

# The Japanese Government's Response to Migrant Workers in the 80s & 90s

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Although Japan had past experience of dealing with hundreds of thousands of Korean migrants in the pre-war years, it was not until long after the war and after the Izanagi economic boom of the latter half of the 1960s that the country was confronted from the mid-1980s onwards with both a shortage of unskilled labour and an influx of migrant workers, the majority of whom came to perform (relatively) unskilled work and did so illegally. Japan's major policy responses to these problems thus far has been the granting of special resident status to descendants of Japanese emigrants to S. America, the development of a trainee system and the introduction of penalties for people who broker the employment of, as well as employers of illegal workers. In what follows I will be examining the pros and cons of these policies.

Japan is unusual in not having had to use foreign workers much earlier. West Germany, for example, which experienced similar high growth in its economy in the 1960s invited Turkish, Tunisian, Moroccan, Yugoslav, Portuguese, Spanish, Italian and Greek people to fill the labour shortage in the late 1950s.<sup>1)</sup> According to Kajita<sup>2)</sup> the demand for labour in Japan from the 1960s onwards was satisfied by (a) mass migration of people to the cities, some on a seasonal basis (b) use of students and housewives as part-time staff (c) longer working hours and more overtime work. Apart from this, automation, including use of robots, was a strategy adopted to improve productivity, reli-

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1) Sellek and Weiner (1992), p. 214.

2) Kajita (1995), p. 3-4.

ability and efficiency as well as reduce the expenditure on wages thereby producing a more competitive product. Japanese companies, at least the very large ones, had also been moving production overseas in order to (a) avoid problems of trade quotas and tariffs (b) avoid costs involved in shipping their products (c) perhaps create some sense of gratitude and brand loyalty for their product as a local employer (d) take advantage of the cheaper costs, particularly labour costs, when they set up in places other than developed countries. However, no matter how attractive conditions are for setting up overseas, there are some industries which are unable to re-locate such as construction projects within Japan, the service sector and small-scale manufacturing concerns.<sup>3)</sup> When the economy is going well, demand for labour in these as well as other industries inevitably increases. This is what happened in the second half of the 1980s and is one of the reasons that unskilled foreign labour was attracted to Japan, which is my next topic.

Between September 1985, when the Plaza Accord was signed, which made international movement of capital easier, and September 1986 the yen appreciated 100% against the dollar. (The value of a number of Asian currencies were linked to the value of the dollar, and even those that weren't, depreciated considerably against the yen.)<sup>4)</sup> To earn an average wage in Japan, some of which may be saved and remitted back home is, then, a very attractive prospect to people who come from countries which have much weaker currencies and where incomes and the cost of living are considerably lower. As mentioned above, from the mid-1980s onwards the Japanese economy also experienced an acceleration in the rate of economic growth (apart from the effect of the Plaza Accord, this is an important reason for the appreciation of the currency), with a concomitant rise in demand for labour, with an inevitable

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3) Sellek and Weiner (1992), p. 215.

4) Shimada (1994), p. 33.

upward pressure on wage levels. On the other hand, many of Japan's Asian neighbours as well as some further afield have an excess of labour i.e. unemployment and some of them rely to some extent on the remittances which their nationals earn abroad as an important source of their foreign exchange. Nationals of countries with less developed economies, such as Pakistan, Bangladesh, Thailand, Philippines and Malaysia used to work in the Middle East from the mid-1970's onwards but the number of construction projects there had decreased significantly by the mid-1980's.<sup>5)</sup> The young male foreigners who were attracted to Japan by the high wages, were also filling positions in the construction and manufacturing industries which many young Japanese were not prepared to consider as they typically involved hard physical labour and also more risk of injury or other health risks than other jobs.

Having established the reasons that led people to come to Japan, it is important to understand the government's position on immigration. Simply stated, the law (the Immigration Control and Refugee Recognition Act of 1951— hereinafter referred to as the Immigration Act— which has been revised on 18 occasions)<sup>6)</sup> has always prohibited foreigners from entering Japan for the purpose of engaging in unskilled labour. With regard to other categories of employment, the immigration authorities will use such criteria as the academic/professional credentials of the applicant, whether a Japanese is available to do the same job, the size of the employer etc. to decide whether to grant requests for work visas.<sup>7)</sup> In spite of the prohibition of unskilled foreign labour, the immigration authorities issued entertainment visas to a certain number of

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5) Sellek and Weiner (1992), p. 219.

