰ Employers 5 and 7 told me that they often mentioned 'forced deportation' in front of their employees if the employees complained about their

⁴⁰ Laura LeMoon's article also reveals that some church-based rescue groups from the US also call the women they rescue from the sex industry 'our daughters'. In one case, the rescued women were forced to call the executive director 'mom' and her husband 'dad' (2017).

working conditions. Employer 8 in Fukui Prefecture actually sent one of his TITP labourers back to China due to her pregnancy (Employer 8), which is illegal according to the Labour Standards Act, Article 9. To avoid labourers becoming pregnant, some employers impose a curfew; others put up surveillance cameras to control their labourers' behaviour at their workplaces and in their accommodations (Photo 2).

Photo 2: Surveillance camera at the garment factory (provided by Tokushima Roren)



The living conditions of labourers under TITP are also concerning. It is not mandatory for the labourers to live in the accommodations provided by their employers, but in practice, it is hard for them to find accommodation by themselves. In addition, it is too expensive for migrant workers to rent a room by themselves, even in rural Japan. Because labourers under TITP would rather save money, they usually choose to live in the accommodations that their employer provides. However, small family-run factories do not have enough money to prepare decent accommodation. To reduce building costs, some small factories in Tokushima house their labourers in shacks without a water supply (Photo 3). In one case,

six to eight female labourers sharing a shack had to drink rainwater from the water tank just next to it. Others just rent rooms in apartments nearby their factories, but 3 or 4 labourers usually have to share a 10m² room. To lower living expenses, including gas and water, another factory in Fukui indicates that they put 20 female labourers in one room (80 m²) with bunk beds (Employer 7). This owner asks them to pay £100 each, which is close to the average fee for accommodation shared by 4 labourers.

Photo 3: Water tank next to the shack of TITP labourers in Tokushima Prefecture



2-2-3. Point of exit: The strategies of labourers and rescue work

The ILO/EC indicators (2009) do not cover the point of exit. However, as in Stringers et al. (2016), this chapter also explores the point of exit. The point of exit does not necessarily coincide with the expiration of the labourer's work visa. The 'point of exit' in this chapter

includes leaving their workplaces in the middle of a labour contract, seeking rescue, and forced deportation by acceptance organisations. By introducing different points of exit, this section will explore various types of exploitation, and clarify the strategies of TITP labourers employ to react the above-mentioned exploitative situations.

As reported by the Immigration Bureau (The House of Representatives Homepage 2015; Sankei West 2015), more than 5,000 TITP labourers left their workplaces in the middle of their contracts every year over the last decade. The media and the Advocacy Network for IT-TIP/TITP Workers' Rights have argued that these labourers have run away from their workplaces because they had to work in 'slavery-like conditions' (The Japan Times, 24th November 2013). Most of the TITP workers, however, own their mobile phones and share information on work hours and wages with other TITP labourers in different Prefectures. My data also indicates that some of them contact brokers to seek better opportunities. Industrial association organisation 1 in Tokushima illustrates the situation of one TITP labourer in Ehime Prefecture. She tried to escape from a garment factory by contacting a broker for a different job:

A girl [TITP labourer] was deceived by a broker and taken to the Ibaraki Prefecture to do agricultural work. She had to work from 7am to 12pm everyday with no pay. Two weeks later, she called and asked us to rescue her. After being rescued, she continued to work at the original garment factory in Ehime Prefecture (Industrial association organisation 1).

Another association organisation in Fukui revealed that a female worker who left her textile industry eventually became a sex worker in a different prefecture (Industrial association

organisations 3 and 5, 15th September 2016; 4th October 2016).⁴¹ Although the Immigration Bureau reveals that around 5,000 TITP labourers have run away each year from their employers (Ibid.), there has been no further investigation of what they are doing or where they go after leaving their workplaces.

Even if TITP labourers decide to stay at their current workplaces, they usually find ways to deal with exploitative situations. These labourers often have enough information about activist groups—the Advocacy Network and local community unions—who offer to rescue TITP labourers who are in trouble. What ‘rescue’ means in this context varies from giving legal advice to providing shelter. These groups have tried to reach out to TITP labourers using radio broadcasts in Chinese, although they still need to develop this resource with translators of other languages, such as Vietnamese and Khmer (Community union in Gifu, 13th September 2016). To deal with the most common forms of exploitation (including unpaid wages for long working hours), these organisations try to negotiate with their clients’ employers about their unpaid wages.⁴² However, if things go wrong, these organisations suggest that their clients leave their workplaces. The following comment from an officer from Fukui branch of the Advocacy Network explains their rescue strategy:

Once these labourers call us to seek ‘rescue’, we convince them to wait until 20 days before their visa expiry date. In so doing, even though they leave their workplaces at this point, they still receive pay for the last 20 days of their stay,

⁴¹ The link between modern slavery and sex trafficking might be a significant oversight in the ILO's programmes on these issues (Boutang 2018). Although the connection between TITP workers and the sex industry has not been precisely analysed, prostitution could be one of the principal escape routes for TITP workers.

⁴² For instance, Rengo Tokushima has tried to negotiate with their clients’ employers by suggesting that they would not go to the Labour Standards Inspection Office if their clients were paid properly (Rengo Tokushima, 17th October 2016).

because the Labour Standards Act prescribes this period for paid vacation (Article 39). We then take these labourers to the Labour Standard Inspections Office to report their employers' maltreatment in their workplaces. After appealing to the Labour Standards Inspections Office, we let them stay in a private shelter for ¥1,000 [£7] per day (in other words, ¥20,000 [£140] for 20 days. We believe that this is a reasonable price for the accommodation, even though it does not include their living costs, internet, or the cost for the rental car to rescue them from their workplaces. This could be even more expensive than their original accommodation at workplaces, but they are, in the end, labourers, so they can afford to pay this amount of money (Interviewed with the Advocacy Network for IT-TIP/TITP Workers' Rights, Fukui branch, 16th September 2016).

This means that, even after TITP labourers are liberated from exploitative work situations at workplaces, they have to pay a certain amount of 'rescue fee' to those activist groups which have vocally said that TITP labourers are 'modern slaves'. Although some of these groups would not identify the location of their accommodations for security reasons, they clarified that this housing was located far from the town centre, which is quite isolated. The problem is, some of those TITP labourers were 'rescued' because of their romantic relationships with Japanese locals or with other male TITP labourers in different workplaces, which made their employers decide to deport them. After being rescued, however, they faced another difficulty, which was whether to continue their romantic relationships despite the distance (Community union in Gifu 2016).

If these organisations and lawyers' *pro bono* work cannot achieve any agreement with the employers on time, they encourage the TITP labourers to leave Japan and advance their claims from their home countries. Although some TITP labourers have Japanese lawyers, when faced large fees on small incomes, they often gave up on pursuing their claims after going home (Lawyer 6, 19th October 2016).

Forced deportation in the middle of a contract is another exit point. As some of the employers and rescued labourers suggested in the interviews, forced deportation occurs when TITP labourers breach the rules. In the process of forced deportation, some of these labourers were confined by their employers for a week before their forced deportation (SMJ 2009). Migrants on temporary visas like TITP labourers are likely to be more compliant and less challenging to their employers because they rely heavily on them for visa renewal. The paternalistic relationship between Japanese male employers and female migrant labourers cultivates anxiety about the insecurity and unpredictability of their temporary migrant status. This does not mean that those labourers are always deportable by their employers, though, most of the employers I interviewed believed that they could deport their foreign labourers if they violated their side of the agreement. Surprisingly, to some extent, the activist groups providing rescue work do not necessarily oppose the idea of forced deportation:

We do not think that forced deportation by employers is itself human rights abuse. Even if we raise this claim with the Labour Standards Inspection Office, it means nothing. Rather, we emphasise that forced deportation is a breach of the labour contract because, without a notice of dismissal, they are forced to go to the airport to leave this country. In the end, they have to go home because they always knew that they could only stay up to three years. The point is, to fire

or deport them without warning advance is wrong. What these migrant labourers want is money, so we should help them out to receive as much as they can before leaving (the Advocacy Network for IT-TIP/TITP Workers' Rights, Fukui branch, 2016).

This less favourable idea of the settlement of unskilled migrants was fundamentally shared among employers and the activist groups providing rescue work. It seems as though the economic sector, and even these activist groups for migrant workers, support the MOJ's reluctant attitude towards accepting the settlement of unskilled migrants (Komine 2014). The belief of these groups that labourers are motivated by money also makes it difficult to consider other aspects of the exploitation of migrant labourers. This view of immigration also prevents them from developing their proposal of an alternative guest worker scheme, under which they and their families could settle in Japan.

In short, in reference to the ILO/EC operational indicator, my data indicated that the labourers whom I interviewed faced problems categorised as 'exploitation', 'coercion' and 'deception', at some point in the continuum of immigration. Most of my data, however, also showed that TITP labourers, especially from China, are now well informed about how to receive their unpaid wages before leaving their workplaces. Based on these findings, the next section will discuss some factors which do not fit with the ILO/EC operational indicators. It will then elaborate on the implications of the different types of illegality experienced by TITP labourers.

3. Implications of Mapping the Data/ Discussion

Based on mapping of the data in the previous section, this final section will discuss the implications of the factors that do not fit the ILO/EC operational indicators.

Using the ILO/EC indicators for identifying trafficked victims or modern slaves, I mapped the interview data. To classify TITP labourers as ‘trafficked victims’ under the ILO/EC indicators, it is necessary to show that they meet at least one of the following conditions: (1) two strong indicators; (2) one strong principle and one medium or one weak indicator; (3) three medium indicators; or (4) two medium indicators and one weak one (ILO/EC 2009:3).⁴³ The interview data suggests that most of the labourers have been trafficked or in slavery-like conditions. At the entry point, some data suggest a deceptive description of the job, workplaces, wages, or education opportunities. Some of the labourers borrowed money from their relatives or friends to pay the fee to intermediaries or brokers. At their workplaces, long work hours, and low or unpaid salaries are ubiquitous. Only one labourer was physically abused by her employer, but some of the participants including the acceptance organisations provided evidence of surveillance, curfews and threats of deportation. Inhuman rules are also common, such as stopping female labourers from developing relationships with Japanese locals, and forcing them to start working 10 minutes earlier than the starting time which was originally informed (Employer 5-7). At the exit point, most of the labourers whom I accessed clarified that they would not have received the proper wages if they had not sought help from community unions. If these problems cannot be solved, they have to give up on receiving their unpaid wages.

