



**Human Rights Watch Submission
to the United Nations Human Rights Committee
In Advance of Its Review of Japan
136th Session
September 2022**

This submission aims to contribute to the Human Rights Committee’s (“the Committee”) upcoming review of Japan’s compliance with the International Covenant on Civil and Political Rights (ICCPR or “the Covenant”). It focuses on the abuse of children’s rights by education technologies (EdTech) endorsed by the Japanese government for online learning during the Covid-19 pandemic, discrimination based on sexual orientation and gender identity, the transgender legal recognition process, the death penalty and criminal justice, and child abuse in sport. It is submitted to the Human Rights Committee in advance of its review of Japan at the Committee’s 136th session.

Children’s Rights Abuses by Government-Endorsed Online Learning during the Covid-19 Pandemic (articles 17, 18, and 19)

In a global investigation of education technology (EdTech) products endorsed by the world’s most populous countries for children’s education during the Covid-19 pandemic, Human Rights Watch found that the Japanese government violated children’s right to privacy and other rights.¹

Of the EdTech products that were recommended by Japan’s Ministry of Education, Culture, Sports, Science, and Technology (MEXT) on March 2, 2020, Human Rights Watch randomly selected for analysis ten EdTech products that would serve as an illustrative sample of MEXT’s decisions.² These were Asahi Shimbun, Cisco Webex, eboard, Flying Classroom, Happy Lilac, LINE, NHK for

¹ Human Rights Watch, “*How Dare They Peep into My Private Life?: Children’s Rights Violations by Governments that Endorsed Online Learning during the Covid-19 Pandemic*” (New York: Human Rights Watch, 2022), <https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments>.

² Government of Japan, Ministry of Education, Culture, Sports, Science, and Technology, “Children’s Learning Support Website,” (“学習支援コンテンツポータルサイト (子供の学び応援サイト)”), http://web.archive.org/web/20210225162705/https://www.mext.go.jp/a_menu/ikusei/gakusyushien/index_00001.htm (accessed February 8, 2022); Ministry of Economy, Trade, and Industry, “Learning Innovation,” https://web.archive.org/web/20210208184825/https://www.learning-innovation.go.jp/covid_19/ (accessed February 8, 2022).

School, schoolTakt, Study Sapuri, and Z-Kai.³ Of these ten products, two were mobile applications (“apps”), six were websites, and two were available in both formats.

Our analysis found that nine out of ten of these EdTech products surveilled or had the capacity to surveil children online, outside school hours, and deep into their private lives. Built by private companies, these EdTech products installed invasive tracking technologies on children’s devices that harvested data on who children are, where children are, who their family and friends are, and what kind of device their family could afford for them to use.

Human Rights Watch also found that seven of these EdTech products transmitted children’s personal data to advertising technology (AdTech) companies, and two products had the capability to do so.

Finding Out Who Children Are

Three EdTech products authorized by MEXT for children’s use had the capability to collect their users’ Android Advertising IDs, allowing them to tag, collectively, an estimated 1.5 million users and uniquely identify their devices for the sole purpose of advertising to them.⁴ Another two

³ Human Rights Watch, “Privacy Snapshot: Japan: Asahi Shimbun,” June 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20Asahi%20Shimbun.pdf; “Privacy Snapshot: Global: Cisco Webex,” February 26, 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20Cisco%20WebEx.pdf; “Privacy Snapshot: Japan: eboard,” June 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20eboard.pdf; “Privacy Snapshot: Japan: Flying Classroom,” June 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20Flying%20ClassRoom.pdf; “Privacy Snapshot: Japan: Happy Lilac,” June 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20Happy%20Lilac.pdf; “Privacy Snapshot: Global: LINE,” March 3, 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20LINE.pdf; “Privacy Snapshot: Japan: NHK for School,” February 25, 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20NHK%20for%20School.pdf; “Privacy Snapshot: Japan: schoolTakt,” August 26, 2020, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20schoolTakt.pdf; “Privacy Snapshot: Japan: Study Sapuri,” February 26, 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20Study%20Sapuri.pdf; “Privacy Snapshot: Japan: Z-Kai,” June 2021, https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20Z-Kai.pdf.

⁴ Human Rights Watch, “Privacy Snapshot: Global: Cisco Webex,” https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20Cisco%20WebEx.pdf; “Privacy Snapshot: Japan: schoolTakt,” https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20schoolTakt.pdf; “Privacy Snapshot: Japan: Study Sapuri,” https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20Study%20Sapuri.pdf.

