

# **JAPAN: Discrimination against Lesbian, Bisexual Women and Transgender People on the Basis of Sexual Orientation and Gender Identity**

## **Shadow Report**

June 2015

**To the Committee on the Elimination of Discrimination against Women (CEDAW) for consideration at the 63<sup>rd</sup> session, 2015 (Pre-Sessional Working Group – List of Issues)**

**Submitted by:**

**Gay Japan News with support from the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)**

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## **I. Introduction**

Lesbian, bisexual women and transgender (LBT) people in Japan face violence, discrimination, prejudice and stigmatization on the basis of sexual orientation and gender identity in different spheres of everyday lives such as education, employment, housing and health care. While there are some positive steps taken by the Japanese government in recent years, substantive equality is not guaranteed to LBT people. Nor does the Japanese law protect them from discrimination and abuse. For example, the Act on the Prevention of Spousal violence and the Protection of Victims was expanded in January 2014 beyond violence in marital relationship and de facto marriage to include violence between partners who are dating and cohabiting. However, the legislature and judiciary have interpreted the amended law to exclude partner violence in same-sex relationships.<sup>1</sup> Denying basic protection to LBT people sends a message to society that these people are not valuable. Equality can only be achieved through equal treatment, so the government must afford protection from all forms of violence, including domestic violence.

Another example is that transgender people who would like to have their gender identity to be reflected on the family registry have to meet specific discriminatory conditions under the law regulating the process by which people with Gender Identity Disorder may change their legal genders.<sup>2</sup> These conditions form barriers that prevent people from changing their documented gender and they must be combated by providing appropriate health services, access to information, and guaranteeing rights to identity expression.

Treating lesbian, bisexual women and transgender people differently amounts to treating them unequally. In order for full equality to exist in Japan, LBT people must have the same rights and benefits guaranteed to heterosexual women and cis-gendered population.

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<sup>1</sup> “Practice of Protection Order Procedures in Tokyo District Court and Osaka District Court based on the Amended DV Law 2013.” Expert opinion by Judge Masayuki Fukushima and Judge Hajime Morikage. Hanrei Times No. 1395. (issued in Feb. 2014.)

<sup>2</sup> Act on Special Cases in Handling Gender for People with Gender Identity Disorder (Japan) Law No. 111 of 2003 (Effective Jul. 16, 2004) [Translation by Chiaki Ota] available at [http://blog.hawaii.edu/aplpj/files/2013/01/APLPJ\\_14.1\\_Ota\\_vFINAL.pdf](http://blog.hawaii.edu/aplpj/files/2013/01/APLPJ_14.1_Ota_vFINAL.pdf) last viewed on Jun. 11, 2015.

## **II. Substantive Violations of the Convention**

### **General Recommendation 19: Violence against Women**

The Act on the Prevention of Spousal Violence and the Protection of Victims was expanded in January 2014 beyond in marital relationship and de facto marriage to include violence between partners who are dating and cohabiting. However, the legislature and judiciary have interpreted the amended law to exclude partner violence in same-sex relationships.<sup>3</sup> The reasoning behind the exclusion is that the Article 24 of the Japanese Constitution stipulates that “marriage shall be based only on the mutual consent of both sexes<sup>4</sup> and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis” and all laws are interpreted within the Constitution.

While LBT people have been victims of domestic violence on the part of their husbands and other family members, cases of reported and investigated domestic violence between same-sex partners are limited and hardly recognized because heteronormativity predominates in Japanese society. In some research, twenty eight out of fifty LBT respondents answered that they experienced some form of sexual violence at least once in their lifetime because of sexual orientation, gender identity and gender expression. Perpetrators ranged from family members, relatives, colleagues, partners including same-sex partners and strangers.<sup>5</sup>

There are very few shelters which LBT people may access without fear of discrimination or ill treatment based upon their sexual orientation, gender identity and gender expression. According to the survey conducted by the Cabinet Office in 2004, only 13.4% of the private shelters in the country have ever served clients who were suffering from domestic violence between same-sex partners.

### **Articles 2, 5 & 15: Discrimination and Prejudice**

In regard to the Article 2 of the Convention, the Committee stated in General Recommendation No. 28 “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. State parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.” Nonetheless, Japan has laws that are discriminatory and exclusive of LBT people. The following information contains such examples.

Japan has not yet passed comprehensive anti-discrimination legislation. The country’s failure to enact anti-discrimination legislation to include sexual orientation and gender identity is a violation of Articles 2, 5 and 15. In 2002, the Ministry of Justice put forth a Draft Bill of Human Rights Protection that included sexual orientation as a category against which discrimination is prohibited. This bill, however, failed to pass in 2002, 2003 and 2005. Further, Japan has yet to establish an independent national human rights institution that meets the standards of the Paris Principles.