⁴³ See p.73 in Chapter 2.

However, some factors do not fit in the ILO/EC indicators, which negate trafficking. The first is the negotiation space between employers and labourers that allows both parties to maximise their interests by bending the formal and informal rules of the migration and labour market to which these labourers are attached. It makes sense that these indicators do not suggest the existence of the negotiation space as there is an assumption that these labourers are exploited at workplaces. However, some of my data indicate that employers and labourers often bargain their working and living conditions. And hence this space questions discourses on labour trafficking and modern slavery which highlight the stories of TITP labourers exploited at their workplaces. An interview with Industrial association organisation 3 revealed that some employers and their labourers bend the rules of the welfare system. Employer 9 also insisted that he had agreed with his employees to pay £3.25 per hour as an overtime wage, instead of paying a bonus equivalent to one month's pay (Employer 9 in Hakusan, 30th September 2016). However, once the employees figured out that their employers would not pay their wages, some of them reported to the Labour Standards Inspection Office that their employers were not paying the required fee for the insurances.

Labourer 2 revealed that she was claiming her unpaid bonus, which she had negotiated with her employer as a reward for looking after other trainees (Labourer 2). Instead of receiving full price of overtime salary, Labour 2 agreed with receiving a reward at the end of her contract. In lodging claims with the Labour Standards Inspection Office, TITP labourers often emphasise their employers' misconduct, and these employers are usually prohibited from employing TITP labourers for the next three years as punishment. The negotiation space between employers and TITP labourers implies that such labourers can be regarded as 'trafficked victims', although not always submissive ones. They use strategies possibly

given to them by the Advocacy Network, and they report their employers' wrongdoing at the right time. For instance, Labourers 4 and 5 left their workplace just before the end of their second year and started negotiating their unpaid wages because they knew that they had to claim for outstanding bills within 2 years (Labourers 4 and 5, 13th September 2016). Such strategy also implies the existence of a degree of agency on the part of TITP labourers, who are capable of bargaining their own working conditions, despite being viewed as 'victims' of labour trafficking or modern slavery.

Second, the missing labourers and forced deportation raise the question of discourses on labour trafficking and slavery constructed by activists. The former TITP labourers who left in the middle of their current work contracts might end up facing more risks rather than current TITP labourers. As suggested above, some of those who have left their workplaces might be people trafficked to work in different areas with no pay (Industrial association organisations 1 and 3). However, these former TITP labourers who have left their workplaces have been ignored by the Advocacy Network. As Chapter 5 explained, while the Advocacy Network for IT-TIP/TITP Workers' Rights has mostly focussed on IT-TIP/TITP labourers, they strongly believe that irregular migrants, such as undocumented migrants or former IT-TIP/TITP labourers who become overstayers, could enjoy more freedom (Interview with Torii 2015). Torii also implied that these escaped TITP labourers could be ignored given the small number of these cases (The House of Representatives, Judicial Affairs Committee 2014). Because the desire of TITP labourers actively looking for the better working opportunities does not fit what this Advocacy Network is suggesting, they cannot represent these former TITP labourers. For the same reason, the stories of TITP labourers who willingly left their workplaces for the better jobs are barely clarified in the media. The media often highlights that these labourers left their workplaces mostly because

of their ‘abusive employers’ (AERA 21st November 2018; Asahi Shimbun 25th December 2014).

Forced deportation is also the factor which does not fit in the ILO/EC operational indicators.⁴⁴ The forced deportation itself does not indicate that those labourers who were forced to leave Japan by their employers were trafficked victims or modern slaves. As Lawyer 4 illustrated in Chapter 5, it differs from the situation that these labourers are transported for the purpose of work (Interview with Lawyer 4, 1st December in 2015). Although forced deportation itself does not indicate trafficking or modern slavery, this raises the intriguing question of who takes responsibility of the lot of those labourers. Regarding taking responsibilities, activists and the media often criticise acceptance organisations who forcibly deport those labourers. Through their communicative discourses, the dichotomy between these acceptance organisations as ‘abusive employers’ and TITP labourers as ‘trafficked victims’ or ‘slaves’ has emerged. Indeed, acceptance organisations should be prevented from forcing these labourers to go home in the middle of their contracts. To prevent such activities, the role of the state in establishing business ethics must be illuminated (LeBaron and Philips 2018). However, the state’s responsibility for creating such ethics has not been encouraged by those activists.

Although it has remained to be seen what the consequences of the policy reform introduced in November 2016 will be, the activists in the Advocacy Network do not fundamentally expect that the government’s initiative of changing labour legislation directly alter the

⁴⁴ Labour 3 also uncovered that her employers had stopped providing work to her since she claimed her unpaid wages to Rengo in Tokushima. Such economic exploitation and bullying from employers are also crucial elements that put pressure on migrant labourers.

degree of agency that employers and labourers enjoy.⁴⁵ Rather, the Advocacy Network, especially local community unions, have tried to circulate ethical norms among the acceptance organisations and informally asked for some flexibility from the Immigration Bureau. For instance, the new labour legislation for the protections of TITP labourers introduced in 2016 finally declared that these labourers are allowed to change their employers if they experienced exploitation with their employers. However, changing employers of TITP labourers had been already observed before the 2016 legislation was promulgated (Interview with Employer 6, Sabae, 7th October 2016; Community union in Gifu, 13th September 2016). According to the community union in Gifu, they occasionally negotiated with the local branch of the Immigration Bureau so that TITP labourers could continue their work with different employers. These labourers, the community union said, had been threatened by their employers to be deported. To help these labourers, local community unions have also helped them to find the new employers. Based on their experiences, the possibilities of changing workplaces were mentioned in the revised guideline [*shishin*] published by the Immigration Bureau in 2013.⁴⁶ We could observe the same thing about the custody of employees' passports. As in Chapter 5, the cases of employees' passports held by their acceptance organisations had been barely seen by 2016 as these community unions have tried to circulate ethical codes among these employers.⁴⁷ This was also already clarified in the guideline published by the Immigration Bureau in 2009 (2009). Although the guideline itself does not have legal binding force, most of the members

⁴⁵ The government was in the process of revising labour regulations to introduce protection of TITP labourers in the late 2015 and 2016 when I conducted the fieldwork. The revised labour regulation came to force in November 2017.

⁴⁶ The guideline (*Shishin*) does not technically have legal binding force in immigration and labour institutions in Japan (MHLW 2005). This is also supported by Lawyer 1 who used to work at the Immigration Bureau (Interview with Lawyer 1, 2015).

⁴⁷ See p.194.

of the Advocacy Network suggested that they have barely seen the custody of passports before the revision of the labour legislation to protect TITP labourers in November 2016.

In short, such informal rules and ethical norms had already gradually emerged in the clothing/textile industry accepting TITP labourers before the government revised labour legislation in 2016. In this sense, the community union described their activities and changes in institutions as follow: ‘We do not think that the government’s regulations mend problems exist in workplaces. Rather, we expect that the official rules the government changed have caught up with ethical norms emerged at workplaces’ (Community union in Gifu 2016). This suggests that communicative discourses among those who are far from the policy-making process are able to influence changes in policies and institutions.

In summary, this section discussed the implications of some factors that do not fit the ILO/EC operational indicators. These factors suggest that these labourers are not mere submissive ‘victims’ or ‘slaves’; they can negotiate with their employers about working conditions, although these negotiations may entail illegal practices. In other words, there is indeed a degree of agency among those labourers, even though they are viewed as ‘trafficked victims’ or ‘modern slaves’. In particular, activists and the media often highlighted forced deportation and runaway labourers as consequences of the wrongdoings by employers. Such factors imply that the responsibility of creating a restrictive, exploitative work environment for migrant labourers lies with employers. However, at the same time, some community unions working with the Advocacy Network also believe that it is more important, rather than revising labour and immigration legislation to punish employers and protect labourers, to circulate good business ethics at workplaces. Although it was technically prohibited, TITP labourers were allowed to change their employers in some circumstances even before the

government introduced their protection in 2016. This implies the influence of business ethics emerged through communicative discourses to feed into policy and institutional changes.

Conclusion

This chapter aimed to assess the gap between constructed discourses on IT-TIP/TITP and the situations of these labourers at their workplaces, and how this gap facilitated strategies and abilities of employers and labourers. In this respect, this chapter also considers to what extent the revision of labour legislation to protect TITP labourers introduced in November 2016 can be effective. This chapter particularly paid attention to the clothing/textile industry. This followed on from Chapter 5 which discussed how discourses on IT-TIP/TITP as ‘labour trafficking’ and ‘modern slavery’ constructed by activists, and how these discourses have come to be recognised by the government. My finding in this chapter showed that most of the labourers whom I interviewed were, to some extent, deceived and exploited at their workplaces. Most of their experiences indicated at least three medium indicators at workplaces (for instance, a deceptive description of the nature of the work, low wages, long work hours, and no respect for labour laws), which means that they were ‘trafficked’ according to the ILO/EC operation indicators. As suggested above, interviews with the labourers, and also with the acceptance organisations indicated that they imposed inhumane rules. For instance, labourers experienced the imposition of curfews, the prohibition of having relationships with Japanese locals, and starting work before the start time which had originally been agreed. Unpaid (or extremely low) wages and long working hours are ubiquitous in garment factories, in particular. It is certainly possible for them to escape from their workplaces as, unlike fishing crews in New Zealand (Stringers et al. 2016), female labourers working in the Japanese clothing/textile industry are not physically isolated.

However, the existence of a debt, deposit required by the sending organisations, and certain insurance fees levied by their employers convince them to continue working there.