EdTech products digitally fingerprinted children using invasive techniques that were impossible to avoid or protect against without throwing the device away.⁵

These identifiers enabled companies to infer the interests and characteristics of individual children for commercial purposes. Every time a child connects to the internet and comes into contact with tracking technology, any information collected about that child is tied back to the identifier associated with them by that company, resulting in a comprehensive profile over time. Data tied together in this way do not need a real name to be able to target a real child or person.

Neither the government nor these five EdTech companies disclosed their use of these tracking techniques. Human Rights Watch finds that these tracking techniques are neither proportionate nor necessary for these products to function, or to deliver educational content to children. Their use on children in an educational setting arbitrarily interferes with children's right to privacy.

Tracking Where Children Are

Information about a child's physical location also reveals powerfully intimate details about their life far beyond their coordinates. Once collected, these data points can reveal sensitive information such as where a child lives and where they go to school; even without names or other obviously identifiable information, it is startlingly easy to identify real children and people without their awareness and consent.

Human Rights Watch found that two apps recommended by MEXT for children's learning had the ability to collect precise location data, or GPS coordinates, that can identify a user's exact location to within 4.9 meters.⁶ Both apps also had the ability to collect the time of the device's current location, as well as the last known location of the device—revealing exactly where a user is, where they were before that, and how long they stayed at each place.

At a time when many children were remotely learning from home under Covid-19 lockdowns, the surveillance of their physical presence through location data likely revealed addresses and places most significant to them.

⁵ Human Rights Watch, *"How Dare They Peep into My Private Life?"*, pp. 28, 30-31.

⁶ US National Coordination Office for Space-Based Positioning, Navigation, and Timing, Global Positioning System (GPS), "GPS Accuracy," <https://www.gps.gov/systems/gps/performance/accuracy/> (accessed July 8, 2021); Human Rights Watch, "Privacy Snapshot: Global: Cisco Webex," https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20Cisco%20WebEx.pdf; "Privacy Snapshot: Global: LINE," https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20LINE.pdf.

Tracking Who Children Know

Two apps recommended by MEXT for children’s use had the ability to collect information about their users’ friends, family, and other acquaintances by accessing the contacts list saved on users’ phones.⁷ This allowed these apps to learn personal details about these contacts, including any saved names, phone numbers, emails, addresses, relationships, and profile photos. Human Rights Watch found that this data was neither necessary for these apps to function, nor provided educational benefit to children.

When details about the personal relationships of a child are collected without consent or awareness by the child or by the family member or friend in question, it is an arbitrary intrusion on the privacy of each of these individuals. For contacts, the right to privacy is affected by the “mere collection of personal data” in which they lose control over information, in addition to the risk of experiencing potential misuse of their personal data.⁸

Tracking What Children Do Inside and Outside the Classroom

Ad trackers and third-party cookies are generally used by AdTech companies to scrutinize a person’s every action and behavior, infer their characteristics and interests, and deliver customized ads and content that follow them around the internet.

Children in Japan were tracked at dizzying scale. Of the eight government-authorized EdTech websites reviewed by Human Rights Watch, seven collectively installed 120 ad trackers on children’s devices and browsers. These ad trackers identified and collected information about what children do within their virtual classrooms and sent their data to AdTech companies.

Five websites collectively inserted 117 third-party cookies on children’s personal devices. These cookies followed children after they left these websites and across the internet, outside of school hours, and sent their whereabouts and activities to AdTech companies.

Notably, Z-kai, an EdTech website endorsed by MEXT for all elementary, middle, and high school students in Japan to learn core subjects during Covid-19 school closures, deployed the highest number of ad trackers and third-party cookies among all the EdTech websites analyzed by Human Rights Watch in its global investigation. Within milliseconds of a child opening up Z-kai, 54 ad

⁷ Human Rights Watch, “Privacy Snapshot: Global: Cisco Webex,” https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20Cisco%20WebEx.pdf; “Privacy Snapshot, Global: LINE,” https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Global%20LINE.pdf.

⁸ United Nations Human Rights Council, Report of the UN High Commissioner for Human Rights on the right to privacy in the digital age, A/HRC/39/29, August 3, 2018, para. 7.

trackers and 76 third-party cookies began tracking the child's behavior and transmitting this data to AdTech companies around the world.

This unnecessary, disproportionate data surveillance—the highest of any country reviewed by Human Rights Watch—enabled advertisers and other companies to use children's data for commercial purposes, and exposed children to further risk of misuse and exploitation of their data. Their use on children in an educational setting unreasonably infringes upon children's right to privacy.