6) Mori (1997), p. 2.

7) Ibid., p. 207

female foreigners from 1979 onwards,<sup>8)</sup> whilst presumably knowing that a majority of these women would be employed in the unskilled activity of hostessing which would not uncommonly include the illegal activity of prostitution. By 1988, the number of unskilled male foreign workers outnumbered their female counterparts.<sup>9)</sup> The majority of both the former and latter entered Japan as tourists and overstayed.<sup>10)</sup> In common with many other countries, Japan has visa-exemption agreements with a number of different countries which allow Japanese and nationals of the relevant countries to visit each other's country for a limited period as a tourist without applying for a visa in advance. Both prior and subsequent to the 1990 revision to the Immigration Act i.e. both in the 1980s and 1990s the government has responded to increases in illegal immigration by suspending visa-exempt agreements with the relevant countries e.g. the agreements with both Pakistan and Bangladesh were suspended in 1989 and that with Iran in 1992.<sup>11)</sup> The problems with controlling immigration using this method are (a) it creates a lot of work for embassies in the relevant countries in having to process visa applications (b) it is a blunt instrument affecting not only the prospective illegal worker but also the prospective bona-fide tourist who might be dissuaded from going to the trouble of applying for a visa, particularly if Japan is just a stop-over destination. In such cases Japan will lose its earnings from tourism.

From the late 80s to the early 90s the problem of illegal foreign workers received a lot of attention from political parties, various government bodies, including the Ministries of Labour, International Trade and Industry, Justice, Foreign Affairs and Construction, the Economic Planning Agency, the National

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8) Kajita (1995), p. 2.

9) Komai (1995), p. 71. 1979 has become known as '*Japayuki* Year Zero' because it was the year when the first large inflow of foreign females occurred.

10) Ibid., p. 8.

11) Sellek (1994), p. 174-175.

Police Agency as well as employers' groups, labour unions and other private sector organisations.<sup>12)</sup> It is not difficult to understand why these various groups might see the problem in very different ways and might therefore have radically different solutions to propose. For instance the government would have been lobbied by the trade unions to toughen up their policy on illegal workers as the unions would want to protect the livelihoods as well as to maintain the wage levels of their members. Other arguments against allowing unskilled workers into the country are (a) the future social and economic costs which will have to be borne in future and which European countries are having to face, in dealing with foreigners and their dependants who settle permanently (b) it is a short-term solution which discourages old-fashioned labour-intensive industries from innovating, modernising, automating and generally investing money in technology and R&D for the future.<sup>13)</sup> On the other hand, employers' groups would favour a more flexible approach because of the shortages of unskilled labour. Other arguments in favour of allowing unskilled labour into the country are (a) because of the ageing of the population and the concomitant decline in the ratio of Japanese who are part of the labour force to those who are not coupled with the decline in population due to the low birth rate, the Federation of Economic Organisations (*Keidanren*) has predicted that there will be a labour shortage of 13–27 million by 2025.<sup>14)</sup> (b) it is one kind of economic aid to Japan's poorer Asian neighbours who, as mentioned earlier have an over-supply of labour (c) a more multi-cultural society has the potential for bringing about many positive changes.

As a response to the problem of the increase in illegal foreign unskilled workers, whilst at the same time taking account of the opinions, needs and

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12) Shimada (1994), p. 50–53.

13) Ibid., p. 47.