At the same time, however, these migrant labourers are not mere submissive ‘victims’. They can access information about activist groups, and exchange information with other labourers in different prefectures by using mobile phones. By using the information received as ‘victims’, some of these labourers went to the Labour Standards Inspection Offices to claim their employers’ wrongdoings at the best timing. There are also some cases implying that employers and employees agree to breach some parts of the Labour Standards Act so that they can maximise their mutual benefits. Those stories tell us that some of them have a clear strategy to seek remedy when needed. For this reason, although I could observe non-payment of wages, both activists offering rescue work and labourers themselves have established some strategies to deal with the issues at the exit point.

Given these points, it seems to be too simple to conclude that TITP labourers are ‘trafficked victims’ or ‘modern slaves’ according to the ILO/EC operation indicators. As in Barrientos et al. (2013) and Stringer et al. (2016), introducing the dimension of the exit point into the analytical frame helps us observe the complex motivations and abilities of some migrant labourers to negotiate their working conditions or to leave their workplaces. In my data, forced deportation and missing labourers in the middle of the contracts also require us to explore the exit point of their work contracts in further detail. Whatever the reasons might be, the Advocacy Network and the media have regarded these factors as evidence of exploitation at workplaces.

These findings raise a question of the potential importance of the state in changing labour legislation based on its interaction with political activists and the media. As my findings showed, the labour legislation introduced in November 2016, enforced in November 2017, was established based on informal rules described in the guidelines. The case of changing employers is a good example. In principle, the immigration and labour regulations prohibit changing employers under the purview of TITP. SMJ and its Advocacy Network had identified this as a major cause of exploitation and had been working to mend this problem since the 1990s. Based on their discourses and information, the government was convinced to revise the labour legislation in 2016. Although it remains to be seen to what extent this revision has altered the strategies and abilities of employers and labourers at workplaces, it might be too optimistic to expect that this revision mitigates the problems at workplaces for TITP labourers. Further discussion will be in Chapter 7.

Chapter 7

Discussions and Conclusion

Introduction

This thesis has intended to achieve two main goals. First, as the introduction highlighted, this thesis has tried to answer the question of how the discourses on ‘human trafficking’ and ‘modern slavery’ have been constructed in Japan. This includes how they have affected changes in policies and institutions associated with immigration and the labour market from 1990 to 2017. Second, this thesis aims to explain how these changes have made unskilled labourers visible despite the zero-immigration principle for migrants in Japan. To achieve these goals, I have explored the process by which political actors construct their own understanding of the problems of trafficking and modern slavery, and what sort of consequences their representation of ‘the problems’ have had. In other words, this thesis features two levels of analysis, both of which are based on two processes. These two processes are: analysing the dialogue between political actors to reveal the construction process of discourses, and analysing interview materials collected through the two periods of fieldwork. Through these analyses, I argue that discourses on ‘human trafficking’, originally representing Filipina entertainers’ issues, have been extended towards ‘modern slavery’ to cover the problems of IT-TIP/TITP labourers in Japan since the early 1990s. This extension of the understanding of human trafficking can be seen, for example, in the government Action Plan from 2004 to 2014, and its introduction of protection for the TITP labourers in November 2016. The government also expressed its intention of establishing the new Action Plan to fight against labour trafficking and modern slavery uncovered in

2017 (Ministerial Meeting Concerning Measures Against Crimes 2014; 2009; 2004; Hayakawa and Barnes 2017). This implies that the government wants to be seen to be acting against trafficking and modern slavery, but also wants to maintain a zero-immigration principle while accepting as many migrant labourers as possible to service the aging population. Institutions and policies for anti-trafficking and anti-slavery have therefore changed towards protection of TITP labourers, which have been carefully embedded within the government's zero-immigration principle. Overall, through the discourses on human trafficking and modern slavery, this thesis has discussed the role of the state in changing institutions and policies to solve these problems.

At the beginning of this chapter, I briefly reflect on the discussions presented in the empirical chapters and suggest that the examined data offer a solid foundation for the above conclusions. In the second part of this chapter, I elaborate on what I believe to be an explanation for why it had taken so long to introduce institutions and policies against labour trafficking and modern slavery, and why these measures have been ineffective. To do so, I return to the material discussed in the theoretical framework in Chapter 2, and clarify the processes of change in the policies and institutions associated with human trafficking and modern slavery. Finally, I reflect on the policy implications of this discussion, as well as the future directions of research to which this study points.

1. A Brief Summary of the Empirical Chapters

From Chapter 3 to Chapter 6, I clarified the process by which discourses associated with human trafficking and modern slavery have been constructed, that is, through the interaction

between political activism and authority. For this reason, these empirical chapters began in Chapter 3 with a literature review on trafficking and modern slavery. The review demonstrated how discourses on, and analyses of, trafficking in Japan have remained focussed on sex trafficking, and how previous studies omitted the fact that the concept of trafficking is historically related to indentured servitude. In the literature pertaining to Japan, the dominant discourses have been constructed around the standpoint of abolitionist feminists who were creating coordinative discourses on human trafficking since the 1990s. Their discourses suggested that women working in the sex industry are victims of trafficking. These discourses appeared in political activism against violence against women from the early 1990s to 2005. This was explored in Chapter 4, which argued that institutions and policies did not only change to fight sex trafficking in 2005 because of the external pressure from the United States (2004). Domestic ideas about sex trafficking were strongly associated with mixed discourses on Filipina entertainers and DV victims. Thus, the mixed discourses on Filipina entertainers and DV victims, and its interaction with external pressures, affected these changes. Chapters 3 and 4 also explained why discourses on human trafficking for the purpose of labour exploitation were not included in anti-trafficking policy in Japan at this time.

Following Chapter 4, Chapters 5 and 6 explained how discourses on human trafficking as sex trafficking had gradually come to include labour trafficking and modern slavery, and how this affected changes in institutions and policies by 2017. Chapter 5 demonstrated that political activism against ‘labour trafficking’ and ‘modern slavery’ *does* exist in Japan. Chapter 5 clarified the process by which discourses on IT-TIP/TITP as labour trafficking and modern slavery came to be recognised by the government. In particular, this chapter demonstrated how political actors who are closely working with policy reforms circulate

such discourses on labour trafficking and modern slavery by using the media, local community unions and international organisations. Doing so clarified more about the complex of internal and external factors through the interaction between coordinative and communicative discourses. Based on this interaction, it explored how the government had changed immigration and labour legislation towards protection by the end of 2016, and how it had set up a new investigatory body to punish abusive employers by 2017. Chapter 6, however, uncovered that there was some degree of agency among those who are allegedly ‘trafficked victims’ and ‘modern slaves’. Some were able to access information from activist groups providing shelters and legal advice, and had strategies to claim their labour rights while being deceived, exploited and threatened by their acceptance organisations. Such degree of agency led to the discussion of structure-agency problems. In this way, this chapter criticised coordinative discourses on ‘labour trafficking’ and ‘modern slavery’, while shedding light on communicative discourses which emerged in workplaces and how they were absorbed in the policy ideas of the 2016 revision.

Overall, these four empirical chapters show the processes by which the two categories of migrants – entertainers and IT-TIP/TITP labourers – have been constructed, in discourses on ‘human trafficking’ and ‘modern slavery’, as well as government responses since the early 1990s. These empirical chapters suggest that the anti-trafficking and anti-slavery paradigm built on these dominant discourses actually raises the risk for some labourers. The result may be that some migrants at the margin of protection laws, who might be in danger of being trafficked at these margins, will be pushed away from the very institutions which are supposed to protect them. The next section will show how policies and institutions associated with entertainers and IT-TIP/TITP labourers have changed, by reflecting on the results of my analysis.

2. The Results of the Data Analysis

2-1. The explanatory process-tracing and critical discourse analysis

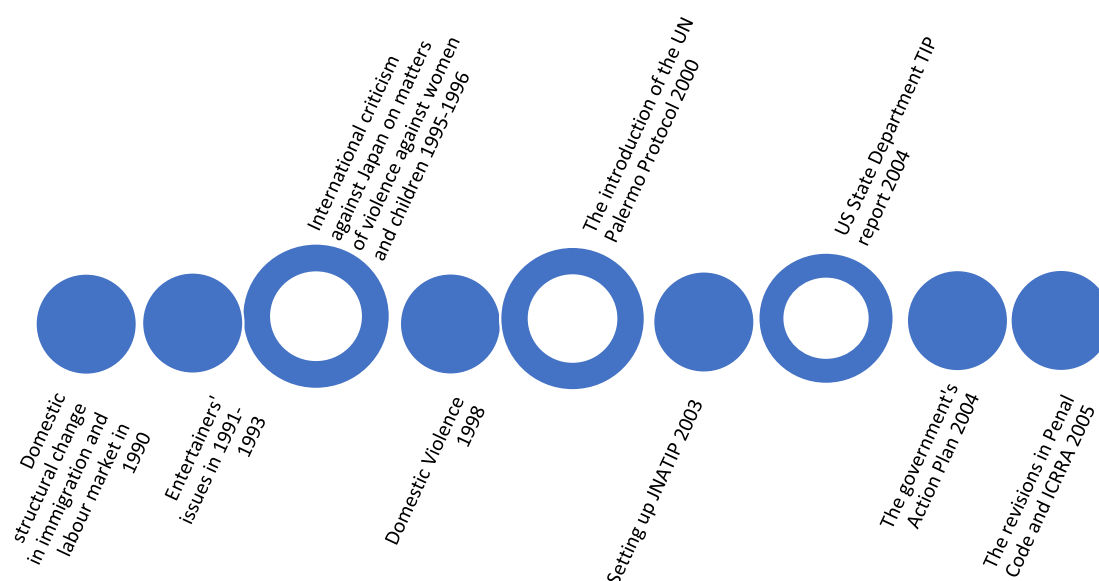
As highlighted in Chapter 2, I used discursive institutionalism as one of the constructivist approaches, and explanatory process-tracing as one of the methods. The explanatory process-tracing method is compatible with discursive institutionalism because it demonstrates how policy ideas are tied to actions. This compatibility helped me untangle complicated discursive processes. It also helped me explain how and why some ideas succeed and others fail in constructing dominant discourses in Japan. In the literature on trafficking and modern slavery, existing theories cannot provide a sufficient explanation of the causes of changes in policies and institutions (Beach and Pedersen 2013). Hence, I used explanatory process-tracing to clarify policy processes associated with trafficking and modern slavery.