Government Failure to Protect

Nine out of the ten government-authorized EdTech products reviewed by Human Rights Watch engaged in data practices that unreasonably infringed on children's rights or risked doing so. These nine products also sent or granted access to children's personal data to AdTech companies that specialize in behavioral advertising or whose algorithms determine what children see online. In doing so, these companies not only distorted or risked distorting children's online experiences, but also risked influencing their opinions and beliefs at a time in their lives when they are at high risk of manipulative interference.⁹

These nine EdTech products were marketed as free and provided to the Japanese government at no direct financial cost. In the process of endorsing these and promoting their wide adoption by schools, teachers, and students, MEXT offloaded the true costs of providing education online onto children, who were forced to pay for their learning with their rights to privacy, access to information, and freedom of thought.

Human Rights Watch did not find evidence that MEXT took measures to prevent or mitigate children's rights abuses by companies, or that MEXT checked whether the EdTech products they were rapidly endorsing were safe for children to use. As a result, children whose families were able to afford access to the internet and connected devices, or who made hard sacrifices in order to do so, were exposed to the privacy practices of the EdTech products they were told or required to use during Covid-19 school closures.

Children, parents, and teachers were largely kept in the dark about these data surveillance practices. Neither the government, nor the nine EdTech companies, informed children and their parents of the data practices that risked or infringed on children's rights. As these tracking technologies were invisible to the user, children had no reasonably practical way of knowing the

⁹ Human Rights Watch, *“How Dare They Peep into My Private Life?”*, pp. 67-87.

existence and extent of these data practices, much less the impacts on their rights. By withholding critical information, the government and these companies impeded children’s access to justice and remedy.

Even if children, parents, and teachers had known about these data practices, Human Rights Watch found that the data surveillance took place in virtual classrooms and educational settings where children could not reasonably object to such surveillance. These EdTech companies did not allow students to decline to be tracked; this monitoring happened secretly, without the child’s knowledge or consent. In most instances, it was impossible for children to opt out of such surveillance and data collection without opting out of compulsory education and giving up on formal learning during the pandemic.

NHK for School

Notably, NHK for School, developed by the public broadcaster, was the only one of the ten EdTech websites and apps endorsed by the government that protected their child users’ privacy by not installing any tracking technologies.¹⁰ This demonstrates that it is possible for the Japanese government to uphold the obligations to protect and promote children’s rights by building and offering digital educational services to children that do not compromise their data and their privacy, and not resort to endorsing products that do violate these rights.

Human Rights Watch recommends that the Committee ask the government of Japan:

- Does the government have plans to develop and enforce comprehensive child data protection laws?
- What recourse or remedy does the government provide, or is planning to provide, to children who have experienced infringements of their rights as a result of their use of these EdTech products and whose data remain at risk of misuse and exploitation?

Human Rights Watch recommends that the Committee call on the government of Japan to:

- Adopt child-specific data protection laws that address the significant child rights impacts of the collection, processing, and use of children’s personal data. Where child data protection laws already exist, update and strengthen implementation to deliver a comprehensive child data protection framework that protects the best interests of the child in complex online environments, and ensures that companies respect children’s rights and are held accountable if they fail to do so.

¹⁰ Human Rights Watch, “Privacy Snapshot: Japan: NHK for School,” https://features.hrw.org/features/StudentsNotProducts/files/privacy_snapshots/Privacy%20Snapshot%20-%20Japan%20NHK%20for%20School.pdf.

- Provide remedy for children whose data were collected through their use of EdTech products. To do so:
 - Conduct a data privacy audit of all EdTech websites and apps it has endorsed for children’s online learning. If the products fail this audit, rescind endorsement of these products, and immediately notify and guide affected schools, teachers, parents, and children to prevent further collection and misuse of children’s data.
 - Require EdTech companies with failed data privacy audits to delete any children’s data collected during the pandemic.
 - Require AdTech companies to identify and immediately delete any children’s data they received from EdTech companies during the pandemic.
- Ensure that any services that are endorsed or procured to deliver online education are safe for children. In coordination with data protection authorities and other relevant institutions:
 - Require all companies providing educational services to children to identify, prevent, and mitigate negative impacts on children’s rights, including across their business relationships and global operations.
 - Require child data protection impact assessments of any educational technology provider seeking public investment, procurement, or endorsement.
 - Ensure that public and private educational institutions enter into written contracts with EdTech providers that include protections for children’s data.
 - Define and provide special protections for categories of sensitive personal data that should never be collected from children in educational settings, such as precise geolocation data.

