

The Rights of Lesbian, Bisexual, Transgender and Intersex (LBTI) Women in Japan

**Shadow Report for the 63rd Session of the Committee on the
Elimination of Discrimination against Women
(Pre-Sessional Working Group – List of Issues)**

**Compiled by the Kaleidoscope Australia Human Rights
Foundation, with the assistance of DLA Piper**

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1. **BACKGROUND**

- 1.1 **Kaleidoscope Australia Human Rights Foundation** is an NGO that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific region. Kaleidoscope has prepared this report with the assistance of global law firm **DLA Piper International LLP** and with the input and consultation of activists within the Japanese LGBTI community.
- 1.2 This report has been prepared to inform the Committee on the Elimination of Discrimination against Women (**Committee**) of areas of concern regarding Japan's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) to respect the human rights of lesbian, bisexual, transgender and intersex (**LBTI**) women. It concludes with recommended questions for the Committee to include in its List of Issues for Japan's 7th and 8th periodic review.
- 1.3 Kaleidoscope gives its permission to the Committee to post this report on the Committee's website for public information purposes.

2. **EXECUTIVE SUMMARY**

- 2.1. The Japanese Government has taken several positive steps in recent years to respect, protect and fulfil the rights of LBTI women. However, there are significant areas of law, regulation and policy where Japan is failing to meet its obligations under CEDAW. In particular, Japan has:
 - 2.1.1. failed to legislate against discrimination based on sexual orientation, gender identity and intersex status, which has resulted in LBTI women and girls continuing to face high levels of discrimination and inequality in education and employment;
 - 2.1.2. failed to provide any form of legal recognition to same-sex couples, which has resulted in discrimination against women in same-sex relationships in a range of areas, including access to public housing, spousal tax benefits, in-vitro fertilisation and spousal visas;
 - 2.1.3. failed to address domestic violence and sexual assault against LBTI women; and
 - 2.1.4. continued to impose significant barriers on the right of transgender women to legally change their gender, including requirements that transgender women do not have any children below the age of 20 and have undergone sex reassignment surgery and divorce before they can change their gender marker.
- 2.2. These areas raise concerns with respect to Articles 2, 5, 10, 11, 12, 13, 15 and 16 of CEDAW.
- 2.3. Our recommended questions for inclusion in the List of Issues are included in section 11 of this report (on page 10).

3. **POSITIVE STEPS TAKEN BY JAPAN**

- 3.1. The Japanese Government (and local governments within Japan) should be commended for the following recent actions which promote the rights of LBTI women:
 - 3.1.1. **Recognition of transgender students in the education system:** On 30 April 2015, the Ministry of Education issued a statement urging local education boards to allow transgender students to wear uniforms and use bathrooms and locker rooms corresponding to the gender that they identify with. Moreover, the statement notes that

gay, lesbian and bisexual students should be accommodated to a greater extent within the education system.¹

3.1.2. **Recognition of same-sex couples in Shibuya:** On 1 April 2015, Tokyo's Shibuya Ward passed an ordinance allowing it to issue partnership certificates to same-sex couples. These certificates recognise same-sex couples as having a relationship equivalent to marriage. They also recognise same-sex couples for the purposes of local government services, such as municipal housing or hospitals. For example, women in a same-sex relationship may be able to use the certificates when visiting their partner at a hospital, during times when only family members are allowed to visit. While the certificates are an important step forward, they do not have any impact in relation to national laws (which continue to exclude same-sex couples) or outside Shibuya Ward. The ordinance does not legally compel private parties, such as businesses, to recognise same-sex couples, but violators will be sent a letter from the Shibuya Ward government and have their names posted on the local government's website. Shibuya is also planning an educational campaign on LGBTI rights issues. Other local governments, including Setagaya Ward in Tokyo and the cities of Yokohama and Takarazuka, have also declared that they are planning to recognise same-sex couples through partnership certificates.²

3.1.3. **Access to public housing for same-sex couples:** In 2012, the *Act on Public Housing*³ was amended by the *Act on the Development of Related Acts for Promoting Reform for Enhancing Regional Autonomy and Independence* (effective as of 1 April 2012), removing the requirement that lodgers or lessees be related to each other. Therefore, same-sex couples are no longer explicitly excluded from the public housing system in Japan, despite not being affirmatively recognised within the legislation either. The lack of explicit recognition has given rise to continued exclusion of same-sex couples in certain local government areas, as explained in paragraph 9.5.1 below.