In practice, some scholars have described the institutionalisation of political and moral activism without referring explicitly to new institutionalism as a theoretical framework (Weitzer 2007; Anderson and O'Connell Davidson 2004). Existing studies on human trafficking in Japan have also drawn attention to changes in policies and institutions, have solely equated human trafficking with sex trafficking, and have exclusively regarded external pressure as the major factor behind the changes in 2005. One consequence of this is that there has been little analysis of policies and institutions associated with human trafficking since 2005. Another consequence is that the analysis of domestic factors in these changes was insufficient, because of the exclusive attention paid to the TIP report published

by the US Department of State in 2004. These consequences caused me to undertake the second stage of my research. My findings suggested that existing theories on the process of change in Japan's human trafficking and modern slavery policies should be modified in light of the new data.

To answer the questions proposed by this thesis, I identified the following empirical events in both sex trafficking and IT-TIP/TITP cases based on my findings from the two periods of fieldwork. Here are the factors that led to structural alignment in dealing with sex trafficking: (1) Domestic structural change based on the revision of labour and immigration legislation since 1990; (2) Entertainers' issues in 1991–1993; (3) International criticisms at the Fourth World Conference in Beijing in 1995 and at the World Congress Against Commercial Sexual Exploitation of Children in 1996; (4) The Domestic Violence Act 1998; (5) The introduction of the UN Palermo Protocol 2000; (6) The establishment of JNATIP in 2003; (7) The US Department of State TIP Report in 2004; (8) The Japanese Government Action Plan in 2004; and (9) The revisions in Penal Code and immigration legislation in 2005. The conflation of discourses between DV and sex trafficked victims, and how the government changed institutions and policies based on such discourses, told us that the immigration law forces migrant women to be dependent on men. The institutional changes made in 2005 that are supposed to help trafficked women do not allow them to be recognised as independent agents who have the abilities and strategies to make their own decisions. This also prevented political actors from discussing labour trafficking in Japan.

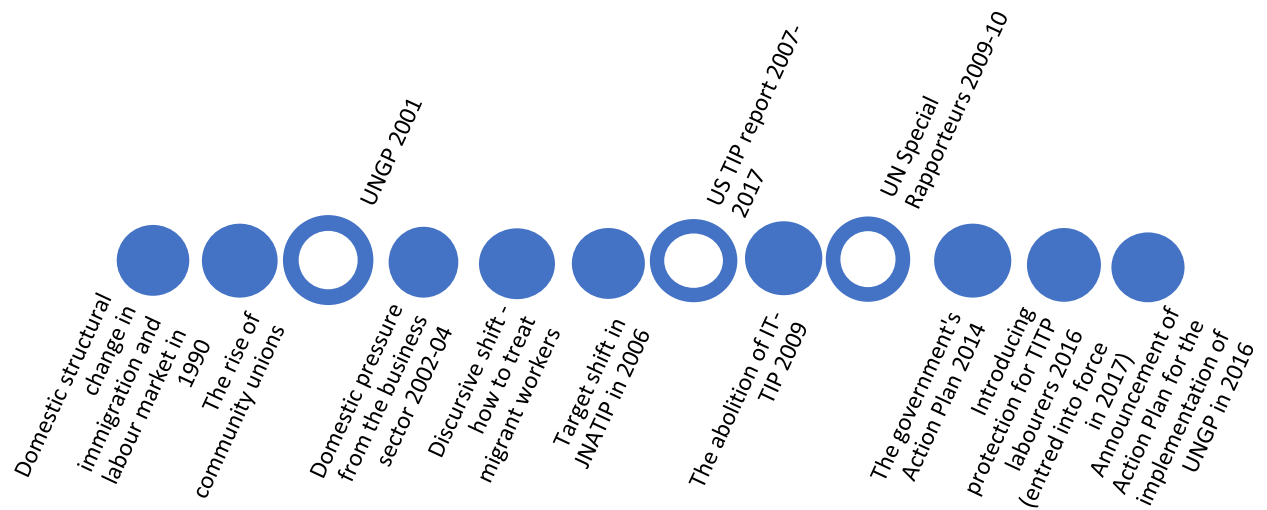
Chart 14: Empirical factors associated with fighting against sex trafficking from 1990 to 2005



Note: A ring circle shows international pressure while a normal circle indicates domestic factors (created by author).

On the other hand, the empirical events associated with changes in institutions of IT-TIP/TITP are as follows: (1) Domestic structural changes based on the revision of labour and immigration legislation since 1990; (2) The rise of community unions in 1993; (3) the UNGPs on Business and Human Rights in 2001; (4) The rise of domestic pressure from business sectors in 2002–2004; (5) The discursive shift regarding the treatment of migrant labourers; (6) The target shift in JNATIP in 2006; (7) The US Department of State TIP report in 2007; (8) The abolition of IT-TIP in 2009 (replaced by TITP); (9) A series of visits by UN Special Rapporteurs from 2009 to 2011; (10) The Government Action Plan in 2014; (11) The introduction of protection for TITP labourers in the Labour Standards Act in 2016; and (12) The announcement of the development of Japan's Action Plan to implement UNGPs in late 2016.

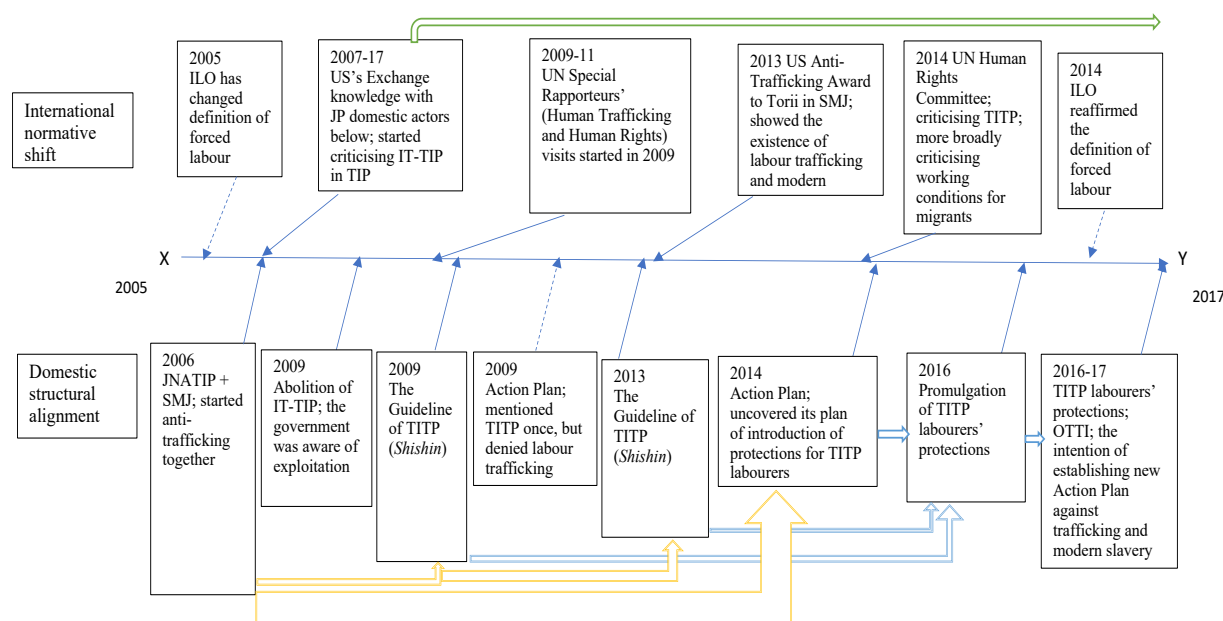
Chart 15: Empirical factors associated with IT-TIP/TITP from 1990 to 2016



Note: A ring circle shows international pressure while a normal circle indicates domestic factors (created by author).

These two charts have individually clarified the empirical events associated with anti-trafficking and anti-slavery from 1990 to 2017. However, what kind of ideational mechanisms had existed to lead these changes is not yet clear. In particular, to explain changes from 2005 to 2017 based on the extension of the understanding of human trafficking towards modern slavery, I introduce Chart 16 as follows:

Chart 16: The process which led to changes in institutions to fight against trafficking and modern slavery from 2005 to 2017 (created by author)



Note: Yellow arrows refer to the influence from domestic activists; blue ones show how the informal rules and norms are feeding into the official legislation by 2017. Green arrow indicates a constant pressure from the US State Department, while dash arrows show unclear linkage with policy and institutional changes.

This chart classifies domestic and international factors in the categories of international normative shift and domestic structural alignment. Doing so clarifies the process leading to changes in late 2016 and early 2017. As in Chapters 3 and 4, by 2005, even activists who are closely working with migrant labourers believed that labour trafficking did not exist at that time. This began to change from 2006 based on discursive interactions among political actors. As shown in Chart 16, domestic structural alignments and international normative shifts have interacted with each other and led to changes in 2017. After the government revised immigration legislation and Penal Code to solve the problems of entertainers in 2005, JNATIP which used to focus only on sex trafficking started working with SMJ in 2006. This happened because one of the members of SMJ realised that IT-TIP could be a case of labour trafficking. In the same year, these groups have started exchanging their ideas of trafficking with the US State Department by using the connection of JNATIP. Based on their

understanding of IT-TIP as labour trafficking, since 2007 the US State Department has started criticising the Japanese government in TIP reports every year. Due to the recession from the late 2008 and the lack of support for immigration plan including their settlement, these external pressures were not reflected in the 2009 Action Plan against trafficking. At the same time, the change in the definition of forced labour in the ILO Convention since 2005 has introduced the understanding of exploited migrant labourers at the low end of labour market, which converted into the shift towards fighting against modern slavery. Given that Japan has not ratified the 2014 ILO Protocol, Japanese domestic actors have not mentioned much about it. However, a series of visits from the UN National Rapporteurs from 2009 to 2011 used both ‘trafficking’ or ‘slavery-like conditions’ to describe the cases of IT-TIP/TITP labourers. These discourses supported domestic political actors to construct coordinative discourses on IT-TIP/TITP as a cause of labour trafficking and modern slavery in order to abolish this *de facto* guest worker scheme.

