

JAPAN: Situation on Human Rights, Sexual Orientation, Gender Identity and Gender Expression

A Stakeholder Report March 2017

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Submitted by **Equality (Gay Japan News)** and **RC-NET**

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Equality (Gay Japan News) is a non-profit organization for human rights of all people regardless of sexual orientation, gender identity, gender expression (SOGIE) and bodily diversity. Our activities include research on the experiences of violence of lesbian, bisexual women and trans people in Japan on the basis of SOGIE, submission of NGO input to the United Nations human rights mechanisms on human rights and SOGIE, and providing news on human rights and SOGIE from abroad in Japanese. It is a member of ECOSOC-accredited International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA.)

RC-NET is a group for sexual violence survivors regardless of their gender or sexuality based in Aomori, Japan. Our activities include direct support provision to sexual violence survivors, documentation and research of sexual violence, raising public awareness towards rape and sexual violence, and networking among support groups for sexual violence survivors.

Organizations Endorsing this Report

1. International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)
2. Japan Sexual Minorities Support Network for Social Inclusion (Kyosei Net)
3. NIJIRO DIVERSITY

I. SUMMARY

Discrimination against people on the basis of sexual orientation, gender identity and gender expression pervades Japanese society. In the absence of comprehensive anti-discrimination legislation and explicit recognition of sexual orientation and gender identity as prohibited grounds for discrimination, lesbian, gay, bisexual and trans (LGBT) people are vulnerable to and adversely affected by stigma, stereotyping and patriarchal gender norms. At the same time, they are denied protections from gender-based discrimination

and violence available to heterosexual and gender normative people.

During the 2008 and 2012 Universal Periodic Review, Japan was urged to adopt national legislation that includes protections from discrimination on grounds of sexual orientation and gender identity.¹ Also, the Human Rights Committee, in 2008 and 2014, recommended that Japan enact comprehensive anti-discrimination legislation that prohibits discrimination on all grounds, including sexual orientation and gender identity.² The Committee on the Elimination of Discrimination against Women, in 2016, called on Japan to pursue efforts to eliminate multiple and intersecting forms of discrimination experienced by minority women including lesbian, bisexual and trans (LBT) women in their access to health, education, employment and participation in public life and in their experiences with the health and education services and at the workplace.³ These recommendations have not been fully implemented.

Where the government has amended discriminatory laws, implementation has been uneven and discriminatory.

- In January 2014, the Act on the Prevention of Spousal Violence and the Protection of Victims was expanded to include protections for partners in violent cohabiting and dating relationships. Lower court judges who hear domestic violence cases and grant protection orders are reluctant to allow the law to be used by lesbians experiencing violence in same sex relationships because they believe that the law should only apply to heterosexual relationships.
- In March 2017, proposed amendments to Penal Code have been tabled to the House of Representatives. They include a change of names of the crime from “crime of rape” to “crime of forced sexual intercourse and other crimes” and a revision to the current definition of rape in Article 177 of the Criminal Code to integrate a broader definition of sexual crime. The new definition does not recognize non-genital penetration as a crime. This means that the proposed definition only includes penile penetration and not recognize bodily invasive acts such as rape with objects—hence failing to integrate a broader understanding of sexual violence.
- In March 2017, Okayama Family Court struck down an appeal by a trans man who challenged the sterilization requirement in Article 3(4) of the 2003 Law concerning Special Cases regarding Sex Status of a Person with Gender Identity Disorder which allows trans persons to change gender marker on family registry as unconstitutional. It is a clear violation of basic human rights.

This stakeholder report submitted by Equality (Gay Japan News) and RC-NET with endorsement by ILGA, Kyosei Net and NIJIRO DIVERSITY highlights Japan’s failure to uphold international human rights obligations. The information in this report is based on documented evidence collected by Equality (Gay Japan News) and RC-NET.

II. BACKGROUND INFORMATION

¹ Report of the Working Group on the UPR: Japan. A/HRC/8/44 (May 30, 2008) and Report of the Working Group on the UPR: Japan. A/HRC/22/14/Add.1 (March 8, 2013).

² Para 29, Concluding Observations. CCPR/C/JPN/CO/5 (December 18, 2008) and para 11, Concluding Observations. CCPR/C/JPN/6 (October 20, 2014).

³ Para 47, Concluding Observations. CEDAW/C/JPN/CO/7-8 (March 7, 2016).