3.1.4. **Public education on the human rights of LGBTI women:** The Human Rights Organ of the Ministry of Justice conducted various educational activities in 2013, which included distributing promotion leaflets nationwide throughout the year, with statements such as "Eliminate Discrimination on the Grounds of Sexual Orientation" and "Eliminate Discrimination on the Grounds of Gender Identity Disorder" to promote awareness of homophobia and transphobia.⁴

4. DISCRIMINATION AND PREJUDICE (ARTICLES 2 AND 5)

Japan's Obligations under CEDAW

4.1. Article 2 of CEDAW obligates Japan to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women". The Committee has previously stated in its General Recommendation No. 28 that:

¹ Shusuke Murai, 'Schools in Japan to let transgender students use whichever locker room they prefer', *The Japan Times*, 30 April 2015 <<http://www.japantimes.co.jp/news/2015/04/30/national/social-issues/schools-japan-let-transgender-students-use-whichever-locker-room-prefer/>>

² Akemi Harada, 'In first for Japan, Shibuya Ward passes ordinance for same-sex certificates', *The Asahi Shimbun*, 1 April 2015 <http://ajw.asahi.com/article/behind_news/politics/AJ201504010033>.

³ Act No. 193 of 4 June 1951.

⁴ Ministry of Justice, 'Status of Human Rights Infringement Cases in 2014 (Overview)' <<http://www.moj.go.jp/content/001139436.pdf>> (in Japanese).

“The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity... States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”

- 4.2. General Recommendation No. 28 provides a basis for the Committee to make recommendations relating to discrimination against LGBTI women in Japan.
- 4.3. Article 5(a) of CEDAW requires Japan to take all appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. This includes prejudices grounded in stereotypical, heteronormative assumptions about the sexual orientation or gender identity of women which have the effect of marginalising LGBTI women.

Japan’s Compliance with Articles 2 and 5

- 4.4. Article 14 of the Japanese Constitution guarantees fundamental human rights and prohibits discrimination on the basis of “race, sex, social status or family origin”. The word “sex” has not been interpreted to include sexual orientation, gender identity or intersex status. No other national laws have been enacted to prohibit discrimination on the basis of sexual orientation or gender identity.
- 4.5. During its 2012 Universal Periodic Review, Japan accepted to follow up the UN Human Rights Council’s recommendation to ‘implement comprehensive anti-discrimination legislation to provide protection for the rights of LGBT persons’.⁵ Despite this, no such legislation has been enacted.
- 4.6. Stigma surrounding sexual orientation, gender identity and intersex status continues to be a major concern in Japan, with individuals feeling that they cannot be open about their sexual orientation, gender identity and intersex status due to concerns regarding lack of social acceptance, personal safety and bullying.⁶ This discrimination often intersects with sex and gender to produce particularly acute patterns of disadvantage for LGBTI women. As explored in the various sections of this report, LGBTI women continue to face discrimination and inequality in a variety of areas of public and private life, including education, employment, health and relationship rights (see section 6 to 9 below).

5. LEGAL RECOGNITION OF GENDER IDENTITY (ARTICLES 1, 2, 3 AND 15)

- 5.1. In 2003, Japan enacted the *Act on Special Provisions for Handling People with Gender Identity Disorders*⁷ which allows persons with “gender identity disorder” to change their gender in their family registers (this generally equates to a change of gender under all laws). The 2008 revision to the Act has relaxed rules that prohibited a person with children from registering a change in their gender. The updated rules allow a person with “gender identity disorder” to change their gender if the person does not have a child under the age of 20.

⁵ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan – Addendum*, UN Doc A/HRC/22/14/Add.1 (8 March 2013) 7 [147.90].

⁶ United States Bureau of Democracy, Human Rights and Labor, *2013 Human Rights Reports: Japan*, 27 February 2014 <<http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220199.htm>>.

⁷ Act No. 111 of 16 July 2003.

5.2. Nevertheless, the requirements of the legal gender change process in Japan continue to violate the rights of transgender women. In particular, the following issues remain of concern:

5.2.1. **Continuing discrimination against transgender women with children:**

Transgender women with a child under 20 years of age still cannot apply to change their gender on their family registry under the current legislation. This hinders the right of transgender women to form a family. The Japan Federation of Bar Associations has recommended that the law be amended so that transgender persons can change their gender if they have children, provided that the gender change would be “not contrary to the best interests of the child”.⁸ While this would allow transgender women with dependent children to change their gender on a case-by-case basis, it would still represent a significant interference in the right of transgender women to have their gender identity recognised by the law. Instead, restrictions on the right of transgender persons with children to change their legal gender should be removed entirely.