Discrimination Based on Sexual Orientation and Gender Identity (articles 2, 26)

Japan has no national law prohibiting discrimination based on sexual orientation or gender identity. Some municipal governments have such local laws. In October 2018, the Tokyo Municipal Government (TMG) passed an LGBT non-discrimination law, which requires the TMG and encourages private organizations such as companies, schools, and private groups to act to address discrimination based on sexual orientation and gender identity. In doing so, it became the first prefectural level non-discrimination law regarding sexual orientation and gender identity.

In response to the national laws passed in May 2019 on workplace harassment, three ministries—the Ministry of Health, Labour and Welfare; the Ministry of Internal Affairs and Communications; and the Ministry of Education, Culture, Sports, Science and Technology—issued ministerial regulations and formal notices requiring for the first time that corporations, local governments,

and schools take actions to prevent harassment based on sexual orientation or gender identity, including the public outing of a person as LGBT.¹¹

LGBT groups in Japan launched a campaign for a national non-discrimination law in the lead-up to the rescheduled Tokyo 2020 Olympics in 2021.¹² In January 2021, 116 Japanese and international groups sent a joint letter urging passage of such legislation to Prime Minister Yoshihide Suga.¹³ In March 2021, the groups submitted a petition with 106,250 signatures from Japan and abroad to all Japanese political parties, including the ruling Liberal Democratic Party (LDP),¹⁴ calling for the introduction of the Equality Act in the Diet.¹⁵ Since then, over 40 corporations and other organizations from Japan and overseas have also endorsed the Equality Act.¹⁶

In response, the LDP announced that it would enact an LGBT law during the 2021 regular Diet session.¹⁷ But the bill presented at the LDP's Special Mission Committee on Sexual Orientation and Gender Identity in April 2021 included no nondiscrimination protections and would only have required the government to “promote understanding of LGBT people.”¹⁸

In May 2021, leaders from the LDP and opposition parties agreed on a draft bill in which discrimination against LGBT individuals would be deemed unacceptable. While the parliamentary caucuses of all other political parties approved the proposed bill, the LDP parliamentary

¹¹ Government of Japan, Ministry of Education, Culture, Sports, Science and Technology, “「事業主が職場における優越的な関係を背景とした言動に起因する問題に関して雇用管理上講ずべき措置等についての指針」の制定等について（通知）」, March 19, 2020, <https://www.pref.hiroshima.lg.jp/uploaded/attachment/389204.pdf> (accessed September 16, 2022); Japan Alliance for LGBT Legislation, “【声明】改正労働施策総合推進法の施行による事業主の性的指向・性自認に関する取り組みの義務付けにあたって,” June 1, 2020, <http://lgbtetc.jp/news/1752/> (accessed September 16, 2020).

¹² LGBT Law Federation, Human Rights Watch, Athlete Ally, and All Out, “#EqualityActJapan,” 2020, <https://equalityactjapan.org/> (accessed September 16, 2022).

¹³ “Japan: Introduce LGBT Equality Act Before Olympics,” Human Rights Watch news release, January 26, 2021, <https://www.hrw.org/news/2021/01/26/japan-introduce-lgbt-equality-act-olympics>.

¹⁴ “LGBT法「差別の禁止明記を」,” *Reuters*, May 5, 2021, <https://jp.reuters.com/article/idJP2021050601001148> (accessed September 16, 2022).

¹⁵ “Japan: Pass Equality Act Before Olympics,” Human Rights Watch news release, March 25, 2021, <https://www.hrw.org/news/2021/03/25/japan-pass-equality-act-olympics>.

¹⁶ Human Rights Watch, “#EqualityActJapan,” <https://www.hrw.org/EqualityActJapan>.

¹⁷ “Japan: Prime Minister Should Back LGBT Equality Act,” Human Rights Watch news release, July 19, 2021, <https://www.hrw.org/news/2021/07/19/japan-prime-minister-should-back-lgbt-equality-act>.

¹⁸ Minky Worden and Kanae Doi, “Japan’s Ruling Party LGBT Bill Falls Short,” commentary, Human Rights Dispatch, May 7, 2021, <https://www.hrw.org/news/2021/05/07/japans-ruling-party-lgbt-bill-falls-short>.

representatives failed to approve it. According to media reports, many LDP representatives opposed the bill.¹⁹

Despite widespread national support and strong global pressure to pass such a law before the rescheduled 2020 Games, Japan failed to pass a national non-discrimination law at the end of the Diet session in June 2021.²⁰

Human Rights Watch recommends that the Committee ask the government of Japan:

- What steps is the government taking to protect sexual and gender minorities against discrimination?
- Does the government have plans to enact legislation to protect against discrimination nationally in line with its international human rights obligations? If so, on what timeline?