14) Mori (1997), p. 132.

desires of various groups having an interest in the problem, the Diet passed a revision to the Immigration Act in December 1989, which subsequently came into effect in June 1990. The law both extended and simplified the scope of the existing categories of resident status to cover a greater number of skilled or professional activities. It also made provisions for those employing or brokering the employment of illegal foreign workers to be fined or imprisoned. An exception to the government's toughened stance on the prohibition of unskilled foreign labour found in the new law was its treatment of the children and grandchildren of Japanese who had emigrated to Brazil and Peru (*Nikkeijin*). The latter were granted resident status which, unlike most other statuses, had no restrictions on the activities which could be engaged in. As a consequence the number of *Nikkeijin* rose from 11,900 in 1988 to 148,700 in 1991.<sup>15)</sup> The government had thus been able to (a) retain their general principle of prohibition of unskilled foreign labour (b) allow a foreign group into Japan from less developed countries who would be unrestricted in the type of work they would be allowed to do, but who, because of their educational background, lack of language skills etc. would inevitably work in the unskilled jobs where there was most demand (c) this foreign group would not only be limited in number (the total number of *Nikkei* in S. America is only 1,400,000<sup>16)</sup>) but have kinship bonds which could justify the Japanese Government offering them preferential treatment (d) satisfy the demand of industry for unskilled labour. (This included large companies who had avoided hiring illegal workers.) (e) discourage the employment of illegal foreign workers by introducing penalties of fines and imprisonment. One possible criticism of this policy is that it is only a relatively short-term measure because not all of the *Nikkei* population of S. America will want to come to Japan and, even if they

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15) Ibid., p. 108.

16) Ibid.

did, they would not cover the shortfall predicted by *Keidanren* quoted above. Another problem is that one consequence of allowing *Nikkeijin* to do unskilled work and introducing penalties for employing illegal foreign workers (albeit those penalties would not be applied in relation to illegal workers already residing in Japan when the new law came into effect) was that the wage rate for *Nikkeijin* rose as employers wanted to hire legal workers. Smaller companies were unable or unwilling to pay this higher rate and so in spite of the penalties attached to the new law of 1990 there was an increase in overstaying foreign residents every year from July 1990 (106,497) to Nov. 1993 (296,751). (Some companies specifically wanted to hire workers from Pakistan or Bangladesh because they found them more hard-working and conscientious than *Nikkeijin*.) The steady slight decline from Nov. 1994 (288,092) to Jan. 1998 (276,810)<sup>17)</sup> has been brought about by the drop in demand for labour due to the recession. This being the case, the penalties attached to the new law do not seem to have achieved the desired effect of curtailing demand for illegal workers and hence dissuading them from entering the country. Other data also appears to support this conclusion. A study presented at a conference on 'The Dynamics of Labor Migration in Asia' at Nihon University in 1996 found that there was minimal enforcement of penalties for employers and that the latter do not resort to secrecy when employing illegal workers as they do not fear visits by the authorities or penalties.<sup>18)</sup> Also, the number of Japanese arrested on charges relating to employing illegal workers was roughly 3,200 between 1993 and 1997, of whom more than 500 were either brokers or gangsters.<sup>19)</sup> This is a small figure given the size of the population

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17) Watanabe (1998), p. 246. These Ministry of Justice statistics are subject to various discrepancies and should be taken as rough estimates.

18) Migration News Vol. 3, No. 4 April 1996.

19) Watanabe (1998), p. 252–253.

of illegal workers (around 300,000) and given the *koban* system of policing under which the police have very good knowledge of who lives and works in their territory. The illegal workers themselves, if they are caught, also do not typically have to suffer the penalty provided by the law. Many of those who would be subject to imprisonment are given 18 month suspended sentences and then deported. (Foreigners who have been sentenced to more than a year's imprisonment are not allowed to re-enter Japan.)<sup>20)</sup> Another problem is that employers who have to rely on foreign workers may feel that it is easier to manage a mixed group of foreigners than a single nationality. (As of 1992, it was estimated that 90% of *Nikkei* in Japan were from Brazil.<sup>21)</sup>) Another possible criticism is that it is not necessarily the case that the *Nikkeijin* will integrate more easily into the society just because there are kinship ties (if this is indeed what the government had hoped for) because (1) those ties may be quite distant (2) as long as the primary reason for going to Japan is economic, there is every reason to suppose that the blood tie is being used as 'a visa' and no reason to suppose that *Nikkeijin* will be any less anti-social than any other group of foreigners (3) if ability to integrate is a primary consideration, then perhaps people who come from countries closer to and which share more things in common with Japan, would make better candidates. The earlier point (c) about the government having some justification in offering the *Nikkeijin* preferential treatment because of blood ties, can be attacked on the grounds that it is racist. One may also say that it is not consistent to both prohibit unskilled foreign labour while at the same time allowing newly-arrived *Nikkeijin* (long-term resident Korean and Chinese are a different matter altogether), foreign students<sup>22)</sup> and foreign trainees to engage in the exact

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20) Migration News Vol. 2, No. 12 Dec. 1995.