5.2.2. **Requirement for sex reassignment surgery to change legal gender:** In order to legally change one’s gender, an individual must have genitalia that closely resemble the physical form of the alternative gender, which requires transgender persons to undergo sex reassignment surgery. This constitutes a form of forced medical treatment and can often involve forced sterilisation, which deprives transgender women of the right to have their own children and form a family under Article 16 of CEDAW. This requirement also violates Principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which states that, “No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity”.⁹

5.2.3. **Requirement for divorce to change legal gender:** Under the current legislative framework, a transgender woman cannot change her gender if she is already married, forcing her to obtain a divorce should she wish to bring her legal gender in alignment with her gender identity.

5.2.4. **Pathologisation of gender identity:** The use of the term “gender identity disorder” to refer to a person’s transgender identity is highly stigmatising, suggesting that transgender persons are mentally ill. Instead of treating transgender identity as a “disorder”, the Japanese Government should take measures to allow every individual to right to determine their own gender identity and to regard this as a normal human variation. According to Principle 18 of the Yogyakarta Principles, “a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed”.¹⁰

⁸ The Opinion concerning Legal Gender for People with Gender Identity Disorder (http://www.nichibenren.or.jp/activity/document/opinion/year/2003/2003_30.html) (in Japanese)

⁹ *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, Principle 3 (March 2007) <http://www.yogyakartaprinciples.org/principles_en.pdf>.

¹⁰ *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, Principle 18 (March 2007) <http://www.yogyakartaprinciples.org/principles_en.pdf>.

6. EDUCATION (ARTICLE 10)

Japan's Obligations under CEDAW

- 6.1. Article 10(c) requires Japan to take all appropriate measures to eliminate “any stereotyped concept of the roles of men and women at all levels and in all forms of education...”. These stereotyped concepts may involve stereotypes about the sexual orientation, gender identity/expression or intersex status of women, grounded in heteronormative assumptions.
- 6.2. Article 10(f) further requires Japan to ensure “the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely”. As part of this obligation, Japan would be required to take steps to reduce drop-outs of female students arising from discrimination or bullying based on their sexual orientation, gender identity or intersex status.

Japan's Compliance with Article 10

- 6.3. Many LGBTI students in Japan experience prejudice and bullying at school, leading them to drop out prematurely and to experience a range of mental health issues, including suicide.
- 6.4. According to an Internet survey of 609 lesbian, gay, bisexual and transgender students conducted by the Tokyo-based Life Respect White Ribbon Campaign in late 2013, **68%** of respondents experienced bullying at some level of education. Even more worryingly, **20%** of respondents suffered physical abuse, **11%** suffered sexual abuse and around **12%** were bullied by teachers. While the survey did not specifically provide data for lesbian, bisexual and intersex women, it did find that acts of violence were particularly prevalent towards transgender women and girls, with **82%** of transgender women and girls reporting being targets of bullying or other forms of violence.¹¹
- 6.5. It is unclear what impact the Ministry of Education's April 2015 statement on transgender students (described in paragraph 3.1.1 above) will have on the recognition and inclusion of transgender girls within the education system. Before this statement was issued, there were several reports of transgender children being treated according to the sex assigned to them at birth, rather than the gender they identified with. This included being required to wear uniforms and use toilets according to the sex assigned at birth. The result was a high level of absenteeism among transgender students, who did not feel comfortable wearing uniforms that did not match their gender identity.¹²
- 6.6. Accordingly, while the Ministry of Education's statement is a significant step forward, there is a need for the Ministry to monitor the extent to which local education boards are complying with the statement and to ensure that all schools are effectively implementing the recommendations in the statement, with a view to reducing the high rate of drop-outs by transgender students.

¹¹ Mami Maruko 'LGBT students may be ready to come out, but are Japan's schools ready to accept them?' *Japan Times*, 15 February 2015 <<http://www.japantimes.co.jp/news/2015/02/15/national/lgbt-students-may-be-ready-to-come-out-but-are-japans-schools-ready-to-accept-them/>>; Morgan Welch, 'First large-scale Japanese study on anti-LGBT bullying released', Four Two Nine, 8 May 2014 <<http://dot429.com/articles/4441-first-large-scale-japanese-study-on-anti-lgbt-bullying-released>>.

