

**Universal Periodic Review – Japan
March 2017**

Summary

This submission highlights key areas of concern regarding Japan's compliance with its international human rights obligations since its previous Universal Periodic Reviews (UPR) in 2012 and 2008: disability rights, discrimination and bullying based on sexual orientation and gender identity, women's rights, rights of migrant workers, children's rights, and the death penalty and criminal justice system.

Disability Rights

In April 2016, the Act on the Elimination of Discrimination against Persons with Disabilities, which the Japanese government enacted as part of ratification of the Convention on the Rights of Persons with Disabilities, came into effect. The law prohibits unfair discriminatory treatment by governments and private entities based on disability. It also requires that government-related agencies provide reasonable accommodation to enable the elimination of social barriers, unless the expense is "excessive." In 2012, Japan accepted recommendations to take the necessary measures to eliminate all discriminatory treatment towards persons with disabilities.

Following the July 2016 incident at a state-funded institution for people with disabilities in which a 26-year-old man stabbed 19 men and women to death and wounded another 27, the Japanese government began examining the practice of involuntary hospitalization in psychiatric hospitals. However, no major reform has been proposed to address stigma against people with disabilities, including by guaranteeing their right to live independently by supporting their inclusion in the community.

Sexual Orientation and Gender Identity

Same-sex marriage is not yet legally recognized in Japan. However, issues of sexual minorities have received increasing attention with more municipalities recognizing same-sex partnerships.

In 2012, Japan accepted a recommendation to "Review its national legislation with a view to eliminating discriminatory provisions based on a comprehensive list of grounds, including social status, gender and sexual orientation." To address discrimination based on sexual orientation and gender identity in Japanese society, including in schools as documented in a 2016 Human Rights Watch report on bullying against LGBT students, a bipartisan parliamentary group established in March 2015 has continued to discuss legislation to address discrimination based on sexual orientation and gender identity, but it has yet to come up with an agreed draft bill.

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) has been at the forefront of progress in the area of education-related rights for sexual and gender minority students. On March 14, 2017, the MEXT revised the Basic Policy for the Prevention of Bullying, mandating that schools should prevent bullying of students based on their sexual orientation or gender identity by "promot[ing] proper understanding of teachers on...sexual orientation/gender identity as well as mak[ing] sure to inform on the school's necessary measures regarding this matter." The policy follows a 2015 directive from the MEXT regarding transgender students and a 2016 MEXT guidebook for teachers about LGBT students.

Another important step will be to amend the Act on Special Treatments for Persons with Gender Identity Disorder, which regulates legal recognition of transgender people. Current Japanese law contains a number of requirements that violate fundamental human rights protections, and affect transgender children. For transgender students in Japan, simply attending school can be an ordeal. National law mandates people to obtain a mental disorder diagnosis and other medical procedures, including sterilization, to be legally recognized according to their gender identity – an abusive and outdated procedure.

By amending the Basic Policy for the Prevention of Bullying to include sexual orientation and gender identity, Japan has taken a crucial step of bringing its policies in line with its international human rights obligations. Japan also supported two recent United Nations Human Rights Council resolutions on ending sexual orientation and gender identity-based violence and discrimination, and co-chaired the 2016 UNESCO International Ministerial Meeting: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression. We encourage Japan to continue its commitment to making education accessible for all Japanese children and ensure that the needs of LGBT youth are included in the policymaking process.

Recommendations:

- Revise Law 111 of 2003 (the Gender Identity Disorder Law), to replace humiliating mandatory procedures such as sterilization with self-identification criteria for legal gender recognition.
- Build on the 2016 Guidebook for Teachers Regarding Careful Response to Students related to Gender Identity Disorder as well as Sexual Orientation and Gender Identity, by developing teacher training materials on sexual orientation, gender identity, and human rights, and make such training mandatory for all current teachers.
- Issue a revised directive clarifying that schools should accommodate students according to their self-declared gender identity without requiring any medical examinations. Schools should ensure that students have full access to education —including school uniforms, lavatories, or documents—without a diagnosis of “Gender Identity Disorder.” This should include access to the lavatory the student is comfortable with, not only gender-neutral or disabled students’ facilities.
- Include information about sexual orientation and gender identity in the national sex education curriculum based on guidelines set forth by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Population Fund (UNFPA).
- Include in the draft non-discrimination legislation protections for students from discrimination on the basis of sexual orientation or gender identity, as well as the explicit anti-discrimination clause for administrators, teachers, counselors, other school staff, and other employees from discrimination in employment on the basis of sexual orientation or gender identity.

Women’s Rights

During its UPR review in 2012, Japan accepted numerous recommendations to protect women’s rights, including to “Take urgent measures to promote gender equality and effectively protect women and children's rights” and to “Ensure effective protection from violence and sexual exploitation for women, particularly women who are migrants or from minority groups.”

In December 2015, the Supreme Court ruled that article 750 of the Civil Code, which requires a husband and wife to adopt the same surname, is constitutional. Ninety-six percent of women change their surnames at the time of marriage. The United Nations Committee on the Elimination of Discrimination against Women (the CEDAW committee) has repeatedly recommended that the article be amended.