21) Mori (1997), p. 108.

22) Komai (1995), p. 8. Foreign students have to get permission to work from the ↗

same activities which are being prohibited. On the subject of students, the government was aware of extreme abuses of the system in which for example foreigners came to Japan on student visas and then spent the whole time working and such associated problems as ghost language schools where no language instruction took place but which were merely fronts supplying documentation for these kinds of bogus students. As a result the government tightened up its issuance of pre-college student visas to mainland Chinese, many of whom came instead on trainee visas in 1990, making up the single largest group of trainees by nationality in that year.<sup>23)</sup> The government was also well aware that, as there were very few criteria which companies had to fulfil in accepting foreign trainees, the latter were being used as a cheap source of labour<sup>24)</sup> rather than being taught technical skills. As a result, the Ministry of Justice issued a ministerial circular at the time of the 1990 revision to the Immigration Act, which spelled out the nature of the skills to be taught (not simple repetition of one task), the usefulness of the skill for when the trainee returns home, the maximum period of permitted on-the-job training (limited to two thirds of the total training time), the maximum number of trainees (limited to one twentieth of the full-time employees) and the fact that the employer must provide training facilities, living facilities, insurance, and suitably experienced training staff.<sup>25)</sup> This trainee system has undergone a number of subsequent changes. The government was lobbied by small and medium-sized companies which were eager to accept trainees and in August 1990 the Minis-

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↘ Immigration Office and may only work up to 4 hours on any day when he/she has classes.

23) Sellek (1994), p. 188.

24) Mori (1997), p. 124. As on-the-job training was not seen as work, trainees were not allowed to be paid. They were merely entitled to receive money to cover living and travel expenses.

25) Komai (1995), p. 40.

try of Justice announced that this was now possible, as long as the training programmes were funded and supported by the national or local government.<sup>26)</sup> In December 1992 there were further reforms to the system extending the trainee system to the agricultural sector and in certain cases authorising the period of on-the-job training to be extended to four-fifths of the total training period.<sup>27)</sup> In April 1993 the government introduced a skills work-training system, known as the Technical Intern Training Programme (TITP) which would enable trainees who have reached a certain level of proficiency, which would be evaluated by an independent organisation, to have their residence status changed to 'skills trainee' and then to continue to train i.e. work at the same place for up to 1.5 times the length of the initial training but in any case so that it would not exceed two years in total, being paid at the same rate as Japanese workers.<sup>28)</sup> Subsequently the period of training was extended to a maximum of three years.<sup>29)</sup>

The government has then by its reforms and relaxation of the trainee system achieved various aims. (1) It has set in place a system whereby a foreigner can receive some training which should benefit both the individual and the economy of the country he comes from (2) In the case of training organised by government agencies such as Japan International Co-operation Agency (JICA) which are wholly funded by the government and do not make use of private companies for on-the-job training<sup>30)</sup> it is an unambiguous form of aid to the country concerned. (3) It has addressed the problem of satisfying the demand for labour requiring relatively low skills. (4) Regarding trainees 'training' in the 'skills trainee' period of TITP, it has addressed the problem of

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26) Shimada (1994), p. 70.

27) Mori (1997), p. 120.

28) Shimada (1994), p. 74.