Japan consistently votes in favor of United Nations resolutions recognizing violence and discrimination on the basis of sexual orientation and gender identity.⁴ It is in fact one of a few countries in Asia to regularly support UN initiatives on sexual orientation and gender identity.

The government of Japan accepted the 2008 and 2012 Universal Periodic Review recommendations and stated that it would take measures to eliminate discrimination on the basis of sexual orientation and gender identity.⁵ Although there have been subsequent positive policy decisions⁶ that acknowledge LGBT vulnerability and suffering, the government has not taken adequate actions to address discrimination against LGBT people.

Despite positive policy decisions, public awareness and understanding towards LGBT people remain low.⁷ LGBT people are forced to remain invisible in education and their places of employment and fear making complaints about discrimination and sexual harassment.

III. JAPAN'S COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. NON-DISCRIMINATION

Without a comprehensive national anti-discrimination law that prohibits discrimination on all grounds, including sexual orientation and gender identity, LGBT people are not protected from discrimination and forced into a cycle of silence to avoid more layers of discrimination.⁸

The Japanese government expanded the Act on the Prevention of Spousal Violence and the Protection of Victims in January 2014 to include protections for partners in violent cohabiting and dating relationships. This is a step forward. However, LGBT persons face great difficulties obtaining protection orders from lower court judges⁹ and making domestic violence reports to police. Intimate Partner Violence in same-sex relationships has been a blind spot and reinforces exclusion of LGBT individuals from state-funded sheltering programs, counseling services, legal aid, and delays or denies redress and remedies for domestic violence.

Revisions of the Japanese Penal Code are currently under consideration. Changing names of a crime from 'rape' to 'crime of forced sexual intercourse and other crimes' does not capture the nature of the crime. A proposed definition of 'crime of forced sexual intercourse and other crimes' limiting to penile penetration and not recognizing bodily invasive acts such as rape with objects will not impose proper sanctions and

⁴ For instance, Human Rights Council Resolutions. A/HRC/RES/17/19 (June 17, 2011) and A/HRC/RES/27/32 (September 26, 2014); General Assembly Resolution. A/RES/69/182 (December 18, 2014).

⁵ Human Rights Council Reports A/HRC/8/52 (September 1, 2008) and A/HRC/22/2 (August 27, 2013).

⁶ For instance, in the Fourth Basic Plan on Gender Equality (2015) the government includes "people who are in difficult situation because of sexual orientation or people with Gender Identity Disorder." The 2012 Outline of Policies for Suicide Prevention Measures states that sexual minorities have a higher rate of suicidal thoughts because they experience prejudice and misunderstanding.

⁷ The 2016 survey by Japanese Trade Union Federation found that 35.0% of 1,000 respondents said they did not want LGB coworkers around and 26.3% said they did not want trans coworkers in the office. In the same survey, 81.0% of the respondents said they did not have friends, acquaintances, family or relatives who are LGBT.

⁸ "Striving For Dignity And Respect: Experiences of Violence and Discrimination As Told by LBT Persons in Japan," is a 2014 report by Equality (Gay Japan News) based on their interviews with 50 Japanese lesbians, bisexual and gender variant individuals who had experienced violence because of their sexual orientation and non-conforming gender.

⁹ Hideki Muramatsu from the Civil Affairs Bureau of the Ministry Justice has publicly stated in *Civil Affairs Monthly* that the domestic violence law refers to marriage and relationships between a man and woman. Given Mr. Muramatsu's career as a prosecutor and judge, his opinions are influential to members of the judiciary.

provide redress for rape, leaving LGBT persons without justice.

In August 2016, Sexual Harassment Guidelines for employers were amended and it came into effect in January 2017. The amended guidelines explicitly say that the new guidelines cover LGBT workers but does not specify prohibition of workplace sexual harassment on the basis of sexual orientation and gender identity. In December 2016, National Personnel Authority revised its regulation 10-10 on prevention of sexual harassment to explicitly add “remarks and behaviors based on prejudice regarding sexual orientation or gender identity” to the list of sexual harassment acts. The regulation, however, only covers public officials at a national level and do not protect local government officials and workers in private sector.

In order for Japan to improve protections for violence against LGBT individuals, it must intentionally and explicitly take into consideration the particular vulnerabilities and concerns of LGBT people.