Despite the fact that they do not have legal binding force, a series of guidelines were published by the Immigration Bureau in order to prevent acceptance organisations from conducting illegal activities such as the custody of labourers’ passports in 2009 (Immigration Bureau 2009). In 2013, the guidelines also allowed labourers to change their employers in some particular cases such as an employers’ retirement or bankruptcy (Immigration Bureau 2013). These guidelines were established based on the interaction with local community unions who tried to circulate informal rules and ethical norms at workplaces. Although they did not have legal binding forces, the same ideas of these guidelines were feeding into policy ideas to fight against trafficking in 2014 and to protect TITP labourers in 2016. In practice, the Cabinet Office uncovered its intention of providing remedies to the TITP labourers in the 2014 Action Plan against human trafficking

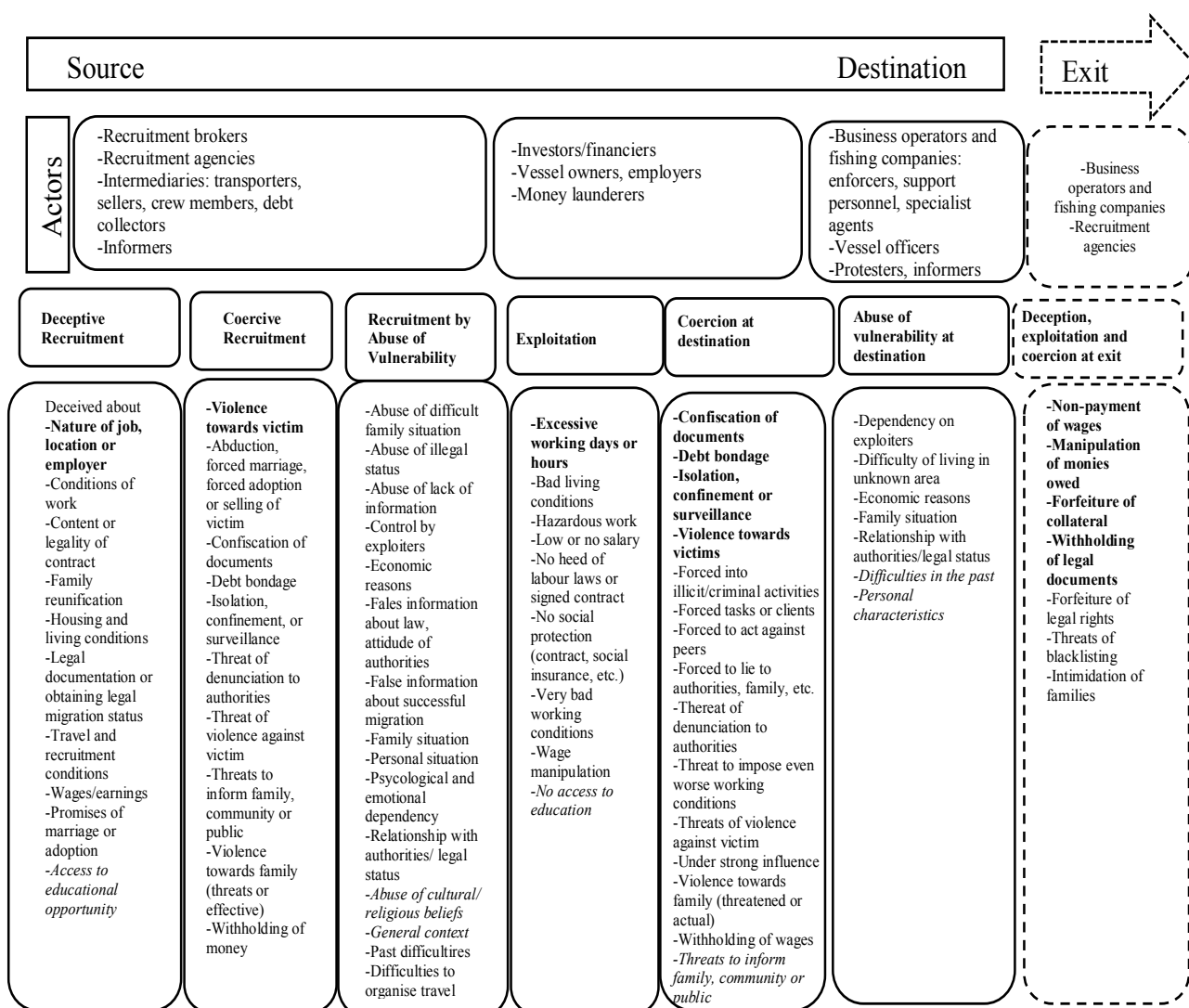
(Ministerial Meeting Concerning Measures against Crimes 2014). Based on this Action Plan, the new legislation to protect these labourers was set up in 2016. This implies that the idea of human trafficking had shifted from sex trafficking to labour exploitation of migrants which was represented in discourses on IT-TIP/TITP labourers by 2014. At the same time, in 2017 the Japanese government also published its plan to establish the new Action Plan to support UN SDG 8.7. to fight against labour trafficking and modern slavery. As a part of its anti-slavery paradigm, the government established OTTI in 2017 to investigate employers' maltreatment of TITP labourers (Hayakawa and Barnes 2017).

While the process-tracing clarifies how the political actors who are closer to the policy process use international norms and the resources provided by their network to feed into changes in 2017, this does not offer an analytical tool for mapping the data I collected through the second fieldwork. The following section therefore discusses how I map the interview materials by using the ILO/EC operational indicators.

2-2. ILO/EC indicators

As Chapter 2 highlighted, to analyse the data from the clothing/textile industry (association organisations, firm owners, and their labourers), community unions, NGOs and lawyers, this thesis introduced the ILO/EC operational indicators revised by Stringer et al. (2016). Since they argued that paying attention to the exit point of exploitation is necessary, in order to assess the exploitative conditions of migrant crews in the fishing industry in New Zealand, they adjusted the operational indicators to include the exit point as follows:

Figure 1. Trafficking for forced labour framework (extended to include exit dimension)



Note: Strong indicators are in bold text; medium in regular text; weak indicators in italics.

Source: Derived from ILO and EC 2009; Wheaton et al. 2000 Schloenhardt 1999; and extended by Stringer et al. (2016)

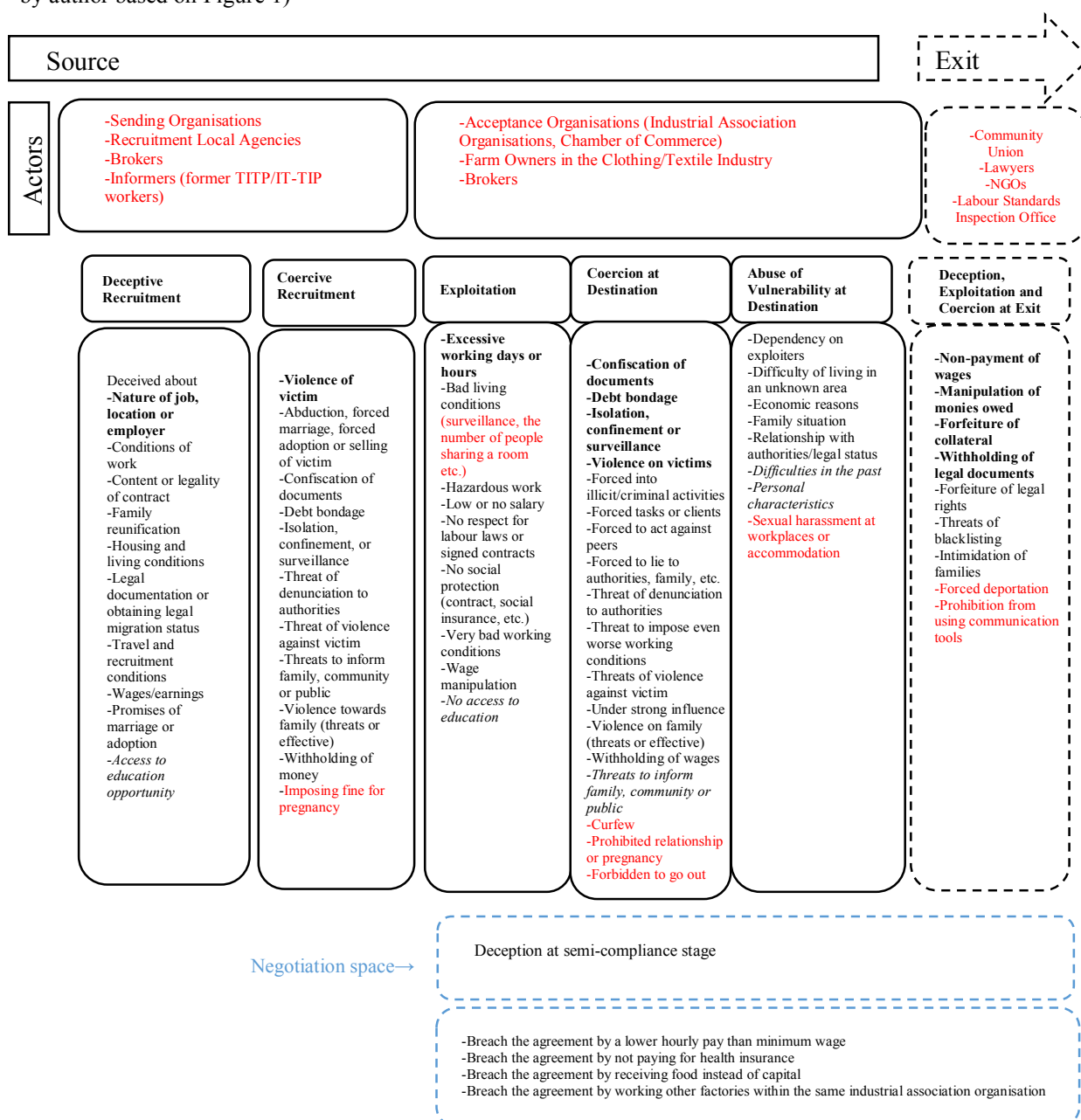
To map my data in Chapter 6, I also edited and revised the ILO/EC indicators, as Stringer et al. did above. This is because some indicators are irrelevant to the data from the clothing/textile industry under the TITP scheme in Japan. For instance, I could not find any evidence of ‘Recruitment by abuse of vulnerability’ in Figure 1. Therefore, I removed this dimension of the migration processes classified in the operational indicators.