Despite rejecting the recommendation in 2012 to “Recognize its legal responsibility for the issue of the so-called ‘comfort women’ and take appropriate measures acceptable to the victims, as recommended by the relevant international community,” Japan and South Korea announced in December 2015 an agreement to resolve the issue of “comfort women” “finally and irreversibly.” Japan agreed to acknowledge responsibility and renew?? apologies for its role. Based on the agreement, Japan provided 1 billion yen (US\$10 million) to the Foundation for Reconciliation and Healing, established by the South Korean government. Women’s rights advocates widely criticized the agreement for reasons including the lack of proper consultations with victims.

In March 2016, the CEDAW committee published concluding observations on the combined 7th and 8th periodic reports of Japan. The report included about 50 concerns and recommendations, many repeating previous concluding observations. The committee also expressed concerns related to the issue of comfort women, including the lack of a full victim-centered approach, and the need for “full and effective redress and reparation” for all victims, including those from countries not covered by the agreement with South Korea. Comfort women were also from countries such as the Philippines, China, Taiwan, the Netherlands, Indonesia, and East Timor.

Japan has the second lowest proportion of female managers among OECD countries. In December 2015, Japan’s Cabinet adopted a new five-year “Fourth Basic Plan for Gender Equality,” lowering the target set in 2003 to ensure that at least 30 percent of leadership positions are held by women in all areas by 2020. Under the new target, the female leadership ratio goal was reduced to 7 percent for middle managerial positions in the central government and 15 percent for the same in the private sector.

Migrant workers

Since 2010, the labor law has fully applied to Technical Intern Trainees—about 200,000 people who mainly come from China and Vietnam and often work in factories and areas including agriculture, fishery, and construction. However, despite accepting recommendations in 2012 to reinforce its efforts to protect the rights of migrant workers and prepare favorable working conditions, weak legal protections for migrant workers still result in abuses. These include illegal overtime, unpaid wages, dangerous working conditions, confiscation of passports, prohibitions on having cell phones and staying elsewhere overnight, forced return, and forced payments to sending agencies in home countries in case the training period does not finish successfully. Such limitations combined with the current system that generally prohibits trainees from changing employers, deter trainees from making complaints to their employers.

The most recent statistics show that in 2015, the Labor Standards Bureau recognized 3,695 cases of labor standards violations, the largest number since 2003, when records were first kept.

While the Labor Standards Act does not apply to domestic work, 2015 guidelines on migrant domestic workers attempt to protect workers by requiring them to be employed by housekeeping service companies instead of by the household. However, migrant domestic workers are generally prohibited from changing employers.

Children’s Rights

In 2012, Japan accepted a recommendation to “Take legal measures to adopt a comprehensive law on child rights and fully bring in line the legislation with the Convention, as well as adopt and implement a national plan of action for children to address inequalities in income and living.” In May 2016, the Diet passed an amendment to the Child Welfare Act that for the first time explicitly refers to children as rights holders, in accordance with the Convention on the Rights of the Child. As noted in a [2014 Human Rights Watch report](#) on the over-institutionalization (nearly 90 percent) of children in Japan’s alternative care

system, the revised law envisions a major shift from institutions to families. Article 3.2 lays out a new principle for family-based care although there are questions about the government's commitment to enforce the new act.

Recommendations:

- Amend the Foster Parents Placement Guidelines in line with the UN Guidelines for the Alternative Care of Children, which require that institutional care is limited to “cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests,” and direct prefecture governments, ordinance designated cities, and child guidance centers to implement the revised guidelines.
- Utilize special adoption for newborns by consulting with pregnant women who are not willing or able to raise their babies.
- Make sure that all foster parents, including kinship-based foster parents and adoptive foster parents, receive adequate training, monitoring, and support, including foster parent allowance. In order to come up with the improved comprehensive programs, assign an independent panel of experts to make recommendations regarding the comprehensive training programs, support programs, and monitoring mechanisms for foster parents. It should also recommend concrete measures to improve the child guidance center's ability to support foster parents.

Death Penalty and criminal justice system

In 2012, Japan noted all but one recommendation referring to reviewing its use of the death penalty; at the time of writing, Japan continues to use the death penalty. In 2016, two people in March and one in November were executed, bringing the total to 17 since Abe returned to power in December 2012. Anti-death penalty advocates have long raised concerns about death-row inmates having inadequate access to legal counsel and only being notified of their execution on the day it takes place.

Japanese criminal procedure law allows suspects to be detained for up to 23 days prior to prosecution without the possibility of release on bail. It also prohibits lawyers from being present during interrogations, increasing the prospect of coercive means being used to extract confessions. Japan rejected recommendations in 2012 to adopt legislative and other measures to ensure that detainees are not questioned without the presence of a lawyer and that they have prompt and unhindered access to legal counsel. In May 2016, a law requiring video and audio recording of interrogations was passed, but it allows broad exceptions such as giving interrogators discretion to determine that a recording will prevent suspects from providing a full statement. It also applies to just a small segment of criminal cases, such as serious cases to be tried by the lay judge system.