Article 23(1) of the Public Housing Law that previously effectively barred unmarried same-sex couples from renting public housing was abolished in 2012 and such couples were no longer legally excluded. In reality, however, municipalities decide who can rent public houses under the amended Public Housing Law and few municipal policies allow same-sex couples to qualify. Thus, in practice same-sex couples remain excluded from public housing.<sup>6</sup>

### **Article 9: Asylum**

Japan has denied asylum to those seeking it based upon discrimination and violence they face in their own country on the basis of sexual orientation and gender identity.

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<sup>3</sup> Ibid.

<sup>4</sup> Underlined by the provider of this report.

<sup>5</sup> International Gay and Lesbian Human Rights Commission & Gay Japan News, “Striving for Dignity and Respect: Experiences of Violence and Discrimination as Told by LBT Persons in Japan”, *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia*, May 2014 available at [http://iglhrc.org/sites/iglhrc.org/files/JapanCC\\_0.pdf](http://iglhrc.org/sites/iglhrc.org/files/JapanCC_0.pdf) last viewed on Jun. 11, 2015

<sup>6</sup> Osaka Prefecture made its public housing ordinance inclusive of same-sex couples. Municipalities have individually have stated that they would maintain what was written in the abolished clause in their own public housing ordinances.

### **Article 10: Education**

Lesbian, bisexual women and transgender students have little access to positive information about diversity of sexuality which leads to difficulty accepting or expressing oneself, feel isolated and experience bullying on the basis of sexual orientation and gender identity. A research targeted more than 600 lesbian, gay, bisexual and transgender (LGBT) people who went to elementary, junior high or high schools in Tokyo area revealed that 68% of the respondents experienced bullying in schools. Among LGBT respondents, transgender women (transgender male-to-female) experienced bullying more than other respondents; 78% of them experienced verbal abuse and 23% experienced sexual abuse by classmates and teachers because of her gender identity.<sup>7</sup>

In April 2015, Ministry of Education, Culture, Sports, Science and Technology issued an instruction urging local boards of education to respond to the needs of students of sexual minority in an appropriate manner and to promote understanding among teachers.<sup>8</sup> While it is a significant step taken by the government, the instruction does not include a plan to conduct much-needed teacher training.

### **Article 11: Employment**

In July 2014, revised Guidelines on Business Owners' Duties in Employment Management in relation to Sexual Harassment in line with the Equal Employment Opportunity Law came into effect. In the new Guidelines, a definition of sexual harassment includes sexual harassment by same-sex colleagues. Ministry of Health, Labor and Welfare in one of the meetings of the Labor Policy Council stated that discriminatory remarks and attitudes against workers of sexual minority at workplace could be sexual harassment.<sup>9</sup> While it is a positive step, neither the Law nor the Guidelines explicitly prohibit workplace discrimination on the basis of sexual orientation and gender identity.

### **Article 16: Marriage and Family Life**

Article 3 of the Law concerning Special Cases in Handling Gender for People with Gender Identity Disorder sets give conditions for transgender people to be eligible to apply for different sex entry on family registry to a family court. One of these conditions requires that a transgender individual who wishes to change one's sex be unmarried at the time of application. A transgender person who has undergone sex reassignment surgery may marry a new partner who is of the opposite sex, but cannot remain married to a partner whom the person was married to prior to its application. A second condition requires that the applicant have no children below the age of 19 at the time of application. A third condition requires that the applicant to be sterilized. These requirements deprive transgender applicants of the right to marriage and family life and the ability to have biological children.

In February 2013, the Special Rapporteur on Torture called for States to “repeal any law allowing instructive and irreversible treatments, including... forced involuntary sterilization” when administered without the free and informed consent of the person concerned. Furthermore, he called for “outlaw[ing] forced or coerced sterilization in all circumstances and provid[ing] special protection to individuals belonging to marginalized groups.”<sup>10</sup>

In Japan, same-sex partnership is not legally recognized and such couples are not guaranteed right to marriage and family and rights granted to married or de facto married heterosexual couples. In April 2015, Ward of Shibuya in Tokyo passed the Ordinance to Promote Gender Equality and Society where Diversity is Respected which includes recognition of partnership of same-sex couples who reside in Shibuya.<sup>11</sup> While

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<sup>7</sup> White Ribbon Campaign, Research Findings 2013 on the Situation of LGBT School Life, April 2014 (in Japanese) available at <http://endomameta.com/schoolreport.pdf> last viewed on Jun. 11, 2015.