¹² Mami Maruko 'LGBT students may be ready to come out, but are Japan's schools ready to accept them?' *Japan Times*, 15 February 2015 <<http://www.japantimes.co.jp/news/2015/02/15/national/lgbt-students-may-be-ready-to-come-out-but-are-japans-schools-ready-to-accept-them/>>.

7. **EMPLOYMENT (ARTICLE 11)**

Japan's Obligations under CEDAW

- 7.1. Article 11(1) of CEDAW requires Japan to take all appropriate measures to eliminate discrimination against women in the field of employment. Read together with Article 2 and General Recommendation No. 28 (see paragraph 4.1 above), this creates a requirement for Japan to address intersectional employment discrimination experienced by LGBTI women.

Japan's Compliance with Article 11

- 7.2. In Japan, there are no national legislative provisions protecting LGBTI women from employment discrimination on the basis of their sexual orientation, gender identity or intersex status. The Japanese government has also not taken any measures to monitor discrimination against LGBTI women in employment nor to provide any assistance to women who have been discriminated on the basis of their sexual orientation, gender identity or intersex status.
- 7.3. LGBTI women in Japan face a high level of discrimination in the workplace, which is often grounded in persistent gender-based stereotypes, including stereotypes about appropriate forms of gender expression and the universal expectation of heterosexual marriage.
- 7.4. According to a 2014 survey conducted by Nijiuro Diversity, a non-profit organisation promoting equality for LGBTI people in the workplace, approximately **40%** of gay, lesbian and bisexual people and approximately **70%** of transgender people responded that they had experienced difficulties in their job search processes due to their sexual orientation or gender identity.¹³ While this survey does not specifically provide statistics for LGBTI women, LGBTI women tend to face a double disadvantage in the workplace: on the one hand, they face barriers due to their gender (which remain significant in Japanese society) and, on the other hand, they face additional barriers due to their sexual orientation, gender identity or intersex status.
- 7.5. According to the *Gender Identity Disorder Act*¹⁴ in Japan, transgender women who have undergone sex reassignment surgery are entitled to update their gender on household registration and identity cards; however, transgender women are unable to update their gender identity on academic records or other crucial documents. The lack of congruency between identity cards and academic records causes many employers to discriminate against potential job candidates who are transgender women.

8. **HEALTH (ARTICLE 12)**

Japan's Obligations under CEDAW

- 8.1. Article 12(1) of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in the field of health care in order to ensure access to health care services.

Japan's Compliance with Article 12

- 8.2. The prevalence of mental health issues among LGBTI women in Japan is incredibly high, due to social stigma, exclusion and discrimination. According to a survey conducted by *Gay Japan News* in January 2015, 27 out of 50 LGBTI women (**54%**) indicated that they had considered

¹³ *Okinawa Times*, 20 July 2014, p. 28.

¹⁴ Act No. 111 of 2003.

suicide, and 5 of them (10%) had actually attempted suicide.¹⁵ Alarming, **all** 50 women in the survey responded that they had experienced depression and decreased self-esteem and engaged in self-harm.¹⁶

- 8.3. Despite these statistics, the Japanese Government has not implemented any policies or programmes seeking to increase access to mental health services or reduce the incidence of mental health issues among LGBTI women.

9. **ECONOMIC, SOCIAL AND FAMILY RIGHTS OF WOMEN IN SAME-SEX RELATIONSHIPS (ARTICLES 13 AND 16)**

Japan's Obligations under CEDAW

- 9.1. Article 13 of CEDAW requires Japan to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular the right to family benefits, the right to bank loans, mortgages and other forms of financial credit and the right to participate in recreational activities, sports and all aspects of cultural life.
- 9.2. Article 16 of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in all matters relating to marriage and family relations, including the rights to enter marriage, freely choose a spouse and to decide on the number and spacing of their children.

Japan's Compliance with Articles 13 and 16

- 9.3. Japan does not currently recognise marriage between persons of the same sex, nor does it provide any alternative form of recognition, such as civil unions or registered partnerships. Article 24(1) of the Constitution of Japan provides that, "Marriage shall be based only on the mutual consent of both sexes, and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis".
- 9.4. There are a number of important rights and benefits that opposite-sex married couples are afforded that are not available to same-sex couples. These include using the same family name, legal rights with respect to inheritance and child custody, hospital visitation rights, access to in-vitro fertilisation, spousal tax benefits and eligibility for certain categories of social insurance.
- 9.5. Of particular concern are the following categories of discrimination against women in same-sex relationships:
 - 9.5.1. **Discrimination in access to public housing:** Even though, as set out in paragraph 3.1.3, there is no longer a national legislative requirement that public housing tenants be married or otherwise related, there remain instances of same-sex couples being excluded from public housing. Each local government has discretion to determine who should be accepted in publicly operated housing. Many municipal governments still do not allow same-sex couples to apply for publicly operated housing.¹⁷

¹⁵ *Mainichi Newspaper*, 21 January 2015, p. 27.