The government’s 2015 Fourth Basic Action Plan on Gender Equality acknowledges that LGBT people face intersecting hardships due to discrimination on the basis of sexual orientation and gender identity. This positive step must be accompanied by concrete policies and guidelines to prevent and redress violence in the home and ways to intervene when same sex partners and parents are the perpetrators of violence against LGBT family members. The Fourth Basic Action Plan currently mentions children, the elderly, people with disabilities, and foreigners as those who face difficulty accessing one-stop centers. The Plan must include access to one-stop centers for LGBT victims and survivors of gender based violence. The Plan must also include training of police and the judiciary to sensitize them to violence against LGBT persons and how to support survivors.

B. HOUSING

In 2012, a clause that effectively excluded same-sex couples from renting public housing was abolished from the Public Housing Law following a concluding observation of the Human Rights Committee.¹⁰ The amended legislation allows municipalities to decide qualifications on public housing. The substantive exclusion of same-sex couples from renting public housing is maintained in most municipalities, excluding Osaka Prefecture and Nakano City(Tokyo) and three other cities with local-level same-sex partner recognition, namely, Shibuya(Tokyo), Iga(Mie) and Naha(Okinawa). Even in these cities, emergency public housing in time of disaster is not available for same-sex couples because these shelters are limited to “household” and people in same-sex relationship are not legally recognized as “household”.

C. HEALTH

Transgender persons who are diagnosed with “gender identity disorder” but do not meet the conditions set forth by the law cannot have their gender identity reflected on the family registry. Since most important official documents including the residency certificate and public insurance card are issued based on the family registry, transgender persons often face difficulties accessing health care with their insurance card on which their legal gender and actual gender seemingly do not match.

Article 3 (4) of the Law concerning Special Cases regarding Sex Status of a Person with Gender Identity Disorder requires transgender persons who wish to change their legal gender to undergo major surgical interventions, including genital surgery and sterilization, so as to be able to change their gender on the family registry. This practically takes away the choice to keep their reproductive organs and violates their reproductive rights and health. In March 2017, a 43-year-old trans man challenged the sterilization prerequisite saying it violates his autonomy guaranteed by Article 13 of the Japanese Constitution but

¹⁰ Para 29, Concluding Observations. CCPR/C/JPN/CO/5 (December 18, 2008).

Okayama Family Court struck down his appeal.¹¹

D. EDUCATION

In April 2015, Japan's Ministry of Education, Culture, Sports, Science and Technology issued administrative guidelines on support provision and sensitive responses to the needs of LGBT students in schools. This is a positive development. The national bullying prevention policy and the government school curricula guidelines, however, remain silent on LGBT. The Ministry is reviewing the curriculum guidelines aiming 2018 and their proposed revisions do not include a single reference to non-heterosexual and non-gender conforming sexualities. It sends out a message to students that LGBT people are nonexistent and exacerbates SOGIE-based bullying that LGBT youth are already facing in schools.

The 2014 survey by White Ribbon Campaign revealed that 68% of the 609 respondents experienced bullying in elementary, junior high or high school because of their sexual orientation and gender identity.¹² Human Rights Watch's report¹³ based on interviews with more than 50 LGBT students and former students in Japan documented bullying, harassment, and discrimination in Japanese schools based on SOGIE. 29% of the respondents had heard insults against LGBT from teachers.

IV. PROPOSED RECOMMENDATIONS

We request states to urge the government of Japan to

- Take measures to enact national laws (civil and penal) that include language explicitly prohibiting discrimination on grounds of sexual orientation and gender identity.
- Take measures to ensure that legislation prohibiting gender-motivated violence (such as rape and domestic violence) extends protections and redress to LGBT persons, and be properly enforced.
- Eliminate the sterilization requirement for trans persons in order to change their gender markers
- Take measures to ensure that programs to eliminate gender inequality and gender-motivated violence and the government school curricula guidelines must intentionally and explicitly be LGBT-sensitive and inclusive.

¹¹ Transgender man appeals ruling that calls for sterilization (February 8, 2017). *THE ASAHI SHIMBUN*. <http://www.asahi.com/ajw/articles/AJ201702080071.html> (last retrieved on March 30, 2017).

¹² The research results by White Ribbon Campaign is included in UNESCO's 2015 report "From Insult to Inclusion: Asia Pacific Report on School Bullying, Violence and Discrimination on the Basis of Sexual Orientation and Gender Identity" <http://unesdoc.unesco.org/images/0023/002354/235414E.pdf> (last retrieved on March 30, 2017).

¹³ "The Nail That Sticks Out Gets Hammered Down': LGBT Bullying and Exclusion in Japanese Schools" 2016.