In terms of the exit point of a contract, what kind of strategies these labourers have and how they play with their structure might depend on the types of industry.¹ Also, these indicators including the exit point of their contracts do not specify whether labourers have access to some communication tools, such as the internet or mobile phones, although these technologies play a significant role in sharing information among TITP labourers before they make a decision to leave their workplaces. Furthermore, it is also necessary to note that some IT-TIP/TITP labourers are rescued and stay at community unions' shelters before their contract ends.

More importantly, some of my data show that there seems to be space for the negotiation of labour conditions between employers and labourers. For instance, the negotiation of overtime pay between employers and labourers has often been mentioned during interviews with employers, industrial association organisations and labourers. Such data do not fit in the dimension between employers and unfree labourers in the indicators. Tanja Bastia and Siobhan McGrath (2011) also implied workers' negotiation over acceptable working conditions, although unlike Ruhs and Anderson (2010; 2006), they did not frame this space as 'semi-compliance'. To amend these points, this thesis revised and extended the model as follows:

¹ For instance, Stringer et al. (2016) show that fishing crew returned to the airport and jump from ships to escape, but these strategies might not fit different industries.

Figure 3. Indicators for unfree labour (extended to include exit dimension + negotiation dimension, created by author based on Figure 1)



As described in the chart above, I revised the exit point to introduce the activist groups which also offer rescue work. I also introduced gender-specific indicators, such as the fine for pregnancy and sexual harassment, to map the data from garment factories. The negotiation space I found was placed below the chart.

To go straight to the bottom line, the ILO/EC operational indicators suggest that most of the labourers I interviewed were ‘trafficked victims’ in terms of three medium indicators (low or no salary, wage manipulation, and bad living and working conditions) present at their workplaces. At the same time, however, there is a risk of oversimplified analysis if we only rely on the ILO/EC indicators without editing and developing this method. The ILO/EC indicators can, at least, be developed through comparative analyses of migrant labourers at the low end of the global labour market. As Stringer et al. noted (2016), migrant crews in New Zealand have no place of escape during their contracts; in contrast, it is possible for TITP labourers in the clothing/textile industry in Japan to escape from their workplaces despite their remoteness. Although TITP labourers are prohibited from changing their employers, data from community unions show that some labourers do change their employers under certain circumstances (Interview with the Advocacy Network for IT-TIP/TITP Workers’ Rights, Fukui branch, 16th September 2016). The case of an employers’ retirement or bankruptcy are mentioned in the guidelines, but the local community unions clarified that there could be various cases including no wages and sexual harassment (Interview with Community Union in Gifu, 13th September 2016). Furthermore, in comparison to the fishing crew in New Zealand, TITP labourers have clearer strategies and information about organisations providing rescue work when it comes to leaving their workplaces. The findings from TITP labourers in the Japanese clothing/textile industry therefore require me to discuss in greater detail of the degree of agency among employers and migrant workers. Furthermore, looking back to changes in policies and institutions including informal rules, the next section will discuss what kind of actions and abilities exist among employers and migrant labourers, and what is the impact of policy reforms on such agency.

3. Discussion: A Degree of Agency at the Low End of the Labour Market

According to the ILO/EC indicators, TITP labourers in the clothing/textile industry are ‘trafficked victims’, although most of them seem to have clear strategies of dealing with their exploitative working conditions. Rather than current TITP labourers who can be identified as ‘victims’, I therefore thought some of those who have gone missing might face the risk of being trafficked in the middle of their work contracts. One step further, this implies that trafficking might occur not at the entry of a destination country, but rather in escaping from the current workplaces which only provide minimum opportunities and wages (O’Connell Davidson 2015). The interview with the representative of Industrial association organisation 1 in Tokushima uncovered his experience rescuing one of the TITP interns in his member companies from a broker and a new employer (Industrial association organisation 1, 7th September 2016). However, TITP labourers who have left their employers in the middle of their contracts have been ignored within political activism.

This controversial result makes me consider the degree of agency of IT-TIP/TITP labourers – that is, their differing abilities to make decisions and express them in their behaviour (Hay 2002). In political activism against the IT-TIP/TITP scheme, these labourers are understood as ‘trafficked victims’ and ‘modern slaves’ being even more vulnerable than irregular migrants, such as undocumented migrants or overstayers. A hierarchy of migrant labourers has been created, not only between TITP labourers and others, but also among TITP labourers. This is due to the expansion of the TITP scheme, which blurs the border between unskilled and skilled workers. This hierarchy among labourers at the low end of the labour market is often constructed by political actors. They aim to conform the experiences of

vulnerable IT-TIP/TITP labourers with the dominant discourses on ‘trafficking’ and ‘modern slavery’. In this way, these political actors aim to change institutions and policies to fit their own preconceived, if well-intentioned, agenda. However, at the same time, once such institutions (and their changes) are structured, others who do not fit the mould are placed at the margins of society. This is also the case for former trainees or interns who became irregular migrants after they escaped from their workplaces.

My thesis shows that notwithstanding the secure visa and work contracts under the purview of the TITP scheme, there is some degree of agency, although these institutions and policies still regulate what these labourers and employers can/cannot do. This means that institutions and policies constructed against trafficking and modern slavery are less effective. In the case of TITP, it is widely believed that a dichotomy exists between ‘evil’ employers and ‘exploited’ migrant employees who are forced to work for over 15 hours every day. However, my data also suggest that employers and some migrant labourers often negotiate on matters of wages, health insurance, holidays and so forth. These labourers are not submissive, and hence have clear strategies for raising their salaries or, if they are not paid, for dealing with this problem. Such a degree of agency exists between acceptance managed by individual enterprises and acceptance supervised by organisations; between a textile firm and a garment factory. There are not many abusive stories of trainees who came through the route managed by individual enterprises, nor from textile firms, even though they are part of the clothing/textile industry. The exploitative conditions uncovered in my data are mostly in the ‘acceptance supervised by organisations’ immigration route, or at garment factories at the bottom of the hierarchy. A labourer’s degree of agency could therefore vary depending on the complex interaction of informal and formal rules, relationships at workplaces, and elements of social structure that shape people’s behaviour.

Although I did not conduct in-depth interviews with (former) entertainers working in the Japanese commercial sex industry, previous studies on entertainers also suggest the existence of a degree of agency among entertainers. For instance, Cheng (2010) identified agency by drawing attention to Filipina entertainers in a South Korean sex club. Instead of using the binary rhetoric of ‘social nuisance’ versus ‘victim’, or ‘forced’ versus ‘consenting’, Cheng invited readers to recognise these entertainers as ‘desiring subjects’ to stay for their careers, loves or something else (2010:9). Critical feminist scholars such as Doezenia (2010; 2002) also revised the stereotype of migrant women in the sex industry as ‘passive victims’ by paying attention to their agency. This has also contributed to the literature on agency among those women and their strategies of resistance, which can be found in studies into the ethnographies of sex workers and hostesses (Yea 2016; Parreñas 2011). A trial case in my thesis of a former entertainer who is married to a Japanese local also provides a good example of such agency (Interview with Lawyer 2, 6th January 2016). By playing with the institutions which allow former entertainers, despite their irregular status, who have married or who are pregnant by Japanese locals to stay in Japan (ICRRA Article 50 (1)-4), they have been fighting over residence permits in Japan for their love and for better future opportunities.

The evidence associated with the degree of agency raises a question of the structure-agency relationship. This relationship is about what is deemed to constitute a valid or adequate explanation of a political effect or outcome. According to Hay (2002), structure means settings (contexts) within which political, social and economic events occur. This could be more specific when it comes to the meaning of structure in political science because it implies more about the ordered nature of social and political relations. For instance, political

institutions, practices, and conventions appear to exhibit regularity, which political scientists mean by 'structure'. Agency refers to the ability of an agent to act or make decisions. As we would imagine, the greater the influence of structure, the more predictable political behaviour is assumed to be.

The problem is that the notion of structure and agency implies more than mere political action or conduct. When it comes to agency, it also implies that the actor could behave differently no matter what the structure predicts (Giddens 1979). Hence, as Sina Leipold and George Winkel suggest (2013), agency seems to be created by spaces of flexibility which leave a gap within the structure. This agency-structure relationship overlaps with the concept of semi-compliance which Ruhs and Anderson introduced (2010). Semi-compliance was formulated to help understand the employment experiences, including the decisions and choices, of migrants and employers alike, in the low wage, low-skilled sectors and the au-pair sector. Ruhs and Anderson argue that the analysis of the abilities, motivations, and processes of migrants, and their employers' engagement with the government policies and institutions is required to understand the nature of illegality in the labour market.

The perspectives of various nature of illegality have raised the question of what sorts of actions and possibilities the gap within the structure facilitated, and how the government's policy reforms have altered this gap. Discourses on TITP labourers as 'trafficked victims' or 'modern slaves', and the anti-trafficking structure based on such discourses, have encouraged these labourers to raise their claims to protect their labour rights. These labourers now know where to go to claim their employers' wrongdoings at their workplaces. These strategies allow them to negotiate about their salaries with employers or change their workplaces even though these negotiations sometimes include illegal aspects. Employers

had also enjoyed labourers' flexibility, to some extent, such as relocating foreign labourers with other members of the same association organisation.

In this sense, the new legislation to protect TITP labourers implemented in 2017 can be seen as a positive change because the protection for these labourers has now a legal binding force. However, as Chapter 6 illustrated, the content itself has not hugely changed from the guidelines which the Immigration Bureau published (2013; 2009). As some local community unions also clarified, they have tried to negotiate with local branch of the Immigration Bureau to let these labourers change their workplaces. It might also be true that the structure of punishing employers as 'evil traffickers' and making TITP labourers 'victims' can affect employers and labourers' agency. It is because, while TITP labourers can openly claim their labour rights to protect themselves even though these labourers might also contribute to creating the natures of illegality, the employers might find it difficult to treat their workers in exploitative ways due to the pressure of punishment. In any case, given that my fieldwork had been completed before the government introduced the remedies for the TITP labourers, the impact of the revision in 2017 remains to be seen.