29) Migration News Vol. 4 No. 10 Oct. 1997

30) Komai (1995), p. 42.

the exploitation of trainees as a source of extremely cheap labour. (5) It has gone some way to satisfy the demands of the trainees to be trained, to receive a fair wage once they have received training, and to have the opportunity to legally earn the same wages as a Japanese worker for at least a limited period and also be covered by Japan's labour laws covering for example minimum wages and employment security. (6) By prohibiting the trainees from having their families accompany them<sup>31)</sup> the government has made it less likely that they will remain in Japan illegally after they have finished their work training. (7) By limiting the work-training system to a maximum of three years, provided that the trainees do not remain in Japan illegally after their visa has expired, the government will be able to avoid the social and economic costs involved in accepting foreigners, permanently into Japanese society. (Regarding the last two points, by agreeing to allow *Nikkeijin* to bring their families with them and granting them long-term visas, the government has implicitly agreed to the costs involved in accepting this group into society.)

In spite of the various revisions to the trainee system, a number of problems still remain. (1) No matter how much you fine-tune the system the problem is that, for the most part, you are attempting to satisfy two groups with different needs and expectations. On the one hand there are the trainees, at least some of whom will go to Japan eager to learn something of the advanced technology for which Japan is famous. On the other hand there are small companies which do not have the resources or necessarily the altruistic desire to provide training above and beyond what the person needs to learn in order to do the job which is required nor do they have capital to invest in sophisticated state-of-the-art equipment. Instead they have shortages of staff to perform simple repetitive manual work. It seems that the government agreed to this

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31) Mori (1997), p. 125.

'training system' because it maintained the illusion of retaining the principle of prohibiting unskilled foreign labour into the market whilst also satisfying the demands of industry for unskilled labour. Not only are the trainees the victims of this dishonesty but there is a danger that the whole trainee system including genuine training schemes run by JICA etc., mentioned above, will have a bad reputation because of this. (Of course there will also be occasions when both trainees' and companies' needs are satisfied by the trainee system as in the case of companies having a particular need to train one of their local employees of an overseas branch who will not only receive quality training but probably also receive a pay rise and promotion on returning home. There are also cases where the trainee is quite happy to be part of a sham training scheme if it gives him the opportunity to earn money in Japan.) (2) Under trainee schemes other than the 'skills trainee' period of TITP, trainees are dissatisfied at receiving only a nominal amount of money to cover expenses even when they are doing the same work as regular employees. As such trainees are not paid at the same rate by every company, this is also a source of dissatisfaction.<sup>32)</sup> (3) As it is more expensive to fulfil all the requirements involved in taking on a trainee than it is to hire an illegal worker, many small businesses prefer to do the latter. Also, to unscrupulous employers, illegal workers are more attractive than trainees or any other kind of worker because, even if they are paid less than Japanese, are not paid at all, have accidents at work or are dismissed for no good reason, the employer knows that they will be unlikely to complain, for fear of deportation. (It is difficult to see how the government can make it less attractive for employers, unscrupulous or otherwise, to hire illegal workers other than by increasing the penalties and ensuring that the present lax enforcement of the law, as noted above, is tightened

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32) Ibid., p. 129.

up. However, as long as companies are not mistreating the foreign employees and as long as there is a shortage of Japanese to perform unskilled work there seems to be an unfairness about punishing the employer at all, as they are only trying to make a living. This perhaps explains the reluctance of some people within the justice system as well as some other government workers to ensure that the law is enforced more rigorously. At any rate, no matter what view is taken concerning penalties for employers, the government has a duty to protect the basic human rights of illegal workers.) (4) There is a demand for types of workers not covered by the trainee system. Presumably there are some kinds of jobs which require virtually no skill and therefore would, at least in theory, be unsuitable to have a trainee do, at least for any length of time, but which, given suitable remuneration, many foreign workers would be happy to do and, many employers would be unable to find Japanese willing to do. (5) In the past older workers would train younger workers who would in turn pass on their skills to future generations. If the younger workers being trained are foreigners (because young Japanese do not wish to do these jobs), who are then rotated out every two years, after the older workers retire there will be nobody to pass on the necessary skills.<sup>33)</sup>

Having looked at the government's handling of the issue of unskilled foreign male workers, I'd like to return to the previously-mentioned matter of unskilled foreign female workers. In reaction to the increase of women coming into the country on entertainment visas and then working as hostesses and in the sex industry, the Ministry of Justice had in 1988 toughened up the application procedures for such visas, specifying size of the employing establishment etc. Also at the same time as the 1990 revision to the Immigration Act, the Ministry of Justice issued directives that stated the minimum work experi-