¹⁶ *Ibid.*

¹⁷ For example, Article 5, paragraph 1(1) of the Housing Ordinance of Toshima Ward (one of the central districts in Tokyo) still requires that applicants for public housing must be family members living together or who are going to be living together (including those who have not registered their marriage but who are in a de facto marriage and are intending to register their

- 9.5.2. **Discrimination in access to tax benefits:** Under the *Income Tax Act*, a spousal allowance of JPY 380,000 (approximately USD 3,800) is given to a taxpayer who has a spouse who meets certain requirements.¹⁸ While the Income Tax Act does not define the term “spouse”, in practice this term is interpreted in accordance with the Civil Code and therefore restricted to opposite-sex married couples. Unmarried couples, including same-sex couples, are therefore ineligible for the tax benefits. Although spouses who have entered a legal same-sex marriage overseas are not explicitly excluded under the law or administrative circulars,¹⁹ the National Tax Agency has not expressed a formal opinion on this matter, making it unclear whether same-sex partners married overseas can enjoy spousal allowance benefits.
- 9.5.3. **No right to form a family through access to in-vitro fertilisation (IVF):** The Japan Society of Obstetrics and Gynecology issued an opinion in June 2014 stating that IVF treatments should only be used by opposite-sex married or unmarried (de facto) couples, effectively denying many LGBTI women the ability to access IVF in order to form a family.²⁰
- 9.5.4. **No spousal visas for same-sex partners:** Under the *Immigration Control and Refugee Recognition Act*,²¹ the spouse and children of a Japanese national immigrating to Japan for work may be granted the status of “dependent” and obtain a visa. The “dependent” relationship must be a legally recognised relationship; accordingly, same-sex partners are not considered “dependents”. Moreover, the Ministry of Justice’s internal rules regarding the interpretation of the *Immigration Control and Refugee Recognition Act* state that the term “spouse” for the purposes of dependent visa status does not include a same-sex spouse, even if the couple is legally married in a foreign country.²² Thus, the foreign same-sex spouses of Japanese nationals will not qualify as dependents and would need to apply for the right to live in Japan on their own, which imposes a significant barrier on the right of same-sex couples to live together as a family.
- 9.6. Instead of marriage, same-sex couples in Japan often utilise the adoption system in order to create a legal family relationship (with one partner “adopting” the other), since adoption can be carried out relatively easily under the Japanese law. While this entitles couples to certain legal protections, including using the same family name, inheritance or social insurance, the adoption system was not intended to be used in this manner when it was adopted. Obligating same-sex couples to go through this process is a violation of their dignity and equality, since it

marriage). Since same-sex couples are unable to marry, they are excluded from the scope of this provision: *Toshima Ward Housing Ordinance*, Ordinance No. 46 of 21 December 1991 <http://www1.g-reiki.net/toshima/reiki_honbun/l600RG00000412.html> (in Japanese).

¹⁸ Act No. 33 of 31 March 1965.

¹⁹ Article 2-46 of the Basic Administrative Circular of the Income Tax Act (No. 30 of 1 July 1970) and Articles 24 and 25 of the Act on General Rules for Application of Laws (Act No. 78 of 21 June 2006).

²⁰ Japan Society of Obstetrics and Gynecology, *Views on Ethics relating to IVF* <http://www.jsog.or.jp/ethic/rinri_kaikoku_201406.html> (in Japanese).

²¹ Cabinet Order No. 319 of October 4, 1951.

²² Standards for Examination of Immigration and Residence Permission, issued by the Immigration Bureau of the Ministry of Justice. These standards are not officially published by the Immigration Bureau but are available through some secondary online sources that have obtained them through Japan's freedom of information law (*Act on Access to Information Held by Administrative Organs*, Act No. 42 of 14 May 1999). The standards are subject to revision and revisions may not be revealed to the public as these are internal rules only.

fails to recognise the true nature of their relationship. Moreover, couples in an “adoption” relationship are still not allowed to enjoy spousal tax benefits or other rights that apply exclusively to married couples.