The question of to what extent policy reform based on the constructed discourses alters the gap within the structure, however, raised some thoughts of the relationship between 'coordinative' and 'communicative' discourses. One is to raise the possibilities of communicative discourses, rather than coordinative discourses, to influence changes in institutions and policies. In terms of coordinative discourses, Schmidt argues (2012c:102), 'the policy ideas in the coordinative discourse [...] are generally translated by political actors into language and arguments accessible to the general public as part of a communicative discourse'. On the other hand, communicative discourses are considered to have less ability

to change institutions and policies, but seem to be discursive interaction ‘from the bottom up through the ideas and discourse of local, national, or international “civil society” or ordinary people’ (Ibid., 86). These two types of discourses, and the different abilities that they imply, suggest that there is a hierarchy between the two in terms of the accessibility of policies and institutions. However, as mentioned above, informal rules like the guidelines for employers, and ethical norms which local community unions had tried to circulate, were absorbed in the 2016 legislation reform. This implies that, rather than being mere ‘carriers’ of coordinative discourses in public space, communicative discourses can be influential over changes in policy and institutional arrangements.

This, in turn, also suggests the danger of constructing dominant discourses. Compared to the case of entertainers, institutional arrangements to protect IT-TIP/TITP labourers are more of the product of communicative discourse. Given that these communicative discourses also exclusively focus on these labourers within TITP structure, the protection may not be that effective because there is a lack of awareness of the former TITP labourers who left this structure and might face more risks of being trafficked. As in Chapter 5, Torii, a director of SMJ, believes that irregular migrants including former trainees and interns can enjoy more freedom. Torii also suggests the number of these irregular migrants is small. This idea is widely shared among the members of the Advocacy Network including local community unions. This implies that even activists who are constructing communicative discourses through their grassroots activities do not care about these former labourers who left their workplaces in the middle of their contracts and might face the risks of being trafficked. As Chapter 5 illustrated, unlike South Korean’s case, this ignorance of the former IT-TIP/TITP labourers who became irregular migrants could be one of the reasons why it took the Japanese government so long to introduce protection for TITP labourers.

In the case of human trafficking and modern slavery, the gap between constructed discourses and the situations at workplaces might also result from a wide variety of understandings of these issues in different societies and countries. This is because what is deemed to be ‘illegal’ has been socially and politically constructed. In this sense, the ILO/EC indicators (2009) were certainly useful for yielding basic ideas of what the terms ‘exploitation’, ‘coercion’ and ‘deception’ might mean, but there is still ambiguity. For instance, it is hard to tell what kind of living conditions are ‘bad’ (Figure 1). As Lerche also suggested (2011:11), the ILO operationalisation still lacks some important factors of forced labour, such as ‘long overtime hours’. Although overtime hours with low wages are a common feature in garment factories anywhere, there is still a long way to go before we can develop general principles about problems with domestic laws in individual countries (ILO 2015; Bastia and McGrath 2011). For instance, ‘exploitation’, ‘coercion’ and ‘deception’ might look different in countries and different industries depending on the nature of the work. This suggests that we need to develop these indicators by conducting cross-regional or cross-industrial comparative studies. Developing such studies will contribute to clarifying what kinds of situations embody ‘exploitation’, ‘coercion’, and ‘deception’ at the low end of the labour market.

4. Conclusion, Contributions and Political Implication

What implications does the above analysis have? In the final section below, I will highlight this study’s contributions and indicate the future directions I think this research should take.

4-1. Conclusion

This thesis shows the process by which the Japanese government has changed institutions and policies for the acceptance of unskilled migrants within its zero-immigration principle over the last almost three decades. This is explored through the lens of discourses on ‘human trafficking’ and ‘modern slavery’. A discursive shift has taken place since the mid-2000s towards providing remedies to TITP labourers, due to a desperate labour shortage. In this shift, the understanding of ‘human trafficking’ has expanded from entertainers’ issues to include the problems of IT-TIP/TITP as ‘labour trafficking’ or ‘modern slavery’. This has contributed to highlighting the exploitation of migrant labourers at the low-end of labour market. Despite an oversimplified view of these labourers’ various motivations and abilities, their sympathetic portrayals by activists and the criticisms of IT-TIP/TITP have convinced the government to review its standpoint of ‘zero-immigration principle’ for unskilled migrants.

Indeed, discourses on ‘human trafficking’ and ‘modern slavery’ in Japan rest on only narrow ideas of trafficked entertainers (mostly Filipina entertainers) and IT-TIP/TITP labourers. Political activists’ efforts to raise these two categories of migrants make sense in light of the current government’s Action Plan (Ministerial Meeting Concerning Measures Against Crimes 2014). This plan places these problems ‘in the context of promoting migrant and female workers’ in an aging society (Ibid.). However, these dominant discourses simply do not reflect the complexities of life on the margins at the low end of the labour market in global capitalist societies.

As a result, changes in institutions and policies against sex trafficking around 2005 introduced Article 50 (1)-3 as a remedy for trafficked victims, but it became a dead letter. Instead of using this Article in trafficking trials, lawyers tend to use Article 50 (1)-4, which states that migrants can stay in Japan if they now have one of the specified family ties, such as being married to a Japanese local. This Article is more useful to lawyers in these trials, because some of the women working in the sex industry became wives or partners of Japanese locals after they ran away from their brokers or employers. In contrast, institutional and policy changes aimed at solving the problems of IT-TIP/TITP are still ongoing, but by 2017, the government had recognised their issues due to political activism for those labourers in fighting against trafficking and modern slavery. It introduced remedies and an investigation scheme to punish the acceptance organisations abusing them. In addition, it also uncovered its intention of partaking in SDG 8.7. by setting up the new Action Plan to fight against labour trafficking and modern slavery in 2017 (Hayakawa and Barnes 2017). In short, by 2017, the Japanese government had started to take part in the global enforcement of labour standards.

These institutional and policy changes from 1990 to 2017 provide a better understanding of the government's change of heart, announcing its willingness to introduce a new visa scheme for unskilled labourers in April 2019. Through this scheme, TITP labourers will now be able to apply for new working opportunities after their completion of the programme and will be able to work for a maximum of five years (Mainichi Shimbun, 29th May 2018). While retaining the TITP scheme, the government will officially invite unskilled labourers into Japan. In this way, some of the TITP labourers will be able to stay in Japan for nearly ten years in total. *Nikkei Asian Review* (2018) recently uncovered that when senior officials of the Cabinet Secretariat and other bureaucrats had a conversation with the Prime Minister in

February 2018, the Prime Minister uncovered that accepting unskilled migrants was ‘unavoidable’. This marks a substantial shift from 1990 to date. Even so, the scheme again denies the possibility of the migrant labourers’ settlement and family unification, since the ‘zero-immigration principle’ will be retained. At the same time, the government shifts the responsibility for the migrants to the acceptance organisations.

The way in which the government revised institutions and policies to protect TITP labourers and punish their employers showed that little has been done to change the structure that causes the problems of trainees and interns at workplaces. While calls to address causes are now commonplace such as inequality between Global North and Global South or globalisation pressing domestic factories, there remains a distinct lack of discussion about what we can do for these foreign labourers. For instance, as mentioned in Chapter 6, the community union in Gifu suggested that circulating business ethics is essential among the economic sector rather than dramatically revising labour regulations. However, the question has remained as to how it is possible to do so and whether or not such tactics can apply to other countries. This poses problems for policy-makers because if they do not understand the issues they face, they are limited what they can do about these issues. Rather than criticising acceptance organisations, the government should review its policy idea of the acceptance of unskilled labourers including their settlement and family reunion. Otherwise, even though the government introduced the legislation to protect these labourers, their employers would not follow it at their workplaces.

4-2. Contributions

This thesis has, I believe, made a number of contributions to the field. First, it offers insight into the relationship between exogenous and endogenous factors influencing domestic institutional changes through the lens of human trafficking and modern slavery. Previous studies on human trafficking were completed around 2005 due to the narrow definition of human trafficking as sex trafficking (Hitomi 2011; Okubo 2007). In other words, these studies presumed it was external pressure from the US Department of States which explained policy and institutional changes, ignoring domestic conditions. This halted analysis of human trafficking in Japan. In this respect, this thesis emphasises the role of ideas and discourses constructed within the interaction between endogenous and exogenous factors since 1990.

This leads us to the second contribution: adding discursive institutionalism to the literature on human trafficking and modern slavery. There are two specific contributions associated with discursive institutionalism. First, this thesis has attempted to discuss changes in institutions and policies fighting against human trafficking and modern slavery by introducing discursive institutionalism. Some of the previous studies discussed the institutionalisation of human trafficking in the domestic as well as international context (Anderson and O'Connell Davidson 2004; Weitzer 2007). These studies also emphasised that discourses could include knowledge which becomes socially legitimised. Socially legitimised discourses become the dominant discourse. However, these studies did not clearly illustrate how these dominant discourses affect changes in policies and institutions. To overcome this, I traced changes in institutional arrangements which had been influenced by domestic discussions of trafficking and modern slavery since the mid-2000s. Thus, this

thesis contributes to clarifying the role of political activism in raising issues of female migrants within discourses on trafficking and modern slavery. Second, it contributes to a greater understanding of the interaction between coordinative and communicative discourses in changing institutions and policies. As mentioned above, communicative and coordinative discourses refer to the gap in political actors' abilities to access policies and institutions. Rather than understanding communicative discourses as mere carriers of coordinative discourses, this thesis also raises the possibilities of communicative discourses in terms of policy and institutional changes.