Human Rights Watch recommends that the Committee call on the government of Japan to:

- Pass a national non-discrimination law, specifying protections against discrimination based on sexual orientation and gender identity.

Transgender Legal Recognition Process (articles 3, 16, 17, 23(2), and 26)

Human Rights Watch has documented the persistent and discriminatory barriers transgender people face to change their legally recognized gender under the Gender Identity Disorder (GID) Special Cases Act. Current processes to legally change one's gender infringe on equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), the right to one's privacy and family (article 17), the right of people of marriageable age to marry and to start a family (article 23(2)), and protection of the law of all persons without discrimination on any ground, including sex (article 26).

The current law has five requirements for a transgender person to be legally recognized according to their gender identity. They must be at least 18 years old, unmarried, not have any children under age 18, not have gonads or permanently lack functioning gonads, and have a physical form that is "endowed with genitalia that closely resemble the physical form of an alternative gender." The procedure for changing one's legally recognized gender requires sterilization surgery and a

¹⁹ Motoko Rich and Hikari Hida, "Olympics Gave Hope to Japan's L.G.B.T.Q. Activists. But Old Prejudices Die Hard," *New York Times*, June 5, 2021, <https://www.nytimes.com/2021/06/05/world/asia/olympics-japan-lgbtq.html> (accessed September 16, 2022).

²⁰ "Japan: Prime Minister Should Back LGBT Equality Act," Human Rights Watch news release, <https://www.hrw.org/news/2021/07/19/japan-prime-minister-should-back-lgbt-equality-act>.

psychiatric diagnosis, which rests on an outdated and pejorative notion that a transgender identity is a “mental disorder.”

While some trans people in Japan are willing to undergo the medical procedures listed in the law, many do not, and should not be required to do so. Further, the continuance of these medical requirements underpins extensive prejudice against trans people.

Gender non-conforming children lack access to legal recognition and suffer abuses as a result, such as in education settings. In the context of Japan’s education system, the state’s failure to accord legal recognition of transgender children’s gender identity contributes to discrimination and degrading treatment. Japan should recognize that it may be in the best interests of many transgender children to change their legal gender before they reach age 18.

Japan’s requirement that all applicants for legal gender recognition be unmarried is effectively a mandatory divorce requirement for married transgender people who wish to be recognized. This is because Japan does not recognize same-sex marriages, which a gender transition would create.

The requirement that a transgender person not have any children under the age of 18 if they wish to secure legal recognition of their gender identity violates transgender people’s right to privacy and family life and the right to found a family, and discriminates on those grounds.

The surgery requirements force transgender people who want legal recognition to undergo lengthy, expensive, invasive, and irreversible medical procedures. It forces many would-be applicants—including those who would not otherwise choose to take these steps—to undergo physically transformative surgical interventions and undergo sterilization.

In a 2019 report documenting the barriers to legal gender recognition, Human Rights Watch interviewed 48 transgender people, as well as lawyers, health providers, and academics from 14 prefectures in Japan.²¹ Some of the transgender people Human Rights Watch interviewed told us that they would not have chosen sterilization if they had had the option to have their gender legally recognized without doing so. Transgender people told Human Rights Watch that Japan’s law infringes on their rights. One transgender man said: “I don’t want to [have surgery], to be honest. However, I have to just because it is a requirement ... I feel pressured to be operated on – so terrible.”²²

²¹ Human Rights Watch, *“A Really High Hurdle”: Japan’s Abusive Transgender Legal Recognition Process* (Human Rights Watch: New York, 2019), <https://www.hrw.org/report/2019/03/19/really-high-hurdle/japans-abusive-transgender-legal-recognition-process>.

²² Human Rights Watch interview with transgender man in Tokyo, Japan, August 2018.

Over time, an increasing number of trans people in Japan have taken the legally prescribed steps and changed their legal gender. In 2020, 676 people were approved for legal gender change, making it a total of 10,301 people who have received the approval during the 16 years since the law came into force.²³ However, activists have said the law limits the number of people who are willing to undergo the full suite of medical interventions.²⁴

In 2017, during its Universal Periodic Review at the United Nations Human Rights Council, Japan pledged to revise the law.²⁵ But despite mounting domestic and international pressure, the government has failed to do so. In 2019 and 2021, Japan's Supreme Court upheld lower court rulings that the law did not violate Japan's constitution.²⁶ However, in the 2019 ruling, two of the justices recognized the need for reform.²⁷ "The suffering that [transgender people] face in terms of gender is also of concern to society that is supposed to embrace diversity in gender identity," they wrote.

