

THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM
COMMENT ON THE DRAFT GENERAL RECOMMENDATION NO.37 ON RACIAL DISCRIMINATION AND THE
RIGHTS TO HEALTH

30 June 2022

INTRODUCTION

The International Movement Against All Forms of Discrimination and Racism (IMADR) is an international non-profit, non-governmental human rights organisation devoted to eliminating discrimination and racism, forging international solidarity among discriminated groups and advancing the international human rights system.¹ IMADR is grateful to the UN Committee on the Elimination of Racial Discrimination (CERD) for providing stakeholders the opportunity to make inputs for the draft General Recommendation No. 37 on racial discrimination and the right to health (hereafter draft GR). To respond to the call from the CERD on GR No. 37 on racial discrimination and the right to health in advance of the Day of General Discussion, our submission provides inputs to strengthen the draft GR based on international and regional human rights standards on multiple and intersectional discrimination against migrant workers in Japan.

MIGRANTS AND RIGHTS TO HEALTH

There are multiple barriers people subject to racism face in accessing timely and quality health care. The barriers often consist of multiple and intersecting forms of discrimination based not only on race, colour, descent, ethnic or national origin, but also other factors, such as their gender, sexuality, citizenship, employment status, age, or disability.²

Migrant workers, in particular female migrant workers in Japan under the government-sponsored Technical Intern Training Program (*ginō jisshū seido*) are subject to these multiple and intersecting forms of discrimination. The Technical Intern Training Program was established in 1993 with an aim to transfer vocational skills and techniques from Japan to so-called developing countries through training personnel.³ However, there are many criticisms that this system in practice works to provides Japanese employers with cheap labour, mostly with the wages lower than average and in unskilled blue-collar jobs, to resolve labour shortages.⁴

¹ IMADR, 'About us' <<https://imadr.org/>> accessed 1 July 2022.

² Committee on the Rights of Persons with Disabilities, 'General comment No.6 on equality and non-discrimination' (CRPD/C/GC/6, 26 April 2018) <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-nondiscrimination>> accessed 30 June 2022, para 19.

³ The Technical Intern Training Program aims to transfer skills, technologies, or knowledge accumulated in Japan to developing and other regions and to promote international cooperation by contributing to the development of human resources who can play roles in the economic development of those developing regions. Japan International Trainee & Skilled Worker Cooperation Organization, 'What is the Technical Intern Training Program?' <<https://www.jitco.or.jp/en/regulation/index.html>> accessed 30 June 2022.

⁴ Bao Quyen Tran, 'Vietnamese Technical Trainees in Japan Voice Concerns Amidst COVID-19' (2020) 18(18) Asia-Pacific Journal 1. Monthly wages earned in 2019 by young foreigners working in Japan under the country's technical trainee system were only some

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A Japanese lawyer reports as one of the most unreasonable working conditions that in some cases intermediaries sending trainees to Japan ban pregnancy, childbirth or even contact with the Japanese to prevent romantic relationships.⁵ Even if not in a formal or informal contract, many of trainees are told by trainee-dispatch organizations in their home countries or companies and schools in Japan that they may be subject to dismissal or deportation once they are found to be pregnant.⁶ In fact, 637 technical trainees discontinued their training programs due to pregnancy or childbirth between November 2017 and December 2020, according to the government survey.⁷ Only 11 of them, or 1.7 percent, resumed their training.⁸ Trainees tend to endure these severe conditions as they are often from poor countries or regions, falling into debts to finance the high program enrolment fees levied by brokers in their home countries, and eager to send money home to support their families.

A 21-year-old Vietnamese woman Le Thi Thuy Linh came to Japan in August 2018 as a technical trainee in a tangerine farm. When she became pregnant in the summer of 2020, being feared to be forced to return home, she could not talk about her pregnancy to anyone.⁹ While Japanese law prohibits detrimental treatment of pregnant workers, Linh had heard nothing about it from the farm where she worked nor the intermediary that introduced her to the workplace.¹⁰ She also heard and believed that foreign trainees would be deported if they became pregnant, while she did not believe her organization would protect her

60 percent of wages for all workers in a similar age group including Japanese, according to a government survey. Jiji Press, 'Foreign Technical Trainees Work at Low Pay in Japan' (*Nippon.com*, 2 April 2020)

<<https://www.nippon.com/en/news/yjj2020040200818/foreign-technical-trainees-work-at-low-pay-in-japan.html>> accessed 30 June 2022: Organization for Technical Intern Training, "Annual Business Statistics FY2019"

<https://www.otit.go.jp/gyoumutoukei_r1/> accessed 30 June 2022.

⁵ Kanna Nakamura, Hiyori Inagaki, Satoe Matsumoto and Misa Ogawa, 'FOCUS: Pregnant trainee in Japan feared being forced to return to Vietnam' (*Kyodo News*, 20 April 2022) <<https://english.kyodonews.net/news/2022/04/803ebc204b8e-focus-pregnant-trainee-in-japan-feared-being-forced-to-return-to-vietnam.html>> accessed 30 June 2022.

⁶ Eri Niiya and Rikuri Kuroda, 'Rumor leads to dead baby and trial for trainee from Vietnam' (*Asahi Shimbun*, 27 June 2022) <<https://www.asahi.com/ajw/articles/14639419>> accessed 30 June 2022.

