

# JAPAN: Discrimination on the Basis of Sexual Orientation and Gender Identity

A Shadow Report  
March 2013

Submitted by **Gay Japan News**  
to **the Committee on Economic, Social and Cultural Rights for consideration at the 50<sup>th</sup> session, 2013.**

## **1. Executive Summary**

The situation faced by lesbian, gay, bisexual and transgender (LGBT) persons in Japan is characterised by invisibility, marginalisation, silent prejudice and stigmatization. LGBT persons are subjected to human rights violation including discrimination in various aspects of everyday life such as education, employment, housing and health care on the basis of sex, sexual orientation, gender identity and gender expression. Unfortunately, neither the Government nor civil society organisations have adequately documented specific cases of such human rights violation and discrimination. Ignoring these problems will only allow them to grow worse. Thus, the Japanese Government should adopt anti-discrimination legislation including on the basis of sexual orientation and gender identity and establish an independent national human rights institution to protect the human rights of LGBT persons in line with the Paris Principles.

Article 14 of the Japan's Constitution guarantees fundamental human rights and prohibits discrimination on the basis of "race, sex, social status or family origin." Substantive equality, however, is not guaranteed to LGBT persons. Nor does Japanese law protect them from discrimination and abuse. Denying these basic protections to LGBT 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 discrimination in all aspects of their lives.

Another example is that transgender people who would like 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 (GID) may change their legal genders<sup>1</sup>. These conditions form barriers that prevent people from changing their documented gender identity and they must be combated by providing appropriate health services, access to information and guaranteeing rights to identity expression.

It is notable that the Japanese government has taken positive steps in recent years towards protecting the rights of LGBT people by changing relevant policies. Such changes include issuing the legal document certifying one's single status when one attempts to marry abroad whether it is same-sex or opposite-sex couples. Inclusion of mental health of sexual minority population in the national policy on suicide prevention is also one of these changes.

However, sterilization requirement of transgender people in the Law on Special Provisions for Handling People with Gender Identity Disorder, lack of anti-discrimination legislation including

---

<sup>1</sup> Law concerning Special Provisions Handling People with Gender Identity Disorder (Law No. 111, enacted in July 2004, amended in June 2008.) Gay Japan News et al., Joint Submission of the Shadow Report on the International Covenant on Civil and Political Rights on Japan, October 2008.

on the basis of sexual orientation and gender identity as well as social stigmatization remain great challenges towards achieving equality and wellbeing of LGBT people.

Treating non-heteronormative and non-gender conforming people differently amounts to treating them unequally. In order for full equality to exist in Japan, LGBT people must have the same rights and benefits which are guaranteed to heterosexual and gender conforming people.

### **Recommendations to the Japanese Government:**

In order to protect people from discrimination and human rights violation on the basis of sexual orientation and gender identity, and also to meet their needs, the Japanese Government ought to establish a national human rights institution, which will be independent from the Government in compliance with the Paris Principles. This institution should review lack of legislation on the rights of LGBT people and also current legislation dealing with people with GID and should recommend establishment and amendments the Government can make to these legislation in order to ensure that no one is denied rights as set out in the Convention because of sexual orientation and gender identity.

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

### **Employment Discrimination: Article 6**

A 50 year-old transgender woman, “K” was fired by her employer, a social welfare corporation in Osaka because she was diagnosed with GID in 2006. She filed a lawsuit against her former employer, seeking compensation of two million yen. According to the Japanese media, K told the employer about her GID when she applied for the job. Though she was hired, she was banned from using women’s washrooms and from wearing make-up at work. In March 2006, the employment contract was terminated without any clear reasons. K and her employer reached reconciliation in Osaka District Court in January 2008.<sup>2</sup>

A male-to-female transgender woman was working for a publisher when she was diagnosed with GID. In January 2002, she requested that her employer recognise her as a woman. In March 2002, she began wearing women’s clothing to the office. Her employer ordered her not to wear this clothing. However, the women continued to dress this way. Her employer fired her in April 2002. The woman subsequently filed a lawsuit. In June 2002, the Tokyo District court found that the initial dismissal of the case was unjust.

The above-mentioned cases are the tip of the iceberg and rare in a sense that these trans plaintiffs could bring the cases to the court. Transgender people face discrimination in employment on the basis of their gender identity and/or gender expression, but many of them do not report because they are afraid of loss of job or further discrimination or abuse as a result of reporting. Plaintiffs in the above-mentioned cases either reached reconciliation or won, but it was only fortunately because there is no legislation which clearly prohibits workplace discrimination on the basis of sexual orientation, gender identity or gender expression.

Some companies and municipalities have been reportedly using a mini-mental state examination on job applicants that includes questions on the applicants’ sexual orientation and gender identity<sup>3</sup>. The intentions of these questions are not know but it can lead to discrimination of applicants on the basis of their sexual orientation and gender identity.

---

<sup>2</sup> “Gender identity Transformed from ‘Freak’ into Rights Issues,” The Japan Times (23 January 2007.)