Human Rights Watch recommends that the Committee ask the government of Japan:

- Does the government have plans to end the abusive and discriminatory requirements that serve as barriers for transgender people to have their gender legally recognized? If so, on what timeline?
- What steps is the government taking to ensure protection against discrimination for transgender people who cannot legally change their gender due to existing barriers?

Human Rights Watch recommends that the Committee call on the government of Japan to:

- Introduce legislation to amend the Gender Identity Disorder (GID) Special Cases Act, removing the five criteria for changing legal gender, and replacing them with a self-declaration model that respects the rights of transgender individuals.

²³ Japanese Society for People Living with Gender Identity Disorder/Gender Dysphoria (GID.JP), "性同一性障害特例法による性別の取扱いの変更数調査 (2020 年版)," 2020, <https://gid.jp/research/research0001/research2021042201/> (accessed September 16, 2022).

²⁴ "People changing registered gender rising at record pace in Japan," *Kyodo News*, January 3, 2021, <https://english.kyodonews.net/news/2021/01/e03c720d8bc5-people-changing-registered-gender-rising-at-record-pace-in-japan.html> (accessed September 16, 2022).

²⁵ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/37/15, January 4, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/002/35/pdf/G1800235.pdf?OpenElement>.

²⁶ "Japan's Supreme Court upholds transgender sterilization requirement," *NBC News*, January 25, 2019, <https://www.nbcnews.com/feature/nbc-out/japan-s-supreme-court-upholds-transgender-sterilization-requirement-n962721> (accessed September 16, 2022).

²⁷ Kanae Doi and Kyle Knight (Human Rights Watch), "A Silver Lining in Japan's Supreme Court Transgender Ruling," Op-ed, *The Diplomat*, March 1, 2019, <https://www.hrw.org/news/2019/03/01/silver-lining-japans-supreme-court-transgender-ruling>.

- Ensure that legal recognition of transgender people’s gender identity applies to all aspects of their lives.
- Recognize that it may be in the best interests of some transgender children to change their legal gender before the age of majority (age 18) and ensure that transgender children are not excluded from the possibility of applying for legal recognition of their gender identity.

Death Penalty and Criminal Justice (articles 6, 9, and 14)

Japan executed one person on death row in July 2022.²⁸ Previously, Japan executed three people on death row in December 2021. In July 2022, there were 106 people on death row.²⁹ Anti-death penalty advocates have long raised concerns about death row inmates having inadequate access to legal counsel, being notified of their execution only on the day it takes place, and some being executed after their lawyers filed a request for retrial, among other issues.³⁰ In November 2019, two prisoners on death row sued the government, seeking compensation for the “extremely inhumane” same-day notices and executions.³¹

Human Rights Watch opposes the infliction of capital punishment in all circumstances because of its inherent cruelty.

Japan’s long overlooked “hostage” justice system, in which criminal suspects are held for long periods in harsh conditions to coerce a confession, received renewed attention after the high-profile arrest of former Renault and Nissan head Carlos Ghosn in November 2018. While Ghosn was detained for 108 days for financial misconduct allegations, he was granted bail quickly compared to other equivalent cases, apparently due to the international criticism. In December 2019, Ghosn fled Japan while on bail.³² Ghosn’s defenders had alleged before his flight that the

²⁸ Justin McCurry, “Japan executes man over Tokyo stabbing rampage – reports,” *Guardian*, July 25, 2022, <https://www.theguardian.com/world/2022/jul/26/japan-executes-man-over-tokyo-stabbing-rampage-reports> (accessed September 16, 2022).

²⁹ Government of Japan, Ministry of Justice, “法務大臣臨時記者会見の概要,” July 26, 2020, https://www.moj.go.jp/hisho/kouhou/hishoo8_00322.html (accessed September 16, 2022).

³⁰ Human Rights Watch, *World Report 2020* (New York: Human Rights Watch, 2020), Japan chapter, <https://www.hrw.org/world-report/2020/country-chapters/japan>.

³¹ Justin McCurry, “Death row inmates sue over Japan’s brief notice of execution,” *Guardian*, November 5, 2021, <https://www.theguardian.com/world/2021/nov/05/japan-death-row-inmates-sue-over-same-day-notification-of-execution-report> (accessed September 16, 2022).