10. GENDER-BASED VIOLENCE (GENERAL RECOMMENDATION NO. 19)

Japan’s Obligations under CEDAW

- 10.1. In General Recommendation No. 19, the Committee noted that violence against women is considered to be a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on an equal basis with men.²³

Domestic Violence

- 10.2. Women in same-sex relationships face similar risks of physical, sexual or psychological violence from their partners as women in opposite-sex relationships. However, the *Act for the Prevention of Spousal Violence and the Protection of Victims*²⁴ does not explicitly extend to same-sex partners, and it is generally considered that the Act still applies only to married and divorced couples or to unmarried opposite-sex couples. There have been only very few domestic violence protection orders granted to same-sex couples.²⁵ In many cases, whether or not an individual receives protection will depend on the knowledge and sensitivity of the particular police officer or judge.
- 10.3. According to a 2012 study by the International Gay and Lesbian Human Rights Commission and Gay Japan News, 12 out of the 28 LBT women surveyed faced intimate partner violence.²⁶

Sexual Assault

- 10.4. Article 177 of the Japanese Criminal Code confines sexual assault to penetration of the vagina by a penis, in situations where the victim physically resists the assault. While post-operative transgender women may potentially be protected by this provision when they are sexually assaulted by men, a significant amount of non-consensual sexual conduct is still not considered to be a crime under Article 177. For example, sexual assaults upon women (including transgender women) that do not involve vaginal penetration are not treated as a crime under Article 177, thereby leaving victims without legal redress.²⁷
- 10.5. A study of 50 interviewees in Japan in 2012 revealed a high rate of sexual violence towards LBT women, with 28 of the 50 LBT respondents experiencing a form sexual violence at least once in their lifetime. Perpetrators ranged from co-workers, school colleagues, family members and partners.²⁸ For example, one of the respondents, K, a transgender woman, described how her female partner would throw things at her while forcing her to have sex with her and with an ex-partner.²⁹

²³ United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against Women* (11th session, 1992).

²⁴ Act No. 31 of 13 April 2001.

²⁵ International Gay and Lesbian Human Rights Commission, *Striving for Dignity and Respect: Experiences of Violence and Discrimination as Told by LBT Persons in Japan*, 2014, pp. 26–27 <http://iglhrc.org/sites/iglhrc.org/files/JapanCC_0.pdf>

²⁶ Ibid 16.

²⁷ Ibid 26.

²⁸ Ibid 7.

²⁹ Ibid 18.

- 10.6. Despite the significant impact such sexual assault has on victims, it is not prohibited under Article 177 of the Criminal Code as currently drafted, creating a significant and highly discriminatory gap in Japan's legislative response to sexual assault.

11. **RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES**

- 11.1. On the basis of the multiple human rights breaches faced by LGBTI women in Japan (as outlined above), we **recommend** that the Committee include within its List of Issues the following questions:

- 11.1.1. What laws, policies and other measures does Japan propose to implement to address widespread discrimination and prejudice against LGBTI women and girls in all areas of public life, particularly education and employment? What steps has Japan taken towards the implementation of a comprehensive law protecting against discrimination on the basis of sexual orientation, gender identity and intersex status?
- 11.1.2. What laws, policies and other measures does Japan propose to implement to remove barriers faced by individuals wishing to obtain a legal change of gender? Does Japan intend to remove restrictions on transgender persons with children legally changing their gender, as well as requirements for sex reassignment surgery and divorce as preconditions to a legal change of gender?
- 11.1.3. How will Japan ensure that the instruction issued by the Ministry of Education in April 2015 on the recognition of transgender students is effectively implemented in all schools? What steps can students take if a school does not recognise their gender identity?
- 11.1.4. What steps is Japan proposing to take to include sexual orientation and gender identity within the national education curriculum and to train teachers to be sensitive to the issues facing LGBTI students?
- 11.1.5. What measures has Japan already taken, and what measures is Japan intending to take, to address the high rates of mental illness among LGBTI women?
- 11.1.6. What laws, policies and other measures does Japan propose to implement to reduce the legal discrimination faced by women in same-sex relationships, including discrimination in access to public housing, tax benefits, in-vitro fertilisation and spousal visas?
- 11.1.7. Does Japan intend to take any measures to address intimate partner violence between same-sex partners, including expanding the definition of domestic violence or providing support services to victims of intimate partner violence regardless of their sexual orientation, gender identity or intersex status?
- 11.1.8. Does Japan intend to expand the definition of sexual assault in Article 177 of the Criminal Code to include all forms of non-consensual sexual activity?