<sup>8</sup> On Implementation of Sensitive Responses and Others about Pupils and Students regarding Gender Identity Disorder, issued on Apr. 30, 2015 by the Ministry of Education, Culture, Sports, Science and Technology (in Japanese) available at [http://www.mext.go.jp/b\\_menu/houdou/27/04/1357468.htm](http://www.mext.go.jp/b_menu/houdou/27/04/1357468.htm) last viewed on Jun. 11, 2015.

<sup>9</sup> Minutes of the 139<sup>th</sup> meeting of the Labor Policy Council, Dec. 20, 2013 (in Japanese) available at <http://www.mhlw.go.jp/stf/shingi/0000037947.html> last viewed on Jun. 11, 2015.

<sup>10</sup> Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, A/HRC/22/53, (Feb. 1, 2013.)

<sup>11</sup> Shibuya Ward Ordinance to Promote Gender Equality and Society where Diversity is Respected (Effective Apr. 1, 2015) (in Japanese) available at [https://www.city.shibuya.tokyo.jp/kusei/jorei/jorei/pdf/danjo\\_tayosei.pdf](https://www.city.shibuya.tokyo.jp/kusei/jorei/jorei/pdf/danjo_tayosei.pdf)

same-sex couples in Shibuya are granted recognition certificate they can use when visiting one's partner at a hospital, applying for both public and private housing and other services provided by Shibuya and private business run in the Ward, the effect is limited within the Ward and recognition by the Ordinance does not have any legally binding power since the national legislation does not recognize such relationship. Same-sex partners are denied right to family including rights to legal recognition and the benefits that stem from such recognition. In June 2014, a lesbian couple submitted a marriage registration form to Aomori City Hall. The submitted form was rejected citing the Article 24 of the Japanese Constitution.

When a Japanese national marries an opposite-sex partner from another country, the State grants that partner a spousal visa. Based on the Immigration Control and Refugee Recognition Act, non-Japanese living in Japan with a Japanese same-sex partner is not guaranteed the same status. Ministry of Justice issued an instruction in October 2013 that said non-Japanese who married a Japanese national abroad where it was legal to do so and wanted to stay in Japan with one's partner could apply for a visa for "special activity."<sup>12</sup> While it allows same-sex partner from another country to remain in Japan with certain legal status, it is not equal to the status granted to opposite-sex partners.

### **III. Recommended Questions for the List of Issues**

We recommend that the Committee consider the following to be included in its List of Issues.

- How does Japan intend to protect lesbian, bisexual women and transgender people from intimate partner violence?
- Does Japan intend to expand the definition of domestic violence or provision of support services to survivors of intimate partner violence regardless of sexual orientation and gender identity?
- Does Japan intend to review the definition of rape in Article 177 of the Criminal Code to include forced intercourse that is not limited to penile-vaginal penetration in order to bring justice to all rape victims regardless of gender, sexual orientation or gender identity?
- How does Japan intend to ensure that the Ministry of Education instruction in April 2015 on the sexual minority students is effectively implemented in all schools?
- What legislative or policy steps does Japan intend to take to implement recommendations during Universal Periodic Reviews in 2008<sup>13</sup> and 2012<sup>14</sup> and by the Human Rights Committee in 2008<sup>15</sup> and 2014<sup>16</sup> to adopt comprehensive anti-discrimination legislation which prohibits discrimination on all grounds, including on sexual orientation and gender identity?

Gay Japan News' mission is a non-commercial LGBTI online news source, advocacy group and member of ILGA. Its mission is to empower LGBTI people in Japan and to achieve human rights of all regardless of sexual orientation, gender identity, gender expression and bodily diversity everywhere.

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last viewed on Jun. 11, 2015.

<sup>12</sup> M. Fukushima (Upper House member) "Regarding Visa Status of Spouses of Same-Sex Marriage" (in Japanese) Feb. 9, 2015 at <http://blogos.com/article/105286/> last viewed on Jun. 11, 2015.

<sup>13</sup> Report of the Working Group on the UPR: Japan. 60-11. A/HRC/8/44 (May 30, 2008)

<sup>14</sup> Report of the Working Group on the UPR: Japan. 147-34, 36, 65, 85, 89, 90. A/HRC/22/14/Add.1 (Mar. 8, 2013.)

<sup>15</sup> Para 29, Concluding Observations of the Human Rights Committee, Japan. CCPR/C/JPN/CO/5 (Oct. 30, 2008.)

<sup>16</sup> Para 11, Concluding Observations of the Human Rights Committee, Japan. CCPR/C/JPN/6 (Oct. 9, 2012.)