³² “ゴーン被告「レバノンにいる」と声明 ロイターが報道,” *Asahi Shimbun Digital*, December 31, 2019, <https://digital.asahi.com/articles/ASMD044VJMD0UHBlooH.html> (accessed September 16, 2022).

Japanese system abused his rights by using long pretrial detention and denial of bail to pressure him to confess, among other issues.³³

In June 2019, a 2016 law came into force that requires video and audio recording of interrogations in a small segment of criminal cases, such as serious cases to be tried by the lay judge system. However, Japanese criminal procedure law continues to allow suspects to be detained for up to 23 days prior to prosecution without the possibility of release on bail and for investigators to deny legal counsel from being present during interrogations.

Interviews by Human Rights Watch conducted in 2020 show that many victims of the “hostage” justice system have suffered greatly.³⁴ For example, in Tokyo, a tax accountant with cancer was charged with a bankruptcy law violation. His family told Human Rights Watch that his health worsened in custody as the jail authorities refused to give him the medication prescribed by his doctor or allow the doctor to assess his health. He was kept in custody for 156 days, during which his bail request on medical grounds was rejected at least seven times. The man kept a meticulous diary of the worsening of his medical condition. He died of cancer waiting for the decision on his appeal.

Human Rights Watch recommends that the Committee ask the government of Japan:

- What steps has the government taken to respect the rights of detainees on death row, including their right to adequate legal counsel?
- Why does the government provide little to no advance notice of execution for detainees on death row, and is the government open to changing this practice?
- What steps has the government taken to respect the rights of detainees, including their right to medical treatment?
- What plans does the government have to review criminal justice procedures and implement reforms, and on what timeline?
- What steps has the government taken, and what plans does the government have, to make sure that detainees are not pressured to confess to be released and that lawyers can be present during interrogations?

Human Rights Watch recommends that the Committee call on the government of Japan to:

³³ “Lawyer calls Tokyo prosecutors’ latest arrest of Carlos Ghosn ‘hostage justice,’” *The Mainichi*, April 4, 2019, <https://mainichi.jp/english/articles/20190404/p2a/oom/ona/007000c> (accessed September 16, 2022); “ゴーン氏弁護士「人質司法だ」 保釈金10億円の行方は,” *Asahi Digital News*, April 5, 2019, <https://digital.asahi.com/articles/ASM445DoVM44UTILo2Q.html> (accessed September 16, 2022).

³⁴ Center for Strategic and International Studies, “RESOLVED: Japan’s Justice System is Fair,” *Debating Japan*, vol. 3 (2020) no. 2, <https://www.csis.org/analysis/resolved-japans-justice-system-fair> (accessed September 16, 2022).

- End the use of capital punishment in all circumstances.
- Until capital punishment is abolished, ensure detainees on death row have access to adequate legal counsel and advanced notice of their execution date.
- Commit to reforming the criminal justice system in a human-rights respecting manner, including by limiting the period detainees are held in pretrial detention, allowing for the possibility of release on bail as soon as they are detained, and making sure that investigators allow legal counsel to be present during interrogations and that detainees are not pressured to confess to get released.
- Ensure rights of detainees are respected, including their right to access medical treatment.

Child Abuse in Sport (article 7)

A 2020 Human Rights Watch report documented Japan’s history of corporal punishment in sport—known as *taibatsu* in Japanese—and finds child abuse in sports training throughout Japanese schools, federations, and elite sports.³⁵ Human Rights Watch documented experiences of more than 800 former child athletes—more than 50 from in-person interviews, and 757 from an online survey—including Olympians and Paralympians. The survey had participants from 45 of the 47 Japanese prefectures, and 50 sports.

Human Rights Watch found that Japanese athletes from at least 50 different sports reported abuses that included being punched in the face, kicked, beaten with objects like bats or bamboo kendo sticks, being deprived of water, choked, whipped with whistles or racquets, and being sexually abused and harassed. Based on the children we interviewed, and media reports we reviewed, Human Rights Watch documented the results of abuse, including depression, suicide, physical disabilities, and lifelong trauma. One athlete Human Rights Watch interviewed said: “I was hit so many times, I can’t count ... we were all called to the coach and I was hit in the face in front of everyone. I was bleeding, but he did not stop hitting me. I did say that my nose was bleeding, but he did not stop.”³⁶

Public outrage led to important reforms in 2013, such as setting up hotlines to report abuse. However, Human Rights Watch found that these reforms are optional “guidelines” instead of rules, that progress has been uneven and unmonitored, and that there is no mandatory reporting of abuse complaints or statistics.