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33) Ibid., p. 131-132.

ence of employees, the fact that there should not have been unlawful acts committed by the establishment within the previous three years, the minimum size of the establishment, the minimum monthly wage it must pay its employees etc. At the same time, the length of the entertainment visa was extended from 60 days to either 90 days or one year.<sup>34)</sup> The estimated number of women illegally remaining in Japan increased for at least the two and a half year period following the enforcement of the revision to the Immigration Act (June 1990)<sup>35)</sup> and the number of Filipinas entering Japan with entertainment visas increased by 25% from 1990 to 1991.<sup>36)</sup> Stricter screening by both the Philippine and Japanese authorities, particularly the former, reduced the number of entertainers by 54.1 percent in 1995<sup>37)</sup> and from September 1996 the immigration authorities made it more difficult for entertainers to receive an extension of their 3 month visa. One of the reactions to this tightening-up of rules was an increase in marriages between Japanese and Filipinas.<sup>38)</sup> Just as with the employers of the illegal male workers mentioned above, the penalties of fines and imprisonment provided by the 1990 revision of the Immigration Act were not sufficient to discourage many employers of female workers either. As far as the directives of the new law are concerned, because the entertainment industry is inextricably linked to the underworld, I cannot suppose that they would represent serious obstacles to those in the business. For example if a small bar wished to hire a foreign hostess, presumably, for a consideration, the woman could be shown to be working in an establishment of the appropriate size. Establishments having committed illegal acts could presumably re-invent themselves under different names. The minimum monthly

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34) Komai (1995), p. 73–75.

35) Shimada (1994), p. 26.

36) Komai (1995), p. 74.

37) Watanabe (1998), p. 243.

38) Migration News Vol. 5, No. 2 Feb. 1998

wage is also not of any consequence, as English conversation schools also have to give an undertaking to the Ministry of Justice to pay a minimum monthly wage to their employees, but in fact many pay them by the hour, with no guaranteed minimum. Just as in the case of male illegal workers, the government has a duty to protect the human rights of female illegal workers.<sup>39)</sup> However, because the underworld are involved (they are also involved to a lesser extent with illegal male workers) and because women doing these kinds of jobs are more vulnerable than migrant male unskilled workers (I have no wish to be patronising towards this group of women women nor to regard them as complete victims) it might have been a good idea to spell out clearly in the directives or other appropriate places the absolute illegality of employers imprisoning their employees and of forcing them into prostitution and then backing up those laws with draconian punishments, which again should have been well publicised in the directives or elsewhere, no matter whether the laws and provisions for severe punishment were already on the statute book and were known to apply whether the victim was an illegal immigrant or not.

In May 1997, to deal with a large increase of Chinese being smuggled into Japan, another revision of the Immigration Act came into effect which increased the penalties on the people who smuggle foreigners and also specified penalties for people helping foreigners to illegally enter the country.<sup>40)</sup> Bringing the matter up to date, in February 2000, an amendment to the Immigration Act came into effect which designates 'illegal stay' as a new criminal offence. This in effect makes the punishment for foreigners who illegally enter and stay in Japan, equally as tough as that for foreigners who enter legally and overstay

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39) Komai (1995), p. 253. In fact since at least 1988 there have existed various confidential human rights consultation centres, some run by the Ministry of Justice, especially aimed at illegal foreign workers of either sex.

40) Migration News Vol. 4, No. 6, June 1997

their visa. The new law allows for foreigners who enter Japan illegally to be imprisoned for up to 3 years or fined up to Y300,000 whether they have been in Japan for over three years or not. Up until now, if such an immigrant was not caught within three years of entering Japan, the statute of limitations on the crime expired and they were not subject to punishment but were simply deported. In contrast to this, foreigners who enter Japan legally, and then overstay their visa have always been liable to face a fine of up to Y300,000 or imprisonment of up to 3 years whenever they are caught.<sup>41)</sup>

Japan, in its present state, with its relatively large population, given the limited habitable areas, lack of natural resources, proximity to a hugely populated country with a significantly lower per capita GNP, is bound to restrict immigration. As an island nation it is also able to control immigration easier than USA. It has been able to learn from the problems that Western nations have experienced with their immigrants. Moreover, it has had the unusual experience, in the not too distant past, of closing itself off, for a long period of time, to the rest of the world. On the other hand excuses given for procrastinating on reforming the immigration policy, if they include the notion of Japan's homogeneity and lack of experience in accepting foreigners, do not hold water. As mentioned at the outset, during Japan's colonisation of Korea, from 1910–1945, hundreds of thousands of Koreans came to Japan, voluntarily or because they were conscripted to do so during the Second World War, to do the less pleasant jobs of those days in mines, construction and factories.