One last contribution refers to the critical literature on trafficking and modern slavery. This thesis has provided the first comprehensive documentation of institutions and policies against trafficking and modern slavery in Japan. Moreover, this overarching Japanese case study illustrates an intriguing relationship between illegality and human trafficking, which slightly differs from the perspective developed by some of the American and European scholars. Because of its illegality, human trafficking is often conflated with irregular migration, so it is wrongly assumed that all trafficked persons are irregular migrants. As in O'Connell Davidson (2017b), however, people who are trafficked do not necessarily cross borders illegally or forcibly. There may be cases of people abducted from their homes and forced to work in other countries or regions, but if the term *human trafficking* only applies to such cases, it would be an extremely small phenomenon, far different from a situation where the estimated number of victims is well into the millions.² Rather, in terms of current instances of human trafficking, most trafficked persons willingly move to different countries, but are deceived about workplaces including living and working conditions during their journeys. Or it might be the case that legal migrants become irregular migrants after leaving

² Cf. Bales, K. (2007) *Ending Slavery: How We Free Today's Slaves*, Barkley: University of California Press.

abusive employers who hold their immigration documents; and while being undocumented or overstayers, they might be trafficked to work in different locations. In this sense, as O'Connell Davidson also clarifies (2015), migrant labourers do not enter voluntarily into the situations which are described as 'trafficking' and 'modern slavery'; rather, they are trapped by traffickers when they 'escape' from their restricted life with its lack of opportunities. This view is also borne out in my thesis in Chapter 6, based on first-hand data from semi-structured interviews and participant observations conducted in the second fieldwork.

4-3. Policy Implication from Japanese Case Study

Ultimately, what is the implication of this Japanese case study of human trafficking and modern slavery, focussing on female migrant labourers in two different industries? First, this Japanese case study raises a broader question about the sex industry and the clothing/textile industry – should they really exist? As clarified in Chapter 3, these industries were already known in the late 19th century Japan as a 'popular destination' for those who lacked opportunities due to limited education and poverty. No qualifications or skills are required in these industries, making it a possible source of income for people without any assets. For this reason, some scholars suggest that, whether these industries are regulated or unregulated, they serve the interests of the working poor of the world (Guthrie 1995; Tsurumi 1990).³ It might be true that there are common interests between migrant labourers without any assets who want to make money and employers seeking flexible workers for

³ For instance, Jeannine Guthrie clarifies that underground brothels operate out of some of Nepal's carpet factories (1995).

their small factories in Japan. However, unless we revise the protectionist practices of advanced countries, including Japan, the working poor will always be at risk of exploitation in these industries. Indeed, since these practices perpetuate the disparities between the Global North and the Global South, problems of trafficking and modern slavery will continue. Needless to say, the sex industry and the clothing/textile industry are the tips of the iceberg. Even if we erase those industries as a source of trafficking and modern slavery in Japan, sooner or later, similar issues on different industries will appear.

Second, this thesis sheds light on the power of dominant discourses, representing the problems of particular groups of migrant labourers, to affect policy and institutional changes for these groups. However, it does not argue that the changes leave these migrant labourers better off. Even if Japan changed its institutions and policies in line with global standards against human trafficking and modern slavery, the state is, indeed, a source of harm to those migrant labourers (O'Connell Davidson 2015; Kabeer 2004). It is because, while the government insists on continuing to invite them without any possibility of settlement, it passes the blame onto those employers and industries which demand cheap labourers by emphasising that 'the problems in IT-TIP/TITP are private matters'.⁴ This standpoint also makes it possible for the government to maintain IT-TIP/TITP as a contribution to international development within its 'zero-immigration principle'. In the same way, employers running small factories in rural Japan enjoy benefits from the flexible working of migrant labourers (such as disparities in lower wages) while controlling their (physical) freedom. While this fundamental idea of differing standards and a hierarchy of labour remains among political actors, those migrant labourers will never be protected. Without

⁴ As in Chapter 5, an MOJ official made this comment at a meeting I attended as an observer from SMJ.

any clear vision, including a vision for settling them and their families in Japan, the exploitative situation of those labourers cannot be solved.

This leads to the third implication. Tracing institutional and policy process related to discourses on entertainers, interns and trainees since the early 1990s in Japan has shown the dynamism of progressive political activism for these migrant labourers in Japanese civil society. Although the Japanese government guards its dominion over categorizations of citizens/non-citizens, skilled/unskilled and workers/non-workers, this monopoly has come under attack by political activism for these migrant labourers who will be key future workforces. In short, my study exploring the changes in policies and institutions associated with these labourers who are regarded as ‘victims’ by activists also represents that Japan as a homogeneous country has become ‘myth’ (Sugimoto 2014; Burgess 2010; Weiner 2008). In this sense, through this case study, we have witnessed the emergence of civil society under the globalisation of the labour market. In terms of the role of civil society, some scholars suggest that Japanese civil society is ‘underdeveloped’ or ‘weak’ compared to other countries (Osborn 2003; Vosse 2000; Yamamoto 1999). It is partially because these scholars tend to use the patterns of civil society participation as the yardstick to measure whether Japanese civil society is well developed or not. Due to NGOs’ limited freedom to conduct independent research and lobbying in history, Japanese civil society has been seen as less democratic in these studies. As other scholars also do (Haddad 2010; Pekkanen 2006), however, I disagree with this view. Although it is still debatable whether the current political activism for migrant labourers is successful or not, through the lens of this activism we can see the prominence of local community unions and their ability to exchange their ideas with the government. In other words, the insights from the experience of this current political activism can be used to enrich the understanding of Japanese civil society.

4-4. Value of this thesis and future direction

The most valuable element of this thesis is its comparative perspective, introducing a Japanese case study of what some describe as ‘human trafficking’ and ‘modern slavery’. In particular, the investigation of working and living conditions in the Japanese clothing/textile industry provides an intriguing insight into ‘modern slavery in business’, which has recently been developed in business studies in some leading universities in England, such as the University of Nottingham and the University of Sheffield. In this new context of human trafficking and modern slavery, practitioners and academic scholars have begun to consider the role of civil society, and private actors in the global supply chain. In this respect, the analysis of the Japanese clothing/textile industry as a trading hub of the Asian apparel industry could offer different perspectives of political activism against human trafficking and modern slavery in a global setting. Furthermore, this thesis encourages future studies to clarify working conditions by using cross-country and cross-industrial data. In this sense, despite its lack of clarification on some indicators, the use of the ILO/EC operational indicators to develop comparative studies would help us generalise the ambiguous concepts of ‘exploitation’, ‘coercion’, and ‘deception’.

There are, of course, more questions raised through this investigation. Primary among them is how international initiatives towards ‘decent work for all’ recognised by the UN can be transferable to different contexts and cultures. Since 2015, when the UN recognised this initiative as one of 17 sustainable development goals to be accomplished by 2030, the research focus on human trafficking and modern slavery has shifted towards discussing exploitative working conditions in the global supply chain. This is partially because many

leading brand companies have been shown to profit from the use of exploitative labour practices in their supply chains. The campaign for ‘decent work for all’ has put pressure on big enterprises into accepting more responsibility for all the workers producing their products. In this context, over the last few years, we have seen an increasing number of governmental initiatives aimed at improving labour standards at workplaces. However, these initiatives overlook the fact that often unregulated networks supply these products in global supply chains in which forced labour and trafficked victims may be employed. To improve global initiatives for decent work, clarifying and closing such gaps between the targets in international initiatives and the problems in global supply chains is required. In particular, it is crucial to explore what kinds of informal jobs and recruitment processes exist in a particular industrial sector in different countries and regions. To do so, as emphasised above, I would like to conduct cross-sectoral and cross-country ethnographic studies built on this case study, paying attention to Japan.

Appendix 1: Questionnaire (Common questions I asked to politicians, lawyers and NGOs)

1. Why do you think the Japanese government revised the Penal Code and immigration law to combat human trafficking in 2005, but has ignored labour exploitation issues?
(In this question, I asked about participants' understanding of human trafficking).
2. In terms of the revisions of institutional arrangements in 2005, do you think there was any pressure from international society as well as from domestic actors before these amendments?
 - a) If so, what kind of pressure?
 - b) Do you come across similar types of pressure regarding TITP issues?
 - c) As for b), if so, do they come from international society or from domestic actors?
3. Over the 1990s, to what extent was it important for the Japanese government to establish a positive image in international society, in terms of dealing with violence against women and children?
4. If you have experience of it, could you please let me know how you cooperate with lawyers, NGOs and labour unions in dealing with human trafficking issues?

Questionnaire (Common questions I asked to employers and labourers)

To employers:

1. Personal profiles (owner's age, types of products, the number of factories, the relationship with major apparel or trading enterprises)
2. When did you start to use TITP?
3. What made you make this decision?

4. How did you choose the sending organisations?
5. Which country or countries are your workers from?
6. About labourers' basic information (age, gender and marriage status). If there is a preference relating to these factors, ask the reasons.
7. Why did you choose this country to recruit workers from?
8. What are the problems in employing workers from abroad? (In this context, I asked about the rules at workplaces.)
9. What is your opinion about TITP (and its extension)?
10. Would you prefer to have your TITP labourers as regular workers?

To labourers:

1. Personal profiles (labourer's hometown, age, gender, type of work, marriage status...)
2. Why did you apply to this programme?
3. When did you come to Japan?
4. How did you choose the sending organisations? Were there any brokers to connect you to the sending organisation? If so, how much did you pay?
5. For how long have you been trained in your home country and in Japan?
6. How many hours did you usually work at the factory per day?
7. What made you seek rescue? How did you know about the rescue organisations? (By asking these questions, I aim to see if there are any problems in their working conditions, rules at their workplaces and their strategies at the exit point.)
8. Do you want to stay in Japan if there is an opportunity to work?
9. What is your opinion of the TITP?

Appendix 2: List of the interviewees

1) The First Stage of the Fieldwork

- Former politicians: 2
- Former Immigration Bureau Officer: 1
- Former ILO Tokyo representative: 1
- Lawyers: 7
- NGOs/community unions: 6

2) The Second Stage of the Fieldwork

- Local authorities: 3
- Labour Inspection Office: 3
- Lawyers: 3
- NGOs/community unions: 8
- Industrial Association Organisations: 11
- Employers: 18
- Labourers: 8

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