³⁵ Human Rights Watch, *“I Was Hit So Many Times I Can’t Count”: Abuse of Child Athletes in Japan* (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/07/20/i-was-hit-so-many-times-i-cant-count/abuse-child-athletes-japan>.

³⁶ Human Rights Watch interview with Daiki A., 23, Fukuoka, February 2020.

Human Rights Watch found that child abuse in sport remains accepted and normalized in many parts of society, and that it is difficult for young athletes to file complaints against a powerful coach or official. Schools and federations rarely punish abusive coaches, often allowing them to continue coaching.

In some cases, abuse of child athletes has directly resulted in life-long injury or death. For example, in 2004, a 15-year-old boy from Yokohama had skipped judo practice; his coach found him and made him spar one-on-one. According to the boy's mother, the coach choked her son until he lost consciousness, and then hit him to wake him up and choked him again when he briefly regained consciousness. The injury caused internal bleeding in the boy's brain, resulting in life-long cognitive impairment.³⁷

In reference to another case, Keiko Kobayashi, former director of Japan Judo Accident Victims Association, said: "My son became severely disabled from *taibatsu* during judo training. His case is only the tip of the iceberg."³⁸

Between 1983 and 2016, there were at least 121 individuals who died while participating in school judo in Japan.³⁹ It is unknown how many of these cases involved abuse by coaches, but the rate of judo deaths in Japan has "no parallel" in other developed nations.⁴⁰

Human Rights Watch recommends that the Committee ask the government of Japan:

- What efforts has the government engaged in to ensure child athletes of abuse are able to speak up and report abuses?
- Has the government investigated any reports of child abuse in sport, and what has been the outcome of the investigation?
- What support or remedy has the government provided to child athletes of abuse?
- Will the government follow other governments to set up an independent Japan Center for Safe Sport, to allow reporting of abuses, remedy for athletes, and get abusive coaches who use *taibatsu* out of sport?

³⁷ Mike Burke, "108 school judo class deaths but no charges, only silence," *Japan Times*, August 26, 2010, <https://www.japantimes.co.jp/news/2010/08/26/national/108-school-judo-class-deaths-but-no-charges-only-silence/> (accessed July 6, 2020).

³⁸ "Japan: Establish Safe Sport Center," Human Rights Watch news release, October 12, 2021, <https://www.hrw.org/news/2021/10/12/japan-establish-safe-sport-center>.

³⁹ Ryo Uchida, "Facing the cervical accident of the middle-advanced person in the 12th fatal accident of school judo," *Yahoo Japan*, May 16, 2016, <https://news.yahoo.co.jp/byline/ryouchida/20160516-00057737/> (accessed July 6, 2020).

⁴⁰ Mike Burke, "108 school judo class deaths but no charges, only silence," *Japan Times*, <https://www.japantimes.co.jp/news/2010/08/26/national/108-school-judo-class-deaths-but-no-charges-only-silence/>.

Human Rights Watch recommends that the Committee call on the government of Japan to:

- Amend the Basic Act on Sport or introduce a new law to explicitly:
 - Ban all forms of abuse by coaches against child athletes in organized sport;
 - Delineate the rights of athletes, including the right to participate in sport free of abuse;
 - Mandate training for all coaches of child athletes; and
 - Mandate that any adult who becomes aware of child athlete abuse must report it.
- Amend the Child Abuse Prevention Law to explicitly expand the existing definition of child abuse in article 2 so that it includes child abuse in organized sport.
- Establish a Japan Center for Safe Sport, an independent administrative body tasked with addressing child abuse in Japanese sport. Among sports organizations, this independent body would have centralized administrative authority to address any allegation of child athlete abuse within organized sport in Japan. Responsibilities should include:
 - Maintain standards to prevent and protect against child athlete abuse, and ensure full compliance with those standards by Japanese sports organizations;
 - Receive complaints or reports of child athlete abuse directly, as well as via a centralized reporting system into which all existing reporting mechanisms would flow;
 - Conduct investigations into all cases of child athlete abuse in organized sport, issue proportionate sanctions against coaches—such as revoking their coaching license, suspending or banning them from coaching—and provide an appeal system for sanctioned coaches;
 - Refer abuse cases to law enforcement for criminal investigation, where appropriate;
 - Track and report data on the number of allegations, and the outcomes of investigations;
 - Create a public registry of coaches who are sanctioned;
 - Ensure free, ongoing, professional psychological support services for child athletes who have experienced abuse;
 - Establish training standards for all coaches of child athletes; and
 - Conduct education and awareness campaigns about the existence of this independent body, and the resources it provides.