The fact is that foreign unskilled workers are now a part of Japanese society and despite the prolonged recession and constant deportations the numbers have not changed very much from their peak in the early 1990s.<sup>42)</sup> This means

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41) The Japan Times February 8, 2000, p. 3.

42) Migration News Vol.6 No. 4, April 1999 & Vol. 7, No.3, Mar. 2000. According to government figures, the number of illegal immigrants was estimated to be at its peak ↗

that illegal immigrants are constantly arriving to replace those who leave or who are deported, because a demand for this more 'flexible' form of labour continues to exist in spite of the recession or indeed because of it. (A company in dire financial straits is more likely to succeed in its demands to illegal employees to work harder or for longer or shorter hours or for reduced pay than if it tried to make the same demands of regular employees.) The demand also exists despite the overhaul, promotion of, and increased use of the trainee system and despite the fact that the population of Nikkeijin has now increased to over 220,000.<sup>43)</sup> As we have seen both of these policies for dealing with the shortage of unskilled labour have their merits as well as demerits. On the other hand the policy of penalties for employers of illegal workers seems, from the arguments mentioned heretofore, much more problematic. Another factor in the continuous presence of a large number of illegal workers during the whole of the 1990s is the acceptance of this fact by many government workers (including the police, as mentioned earlier) rather than reporting all cases of illegal workers to the immigration authorities. Given that the illegal workers seem to be here to stay and that they are fulfilling a demand which will increase in years to come<sup>44)</sup> and that at least at present (high) levels of unemployment<sup>45)</sup> the foreign workers do not seem to be occupying positions which

↘ at around 300,000 in 1993, whereas at present it is estimated to be around 270,000.

43) Ibid., Vol. 6, No. 11, Nov. 1999

44) Ibid., Vol. 7 No. 4, April 2000. As mentioned earlier, demand for labour will increase in years to come because of (a) the ageing of the population and the concomitant decline in the ratio of Japanese who are part of the labour force to those who are not and (b) the decline in population due to the low birth rate. An example of a job directly related to the greying of the population, the demand for which will increase in years to come and one which could be met by migrant workers, is that of home-care for the elderly. The number of such workers is expected to more than double in the next five years rising from 157,000 people at present to 350,000 by 2005.

45) The Japan Times April 1, 2000, p. 1. In February 2000, unemployment in the ↗

the indigenous population wish to have, it would seem sensible, if the government formally recognised their existence by granting them an amnesty on their past illegal status and some kind of right of residence. In doing this, the government would be able to go a long way to protecting these people's rights. (No doubt amnesty is not unproblematic, as it might encourage the entry of more illegal migrants hoping to be part of a future amnesty.) As long as the government does not make a priority of protecting the rights of the illegal workers who are contributing to Japan's economy as well as paying taxes, when they will never draw a state pension nor make use of many of the things on which their taxes are used, they are open to the accusation that they are treating human beings as mere units of labour. The same thing is true, to a lesser extent with the trainees who are rotated in and out. On the other hand one can also say that in the light of the prolonged recession and high level of unemployment, perhaps the government's 'policy' of virtually maintaining the status quo regarding the prohibition of entry of unskilled foreign labour and its procrastination in forming an effective policy regarding future shortages of manpower have been in some ways felicitous. These fudged 'decisions' are a product of a conservative society as represented by the views of the people in the Ministry of Justice which have thus far prevailed over views of people in ministries which favour a more relaxed position on the entry of unskilled foreign labour.

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 general population stood at a post-war record high of 4.9% i.e. about 3,300,000 people.

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