<sup>3</sup> ”Checking sexual orientation?” Chunichi Shimbun (14 March 2013.)  
<http://www.chunichi.co.jp/hokuriku/article/news/CK2013031402100006.html>

## **Denial of Social Benefits and Right to Family: Articles 9 and 10**

Same-sex couples are not recognised by any legislation, thus rights granted to opposite-sex couples are denied to them including their right to inheritance and spousal pension benefit. As is noted above, Article 3 of the Law Concerning Special Provisions for Handling People with Gender Identity Disorder sets five conditions for transgender individuals to change their sex on identity cards. One of these conditions requires that a transgender individual who wishes to change his or her sex be unmarried at the time of application, and another condition requires that the applicant have no children below the age of 19 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 they were with prior to their application.

In 2012, a clause that effectively excluded same-sex couples from renting public housing was abolished from Public Housing Law and the amended law allows municipalities to decide qualifications on public housing. Municipalities maintain the substantive exclusion of same-sex couples from renting public housing. Temporary housing built in municipalities which were affected by the Great East Japan Disaster is limited to “household.” Since people in same-sex relationships are not legally recognised “household,” same-sex partners are barred from living together as family.

Transgender people who cannot have their gender on the family registry changed face difficulties with housing because they often must submit official documents in order to rent housing and their gender on these documents does not reflect accurately depict their gender identity.

Transgender people and children of transgender parents are denied right to family. A female-to-male transgender person who had changed his changer on *koseki*, Japan’s family registry and legally married to a woman tried to have him registered as a father of the son whom they had through artificial insemination with sperm of a third party. The existing law does not recognize him as a father on the basis that he is “biologically female.” He filed an appeal to a court of first instance and higher court but the appeal was rejected. He and his family are appealing to the Supreme Court<sup>4</sup>.

## **Right to Physical and Mental Health: Article 12**

Transgender persons who are diagnosed with GID but do not meet the conditions set fourth 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 Provisions for Handling People with Gender Identity Disorder requires transgender persons who wish to change their legal gender to undergo major surgical interventions, including genital surgery and sterilisation, so as to be able to change their gender on the family registry. This practically takes away the choice to keep their reproductive organs. It violates not only their reproductive rights but also their integrity.

Insensitive health care personnel, including gynecologists, alienate lesbian and bisexual women by presuming them to be heterosexual women. This makes it difficult to talk about health problems that may need medical attention because to do so would means revealing their sexual orientation and potentially facing homophobia from the doctor.

---

<sup>4</sup> “Seeking recognition as a father. Trans man appealing to the Supreme Court.” Nippon Television News 24 (14 March 2013) <http://www.news24.jp/articles/2013/03/14/07224797.html>

The Government's projects on HIV/AIDS tend to focus only men who have sex with men and have failed to recognise the related issues faced by lesbian, bisexual women and transgender persons.

Mental health of gay, bisexual men and transgender persons is worth attention. According to Hidaka et al<sup>5</sup>, among gay and bisexual men, 64% have considered committing suicide and 15% have attempted suicide. A study also shows that about 70% of all respondents who have suspected that they have HIV have considered committing suicide<sup>6</sup>.

### **Right to Education: Article 13**

In January 2013, it was reported that the government decided to reintroduce the supplementary teaching materials for moral education in elementary and junior high schools that said being attracted to someone of the opposite sex was natural<sup>7</sup>. This reinforces heteronormativity and excludes non-heteronormative pupils.

### **3. Concluding Notes**

- LGBT persons not only face discrimination under laws and policies but are also subject to discrimination in health care, housing and employment.
- There is no anti-discrimination law, which includes on the basis of sexual orientation and gender identity as protected statuses, and no national human rights institution to enforce such a law. LGBT people lack redress from discrimination.

### **4. Recommendations**

The Japanese Government should:

1. Enact Anti-Discrimination Legislation prohibiting discrimination on the basis of sexual orientation and gender identity in employment, housing and the social security, and health services.
2. Establish a national human rights institution, independent from the Government, based on 'Principles relating to the Status of the National Human Rights Commission (Paris Principles.)'
3. Reviews current legislation to awards to unmarried same-sex couples that same rights awarded to unmarried opposite-sex couples.
4. Review and amend current legislation on people with GID to make sure that no person with GID is disadvantaged from conditions set out in the law.
5. Raise awareness and sensitize people on non-heteronormative and non-gender conforming identities, so that LGBT persons are not refused or excluded by society.

Gay Japan News' mission is empowering lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Japan and achieving human rights of all people regardless of sexual orientation, gender identity or gender expression everywhere. Gay Japan News is a member of ECOSOC-accredited International Lesbian and Gay Association. [www.gayjapannews.com](http://www.gayjapannews.com)

-----

---

<sup>5</sup> Research by Dr. Yasuharu HIDAHA et al., Graduate School of Medicine, Kyoto University. In 2005, he surveyed 5,731 gay and bisexual men regarding their HIV testing behaviour, experience of being bullied, suicidal attempt and mental health.

<sup>6</sup> Research by Dr. Mikiya NAKATSUKA et al. The research targeted 661 patients who suspected that they had GID from 1994 till 2006 focusing on their suicidal attempt and self-injury.

<sup>7</sup> "Education Ministry to reintroduce *Kokorono Notebook* " Sankei News (7 January 2013) <http://sankei.jp.msn.com/life/news/130107/edc13010722270001-n1.htm>