⁷ Japan Federation of Bar Associations, 'Opinion on the Abolition of the Technical Intern Training System and Reform of the Specified Skill System' <<https://www.nichibenren.or.jp/library/pdf/document/opinion/2022/220415.pdf>> accessed 30 June 2022. However, Japanese human rights lawyer Ibusuki mentioned 637 women were only the tip of the iceberg as other reasons are often cited when reporting to the government, even if the trainees were forced to return home due to pregnancy. Nakamura, Inagaki, Matsumoto and Ogawa (n 5).

⁸ *ibid.*

⁹ It is reported that she tried to hide her pregnancy from others by wearing loose clothing. Nakamura, Inagaki, Matsumoto and Ogawa (n 5). Philip Brasor and Masako Tsubuku, 'Japanese Court "Forgives" Vietnamese Trainee Convicted of Abandoning a Baby... Up to a Point' (2022) 20(3) *Asia-Pacific Journal* 1.

¹⁰ The Labour Standards Law and the Equal Employment Opportunity Law apply to the trainees, just as they do to Japanese nationals. In the event of pregnancy or childbirth, training is supposed to be temporarily suspended, and support systems such as lump-sum payments and leave can be used. However, in a discriminatory treatment of foreign trainees, the law is often not complied by companies and intermediaries.

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from being penalised for getting pregnant and giving birth in Japan. She however could not return home as she had racked up debts and her family relied on her remittances.¹¹ On November 15, 2020, she gave birth to twin boys who did not breathe. Naming the boys in Vietnamese, Linh wrote a letter saying, "I'm sorry, my twin babies. Please sleep peacefully." She placed the letter along with their bodies, which she wrapped in towels, in a cardboard box inside another that she sealed with tape. The box was placed on a shelf in the house where she lived and she stayed in the same room as the bodies and kept them for only 33 hours.

She was then arrested in mid-November 2020 for allegedly 'abandoning' the bodies of stillborn twins she gave birth to while she was alone at home.¹² While she alleged that she intended to mourn them and prepared to bury the bodies, the prosecutor indicted her claiming that she tried to 'hide' the bodies. The Fukuoka High Court ruled Linh had sought to hide the bodies because she placed them in sealed boxes after concealing her pregnancy in an effort to continue working in Japan and that she hurt religious sentiments and feelings regarding mourning the dead.¹³ Linh was sentenced in January 2022 to three months in prison, suspended for two years.¹⁴ Linh, the defense councils and supporters found the ruling wrong as the judges did neither take into consideration the light of foreign trainees nor Linh's dire situation in which she was close to her limits physically and mentally after giving birth alone and bleeding heavily.¹⁵ "If the judge who wrote this decision had understood how much I and other technical trainees suffer and how we are afraid of our employers and supervising entities, the result would be different" wrote Linh in her letter to the press.¹⁶ The case was appealed to the Supreme Court. As of June 2022, the campaign seeking her acquittal has garnered more than 80,000 signatures of support.¹⁷

Linh's isolation during childbirth highlights the predicament of many foreign trainees working in Japan under the technical training program. There have been many reports of cases like Linh's isolated childbirth without access to healthcare in a hospital. In the case of another Vietnamese female trainee, she got pregnant, but her Japanese boyfriend fled after he realised her pregnancy.¹⁸ She was denied medical service several times because there was no interpreter at the hospital and she could not speak Japanese enough to explain her situation.¹⁹ She ended up in giving birth to a girl alone in the corridor of a house that was used as a company dormitory.²⁰ The situation is only worsened as the court has criminalised those mothers giving an isolated

¹¹ She earned about ¥150,000 a month, of which ¥120,000 she sent back to family in Vietnam. Nakamura, Inagaki, Matsumoto and Ogawa (n 5).

¹² Nakamura, Inagaki, Matsumoto and Ogawa (n 5).

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Niiya and Kuroda (n 6).

¹⁹ *ibid.*

²⁰ *ibid.*

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childbirth without access to medical service in a fear and a struggle with structured discrimination against foreign migrant female workers, in particular with prevalent maternity-linked harassment.

While an increasing number of female interns are joining the Technical Intern Training Program,²¹ arrangements for their needs have not been made, such as assistance in case of pregnancy. Most trainees are young women in their early twenties, often with little experience of birth control. Most are not married and feel ashamed of getting pregnant, not knowing what to do and unable to speak up. Those trainees often cannot explain their physical conditions to medical personnel because of the language barrier, and they have little or no knowledge about assistance services available. Thus, it is urgent to provide accurate information and protection, as well as the safe and reliable access to health service for those trainees.

CONCLUSION

The case of Linh and other female trainees demonstrates that the enforcement of the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees in November 2017 and measures taken to revise the Technical Intern Training Program are not sufficient at all to protect them from multiple and intersecting forms of discrimination in health care, health inequalities, and barriers to health based on race, colour, descent, ethnic or national origin. However, we cannot leave technical trainees treated like machine parts in a modern slavery that can be replaced when they are unable to work. We also believe it is unfair and unjust for trainees who cannot help giving birth without access to health care in those dire situations to be treated as a criminal.

Thus, we call for the government to ensure that reproductive rights and health of the trainees, in particular pregnant women, are protected, no matter what legal status a person has. The government should take comprehensive measures to support foreign workers so that they have safe access to health service including maternity and child-care leaves, tackling the root causes of multiple and intersecting forms of discrimination to achieve substantive equality.

²¹ Women accounted for almost 40% of all Technical Interns in 2018. Ministry of Health, Labour and Welfare, 'Status of Technical Intern Training Program' (1 October 2019) <<https://jsite.mhlw.go.jp/tokyo-roudoukyoku/content/contents/000692897.pdf>> accessed 1 July 2022.